



Commission for Energy Regulation

An Coimisiún um Rialáil Fuinnimh

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## 1. Foreword from CER Commissioners

The year 2009 was one in which Europe experienced a severe economic downturn, with Ireland in particular experiencing a deep recession. This can be seen in Irish electricity demand figures which fell by more than 5% over the previous year, an unprecedented drop in an industry which had experienced robust growth. The Commission for Energy Regulation (CER) recognises that this economic situation impacted on all the various participants in the Irish energy market, including customers, generators, network operators and suppliers. However, despite the difficult economic background, the CER is pleased to report that the Irish energy sector was full of positive and exciting developments during 2009, which should stand Ireland in good stead into the future.

The global economic downturn meant that the dramatically lower global fuel prices seen in the 2<sup>nd</sup> half of 2008 continued into 2009. In view of these lower global fuel costs, the biggest driver of Ireland's energy prices, in May 2009 the CER reduced regulated electricity prices by an average of 10% and regulated gas prices by an average of 12%. This was followed by a further reduction of circa 10% in the average regulated gas tariffs in October 2009 and yet another fall of 8% in February 2010.

During 2009 Ireland saw strong competition among energy suppliers for customers, putting further downward pressure on its energy prices. Building on the competition already seen in the business markets, vigorous competition developed, for the first time, in the domestic (i.e. residential) electricity sector. This led to circa 400,000 domestic electricity customers switching supplier in 2009. In total, about 1 in 5 of all Irish electricity customers switched supplier during the year, among the highest customer switching rates ever seen in Europe. The CER welcomes this development and is pleased to see signs of healthy competition also developing in the domestic gas market in recent months. With an effectively regulated market, good levels of supplier choice and an easy supplier switching process, all energy customers can now avail of the opportunity to make significant savings on their energy bills. In addition, the CER's Energy Customers Team continues to provide energy-related information to customers through the *energycustomers.ie* website, leaflets and face-to-face meetings, while it also offers a free dispute resolution service.

Due to the strong competition developing in the electricity market, the CER published a "Roadmap" public consultation in late 2009 on the de-regulation of ESB Customer Supply's electricity prices. Following consideration of comments received, the CER subsequently decided that price de-regulation of ESB's prices in the business markets will take place from October 2010. Price deregulation in the domestic market will be allowed once ESB Customer Supply meets a number of criteria including a further reduction in its market share which, given the rate of customer switching, is expected to happen at some stage in 2011. This move will make Ireland one of the few countries in Europe with fully deregulated final electricity prices, and should further increase customer choice in electricity products as we move forward.

The Single Electricity Market (SEM), a ground-breaking development in Europe which merged the former separate Republic of Ireland and Northern Ireland electricity markets into one all-island market in November 2007, continued to work well in 2009. The SEM is jointly regulated by the CER and the Northern Ireland Utility Regulator (UR). The SEM derives wholesale prices through a mandatory centralised pool system which ensures a liquid and transparent wholesale market. Prices are derived from commercial offers from each dispatchable generator in the

system based on short run costs and thus closely track prevailing international fuel prices. Through the SEM the cheapest generation plants are dispatched at any one time to meet demand across the island, meaning that the reduction in global fuel prices fed through to lower retail prices in 2009. The design of the SEM delivers transparent price signals, encouraging generation entry to the market. This was seen with the construction of two new efficient gas generating plants in Co. Cork during 2009, both of which are due for completion in 2010. This will ultimately contribute to lower electricity prices for end customers. It is hoped that all-island Common Arrangements for Gas (CAG) can be developed to build on the success of the SEM, once approval is received from Energy Ministers and the appropriate legislation is passed in both jurisdictions.

Meanwhile, in 2009 work continued on developing aspects of the SEM. Allowing for increased integration between the SEM and neighbouring European markets will be a significant challenge for the CER in the coming years as physical interconnection increases. In this regard, the CER and UR commenced a workstream to review the framework required to provide for this. A consultation was published in September 2009 on how to best coordinate the allocation of transfer capacity on interconnectors between SEM and other markets across various time-frames. A decision paper on this topic was then published in March 2010 where a programme of work to maximise the efficient use of existing and future interconnectors between the SEM and its neighbouring European markets was set out.

Energy is a long-term business so, despite the economic recession, 2009 was a year when big steps were taken towards shaping the industry for the decades ahead. The amount of renewable generation in Ireland continued to rise in 2009 as a result of previous network connection decisions previously made by the CER. By the end of the year there was over 1,500 MW of renewable electricity generation connected on the Irish network, most of it in the form of wind power. In total 14% of the island's (Republic of Ireland and Northern Ireland) electricity consumption came from renewable generation in 2009 and this is anticipated to increase to about 15% in 2010. This is ahead of EU targets for Ireland and means that it is now one of the leading countries in the world in terms of the level of wind penetration in a weakly connected island system. In addition, late 2009 saw connection offers starting to roll out, on schedule, from the network operators to circa 4,000 MW of new wind farm projects on foot of the CER's "Gate 3" policy. The Gate 3 wind farms will enable Ireland to meet the Government's target that 40% of our electricity consumption comes from renewable sources by 2020. To monitor the roll-out of all Gate 3 offers, the CER set up a Gate 3 Liaison Group with the system operators and industry in early 2009. This Group meets monthly and has proved a useful forum for discussing Gate 3-related matters with industry.

To complement the new wind farms, enhance Ireland's security of electricity supply and facilitate competition into the future, the CER issued a decision in late 2009 which allows for connection offers to be issued in Gate 3 to about 1,350 MW of new conventional (i.e. non-renewable) generator projects. This includes offers to flexible gas turbine based power stations and pumped storage hydro plant. This is in addition to the new 500 MW EirGrid interconnector under development from Ireland to the UK, overseen by the CER which is targeted to commence operation by 2012. If constructed, all of these developments will assist in the years ahead in providing for Ireland's security of supply, meeting our renewable targets and facilitating cross-border trade and competition in electricity, all to the benefit of the end-customer.

Delivery by the network operators of new network infrastructure over the coming years, primarily upgraded and new transmission wires, will be necessary to deliver these benefits. The cost of

the network upgrades will be largely paid for by the end-customer through network tariffs. In this context, in 2009 the CER commenced reviews of the electricity network businesses' allowed revenues, covering the years 2011 to 2015, leading to a CER consultation and decision on the matter in 2010. While an increase in the network capital investment budget is envisaged to provide for the new infrastructure, achieving efficiency gains and value for money for end-users will be a key consideration for the CER.

Turning to safety, 2009 marked the formal commencement of the statutory regulation of electrical contractors and natural gas installers in Ireland, replacing the old voluntary self-regulatory systems. In January 2009 the two bodies appointed by the CER, the Register of Electrical Contractors of Ireland (RECI) and the Electrical Contractors Safety & Standards (ECSSAI), commenced their role in registering electrical contractors. The equivalent body on the gas side appointed by the CER, the Register of Gas Installers of Ireland (RGII), commenced its operations in June. These safety supervisory bodies, which are subject to ongoing monitoring by the CER, are also responsible for audit and inspection of their respective registered members. This helps to ensure that work carried out by electrical contractors and gas installers in our homes and businesses is carried out to the highest safety standards.

The year 2009 saw the first full year of operation of the Natural Gas Safety Regulatory Framework. The Framework sets out how the CER regulates natural gas undertakings and natural gas installers (through the RGII) in Ireland with respect to safety. Under the Framework, the CER monitors the performance of regulated entities through ongoing audits and evaluating submitted quarterly performance reports on key safety metrics. Although still in the early stages of operation, the CER is satisfied that the RGII and the operators of the natural gas transmission and distribution system are operating in compliance with the Framework and that strong safety outcomes are being achieved. Ongoing audits/inspections and quarterly performance reporting will continue in 2010 and beyond in order to provide re-assurance of ongoing compliance and encourage further improvements in safety outcomes.

Looking forward, in 2009 the CER started preparing for its new role in regulating petroleum exploration and extraction safety, which commences from mid 2010 and will be a key priority in the coming years. In addition, the CER undertook significant preparatory work to facilitate the safety regulation of Liquefied Petroleum Gas (LPG) within the overall gas safety framework; including the safety regulation of LPG installers and LPG distribution systems and the oversight of LPG safety incidents.

With more efficient energy use in mind, 2009 also saw significant progress in the CER's smart metering project, which is a major pilot project coordinated with the network operators to ascertain the potential for smart meters to be rolled-out nationally. As part of the pilot "customer behaviour trials", smart meters were put in place, on schedule, for 6,500 electricity customers and 2,000 gas customers during 2009. These trials will enable information to be obtained on customer consumption patterns and will provide participating customers with the opportunity to monitor their own consumption and make energy consumption changes across the day. In the context of related "technology trials", an additional 3,400 electricity smart meters were installed in 2009. The results of all these trials will feed into a cost-benefit analysis by early 2011, which in turn will inform decisions related to any national roll-out of smart meters.

At an organisational level, Tom Reeves, our first Commissioner, retired in September 2009 after 10 years at the helm. Tom built up the organisation from its establishment in 1999 to what it is today, bringing about a successful transformation of our energy market along the way. The CER

would like to take this opportunity to thank Tom for all his hard work down the years and wish him the very best for the future. The CER also warmly welcomes Garrett Blaney who joined Michael G. Tutty and Dermot Nolan as Commissioners in February 2010.

Finally, in 2009 the CER developed a Strategic Plan for 2010 to 2014, which was finalised and published in early 2010. This plan provides an overview of the CER's goals for 2010 to 2014 and the strategies to achieve them. These goals will be foremost in our mind as we regulate the energy market in 2010 and the years ahead, namely that the lights stay on, the gas continues to flow, prices are fair and reasonable, the environment is protected and electricity and gas are supplied safely, all with a top quality regulatory service to our customers.



Michael G. Tutty  
Chairperson



Dermot Nolan  
Commissioner



Garrett Blaney  
Commissioner

## 2. The Commission for Energy Regulation

The Commission for Energy Regulation (CER) is the independent body responsible for regulating the natural gas and electricity markets in Ireland. The CER protects electricity and natural gas customers by working for a safe, secure and sustainable supply of electricity and natural gas, in a competitive market which delivers reasonable prices and a good quality service.

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,
- electricity and gas are supplied safely.

### 2.1 Organisational Structure

The CER is headed by up to three Commissioners at any one time. From January to September 2009 the Commissioners were Michael G. Tutty, Tom Reeves and Dermot Nolan. Following Mr Reeves' retirement as Commissioner in September, the Commissioners were Michael G. Tutty and Dermot Nolan until February 2010 when Garrett Blaney also joined as Commissioner. Mr Tutty is Chairman of the CER.

The CER is made up of five functional divisions and an operations division that provides support to all teams. These are currently headed up by four Directors as shown in the diagram of the organisational structure in Appendix A.

The CER's divisions are: Electricity Markets; Electricity Networks and Retail; Gas, Legal and Environment; Safety; Consumer Affairs; and Operations. An overview of these is provided below.

The **Electricity Markets Division** is responsible for overseeing the electricity generation sector in Ireland as well the joint regulation of the all-island Single Electricity Market (SEM) along with the Northern Ireland Utility Regulator (UR). The division also monitors security of supply in Ireland, licensing and monitoring of new and existing generation companies, including setting the terms of licences and enforcing those terms.

The **Electricity Networks and Retail Division** oversees the regulation of Ireland's electricity transmission and distribution systems as well as the competitive retail electricity market. They are also responsible for overseeing the development of the East-West Interconnector project.

The **Gas, Legal and Environment Division** is responsible for the regulation of natural gas networks and supply. The team is also responsible for overseeing and leading the All Island Gas project – Common Arrangements for Gas (CAG) and is currently working with UR in this

area. This division also includes the Environment Team which regulates aspects of the CER's work on the use of renewable and sustainable forms of energy, including promoting research and development as well as the implementation of national policy on renewables. The CER's Project Office also forms part of the Gas division. The role of the project office is to lead and support the successful implementation of major projects in the CER. It is currently involved in smart metering and managing the CER's IT.

The **Safety Division** has responsibility for the implementation of the Safety provisions of the Energy (Miscellaneous) Provisions Act 2006, which relates to the regulation of electrical contractors and natural gas installers with respect to safety and the regulation of natural gas undertakings with respect to safety. The CER was given new functions in 2010 with respect to the safety regulation of petroleum exploration and extraction activities.

The **Customer Affairs Division** has responsibility for reviewing gas and electricity suppliers' adherence to their Consumer Protection Codes of Practice and Customer Charters. In addition, the team also provides an independent complaints resolution service for natural gas and electricity customers.

The **Operations Division** includes the CER's operation teams including Human Resources, the Business Information Centre, Facilities, and the Finance Department. Together these areas are involved in driving efficiency gains throughout the organisation.

## 2.2 CER Functions

The functions of the CER have been built up over time, following the enactment of various pieces of legislation. Initially the CER was responsible for regulation and reform of the electricity market only, including the licensing of new entrant generators and suppliers. In 2002, the CER was also given statutory responsibility for regulation of the natural gas market, while various pieces of legislation have increased and augmented our functions in the areas of customer protection, licensing and gas and electricity safety.

Section 8 of the Electricity Regulation Act, 1999 established the Commission for Electricity Regulation. Section 9 detailed the functions of the CER with respect to its role in the Irish electricity sector. This Act came into operation and the CER was established in July 1999.

Section 5 of the Gas (Interim) (Regulation) Act, 2002 extended this legal role, and the functions of the CER, to the gas sector, thereby renaming the Commission for Electricity Regulation as the Commission for Energy Regulation. This Act also extended the functions of the CER in the electricity industry.

Subsequent secondary legislation, or statutory instruments, has been enacted since 1999, which has further added to these functions. Following the introduction in 2003 of the Internal Market in Electricity Directive (Directive 2003/54/EC) and the Internal Market in Gas Directive (Directive 2003/55/EC), various pieces of legislation were enacted to transpose these Directives, including, Statutory Instrument Number 60 of 2005 (European Communities (Internal Market in Electricity) Regulations 2005); Statutory Instrument Number 452 of 2004 (European Communities (Internal Market in Natural Gas) Regulations 2004) (Number 2); Statutory Instrument Number 320 of 2005 (European Communities (Internal Market in Natural Gas)



Regulations 2005), and Statutory Instrument Number 760 of 2005 (European Communities (Internal Market in Natural Gas) (BGÉ) Regulations 2005). Further implementing legislation can be found on [www.irishstatutebook.ie](http://www.irishstatutebook.ie).

In late 2006, a further piece of primary legislation was enacted which added significant extra functions to the CER's remit. The Energy (Miscellaneous Provisions) Act 2006 outlines the functions of the CER regarding the all-island energy market and regarding electrical safety, natural gas safety and the regulation of electrical contractors.

In 2007, the Electricity Regulation (Amendment) (Single Electricity Market) Act 2007 was enacted and subsequently commenced. The Act provided for the establishment of a single competitive wholesale electricity market on the Island of Ireland and its Islands and allocates certain functions to the CER to establish and facilitate the operation of the Single Electricity Market in the State. Statutory Instrument Number 406 of 2007 (Electricity Regulation Act 1999 (Single Electricity Market) Regulations 2007) established the trading arrangements and other related matters considered necessary to establish and facilitate the operation of the Single Electricity Market.

Most recently the Electricity Regulation (Amendment) (EirGrid), Act 2008 was enacted to allow for the construction, by EirGrid, of the East West Interconnector between Ireland and Wales.

The Petroleum (Exploration and Extraction) Safety Act 2010, enacted in April 2010, has given the CER additional functions in regulating petroleum exploration and extraction activities with respect to safety. It introduces a risk based safety framework under which applicants must submit a safety case to CER. The Act has not yet been fully commenced.

A list of the "Functions of the CER", as contained in the (unofficial) consolidated version of section 9 of the Electricity Regulation Act, is presented in Appendix B of this document. The functions of the CER as of 2009 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 disabled, the elderly and those residing in rural areas;
- Promoting competition in supply of electricity and natural gas and 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;
- 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 natural gas installers with respect to safety;
- Promoting the safety of natural gas customers and the public generally as respects the supply storage, transmission, distribution and use of natural gas;
- Establishing and implementing a natural gas safety framework.

## 2.3 Main Enforcement Powers

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

- Licences: Anyone seeking to construct a generating station, generate or supply 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 24 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 Instruments 452 of 2004 and 60 of 2005 with respect to complaint and dispute resolution between customers and their supplier or network operator;
- 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 of 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.

## **2.4 Interagency Agreements**

The CER interacts with a number of other governmental bodies including the Irish Competition Authority, Sustainable Energy 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 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 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

## **2.5 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 four parliamentary committees on energy:

1. Joint Committee on Climate Change and Energy Security;
2. Joint Committee on Communications, Energy and Natural Resources;
3. Joint Committee on Economic Regulatory Affairs; and,
4. Joint Committee on Finance and the Public Service.

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 under Section 22 of the Gas (Interim) (Regulation) Act, 2002 the CER must identify separately in regard to the gas and electricity 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 2009.

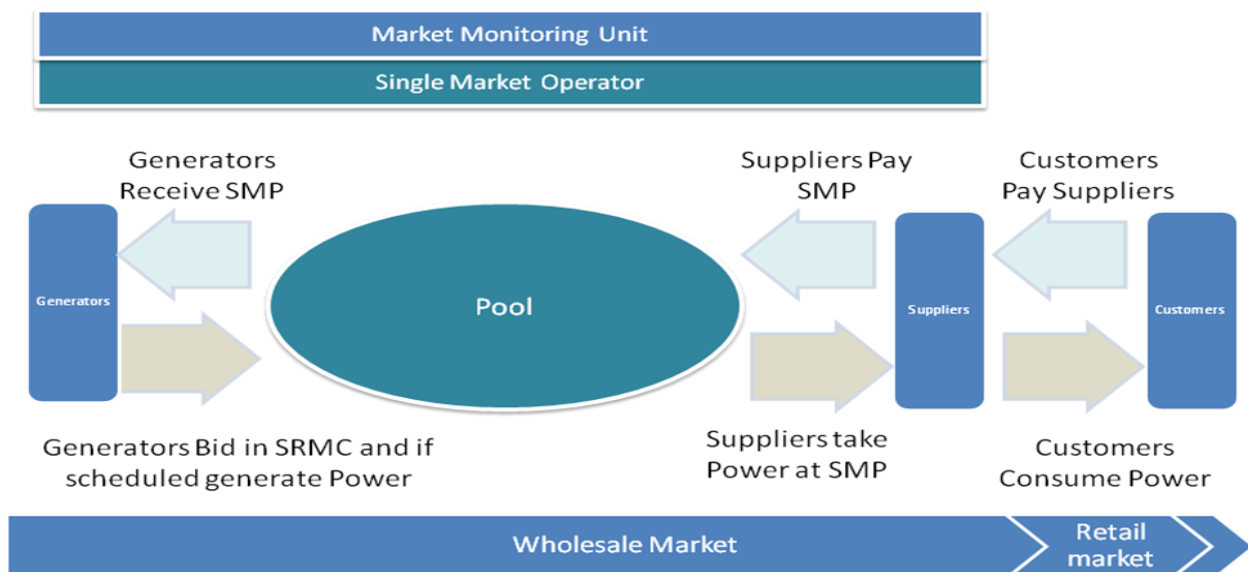
#### 3.1 Wholesale Electricity Market Developments

##### 3.1.1 SEM - Overview

Following the successful introduction of the all-island SEM on the 1<sup>st</sup> November 2007, the Regulatory Authorities, the CER and the UR, focused on the ongoing governance and operation of the new wholesale market and towards ensuring that the benefits of the market are fully realised.

As a background, 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) purchase energy from the pool pay the SMP for each trading period along with capacity costs and system charges. This is illustrated below - the SEM rules are set out in detail in the Trading and Settlement Code.

Figure 1 - All-Island Single Electricity Market



The Regulatory Authorities monitor and oversee the all-island 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 SEM is now into its 3rd year of operation and has functioned successfully and in accordance with the SEM objectives during that time. The Regulatory Authorities are of the view that the market in the main has worked well and is delivering fair and cost-reflective prices. The SEM is sending out correct price signals to potential investors with a high level of interest in building new generation since the SEM went live in November 2007. Nonetheless, conscious of a number of challenges facing the market such as increasing levels of intermittent generation coming on stream and the need to facilitate new interconnection with neighbouring markets, the Regulatory Authorities launched in 2009 a series of development initiatives to meet these challenges.

### **3.1.2 SEM Trading and Market Development**

The Trading and Settlement Code team, based in CER, manages the SEM rules on behalf of the SEM Committee (please see section section 4.5.1)<sup>1</sup>, with the central focus of this role being on the SEM Trading and Settlement Code (the Code). The Code is a multilateral contract which sets out the rules and procedures concerning the sale and purchase of wholesale electricity in Ireland and Northern Ireland. The Code was designated by the Regulatory Authorities in July 2007 and can be modified from time to time thereafter, in accordance with procedures set out in the Code.

