



Commission for Energy Regulation
An Coimisiún um Rialáil Fuinnimh

REGULATOR'S 2012 NATIONAL REPORT TO THE EUROPEAN COMMISSION

COMMISSION FOR ENERGY REGULATION (CER) - IRELAND

JULY 2013

Table of Contents

| | | |
|----|------------------------------------------------------------|----|
| 1. | Foreword from CER Commissioners..... | 3 |
| 2. | Overview of the CER..... | 7 |
| 3. | Main Developments in the Gas and Electricity Markets..... | 13 |
| 4. | Regulations and Performance of the Electricity Market..... | 51 |
| 5. | Regulations and Performance of the Natural Gas Market..... | 53 |
| 6. | Consumer Protection..... | 56 |

1. Foreword from CER Commissioners



Chairperson Dermot Nolan



Commissioner Garrett Blaney



Commissioner Paul McGowan

Introduction

The Commission for Energy Regulation (CER) is Ireland's independent energy regulator, with a wide range of functions in economic regulation, safety regulation and customer protection. Our key objective as an economic regulator is to protect energy customers. As the country's energy safety regulator our core focus is on protecting lives and having a world-class safety record.

The CER's economic role and associated energy policy developments in 2012, including those related to Europe, are detailed in this annual report to the European Commission. Where key policy developments continued into the first half of 2013, they are also referenced in this report for completeness.

Key economic energy developments during 2012 included the conclusion of the 5-year revenue review for Bord Gáis Networks, a decision on the regulatory treatment of the Bord Gáis gas interconnectors, a decision to proceed with a National Smart Meter Roll-out Programme (NSMP) and progress in relation to the integration of the wholesale Single Electricity Market (SEM) into an emerging single internal European "target model".

These and other areas are summarised below, with more detail in the body of the report.

Energy Prices

The international cost of gas, which is outside of Ireland's control, is a key driver of Ireland's electricity and gas prices. The fall in the international cost of gas in 2009 contributed to noticeable reductions in our energy prices in 2009 and 2010. Unfortunately the cost of gas has risen again since then, especially in euro terms. As a result, 2012 saw rises in electricity and gas tariffs both in Ireland and in other European countries. This included an 8.5% rise in regulated Bord Gáis Energy residential gas tariffs.

Energy tariff rises are difficult for many customers in the current economic climate. To help mitigate the effects of this, the CER encourages customers to "shop around" among the many competing energy suppliers for the best tariff deal.

Customer Protection

To assist customers in shopping around, the CER has set-up a framework for accrediting price comparison websites. Under this framework, a website providing an energy price comparison service can be accredited by the CER if it meets defined standards of accuracy, transparency, and reliability. In March 2012 www.bonkers.ie was the first such website accredited by the CER, and this was followed-by the accreditation of www.uswitch.ie in May 2013. This system gives energy customers the confidence to use accredited price comparison websites, assisting them in finding the best tariff offer.

More generally, during 2012 the CER monitored the retail markets including supplier market shares, switching rates, disconnection levels and customer experiences, and this is expected to develop further in the coming years. In particular the CER continued to enforce stringent obligations on suppliers to help ensure that energy disconnections are a last resort. For example, prior to making any disconnection moves, all suppliers are required to offer customers a free Pay-As-You-Go meter to help them manage their bills. Overall, the rate of disconnections in electricity for 2012 for non-payment of account was broadly the same as in 2011, though there was a rise in gas disconnections. The CER will closely monitor this matter.

The CER's Energy Customers Team also continues to provide a free dispute resolution service for issues that customers may have with their energy supplier or network operator – please see www.energycustomers.ie for further information.

SEM & European Integration

The cost of generating electricity typically accounts for over half of a customer's electricity bill. The CER has a key role in ensuring that wholesale electricity (generation) costs are at competitive levels, by jointly regulating the wholesale all-island Single Electricity Market (SEM) with the Utility Regulator in Belfast. The SEM is governed through the SEM Committee, consisting of the CER, the Utility Regulator and an Independent Member.

Assisted by its clear regulation and inherent transparency, the SEM has encouraged modern efficient generation into the island in recent years. This has helped to keep prices competitive, ensure continued security of electricity supply and delivered environmental benefits. In 2012 the SEM continued to work well: it ran the cheapest available plants across the island where feasible to meet demand, while the System Marginal Price (SMP) broadly followed gas costs as expected given the island's generation mix.

Key developments in SEM in 2012 included the go-live of intra-day trading in July to assist interconnector trading through the implementation of European rules on network access for cross-border trade. The year also saw the continuation of the "DS3" workstream to facilitate more renewable generation and the conclusion of the medium-term review of the capacity payment mechanism.

The biggest policy development of all in SEM in 2012 related to the project to integrate SEM into a single internal European "target model" market by 2016. The SEM Committee published a major consultation paper on the matter in January, followed by industry workshops organised by the Regulatory Authorities, leading to a proposed decision on the next steps in November 2012

and a final decision in February 2013. This project will continue to be a priority in the coming years, with a consultation on a new SEM High Level Design expected in late 2013.

Energy Networks

During 2012 the new 500 MW EirGrid East-West electricity interconnector to the UK was completed, within budget. Following a technical fault the interconnector commenced full commercial operation in May 2013, and it should promote more cross-border trade in the SEM, to the benefit of customers, as well as assisting wind generation and security of supply. Investment in the on-shore electricity network also continued during the year, in order to provide for a high quality energy supply and the connection of more wind farms.

In gas networks, 2012 saw the completion of the CER's review of the allowed revenue and tariffs for the monopoly Bord Gáis Networks transmission and distribution systems, covering the 5 years to 2016/17. The key objective of this exercise was giving "value for money" to customers and setting appropriate revenues to adequately maintain and develop the gas network.

Following consultation, in 2012 the CER published a significant decision on the regulatory treatment of the Bord Gáis gas interconnectors and all entry points to the transmission system, setting out a forward-looking Long Run Marginal Cost (LRMC) tariff methodology. The basic objective of the CER's decision in this area is to reward efficient new sources of gas while at the same time containing any upward pressure on tariffs, recognising the crucial role that the interconnectors play in securing Ireland's long term energy supply requirements.

Smart Meters

In 2012 the CER decided to proceed with the roll-out electricity and gas "smart meters" to all homes and many businesses across Ireland in the coming years under the National Smart Metering Programme (NSMP). This followed the completion of pilot trials which showed that, taking account of the costs involved, smart meters could provide a net benefit to customers and the country of more than €220 million over 20 years.

This benefit is provided because smart meters can record customers' use of energy over short intervals, say every 30 minutes. Thus they allow for the provision of more consumption information to customers and they allow suppliers to charge varying electricity prices to reflect the different cost of electricity at different times. This combination of a more informed customer and new tariff structures facilitates reductions in overall and especially peak energy consumption. Smart meters therefore help reduce energy bills, improve energy efficiency and lower Ireland's CO₂ emissions, which is good for the environment.

The CER will extensively engage with stakeholders and interested parties in 2013 as it takes this project forward.

Next Steps

In addition to our important operational roles, key economic energy project work for the CER in 2013 includes progressing the smart metering and SEM European integration workstreams.

The CER will remain focused on providing an efficient regulatory service to all our customers and meeting our expanding statutory duties. For further information on all aspects of the CER's work, please see the CER's website at www.cer.ie.



Dermot Nolan

Chairperson



Garrett Blaney

Commissioner



Paul McGowan

Commissioner

2. Overview of the CER

2.1 Introduction

The Commission for Energy Regulation (CER) is the independent body responsible for regulating the natural gas and electricity markets in Ireland, and is the safety regulator of electricity, natural gas and petroleum exploration. As an economic and safety energy regulator, our mission is as follows:

In a world where energy supply and prices are highly volatile, the mission of the CER, acting in the interests of consumers is to ensure that:

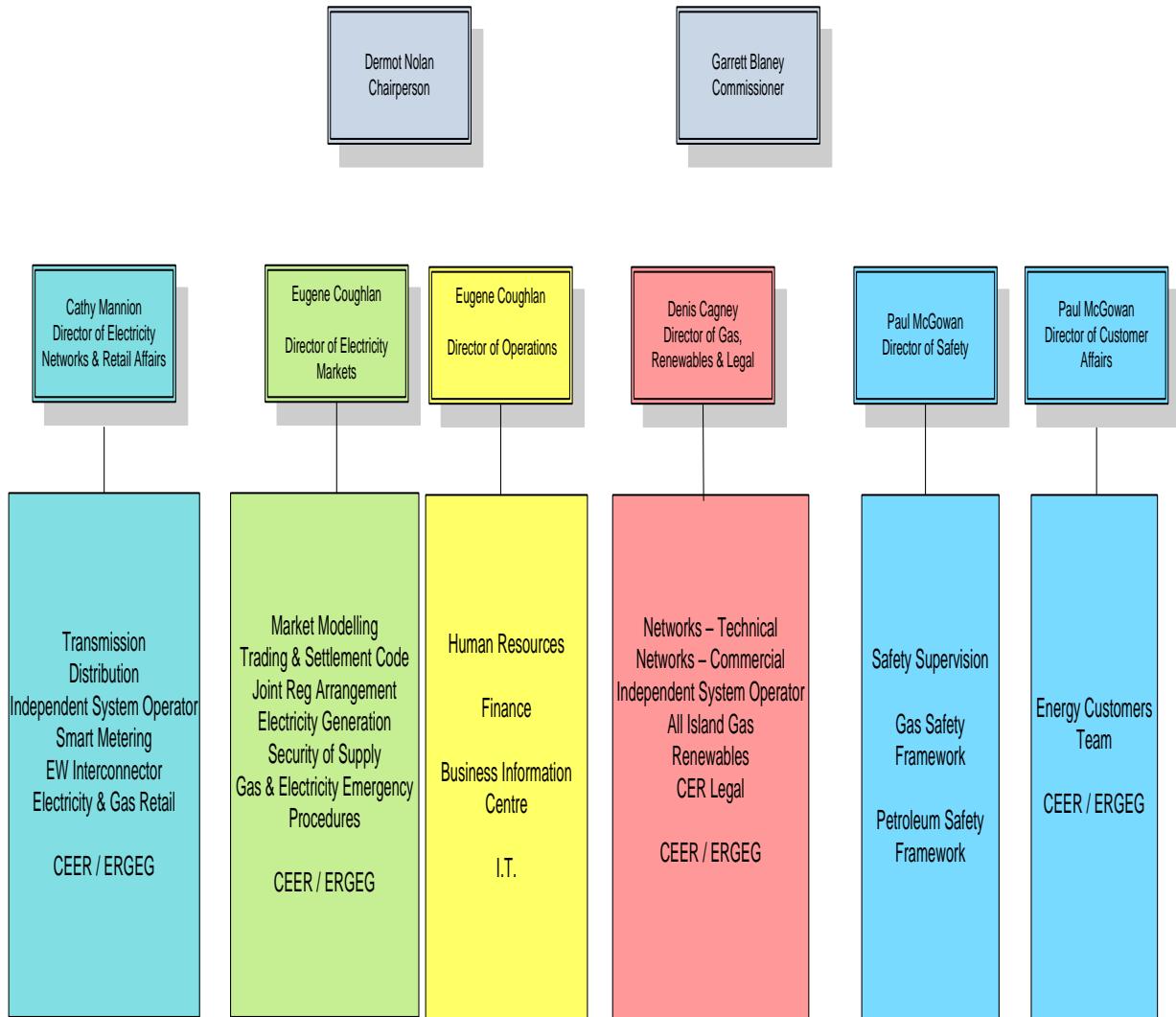
- *the lights stay on,*
- *the gas continues to flow,*
- *the prices charged are fair and reasonable,*
- *the environment is protected, and,*
- *energy is supplied safely.*

For detailed information on our work please see our website at www.cer.ie.

The CER's economic role and related developments in energy in 2012, including those related to Europe, are detailed in this annual report for the European Commission. Where key policy developments continued into the first half of 2013, they are also referenced in this report for completeness.

2.2 CER Organisation

The CER is headed by up to three Commissioners at any one time. In 2012 the Commissioners were Dermot Nolan, Chairperson, and Garret Blaney. The Commissioners were assisted in their duties by a staff of about 70, including 4 directors, across its economic, customer and safety roles. The chart below summarises the organisational structure from last year.



Since last year Dr. Paul McGowan has been appointed as Commissioner (in March 2013) and there have also been other organisational changes including the appointment of Sheenagh Rooney as Director of Energy Safety in May 2013.

2.3 CER Functions

The CER was established under the provisions of the Electricity Regulation Act, 1999, and has taken on significant additional responsibilities since then under various pieces of legislation. Responsibility for the regulation of the natural gas market was conferred upon the CER under the Gas (Interim) Regulation Act, 2002.

More recently, the Energy (Miscellaneous Provisions) Act 2006 added to the role and functions of the CER, including providing for additional responsibilities in natural gas and electrical safety. The Electricity Regulation Amendment (SEM) Act, 2007 outlined the CER's functions in relation

to the Single Electricity Market (SEM) for the island of Ireland. The SEM is governed through the SEM Committee consisting of the CER, the Utility Regulator in Belfast and an Independent Member. In 2010 the CER's statutory safety responsibilities expanded significantly with the enactment of the Petroleum (Exploration & Extraction) Safety Act, 2010. Further legislation has seen the Registered Gas Installer scheme expand to include Liquefied Petroleum Gas (LPG) installers and legislation is planned to expand the CER's LPG safety functions to include piped LPG distribution systems, LPG incident reporting & investigations and LPG promotion and public awareness.

The CER's statutory duties include that it must promote: competition in gas and electricity markets; safety on the part of the electrical contracting sector and natural gas undertakings; the continuity, security and quality of supplies of electricity and natural gas; and renewable, sustainable or alternative forms of energy.

The CER must also take account of: the protection of the environment; encouragement of efficient use and production of electricity; and the needs of rural customers, the disadvantaged and the elderly. The CER must also take account of the rights of customers, particularly household customers and small enterprises, to be supplied with electricity to a specified quality at reasonable, easily and clearly comparable and transparent prices.

The functions of the CER can be summarised as follows:

- Ensuring sufficient capacity in the electricity and gas systems to satisfy reasonable demands for supply of natural gas and electricity;
- Protecting the interests of final customers including the disadvantaged, the elderly and those residing in rural areas;
- Promoting competition in the supply of electricity and natural gas and in electricity generation;
- Ensuring no unfair discrimination between applicants for, or holders of, licences, consents and authorisations or between them and State-owned operators;
- Promoting the continuity, security and quality of supplies and encouraging safety and efficiency in undertakings and by end users;
- Monitoring security of electricity and gas supplies and taking appropriate action to ensure satisfactory margins between supply and demand;
- Ensuring licence and authorisation holders are capable of financing their activities;
- Setting standards, enforcing compliance, settling disputes, controlling and monitoring performance and reporting regularly on these activities;
- Promoting research and the use of sustainable forms of energy that reduce, or are free of, greenhouse gas emissions as well as adopting measures to protect the natural environment in all the sectors' activities;

- Advising government on the development and regulation of the gas and electricity sectors;
- Regulating the activities of electrical contractors with respect to safety;
- Regulating the activities of natural gas undertakings and of natural gas & LPG installers with respect to safety;
- Promoting the safety of natural gas customers and the public generally as regards the supply storage, transmission, distribution and use of natural gas;
- Establishing and implementing a natural gas safety framework;
- Establishing and implementing a risk-based petroleum safety framework.

2.4 Main Enforcement Powers

The CER has a significant range of enforcement powers. These include:

- Licences: Anyone seeking to construct a generating station, generate electricity or supply gas or electricity in Ireland must be licensed by CER and apply to the CER for a licence. The Transmission System Operator (TSO), Distribution System Asset Owner (DAO) and the Distribution System Operator (DSO) for electricity and gas are also licensed by the CER. The electricity Transmission System Owner is also licensed;
- Directions: Under sections 23 and 24 of the Electricity Regulation Act, 1999, the CER can issue a direction to a licensee to comply with its licence or authorisation conditions;
- Determinations: Where the CER decides not to give a direction under section 25 of the Electricity Regulation Act, 1999, it may make a determination that the holder of a licence or authorisation has committed a specific breach of a condition or requirement;
- Court Orders: In order to ensure compliance with a direction given under sections 23 or 24, the CER may apply to the Irish High Court requiring the holder of a licence or an authorisation to discontinue or refrain from specific practices;
- Licence Revocation: In certain circumstances set out in the licence, the CER may revoke a licence.
- The CER has powers under Statutory Instrument 463 of 2011 with respect to complaint and dispute resolution between customers and their supplier or network operator. A decision issued under these Instruments is binding on the supplier or network operator and may include proportionate compensation to the customer;
- Criminal Prosecutions: The CER, further to the provisions of the Energy (Miscellaneous) Provisions Act, 2006 can prosecute any unregistered party from carrying out certain gas work. The CER may also summarily prosecute unlicensed generation or supply of electricity or gas or the unlicensed carrying out of the DSO, DAO or TSO functions in relation to

electricity or gas, under Statutory Instrument No. 445 of 2000 (Internal Market In Electricity) Regulations 2000 and section 2 of the Gas (Interim) (Regulation) Act 2002, respectively.

2.5 Interagency Agreements

The CER interacts with a number of other governmental bodies including the Irish Competition Authority, Sustainable Energy Authority of Ireland and the Health and Safety Authority.

The Irish Competition Authority is responsible for implementing Ireland's competition legislation which mirrors EU legislation. This remit includes the energy sectors. This overlaps with the CER's responsibility to facilitate and encourage the development of a competitive energy market and may overlap with the implementation of some of the CER's dispute resolution functions. In accordance with the Irish Competition Act, 2002, the CER and the Competition Authority have put in place a co-operation agreement. This agreement governs the relations between the two bodies. The agreement provides for the exchange of information and allows each party to forbear to act where it considers the other is investigating or exercising its powers in a certain matter. To date the Competition Authority has not taken any case in relation to an energy company.