The role of the Code Modifications Committee, which comprises representatives from industry participants and the Regulatory Authorities, is, among other things, to consider and report on proposed modifications to the Code. In 2009, the Committee considered 46 Modification Proposals. Two such Code Modifications which were recommended for approval by the Modifications Committee in 2009 and subsequently approved by the SEM Committee are as follows:

- **Dual Rated Generator Amendment.** This Modification seeks to address the MSP (Market Scheduling and Pricing) software and market issue of non-cost reflective price spikes caused by the market rules' inability to handle dual-rated generators. A final decision was made to approve the Modification Proposal by the SEM Committee in early 2010, with the system changes required to implement this Modification Proposal being deployed in October 2010; and,
- **Aggregate Payments for Invoices.** This Modification seeks to provide a means for Participants to reduce the number of payments they need to make per month, by grouping payments for the same account, for the same invoice type (trading, capacity or market operator charge) and same due date into one single payment. In doing so, this reduces the number of payments per month and therefore reduces the high cost of processing these

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<sup>1</sup> The SEM Committee is established in Ireland and Northern Ireland by virtue of Section 8A of the Electricity Regulation Act 1999 as inserted by Section 4 of the Electricity Regulation (Amendment) Act 2007, and Article 6 (1) of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 respectively. The SEM Committee is a Committee of both CER and the UR (together the Regulatory Authorities) that, on behalf of the Regulatory Authorities, takes any decision as to the exercise of a relevant function of CER or NIAUR in relation to an SEM Matter.

payments relative to the payment value.

During 2009, the Regulatory Authorities consulted on several policy-related Code parameters including the market price cap and market price floor and the Uplift parameter values to apply in 2010; these remained unchanged from the 2009 values at €1000 MWh and -€100 MWh respectively. The Regulatory Authorities also issued a Consultation and Decision Paper on setting the Value of Lost Load to apply for the SEM year 2010. In addition, the Regulatory Authorities approved the following Code parameters for 2010:

- Credit Cover parameters;
- MSP Software parameters;
- Annual Capacity Exchange Rate;
- Uninstructed Imbalances parameters;
- Flattening Power Factor; and,
- Settlement Recalculation Threshold.

### **3.1.3 SEM Regional Integration and Interconnector Trading**

In addition to continuing its work of overseeing changes to the Code and operation of the market, the Trading and Settlement Code and Market Development Team based in CER is responsible for the area of Regional Market Integration and Interconnector Trading. The SEM Committee, as part of their work plan for 2009, asked the Regulatory Authorities to review the issues surrounding interconnection between Ireland and Great Britain and to develop a strategy for further market integration with neighbouring markets as physical interconnection increases.

On foot of this, the SEM Committee issued an Information Paper on Interconnector issues in April 2009. The paper recognised that flows in both directions across the Moyle Interconnector had not responded as fully as they might to price arbitrage opportunities between the SEM and the Great Britain markets. It identified a number of reasons why this might be the case, including the availability of capacity on the Moyle Interconnector and its cost, the risks created by the misalignment of the SEM and Great Britain markets and other trading risks such as the lack of liquidity in day ahead markets and network charging in Great Britain. The paper noted that, with the prospect of increased interconnection in the medium term, the main barriers to increased interconnector use by participants and the promotion of within-day trading would need to be addressed. The SEM would also need to be developed to conform to European Union regulations and to maximise the benefits of increased interconnection.

Following the above analysis, the SEM Committee commissioned a Consultation Paper in September 2009 on integration of the SEM with its neighbouring markets, including indicative proposals for intra-day trading on interconnectors between the SEM and its regional market. The paper considered the costs and benefits of increased interconnection in a system which will become increasingly dependent on intermittent generation and examined how best to coordinate the allocation of available transfer capacity on interconnectors in the SEM across various time-frames. The paper also examined in detail the wider, more strategic implications for the integration of the SEM with its neighbouring markets in the context of recent initiatives at the European level.

Following this consultation, the SEM Committee issued a Decision Paper in March 2010. This paper establishes a programme of work for the Regulatory Authorities with the aim of maximising the efficient use of existing and future interconnectors between the SEM and its

neighbouring markets. This is in the context of the wider integration of European electricity markets and within the parameters of the current SEM design. The SEM Committee also set out its decisions in a number of policy areas including forward explicit auctions, day-ahead coupling, intra-day trading, system operator to system operator balancing, barriers to trading and engagement with the developing European standard models for cross border trading.

### 3.1.4 SEM Capacity Payments Review

The Capacity Payments Mechanism (CPM) is managed within the electricity section of the UR, with shadow management responsibilities falling to the CER.

The CPM is a fixed revenue system whereby generators are paid regulated quantities (Capacity Payments) of money for providing available generation capacity to the market. The money is sourced by concurrent Capacity Charges levied on all Suppliers that purchase energy from the pool. The core of the CPM takes the form of a fixed annual sum of money, called the Annual Capacity Payments Sum which is calculated by the Regulatory Authorities on an annual basis. The Annual Capacity Payment Pots for the Years 2007 to 2010 are as follows:

**Table 1 - Annual capacity Payment Pots for the Trading Years 2007-2010**

Year	BNE Peaker Cost (€/kW/yr)	Capacity Requirement (MW)	Annual Capacity Pot (€m)	Capacity Pot Change (% Yr on Yr)
2007	64.73	6,960	450.5	-
2008	79.77	7,211	575.2	27.7%
2009	87.12	7,356	640.9	11.4%
2010	80.74	6,826	551.1	-14.0%

During 2009 the annual exercise took place to establish the capacity pot for 2010. This involved establishing the fixed costs of a best new entrant peaking plant in the market and also EirGrid's calculation of the capacity requirement for the year ahead. These two numbers fed into the size of the capacity pot required. The pot decreased by 14% on the previous year which was driven by lower costs of the peaking plant and a decrease in the capacity requirement driven by lower anticipated electricity demand (see table above).

#### **Capacity Payments Medium Term Review**

In March 2009 the SEM Committee published a consultation paper *“Fixed Cost of a Best New Entrant Peaking Plant Calculation Methodology Consultation Paper”* relating to the perceived volatility of the CPM and proposed a number of options to help reduce the level of volatility. In this paper, the SEM Committee signalled its intention to carry out a further review of the CPM in the medium term. Following comments received in response to the consultation paper, the Regulatory Authorities decided to amalgamate this matter with its more comprehensive review of the CPM. The following month the SEM Committee published a consultation paper documenting the scope of work that the SEMC proposed to carry out in relation to a medium term review of the CPM. The main areas under consideration in this review are detailed below:



- Assessment of CPM in SEM (historical analysis);
- Impact of CPM on Customers;
- Incentives for Generators Capacity;
- Payments when Capacity is needed;
- Distribution of Capacity Payments;
- Capacity Requirement Calculation;
- WACC Methodology;
- Infra Marginal Rent & CPM;
- Impact of Exchange Rate in CPM;
- Treatment of Wind in CPM;
- Treatment of Interconnector in CPM;
- Relationship of CPM with Ancillary Services; and,
- Impact on Diversity of Generation & Security of Supply.

Following a workshop on the issues, in November 2009, a CPM Medium Term Review Information Paper was published by the Regulatory Authorities which includes details on the planned activities, timelines and periods for further consultation on the topics under review within the CPM Medium Term Review. The Regulatory Authorities intend to consult further on the CPM Medium Term Review during 2010. As part of this a discussion paper containing a historical review of various aspects of the capacity payment mechanism was published in July 2009.

### **3.1.5 SEM Dispatch and Relevant Matters**

Early in 2008 the SEM Committee published a discussion paper setting out key issues arising from increasing levels of wind generation on the island of Ireland and potential solutions to those issues in the context of the SEM. Following receipt of comments, a paper was published in Autumn of that year setting out initial responses to those comments and next steps. One area of further work identified here was the need to further consult on relevant scheduling and dispatch matters. This was progressed with the publication of a consultation paper in July of 2009. The July consultation contains discussion and sets out options/proposals in relation matters such as:

- Underlying principles for the dispatch of all plant on the island including the treatment in dispatch of generation with different levels of firm access and treatment in dispatch of generation with respect to priority dispatch;
- Trading and Settlement Code issues including compensation for “curtailment”, the treatment of firm access for Price Taking Generation Units, determination of SMP when demand is met by Price Takers in the market schedule, Excess Generation Events and allocation of access to the market schedule for plants located behind constraints;
- The question of “deemed firm access” and whether this should be introduced.

A proposed decision paper is planned to go to the SEM Committee in the third quarter of 2010 for approval and publication. This will be followed by a decision paper. Follow-up work packages and potential future consultations on specific work items will be required post the publication of the decision paper. This will include work on any detailed modifications to the Trading and Settlement Code should they be required.

### **3.1.6 SEMO Regulation**

The SEMO (Single Electricity Market Operator) Regulation unit, based in the UR, is responsible for approving SEMO's revenues and tariffs, overseeing SEMO's licence compliance, and approving projects run by SEMO. During 2009, the Regulatory Authorities determined SEMO's revenues and costs for the year October 2009 to September 2010. This one-year price control is expected to be followed by a three-year price control for the period October 2010 to September 2013. During the year, the bi-annual system release strategy was also agreed with the System Vendor, ABB. This provides for system releases in April and October each year for a 3-year period.

### **3.1.7 SEM Market Modelling Group**

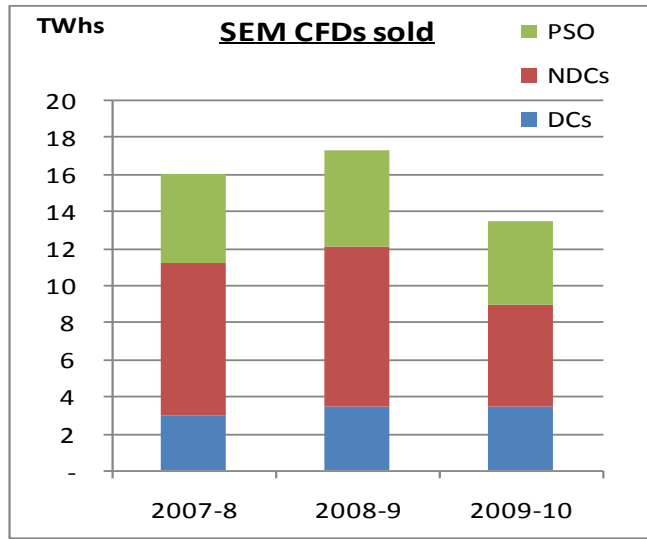
The Regulatory Authorities' Market Modelling Group (MMG), based in the CER, provides market forecasts of the SEM. The majority of the MMG's forecasting is over the short term (1 to 2 years), which is used to quantify and price Directed Contracts and to feed into the work of the Regulatory Authorities. Medium and long-term forecasting is also carried out to support the Regulatory Authorities' policy decisions. During 2009 the MMG work included:

- Validation of the forecasting model (Plexos) and the dataset for SEM covering 2009 and 2010;
- Quantifying and Pricing of Directed Contracts for eligible suppliers, imposed on the incumbent generators (ESB Power Generation & NIE Power Procurement Business) in the SEM as part of the Market Power Mitigation Strategy, covering the 1<sup>st</sup> October 2009 to 30<sup>th</sup> September 2010;
- Setting the reserve price for Public Service Obligation (PSO) related Contracts for Differences (CfDs);
- Monitoring the volume and prices of Non-Directed Contracts, which are typically offered by the incumbent generators (ESB Power Generation & NIE Power Procurement Business) over and above the mandatory Directed Contracts, covering the 1st October 2009 to 30th September 2010;
- Estimating the wholesale price for the Public Service Obligation levy covering the 1st October 2009 to 30th September 2010;
- Assisting the retail division of CER in analysing ESB Customer Supply Tariffs for the period from 1<sup>st</sup> October 2009 to 30<sup>th</sup> September 2010; and,
- Modelling support to the Regulatory Authorities to help inform the Regulatory Authority policy on the SEM.

2009 saw the introduction of a multilateral trading facility, through the efforts of market participants, for the trading of Non-Directed Contracts. It is hosted by Tullet Prebon and this should advance the development of the contracts market in the SEM by promoting liquidity, diversity, transparency and flexibility.

The following shows the total volume of CfDs sold for the 2009/'10 tariff year in SEM, divided between Directed Contracts, Non-Directed Contracts and PSO-related CfDs, compared to previous tariff years.

Figure 2 – Contracts Sold in SEM



### 3.1.8 SEM Market Monitoring Unit

The Market Monitoring Unit (MMU), located in the UR, 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. The MMU is also the point of contact for participants who wish to register complaints relating to market behaviour. Key issues for the MMU in 2009 were:

#### *Governance*

In Q4 2009 the MMU commenced a review of its Governance arrangements. After almost two years since SEM Go-Live, the aim of the review was to assess how well the Unit is performing its functions and to identify areas of monitoring that could be improved. The MMU commissioned consultants to construct and issue a questionnaire in order to obtain the views of interested parties, including market participants. The views obtained then fed into overall recommendations made by the consultants. The review considered issues such as the role of the MMU in monitoring, analysing and making recommendations on bidding behaviour in the SEM. Implementation of recommendations is expected to occur in 2010.

#### *Generator Cycling*

The Power Plant Cycling report was prepared by the MMU and is aimed at informing industry on issues of power plant cycling, as the anticipated future growth of intermittent renewable generation is expected to have an impact on the amount of cycling experienced by thermal plants in the SEM. The report highlighted the effects of generator "cyclic operation" and the associated potential damage, as well as providing a best practice guide for cycling.

#### *Monitoring and Reporting*

This covers the ongoing monitoring of generators' commercial and technical offer data. In April 2009 the MMU published its first Public Report. The report constitutes the MMU's public

assessment of the performance of the SEM for the period 1<sup>st</sup> November 2007 to 31<sup>st</sup> December 2008. The MMU 2010 Report covering the period January 2009 to December 2009 is due to be published in the coming months.

### 3.1.9 Price Developments in the SEM

2009 saw the SEM's SMP move to the lowest average levels since the beginning of the all-island SEM in November 2007, with SMP in 2009 dramatically lower than 2008. The SEM is dominated by power stations that run on fossil fuels and therefore carries through any changes from those fuel markets into the wholesale electricity price. So this SMP movement was in line with the movements that took place in international fuel markets, all of which fell significantly from the peak fuel prices in the summer of 2008. In particular, gas is the dominant fuel in the SEM, responsible for approximately 70% of electricity generated in 2009. Gas prices fell from 2008 to 2009 which drove down the SMP from the levels reached in 2008. All these developments are shown in the figures below.

Figure 3 - SEM Daily Average SMP (D+4)

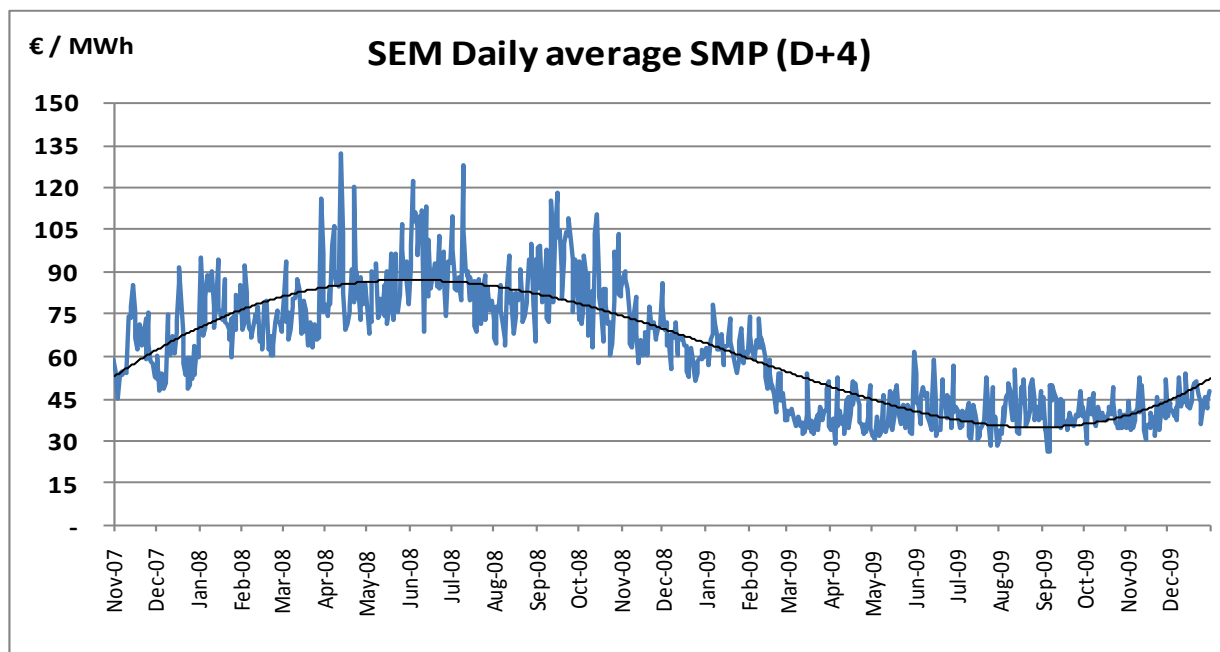


Figure 4 - SMP in the SEM, 2009 versus 2008

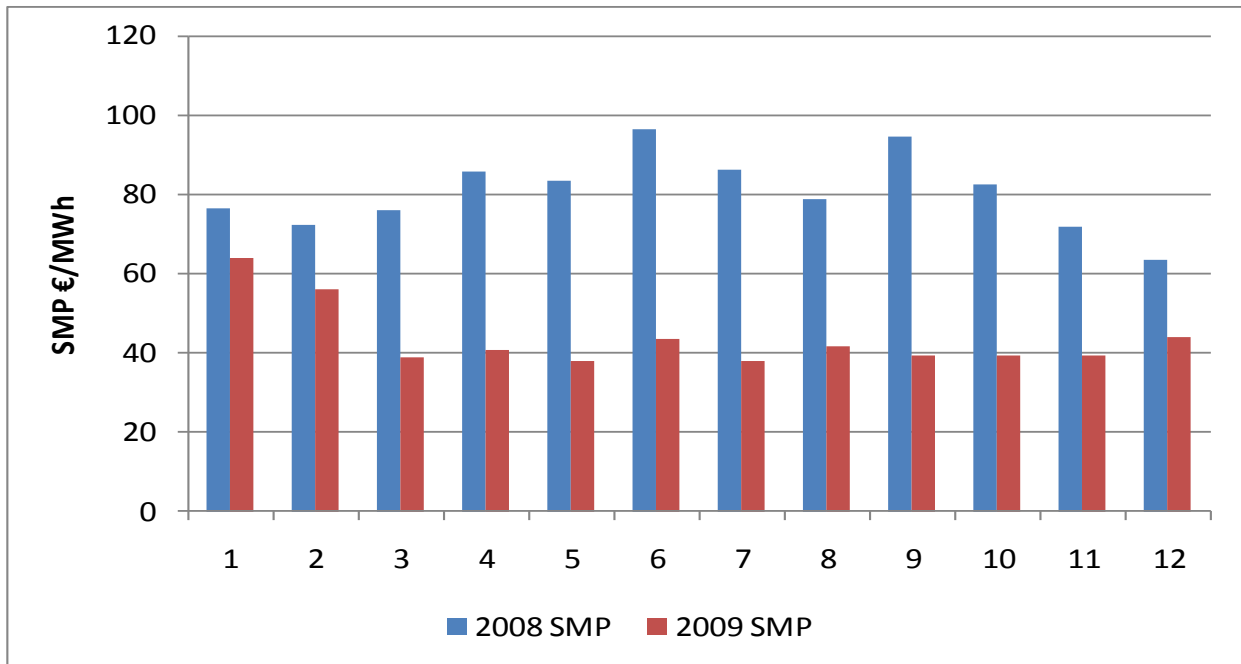
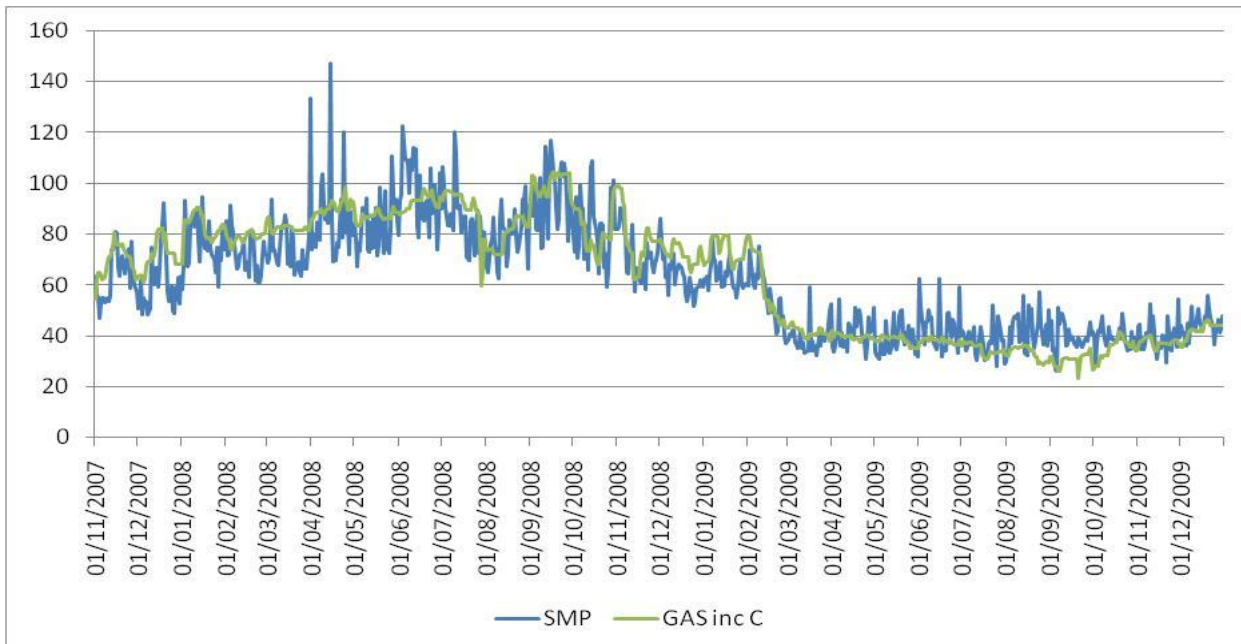


Figure 5 - Gas and SMP Price



### 3.1.10 SEM Locational Signals

In January 2009, the Regulatory Authorities working in cooperation with the TSOs on the island (EirGrid for Ireland and SONI for Northern Ireland) initiated a review of locational signals on the all island transmission network.<sup>2</sup> These signals related to generator transmission use of system charges (G-TUoS) and transmission loss adjustment factors (TLAFs) as follows:

- **G-TUoS:** These are use of system charges paid for by generators to cover their usage of the transmission network. Presently in Ireland, G-TUoS levels paid by generators vary by location, based on load flow modelling to determine each generators use of the system. In Northern Ireland a different methodology is used with a common non-locationally varying charge per MW being applied to generators. This workstream aimed to provide for the harmonisation of G-TUoS charging on the island.
- **TLAFs:** Loss of electricity occurs as electricity is transported across networks from the point of generation to the point of demand. Transmission loss factors are applied to generators primarily to assist in delivering efficient dispatch of generation but also as a mechanism of accounting for total system losses. Harmonised all-island transmission losses arrangements were introduced as part of SEM implementation. The Regulatory Authorities decided to review the current methodology due to the volatility from year-to-year in TLAF figures, an issue likely to increase with greater levels of wind on the system, as well as the fact that the TLAF figures did not always promote efficient dispatch as they were calculated in advance of each year.