The Sustainable Energy Authority of Ireland is the government body charged with improving energy efficiency, advancing the development and competitive deployment of renewable sources of energy and combined heat and power, and reducing the environmental impact of energy production and use.

The Health and Safety Authority (HSA) has overall responsibility for the administration and enforcement of health and safety at work in Ireland. It is a State-sponsored body, established under the Safety, Health and Welfare at Work Act and it reports to the Minister for Enterprise, Trade and Employment. The HSA monitors compliance with legislation at the workplace and can take enforcement action (up to and including prosecutions). The CER and the HSA signed a Memorandum of Understanding (MoU) in June 2008. The objective of this MoU between the HSA and the CER is to facilitate cooperation between both regulators in discharging their respective statutory responsibilities for the regulation of natural gas undertakings, gas installers and electrical contractors with respect to safety. This is in order to enhance the actions of both regulators and to avoid duplication of effort by both regulators and the imposition of an unnecessary regulatory burden on the regulated entities.

Furthermore, the CER interacts with the Department of Communications, Energy and Natural Resources, which is the Government Department with responsibility for the development of energy policy in Ireland. This department is also responsible for licensing all offshore oil and gas developments and pipelines (the CER is responsible for the licensing of all onshore gas pipelines). The Irish Government is the main shareholder in the incumbent gas and electricity companies, Bord Gáis Éireann (BGE) and the Electricity Supply Board (ESB).

Pursuant to the CER new petroleum safety functions under the Petroleum (Exploration and Extraction) Safety Act 2010, the CER is required to consult and cooperate with a number of statutory agencies and Ministers including the Environmental Protection Agency, National Standards Authority of Ireland, Irish Aviation Authority, Minister for the Environment, Heritage and Local Government and the Department of Transport (now Department of Transport,

Tourism and Sport). Given the increasing interaction with these agencies, discussions have been ongoing throughout 2012 on the agreement of MoU. A number of these MoU were concluded in 2013, including with the Environmental Protection Agency (EPA) and An Bord Pleanála.

2.6 Independence & Accountability

The CER is independent of the government and any other state agency in the implementation of its functions. However the CER is required to comply with directions issued by the Minister for Communications, Energy and Natural Resources as regards the performance of its functions. These directions may not be made in respect of specific or individual licensees. The CER submits an annual report for approval by the Minister for Communications, Energy, and Natural Resources and is also accountable to parliamentary committees related to energy.

The CER's main source of income is through a levy on the relevant market participants. Initially the proposed principles for administration of the levies for the relevant calendar year and subsequent years were communicated to all market participants through a consultation process. On agreement with all industry participants the principles for administration of the levy were implemented. In the discharge of the CER's functions the CER must identify separately in regard to the gas, electricity and petroleum safety sectors all elements of cost and revenue. Separate levies are issued to the relevant electricity and gas industry participants.

3. Main Developments in the Gas and Electricity Markets

This section provides a summary of the key developments in the Irish electricity and natural gas sectors during 2012. It covers many of the key issues requested in the CEER's paper detailing the structure of this report, though account is taken for the specific structure of the Irish energy sector and market.

3.1 Wholesale Electricity Market Developments

3.1.1 SEM Introduction

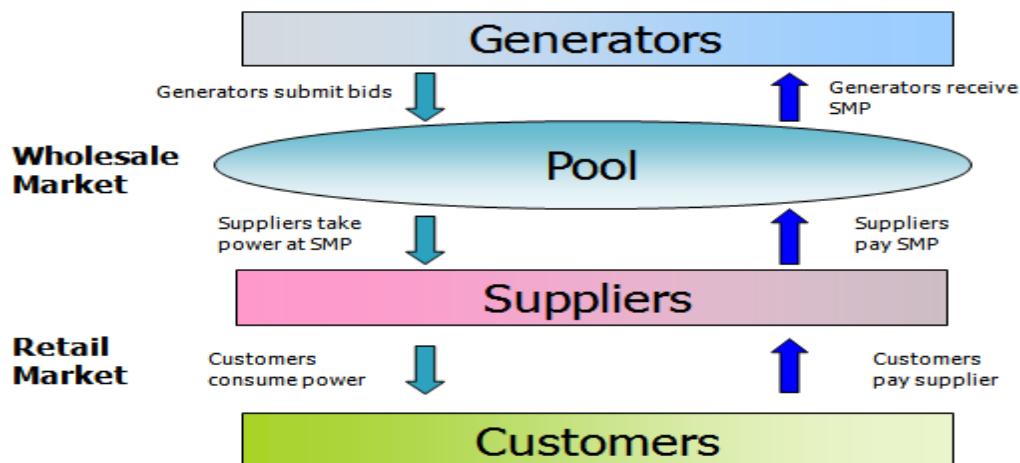
The Single Electricity Market (SEM) is the wholesale electricity market for the island of Ireland, regulated jointly by the CER and its counterpart in Belfast, the Northern Ireland Authority for Utility Regulation (Utility Regulator), and together referred to as the Regulatory Authorities or RAs. By combining what were two separate jurisdictional electricity markets, the SEM became one of the first of its kind in Europe when it went live on 1st November 2007. The SEM is designed to provide for the least-cost source of electricity generation to meet customer demand at any one time across the island, while also maximising long-term sustainability and reliability.

The decision-making body which governs the market is the SEM Committee, consisting of the CER, the Utility Regulator as well as an Independent Member (who also has a deputy), with each entity having one vote.

The SEM includes a centralised all-island gross mandatory pool (or spot) market. In this pool electricity is bought and sold through a market clearing mechanism, whereby generators bid in their marginal cost and receive the System Marginal Price (SMP) for each trading period for their scheduled dispatch quantities, with the cheapest possible generators run to meet demand across the island. Generators also receive separate payments for the provision of available generation capacity through a capacity payment mechanism, and constraint payments for differences between the market schedule and the system dispatch.

Suppliers (to electricity customers) that purchase energy from the pool, pay the SMP for each trading period along with capacity costs and system charges.

The SEM pool is illustrated below, while the SEM rules are set out in detail in the Trading and Settlement Code.



Overall, the SEM facilitates the running of the cheapest possible generators, determined by the stack of generation bids, to meet customer demand across the island.

During 2012 the Regulatory Authorities continued to monitor and oversee the SEM and the suite of regulatory rules governing it. From the setting of directed contracts to the monitoring of generators' compliance with the bidding principles to oversight of the market rules, the Regulatory Authorities have been actively supervising the SEM and representing the interests of all-island consumers.

The Regulatory Authorities are of the view that the SEM in the main is continuing to work well, in accordance with its objectives, and is delivering fair and cost-reflective prices. Assisted by clear market rules and transparency, the SEM has encouraged new efficient generators into the market (in both Ireland and Northern Ireland), helping to put downward pressure on customer prices and providing security of supply and environmental benefits.

In 2012 the Regulatory Authorities continued with a series of development initiatives to meet the challenges facing the market, such as increasing levels of intermittent generation and the need to facilitate new interconnection with neighbouring market.

The key areas of SEM work in 2012 and other related work issues are shown below.

3.1.2 Intraday Trading

The introduction of intraday trading in SEM was a key highlight in 2012. On 21st July, a modification to SEM was implemented to create two new Gate closures in the market. These new gates allow additional opportunities for trading in SEM. In particular, the new gates create a mechanism to release interconnector capacity that is not used by long-term capacity rights holders back into the market for use by all interconnector users. It is expected that this will result in a better utilisation of the East West and Moyle interconnectors.

The Intraday trading modification was brought forward as a result of Regulation 2003/1228 ("2nd legislative Package") of the European Parliament and of the Council on conditions for access to

the network for cross-border exchanges in electricity - this provides that all Member States must have intra-day trading mechanisms in place on their borders.

3.1.3 European Market Integration

At the February 2011 European Council meeting, Member States committed to deliver a fully-functioning, interconnected and integrated internal energy market by 2014. The Communication on the Internal Energy Market published by the European Commission on 15th November 2012 highlighted the benefits of a truly integrated European market and identified the need for further action in a number of areas including consumer protection, enforcing the existing rules and investing in the modernisation of energy infrastructure.

In this context, a key focus for the CER during 2012 was to develop plans to integrate the SEM into this pan-European electricity market to promote cross-border competition and deliver significant benefits to consumers.

The EU “Target Model” for electricity evolved out of the EU’s Third Energy Package in 2009, which is a set of legislative measures that aim to create a single competitive European energy market. The Agency for the Cooperation of Energy Regulators (ACER), established under the third Package of EU energy legislation, has identified a number of key elements to the design of the Target Model to facilitate market integration. These include methods for calculating interconnector capacity available across borders and determining appropriate market zones. These also include methodologies for allocating cross border capacity in different timeframes namely forwards, day ahead and intraday.

3.1.4 SEM Market Integration Project

Due to its centralised structure and gross mandatory pool design, it seems likely that the SEM will require significant modifications to implement the Target Model. In recognition of this, ACER has granted the SEM a two-year derogation, an additional two years to implement the Target Model, i.e. from 2014 to 2016.

In January 2012, the RAs published a consultation paper in January 2012 to seek views on options for implementing the Target Model in Ireland and Northern Ireland in a manner that is consistent with national and EU policy objectives. In addition, the RAs hosted a number of industry workshops and engaged with a wide range of stakeholders including Government Departments, System Operators, Ofgem and ACER to discuss the issues involved in integrating SEM into the European market.

The SEM Committee published a proposed decision paper on the next steps in the process of market integration in November 2012 and a final decision paper in February 2013. The main conclusions of this paper include:

- The establishment of a set of high-level principles which will govern the design and implementation of the new market;
- The establishment of project governance arrangements with strengthened stakeholder engagement to ensure that consumer groups and market participants are adequately involved in the project.

- Commitment to maintaining the current structure of the SEM until 2016 and to carrying out an impact assessment on the new market design in line with best practice; and,
- A working assumption that the new market will continue to be based on transparent, centralised trading arrangements with least-cost dispatch.

During 2013 the Regulatory Authorities will initiate the project to develop a new SEM High Level Design. It is expected that a Consultation Paper will be published towards the end of 2013 or early in 2014.

3.1.5 Framework Guidelines and Network Codes

The detailed rules of the Target Model are developed by the Agency for Cooperation of Energy Regulators (ACER) and the European Network of Transmission System Operators for Electricity (ENTSOE) and are finalised by the European Commission.

ACER initiates the process by developing Framework Guidelines. Based on these Framework Guidelines, ENTSOE develops detailed Network Codes. This is all done in consultation with interested stakeholders. The final Network Codes will be made into binding Regulations following a comitology process. More information on this process and the individual Framework Guidelines and Network Codes is available on the ACER and ENTSOE websites.

On 25th September 2012, ACER Adopted the Framework Guidelines on Electricity Balancing and reviewed four Network Codes as submitted by ENTSO: the Network Code on Requirements for Generators, the Network Code on Demand Connection, the Network Code on Capacity Allocation and Congestion Management. ACER issued preliminary opinions on the Requirements for Generation Network Code (October) and the Capacity Allocation and Congestion Management Network Code (December). ACER called for improvements to be made in both of these codes before they are passed to the European Commission and the comitology process. In March 2013, ACER issued its final reasoned opinion on these three network codes.

3.1.6 France-UK-Ireland (FUI)

In order to enable an efficient transition to the single European market, a number of regional initiatives were launched in 2006. These initiatives bring together Regulators, TSOs, the European Commission, Member State Governments, industry and stakeholders to develop and implement common policies for the trading of electricity across borders in each region. Ireland is part of the France-UK-Ireland (FUI) region.

The SEM Committee continued to progress work related to increasing electricity market integration with neighbouring jurisdictions in the FUI region throughout 2012. Key achievements for the FUI region include:

- Approval of detailed access arrangements (Access Rules) for use of the East West and Moyle interconnectors;
- Approval of the charging methodology for interconnector capacity acquired at the intra-day timeframe;

- Establishment of joint working arrangements with Ofgem; and,
- Agreement that TSOs in the region should engage in greater levels of cooperation and that they should develop more robust countertrading and balancing arrangements in region.

3.1.7 SEM Market Power and Liquidity

Following earlier consultation, in November 2011 the SEM Committee published a draft decision paper on market power and liquidity for final consultation. This paper proposed to:

- Maintain the Bidding Code of Practice, Market Monitoring Unit and Directed Contracts (BCoP, MMU and DCs) as SEM market power mitigation measures for the foreseeable future. This is because the SEM spot market is quite highly concentrated and CEPA's spot market modelling analysis for 2015/20 indicated that, while ESB's market power would not be at levels of concern *on average*, there would still be certain hours/scenarios when the RSI is below 1.2, the threshold that typically suggests market power potential. If the spot market becomes significantly less concentrated in the future, the Committee would then review these market power mitigation measures;
- Not allow ESB vertical (generation-supply) integration for now, but allow the horizontal integration of ESB generation units, given the low market power risks involved;
- Continue with the current 1,150 HHI level for the determination of DC volumes; DC volumes from the horizontal integration of ESB (referred to above) are expected to increase significantly from 2010/11 levels. That said, the SEM Committee will continue to monitor the market and if there is any evidence of market power being exercised and liquidity levels significantly falling, the Committee reserves the right to take further action, including the lowering of the HHI threshold; and,
- In relation to contract liquidity, not establish a market maker or to mandate contracts from generators at this time as liquidity is generally best developing "organically" through industry/market initiatives, such as the new "Over the Counter" (OTC) facility for NDCs. However, there may be a case for proceeding with such an approach in the future, in the context of the integration of SEM into European markets. The Regulatory Authorities' Market Integration Project Team will lead this work and any initiatives in this area will be fully consulted on by the Regulatory Authorities at the appropriate time.

Generally there was a favourable market participant response to the draft decision's proposals. A final decision on this matter was made by the SEM Committee in February 2012, with no substantial policy change from the draft decision. This brought the workstream to a close from a policy perspective.

Following from this, during the first half of 2013 ESB's Generation licence was amended to allow for horizontal generation integration, following a public consultation on the matter during which no objections to the proposed licence change were received by the CER.

3.1.8 SEM Dispatch and Scheduling: Tiebreaks

In late 2011, the SEM Committee published its decision on the Treatment of Price Taking Generation in Tie-breaks in Dispatch in the SEM. This paper set out the rule-set for the dispatch down of price taking generation in the event of a tie-break situation i.e. where there was no market indicator to distinguish between competing plant. This decision related to both the treatment of constraints and curtailment. However in March 2012, the SEM Committee decided to withdraw the element of its decision related to curtailment. A communication was issued to the industry on this, which was followed up by a consultation paper on the treatment of curtailment in tie-break situations in April 2012.

This paper set out four options for this issue and each of these options were considered against a set of decision making criteria outlined by the SEM Committee. The options were considered against the following:

- Impact on the consumer and Dispatch Balancing Costs;
- Facilitation of Ireland and Northern Ireland 2020 Renewable Targets;
- Efficiency of Entry Signal;
- Stable Investment Environment;
- Consistency of treatment for constraints and curtailment.

93 responses to the consultation were received, while the SEM Committee also considered independent modelling produced by the TSOs into the potential impact of the various options on consumers and DBC. Following this review, the SEM Committee published a Proposed Decision paper which outlined its favoured option for the treatment of curtailment in tie-break situation. The SEM Committee has subsequently in early 2013 arrived at final decision on this matter. This decision outlined that all generators in the tie-break situation would be turned down on a pro-rata basis for the treatment of curtailment and that Dispatch Balancing Cost (DBC) compensation for curtailment will be available until 31st December 2017 but would no longer be available from 1st January 2018. The SEM Committee also published an approved rule-set provided by the TSOs to distinguish between constraints and curtailment.

As part of its decision on the treatment of constraints in tie-break situations published in December 2011, the SEM Committee required the TSOs to model constraint groups on the island and to provide a report to the SEM Committee. This was carried out in 2012 and the SEM Committee carried out a consultation on the proposed constraints groups. This identified a constraint group in the Donegal region and the South-west of Ireland. The SEM Committee subsequently approved the constraint groups modelled by the TSO, in early 2013.

3.1.9 Capacity Payment Review

In April 2009 the SEM Committee published a consultation paper documenting the scope of work that it proposed to carry out in relation to a medium term review of the Capacity Payment Mechanism (CPM). The main purpose of this review was to examine if the current design of the CPM could be further improved to optimally meet its objectives. In November 2009 the SEM Committee published an information paper which set out the various work streams that form part of the medium term review.

This medium term review was concluded in 2012. A Final Decision Paper was published in 2012.

Key points from the CPM Medium Term Review Final Decision Paper include:

- The current CPM is generally working well and that there is no compelling need to make major changes to the current design and methodology;
- The design of the distribution allocation should be changed;
- The Forced Outage Probability percentage within the Capacity Requirement calculation should be increased to 5.91%;
- Infra Marginal Rent will be deducted from the BNE Cost of the Annual Capacity Payment Sum (ACPS) on an annual basis; and
- The BNE calculation methodology was revised so that the Fixed Costs of the BNE would be calculated for 2013 and then fixed for three years, with indexing being applied in 2014 and 2015. The Capacity Requirement will be recalculated annually.

The SEM Committee also recommended increasing the Flattening Power Factor to 0.5. This was consulted upon in August 2012. Based upon the responses, it was clear that there was no support for making changes to the Flattening Power Factor, and it was decided to keep it at its previous value of 0.35.

These decisions were implemented for the 2013 determination of the Best New Entrant (BNE) Fixed Cost and the Annual Capacity Payment Sum (ACPS). The BNE Fixed cost for 2013 is €78.18kW/year. The Capacity Requirement was set at 6,778MW and the ACPS is set at €529,876,722.

3.1.10 Market Modelling Group

Among other things, the RAs' Market Modelling Group (MMG) is responsible for developing and monitoring various Contracts for Differences (CfDs) for participants in the SEM. Specifically, the MMG sets the price, quantity and supplier eligibility of Directed Contracts (DCs).

The majority of the MMG's forecasting SEM outcomes is over the short term (1 to 2 years), which is used to quantify/price DCs and forecast generator profits, although some medium and long-term forecasting is also carried out to inform the RAs' policy decisions.

SEM Directed Contracts

As part of the SEM Market Power Mitigation Strategy, the RAs' MMG implements a suite of DCs on behalf of the SEM Committee. Market Power is defined as the ability of a market participant acting independently, to raise (or reduce) market prices consistently and profitably above (or below) competitive levels for a sustained period of time. DCs are designed to significantly reduce the incentive on the incumbent generators to submit bids in the SEM above competitive levels or withhold capacity in order to influence SEM spot prices or future contract prices.

During 2011 the MMG's work included:

- In-house Validation of the forecasting model (PLEXOS) and the dataset for SEM covering 2011 and 2012;
- Quantification and Pricing of DCs, for eligible suppliers, imposed on the incumbent generators (ESB Power Generation & NIE Energy Power Procurement Business) in the

SEM as part of the Market Power Mitigation Strategy, covering the next contract year, i.e. from 1st October 2011 to 30th September 2012;

- Setting of auction reserve prices for Public Service Obligation (PSO) related CfDs;
- Monitoring the volume and prices of Non-Directed Contracts, which are typically offered by the incumbent generators (ESB Power Generation & NIE Energy Power Procurement Business) over and above the mandatory Directed Contracts; and,
- Modelling support to the RAs to help inform their policy on the SEM;

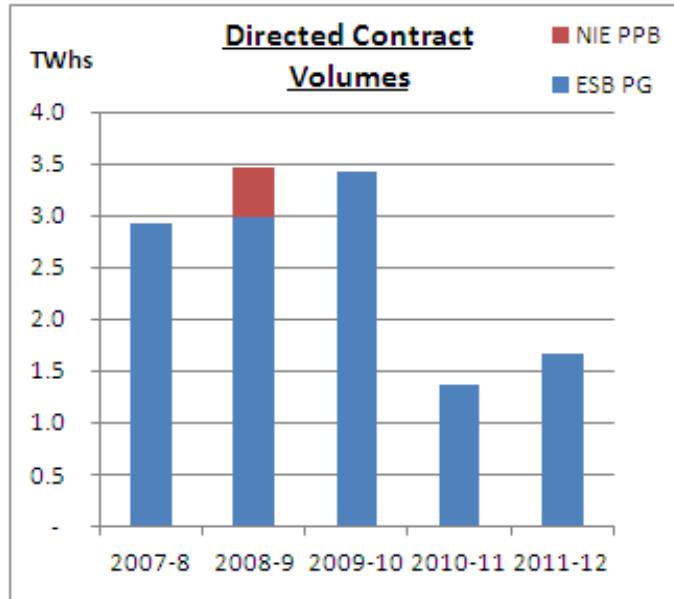
Quantities of Directed Contracts

The quantities of DCs imposed on the incumbent generators are set to achieve a desired concentration level in the SEM as measured by the Herfindahl-Hirschman Index (HHI). A HHI threshold of 1,150 was chosen by the RAs and, at this HHI level, only ESB Power Generation (ESB PG) were required to sell DCs for the 2011/12 tariff year which runs from October 2011 to September 2012. Three DC products were required by the RAs to be offered by ESB PG – baseload, mid-merit and peak – in order to reduce market concentration in each segment for each quarter to a HHI of 1,150. No baseload contracts and no peak contracts were required in Q3 2012 and Q1 2012 respectively as the HHI in these segments for these quarters was already below 1,150.

The quantities of DCs which ESB PG were required by the RAs to offer to eligible suppliers to meet this HHI threshold are shown in the table below.

| ESB PG Directed Contract Quantities (MW) | | | |
|------------------------------------------|----------|-----------|------|
| Quarter | Baseload | Mid Merit | Peak |
| Q4 2011 | 209 | 104 | 36 |
| Q1 2012 | 154 | 73 | 0 |
| Q2 2012 | 119 | 99 | n/a |
| Q3 2012 | 0 | 154 | n/a |

The contracts were sold to eligible suppliers in two separate subscription processes by ESB PG. The table below shows the volume of DCs that ESB PG and NIE PPB were required to offer from the beginning of the SEM, related to their predicted generation output. The chart shows an increase in the total volume of contracts in the second and third years, then a significant reduction in the fourth year, followed by an increase last year.



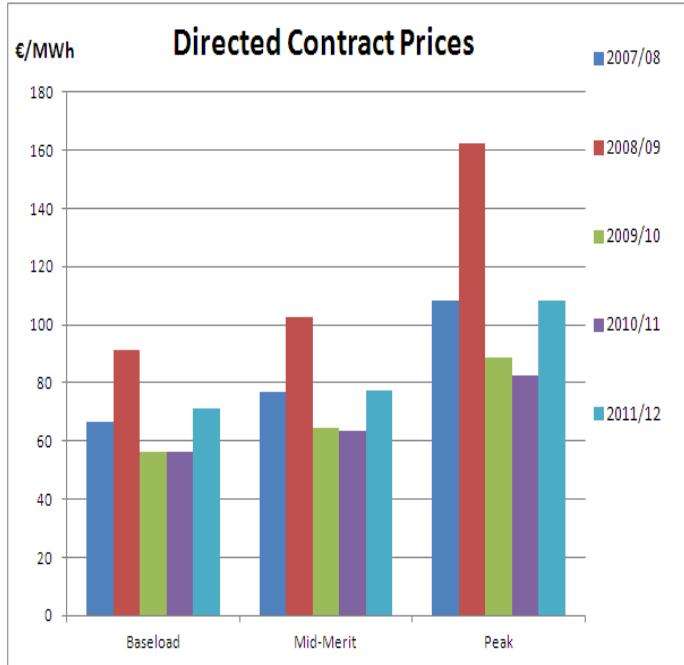
Pricing of Directed Contracts

The prices of the DCs were determined each day during the subscription period using forward fuel and carbon prices and regression formulas determined by the RAs through econometric analysis. These formulas were designed to mimic the results of the validated SEM PLEXOS model.

Using this methodology, the average prices for all DC products are shown in Euros and Sterling below.

| Product | €/MWh | £/MWh |
|-----------|--------|-------|
| Baseload | 70.38 | 62.90 |
| Mid Merit | 77.36 | 69.13 |
| Peak | 104.03 | 92.97 |

As shown the figure below the average price of DCs sold for the 2011/12 tariff year was higher than the previous year but significantly lower than the peak 2008/09 period, in line with the movements in international fuel markets.



PSO-related Contracts

In addition to the above contracts, ESB PG also offered generation associated with the Irish Public Service Obligation (PSO). The RAs determine the reserve prices (using the Validated PLEXOS model and up-to-date forward fuel prices) that these products are offered to the market at and they are auctioned off to suppliers. For the 2011/12 contract year the PSO-Related CfDs are being offered on a quarterly basis, with auctions occurring about a month ahead of the quarter in question. Contracts are being offered at monthly granularity with a mix of products between baseload, mid-merit 1 and mid-merit 2. This provides market participants with a good choice and mix of offerings/products.

Non-Directed Contracts

While the RAs legal remit on behalf of the SEMC largely extends to DCs, licensed generators can also offer Non-Directed Contracts (NDCs) to the market. The RAs do not set the price or quantity of NDCs as they are agreed on a bilateral basis between market participants. They do however take an active role in the monitoring and development of the NDC market by assessing the reasonableness of prices during the ESB PG and NIE PPB auction processes. The RAs have also worked with participants on the development of a multi-lateral trading facility which went live in April 2009. In addition a new “Over the Counter” (OTC) trading facility commenced in 2011. This should help to assist liquidity, by allowing for suppliers and generators to interact more with respect to NDC price and quantities, assisting in price discovery.

Generator Financial Reporting

During 2011 the MMG assessed key generator financial performance in the SEM, both historical performance using generator financial accounts and forecasts based on SEM modelling. This

information was provided to the SEM Committee to inform them on the financial performance of generators in the SEM.

In addition, in December 2011 the Regulatory Authorities published a Consultation Paper setting out proposals for the collection and publication of information on generators' financial performance. This paper set out a proposed financial reporting template to be completed by generator companies with a combined capacity greater than or equal to 20 MW. The paper also set out timelines for the annual publication by the RAs of a report covering profit levels of generators operating in the SEM.

The consultation closed in early February 2012 and the RAs received a total of 13 consultation responses. Following on from this, a decision document was published by the RAs in May 2012, taking account of comments received to the public consultation. The key change from the consultation was that the reporting threshold for generator companies was increased to 25 MW and the RAs committed to only publishing financial information in banded format (rather than by individual generator) in order to preserve commercially sensitive data .

3.1.12 Market Monitoring Unit

The RAs' Market Monitoring Unit (MMU) forms part of the SEM market power mitigation strategy, with the behaviour in the market is reviewed by the MMU on an ex-post basis. This includes investigating the exercise of market power in the spot market, monitoring the compliance of market participants with the spot market Bidding Code of Practice (BCoP) and other market rules and reviewing prices reported in the market.

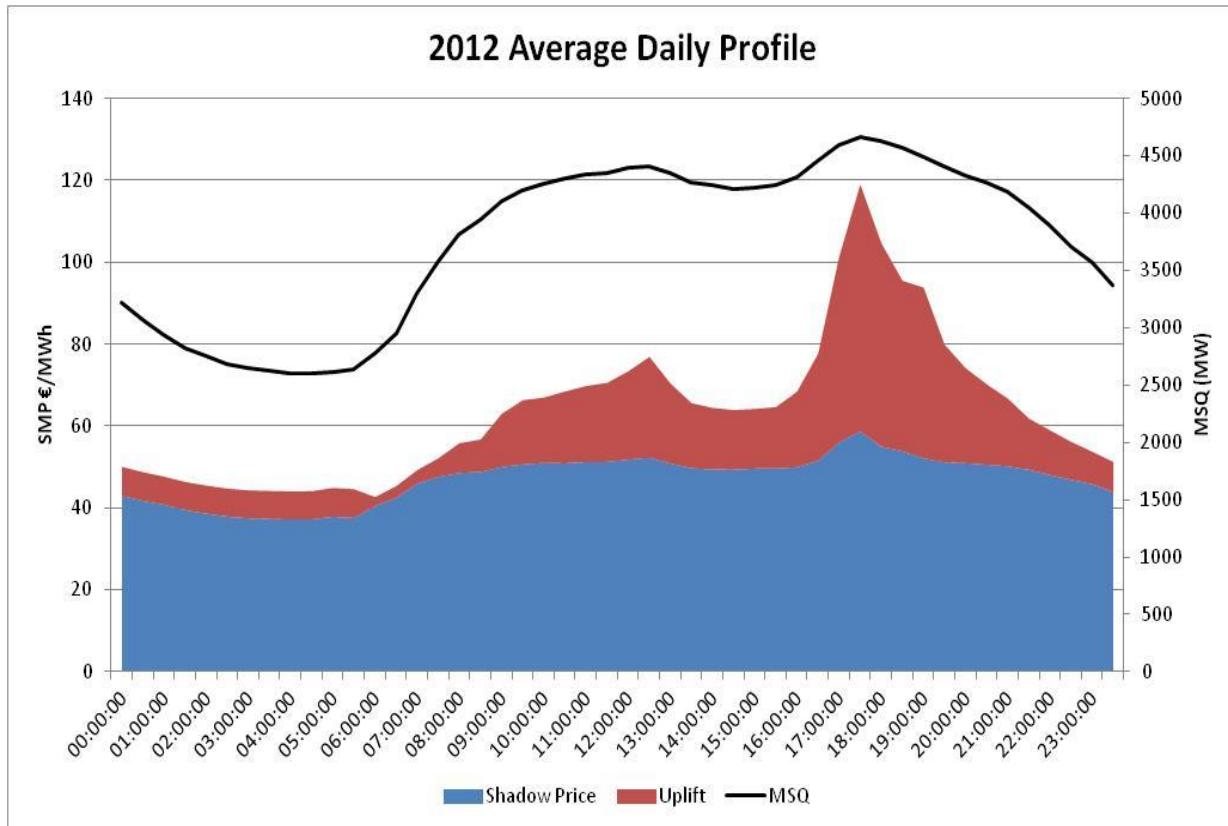
The MMU continuously reviews generator participants' behaviour in the market including investigations into the exercise of market power, monitoring the compliance of market participants with the bidding code of practice and other market rules.

There are several elements to prices in the SEM that are reviewed and monitored by the MMU:

- System Marginal Price (SMP): the price at which each MWh of electricity is sold under the Trading and Settlement Code in any given Trading Period. It is calculated on a half-hourly basis and is measured in Euros per Megawatt-hour (€/MWh). The SMP is made up of the sum of the shadow price and uplift;
- Shadow Price: a component of the SMP for each Trading Period which reflects the short run marginal cost (SRMC) of the marginal generating unit.
- Uplift: a component of the SMP for each Trading Period which is calculated to reflect the Start-Up and No Load Cost element of Schedule Production Cost for relevant Generator Units.

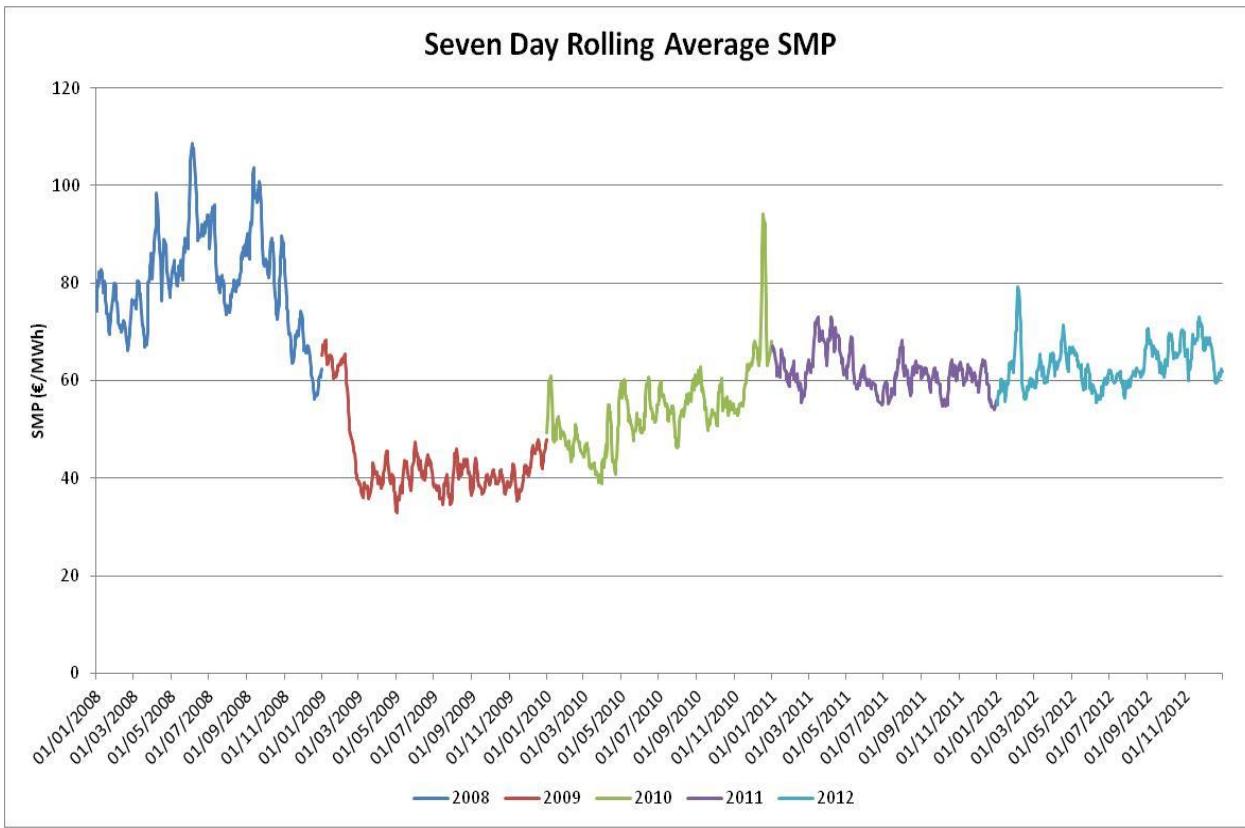
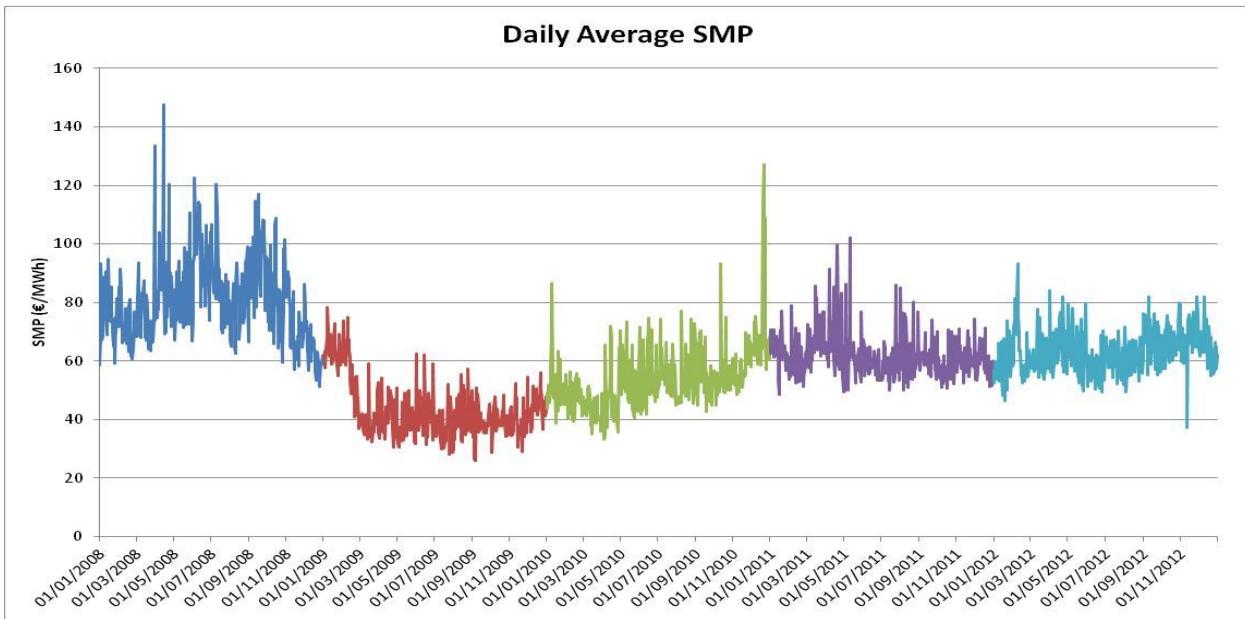
In 2012 the SMP rose 2% on average against the 2011 SMP. This rise is due to a combination of increasing gas prices, up 13%, and falling Market Scheduled Quantity (MSQ), down 2%, over the same period.