In May 2009, the TSOs published a consultation paper which presented a range of potential methodology options in respect of G-TUoS and TLAFs. Based on feedback provided to the May 2009 consultation, in November 2009 the TSOs published a further consultation paper in which they set out their preferred options for both G-TUoS and TLAFs. The Regulatory Authorities are continuing to work on this workstream with a view to publishing a decision on G-TUoS and TLAFs in Q3 2010.

### 3.1.11 SEM Ancillary Services & Other System Charges

Ancillary services are services procured by the Transmission System Operators on a regulated basis from generators or others in order to enable them to operate the electricity system safely, securely, reliably and economically. Ancillary services specifically refer to reserve, black start and reactive power.

A joint Regulatory Authority/TSO project was carried out throughout 2008 and 2009 with a view to harmonising the jurisdictional arrangements for the procurement of these services across the island. The review also included introducing charges to generators for non-compliance with key Grid Code areas, i.e. Grid Code Performance Incentives, as well as harmonising arrangements relating to generator trips and short-notice declarations. Following a decision by the SEM Committee in January 2009 on the all-island policy for these Ancillary Service-related areas, a consultation paper on the proposed rates and charges to apply was published in June 2009. A

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<sup>2</sup> SEM-09-001

final decision on these all-island payments and charging arrangements for the period from 1<sup>st</sup> February to 30<sup>th</sup> September 2010 was then published by the Regulatory Authorities in January 2010 covering:

- Ancillary Services - Reserve, Reactive Power and Black Start;
- Generator Trip and Short Notice Declaration Charges; and,
- Generator Performance Incentives.

Accordingly the new harmonised all-island Ancillary Service-related arrangements went live on 1<sup>st</sup> February 2010 and have been operating well since.

### **3.2 Common Arrangements for Gas - CAG**

On 14<sup>th</sup> February 2008 the CER and the UR signed a Memorandum of Understanding (MoU) for the development of CAG on an all-Island basis. The MoU sets out the high level objectives of CAG.

The Regulatory Authorities are committed to working together to establish all-Island Common Arrangements for Gas whereby all stakeholders can buy, sell, transport, and contribute to the development and planning of the natural gas market north and south of the border effectively on an all-island basis. This means that variations in the price and conditions on which gas is bought and sold will be determined by market conditions and economics, not by variations in regulatory arrangements.

During the course of 2008 & early 2009 the Regulatory Authorities engaged with Industry to develop the high level design for CAG and have focused on three key areas – the options for the operations regime, the options for the tariff methodology, and gas quality. The RAs have published conclusions in each of these areas.

On the basis of the published conclusions, the Regulatory Authorities are now in a position to initiate work-streams for the further design and development of the CAG regime; for example on the roles and responsibilities of the CAG SO and asset owners and the structure of the all-island tariff.

However, it had always been recognised by the Regulatory Authorities that the core elements of the CAG would need to be underpinned by approval from both Energy Ministers and by legislation in both jurisdictions and that the final decision on initiating CAG and these work streams rested with the Ministers. To this effect, letters were exchanged between the Ministers in May 2010 to agree an appropriate overall structure for CAG, which has in turn provided the basis for the Regulatory Authorities proceeding with implementing CAG.

The Regulatory Authorities are currently realigning their work plan with the new timetable for implementing CAG legislation and October 2012 is the likely new target implementation date. The RAs will issue a revised work plan when they are in a position to do so.

### **3.2.1 Related Work Items**

#### *Harmonisation of Security of Supply Arrangements*

The Regulatory Authorities published a Conclusions Paper on Security of Supply as part of the CAG project. This paper follows the Consultation Paper on Security of Supply in which the Regulatory Authorities invited comment on security standards, obligations on shippers/suppliers and gas storage and sets out the conclusions and next steps of the Regulatory Authorities in relation to these issues. The Conclusions Paper notes the need to take account of the proposed new EU Security of Supply Directive and sets out the way in which Security of Supply issues will be dealt with in CAG.

#### *Gas Quality Industry Group*

In 2008 the Regulatory Authorities established the Gas Quality Industry Group headed by themselves and comprising industry participants, in order to recommend an appropriate gas quality standard for Ireland and Northern Ireland. In 2009, together with the Northern Ireland Authority for Utility Regulation, the CER harmonised the gas quality standard and progressed the implementation of procedures for managing gas which fails to meet the agreed specification in Ireland.

## **3.3 Electricity Retail Market Developments**

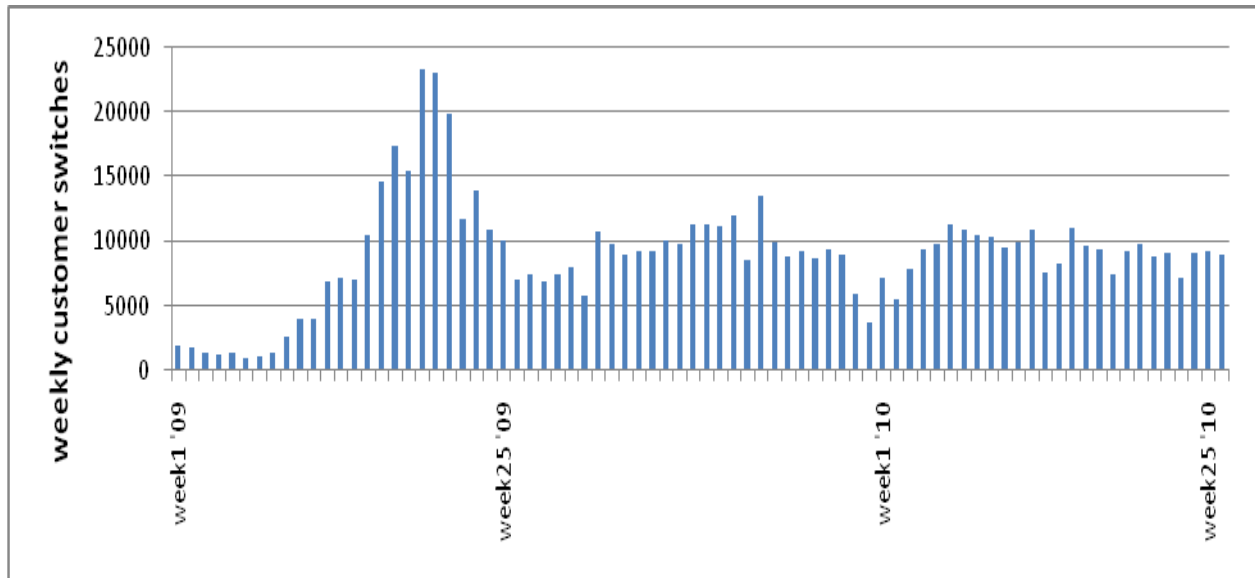
The CER currently regulates ESB Public Electricity Supplier (PES) tariffs for domestic customers and small to medium sized industrial and commercial customers on an annual basis. However, from 1<sup>st</sup> October 2010 the deregulation of all business markets will take place and there will only be regulated tariffs for domestic customers supplied by ESB PES (see next).

### **3.3.1 De-regulation Roadmap**

2009 was a very significant year for the retail electricity market. The entry of Bord Gáis Energy and Airtricity into the Irish market has not only transformed the competitive landscape in terms of the domestic market, it has also had a very positive effect on business market awareness of supplier switching options. The success of the new entrants in acquiring customers has led to Ireland having the highest switching rates in Europe in 2009, with about 400,000 domestic customers switching supplier during the year. In total about 1 in 5 of all Irish electricity customers switched supplier in 2009. As can be seen from Figure 6 next, this significant switching activity has continued into 2010.



Figure 6 – Weekly Customer Switches from January 2009 to June 2010



In response to the changing competitive environment, the CER published its *“Review of the Regulatory Framework for the Retail Electricity Market: Proposals on a Roadmap for Deregulation* in December 2009. This consultation document reviewed the market structures and consulted on the criteria that determine when markets are sufficiently competitive to end regulated final prices in the Irish retail market. The CER also invited submissions on what other actions should be taken apart from the removal of the price control in order to ensure a fully competitive deregulated electricity retail market.

In April 2010 the CER published its decision paper on the Roadmap which reviewed the relevant markets: domestic, small businesses, medium businesses and large industrial & commercial customers and has concluded that all three business markets are sufficiently competitive to allow for the complete removal of regulated end prices. As a result ESB Customer Supply will be free to compete in business markets from 1<sup>st</sup> October 2010. The CER concluded that, while there is also significant competition in the domestic market, regulatory restrictions would not be removed until ESB Customer Supply had reduced its market share to 60%, there is a minimum 10% market share for two independent competitors and a there is a 10% switching level. The most recent monitoring of the retail markets suggests that this will occur sometime in early 2011.

The Roadmap decision paper also requires a commitment from ESB which will address, to the satisfaction of the CER, the rebranding of the ESB supply businesses, including any appropriate transitional arrangements as a condition of the deregulation of the domestic market. This obligation to re-brand aims to deliver a goal of the European “3<sup>rd</sup> Package legislation” by removing any customer confusion between the role of ESB Customer Supply as a supplier of electricity and ESB Networks as the Distribution System Operator and Asset Owner. Though these two entities have been separately branded for over ten years, some degree of confusion as to their distinct roles is evident. This was identified in a recent customer survey, which indicated that 28% of domestic customers believe that their supplier is responsible for power failure repair and 25% believed their supplier was responsible for grid maintenance. In re-

branding, customers' confidence in alternate suppliers will be improved, removing a recognised barrier to supplier switching.

### **3.3.2 Tariff Structure & k-Factor Review**

In 2009, the CER and UR conducted a joint Review of Tariff Structures and also a separate Review of "k-factors" (a term in the price control formula that facilitates adjustment for any under-recovery or over-recovery in any given year to be applied in the following year) and Supply Margins. This was in the context of ongoing joint work on retail market harmonisation. The CER and NIAUR jointly published consultations in July 2009 and issued the final reports in December 2009 with consultants' recommendations.

#### *Report on Tariff Structure Review.*

The CER and the UR retained Poyry consultants to undertake this review and suggest how tariff structures might be harmonised in both jurisdictions with the aim of promoting competition in the provision of electricity supplies. In the review, the consultants, Poyry, set out views on those developments which should be progressed in order to harmonise PES tariffs between Ireland and Northern Ireland for the purpose of creating consistency and promoting competition through providing choice to customers. Poyry made recommendations in the following key areas:

- All Island Market Structure;
- All Island Regulatory Proposals; and
- PES Regulatory Proposals.

These three groups of recommendations are intended to create consistency and promote competition through providing choice for customers. The Regulatory Authorities have already commenced work on the implementation of some of these proposals including an all island global aggregation solution.

#### *Report on a Review of k-Factors and Supply Margins*

Separately, consultants Skyplex were commissioned by the CER and the UR to review the use of k-factors in the regulation of prices for monopoly services, and their linkage to the supply margin that each PES is permitted to earn. The consultants made proposals on 3 options for changes to how k-factors are regulated in the consultation:

- Minimal Change - k-factors are retained with some enhancements, specifically in terms of transparency, to the existing arrangements.
- Asymmetric k-factors - over recoveries are repaid with a premium and under-recoveries are not fully recovered.
- Maximum Allowed Revenue - the removal of k-factors and put in place a maximum revenue restraint determined ex-post.

In its final report Skyplex recommended that each of the regulators should adopt different solutions based on the level of competition that existed in the market, recommending a move to a Maximum Allowed Revenue (MAR) for the Irish market. Given the significant changes in the retail market in Ireland in 2009, the CER followed this work with a further consultation on the

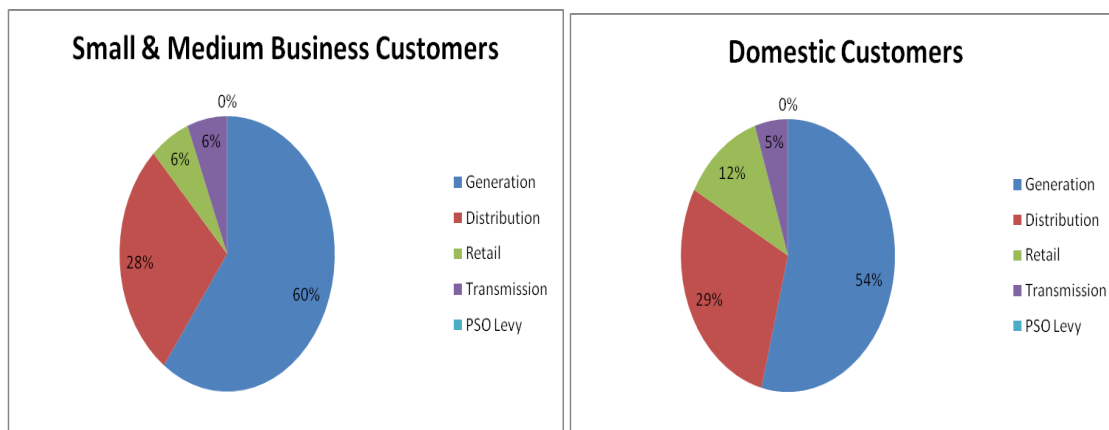
implementation of the MAR for regulated tariffs from 1<sup>st</sup> October. Following consultation, the CER published in May 2010 a decision paper amending the regulation of ESB PES domestic tariffs to one based on MAR defined for a period of 12 months from 1st October 2010. This approach reduces the impact of K-Factors and brings about a regulatory framework more appropriate to an increasingly competitive market.

### 3.3.3 ESB Tariffs for 2009/'10

While a number of key projects in 2009 focussed on changes to the regulatory framework, and ultimately market deregulation, the CER also implemented a number of key decisions with respect to the regulated tariffs which applied in 2009.

As a background, generation costs are by far the biggest driver of electricity prices for customers. More than half of the electricity bills for domestic customers and Small and Medium Enterprises (SMEs) is driven by generation costs, as illustrated below for the 2009/'10 tariff year (October 2009 to September 2010). In Ireland these Generation costs are primarily driven by international fuel prices, particularly the cost of natural gas, which is largely outside of Ireland's control. The Public Service Obligation (PSO) levy, associated with particular generating plant, is also related to the generation cost. The cost of the distribution and transmission networks, which transports the electricity to our homes and businesses, makes up about 1/3 of total electricity bills. These network costs are regulated by the CER. Supplier costs make up the balance of a customer's bill - this is typically a small component.

Figure 7 – Components of 2009/'10 Regulated ESB Customers Supply Electricity Bill



#### May Tariff Review

In view of lower global fuel prices, the CER reduced ESB's regulated PES end electricity prices by an average of 10.3% tariffs from 1<sup>st</sup> May 2009 which was achieved through re-profiling network charges, to the benefit of all consumers and businesses.

#### September Tariff Review

In September 2009, the CER set out its decision paper on regulated PES tariffs for the 2009/'10 tariffs period. This decision paper set out an average decrease of approximately 0.2% in the final tariffs.

### *Microgeneration*

In February 2009, ESB Customer Supply was the first supplier to offer a microgeneration tariff to domestic customers at a rate of 9c/kWh. In parallel the DSO, ESB Networks agreed to offer an additional 10c/kWh for electricity exported to the grid to the first 4,000 domestic microgenerators who signed up to the scheme. At the end of 2009 nearly 200 domestic customers had registered as microgenerators.

### **3.3.4 Related Work Items**

#### *Review of Revenue Regulation Framework*

In May 2010 the CER published a decision paper amending the regulation of ESB PES domestic tariffs, introducing a Maximum Allowed Revenue which will be defined for a period of 12 months from 1st October 2010. This approach reduces the impact of K-Factors and brings about a regulatory framework more appropriate to an increasingly competitive market. The CER will conduct an ex-post revenue review.

#### *Retail Market Harmonisation*

Since the introduction of the SEM, the Regulatory Authorities have implemented a number of measures to promote competition with the retail markets across the island as described above to further the common objectives of encouraging competition in supply markets and improving quality of service to all customers. In this context, in 2009 the Regulatory Authorities undertook the first stage of a project on the harmonisation of operational procedures within the electricity retail markets. Ultimately the project will deliver harmonised market messages and associated supplier facing processes to enable greater efficiencies and benefit all customers across the island.

#### *Demand Side Management*

In 2009 the Regulatory Authorities initiated a programme of work to develop a Strategic Demand Response Programme for the island of Ireland. The CER and the UR published a joint consultation paper on the Single Electricity Market Demand Side Vision for 2020, in August 2010.

#### *Energy Customers Team*

The CER launched its Energy Customers Team in October 2008. The Energy Customers Team provides a complaint resolution service for customers who are in dispute with their supplier. All suppliers are required to put in place a code of practice on complaint resolution. Where a resolution cannot be reached having followed these procedures, the CER will investigate and issue a decision. The CER has legislative powers to direct suppliers to compensate customers, if they believe it is required.

The Energy Customers Team dealt with 467 standard and 262 complex complaints, covering gas and electricity, in 2009. The single biggest area of complaint related to the matter of costs in some respect, in particular billing / estimated reading complaints and supplier deposits.

### 3.4 Gas Retail Market Developments

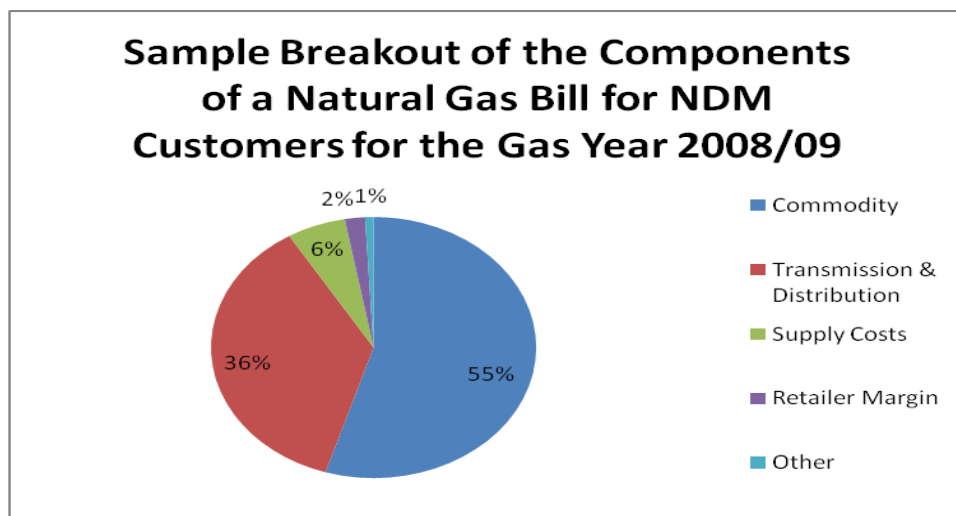
The CER is responsible for the regulation of BGE's gas tariffs, promoting the development of competition in the gas market and overseeing the development of consumer policy to ensure consumers have adequate levels of service and protection provided to them by their suppliers.

Competition in the gas market for industrial and commercial customers has been in place since 2004. The CER has been working with industry participants to develop market processes to support full market opening and the development of competition for the benefit of all customers. Full market opening in the Irish natural gas market took place on 1st July 2007 and there are now two suppliers operating in the domestic segment; however BGE still holds 98% of the domestic market.

#### 3.4.1 Gas Tariffs

As illustrated below, the cost of purchasing natural gas makes up more than half the price of natural gas in a customer's bill. This gas is mostly purchased on international markets and so is therefore largely outside of Ireland's control. Network (transmission and distribution) costs, to transport the gas to our homes and businesses, make up about 1/3 of total gas bills, with supplier and other costs making up the balance.

Figure 8 – Breakdown of Gas Bill for Non Daily Metered (NDM) Customers 2008/'09



#### Revenue Control Formula

The CER carried out three reviews of the Revenue Control Formula during 2009. The first review was carried out in early 2009. The review was carried out on the premise of bringing forward anticipated tariff reductions due in part falling commodity prices and taking into account

the exceptional economic difficulties at that time. Following consultation and a report to the Minister, the CER concluded that a 12% decrease in BGE tariffs from 1<sup>st</sup> May 2009 was appropriate and best served the interest of customers. In September 2009 the CER, as part of its normal annual review, also approved an average 9.8% decrease in BGE Daily Metered (NDM) tariffs from October 2009. The CER also committed to carry out a midyear (interim) review of the BGE NDM tariffs in December each year to keep tariffs cost reflective. This review was carried out in late December 2009 and proposed an average 8% reduction in NDM tariffs - this was subsequently approved on 6<sup>th</sup> Jan 2010. This reduction applied from February 2010.

### *Fuel Variation Tariff*

In July 2007 the CER published a decision with respect to the implementation of a price regulation regime - a Fuel Variation Tariff (FVT) for NDM gas consumers of BG Energy with a Supply Point Capacity above 3,750 kWh and consumption level greater than 73,000kWh of gas annually. The resulting regime came into effect on the 1st October 2007. The aim of the FVT regime is to provide a transparent tariff which reflects the underlying cost of procurement and delivery of Gas to BG Energy's larger NDM customers. It was also hoped to provide the opportunity for customers to choose a tariff that is suited to their individual preference and that the regime would be conducive to the development of competition in the retail gas market.

During 2009 the CER carried out a full structural review of the Fuel Variation Tariff. Following this structural review the CER decided to retain the FVT regulated pricing mechanism in its current form with change only to the booking window. The CER decided to approve this change to the booking window on the FVT contract offered by BGE to enhance the flexibility offered to customers. The CER also decided that the BGE FVT tariff fixed charge will be subject to review twice yearly in order to reflect the volatility in wholesale gas prices and currency exchange rates seen since mid 2008.

### *Regulated Tariff Formula*

The Regulated Tariff Formula (RTF) took effect in April 2003 and covers customers consuming from 188,000 to 9 million therms (circa 5.5-264 GWh) per annum. In brief, the RTF is a regulated pricing mechanism applied to BG Energy gas customers in the large industrial and commercial sector. The RTF regime introduced a price regulation formula reflective of monthly wholesale prices and the cost of delivering gas to the customer's premises. The regime was designed at the time to serve two stated purposes:

- To provide a transparent market reflective pricing mechanism for the pricing of customers, thereby creating a clear target for competing suppliers.
- To allow BGEs to operate in an eligible market sector where sustainable competition has yet to develop.

In setting up the RTF regime the CER set about creating a competitive environment suitable to encourage new entrants enter the gas supply market. The intention of the RTF regime was to provide a clear target for new market entrant suppliers to match/benchmark against in providing supplies to customers. The regime was proposed to give confidence to market participants that price structures had been established in a transparent manner and would be regulated until a competitive market developed. As with any regulated regime the end goal was to create a sustainable competitive environment, at which time regulation could be removed without having an effect on the competitive environment. Since its inception, the CER has regarded the RTF as

a stepping stone to building effective competition in the wider industrial and commercial supply segment. It is with this intention that a consultation was proposed. Near the end of 2009 the CER accordingly published a consultation on the future of the RTF, which stated that the CER was minded to remove regulation in the RTF sector from October 2010. The CER also wrote to all RTF customers seeking their views on whether the RTF should be retained, amended or abolished. The consultation examined the merits of the RTF and the current state of play in the sector under certain criteria. The CER decided in June 2010 that BGE will no longer be obliged to offer this tariff from 1<sup>st</sup> October 2010; this sector is now open to full competition.

### *Energy Customers*

The Energy Customers Team dealt with 467 standard and 262 complex complaints (gas and electricity related) in 2009. Similar to electricity, the most common area of complaints in 2009 was related to cost.

## **3.5 Electricity Network Tariffs**

The CER undertakes periodic reviews of the revenue requirements of the electricity network monopoly businesses, both in transmission and distribution, which in turn sets the transmission and distribution tariffs that feed through to the end-price of electricity. The current revenue period for transmission and distribution, known as Price Review 2 (PR2), runs until the end of 2010. In 2009 the CER commenced its review of the allowed revenue for transmission and distribution for Price Review 3 (PR3) which will apply from 2011 to 2015.

These reviews focus on value for money for customers, efficiency gains and investment plans required to support economic growth and Ireland's renewable targets.

### **3.5.1 Five-Year Reviews**

The CER commenced the process of reviewing its five-year revenue control for the electricity networks in 2009. These separate reviews, which will be completed in 2010, will set out the allowed revenues for the companies involved for the period 2011 to 2015. The CER published proposals in August 2010 with a decision to be issued in September.

Regulation of the monopoly network owners and operators is a fundamental role for the CER. The importance of making the correct decisions in relation to the development of the networks is also critical. They are vital pieces of national infrastructure and their stability, security and reliability in recent years has been a key contributory factor in developing business and attracting overseas investment to Ireland. The bodies involved - ESB Networks Ltd. as Distribution System Operator (DSO), ESB as Transmission Asset Owner (TAO) and Distribution Asset Owner (DAO) and EirGrid as Transmission System Operator (TSO) – are required to submit their proposals for required revenues, including capital expenditure over the next five-year period. The CER analyses and reviews their proposals, with the aim of achieving operational efficiencies while ensuring the correct level and type of investment in the electricity networks. The companies are benchmarked against similar organisations internationally and areas of their business where improvements need to be made are targeted.

Ongoing investment in the electricity systems is important to ensure that the system is in a position to cope with increasing demand for electricity over the coming years, aligned with the expected economic recovery. In addition to this, the transmission and distribution systems need to adapt to the significant additional wind capacity which will come on to the system between now and 2020 as a result of the CER's decision on Gate 3 in late 2009. The CER will ensure that its review will take into account the Gate 3 decision and will carry out a full consultation on the transmission and distribution reviews, prior to making its decision in Q3 2010.

### *Achievements in 2009*

The transmission and distribution networks review commenced in early 2009 and will last through to Q3 2010. It is intended to publish final decision papers in Q3 2010 for the new transmission and distribution revenue control period to commence in 2011 and for revised tariffs to apply from 1<sup>st</sup> October 2010. The following key tasks were carried out during 2009:

- In April 2009 the CER published an information paper, which asked interested parties to comment on the scope of CER's focus for the electricity networks five-year review. This paper stated that on the basis of regulatory certainty and maintaining regulatory precedent, there were certain methodologies used in previous revenue periods which the CER does not consider appropriate to review again for PR3 - for example, the use of the Capital Asset Pricing Model to aid in the determination of the Weighted Average Cost of Capital for the network utilities.
- In Q2 2009 the CER developed review questionnaires focusing on costs, revenues and efficiencies, both historical and forecast, which were submitted to the network utilities for their response. The network utilities submitted historic cost elements of the questionnaires in Q3 2009 and forecast cost elements in Q4 2009.
- The historic and forecast submissions made by the network utilities are being reviewed in the first half of 2010 by the CER and its PR3 consultants. Again, the focus of this review will be on whether the historic costs incurred by the utilities and their projected forecast costs have been made, and will be made, efficiently.

The CER will consult and decide on the allowed revenues for the network utilities from 2011 to 2015. Value for money for customers is a key element in deciding on the allowed revenue for these businesses. This timetable will allow the implementation of distribution and transmission tariffs on 1<sup>st</sup> October 2010 in line with the revenues decided upon through PR3.

## **3.6 Infrastructure Developments**

### **3.6.1 East-West Interconnector**

The CER is actively involved in promoting the development of the East West Interconnector (EWIC) between Ireland and Great Britain. EWIC is a 500 MW HVDC Interconnector which will have both importing and exporting capacity and be able to transmit Direct Current between the two converter stations, proposed for 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 will 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.

**Table 2 - East-West Interconnector Features**

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

The advancement of this project continues to remain a key priority for the CER, with significant progress being made to date. The CER and EirGrid, the Transmission System Operator, are working closely together to ensure the completion of this project on schedule. The main items of work in 2009/10 are summarised below:

- Preparatory planning work has been carried out to secure the over-land section of the interconnector route. Planning permission for the UK converter station was granted in early September and for the Irish section on 15 September 2009.
- All pre-construction planning requirements have been satisfied and EirGrid's contract has started to construct the interconnector.

The advancement of this project remains a key priority for the CER in 2010. The target for the interconnector to be operational remains the third quarter of 2012.

### **3.6.2 Conventional Generation**

During 2009, the CER continued to monitor the construction of power stations and receive reports on a quarterly basis on progress against completion time lines. The large generation projects closely monitored by the CER during 2009 included:

- ESB 431 MW CCGT plant at Aghada, Co. Cork;
- Bord Gáis 445 MW CCGT plant at Whitegate, Co. Cork; and,
- Cushaling Power 112MW Distillate Peaker in Co. Offaly.

The ESB Plant at Aghada has been commercially operational since April 2010. The Bord Gáis and Cushaling Power plants are expected to be commercially operational later in 2010.

### **3.6.3 Shannon LNG**

In 2008, Shannon Liquefied Natural Gas (LNG) applied to the CER for an LNG licence and a full capacity exemption from regulated Third Party Access (rTPA) pursuant to Article 22 of Directive 2003/55/EC for the LNG terminal in Tarbert, Co. Kerry.

Shannon LNG proposes to construct a regasification terminal on a 104 hectare (257 acre) site located on the Shannon Estuary between Tarbert and Ballylongford in Co. Kerry. The site, which is zoned industrial by Kerry County Council, is owned by Shannon Development and Shannon LNG has an option to purchase the site subject to obtaining planning approval. Shannon Development has reserved the site as a national strategic location for large-scale maritime related industry, such as an LNG re-gasification terminal, primarily because of its access to relatively sheltered deep water in the Shannon Estuary. The terminal is expected to be operational in 2015/16 at the earliest.

### **3.6.4 Connection Offers to Renewable & Non-Renewable Generators**

The Irish Government target for renewable energy of October 2008 requires that 40% of electricity consumed by the year 2020 should be generated from renewable sources.

Following extensive public consultation, in December 2008 the CER set out a connection policy direction for renewable generators seeking to connect to the network in Ireland known as “Gate 3”, followed by a related direction in December 2009 on the treatment of non-renewable - known as “conventional” - generator and interconnector connection applications. Both of these CER policy decisions are designed to ensure that a high capacity of renewable and conventional projects can connect to the Irish network over the next decade in a way that is efficient, maintains Ireland’s security of supply, promotes competition and achieves the 40% renewables target by 2020.

#### *Progress to Date - “Wind Power Expansion”*

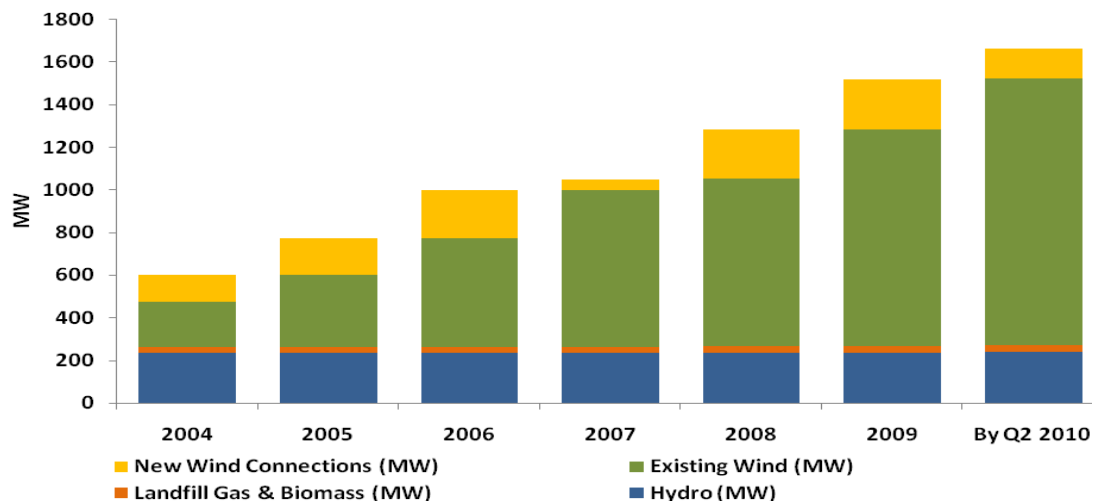
There is a large volume of proposed new generation projects, especially wind farms, seeking to connect to the electricity network, which has limited capacity. Against this background, in 2005 the CER approved a new connection policy known as the Group Processing Approach (GPA) for the connection of generator applicants to the network by EirGrid as Transmission System Operator and ESB Networks Ltd. as Distribution System Operator. The GPA allows for generator applicants to be processed for connection (by EirGrid and ESB Networks Ltd.) together, with lines designed to connect a geographic group of wind farms instead of the one-by-one connection process used previously for renewable generators. This results in fewer lines being built than would otherwise be the case and means that the network is developed more efficiently, to the benefit of generators, consumers and environment.

To date the CER has developed policy for three batches - what we call “Gates” - of generator connection applications to be processed for connection through the GPA. These Gates involve a certain number of generator applicants being offered to connect to the network by EirGrid and ESB Networks Ltd., under criteria determined by the CER.

The first Gate was launched by the CER at the end of 2004 and provided for network connection offers issuing to over 30 wind farms, with a combined capacity of 365 MW. Gate 2,

launched by the CER in 2006, involved connection offers issuing to about 120 renewable generation projects across the country, equivalent to 1,300 MW in capacity. Almost all of these renewable generators were wind farms. Most of the Gate 1 and 2 wind farm projects have either already connected to the network or are in the process of being connected as the connection wires are being built. As a result of Gates 1 and 2, Ireland has already recently seen a dramatic rise in the amount of renewable generation connected to the network, rising from circa 600 MW at the end of 2004 to over 1,500 in 2009. This has increased further to about 1,700 MW by mid 2010. This increase is shown below.

**Figure 9 - Renewable Generation in Ireland**



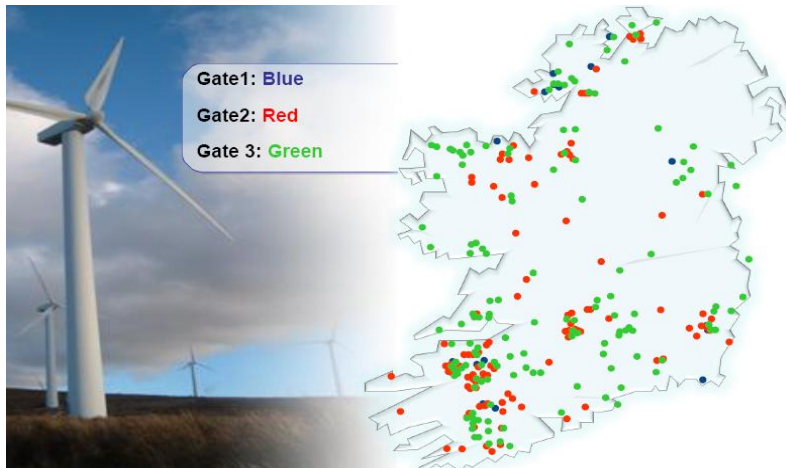
Following this increased connection of wind farms, 14% of the island’s (Republic of Ireland and Northern Ireland) electricity came from renewable sources in 2009, most of it in the form of wind power. This is anticipated to increase to over 15% in 2010, which is ahead of EU targets for Ireland. It means that, for a small network, Ireland is now becoming a world leader in wind power. With more Gate 2 wind farms continuing to connect, we expect the amount of renewable generation in Ireland to continue to increase significantly over the next couple of years, to about 2,900 MW. This increase is before any consideration is given to the CER’s Gate 3 decisions, which will drive big industry changes as discussed below.

*Gate 3 Policy*

In the Gate 3 policy decision of December 2008, the CER directed the System Operators – EirGrid as TSO and ESB Networks Ltd. as DSO – to issue circa 3,900 MW of renewable generator connection offers in accordance with a detailed rule-set. This was with a view to achieving the Government’s 40% renewable target for 2020.

Under a complex system decided on by the CER, Gate 3 wind farms will be granted full scheduled firm access to the transmission system for their output over the coming years in line with the available capacity already on the grid and the grid upgrades planned for the areas in which they are connecting. These Gate 3 renewable generator connection offers are being issued from EirGrid and ESB Networks to over 150 wind farm projects around the country over an 18 month period, from December 2009 through to mid 2011. The following map shows the location of Gate 1, Gate 2 and the proposed Gate 3 renewable generators around Ireland.

Figure 10 – Location of “Gate” Renewable Generators in Ireland



Source: ESB Networks

If all of these Gate 3 wind farms are built, Ireland will have more than 6,000 MW of wind farms connected over the next decade or so. Gate 3 will therefore reduce Ireland’s reliance on fossil fuels, provide for the achievement of the 2020 40% renewables target and drive a dramatic “greening” of Ireland’s electricity industry.

To help complement this very large rise in wind farms, in December 2009 the CER published a related direction which decided on the criteria for which conventional (non-renewable) generator and interconnector applicants will receive a connection offer in tandem with the Gate 3 wind farms. This CER direction followed extensive public consultation throughout 2009. It allows for connection offers to be issued to about 1,350 MW of conventional generation projects across the country. These projects will be offered scheduled firm access to the transmission system using a similar system to that of the Gate 3 wind farms. They include flexible gas-fired power stations and pumped storage hydro plant, in addition to the 500 MW EirGrid interconnector already under construction to the UK. These new projects, if constructed, will help modernise Ireland’s electricity generation fleet, enhance its security of supply, facilitate the increased connection of wind power and provide for more competition in the supply of electricity, to the benefit of the Irish electricity customer.

In January 2010 the CER published the transmission scheduled firm access connection dates for the Gate 3 renewable and conventional applicants eligible for a connection offer, covering the years 2010 to 2023. These dates were derived by EirGrid in line with rule-set decided on by the CER in the two Gate 3-related directions.

### *Gate 3 Liaison Group*

To help keep the Gate 3 renewable and conventional offer programme on track, the CER set up a Gate 3 Liaison Group with industry in early 2009. The Group meetings, which are held monthly, are organised and chaired by the CER, and include representatives from the system operators and from the renewable and non-renewable generation sectors - minutes from meetings are available at [www.cer.ie](http://www.cer.ie). So far, the Gate 3 project for the issuance of offers is

running according to schedule and the Gate 3 project is on track to provide for meeting the target of 40% electricity consumption from renewable sources by 2020.

### *Renewable Connection Contracts*

Related to Gate 3 policy, during 2009 the CER also reviewed the details of renewable generator connection policy and contracts issued by EirGrid and ESB Networks Ltd. A number of issues were addressed in this review, such as the connection process, transparency and information sharing, bonding arrangements, contractual arrangements and provision for a fixed-time connection contract. The goal of the review was to ensure that connection policy facilitated the significant increase in renewable connections.

The work began in July 2008 leading to proposed decision paper in April 2009 and a decision paper on the connection policy in August 2009. These were followed by a consultation on connection contract in August 2009 and a decision paper in December 2009. Since then, a further consultation on the payment amount for late shallow connections and connection charter was issued in March 2010 with a final decision paper expected for Q3 2010.

### **3.6.5 Smart Metering**

The CER established the Smart Metering Project Phase 1 in late 2007 with the objective of setting up and running smart metering behavioural & technology trials and undertaking a cost benefit analysis (CBA) of smart metering. The findings from these trials & the CBA will inform decisions relating to the full rollout of an optimally designed universal National Smart Metering Plan in Ireland. The project is managed by CER, with the support of the Department of Communications, Energy and Natural Resources, Sustainable Energy Authority of Ireland, ESB Networks, Bord Gáis Networks and the electricity and gas industry in Ireland.

Overall, progress has been very positive with all key milestones having been achieved. The main highlights to date have been the:

- Initiation of the electricity customer behaviour trials (CBT) for residential and SME customers – due to complete end-2010. This encompassed a roll out of c.6,500 smart meters to trial participants testing a range of smart metering enabled stimuli, including time of use tariffs, detailed & more frequent billing, in-home displays (IHDs).
- Initiation of the technology trials – due to complete Q3 2010. This includes testing of the smart metering functionality on different communications layer networks such as power line carrier, wireless mesh (RF 2.4GHz) & GPRS.
- Initiation of the gas CBT for residential customers – due to complete mid-2011. This encompassed a roll out of circa 2,000 smart meters to trial participants testing a range of smart metering enabled stimuli, including detailed & more frequent billing, IHDs & a variable tariff.

The Economic & Social Research Institute (ESRI) is working with the CER to develop a Smart Metering CBA, which will be completed in March 2011. The CER is consulting during 2010 on likely national smart metering roll out scenarios that should be used for the CBA.

### **3.6.6 Corrib**

The Corrib Gas field is currently under consideration off the west coast of Ireland. If the field becomes operational, it is expected that the first gas will be delivered from the field in 2013. In 2009 the CER were working to develop the arrangements (including modifications to the code of Operations) for delivering the gas to the main transportation system. A network tariff (Bellanaboy Entry Tariff) will have to be developed for this new entry point and it is expected that this will be consulted on in 2011.

## **3.7 Unbundling Developments**

### **3.7.1 Electricity**

EU Directive 2003/54/EC unbundling requirements have been transposed into Irish law through European Communities (Internal Market in Electricity) (Electricity Supply Board) Regulations 2008 (SI 280 of 2008).