The graph shows the average daily profile for 2012, showing the SMP divided between the shadow price and uplift, as well as MSQ.

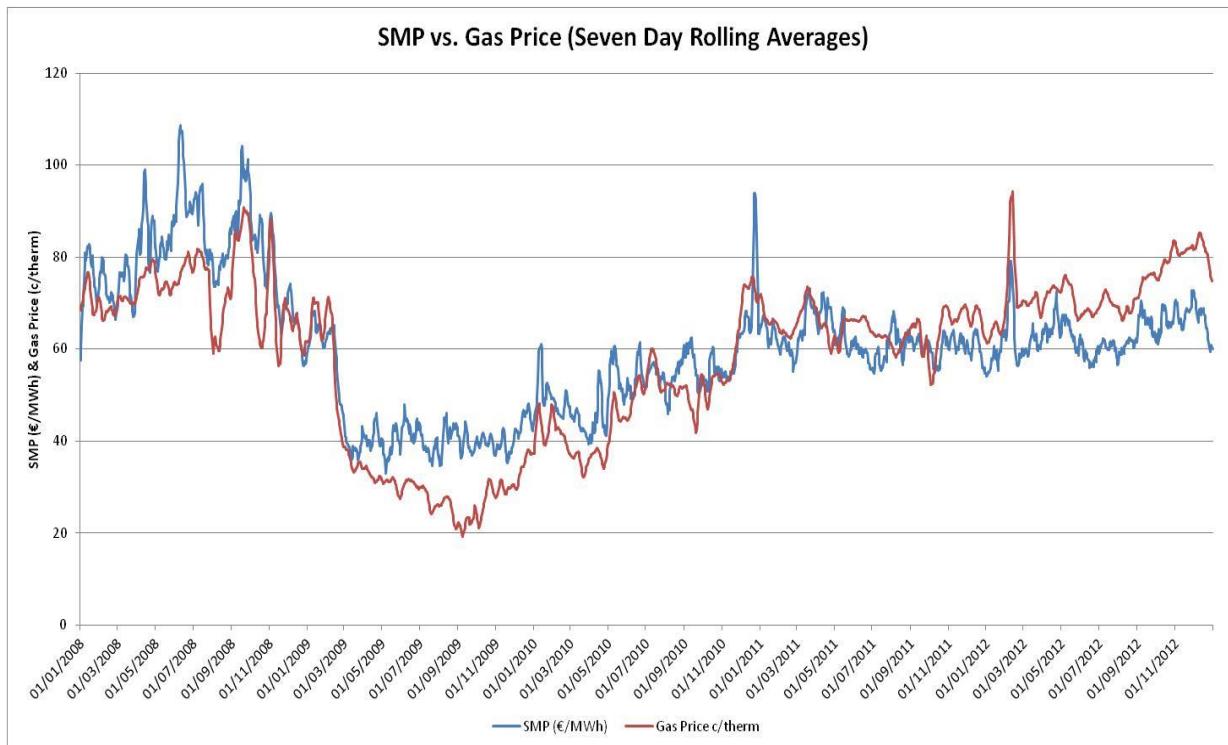


The long-term trend of SMP has largely followed trends in fuel and carbon prices, especially gas prices given that gas is the key fuel for electricity generation across the island. It is also impacted on by the margin between demand and available generation capacity - hence typically SMP is higher over the winter months when electricity demand is high and fuel is usually more expensive.

The relationship between the gas price and the SMP is shown below, where it can be seen that SMP closely follows the gas price, as would be expected from an efficiently functioning market on the island given that gas generation is so important to the island's fuel mix.



In line with gas price changes in recent years, the average SMP has fallen from over €80/MWh in October 2008 to under €40/MWh for most of 2009, and then increased to over €50/MWh in 2010 and €60/MWh in 2011 and 2012. This trend is shown in the graphs below.



3.1.11 SEM Locational Signals

TLAFs

In June 2012 the SEMC published its decision paper on the Treatment of Losses in the SEM. This followed an extensive period of consultation with industry on the enduring approach to Transmission Loss Adjustment Factors (“TLAFs”). Having conducted and reviewed the RA modelling analysis and that of industry participants the SEM Committee decided not to implement “splitting”, that is different approaches to TLAFs in the market schedule to TLAFs applying in the dispatch schedule. In addition the Committee decided to maintain the existing approach of “compressed TLAFs”.

Generator TUoS

In August 2012 the SEM Committee published its decision paper on the review of Generator Transmission Use of System Charging (GTUoS) and the accompanying all-island GTUoS tariffs for the tariff year 2012-13.

Three sets of tariffs were provided by the TSOs based on two methodologies as requested by the SEM Committee. Tariff set one was based on the default 2011-12 methodology, with Tariff Set 2a and 2b based on an amended methodology following a review of SEM Committee requested items. The workstream carried out was further development of the Locational Signals project, which aims to put in place appropriate signals in GTUoS tariffs to promote optimum location of generation plants.

As part of its decision the SEM Committee also requested that further analysis was carried out on the tariffs, including the possibility of fixing the methodology for a set period. The TSOs will report to the SEM Committee on this matter in 2013.

3.1.12 SEM Ancillary Services

Ancillary Services refers to services provided generally by generators to the system other than energy and capacity. In the SEM they are operating reserve, reactive power and black start. The SEM Committee put in place Harmonised Ancillary Services Arrangements across the island in 2010. In 2012, the SEM Committee reviewed the operation of these arrangements on the island and approved rates for the various services.

3.1.13 DS3 Programme

The Facilitation of Renewables Studies (FORS) published in 2010, the Regulatory Authorities requested that the TSOs carry out further analysis and put in place a programme of actions in order to address the system operation challenges, bearing in mind renewable commitments – 40% of electricity consumption targets to come from renewables by 2020 – and the requirements of Directive 2009/29/EC.

The TSOs have now, in conjunction with the Regulatory Authorities put in place a programme of work to resolve the challenges and concerns identified in the FORS and the Sustainable Power Systems report (published 2011). This programme is called the “DS3 Programme – Delivering a Secure, Sustainable Electricity System” and involves 12 separate workstreams in the areas of system performance, system policies and system tools. The RAs are actively engaged in monitoring progress and over-seeing the delivery by the TSOs of these workstreams. Full details on each workstream can be found on EirGrid’s website (www.eirgrid.com).

The review of system services (ancillary services) is one of the key work-streams in the DS3 project. It has involved the TSOs undertaking a detailed analysis of the requirements of the electricity system on the island of Ireland for system services to support the secure and reliable operation of the system as levels of non-synchronous wind penetration increase. To date the TSO has published three consultation papers on its proposed approach and submitted its Recommendations Paper in May 2013. The TSOs presented their recommendations at an industry forum in June 2013.

77

The TSO’s consultations have focused on both the technical design of proposed new system services, the structure of new services and the methodology being proposed by the TSOs to obtain a value for the proposed new services. The TSO’s modelling has indicated a value to the system of €295 million associated with the delivery of the DS3 programme. The RAs have not yet taken a view of the approach taken by the TSOs but will be publishing a proposed decision on this in Q3 2013.

Throughout 2012, the Grid Code Review Panel considered a number of Grid Code modifications associated with DS3. Chief amongst these was the proposed modification on Rate of Change of Frequency (RoCoF). The TSOs proposed to increase the Grid Code RoCoF requirement from 0.5 Hz/sec to 1.0 Hz/sec. Conventional generators have indicated significant difficulties in meeting this proposed new standard and the need to carry out lengthy and expensive studies to determine compliance levels. Following a number of Grid Code Review Panel meetings and the establishment of a working group under the Grid Code Review Panel to discuss this matter, the

modification was submitted to the CER in late 2012 for approval. The CER intends to review this modification in 2013.

3.2 Wholesale Gas Market Developments

3.2.1 CAG Project

The Common Arrangements for Gas (CAG) is a cross-border project, which is being led by the CER and the Utility Regulator (referred to jointly as the Regulatory Authorities or RAs). Its aims are to create fair and transparent arrangements across the island of Ireland, whereby all stakeholders can buy, sell, transport, operate, develop and plan the natural gas market north and south of the border effectively on an all-island basis.

The CER and Utility Regulator signed a Memorandum of Understanding (MoU) on 14th February 2008 in relation to CAG under the All-Island Energy Market Development Framework. Under the MoU, the Regulators decided to develop plans to operate the gas transmission systems in Ireland and Northern Ireland on a single, all-island network basis. Work commenced on the project in 2008 and considerable background work has been achieved between the RAs and the Transmission System Operators (TSOs) – including the publication of a CAG work plan and key work streams. These included legislation and licensing, CAG System Operator establishment and implementation, All-Island Transmission and Distribution Code of Operations, Transmission Tariffs, Common Retail Market Arrangements. The RAs followed this up with a series of intensive consultation exercises and workshops with stakeholders.

3.2.2. Recent Developments

The RAs have worked closely with each other, with the Departments and with the industry in seeking to progress the CAG project. However in April 2011 it was acknowledged that there were still substantive outstanding issues awaiting resolution. In particular system modelling highlighted physical capacity limitations of the respective networks that would inhibit the operation of a single physical balancing regime on the island. In addition, the CER considers there is a need to keep the original Cost Benefit Analysis for CAG under review to ensure that it will provide benefits to gas customer in Ireland.

Accordingly, the CER embarked on two studies in relation to CAG. The first, which was commissioned jointly with the Utility Regulator, examined the issue of single balancing zone and timelines associated with the single balancing point (both virtual and physical). The CER also carried out its own more general cost benefit analysis update study on CAG to ensure the underlying goal of delivering mutual benefits to Irish customers is likely to be met. Both studies are near conclusion and will feed into the CAG project.

3.2.3 Interconnection Points and Reverse Flow 2011

In 2012 it became necessary to focus on meeting compliance with EU requirements under EU Regulation 1775/2005 regarding the conditions of access to the gas transmission pipelines.

Specifically for Ireland this involved amending the access conditions to the Irish gas network at two points, the Moffat Interconnection Point and the South-North gas pipeline.

Achieving compliance at the Moffat Interconnection Point, the point of interconnection between the Irish and Great British ('GB') natural gas transportation systems in Scotland, involved implementing a "backhaul" or "virtual reverse flow" service, whereby gas can be virtually transported from Ireland to GB.

To explain, where it is technically not possible to physically transport gas through a pipeline in both directions, EU Regulation 1775/2005 requires that a TSO to offer capacity as a "counter flow" or "backhaul" on a virtual basis in the other direction. The gas is not actually moving in the opposite direction, but the gas flow requested in the counter flow direction is subtracted from the gas flowing in the forward direction. The CER worked closely with the TSOs, and the GB National Regulatory Authority, Ofgem, in 2011 to successfully implement a virtual reverse flow service at Moffat for 2012.

In relation to the South-North gas pipeline, a gas transmission pipeline that spans both the Irish and Northern Irish jurisdictions, achieving compliance with EU Regulation 1775/2005 in practice involved putting arrangements in place so that market participants can have third party access to the pipeline. Following development work by Gaslink, the Irish TSO, and consultation with industry, in July 2012 the CER approved the implementation of physical forward flow and virtual reverse flow access arrangements on the South-North Pipeline.

3.2.4 Physical Reverse Flow Market Test

EU Regulation 994/2010 concerning measures to safeguard security of gas supply, stipulates in Article 6(5) that transmission system operators shall enable permanent bi-directional physical capacity on all interconnections points between Member States by the latest 3rd December 2013 except:

- in the case of connections to production facilities, to LNG facilities and to distribution facilities
- where an exemption has been granted in accordance with article 7.

Article 7 states that Transmission System Operators shall by no later than 3rd March 2012, submit either a proposal for bi-directional reverse flow capacity or a request for an exemption from the obligation to enable bi-directional reverse flow capacity to their respective Competent Authority. Before any proposal can be submitted the Transmission System Operators had to fulfil the criteria set-out in Article 7(1) including:

- the completion of an assessment of market demand
- and completion of the assessment on the security of supply benefit physical reverse flow would provide.

In 2011 Gaslink and National Grid jointly undertook a market demand and security of supply assessment of enabling physical reverse flow at the Moffat Interconnection Point. This analysis concluded:

- In the short to medium term, the majority (approximately 95%) of Ireland's gas demand will be met from imports from GB through the Moffat Interconnection Point and thus there will obviously be insufficient physical gas supplies in Ireland to supply the GB market over this timeframe.
- Based on the responses to the market demand assessment carried out by the TSOs, there is currently no demand from the market for enabling physical reverse flow at Moffat by 3rd December 2013.
- There would be no additional security of supply benefit to the UK or Ireland from enabling bi-directional capacity at the Moffat Interconnection Point by 3rd December 2013.

In consideration of these conclusions, and in accordance with Article 7, the CER granted Gaslink an exemption from the obligation to enable bi-directional capacity at Moffat by December 2013. Given that the supply and demand scenarios in each Member State (Ireland and the UK) may change over the next number of years, the CER intends to undertake another market demand and security of supply assessment of physical reverse flow at Moffat later in 2013.

3.2.5 Regulation EU 994/2010

Regulation EU 994/2010 (Security of Gas Supply) requires that each Member State (on a biennial basis) produce a Risk Assessment, and subsequently publish a Preventive Action Plan and an Emergency Plan based on the findings contained within the Risk Assessment.

In 2011, as part of its compliance with Regulation 994/2010, the CER, as the designated Competent Authority for Ireland, submitted its Risk Assessment to the European Commission. The results of the Risk Assessment confirmed Ireland's current inability to meet the N-1 Infrastructure Standard, which has resulted in Department of Energy & Climate Change (UK Competent Authority) agreeing to adopt a regional approach to N-1 Infrastructure Standard.

Consequently, during 2012, the CER in conjunction with Department of Energy & Climate Change, the Department of Enterprise Trade and Investment (Government Department in Northern Ireland), the Department of Communication Energy and Natural Resources (Government Department in Ireland), the Regulatory Authorities (i.e. Ofgem & NIAUR) and the gas Transmission System Operators have worked towards progressing a regional approach between the UK and Ireland under EU Regulation 994/2010.

With reference to Ireland's Preventive Action Plan and Emergency Plan, the CER submitted its respective plans to the European Commission in December 2012, following a public consultation with industry, and the exchange of draft Preventive Action Plans and Emergency Plans with the Department of Energy & Climate Change. The effectiveness of these plans will be continually monitored, as required under Regulation EU 994/2010.

3.3 Retail Market Developments & Consumer Protection

3.3.1 Introduction

Increased competition and deregulation in retail markets requires a more comprehensive framework to monitor the state of competition and assess if consumers are benefitting from it, as required by the 3rd Package, which has been transposed into Irish legislation. The 3rd Package refers to a package of EU legislation on European electricity and gas markets, which places a renewed emphasis on customer protection. National regulators (including the CER) are required to monitor retail markets across a range of indicators, to take action where necessary, to prevent distortion or restriction of competition in the supply of electricity and gas to final customers, and to ensure that final customers are benefiting from competition in the supply of electricity.

The CER has been developing a new retail market monitoring framework in order to meet these new requirements and respond to the increased competition resulting from the deregulation of the electricity and gas markets. This monitoring framework will be crucial in ensuring that consumers continue to benefit from competition.

The one section of the retail energy markets that has yet to be deregulated is the domestic gas market. The CER has been in the process of developing a roadmap setting out the path for the deregulation of this market segment.

The CER has a statutory responsibility to provide a complaints resolution service to customers with an unresolved complaint with their supplier or network operator. Since 2008 the CER's Energy Customers Team has provided a dedicated service to customers with queries and unresolved complaints regarding their network operator or supplier. A separate Energy Customers Team Annual Report issues to the Minister detailing the number and type of complaints received from customers, their resolution and the service levels provided by suppliers.

3.3.2 Retail Market Monitoring

With the transition to full deregulation and the provisions of the 3rd Package the CER reviewed its retail market monitoring framework. A consultation paper was published in December 2011 setting out the proposed enhanced framework. The new framework was based on best practice and proposed examining a broad range of indicators which consider market structures, retail market outcomes and customer satisfaction (including in relation to the prices and choices that the market produces such as diversity of tariffs and contracts, end user prices and the price spread for comparable products).