In line with the model for distribution unbundling adopted in SI 280, ESB will remain the owner of the distribution system and a wholly owned subsidiary of ESB is required to undertake the functions of the operator. To progress the separation of the businesses, the CER consulted on the necessary modifications to the Distribution System Operator (DSO) licence to take account of this new situation. Given the timeframe for the legal unbundling process offered the CER felt it appropriate to carry out a full review of the DSO and Distribution System Owner (DAO) licences in light of the developments in the electricity market.

The unbundled regime came into operation in January 2009. The DSO has put in place a compliance programme which was reviewed and approved by the CER. The CER has reviewed and published a compliance report. This report details the actions taken by the DSO during 2009 to ensure it follows its compliance programme. No significant non-compliances were reported.

### **3.7.2 Gas**

Following public consultation the CER published the Operating Agreement between Gaslink and BGE in July 2008. Gaslink is the recently established Independent System Operator of the BGE Transportation System.

The establishment of Gaslink as an Independent System Operator for the BGE Transportation System to facilitate competition in supply activities is required under European Communities (Internal Market in Natural Gas) (BGE) Regulations, SI NO 760 of 2005.

The Operating Agreement is designed to enable Gaslink discharge the functions of independent transmission and distribution system operators as provided for in Directive 2003/55/EC.

In addition the CER consulted on the licences awarded to Gaslink as the System Operator and to BGE as asset owner of the distribution and transmission systems in accordance with the European Communities (Internal Market in Natural Gas) (BGÉ) Regulations 2005 (SI No. 760 of 2005), which gives effect to EU Directive 2003/55/EC.

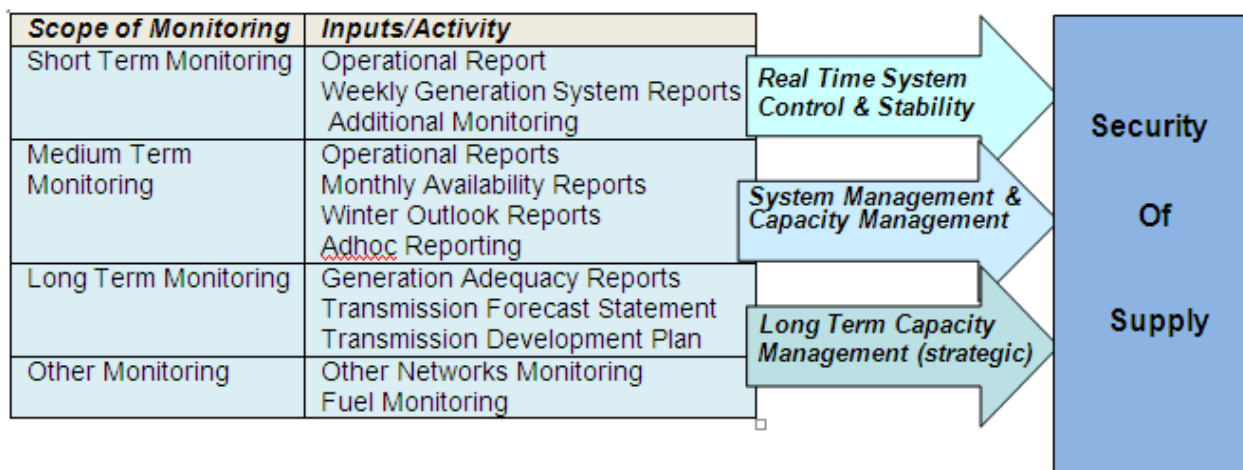
## 3.8 Security of Supply Developments

### 3.8.1 Electricity

The CER's legal functions and duties in relation to security of supply are contained primarily in Directive 2003/54/EC and Directive 2005/89/EC. The directives have been transposed into Irish law in SI 60 of 2005. The continued monitoring of security of supply remains a key priority for the CER.

The CER has established formal monitoring and reporting arrangements with EirGrid that are categorised in terms of short term, medium term, long term and other reporting activities. Figure 11 below sets out the CERs monitoring activities at a high level.

**Figure 11 - Monitoring and Reporting Arrangements**



In 2009 the key work streams centred on the activities of:

- Monitoring Generation Adequacy;
- The finalisation of a decision on Secondary Fuel Obligations on generators;
- The completion of ongoing activities with the Task Force for Emergency Procedures, and;
- Continued monitoring of progress on the construction of generation stations that have received approval or authorisations to construct.

The CER is also required by legislation to produce a bi-annual report on security of electricity supply and submit it to the European Commission. The third such report was produced by the CER in 2010 and was published in July 2010. Some of the key points from that report are summarised below:

- In 2008, on an all-island basis (Ireland and Northern Ireland), 82% of electricity generation came from imported fuels of which 61% was natural gas, 17% was coal and 4% was oil;
- Ireland imports more than 90% of gas requirements and 100% of oil and coal requirements;

- The TSO demand analysis, carried out in late 2009 suggests that while 2008 and 2009 have seen a decrease in electricity demand, all three scenarios studied suggest a return to growth in mid 2010;
- The most recent group connection application processing decisions set out the framework for the connection of circa 3,900 MW of renewables in addition to more than 1,300 MW of conventional plant over and above what's already catered for; and,
- Based on the TSO's assessment of supply and demand of electricity there is expected to be an increase in surplus capacity in the coming years, peaking in 2015.

The 2010 Security of Supply Report is available on the CER website.

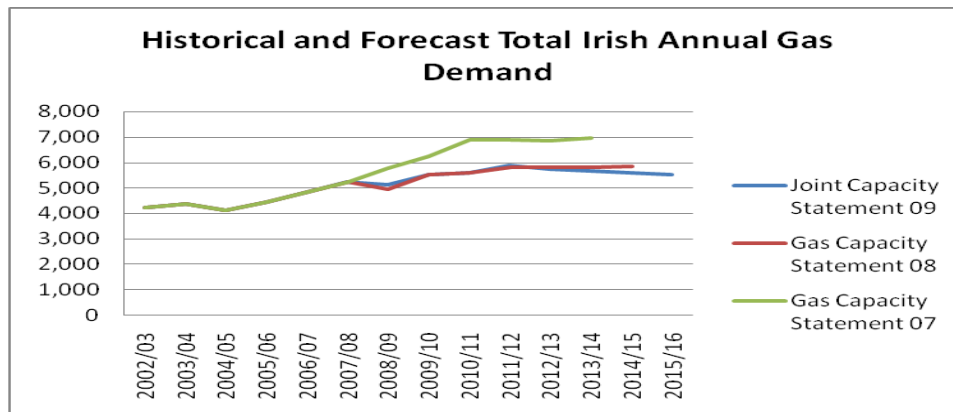
In addition the East/West Interconnector project progressed well during 2009 (as referred to in section 3.6.1). Increasing interconnection for Ireland will contribute to an improved security of supply outlook for the future.

The Generation Adequacy Report for the period 2010-2016 was published by EirGrid (TSO) in December 2009 and reflects a forecast estimate of the electricity system demand and generation capacity over the next seven years. The report presents a positive security of supply position for the coming years. The recent change in economic circumstances in Ireland has resulted in lower demand. In addition there has been connection of new generation (mainly wind) and an improvement in plant set availability.

### 3.8.2 Gas

In 2009 the CER and UR co-operated in the production of a Joint Capacity Statement for Ireland and Northern Ireland. The results of the analysis are largely positive in relation to security of supply on the island. The report shows that the transmission system has sufficient capacity for supplies to meet the reasonable medium-term demand growth with no significant requirement to reinforce the transmission system in either jurisdiction at the present time. It is noted that demand forecasts in this Statement are lower than in previous years, primarily reflecting the economic downturn, and lower forecasts of economic growth, together with improved energy efficiency. The historical and forecast total Irish Annual Gas demand for the period is shown below.

Figure 12 - Historic and Forecast Gas Demand from Gas Capacity Statement





Overall, the Regulatory Authorities consider that the longer term prospects for security of gas supply remain positive due to the potential operation of the transmission system on an all-island basis, the progression of the CAG project, and the proposed introduction of new sources of supply.

### **3.9 Safety Developments**

The Safety Division of the CER is responsible for discharging the CER's statutory functions with respect to public safety involving the regulation of transmission, distribution, storage, supply and shipping of natural gas. The team also has responsibility for the supervision of Registered Electrical Contractors and Registered Gas Installers. The importance of the CER's role in this area is reflected in the large volume of work carried out in 2009.

Following the establishment of the gas and electrical safety regulatory frameworks, the CER's primary focus for 2009 included:

1. Operating the safety case regime envisaged under the Natural Gas Safety Regulatory Framework;
2. Developing a safety performance and compliance monitoring framework for natural gas undertakings under the Natural Gas Safety Regulatory Framework;
3. Appointment of the Safety Supervisory Bodies (SSBs) who will, on behalf of the CER, have the responsibility for the registration and monitoring of gas and electrical contractors operating under the safety scheme;
4. Developing a Performance Management Framework for the ongoing monitoring of the gas and electrical SSBs to ensure compliance with the Criteria Document and the Terms & Conditions of Appointment;
5. Defining the scope of electrical works (i.e. Controlled Works) and Gas Works;
6. Publishing Common Procedures regarding the operation of the Criteria Document for electrical safety;
7. Developing and rollout of a promotion and public awareness campaign for gas and electrical safety;
8. Facilitating the establishment and operation of enforcement procedures through the appointment of Disciplinary Committees for both gas and electrical SSBs; and,
9. Ensuring that relevant processes and procedures are in place to enable the CER to prosecute non-registered gas installers where breaches have occurred.

Looking forward, in 2009 the CER started preparing for its new role in regulating petroleum exploration and extraction safety off-shore petroleum safety, which commences from mid 2010 and will be a key priority in the coming years. In addition, the CER undertook significant preparatory work to facilitate the safety regulation of Liquefied Petroleum Gas (LPG) within the overall gas safety framework; including the safety regulation of LPG installers and LPG distribution systems and the oversight of LPG safety incidents.

## **4. Regulation and Performance of the Electricity Market**

The CER regulates the vertically-integrated incumbent Electricity Supply Board (ESB) in the electricity market. The CER regulates the charges, tariffs and access conditions imposed by ESB and conducts five-year reviews of revenue earned by the electricity network operators. There are also price controls in place for the regulated generation and supply business units of the ESB. Please note that the CER has commenced a process of de-regulating ESB Customer Supply's end electricity prices as discussed in section 3.3.1.

Access conditions, connection charges and use of system tariffs imposed by the transmission and distribution operators are also regulated. For electricity, this concerns EirGrid as TSO and ESB Networks as the DSO and TAO. 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 operators from its generation and supply businesses was completed in late 2005, with subsequent legal unbundling carried out in 2008.

### **4.1 Electricity Network Operators**

There is one TSO, EirGrid, and one DSO, ESB Networks Ltd. ESB Networks is the TAO.

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.

This process commences with the system operators submitting their proposed revenue requirements to the CER. The CER then reviews the information provided and decides on the allowed revenues for the operators based on a number of criteria, based on an ex-post review process, benchmarking data and performance against previously agreed targets and revenue amounts.

CPI-X (incentive based form of regulation) was used as the basis for the price control for the TAO, TSO and DSO in the current electricity Price Control (PR2), 2006-2010 and the CER intends to continue using it for PR3 (2011 – 2015) to provide strong incentives for efficiency and an assurance to the final customer that the benefits of those efficiency gains will be shared with them.

The benchmark data used consists of the following:

- OPEX: operational costs including payroll;
- CAPEX: network capital expenditure, load (growth) related and non-load (reinforcement) related.

The CER also reviews historical data to evaluate the operators' performance over the previous control periods, and reviews the submissions for expenditure in the coming control period including operational efficiencies, the delivery and requirements for capital investment, and improvements in the network. This review, technical, economic and financial in nature, may include top-down and bottom-up analyses. Top-down analysis of the businesses during PR2 was based on benchmark data where possible and encompassed the following; comparison of forecast and historic costs with those of comparable businesses where relevant and available, identifying controllable and non-controllable Opex categories and establishing the degree of consistency in approach between the businesses and appropriate comparators and benchmarking corporate centre costs against peer organisations. Based on the output of this analysis, the regulatory revenue for the base year and subsequent years is determined. Price controls are set for a duration of five years. The Department of Communications, Energy and Natural Resources is informed of the outcomes of these revenue reviews.

The CER carried out a review of the network operators' revenue during 2009 and 2010 for the period 2011 to 2015 and is expected to complete the review in 2010. Further details are available in section 3.5.

## 4.2 Electricity Network Tariff Structure

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.

During 2008 the CER reviewed and approved the total allowed transmission revenue for 2009 (€259 million) and the respective tariffs for the transmission year 1<sup>st</sup> January 2009 to 30<sup>th</sup> September 2009. Furthermore, the CER has reviewed and approved the total allowed transmission revenue for 2010 (€237 million) and the respective tariffs for the transmission year 1<sup>st</sup> October 2009 to 30<sup>th</sup> September 2010. Transmission tariffs are designed to fully recover the TUoS revenue requirement from transmission "users" including both generators and demand users connected directly to the transmission system or indirectly via the distribution system.

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.

The CER recently conducted its annual review of distribution revenue and tariffs for 2010. The CER has allowed the DSO to collect €679.2 million (2010 prices) for the year 2010 and €675.7 million for 2011 (in 2011 prices). This revenue is collected from demand customers through cost reflected tariffs.

There is a requirement on the 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 – 2009:

**Table 3- Duration of interruption for average customer 2005-2009 (minutes/year)**

	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>
<b>SAIDI (planned interruptions) Min/Yr</b>	375	269	79	61	59.3
<b>SAIDI (unplanned interruptions) Min/Yr</b>	154	124	115	94	81.3
<b>SAIDI (planned and unplanned interruptions) Min/Yr</b>	529	393	194	155	141

### 4.3 Electricity System Information

The Single Electricity Market Operator (SEMO), a contractual joint venture between EirGrid and SONI, publishes a range of wholesale market information pertaining to the SEM concerning generators, SMP and trading and settlement data.

Central to the design of the SEM is the principle of transparency, through the publication of as much market related data as legally permissible. The SEM Trading and Settlement Code, being the rules and procedures governing the trading and settlement of wholesale electricity in Ireland and Northern Ireland, provides for the publication<sup>3</sup> of a comprehensive level of market data. The following are published by SEMO according to timescales set out in the Trading and Settlement Code:

- Annual Capacity Exchange Rate
- Annual Load Forecast
- Annual Capacity Payment Sum
- Market Price Cap
- Market Price Floor
- Value of Lost Load
- Fixed Market Operator Charge (Supplier Unit)
- Fixed Market Operator Charge (Generator Unit)
- Variable Market Operator Price
- Capacity Period Payment Sum
- Fixed Capacity Payment Proportion
- Ex-Post Capacity Payment Proportion
- Engineering Tolerance
- MW Tolerance
- System per Unit Regulation parameter
- Discount for Over Generation
- Premium for Under Generation
- Fixed Capacity Payments Weighting Factor for each Trading Period in the relevant Year
- Terms of Reference for Market Operator Audit
- Audit Report
- Transmission Loss Adjustment Factors
- Imperfections Price
- Imperfections Charge Factor
- Testing Tariff
- Settlement Calendar
- Schedule of Testing Tariffs
- Fixed Credit Requirement
- Historical Assessment Period for the Billing Period
- Historical Assessment Period for the Capacity Period
- Analysis Percentile Parameter
- Credit Cover Adjustment Trigger
- Maximum level of the Warning Limit

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<sup>3</sup> This information is published on the SEMO website – [www.sem-o.com](http://www.sem-o.com)

- Annual Maintenance Schedule - Transmission Line Outages (Appendix F)
- Annual Maintenance Schedule - Generator Outages Schedule (Appendix F)
- Flattening Power Factor
- Monthly Maintenance Schedule – Generator Unit outages
- Monthly Maintenance Schedule – Transmission System line outages
- Monthly Load Forecast Margin
- Loss of Load Probability for each Trading Period in the relevant Month
- Variable Capacity Payments Weighting Factor for each Trading Period in the relevant Month
- Available Transfer Capacity (interconnector)
- Four Day Load Forecast
- Any important updates to Maintenance Schedule Data Transaction
- Two Day Rolling Wind Power Unit Forecast aggregated by Jurisdiction
- Forecast of Ex-Post Loss of Load Probability for each Trading Period in the forthcoming 31 Trading Days
- Ex-Ante Indicative System Marginal Prices
- Technical Offer Data
- Commercial Offer Data
- Demand Control Data Transaction
- Interconnector Available Transfer Capacities
- Active Interconnector Unit Export Capacity Holding
- Active Interconnector Unit Import Capacity Holding
- Modified Interconnector Unit Nominations
- Ex-Ante Indicative Market Schedule
- Ex-Ante Indicative Operations Schedule
- Generator Unit Technical Characteristics Data Transaction
- Energy Limited Generator Unit Technical Characteristics Data Transaction
- Dispatch Instruction and SO Interconnector Trades Data Transaction
- All Price-affecting Metered Data, excluding Trading Site Supplier Units for Trading Sites with non-firm access for all available Trading Periods
- Net Inter Jurisdictional Import for all available Trading Periods
- Indicative Tolerance for Over Generation
- Indicative Tolerance for Under Generation
- Initial Tolerance for Over Generation
- Initial Tolerance for Under Generation
- Indicative Dispatch Offer Price
- Initial Dispatch Offer Price
- Ex-Post Indicative Market Schedule Quantity
- Ex-Post Initial Market Schedule Quantity
- Ex-Post Indicative SMPs
- Initial SMPs 4
- Nominal System Frequency
- Average System Frequency
- Indicative Energy Payments to Generator Units
- Ex-Post Initial Energy Payments to Generator Units

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<sup>4</sup> This is the price used for settlement in the market

- Credit Assessment Price for the Undefined Exposure Period for Billing Periods
- Estimated Capacity Price for the Undefined Exposure Period for Capacity Periods
- Metered Generation
- Ex-Post Indicative Capacity Payments to each Generator Unit
- Initial Capacity Payments to each Generator Unit
- Indicative Ex-Post Capacity Payments Weighting Factor
- Ex-Post Indicative values of Eligible Availability
- Ex-Post Initial values of Eligible Availability
- Initial Ex-Post Capacity Payments Weighting Factor
- Initial Ex-Post Margin
- Initial Ex-Post Loss of Load Probability.

#### **4.4 Unbundling of Electricity Networks**

ESB currently owns the electricity networks (both transmission and distribution) and also operates the electricity distribution system. In 2001, the CER issued a TAO and a DSO licence to ESB. A TSO licence was issued to EirGrid. An Infrastructure Agreement, detailing the arrangements between TSO and TAO, was formulated in 2001 and was fully implemented in July 2006.

EU Directive 2003/54/EC unbundling requirements have been transposed into Irish law through European Communities (Internal Market in Electricity) (Electricity Supply Board) Regulations 2008 (SI 280 of 2008).

In line with the model for distribution unbundling adopted in SI 280, ESB will remain the owner of the distribution system (DAO) and a wholly owned subsidiary of ESB will be created to undertake the functions of the operator. To progress the separation of the businesses, the CER consulted on the necessary modifications to the Distribution System Operator licence to take account of this new situation. Given the timeframe for the legal unbundling process offered the CER felt it appropriate to carry out a full review of the Distribution System Operator (DSO) and Distribution System Owner (DAO) licences in light of the developments in the electricity market over the last seven years.

The CER also consulted upon the Operating Agreement to be entered into between the DAO and the DSO. The Operating Agreement to be entered into between the DAO (being ESB) and DSO (being ESB Networks Ltd) was published in November 2008. With the modified DSO and DAO licences published in early 2009.

Business separation arrangements exist between the various ESB divisions. In particular ring-fencing arrangements are in place between the networks business of ESB, ESB Networks and the production and supply arms of ESB; ESB Power Generation (ESB PG), ESB Public Electricity Supplier (ESB PES) and ESB Independent Energy (ESBIE).

Details of these networks separation arrangements are presented in the table below and are incorporated in each of the system operator's (or owner's) licence:

**Table 4 - Electricity Unbundling Arrangements**

<b>Electricity Unbundling</b>		
	Transmission	Distribution
	Yes/No	Yes/No
Separate headquarters	Y	Y
Separate corporate presentation	Y	N
Unbundled regulatory accounts with guidelines	Y	Y
Audit of unbundled accounts	Y	Y
Publication of unbundled accounts <sup>5</sup>	Y	Y
Separate board of Directors without Directors from other group companies	Y	N

The relevant unbundling provisions of the TSO, TAO and DSO licences are as follows:

- **Implementation of Legal Unbundling & Network Ownership:** Ownership of the networks is with ESB, an undertaking that is owned by the State (95 percent) and by its own employees (5 percent). Operation of the distribution networks is under taken by ESB Networks Ltd, a wholly owned subsidiary of ESB. EirGrid undertakes operation of the transmission system and the wholesale market. EirGrid was legally separated from ESB in July 2006. The Government outlined, in its White Paper on Energy<sup>6</sup>, its intention to transfer ownership of the transmission network from ESB to EirGrid. This would establish EirGrid as the National Transmission Grid Company.
- **Ringfencing Arrangements:** The TSO, EirGrid, is fully independent of ESB. EirGrid is owned by the state (through the Department of Finance and the Department of Communications, Energy and Natural Resources). ESB Networks is a ringfenced business within ESB. As such, ESB Networks as the TAO is separated from the production and supply arms of ESB, ESB PES and ESB PG. ESB Networks Ltd is a wholly own subsidiary of ESB and undertakes the functions of the DSO.

In terms of location, EirGrid has its own separate offices. ESB Networks premises are also separate from other ESB premises.