Following the publication of the consultation paper the CER received detailed responses from stakeholders. The issues raised by respondents are being considered and further development work has been undertaken to progress the framework. Given the importance of this workstream the CER intends to engage further with a range of stakeholders in order to develop a framework that is appropriate for the market. The CER will publish a decision document setting out the proposed market monitoring framework in 2013.

Throughout the course of 2012 the CER has continued to apply its existing market monitoring framework which covers a number of key indicators such as market share, switching rates,

complaints, disconnections, suppliers' compliance with Codes of Practices and supply licences, and direct customer experiences (via annual survey and complaints). A number of reports were published over the course of the year providing stakeholders with market indicators in the above areas. These market monitoring activities in conjunction with the general customer protection measures will ensure that consumers benefit through the efficient functioning of the retail markets and in doing such fulfil the key retail aims of the 3rd Package.

Retail Market Shares

Competition continued to develop in the electricity and gas retail markets in 2012. There were no new entrants in the gas or electricity markets; however data suggests that the incumbent supplier in the gas Non Daily Metered (NDM) retail market, Bord Gáis Energy, is losing market share.

In electricity, Electric Ireland continues to be the largest supplier in terms of customers across all segments and in terms of MWh in the domestic (residential) and Large Energy User (LEU) markets. Energia remains the largest supplier (in terms of MWh) in the small and medium business markets. The domestic market share (MWh) of Electric Ireland (59.6%) is just under the threshold at which it was deregulated (60%).

In gas, Bord Gáis Energy is the largest supplier in terms of customers and consumption in the domestic, Industrial Commercial (IC) and Fuel Variation Tariff (FVT) markets. In the Regulated Tariff Formula (RTF) market, Bord Gáis Energy has the highest GWh and Vayu has the largest number of customers. While Bord Gáis Energy had a 65.65% share of customers in the domestic gas market in Q4 2012, it has experienced significant decreases in share over the past year. Assuming a similar rate of attrition that was experienced in 2012, it would be expected that Bord Gáis Energy will reach both thresholds for deregulation (60% with rebranding and the 55% without rebranding) within the next 12 months.

The following charts show the market shares of the key energy suppliers in the electricity and the gas domestic markets at the end of 2012:

Domestic Electricity Market

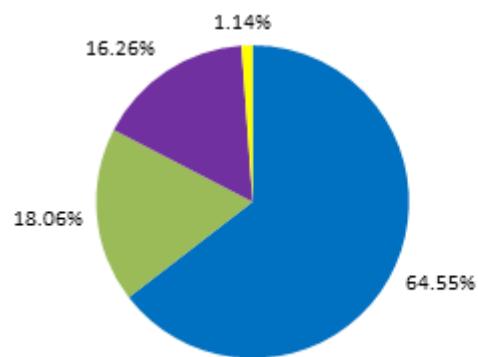


Figure Customer numbers share, domestic Electricity market, Q4 2012

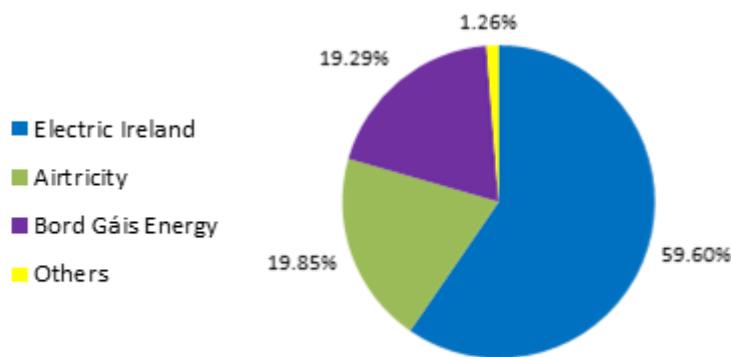


Figure Consumption (MWh) share, domestic Electricity market, Q4 2012

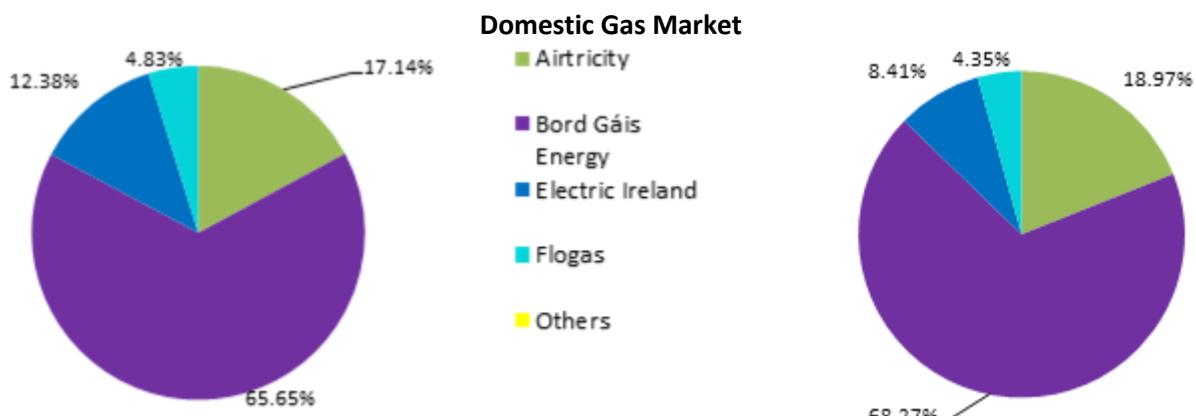


Figure Customer Numbers, Domestic Gas Market, Q4 2012

Figure Consumption, GWh, Domestic Gas Market, Q4 2012

Customer Switching

Switching is an important metric of competition and consumer engagement in the retail markets. Switching is continuing in both the electricity and gas markets and switching rates are above 10% in both markets. Under the VaasaETT description of the levels of switching, the Irish electricity market is considered a “warm active” market and switching activity is sufficient. The Irish gas market is considered a “hot market”. Ireland ranks very well globally in terms of switching rates. However, reductions in switching were experienced in both electricity and gas between 2011 and 2012, and the level of switching in electricity appears to be stabilising.

The total number of switches completed in the electricity market in 2012 was 252,056. This represented a decline in the total number since 2011 of 25%. This decline is driven by a decrease in domestic market switching. Increases were experienced in all other market segments. The total number of switches completed in the gas market in 2012 was 110,579. This represented a decline in the total number since 2011 of 2% (with declines of 2% in the domestic market and 11% in IC).

Retail Prices

Energy prices are made up of a number of different components including network costs, wholesale costs, supply and retail costs and other factors that are driven by Government policy such as PSO levy, VAT rate and the carbon tax.

All suppliers are required to publish details of the tariff plans that are available to domestic customers. In 2012 Ireland’s first price comparison website was accredited, with a second accredited in the first half of 2013 (see later). These developments serve to provide customers with more clarity and transparency in relation to prices.

Overall, latest data shows that Irish electricity prices are higher than or broadly equal to the euro area average depending on consumption band examined. Conversely, gas prices are below the

average. The data shows that electricity and gas prices have increased between 2011 and 2012. Prices increased across suppliers in October 2012.

Energy and supply costs comprise a large proportion of final price in Ireland in comparison to other EU countries. It is likely that a significant share of this is accounted for by fossil fuel costs.

Customer Protection

Customer protection measures continued to be enhanced during 2012. The CER published a decision paper on the Supplier Handbook for suppliers of electricity and gas, which set out the minimum service levels that suppliers must provide their customers with. The Supplier Handbook covers all key areas of customer-supplier interaction, including billing, disconnections, marketing and customer sign-up.

2012 was the first full year since the introduction of the debt flagging process and the roll-out of pay-as-you-go (PAYG) keypad meters for electricity customers. Suppliers are required to offer customers a PAYG meter prior to taking steps to disconnect. PAYG meters are provided free of charge to customers experiencing difficulty in paying their bills. These developments provided suppliers with tools to assist customer in managing their bills and minimise disconnections.

Debt flagging was introduced in light of on-going concerns from energy suppliers and consumer organisations that, in the current economic climate, customer and industry debt levels are being exacerbated by some customers changing supplier in order to avoid paying their arrears or to avoid disconnection. This practice of "debt hopping" is considered to raise costs for energy suppliers, and consequently for all consumers, and further compounds an individual's debt situation making it more difficult to manage in the long run. Overall approximately 1.9% of electricity change of supplier requests were debt flagged (4,746), and in gas 0.6% were debt flagged (829).

There was a general upward trend throughout 2012 in the number of PAYG meters installed in electricity; however, compared to 2011, gas PAYG meter installations has declined. The CER is continuing to monitor the number of PAYG meter installs on an on-going basis and is working with industry and customer advocacy and support groups to further promote PAYG meters to those who would benefit most from them.

Due to the overall increase in the number of customers in arrears, gas and electricity domestic disconnections for non-payment of account (NPA) increased in 2012 (by 82% in gas and 1% in electricity). There continues to be stringent obligations on suppliers to make disconnections the "last resort" and all suppliers offer PAYG meters prior to taking steps to disconnect for reasons of non-payment in accordance with their customer protection obligations of their Supply Licences. In 2012, the CER extended out to the end of 2013 the requirement that suppliers can only pass on 50% of the charge for a disconnection or reconnection for reason of non-payment to a customer experiencing financial hardship.

While the revised Supplier Handbook was published and PAYG meters continued to be installed, disconnections remained high in 2012. The CER will undertake an audit of suppliers Codes of Practice on Disconnections with a particular focus on the process for PAYG installs and payment plans during 2013 and will continue to work with suppliers and other stakeholders to determine what further actions can be taken to reduce the level of disconnections and increase the uptake of PAYG meters.

3.3.3 Energy Customers Team

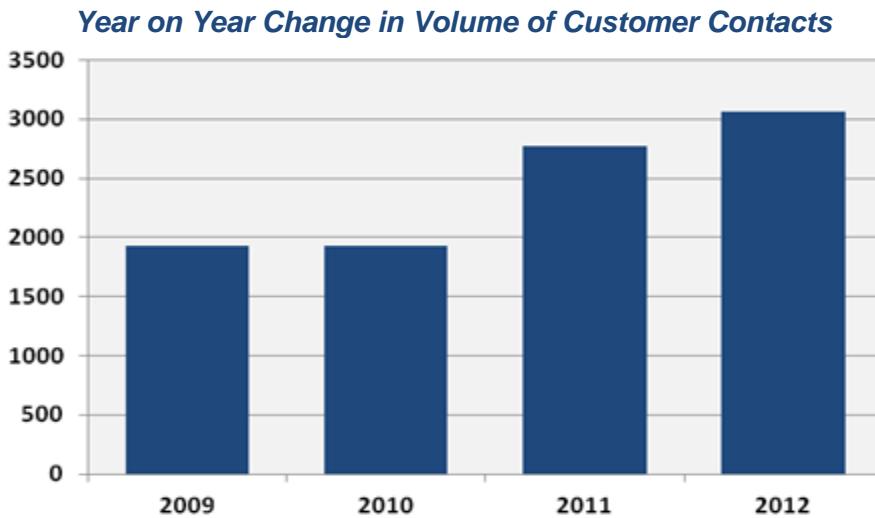
The CER has a statutory responsibility to provide a complaints resolution service to customers with an unresolved complaint with their supplier or network operator. The CER's Energy Customers Team (ECT) fulfils this role for domestic and small business customers through a dedicated complaints resolution service.

Additionally, the Team provides a customer awareness and information service via its www.energycustomers.ie brand and website. The website, www.energycustomers.ie, aims to provide clear information, to empower customers to make informed choices as competition develops in the energy industry. This includes information on their rights, energy suppliers' Codes of Practice and also explains what to do if they experience problems with their bills, their connection to the electricity or natural gas network or other energy supply related issues. The www.energycustomers.ie website also provides guidance and assistance to customers wishing to access the CER's transparent, free and easy to use complaint resolution service for domestic and small business customers with unresolved complaints.

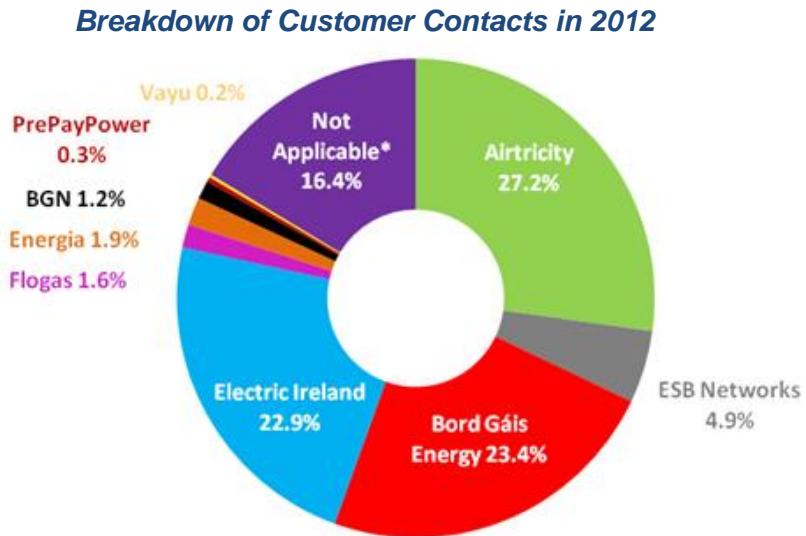
Awareness of the role of the Energy Customers Team has increased in recent years and 2012 saw a 66% increase in the number of visits to our website – www.energycustomers.ie. In addition to increased volumes of website visits, the Energy Customers Team has seen a significant increase in the number of customer contacts over the past few years. Customer contacts include any contact made by consumers, whether by phone, email or letter.

In 2011 the number of customer contacts jumped by 48% compared to 2010, up to a total of 2,770. The increase continued in 2012, with almost 300 additional contacts resulting in an increase of 11% compared to the previous. The total number of customers availing of the service in 2012 was 3,067.

As with the previous year's increase, there is not one significant event or development driving this increase, rather it is attributable to a wider recognition of the functions of the CER and customers becoming more aware of energy issues. The graph below illustrates the increase in the volume of customer contacts that the Energy Customers Team has experienced over the past four years.



The graph below provides breakdown of which supplier or network operator customers were contacting the Energy Customers Team in relation to. As can be seen the larger supplier (Airtricity, BGE and Electric Ireland) accounted for the majority of customer contacts, but increasingly we are receiving contacts in relation to the other suppliers in the market, reflecting the increase in competition in the domestic markets.



The “Not Applicable” contacts are those where the customer did not state their supplier or network operator or may have contacted the ECT with a general query that was not related to any specific supplier or network operator.

3.4 Public Service Obligations

This section outlines the legislative framework for the implementation of PSOs and the specific policies that have been implemented with respect to PSOs in Ireland.

PSO Legislation

Under Section 39 of the Electricity Regulation Act 1999 (as amended) the Minister is empowered to, by order, direct the CER to impose certain public service obligations on the ESB, electricity suppliers and the TSO.

Statutory Instrument No. 217 of 2002 (Electricity Act 1999 (Public Service Obligations) Order 2002) (S.I. 217 of 2002) was the order made by then Minister for Public Enterprise under Section 39 of the Electricity Regulation Act 1999. SI 217 of 2002 sets out more detail in relation to the duties of certain parties, including the CER, in respect of the PSO. The PSO Order specifies the role of the CER and the collection and other duties of suppliers, the DSO (distribution system operator) and the TSO (transmission system operator). S.I. No. 217 of 2002 provides, inter alia, for the imposition on ESB of public service obligations which will require

ESB to purchase the output of certain peat and renewable, sustainable or alternative electricity generating stations, in the interests of security of supply and environmental protection respectively. The order provides for the calculation of the PSO levy by the CER to provide for the recovery of costs by all relevant parties in accordance with the notifications to the EU Commission regarding the various mechanisms supported by the PSO.

The original PSO Notification of November 2000 ("the Notification") to the European Commission sets out the broad areas that may be covered by the PSO (as listed in Section 39 of the Electricity Regulation Act 1999), namely security of supply, use of indigenous fuel sources and environmental protection. It refers specifically to the schemes envisaged to be covered by the PSO at that juncture, i.e. the imposition on ESB of a requirement to have available to it the output of electricity generating stations using peat and stations using renewable, sustainable or alternative forms of energy.

Subsequent to the Notification, new schemes have been notified to the EU Commission in accordance with Article 88(3) of the Treaty and Directive 2003/54/EC and have received state aid clearance. S.I. No. 217 has been amended by a number of subsequent orders to provide for the recovery of costs under the PSO for such schemes. These included the recovery of costs associated with peaking plant and plant that entered the market under a competition held by the CER due to security of supply concerns. A Renewable Energy Feed-In Tariff (REFIT) was notified to the EU in 2006 and received state aid clearance in 2007. Two further REFITs have since been notified to the EU and received state aid clearance. REFIT 2 and REFIT 3 opened in March and February of 2012 respectively. S.I. No. 217 of 2002 (as amended by the subsequent orders) also takes account of suppliers receiving support under the PSO in relation to the above REFITs.

The CER is obliged to approve the costs associated with the above under Article 9 of S.I. No. 217 of 2002.

PSOs - Environmental Protection & Security of Supply

In Ireland, the objectives of the PSO are to ensure reasonable self-sufficiency in electricity generation capacity by utilising peat as a primary fuel source, to ensure a secure and reliable electricity supply, and to promote renewable energy sources to help protect the environment and contribute to Ireland's security of supply.

The PSO is imposed by the Department of Communications, Energy and Natural Resources on Electric Ireland and ESB Power Generation.