- **Incumbent's Corporate Image:** In terms of presentation, EirGrid presents itself as EirGrid and the TSO, emphasising its difference and separation from ESB, with its own logo and its own website at [www.EirGrid.com](http://www.EirGrid.com). ESB Networks presents itself as the DSO and TAO. ESB Networks does not use a separate logo or corporate website.

<sup>5</sup> Unbundled accounts are published in a summarised format.

<sup>6</sup> Delivering a Sustainable Energy Future for Ireland – A Government White Paper: March 2007



- **Publication of TSO/TAO/DSO Accounts:** There is a requirement on parties to submit audited accounts.
- **Regulatory Accounting Guidelines ('RAGs'):** In 2002 the CER issued detailed guidelines in the regulatory guidelines.

The CER regulates accounts submissions under Condition 14 ('Separate Accounts for the Separate Businesses') of ESB Networks' Transmission System Owner Licence, Condition 22 of the EirGrid's Transmission System Operator Licence and Condition 19 of the ESB Networks' Distribution System Operator Licence. These conditions ensure that ESB maintains separate accounting and reporting arrangements, in a form approved by the CER:

- **Audit of 'RAGs':** These regulatory accounts are subject to a separate audit from an audit team of certified accountants separate from the audit team for ESB accounts and for EirGrid.
- **Role of Compliance Officer(s):** The sole role of the compliance officer(s) is to facilitate compliance by the licensee's obligations and duties under the licence and any other legislative obligation or duty notified to the licensee by the CER. In particular, the duties and tasks assigned to the compliance officer(s) include recommending and establishing practices, procedures and systems to ensure the licensee's compliance with the relevant duties and monitoring the effectiveness of the practices, procedures and systems adopted by the licensee to ensure its compliance with the relevant duties.
- **Shared Costs:** Costs of transmission are applied separately and paid for by Use of System charges and other payments from users of the system. Costs of the DSO are shared in some areas and are apportioned by the DSO's regulatory accounts.
- **Other Regulatory Sanctions:** As outlined above the requirement for separate financial accounts in respect of each separate business is included under both the distribution and transmission licences issued to ESB Networks Ltd and EirGrid. Failure to adequately implement the procedures would mean that the licensees would not be in compliance with their licence obligations.

Section 24 of the Electricity Regulation Act, 1999 states that where the CER is of the opinion that the holder of a licence may be contravening or may be likely to contravene a condition or requirement it may issue a notice to the holder of the licence.

Following consideration of any representations or objections in relation to this the CER may make a direction to the holder of the licence to take measures as are necessary to cease the contravention or to prevent a future contravention. Alternatively as outlined under Section 25 where the CER decides not to issue a direction under Section 24 it may make a determination that the holder of the licence has committed a specified breach of a condition or requirement. In order to ensure compliance with a direction given under Section 24 the CER may apply to the Irish High Court for an order requiring the holder of the licence to discontinue or refrain from specified practices (Section 26).

## 4.5 SEM

The SEM consists of a gross pool market into which all electricity generated or imported onto the island of Ireland must be sold, and from which all wholesale electricity for consumption or export from the island of Ireland must be purchased. The SEM combined the two previously separate wholesale markets of the Republic of Ireland and Northern Ireland into one cross-border market and was developed with the goal of creating a single market that benefits all consumers through; greater competition, better investment opportunities, enhanced security of supply, and improved efficiencies.

More details of the SEM, including developments in 2009 are shown in Section 3.1.

### 4.5.1 Regulatory Environment

The **SEM Committee** is the decision-making body which governs the exercise of regulatory functions on SEM matters. Legislation was enacted in both jurisdictions to establish and to give effect to the SEM Committee:

- **Republic of Ireland** – the Electricity Regulation (Amendment) (Single Electricity Market) Act 2007 which amends the Electricity Regulation Act 1999 to provide for the establishment and operation of a single competitive wholesale electricity market on the island of Ireland.
- **Northern Ireland** - the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 provides a legal framework for the establishment and operation of the SEM in NI.

Under law, the primary function of the SEM Committee is the taking of decisions as to the exercise of relevant functions of the CER or the UR in relation to SEM matters on behalf of the Regulatory Authorities. A matter is a SEM Matter if the exercise of certain “relevant functions” by either Regulatory Authority in relation to that matter materially affects, or is likely to materially affect, the SEM.

The objectives and functions of the SEM Committee in carrying out their functions in relation to the SEM are set out in Sections 7 and 9 of the Electricity Regulation (Amendment) (Single Electricity Market) Act 2007. They are mirrored in the Northern Ireland legislation.

The SEM Committee is supported by an **Oversight Committee**, a Secretariat and a number of **Joint Management Units** (JMU) which supervise and co-ordinate key regulatory workstreams. The Oversight Committee is responsible for:

- the management and recommendation of resources across both Regulatory Authorities to ensure both Regulatory Authorities give effect to decisions of the SEM Committee;
- the co-ordination and development of proposals on SEM matters for consideration by the SEM Committee;
- the management of key regulatory functions through JMU, as outlined below; and,
- such other matters as determined by the SEM Committee.

Four key SEM regulatory functions have been identified and a Joint Management Unit (“JMU”), assigned to each:

- Trading and Settlement Code;

- Market Modelling Group;
- Market Monitoring Unit;
- Single Electricity Market Operator Regulation.

Agreed internal joint working principles, called Joint Regulatory Arrangements, have been developed by the Regulatory Authorities for the operation of the oversight arrangements, the exercise of roles in the management of each JMU, and the exercise of any delegated functions from the SEM Committee.

The CER has lead responsibility for two of the JMUs; the Trading & Settlement Code and the Market Modelling Group, and also a shadow role in the other two JMUs; SEMO Regulation and the Market Monitoring Unit, as follows.

#### *Trading & Settlement Code*

The Code is a multilateral contract which sets out the rules and procedures concerning the sale and purchase of wholesale electricity in Ireland and Northern Ireland. The Code was designated by the Regulatory Authorities on 3rd July 2007 and can be modified from time to time thereafter in accordance with procedures set out in the Code. This JMU is based in the CER.

#### *Market Modelling Group*

The Market Modelling Group (MMG), also based in the CER, provides market forecasts of the SEM to the RAs. The majority of the MMG's forecasting is over short term (1 to 2 years), which is used to feed into the work of other JMUs and departments within the RAs. Medium and long-term forecasting is also carried out to support RA policy decisions.

#### *Market Monitoring Unit*

The Market Monitoring Unit (MMU), based in the UR, reviews generator participant behaviour in the market; this includes investigations into the exercise of market power, monitoring the compliance of market participants with the bidding code of practice and other market rules. The MMU is also the point of contact for participants who wish to register complaints of market behaviour.

The MMU also has responsibility for setting the SEM Capacity Payment Mechanism (CPM). The CPM attaches a value to the provision of capacity by generators within the market. The CPM was developed with a view to ensuring the reliability of the system, giving some degree of price and revenue stability and sending efficient signals to the market for long term investment. Taken together, the SEM's SMP and the CPM reward generators for the value of energy and capacity.

This CPM ensures the reliability of the system, giving some degree of price and revenue stability and sending efficient signals to the market for long term investment. Under the Capacity Payments Mechanism, capacity payments are made in respect of generators based on a measure of their availability. These payments depend on a fixed amount of cash – known as the “Annual Pot” - determined by the Regulatory Authorities each year. This is based, in terms of price, upon the fixed costs of a best new entrant peaking plant and, in terms of volume, on the capacity required to meet the (all-island) security standard of the system. Capacity Payments to

generators are funded by Capacity Charges, which are levied on Suppliers based upon their electricity purchases. To date, four full year pots have been approved by the Regulatory Authorities as follows;

- 2008 - €575,221,470
- 2009 - €640,854,720
- 2010 - €551,133,375
- 2011 - €544, 956,545

#### *Single Electricity Market Operator Regulation*

This unit, which is based in the UR, is responsible for approving the SEMO's revenues and tariffs, overseeing licence compliance, and approving projects run by SEMO. The main project during 2008 was the Market System Development Plan (Day 1+), which was delivered on time in January 2009.

### **4.5.2 SEM Market Power Mitigation**

#### ***Market Power Definition***

*The ability of a market participant, acting independently, to raise market prices consistently and profitably above competitive levels for a sustained period of time.*

As part of the development of the SEM the Regulatory Authorities developed a robust market power mitigation strategy to prevent market power being abused or distorting the SEM. The major focus of this strategy comprised the imposition of Directed Contracts on generators with significant market power, the imposition on generators of licence conditions to adhere to a Bidding Code of Practice and the setting up of a bespoke Market Monitoring Unit to monitor participants bidding behaviour.

Directed Contracts form a cornerstone of the market power mitigation strategy in the SEM. These contracts (to be in the form of Contracts for Difference at a regulated price based on the Regulatory Authorities' forecast of spot market prices in a market absent any market power) mitigate market power by reducing the incentives for the market participants to submit bids above competitive levels, or otherwise withhold capacity, in order to influence current spot prices or future contract prices. On an annual basis the Regulatory Authorities direct generators with market power to offer a portion of their output as Directed Contracts to all suppliers eligible to avail of it.

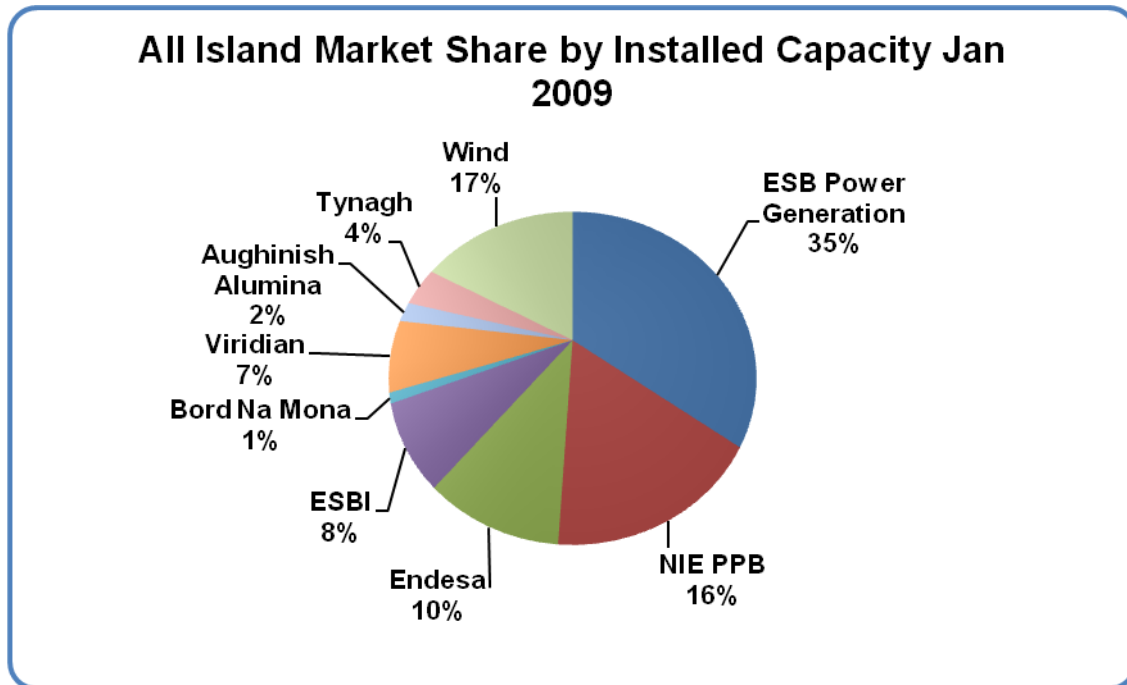
In 2009 only ESB PG were required to offer Directed Contracts – its market share in January 2009 is shown in the pie chart below. The prices of these contracts are determined largely by forward fuel prices and a pricing formula established by the Regulatory Authorities. Suppliers bid the volume of MWs they require during the directed contracts auctions held. The entire

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<sup>7</sup> Ref: US Department of Justice & Federal Trade Commission, Horizontal Merger Guidelines 1997. See also, definition of dominant position in *United Brands v Commission of the European Communities* Court of Justice of the European Communities, Case 27/76 [1978] ECR 207, judgment of 14 February 1978.

volumes of directed contracts were sold during the auctions and therefore fulfilling this element of the market power mitigation strategy.

Figure 13- All Island Market Share by Installed Capacity Jan 2009



#### 4.5.3 Bidding Principles

As another key element of the market power mitigation strategy, the Regulatory Authorities (during the development of the SEM) drew up and consulted on a set of Bidding Principles and a Bidding Code of Practice for generators bidding into the SEM. As part of this, market participants must adhere to principles that price bids be submitted to the SEMO at Short Run Marginal Cost (SRMC). This requirement to bid SRMC is reflected in a condition in all electricity licences in both Northern Ireland and Ireland.

#### 4.5.4 SEMO Establishment, Revenue and Tariffs

The SEM design also required that a Single Electricity Market Operator (SEMO) be put in place to schedule the market, settle energy payments and administer other market related cash-flows. Accordingly SEMO, a contractual joint venture between the System Operator of Northern Ireland (SONI) and EirGrid, was established prior to the commencement of market trials in July 2007 and in advance of SEM "Go-Live" on 1 November 2007.

The establishment of SEMO was carried out under the supervision of the Regulatory Authorities, and an important part of the Regulatory Authorities' role in this regard is the setting of a SEMO revenue control. This allowed the SEMO to recover both its own administrative costs and other market related costs as required under the SEM Trading and Settlement Code. A one-year revenue control was carried out in mid-2009 for the tariff year October 2009 to

September 2010. This one-year control is being followed by a 3-year control to begin from October 2010.

## **4.6 Electricity Retail**

### **4.6.1 Introduction**

Currently the CER has statutory responsibility for approving ESB Customer Supply proposals to change electricity tariff structures and levels as well as regulating annual allowed revenues for ESB Customer Supply. The CER also oversees the development of consumer policy as it applies to electricity customers and ensures that the correct market structures to support competition are in place.

The electricity retail market fully opened to competition in February 2005, meaning all electricity customers are entitled to choose their supplier. When a section of the market becomes competitive, it is removed from price regulation. The Large Energy User section of the market is considered fully competitive and is no longer subject to fixed regulated tariffs since late 2007. Further to the sustained positive changes in the electricity market in 2009, the CER published a decision paper on a Roadmap to Deregulation in April 2010, following consultation in late 2009. In the decision the CER set out the deregulation of the Irish retail electricity market, and an end to the regulation of retail prices for customers in all three business markets: Large Energy Users, Medium and Small Sized Business, from 1<sup>st</sup> October 2010. The paper also set out the CER's decision with regard to the criteria for the deregulation of the domestic market end prices. For further information please see section 3.3.1.

Through the Industry Governance Group forum, the CER in conjunction with industry has contributed to the implementation of agreed market procedures, codes of practice and operational policy that governs the liberalised retail electricity market. In both 2008 and 2009, the CER published an "Electricity Retail Market Information Report" for the previous year, which provided an overview of the retail market and developments within the sector. The reports indicated increased competition in the retail sector, particularly in the Small Medium Enterprise and Large Energy user sections. The CER will continue to publish annual reports annually. Its monitoring suggests that there has been significant competitive activity in the domestic market in 2009.

### **4.6.2 Retail Market Concentration**

There are currently 6 undertakings active in the Irish retail market. Of these, 4 are independent suppliers which are not affiliated in any way with the incumbent, ESB. ESB also has a 'universal service', or default, supplier arm known as ESB PES. Overall there are 6 suppliers (5 where ESB PES and ESBIE are combined) in the largest and medium-sized retail segment, 4 suppliers in the small business sector and 3 in the domestic market.

### **4.6.3 Supplier characteristics**

Nationality: All but one of these firms is based in Ireland. The exception is the supplier Energia, a subsidiary of Viridian (Northern Ireland Electricity).

All of the 4 largest suppliers are vertically integrated with a generation business.

As mentioned above, the incumbent ESB also owns and operates the Irish distribution system, of which there is only one in Ireland. ESB also currently owns the transmission system. However, the operation of the transmission system is undertaken by the independent TSO, EirGrid. The operation and ownership of the networks is separated from the supply businesses via management separation. However, all of these business units share selected common services within ESB's corporate structure.

#### **4.6.4 Regulated Supply Tariffs**

The CER approves the tariffs of the default supplier, ESB PES. From 2002, these tariffs – which typically apply from October to September in each tariff year – have been approved on an annual basis. In certain cases wholesale market conditions have necessitated mid-year tariff reviews.

ESB PES customers are divided into the following categories:

1. Domestic Urban (residential customers served by three-phase low voltage network);
2. Domestic Rural (residential customers served by single-phase low voltage network);
3. Residential Business (connections where a customer is both residential and commercial);
4. Small (a) Commercial & (b) Industrial (General Purpose: customers with a maximum import capacity of less than 50kVA).
5. (a) Commercial & (b) Industrial Low Voltage Max Demand (customers with a maximum import capacity of 50kVA or above).

Tariffs for categories 3, 4 and 5 will no longer be regulated from 1<sup>st</sup> October 2010, as discussed in section 3.3.1.

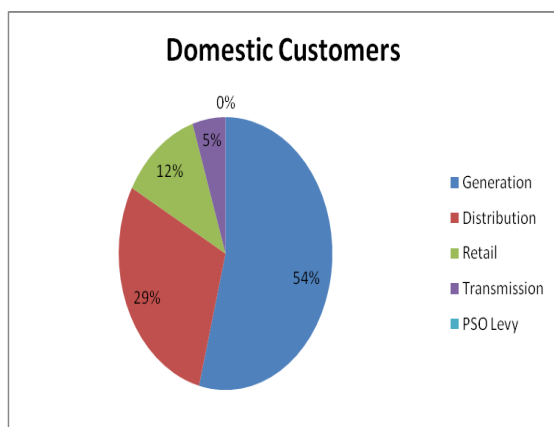
As applied to Eurostat customer categories, tariffs 1-3 charged in Ireland roughly correspond to domestic categories Da to De. Tariff categories 4-5, above, relate to Eurostat Ia to Ii industrial and commercial customer categories. However, the key difference between these two classification systems is that the majority of Irish tariffs are charged to customers based on their network characteristics, while Eurostat categories are based on customer usage. Therefore, in Ireland, the default supplier's average cost of serving customers in any given category may be considerably higher than the costs to an independent supplier of serving customers in the same category.

#### **4.6.5 Retail Revenue and Tariffs**

Following a period of public consultation, in September 2008 the CER published a paper detailing the allowed revenue for ESB CS, as the PES, for the period from 1<sup>st</sup> October 2008 to 30th September 2009. The published document set out the basis and calculation of the allowed cost of €160.78 million and placed it in the context of the five year (2006-2010) control on PES Allowable costs. The time period covered in the current 5 year revenue review will expire at the end of the next tariff period (2009-2010); rather than carrying out another 5 year review of the allowable costs for the next five year period the CER carried out a two year review, due to the impending deregulation of the domestic markets and ESB Customer Supply.

Though the CER is transitioning to deregulation of the retail markets, it currently regulates ESB tariffs for domestic customers and small to medium sized industrial and commercial customers on an annual basis. In light of the dramatic increase in fuel prices over the first half of 2008 the CER approved an application from ESB PES for an interim price increase of an average of 17.5% for households and SME's to apply from the 1st August 2008. The CER conducted a further review of tariffs in November 2008 to set tariffs from 1st January – 30th September 2009. The second half of 2008 was marked by falling fuel prices which, combined with a €15.4m over-recovery by ESB Power generation in 2007, the €300m rebate agreed with ESB and a further €87m PSO related rebate, allowed the CER to approve an average decrease in electricity tariffs of just less than 1% from the 1st of January 2009. Further falls in wholesale fuel prices saw an average of 10% reduction in end user tariffs in May 2009 with further reductions to be implemented from October 2009. The following graph shows the breakdown of ESB domestic costs for the 2009/10 tariff year.

**Figure 14- Domestic Electricity Cost Breakdown**



The CER notes that electricity costs in Ireland can be high relative to some other European countries. This is primarily due to the small size of the Irish market and the heavy reliance on fossil fuels to generate electricity. The figure above shows that for an average domestic customer of ESB Customer Supply over half of their final tariff is made up from generation costs. Unlike many European countries, Ireland does not have access to cheaper generating fuels such as hydro and nuclear. Furthermore, up to €4.3 billion will have been spent upgrading and maintaining the electricity networks between 2001 and 2010 which has pushed up the network costs; this investment has been essential to maintain security of supply and connect new generators and customers (including renewable generators).

#### **4.6.6 Retail Market Customer Switching**

Overall, a considerable proportion of industrial customers have switched supplier since market opening commenced in 2000. A significant number of commercial customers have also changed since this date. The entry of Bord Gáis and Airtricity into the domestic electricity market has resulted in a large increase in domestic switching in 2009 and by the end of Q2 2010, independent suppliers had circa 28% of the total number of domestic customers. Please also see section 3.3.1 for information on this area.



In regard to customer switching processes, there are no charges for changing supplier. The maximum delay for changing supplier is 20 days. Finally, there is no process-restriction on customers in debt from changing supplier.

In September 2006, the CER decided that levels of competition amongst suppliers in the "large energy users" sector of the market had developed to a sufficient level to end tariff regulation in this sector of the market. This effectively prevented ESB PES from competing for customers in this market sector. ESB PES is still active in this sector of the market, supplying customers that could not obtain another supplier. Please see section 3.3.1 for information on the CER's recent price de-regulation "Roadmap".