Electric Ireland is obliged under the PSO as wholesale purchaser of energy from renewable and a peat-generating source. Electric Ireland purchases electricity from a peat generating station through a Power Purchase Agreement (PPA) under the terms of the Notification referred to previously. ESB Power Generation receives support under the PSO in relation to the energy it is obliged to produce from its two peat generation plants.

Electric Ireland purchases energy from renewable sources under the Alternative Energy Requirement (AER) scheme, as notified to the EU.

The REFIT scheme (as notified to the EU) was introduced in 2006 and guarantees all suppliers participating in the scheme a minimum price in return for the purchase of renewable generation through PPAs. The price is appropriate to the category of generation supported. Monies accruing to suppliers participating in REFIT scheme are paid out under the PSO mechanism in accordance with governing legislation and the terms and conditions of the REFIT schemes as published.

Electric Ireland is also engaged in a Capacity and Differences Agreement (CADA) with two generators. The CADA scheme was notified to the EU Commission in October 2003 in order to secure additional capacity to meet an anticipated generation capacity shortfall in 2005, and were cleared by the EU Commission at the end of 2003.

The PSO is funded by a levy which is imposed on all electricity customers. The implementation of the PSO levy commenced on the 1st January 2003. The costs of purchasing the relevant energy (subject to the terms and conditions of the scheme/support involved) – above-and-beyond a modelled, estimated, time weighted *ex ante* value of anticipated market revenues – are levied on all customers via their supplier. The *ex ante* PSO levy figures are corrected *ex post* once actual market revenues, costs, inflation and plant output are verified and notified to the CER. Costs relating to the administration of the scheme are also included in the levy. At present, all suppliers, the DSO, Electric Ireland and EirGrid as TSO are notified of the final determination of the above levy no later than two months in advance of the commencement of the levy period in a decision paper published on the CER's website.

Based on modelled market conditions and estimates of costs, plant output and inflation for the period 1st October 2012 to 30th September 2013, the CER determined the PSO levy for that period to be €131.2 million. The breakdown of this is shown below.

| Customer Category | Annual Levy Amount | Monthly Levy Amount |
|-------------------------------------------------------------------------------------------|---------------------------|----------------------------|
| Domestic customers | €27.82/customer | €2.32/customer |
| Small commercial customers (maximum import capacity of less than 30kVA) | €85.73/customer | €7.14/customer |
| Medium and large customers (maximum import capacity of equal to or greater than 30kVA) | €11.87/kVA | €0.99/kVA |

3.5 Network Regulation and Infrastructure

Background in Electricity

The CER's responsibilities involve regulating the level of revenue which the monopoly electricity network operators and owners can recover from customers to cover their costs. ESB Networks owns the entire network; it also operates the lower voltage distribution network, while EirGrid operates the higher voltage transmission network. If unregulated, these monopolies could be inefficient and impose prices that were too high so, as set out in legislation, the CER regulates the network utilities' activities and income. This is in order to protect the interest of electricity consumers, while ensuring that they can fulfil their obligations and deliver secure electricity supplies.

The nature of such regulation is that every five years the CER sets the amount of money that the utilities can collect from electricity customers for the following five years. The revenue is set at a level that would allow a well-run business to fund its activities. It is set through a combination of examining the specific underlying costs of the relevant utility and benchmarking against best international companies in this field. Through this review the utilities are incentivised to operate efficiently, to make cost reductions, and to provide high levels of customer service. The allowed revenue is collected from suppliers via Transmission and Distribution Use of System charges - TUoS and DUoS - which are then recovered from final customers. These form approximately 7% and 25% of the final electricity bill respectively.

This five year approach is best international practice, and is used by nearly all other energy regulators (such as Ofgem in Great Britain) as well as in a number of other regulated sectors. It ensures that consumers are protected, while offering the regulated businesses a clear and stable environment. This allows the network utilities to make the necessary investments to ensure modern and efficient transmission and distribution systems and high levels of customer service.

In November 2010, the CER completed its review of the revenue that the electricity transmission and distribution network utilities can recover from their customers over the 2011 to 2015 period. The review involved an assessment of the utilities' investment plans and operational costs for that period, and an assessment of their performance over the previous five years. The allowed revenues and tariffs are updated annually to take account of changed assumptions such as levels of forecast demand or new issues which have arisen.

3.5.2 Infrastructure Network Developments

East-West Interconnector

EWIC is a 500 MW HVDC Interconnector which has both importing and exporting capacity and is able to transmit Direct Current between the two converter stations, Woodland, in Ireland and Deeside in Wales. It is 256 km in length – 185 km of marine (under sea) cable and 71 km of terrestrial cable (above sea). The converter stations convert the current to the usual form of Alternating Current for onward transmission on the transmission network in the UK and Ireland. The features of EWIC are provided below.

| East-West Interconnector Feature | Detail |
|----------------------------------|-------------------------------------|
| Capacity | 500 MW |
| Ownership | EirGrid |
| Delivery date | 2012 |
| Connection Point on Irish System | Woodlands sub-station, south Meath. |

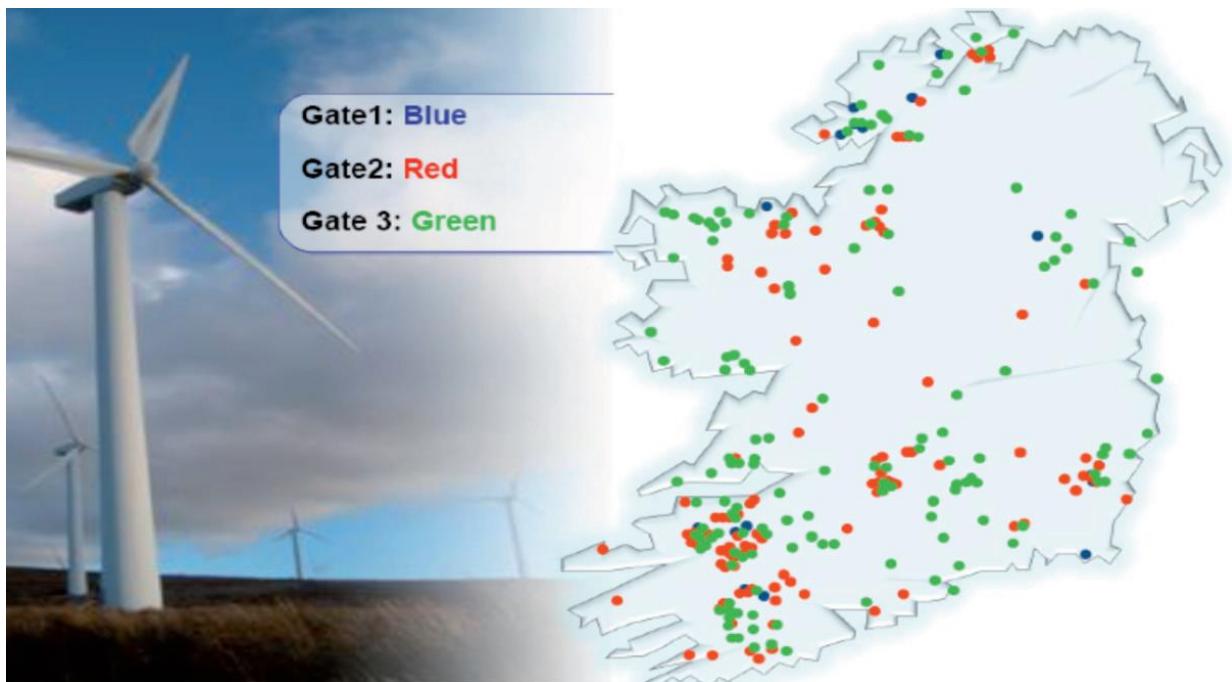
The project was completed in September 2012 and came into full commercial operation in May 2013.

Connection Offers to Renewable Generators

The Government has set a national target for Ireland to achieve 40% of electricity consumption from renewable sources by 2020. The CER is responsible for developing generator connection policy in Ireland. On foot of the Government's targets and following public consultation, the CER published its decision on Gate 3 renewable generator connections in December 2008. Gate 3 is essentially the third round of connection offers for renewable generators such as wind-farms, processed under a system known as the Group Processing Approach. The Gate 3 renewables direction allowed for the issuance of connection offers by the System Operators to over 150 new renewable projects, with a combined capacity of about 4,000 MW. In addition to new renewable connections, the CER also published a direction to the System Operators on new non-renewable (conventional) generators offers which will be processed as part of Gate 3. This direction was published in December 2010.

Since then, the CER has been working with the electricity industry and the System Operators to ensure that Gate 3 offers roll out in accordance with the agreed offer issuance schedule and that Gate 3 parties remain fully up to date with the Gate 3 programme. The underlying aim of the CER's efforts in this area remains the achievement of Ireland's renewable targets by 2020 in the most efficient and cost effective manner possible. Gate 3 involves the connection of an unprecedented level of renewable generation in Ireland. The programme involves the issuance of around 3,200 MW of capacity to on-shore wind projects, with a further almost 800 MW of capacity to off-shore wind projects.

If all of these Gate 3 projects develop through to connection to the electricity system, on top of Gate 1 and 2 renewable generators, Ireland will have approx. 6,000 MW of renewable power connected. By any standards, this will be a significant level of mainly intermittent wind power. The location of the Gate 3 renewable projects is shown below, along with Gate 1 and 2.



To allow for the connection of all of these new renewable projects, the CER has sanctioned more than a billion euro investment in the electricity transmission system over the years 2011 to 2015. This includes the construction of new transmission capacity as well as the upgrading of existing capacity to allow these renewable projects to export their power. Delivery of this new infrastructure by the System Operators will be a key component of the success of Gate 3 and achievement of Ireland's renewable targets.

Already about 20% of our electricity consumption comes from renewable sources - mostly wind farms - one of the highest levels in the EU, and this has been facilitate by the connection of Gate 1 and Gate 2 renewable generators in recent years. All offers were issued to Gate 3 parties by 12th August 2011. Generators have already begun accepting their offers with just over 1,400 MW of renewable offers accepted by Q3 2013. All generators in the Gate will be required to accept or reject their offer by October 2013.

To ensure all Gate 3 generators remain fully up to date with the roll-out of Gate 3 the CER facilitates the Gate 3 Liaison Group. The Liaison Group continues to deal with a large volume of Gate 3 issues and is working effectively as a communications forum and information exchange between the CER, the System Operators and the electricity industry.

Smart Metering

The CER is responsible for overall delivery of the National Smart metering Programme (NSMP). The rollout of smart metering represents a major national infrastructure programme, potentially requiring an investment of up to €1 billion. The cost-benefit analyses show that the long-term benefits should clearly exceed these investment costs (by around €229 million net present value

over a period of 20 years) and that there are likely to be further non-quantifiable benefits in terms of informed consumers, technological innovation, and synergies with other areas.

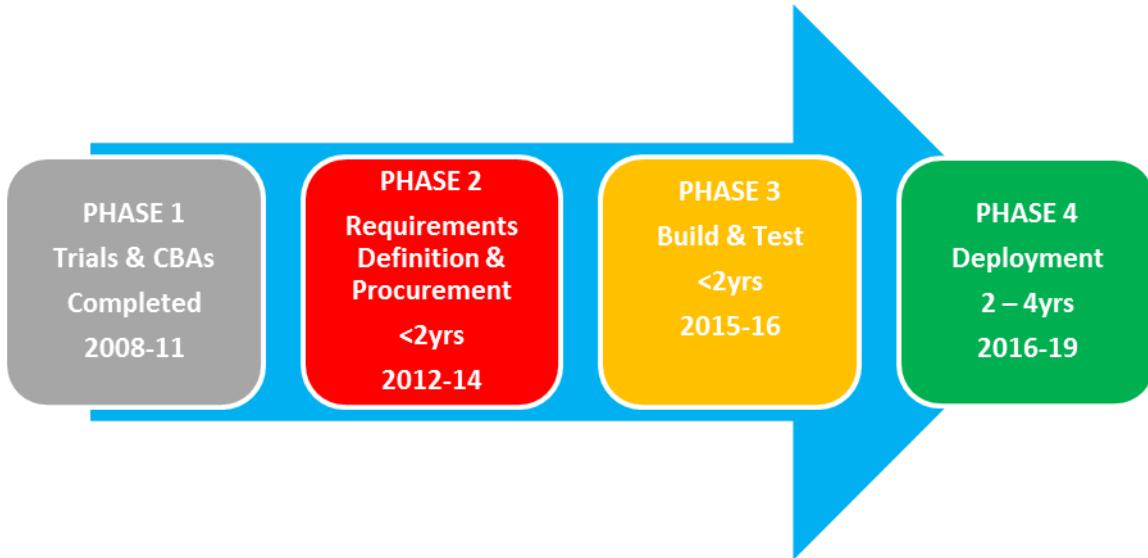
The aim of the NSMP is to deliver the national rollout of smart metering in Ireland in line with the high level requirements, design and timelines as specified in the CER Decision Paper published in July 2012. The National Smart Metering Programme has the following strategic objectives (which apply to both electricity and gas unless stated otherwise):

1. Encourage Energy Efficiency
2. Facilitate Peak Load Management (electricity only)
3. Support Renewable and Micro Generation (electricity only)
4. Enhance Competition and Improve Consumer Experience
5. Improve Network Services

Background

The CER, working closely with the Department of Communications, Energy and Natural Resources (DCENR), established the Smart Metering Programme Phase 1 in late 2007 with the objective of setting up and running smart metering trials and assessing their costs and benefits, in order to inform decisions relating to the full rollout of an optimally designed universal National Smart Metering Programme. The key deliverables of Phase 1, namely the comprehensive electricity and gas smart metering trials findings reports and cost-benefit analyses reports were published by the CER during 2011.

Phase 1 (Exploratory – Trials and Cost-benefit Analyses) was formally concluded with the publication of the Smart Metering Decision Paper in 4th July 2012 after which Phase 2 (Requirements Definition and Solution Procurement) was formally initiated and is currently in progress. Refer to Figure 1 which depicts this phased approach and the high level timelines currently envisaged for each of the remaining phases of the Programme. It should be noted that throughout the Programme implementation the CER will keep timelines under review and will endeavour to accelerate timelines where feasible.



During 2012 the CER completed its three key targets for the National Smart Metering Programme, which focused on formally concluding Phase 1 and initiating Phase 2 of the Programme:

- Published National Smart Metering Roll-out Decision Paper – July 2012.
- Formally Initiated Phase 2 - August 2012.
- Finalised Programme Governance Structure and Implementation Plan – November 2012.

During the first half of 2012 the focus of the CER was on finalising the Smart Metering Decision Paper, which was published in July 2012. This paper outlines the decision by the CER, after taking account of responses received to its consultation on the topic, to proceed to the next phase (Phase 2) of the National Smart Metering Programme. The paper outlines that the decision is based on the positive results of the comprehensive electricity and gas smart metering trials and associated cost-benefit analyses published during 2011.

The paper also highlights that the decision is further underpinned by relevant European and national legislation which promote smart metering and outline specific related requirements.

The Decision Paper further outlines the high level objectives, data requirements, design, functionality, implementation approach and timelines that are to be formally adopted by the National Smart Metering Programme as it proceeds to the next phase (Phase 2 - Requirements Definition and Solution Procurement) in delivering a national rollout of electricity and gas smart metering in Ireland to all residential consumers and small-to-medium enterprise (SME) consumers.

Since publication of the Smart Metering Decision Paper in July 2012 the CER worked with key stakeholders to formally mobilise and initiate Phase 2 of the NSMP, including the agreement of the Programme Initiation Documentation (PrID) in November 2012, incorporating the programme organisation, governance and approach, and development of associated detailed programme planning. Kicking off in August 2012 various information (options, strategy and

impact assessment) papers have also been developed by different stakeholders as part of the first stage (High Level Design Stage 1) of Phase 2. These Information papers cover key regulatory policy subject matter areas, including the range of possible options for the electricity time of use tariffs policy and the electricity and gas smart prepayment policy, and technical reviews and strategies.

Plans for 2013

In December 2012 the CER published its Smart Metering Information Paper to give an overview of the current position of the NSMP and its future plans, including details from the agreed Programme Initiation Document regarding the programme organisation, governance, approach and timelines for the NSMP. This Information Paper also gives an overview of the initial batch of completed deliverables from Phase 2 of the NSMP, namely a suite of papers which have been produced as part of the High Level Design Stage 1. These appended papers covered a range of areas including regulatory policy options, impact assessments and technical strategies and reviews. They are intended to provide an "information platform" for structuring the detailed NSMP stakeholder interactions that are planned for 2013 when the smart metering regulatory, functional and technical requirements will be elaborated upon and defined as part of the High Level Design Stage 2 (which began January 2013).

3.6 Security of Supply

3.6.1 Electricity

The CER has a duty to promote continuity, security and quality of supply of electricity. The CER monitors the security of supply of electricity and can take such measures as it considers necessary to protect security of supply.

Mainly due to the continuing weak economic conditions in Ireland total electricity demand in Ireland has continued to be depressed. A slight rise in demand in 2010 was due to some unusually inclement weather at the end of 2010. However in 2011 demand has reduced and this trend has continued into 2012 with an estimated further reduction of 1.76% in annual consumption.

Although a record system peak demand of 5,090 MW was set in December 2010, in 2012 the system peak demand was 4,589 MW at 17.30 on Monday 10th December 2012. At peak demand in 2012 the total available dispatchable plant was 6,647 MW, wind contributed 419MW and there was an export flow of 203 MW on the North-South tie line which gives a very comfortable margin at peak of 2,274 MW.

2012 saw the continuing connection of largely renewable energy onto the system. A record of 1,506 MW of wind generation was seen on the 17.45 on 21st December 2012. The approximate installed generation capacity by fuel type in Ireland at the end of 2012 is show below.

| Fuel Type | Connected (MW) | Percentage of Total Connected |
|------------------|----------------|-------------------------------|
| Gas | 3,742 | 49.3% |
| Coal | 863 | 11.4% |
| Oil | 217 | 2.9% |
| Peat | 292 | 3.8% |
| Hydro | 237 | 3.1% |
| Wind | 1,642 | 21.6% |
| Pumped Hydro | 292 | 3.8% |
| Other Renewables | 305 | 4.0% |

The largest fuel type used is natural gas. Given this significant reliance on natural gas it is important to ensure that secondary fuel arrangements are in place to ensure that there is no interruption to electricity supplies if there is a disruption to gas supplies. At present natural gas fuelled generators are required to hold secondary fuel stocks of between 3 and 5 days.

A testing regime is in place whereby secondary fuel capabilities are tested on an annual basis. EirGrid monitors compliance with the arrangements and provides reports to the CER.

In August 2010 during a routine refurbishment at a pump storage unit in Turlough Hill, significant fatigue cracking was found on one of the units. Subsequent investigations on the remainder of the units found similar issues; this lead to the outage of all units at Turlough Hill. The CER monitored progress on the repair works to ensure that the units were return to service as quickly as possible. In parallel with repairing the faults, ESB took the opportunity to carry out an extensive overhaul of all the units. The units returned to service during 2012 on a phased basis with the last unit returning to service towards the end of August.

During 2012 the East-West Interconnector (EWIC), a 500 MW High Voltage Direct Current (HVDC) connection to Britain was commissioned by EirGrid. This interconnector fortifies Ireland's energy security of supply position and promotes cross-border trade. The EWIC also connects the growing renewable connections in Ireland to a wider European grid, thus suitably absorbing additional non-synchronous capacity (primarily wind). EWIC was officially opened on 20th September 2012, however due to a technical fault the commercial operation date was delayed to 21st December 2012 and the interconnector has operated at a reduced capacity from this date. EirGrid and ABB worked to resolve the issue and EWIC returned to full capacity in May 2013.

The Moyle interconnector connects the Northern Ireland transmission system to the Scottish transmission system. The interconnector is a 500 MW High Voltage Direct Current connection and consists of 2 cables, each capable of transferring 250 MW. On Saturday 23rd June one of the cables developed a fault. This has resulted in the Moyle interconnector capacity being reduced to 250 MW. Mutual Energy, the owner of the interconnector, is working to identify the location of the fault and options to resolve the issue. It is expected that they will be in a position in early 2013 to recommend solutions to UR, the Northern Irish energy regulator, to resolve the

issue. Given the complexity of the issue it is not expected the Moyle interconnector will return to service for a number of years. Although this interconnector is not directly connected to the Irish Transmission system, the unavailability of a portion of a flexible resource may have consequential impacts on the Irish system.

3.6.2 Plant Licensing

The CER has a statutory function of issuing licences to Generate and Authorisations to Construct pursuant to Section 14 & 16 of the Electricity Regulation Act, 1999. In 2012 29 new Authorisations to Construct and 29 Licences to Generate were issued by the CER.

| Authorisations to Construct Granted | Total - 29 | Total Capacity (MW) 596.8 |
|----------------------------------------------|-------------------|----------------------------------|
| Of which Wind | 25 | 585.4 |
| Of which Combined Cooling & Power | 1 | 3.0 |
| Of which Landfill Gas | 3 | 8.4 |
| Licences to Generate Granted | | Total - 29 |

3.6.3 Gas Security of Supply

In 2013, as a result of Third Package requirements, Gaslink as TSO has submitted a draft Network Development Plan to the CER. This outlines the main infrastructure that will be built over the next 36 months as well as identifying the infrastructure requirements that may be needed during reporting period. The allowed revenues for the capital expenditures planned are included in the PC3 Decision for the transmission and distribution networks.

In addition, Gaslink outline a number of other areas that may, in the medium term, require capital investment.

The Network Development Plan also outlines the supply and demand scenarios that are expected to occur during the reporting period (2013-2022) in Ireland.

Sources of Supply

The Moffat entry point in Scotland connects the Irish natural gas system to that belonging to National Grid in GB, and allows for the importation of GB gas to Ireland and Northern Ireland via two sub-sea interconnectors and an onshore pipeline in Scotland. It is the primary source of gas for the gas markets in Ireland (circa 95%), Northern Ireland and the Isle of Man.

Ireland's only indigenous gas supplies operational at present are located off the South coast of Ireland at Kinsale and are brought ashore through the Inch entry point. These existing fields are largely depleted and the facility accounts for only about 5% of demand, mainly as a seasonal storage facility. It has a working volume of c. 230mscm (2,472, GWh), a maximum withdrawal rate of 2.7 mscm/d (29.3 GWh/d) and a maximum injection rate of 2.55 mscm/d (27.6GWh/d). It mainly operates as a seasonal storage facility but can also accommodate within-day gas withdrawals and injections. There is potential for expansion of the storage facility.

PSE Kinsale Limited is currently determining the commercial feasibility of additional future development. PSE Kinsale has indicated to CER that as production declines the facility will not be economic on a standalone basis without further development.

The main source of additional indigenous production in the short term is the Corrib gas field off the West coast of Ireland. The Corrib gas field is estimated to contain circa 23 bcm of gas and would supply circa 47% of the Irish gas demand during its first full year of commercial production. It is expected that commercial gas will flow in early 2015 subject to the necessary permits.

Shannon LNG has proposed 2018 as the earliest date for its proposed LNG facility at Ballylongford Co. Kerry. Planning permission has been granted for both the terminal and the transmission pipeline that will deliver gas into the ROI transmission system. Shannon LNG proposes to develop the project on a phased basis. Initially it is proposed that the LNG storage tanks and re-gasification facilities will offer a capacity of 191.1GWh/d (17 mscm/d). Thereafter subsequent phases may be developed with an ultimate capacity of up to 314.7 GWh/d (28.3 mscm/d)

Gas Demand

Historic gas demand in Ireland is anticipated to have fallen in 2012/13 by 1.2% on the previous year. A reduction of 7.6% in the Power sector was offset somewhat by increases in Industrial & Commercial (I/C) and Residential demand of 4.1% and 15.4%. The decrease in power sector demand is due to overall lower electricity demand and a more dominant position for coal fired generation in the power sector. Peak day demand in Ireland was 1.3% higher than 2011/12. This was driven by a 5% increase in the power generation sector.

Over the next 10 years it is forecast that gas demand will increase by 15% (1.7% per annum), with a 9% increase in peak day demand. The expected growth in the power sector demand is expected to arise as a result of fast acting gas plants facilitating increasing levels of renewables (primarily wind) on the system.

It is expected that I/C gas demand will also grow steadily in line with GDP growth rates. This is expected to be driven primarily by the export oriented food industry. Residential gas demand is expected to decline over the period. This is due to expected energy efficiency that will be expected to arise during the period. Energy efficiency savings are derived from the National Energy Efficiency Action Plan (NEEAP).

3.7 “Third Package” Developments

Unbundling and Certification for Third Package - Gas

In 2010 the Department for Communications, Energy and Natural Resources advised the CER that BGE would adopt the “Independent Transmission Operator (ITO) model” for network unbundling to ensure compliance with the Third Package. Essentially, the ITO model will amalgamate Gaslink and Bord Gais Networks, to form a new independent subsidiary of BGE, which will have its own Board and Supervisory Body.

A key function of the CER is to review BGE’s application regarding the establishment of the ITO, to ensure that BGE’s application for ITO certification is in compliance with the Third Package. In order to progress the implementation of the ITO model, the CER had significant interaction with BGE, in terms of reviewing their proposals to enable BGE’s compliance with the relevant articles under Directive 2009/73/EC. Specifically, during 2011 the CER reviewed BGE’s proposals in terms of:

- the separation of assets, equipment and staff;
- brand development;
- ensuring the independence of staff within the proposed ITO;
- establishment of a Supervisory Body;
- appointment of a Compliance Officer;
- development of a Compliance Programme; and,
- development of a Ten Year Network Development Plan.

However, in February 2012, the Irish Government announced its intention to sell elements of BGÉ’s energy business (i.e. non-network assets), as part of the State Asset Disposal Programme. On completion of the transaction, BGÉ will become fully ownership unbundled by the end of 2013, thereby replacing any ITO model of unbundling. Given the market uncertainties that are associated with the planned sale of a business, it was decided that BGE’s ITO Certification Application should proceed, which resulted in BGE submitting an ITO certification application to the CER.

Having reviewed BGE’s ITO certification application, the CER issued its preliminary certification decision to the European Commission. Following the receipt of the European Commission’s opinion, and taking utmost account of the European Commission’s opinion, the CER decided to certify BGE (CER/13/161: CER’s ITO Certification Decision) as an ITO subject to the completion of outstanding ITO work items.

Unbundling and Certification for Third Package - Electricity

Under Directive 2009/72/EC (the “Directive”), transposed in Ireland by S.I. No. 570 of 2011, National Regulatory Authorities are required to certify the unbundling arrangements of Transmission System Operators in each Member State in a form consistent with the Directive. Unbundling refers to effective separation of networks from activities of generation and supply. There are three available models described in the Directive: full ownership unbundling (FOU); independent system operator (ISO); independent transmission operator (ITO); while Article 9(9) of the Directive allows for a derogation from these models provided that the existing

transmission arrangements can be shown to guarantee more effective independence for the TSO than would be possible under the ITO model. The procedure for this certification process is further outlined in Regulation 714/2009. The SEM Committee determined that TSO Certification is a SEM matter and accordingly this process was carried out by the CER on behalf of the SEM Committee.

The SEM Committee published a guidance paper (SEM-12-005) outlining the process for application for certification in Ireland on 6th February 2012. This paper set a deadline of 2nd April 2012 for applications for certification. On 2nd April ESB made an application for certification under Article 9(9) of the Directive. Under the SEM Committee's process, EirGrid was offered the opportunity to make a submission in relation to the application which they did on 27th April 2012. The SEM Committee also made several requests for additional information from both ESB and EirGrid.

On 12th February 2013 the SEM Committee issued its Preliminary Decision on ESB's application, in addition to all of the supporting documentation, to the European Commission. The European Commission issued its decision on the 12th April 2013, this decision is available on the European Commission's website and CER's website.

In accordance with Article 1 of the European Commission Decision of 12th April 2013 the CER certified EirGrid as the transmission system operator for Ireland. This certification had immediate effect. It shall be implemented and monitored in accordance with the requirements of Article 1 of the European Commission's Decision.

Framework Guidelines & Network Codes in Gas

The EU's Third Package contains provisions regarding the establishment of harmonised access conditions to natural gas transmission systems to ensure the proper functioning of the internal market in gas. Central to these provisions is the development of EU-wide Network Codes in 12 topic areas which will apply to gas interconnection points throughout Europe. These topic areas include harmonised principles for tariffs, capacity allocation, congestion management, transparency requirements and balancing.

These EU-wide Network Codes for gas will be drafted by the European Networks of Transmission System Operators for Gas (ENTSOG) in line with the Framework Guidelines set out by ACER. ACER also has a role in reviewing the draft Network Codes, including their compliance with the Framework Guidelines. In 2012 the European Regulators progressed the development of the Network Codes for Capacity Allocation Mechanism (CAM), Balancing and Interoperability and also the Framework Guidelines on Tariffs, which will require changes to the Irish gas market.

The CER has provided important input into the development of the Framework Guidelines, and subsequent Network Codes which involved assessing the implications to the Irish market. The CER and Gaslink, the Irish TSO, also provided regulator updates on these European developments to industry through industry fora, and closely worked with the Department of Communications, Energy and Natural Resources.

The implementation of these Network Codes will be a considerable undertaking and the CER is preparing an implementation programme for each of the Network Codes. The 'Congestion Management Procedures' will be implemented in October 2013 and the CER is working closely

with the TSOs and adjacent National Regulatory Authorities to ensure compliance is achieved on time. The Balancing and Interoperability Network Codes, as well as the Tariff Framework Guidelines will also be further developed in 2013 and the CER, in conjunction with Gaslink, will contribute to the progress of these Codes and represent the needs of the Irish gas market at a European level.

For information on Framework Guidelines in electricity, please see section 3.1.

3.8 REMIT

REMIT is the new EU “Regulation on Energy Market Integrity and Transparency” which entered EU law on 28th December 2011. REMIT introduces new EU-wide market rules and monitoring in energy. It provides for market abuse prohibition rules across the EU and will also establish a new registration, reporting and monitoring regime for energy transactions, with certain energy transaction data across the EU to be sent to ACER in Ljubljana.

A public workshop to help inform market participants on REMIT was held by Regulatory Authorities (CER and Utility Regulator) in March 2012. During the year the RAs also inputted to ACER meetings discussing the proposed REMIT registration and transaction reporting system. This is to press for a system which captures suspected cases of market abuse but which is also not administratively burdensome or costly for market participants. This task will continue in 2013.

4. Regulation and Performance of the Electricity Market

4.1 Introduction to Networks

Access conditions, connection charges and use of system tariffs imposed by the transmission and distribution operators are regulated. For electricity, this concerns EirGrid as Transmission System Operator (TSO) and ESB Networks Ltd. as the Distribution System Operator (DSO). Further, the CER has introduced a number of ring-fencing requirements between and within the incumbents' regulated businesses to ensure that certain business units/subsidiaries are autonomous and independent of one another. These requirements are enforced by way of licence conditions and business separation implementation programmes. The full business separation of ESB network businesses from its generation and supply businesses was completed in late 2005, with subsequent legal unbundling carried out at the start of 2009.

4.2 Electricity Network Operators

There is one TSO, EirGrid, and one DSO, ESB Networks Ltd. ESB Networks (a business unit of ESB Group) is the owner of transmission and distribution system.

The CER collects an array of information from the network operators for the purposes of calculating allowed revenues and network tariffs. This includes collecting information on the existing Regulated Asset Base (RAB), operating costs (OPEX), capital expenditure costs (CAPEX), asset values, business and system performance.

The CER carried out a review of the network operators' revenue during 2009 and 2010 for the period 2011 to 2015. Further details are available in section 3.5 earlier. The CER approves any changes to transmission and distribution tariffs and has quality of service measures as part of its review of the revenue submissions, including benchmarking, efficiency targets and quality of service reports. The DSO and TSO release to market participants a Statement of Charges and a Tariff Schedule, detailing the prevailing tariff terms and conditions for the following year.

Please see section 3 for developments in this area, with unbundling information in section 3.7.

4.3 Electricity Network Tariff Structure

Transmission tariffs consist of postalised demand tariffs and locational generator tariffs, which recoup 75% and 25% of the "wires component" of the allowed transmission revenue (the vast bulk of the revenue) respectively. All allowed "non-wires" costs, such as ancillary services, are recovered through demand tariffs.

The network charge recovered from demand customers is not recovered solely on a capacity basis but is split between energy and capacity. 40% is recovered on an energy basis and 60% is recovered on a capacity basis through the 'Network Capacity Charge'. This is allocated on a fixed basis through a per MW, Network Capacity Charge. This amounts to approx. 45% of wire costs being allocated to the network capacity charge.

The 40% of wire related costs that is allocated on an energy basis is recovered through an MWh Network Transfer Charge, as a result demand users are charged consistent with their associated usage.

There is also a capacity margin charge in place for recovering costs associated with demand side management schemes. This is recovered fully from demand users and does not form part of the TUoS revenue.

The 25% of the total allocation of network related costs that is allocated to generation users is recovered through the Generation Capacity Charge. Generators connected directly to the transmission system or indirectly via the distribution system pay locational use-of-system charges which are capacity based (Reverse MW-mile methodology).

Distribution connected generators with a capacity <10 MW have a locational Network Capacity Charge rate of zero. Generators equal to or greater than 10 MW pay a site specific Generator Network Capacity Charge.

Generators who can be called upon to offset flows and who have the potential to reduce the need for future investments are credited by the TSO. This could result in some of these generators having a negative overall TUoS charge; however a lower bound of zero has been set for generators who do not provide system security from a planning perspective – wind generation and ‘emergency’ generators.

4.4 Network Performance

There is a requirement on the Distribution System Operator (DSO) to submit an annual report to the CER detailing quality of service targets met, reasons for not meeting targets (if appropriate) and recommendations for improving the targets for the future. The CER reviews these reports and decides on appropriate action and also on what targets are required to be met for the next submission. The table below provides information on the total duration (minutes/yr) of interruption for the average customer for the period 2005 – 2010:

Duration of interruption for average customer 2005-2009 (minutes/year)

| SAIDI | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|------------------------------------------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Planned interruptions - Min per customer/Yr | 375 | 269 | 79 | 61 | 59.3 | 64.1 |
| Unplanned interruptions - Min per customer/Yr | 154 | 124 | 115 | 94 | 81.3 | 82.1 |
| Planned and unplanned interruptions - Min per customer/Yr | 529 | 393 | 194 | 155 | 141 | 146.1 |

4.5 Wholesale / Retail

Please see section 3 for electricity and retail / wholesale developments in 2012.

5. Regulation and Performance of the Natural Gas Market

5.1 Introduction to Networks

Under the Gas (Interim Regulation) Act, 2002 the CER is responsible for the regulation of the Irish gas network and the supply or retail market. While the Minister for Communications, Energy and Natural Resources retain responsibility for the licensing and regulation of offshore exploration.

The CER regulates the charges, tariffs and access conditions imposed by BG Energy and conducts five-year reviews of revenue earned by the gas network operators. There are also annual price controls in place for the supply arm of BGE. Access conditions, connection charges and use of system tariffs imposed by the transmission and distribution operators are also regulated. In gas, this concerns BG Networks as owner of the gas transmission and distribution systems and Gaslink as TSO.