#### **4.6.7 Retail Tariff Structures**

In 2009, the CER and NIAUR conducted a joint Review of Tariff Structures and also a separate Review of "k-factors" (a term in the price control formula that facilitates adjustment for any under-recovery or over-recovery in any given year to be applied in the following year) and Supply Margins. This was in the context of ongoing joint work on retail market harmonisation. The CER and NIAUR jointly published consultations in July 2009 and issued the final reports in December 2009 with consultants' recommendations.

In its final report Skyplex recommended that each of the regulators should adopt different solutions based on the level of competition that existed in the market, recommending a move to a Maximum Allowed Revenue (MAR) for the Irish market. Given the significant changes in the retail market in Ireland in 2009, the CER followed this work with a further consultation on the implementation of the MAR for regulated tariffs from 1<sup>st</sup> October. Following consultation, the CER published in May 2010 a decision paper amending the regulation of ESB PES domestic tariffs to one based on MAR defined for a period of 12 months from 1st October 2010. This approach reduces the impact of K-Factors and brings about a regulatory framework more appropriate to an increasingly competitive market.

#### **4.6.8 Energy Customers**

The CER's Energy Customers Team was established late in 2006 to provide a complaint resolution and information service directly to small business and domestic customers. When a customer has completed their supplier or network operator's internal complaint process, and is still not satisfied that their complaint has been adequately considered, they can then contact the Energy Customers Team who will investigate the matter on their behalf. Following investigation the CER has the power to direct suppliers and network operators to award compensation or to resolve the complaint in a set fashion if the customer's complaint is upheld. The Energy Customers Team is also the CER's first point of contact for domestic information requests and provides a customer friendly website, *energycustomers.ie*.

In 2007 and 2008 the team concentrated on the implementation of processes to support this role, while 2009 saw them concentrate on a public awareness campaign to ensure customers were aware of this service.

2009 also saw an increase in customer contacts to the Energy Customers Team. There were a total of 1,927 customer contacts; an increase of 55% from when compared to 2008. These were

received over the telephone, by letter and email and also in person. Within this total number, the Team handled 262 complex complaints whereby a formal dispute determination was made following a full investigation of the facts surrounding the complaint. The CER's decisions in these complaints are binding on the supplier or network operator involved.

#### **4.6.9 Information Requests**

Information Requests are defined as general questions and queries from customers referring to natural gas, electricity or the functions of the CER. The type of Information Requests received include general information on disconnection and reconnection fees, list of suppliers, information on how to get connected, and inquiries on what role the CER plays.

#### **4.6.10 Complaints**

**Standard Complaints** are defined as general complaints which do not require the full scale investigation of a supplier's or network operator's behaviour in relation to a specific incident. In general they can be answered at the first point of contact or with limited correspondence. Examples of these would be complaints regarding fixed regulated standing charges, customer's dissatisfaction regarding the introduction of new fees or tariffs or general policy complaints. The Energy Customers Team monitors these complaints to ensure that if a trend is visible in the type of issues being raised by customers that feedback is given to the division within the CER with responsibility for that issue. This ensures that as policies are reviewed customers' views are included for consideration.

A **Complex Complaint** is a complaint between a customer and a supplier or network operator, or both, which requires a full investigation by the CER. A complaint will only be logged as a Complex Complaint if it has completed the supplier or network operator's full complaints handling process and if this has been confirmed by both the customer and the supplier or network operator. The investigation of a Complex Complaint includes liaising with the customer, supplier, and/or network operator whilst determining the full extent of what has occurred in relation to the issue raised by the customer. Once the Energy Customers Team is satisfied that enough information has been provided to issue a determination on the matter a decision is made by the CER. The CER has the power to direct a supplier or network operator to compensate or put in place a solution to the problem, if appropriate. In 2009 the Energy Customers Team dealt with 186 electricity and 76 gas related complex complaints.

#### **4.6.11 Market Power Mitigation**

The CER monitors the conduct and behaviour of ESB suppliers by employing a number of measures. ESB's activities, as the PES, are regulated in the areas of final customer tariffs and supply terms & conditions. Supply terms and conditions include conditions concerning consumer codes of practice, non-discrimination and duty-to-supply clauses, performance reporting, and supplier of last resort obligations.

These PES and PG licences include ring-fencing arrangements which cover the disclosure of information between the two businesses, between the two businesses and the regulated network businesses and between the two businesses and the board of ESB.

ESB's independent supply business, ESB Independent Energy, is licensed as a 'brown' (a renewable and a CHP) independent supplier. As well as being subject to generic licence conditions, ESBIE's licences contain conditions limiting its marketing activities. The present ESBIE licences also contain a market dominance condition. This condition also allows the CER to specify what constitutes the relevant market for the purpose of monitoring market dominance.

1. Tariff Approval & Publication

ESB PES, as the default supplier, must publish its tariffs, as approved by the CER. ESB PES offers these tariffs on the principle of non-discrimination. Changes to approved tariffs may be undertaken on an annual basis. Independent suppliers, on the other hand, are not required to publish their respective tariffs.

2. Supply Obligation

Under regulation 18 of S.I. 60 of 2005, ESB PES has a duty to supply all customers who make reasonable requests for supply. Independent suppliers are not subject to this regulation.

3. Business Separation

ESB PES is functionally separated from ESB Networks as DSO and TAO and from EirGrid as TSO. In 2001, the CER licensed ESB as transmission owner and distribution operator. Under these licences, ESB is required to separate these network businesses from its affiliated supply and generation businesses. This "business separation" process was commenced in late 2001 and will be fully complete by the end of 2005 (the Transmission System Operator, EirGrid, which was established in 2001, was fully separated from ESB in June 2006.)

## **5. Regulation and Performance of the Natural Gas Market**

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.

### **5.1 Regulation of Gas Transmission and Distribution Companies**

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.

#### **5.1.1 Gas Network Tariffs**

BG Networks (BGN) proposes network transmission and distribution tariffs to the CER as part of the annual tariff review exercise. The CER reviews the assumptions underlying these submissions and the impact these will have on system-users. The CER then carries out a public consultation on the proposed tariffs in advance of issuing a determination.

A "revenue review" is undertaken every five years for both transmission and distribution costs, during which the CER makes an in-depth examination of BGN costs, including the benchmarking of costs against the same activities in other countries. BGN's allowed costs are decreased as appropriate to reflect efficiencies that should be achieved. The most recent revenue reviews for transmission and distribution run from 2007/08 to 2011/12.

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; as such continuity of supply is not an issue in this market.

**Table 5 - Natural Gas Network Operators 2009**

Natural Gas Operators 2009		
	Number of regulated companies	Interruptions (minutes lost per customer per year)
Transmission	1	Negligible
Distribution	1	Negligible

### 5.1.2 Gas Balancing

Natural gas market balancing arrangements are included in the Irish gas Code of Operations, as approved by the CER. There is a daily balancing regime which is based on the aggregate portfolio of each individual shipper. Tolerance ranges are based on customer category (i.e. smaller customers have larger tolerances). Market participants can trade out their imbalance ex-post with another shipper (which has an opposing Daily Imbalance Quantity for the same day).

The table below describes the Irish balancing mechanism in greater detail:

**Table 6 - Gas Balancing Mechanism Characteristics**

<b>Gas Balancing Mechanism Characteristics</b>	
Definition of balancing charges	Under the Code of Operations, balancing charges are defined as the Daily Imbalance Charge and the System Imbalance Charge.
Definition of penalties	Penalties are charged on imbalances outside the appropriate tolerance range that are not traded out. The regime is market based as the prices are based on the UK NBP price. First tier imbalances (i.e. within the tolerance range) are cashed out at the NBP price and have no additional penalties. Shippers are penalised if the imbalance is in excess of the tolerance at the Second tier imbalance price by paying a multiple of the market price.
Existence of tolerance levels	Tolerance levels are set on a customer category basis. Gaslink, calculates the Shipper Portfolio Tolerance in respect of each day for each registered Shipper. The calculation methodology for the Shipper Portfolio

	Tolerance is outlined in Part E, Section 1.7 of the Code of Operations.
TSO/DSO energy procurement	Gaslink procures energy through an annual tender for balancing and shrinkage.
System Requirements	Gaslink publishes a report outlining its balancing requirements on an ex-post basis. Estimates are published to shippers and to tendering parties ex ante.
Balancing incentives	System users have an incentive to balance within the set tolerance levels so that they are not faced with the punitive second tier imbalance price.
Balancing interval	Entry/exit balancing is on a daily basis.
Balancing areas	In Ireland, there is a single transmission/ distribution system, which corresponds with the single balancing area.
Interaction between areas	It is anticipated that a single balancing area will be created for the island of Ireland (Republic of Ireland and Northern Ireland) following the full implementation of CAG8
Grouping of Imbalances	The entry-exit balancing regime operates on an aggregate basis across the entire portfolio of the individual shipper. System users can trade out any imbalance on an ex-post basis.
Imbalance Settlement timetable	Shippers are notified of the initial imbalance at 17.00 on the day following the trade. They have from this time to 17.00 seven days after the end of the month to trade out the imbalance with other shippers. Shippers are notified of the final imbalance position at 17.30 seven days after the end of the month.

<sup>8</sup> CER and the Northern Ireland regulator (UR) are undertaking a programme of work designed to integrate the Irish and Northern Irish gas markets under the Common Arrangements for Gas (CAG) project.

### 5.1.3 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.

### 5.1.4 Unbundling of Gas Networks

In 2004, the CER issued transmission, distribution and supply licences to BGE. New legislation, SI 760 of 2005, was introduced in late 2005 which gave further legal effect to Directive 2003/55/EC by providing for the legal unbundling of the transmission and distribution systems operations of BGN. This was effected on 4<sup>th</sup> July 2008 with the establishment of Gaslink as the legally unbundled Independent System Operator. To facilitate the legal unbundling as required by 2003/55/EC the CER granted Transmission and Distribution operator licences to Gaslink and Transmission and Distribution Owner licences to BGE and revoked the original licences.

The business separation arrangements existing between BGE Networks and Bord Gáis Energy are presented in the table below:

**Table 7 - Gas Unbundling Arrangements**

<b>Gas Unbundling (From Bord Gáis Energy)</b>		
	Transmission (Yes/No)	Distribution (Yes/No)
Separate headquarters	Y	Y
Separate corporate presentation	N	N
Unbundled regulatory accounts with guidelines	Y	Y
Audit of unbundled accounts	Y	Y
Publication of unbundled accounts	N	N
Separate board of Directors without Directors from other group companies	N	N

The relevant provisions of these licences are as follows:

- Implementation of Legal Unbundling: The Minister for Communications Marine & Natural Resources signed a statutory instrument in late 2005 (SI 760 of 2005) which provides for the legal unbundling of the distribution and transmission operation activities of the incumbent BGÉ. This was effected on 4<sup>th</sup> July 2008 with the establishment of Gaslink.
- Network Ownership: BGE owns the gas transmission and distribution networks in Ireland and is wholly-owned by the Irish Government. The relationship between BGE as asset owner and Gaslink as system operator is set out in the Operating Agreement approved by the CER.
- Ringfencing Arrangements: There are ringfencing arrangements in place between BGE Networks and BG Energy. However, these businesses are not as yet physically separated. BGE also has one 'shared services' division.
- Incumbent's Corporate Image: The network operator is branded as BGÉ Networks, while the supply arm is presented to customers as Bord Gáis Energy Supply. However, BGE's website and logo are common use. Moreover, BGÉ publishes one annual report for its businesses. The system operator Gaslink, is an independent subsidiary of BGÉ. They do not operate under the parent company umbrella and have their own brand and website.
- Publication of TSO/DSO Accounts: The 2005 BGÉ Financial Accounts include segmental analysis by business segment (i.e. Transmission Operations, Distribution Operations, Energy Supply – Total, Energy Supply External Turnover and Ancillary Businesses). The Natural Gas Transmission and Distribution Licences granted to BGE include detailed requirements in relation to the preparation of separate financial accounts for each separate Business. The requirements in relation to these are outlined further below.
- Regulatory Accounting Guidelines ('RAGs'): The CER regulates BGÉ accounts submissions under condition 26 of the gas transmission Licence and under condition 25 of the gas distribution licence.
- Audit of 'RAGs': Under condition 25 of the distribution licence and condition 26 of the transmission licence, the licensee shall in relation to each separate business procure in respect of the accounting statements prepared in accordance with this condition for the financial year, a report by the auditors addressed to the CER stating whether in their opinion these statements have been properly prepared in accordance with this condition and give a true and fair view of the revenues, costs, assets, liabilities, reserves and provision of, or reasonable attributable to the separate business to which the statements relate.
- Role of Compliance Officer: The sole role of the compliance officer (as outlined under condition 22 of the distribution licence and condition 23 of the transmission licence) is to facilitate compliance with the licensee's obligations and duties under the licence and any other legislative obligation or duty notified to the licensee by the CER. In particular, the duties and tasks assigned to the compliance officer include recommending and establishing practices, procedures and systems to ensure the licensee's compliance with the relevant duties and monitoring the effectiveness of the practices, procedures and systems adopted by the licensee to ensure its compliance with the relevant duties.



- Other Regulatory Sanctions: As outlined above the requirement for separate financial accounts in respect of each Separate Business is included under both the Distribution and Transmission Licences issued to BGE. Failure to adequately implement the procedures would mean that the Licensees would not be in compliance with their licence obligations.

These conditions ensure that BGE maintains separate accounting and reporting arrangements, in a form approved by the CER.

### **5.1.5 Management & Allocation of Interconnection Capacity & Congestion**

As mentioned above, the Transmission and Distribution systems are operated by an Independent System Operator, Gaslink. The Transmission and Distribution assets remain in the ownership of BGE.

Currently 95% of gas is imported through the two interconnectors with the UK (IC1 and IC2). There is ample capacity available through the interconnectors now and for the foreseeable future and therefore there is no congestion. Neither is there any congestion on the on-shore system as the system is centrally planned. Investments are approved by the CER and included in the regulated asset base with revenues recovered through the tariffs.

While there is no congestion in the Irish system in practice, rules have been developed to deal with congestion should the situation arise. These rules for congestion management are in line with Directive 2003/55/EC, and are outlined in the Irish gas Code of Operations.

As there is currently adequate capacity available on the Irish gas transmission system capacity is allocated on a first-come first-served basis. While the CER is keeping these rules under review as the market develops, it is thought that the cost of capacity (and particularly interconnector capacity) acts as a disincentive for market participants to hoard capacity.

Other features of congestion management measures include:

- Short-term capacity products: Three short-term firm capacity products were introduced during the 2007/08 gas year; monthly, weekly and within-day products are now available for shippers to plan and adjust their capacity bookings as appropriate throughout the gas year;
- Secondary market for capacity: The secondary market for capacity operates on a bilateral basis. While the Transporter, Gaslink, is not a party to these capacity trades, it does recognise and facilitate these trades on its systems;
- Interruptible Capacity: Shippers can nominate in excess of active capacity which is de-facto an interruptible capacity. A specific interruptible product is in place at the storage entry point at Inch. Principles and business rules have been developed for an enhanced interruptible product at the entry, these will be developed further and implemented as part of the CAG project;
- Cross-border link swaps: Since cross-border links are not congested no swaps are in place;

- Transit Contracts (Article 3(1) of Directive 91/296): No transit contracts exist at present. The South/North pipeline may be transiting in the future. The specific arrangements have not yet been finalised;
- Assessment of maximum technical capacity: The TSO methodology on the maximum technical capacity is assessed in the *Joint Capacity Statement (JCS)* prepared by the CER and the UR. The JCS estimates the gas capacity of the Ireland and Northern Ireland systems and in addition acts as an independent check on the TSO methodology;
- Publication of capacity availability and capacity bookings: The transporter has developed a transparency website for the publication of information regarding the level of capacity booked and the level of capacity available at certain relevant points on the system. This information is available publicly through the transporter's website ([www.gaslink.ie](http://www.gaslink.ie))

## 5.2 Wholesale Gas Market

### 5.2.1 Common Arrangements for Gas - CAG

The CAG project between the Ireland and Northern Ireland includes the development of a common all-island gas market arrangements going forward. On the 14th February 2008 the CER and the UR signed a MoU for the development of CAG on an All-Island basis. The MoU sets out the high level objectives of CAG.

The two Regulatory Authorities are committed to working together to establish All-Island Common Arrangements for Gas whereby all stakeholders can buy, sell, transport, and contribute to the development and planning of the natural gas market north and south of the border effectively on an all-island basis. This means that variations in the price and conditions on which gas is bought and sold will be determined by market conditions and economics, not by variations in regulatory arrangements.

The CAG Project is managed out of the CER Project Office and involved setting up;

- Governance Structures;
- Project work streams (*incl. Cost Benefit Analysis (CBA), Gas Quality; Single Transmission Tariff; Gas Industry Operations; Legislation; Licences and Contracts; Code Development; Connection Policy; Joint Capacity Statement; Security Standard and Storage; Planning and Development Framework; Retail Market Alignment.*);
- Project plans; and,
- Issues/Risk logs.

Good progress was made during 2009. Details on this are provided in section 3.2.

### 5.2.2 Indigenous Production and Storage

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 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 production accounts for only about 5% of demand. There is some potential for additional gas supplies to be recovered off the Kinsale coast and indicative estimates suggest there may be more than 1.9 bcm (70 bcf) of potential reserves.

The main possible source of additional indigenous production in the short term is the proposed 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 60% of the Irish gas demand for 6 years.

The only storage facility currently in Ireland is the depleted South West Kinsale (SWK) gas field has been converted for this purpose. It has a working volume of c. 200mscm (2,093GWh), a maximum withdrawal rate of 2.8 mscm/d (29.3 GWh/d) and a maximum injection rate of 1.8 mscm/d (18.8GWh/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.

## 5.3 Retail Gas Market

### 5.3.1 Shipper / Supply Licence Provisions

All shippers/suppliers in the market require a Shipper/Supply Licence<sup>9</sup> from the CER. 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: Condition 8 of the general 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 (Condition 14). Condition 16 refers to prohibition of cross-subsidies.

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<sup>9</sup> Natural Gas customers in Ireland may be supplied by a shipper or a supplier.

Condition 18 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).

Condition 19 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.

### 5.3.2 Gas Supply Tariffs

BGE's allowed revenue – relating to the Domestic and Small Industrial & Commercial markets – is calculated by the application of a revenue control formula. The overall level of gas procurement and operating costs and a suitable margin on costs is approved through this revenue control formula by the CER.

The table below outlines the separate components of the revenue control formula:

**Table 8 - BGE Energy Supply Revenue Revenue Control Formula**

<b>BG Energy Supply Revenue Control Formula</b>	
<i>Component</i>	<i>Basis</i>
Transmission & Distribution costs (pass-through)	These figures are calculated by the multiplication of estimated capacity and commodity figures of BG Energy's customers by the transmission and distribution tariffs. The CER examines these forecasted figures and reconciled at the end of the year once an outturn value is known.
Gas procurement costs (pass-through)	Condition 17 of the BG Energy Licence obliges BG Energy to procure gas at the best effective and most obtainable price. In its latest decision regarding the revenue control period 2007/08 – 2011/12, the CER added financial incentives to the revenue control formula to incentivise BG Energy to purchase gas more efficiently.
BGS's own supply costs	Indexed to growth/decline in numbers of BG Energy's customers and in GWh sales.

In addition, new tariff structures for domestic and small and medium sized businesses have been implemented by BG Energy since October 2007. This follows a review of tariff structures

carried out by the CER during 2007. These new tariff structures have been designed to ensure greater levels of cost reflectivity as well as improving levels of choice for natural gas customers. They also provide a more transparent tariff against which other suppliers may wish to compete. In addition the new tariffs have been designed to encourage improved efficiency. Levels of fixed or standing charges in the tariff have been reduced significantly which means that the final level of a customer's bill is more closely linked to unit charges and actual usage than in the past.

### **Large Customers (consumption level between 5.5 GWh/annum & 264 GWh/annum)**

The *Regulated Tariff Formula* (RTF) applies to this customer category. However gas customers within this consumption level that utilise the gas to produce electricity, including combined heat and power have the choice between a RTF tariff and an 'unregulated' tariff.

Near the end of 2009 the CER published a consultation on the future of the RTF, which stated that the CER was minded to remove regulation in the RTF sector from October 2010. The CER also wrote to all RTF customers seeking their views on whether the RTF should be retained, amended or abolished. The consultation examined the merits of the RTF and the current state of play in the sector under certain criteria. The CER decided in June 2010 that BG Energy will no longer be obliged to offer this tariff from 1<sup>st</sup> October 2010; this sector is now open to full competition.

**Table 9 - BG Energy RTF Products 2009**

<b>BG Energy RTF Products 2009</b>	
<i>Product</i>	<i>Description</i>
Fixed RTF	This product is offered for terms of 3, 6, 9 and 12 months. The gas commodities are fixed for each month when the RTF offer is accepted. It is stated in CER/04/306 of the 30 <sup>th</sup> September 2004 that 'BG Energy must use the International Petroleum Exchange (IPE) futures settlement prices for each month of the RTF contract period as quoted on the IPE on the first business day immediately preceding the date on which the customer is quoted'.
Variable RTF	This product does not last for a limited time period. This product continues until either a switch in supplier occurs or a fixed term RTF is accepted. The average of the relevant International Petroleum Exchange (IPE) prices for a month is utilised to determine the price a customer is charged in the subsequent month. It is stated in CER/04/306 of the 30 <sup>th</sup> September 2004 that "the IPE index term is calculated as the average of the IPE settlement prices for month M for each business day up to and including the second last business day of month M-1".