Further, the CER has introduced a number of ring-fencing requirements between and within the incumbents' regulated businesses to ensure that certain business units/subsidiaries are autonomous and independent of one another. These requirements are enforced by way of licence conditions and business separation implementation programmes.

BGE owns the gas networks in Ireland which are now operated by Gaslink, a legally separate subsidiary of BGE. The relationship between Gaslink as the system operator and BGE as asset owner is managed through the Operating Agreement approved by the CER. These arrangements are in accordance with Irish legislation SI 760 of 2005, which was introduced to give legal effect to Directive 2003/55/EC.

5.2 Gas Network Tariffs

The CER as the independent energy regulator is responsible for regulating the level of revenue which the gas network utility, Bord Gáis Networks (BGN) may recover from its customers to recover costs. This work stream involves the five-yearly review of BGN, and sets the amount of revenue that it can recover from its customers over the five year period, in this case from October 2012 to September 2017.

The CER commenced its third 5-year revenue review process for gas networks in 2011, focusing on "value for money" for customers, efficiency gains and the investment plans required to maintain and develop the gas network. The review involves an assessment of the utility's investment plans and operational costs for that period, and an assessment of its performance over the previous five years (PC2). The CER's main role in this area is to ensure that current and future customers are protected as well as ensuring a stable investment environment. The CER sets out this revenue stream via what is called a Price Control (PC).

In November 2012 the CER published its Decision Paper allowing €998.5m to be recovered for the transmission system from October 2012 to September 2017. This was lower than the request from BGN for revenues between €1,092m to €1,176m. Similarly, CER allowed €996m to be recovered from the distribution system over the period of PC3. The allowed revenues

cover both the Capex and Opex expenditures that are expected to arise during the price control period. This includes allowed Capex and Opex required for the Regulated Asset Base (RAB), which includes the Interconnectors from Scotland and the onshore system within Ireland.

The recovery of the allowed revenues is via transmission and distribution tariffs.

5.3 Network Performance

The performance of the networks is evaluated in the context of tariff reviews and in the wider context of public safety – for example; the CER has approved expenditure to replace cast iron pipes with PE pipes for safety reasons.

Regarding quality of supply, there is a low risk of interruption on the Irish natural gas system and as such, continuity of supply is not an issue in this market. Gaslink\BGN submit an Annual Performance Report to the CER outlining a range of performance indicators, including Network Performance.

5.4 Information provided to Participants by TSO

In 2004 the CER published a decision outlining what information the TSO must provide to market participants regarding balancing. In particular, the following information is provided:

1. Balancing Actions

Gaslink publishes in a generalised format the criteria used to determine when an action is necessary. Gaslink will also publish (possibly in arrears to allow for validation) the location, date, and volume (buy/sell) for balancing actions taken. Gaslink will be obliged to keep a record of the reasons why certain balancing actions are taken. This information will not be published but will be available to the CER to review.

2. Imbalance Prices

Gaslink publishes all possible charges that Shippers and potential Shippers will face, in table format showing all charges, explaining how/why these apply, stating what the charge actually is (or has been, where appropriate), and referring to the relevant sections of the Code of Operations or web addresses, for example, where background of the charges may be found.

5.5 Unbundling of Gas Networks

Please see section 3.7 for information on this.

5.6 Retail

Please see section 3 for electricity and gas retail developments in 2012.

Shipper / Supply Licence Provisions

All shippers and suppliers in the market are required to hold relevant licences from the CER. In 2011, the CER separated the then combined shipping and supply licence into two separate licences to reflect the separate functions of shipping and supply as set out in national legislation.

These licences include the following conditions:

- Provision of Information to CER: The general conditions of the licence include the requirement for the provision of information to the CER. The licensee must provide to the CER in such form and at such times as the CER may require such information and reports as the CER may consider necessary or relevant or it may require in the performance of its duties or functions under legislation. In addition, the licensee shall publish information (save for confidential or commercially sensitive information) in such form and manner and at such times as the CER may require.
- Market Surveillance: Licence conditions prohibits anti-competitive behaviour stating that the licensee shall not prevent, restrict or distort competition to any appreciable extent in any market relating to the supply, distribution, transmission or storage of natural gas. The licensee is also prohibited from abusing any dominant position it may have. The CER shall determine whether the licensee holds a dominant position.
- Competition Policy actions: Specific conditions relating to economic regulation applicable only where the licensee is BGE include the ring-fencing of the supply business and restriction on use of certain information. A specific condition also refers to prohibition of cross-subsidies.

The supply licence prohibits discrimination in supplying or offering terms for the supply of natural gas. In particular, the licensee shall not show undue preference to any person (or class of persons) and shall not exercise undue discrimination between any persons (or classes of persons).

The supply licence lays down the duty to offer supply whereby the licensee shall upon receipt of a request from a person who the licensee is authorised to supply by this License and who is a final customer as soon as practicable a) offer to enter into a supply contract to supply natural gas to the premises in respect of which the supply is requested; and b) where the terms offered are accepted by the customer, give a supply of natural gas to those premises in accordance with the terms offered.

In 2011 the CER consulted on a proposal to add, in furtherance of the Energy Services Directive – S.I. No. 542 of 2009, a condition to the supply licence obliging suppliers not to offer tariffs that create incentives that may unnecessarily increase the volume of distributed or transmitted energy.

6. Consumer Protection

6.1 Introduction

Consumer protection measures apply to all parties active in the Irish retail energy markets. These cover supplier conduct over a range of areas such as marketing, billing, complaints handling, customer debt, treatment of vulnerable customers and disconnection. These obligations are broadly equivalent for suppliers in the electricity and gas markets and are specified by codes of practice submitted by suppliers and approved by the CER. These, in turn, are based on guidelines developed and published by the CER.

Customers are also protected when their supplier abruptly exits the market. In the event of such an exit, the CER obliges a supplier, or a number of suppliers, to act as a Supplier of Last Resort. Quality of supply obligations and performance targets cover selected service obligations such as supply continuity and safety issues. These obligations and targets are placed on the network operators and owners.

The CER also has a legislative duty to “have regard to” customers located in rural areas. Moreover ESB, which is still designated as the Public Electricity Supplier (PES) has a duty to supply all reasonable requests for supply received from customers.

The legislative frameworks and specific policies/measures that have been put in place with respect to consumer protection are discussed below.

Developments during 20112 in this area are highlighted in section 3.3 above.

6.2 Consumer Protection Legislation

The Electricity Regulation Act, 1999, and the Gas (Interim) Regulation Act, 2002, transposed into Irish legislation the various public service obligations outlined in Internal Market in Electricity and Gas Directives 96/92/EC and 98/30/EC.

Statutory Instrument Number 60 of 2005 (European Communities (Internal Market in Electricity) Regulations 2005) (SI 60 of 2005) transposed the obligations and consumer protection measures included in the Internal Market in Electricity Directive 2003/54/EC. Equivalent measures in gas stemming from the Internal Market in Gas Directive 2003/55/EC were transposed by Statutory Instrument Number 452 of 2004 (European Communities (Internal Market in Gas) (No.2) Regulations 2004) (SI 452 of 2004).

In addition, the Third Package of European energy legislation placed new duties and responsibilities on National Regulatory Authorities (NRAs), including the CER, with respect to the retail market and customer protection, including an increased role in market monitoring. The first phase of transposition of the Third Package was implemented through the enactment of S.I. No. 450 of 2010 which required the CER to monitor the level and effectiveness of market opening and the development of competition in the supply of electricity to final customers. SI No. 463 of 2011 transposed the broader customer protection aspects of the Third package and SI No. 630 of 2011 completed the transposition, extending the monitoring obligations to the gas market and including additional requirements for both electricity and gas.

Electricity

S.I. 60 of 2005 provides for inter alia, better consumer protection measures and also added Directive 2003/54/EC ‘Annex A’ consumer protection measures and transposed the universal service obligation. SI 60 of 2005 also provides for the labelling of energy sources on electricity bills and standards of performance of the PES, TSO and DSO in relation to supply.

The further customer protection and market monitoring requirements of the Third Package for the electricity retail markets were transposed into national law via the following statutory instruments: S.I. No. 450 of 2010, S.I. 463 of 2011 and SI No. 630 of 2011

S.I. No. 450 of 2010 also allowed for deregulation of the electricity markets by removing the onus on the CER to examine and approve electricity supply charges levied by the ESB Public Electricity Supplier. However, where monitoring of the market shows that customers are not benefiting for competition or that competition is being distorted or restricted, S.I. No. 450 of 2010 provides for the CER taking measured action, including, if necessary, the re-imposition of tariff regulation.

Gas

The Gas (Interim) (Regulation) Act of 2002 extended the existing electricity customer protection functions of the CER to the gas market.

In addition, the public service and consumer protection requirements placed on market participants as outlined in Directive 2003/55/EC have been transposed by S.I. 452 of 2004.

In S.I. No. 452 it is stated in regulation 6 (inserting section 21A into the Gas (Interim) (Regulation) Act 2002) that the function of the CER with respect to consumer protection is to ensure:

- there is a high standard of protection for all final customers in their dealings with natural gas suppliers;
- all final customers are supplied with natural gas of specified quality at reasonable prices;
- there are dispute resolution mechanisms in place for users of the natural gas system and their final customers; and,
- there are adequate safeguards to protect vulnerable customers (including the elderly and disabled) which shall include measures to help such customers avoid disconnection;

These duties were included in generic and BGS licences issued in April 2004. The CER is entitled to give directions, as it deems necessary, in order to carry out the above functions. A supplier or shipper in breach of such a direction is guilty of an offence and is liable on summary conviction to a fine not exceeding €3,000.

The further customer protection and market monitoring requirements of the Third Package for the gas retail markets were transposed into national law via the following statutory instruments: S.I. 463 of 2011 and SI No. 630 of 2011

6.3 Consumer Protection Obligations

This section outlines specific consumer protection measures which have been put in place by the CER for the benefit of consumers. Customer protection obligations are binding on all suppliers. Though broadly similar the requirements vary for domestic and business customer, with greater requirements placed on suppliers of domestic customers – for example they must obtain CER approval of their Terms and Conditions.

Customer protection measures take the form of supplier codes of conduct and supplier charters (contracts). These measures are broadly equivalent for electricity and gas.

Quality of Supply

In electricity, under condition 13 of the ESB Distribution System Operator's licence, in 2001 the ESB submitted to the CER a report setting out the criteria against which the performance of the Distribution Business would be measured. These criteria included data on the number of disconnections, the number of customer minutes lost etc.

Every year since 2001, the DSO has submitted an annual performance report outlining performance against these criteria. This report is published by the CER in September of every year. The CER can amend these performance criteria from time to time. Condition 11 of the Transmission System Owner's licence and condition 16 of the Transmission System Operator's licence include equivalent conditions. The TSO does not submit an annual performance report. However, transmission performance indicators are provided for in the regulated accounts.

In 2004, the CER issued gas transmission and distribution system operator licences to BGE Networks (at that time known as BGE Transportation). Conditions 14 and 18 of the distribution licence and conditions 15 and 19 of the transmission licence refer to quality and safety obligations. To facilitate legal unbundling as required by 2003/55/EC the CER granted Transmission and Distribution Operator licences to Gaslink the newly established Independent System Operator in 2008.

Supplier Codes of Conduct & Customer Charters - Gas & Electricity

Suppliers are currently required to produce the following Codes of Practice in order to provide their customers with a level of customer protection:

- Code of Practice for Marketing;
- Code of Practice for Billing, Payment and de-energisation / disconnection;
- Code of Practice on Complaints Handling;
- Code of Practice for Vulnerable Customers – if serving domestic customers;
- Code of Practice for Budget Controllers/ Prepayment metering – if serving domestic customers; and
- Customer Charter – if serving domestic customers.

The CER issued guidelines in relation to all of these Codes of Practice and the Customer Charter to ensure consistency in their production. The early 2007 the first version of these codes were published by suppliers. Changes to the Codes of Practice for de-energisation / disconnection were introduced in 2010, which introduced a greater level of assistance to

customers to avoid disconnection in these testing economic times – for example a requirement on suppliers to offer a free “pay as you go” meter prior to moving to disconnection for non payment. In 2011 the CER consulted on the amalgamation of the various Codes of Practice into a single document to be called the Supplier Handbook. At the same time the Codes of Practice were reviewed and changes put forth. A decision on the Supplier Handbook was published in June 2012. The updated requirements for suppliers Customer Charter, Codes of Practice and Terms & Conditions came into effect in September 2012.

Contract Transparency - Gas & Electricity

Under condition 12 of the natural gas supply/shipping licence BGS is required to publish the terms on which it supplies natural gas to eligible customers. In addition, condition 23 of the gas supply/shipping licence states that all suppliers of domestic customers must supply the CER with all relevant contracts or arrangements set out in a standard form, which shall be approved by the CER.

Condition 7 of the electricity supply licence underlines that detailed terms ‘as are appropriate for the purpose of the agreement’ are to be set out by the licensee in making an offer to enter into an agreement for the provision of relevant metering equipment. Also condition 19 of the electricity supply licence states that all suppliers of customers, ‘whose consumption of electricity at any single premises in any 12 month period is estimated and calculated to be or likely to be less than 10,000 kWh or such other figure as the CER may substitute must supply the CER’, must supply the CER with all relevant contracts or arrangements set out in a standard form, which shall be approved by the CER.

Complaints Arbitration - Gas & Electricity

The CER has legal remit to independently resolve disputes between customers and licensed suppliers, the distribution system operator in electricity and, in the case of natural gas, natural gas licence holders. Statutory Instrument SI 463 of 2011 (replacing SI 452 of 2004 for Natural Gas and SI 60 of 2005 for Electricity) increases the CER’s responsibility in the area of customer protection to take account of relevant changes in the Third Package and increases the CER’s powers in relation to complaints arbitration, to allow the CER to apply any decision which it considers affects more than one customer to all affected customers.

The CER has established a dedicated Energy Customers Team which provides this independent complaints resolution service for small business and domestic customers. If a customer cannot resolve their complaint with their supplier or network operator following completion of their complaints handling process, they may refer their complaint to the Energy Customers Team for consideration. The team examines the complaint interacting with suppliers and network operators to determine the root of the problem. Following completion of any necessary investigation the Energy Customers Team issues a decision in relation to the matter on behalf of the CER. Where appropriate the CER may direct a supplier or network operator to undertake an action or compensate a customer in relation to their complaint.

The Energy Customers Team work in 2012 is discussed in section 3.3 above.

Supplier of Last Resort for Electricity & Gas

Further to S.I. 60 of 2005, the CER may appoint and direct an electricity Supplier to Last Resort (SoLR) to serve customers where either a supplier has exited the market or where specific exceptional circumstances (i.e. safety concerns) warrant such a direction. It is anticipated that similar conditions will be legislated for in the gas market.

In April 2005, the CER published a paper of SoLR options for both the electricity and gas markets including proposed rules for the allocation and duration of the role, as well as principles governing the recovery of extraordinary costs by the SoLR(s). In addition this paper specified the circumstances that would trigger such this process. The CER considered that 'triggers' such as abrupt supplier exit, supplier bankruptcy and supply licence revocation would be considered here.

A decision on this matter was issued in April 2006 which appointed ESB PES and BGE as SoLRs for the electricity and gas markets respectively.

The CER consulted on possible changes to SoLR rules and policy in the electricity sector to take account of changing market rules and conditions arising from the commencement of the SEM in November 2007. A decision on this matter was issued prior to the commencement of the SEM. In 2011 and the transition to full deregulation of the electricity retail markets (which occurred in April of that year) the CER published a decision paper on how the role of the SoLR would be fulfilled in the deregulated market place. The decision will see the role of the SoLR be offered to the market in a competitive process. The CER is to consult further on the details of this process. In the interim Electric Ireland (formerly ESB Customer Supply) will maintain the role of the Public Electricity Supplier.

Universal Service / Supply Obligation

Under S.I. 60 of 2005 and under its supply licence, ESB PES, as the "default supplier", must meet all reasonable requests for supply (duty to offer supply). The CER determines what constitutes a reasonable request for supply. No such obligation to supply is placed on the BGE in the gas market. As noted above the ESB PES must serve customers according to standard terms and conditions and shall charge tariffs approved by the CER.

In 2011 and the transition to full deregulation of the electricity retail markets (which occurred in April of that year) the CER published a decision on how the duty to offer supply would be fulfilled in the deregulated marketplace. The decision will see a duty to offer supply for domestic and small business customers placed, through licence condition, on suppliers actively supplying these customer categories. The CER subsequently consulted on modifications to the licence to supply electricity in 2011 to implement this decision. A decision on the licence modifications is to be published in 2012.

Network Access for Rural Customers

The Electricity Regulation Act, 1999, states that the CER should take into account the needs of rural customers. Condition 2 of the Distribution System Operator's licence (Connection to and use of the distribution system) stipulates that the DSO shall publish, and make available on their website, a statement of charges for connection to the distribution system. These charges

include standardised connection charges for domestic rural customers and are approved by the CER.

Again, no such obligation to supply is placed on the BGE in the gas market.

Information on Energy Sources for Electricity

As required by Directive 2003/54/EC and S.I. No. 60 of 2005 all suppliers must provide reliable information on all bills/ promotional material sent to customers regarding the contribution of each energy source to the overall fuel mix of the supplier concerned over the preceding year. In July 2009 the SEM Committee published a decision on the Interim Arrangements for fuel mix disclosure. These interim arrangements have since been replaced by a new methodology which was required due to the introduction of guarantees of origin for renewables in Ireland. The new methodology is set out in a SEM Committee decision which was published in November 2011.

These interim arrangements will be superseded by the arrangements which will be introduced following the transposition of the new RES directive (2009/28/EC) into Irish and UK law.