Default RTF	<p>This is put in force when a customer isn't supplied by an independent supplier and has not indicated in writing its acceptance of either of the other two RTF products.</p> <p>This product is the same as the variable RTF product except that the price the customer is charged in the first month is set as the market price. It is stated in CER/04/306 of the 30<sup>th</sup> September 2004 that 'the IPE index for the first month of the period will be set at the IPE price on the last business day of the previous month'.</p>
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BG Energy is required to submit the standard RTF supply contract for approval by the CER. The RTF is based on the following formula:

$$P = [(IPE\ Index + Tgb + Psw) * EUR/GBP] + Tti + Tdi + Si + Fixed\ Charges$$

P	the price of gas for the customer
IPE Index	the monthly International Petroleum Exchange price index at the national balancing point in Great Britain (GB)
Tgb	GB transportation charges
Psw	Swing Premium
EUR/GBP	the Euro Sterling exchange rate
Tti	Transportation charges for the Irish Interconnectors and on-shore Ireland Transmission System
Tdi	Transportation charges for the Irish Distribution System
Si	Shrinkage charges on the Irish System
Fixed Charges	Fixed charge to cover BGS operating costs and margin

### **Medium Customers (consumption level above 73,000kWh and SPC greater than 3,750kWh)**

The Fuel Variation Tariff (FVT) is a price regulation regime which came into effect as of 1 October 2007. Similar to that of the RTF, the FVT is based on a formula, approved by the CER, which reflects the cost to serve of each customer. It consists of four components:

- *Gas Commodity Charge (c/kWh)*: reflecting the monthly unit cost of wholesale gas purchased;
- *Fixed Rate Charge (c/kWh)*: incorporating transmission commodity tariffs, distribution commodity tariffs, swing, flexibility and an approved margin on costs (2.75%);

- *Site Charge (€ per month)*: incorporating transmission capacity tariffs, distribution capacity tariffs, administration costs; and,
- *Shrinkage Gas Charge (c/kWh)*: reflecting the monthly unit cost of transmission shrinkage gas costs incurred with respect to FVT volumes. This charge is common to all customers.

**Table 10 - BG Energy FVT Products**

<b>BG Energy FVT Products</b>	
<i>Product</i>	<i>Description</i>
Monthly Floating Price	This is the default pricing option which applies to all FVT customers of BG Energy where no alternative pricing arrangements have been put in place. The gas commodity price is calculated as the average of the last five 'ICE' daily settlement prices for month M during month M-1 as published in the European Spot Gas Markets (ESGM).
Fixed RTF	This product is offered for terms of 3, 6, 9 and 12 months. The gas commodities charge for each month in the contract period is calculated as the published 'ICE' settlement price for the day immediately prior to the booking window.

## **6. Security of Supply**

This section provides information on the current security of supply situation in Ireland with regard to electricity and gas supplies.

### **6.1 Overview**

This section details the CER's role and that of EirGrid as TSO with respect to security of electricity supply. It then examines growth in demand and the forecast situation for security of supply and provides an examination of the various measures being undertaken by the CER to address security of supply issues. The CER's role with respect to the authorisation of new plant, details of upcoming new infrastructural developments, the current and forecast generation mix, together with a brief description of the various incentives currently in place in the Irish market to encourage new generation capacity is also discussed. The section concludes with an overview of upcoming network developments intended to assist security of supply through further interconnection.

#### **6.1.1 CER & TSO's Role**

The CER has a role in monitoring security of supply/generation adequacy and, together with the EirGrid and the Department of Communications, Energy & Natural Resources (DCENR), putting in place appropriate arrangements to ensure that a satisfactory generation capacity margin is maintained and electricity supply is secured.

The CER's legal functions and duties in relation to security of supply are contained primarily in Directive 2003/54/EC and Directive 2005/89/EC. The Directives have been transposed into Irish law by SI 60 of 2005. The continued monitoring of security of supply remains a key priority for the CER.

As part of its monitoring arrangements, the CER reviews the generation adequacy of the Irish system on a weekly basis and publishes a weekly report on its website. This report also contains quarterly comparisons and useful data on generation adequacy including wind generation statistics and demand levels. The CER also produces a bi-annual report on security of supply for the European Commission while an annual update is provided in the CER Annual Report. The TSO produces an annual forecast statement (covering the forthcoming seven year period) which is also approved by the CER.

In consultation with the DCENR and other relevant parties, the CER can decide on any necessary actions, as deemed appropriate, to protect or enhance security of supply. In addition to putting in place such measures as deemed appropriate, the CER has established a regulatory regime in the authorising and licensing of generation and regulation of the various networks codes to assist in the enforcement of security of supply.

The TSO, in addition to the preparation of its annual forecast statement, is responsible for the day-to-day monitoring of generation capacity and system management (management of nominations, dispatch, ancillary services and system emergency management (system alerts, load shedding, etc.)).



## 6.1.2 CER Report to EU Commission on Security of Electricity Supply

Under European Directives 2003/54/EC and 2005/89/EC, which have been transposed into Irish Law by Statutory Instrument No. 60 of 2005, the CER is required to prepare and submit a report to the European Commission every two years. The third such report fell due on 31<sup>st</sup> July 2010.

The report describes the security of supply situation in Ireland with reference to the following key areas:

- (a) The CER's Monitoring Activities;
- (b) Fuel and Other Power Sources;
- (c) The Balance Between Supply and Demand;
- (d) Supply and Demand-Side Measures;
- (e) Transmission Networks; and,
- (f) Issues Identified and Measures Undertaken.

Some of the key points from that 2010 report are summarised below:

- In 2008, across the island (Ireland and Northern Ireland) 82% of electricity generation came from imported fuels of which 61% was natural gas, 17% was coal and 4% was oil;
- Ireland imports more than 90% of gas requirements and 100% of oil and coal requirements;
- The TSO demand analysis, carried out in late 2009 suggests that while 2008 and 2009 have seen a decrease in electricity demand all three scenarios studied suggest a return to growth in mid 2010;
- Based on the TSO's assessment of supply and demand of electricity there is expected to be an increase in surplus capacity in the coming years, peaking in 2015.

The 2010 Security of Supply Report is available on the CER website.

As stated above, the Security of Supply Report indicates a heavy reliance on fossil fuels for electricity generation, primarily natural gas, coal and oil. The continued supply of natural gas is an important consideration for the CER given that natural gas accounted for over 61% of Ireland and Northern Ireland's generation fuel mix in 2009.

To protect the security of electricity supplies the CER has made a decision in relation to the fuelling capabilities of generators. The decision essentially requires generators with gas as a primary fuel to be able to run on a secondary fuel for a period of time and also for non gas fired generation stations to hold fuel in storage to run for a defined number of days. The key decisions from the paper are as follows:

**Table 11 - Secondary Fuel Requirements**

Primary Fuel Type of the Generating Unit	Requirement to be capable of running on a secondary fuel	Requirement to hold stocks of that fuel	Number of Days Storage Required (Continuous running at primary fuel rated capacity)	
Gas units and CHP units of more than 10MW	Yes (At 90% of units capacity)	Requirement to hold secondary fuel	Higher Merit	5
			Lower Merit	3
			CHP>10MW	1
Non-gas units such as oil and coal (excluding renewable and peat units)	No requirement	Requirement to hold primary fuel	Higher Merit	5
			Lower Merit	3
Renewable <sup>10</sup> units	No requirement	No requirement	N/A	
CHP units of 10MW and less	No requirement	No requirement	N/A	
Peat units	No requirement	No requirement	N/A	

## 6.2 Security of Supply Indicators

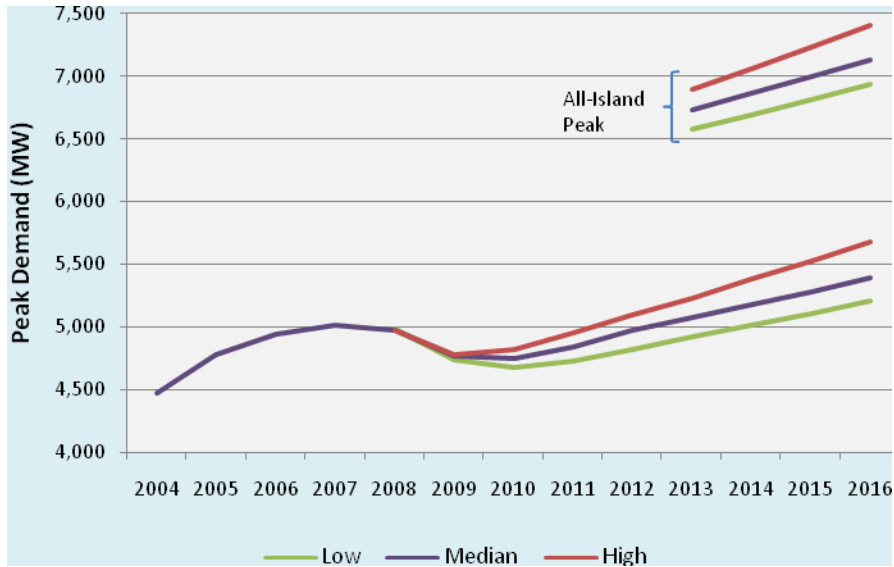
### 6.2.1 Electricity Demand

Electricity demand in Ireland saw substantial growth in the years up to 2008. In 1996 total system demand was just over 15,000GWh. By 2008 this figure had reached 28,300 GWh. However demand fell in 2009 by approximately 5% to about 26,800 GWh; this was related to the downturn in the Irish economy.

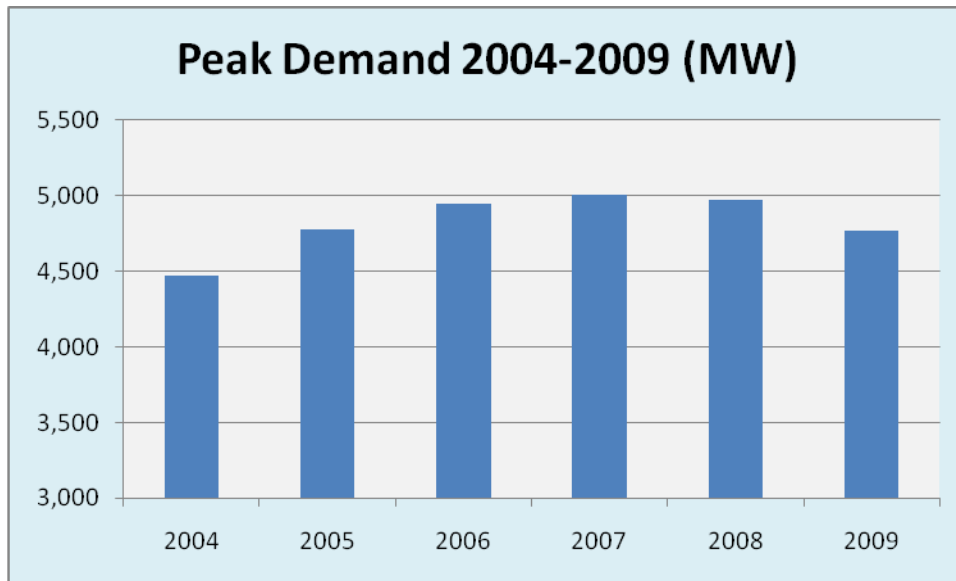
In terms of the peak demand, the trend in the evening peak for the year has seen it reported towards the end of each year, typically the Tuesday or Wednesday. However, 2009 and 2010 saw peak demand reached in early January. The figure below shows the results of the TSO's peak demand forecasting under different scenarios as per the latest Generation Adequacy Report.

<sup>10</sup> Renewables is as defined in the Electricity Regulation Act 1999

**Figure 14 - Peak Demand Forecasting from Generation Adequacy Report**



**Figure 15 - Peak Demand - 2004-2009**



**6.2.2 TSO Annual Reviews of Generation Adequacy - 7 Year Forecast**

The TSO produces an annual forecast statement of generation adequacy covering the subsequent seven-year period. In 2004, the TSO commented that the central issue to security of supply had become plant availability, particularly availability of the incumbent generation company's plant.

The latest Generation Adequacy Report for the period 2010-2016 was published by EirGrid in late 2009 and reflects a forecast estimate of the electricity system demand and generation capacity over the next seven years

The report presents a positive security of supply position for the coming years. The recent change in economic circumstances in Ireland has resulted in lower demand. In addition there has been connection of new generation (mainly wind) and an improvement in plant set availability.

## **6.3 Progress on Major Infrastructure Projects**

### **6.3.1 Monitoring of construction projects**

During 2009, the CER continued to monitor the construction of power stations and receive reports on a quarterly basis on progress against completion time lines. The large generation projects closely monitored by the CER during 2009 included:

- ESB 431 MW CCGT plant at Aghada, Co. Cork;
- Bord Gáis 445 MW CCGT plant at Whitegate, Co. Cork; and,
- Cushaling Power 112MW at Edenderry, Co Offaly

The ESB Plant at Aghada has been commercially operational since April 2010. The Bord Gáis and Cushaling Power plants are expected to be commercially operational later in 2010.

See section 3.6 for information on other infrastructure developments.

### **6.3.2 CER's Role with respect to Authorisation of Generation**

Under the relevant legislation, generation plants are required to obtain an Authorisation to Construct or Reconstruct Generation Plant and a Licence to Generate. These contain a number of conditions relating to the construction and operation of the plant, and the applicant's business.

These are both issued by the CER which assesses the suitability of applications in accordance with the following criteria:

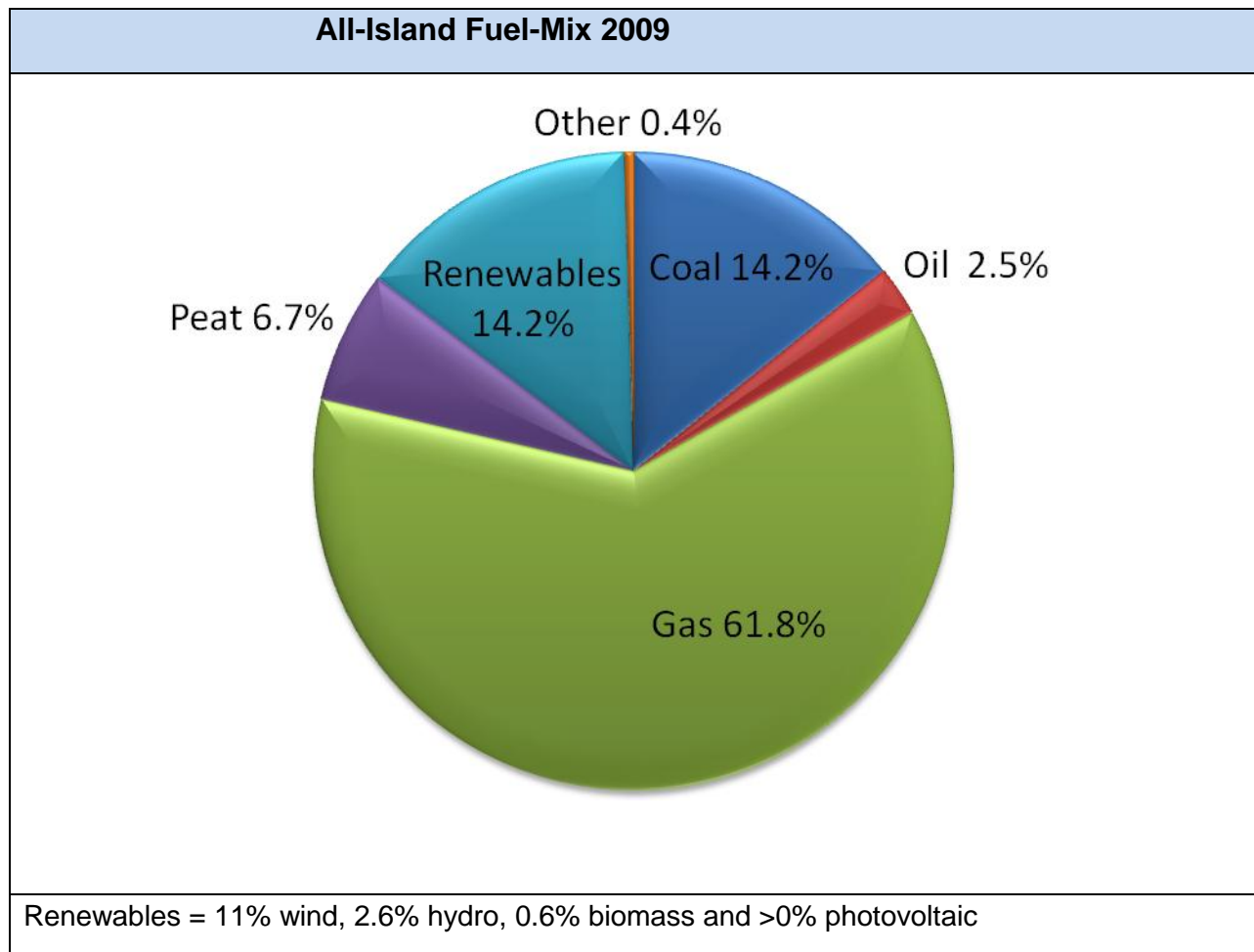
- Suitability of the Applicant (correctly constituted body, managerial competency, solvency, etc.);
- Suitability of Project – technical assessment (generation plant and technology proposed, construction and commissioning programme, plant engineers, network connection agreements, etc.);
- Compliance with relevant legislation (environmental regulations, planning permissions, other permits (Water Extraction Licence, Integrated Pollution Prevention Control Licence, etc);

- Project business plan (project financing, business plan, off-take arrangements, accounts projections, etc.).

### 6.3.3 2009 Generation Fuel Mix

The fuel mix for the SEM (Ireland and Northern Ireland) is set out in Figure 17 below. This shows that gas is by far the most predominant fuel in electricity generation, with renewables also playing an increasingly important role - see also section 3.6.4.

Figure 16 - All-Island Fuel Mix 2009



### 6.3.4 Network / Interconnection Projects

Ireland is connected to Northern Ireland via a 600 MW AC “North-South” tie-line. Since the advent of the SEM this tie-line is now considered a part of the all island market. In turn the SEM is directly connected to Scotland via a 400MW DC interconnector between Northern Ireland and Scotland at Moyle. Each year auctions are held to allocate capacity across this interconnector.

As described in Section 3.6.1 the CER is also progressing the East West Interconnector project which will see a 500 MW interconnector built from Ireland to Wales by 2012.

## **7. Public Service Obligations & Consumer Protection**

In this section a summary of the requirements placed on market participants on issues related to public service and consumer protection is provided.

In Ireland, the term “Public Service Obligation” (PSO) generally refers to the obligations placed on suppliers and ESB Power Generation in the areas of environmental protection and security of supply. The objectives of the PSO are to ensure reasonable self-sufficiency in electricity generation capacity by utilising peat as a primary fuel source and to promote renewable energy sources to help protect the environment and contribute to Ireland’s security of supply. The policy, detail and operation of PSO backed support schemes relating to environmental protection and security of supply are determined by the Government. The cost of meeting these environmental and security of supply PSOs is met by all customers based on charges calculated by the CER in accordance with its duties with respect to PSO.

Consumer protection measures apply to all certain 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. Supplier-customer contract conditions are also covered in the form of a “supplier charter”.

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 – EirGrid and ESB in electricity and BGE in the gas market.

The CER also has a legislative duty to ‘have regard to’ customers located in rural areas. Moreover ESB PES has a duty to supply all reasonable requests for supply received from customers.

Finally, the CER sets regulated tariffs for end-customers served by ESB PES in the electricity market and BGE Energy Supply in the gas market.

The legislative frameworks and specific policies/measures that have been put in place with respect to PSOs and consumer protection are discussed in sections 7.1 and 7.2 below.

### **7.1 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.

### **7.1.1 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 distribution system operator and the 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, up until 31 December 2019, 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 nine 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. Renewable Energy Feed-In Tariff (REFIT) was notified to the EU in 2005 and received state aid clearance. S.I. No. 217 of 2002 (as amended by the subsequent orders) also takes account of suppliers receiving support under the PSO.

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

### **7.1.2 PSOs – Environmental Protection & Security of Supply**

In Ireland, obligations placed on suppliers and ESB Power Generation in the areas of environmental protection and security of supply. 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 the ESB PES and ESB Power Generation.

The ESB PES is obliged under the PSO as wholesale purchaser of energy from renewable and a peat-generating source. The ESB PES 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 ESB PES purchases electricity from a peat generating station through a Power Purchase Agreement (PPA) under the terms of the Notification referred to previously. The ESB PES purchase energy from renewable sources under the Alternative Energy Requirement (AER) scheme, as notified to the EU. ESB Power Generation receives support under the PSO in relation to the energy it is obliged to produce from its peat generation plant.

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 support of renewable generation through PPAs. The price is appropriate to the category of generation supported. The REFIT scheme is paid out under the PSO mechanism.

The PSO is funded by a levy which is imposed on all electricity customers. The implementation of the PSO levy commenced on the 1<sup>st</sup> 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, ESB PES 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 1<sup>st</sup> October 2010 to 30<sup>th</sup> September 2011, the CER has determined the PSO levy for that period to be €157 million. This amount will be recovered over 12 months.

**Table 12- PSO Levy**

Customer category	Annual levy amount	Monthly Levy amount
Domestic customers	€32.76 per customer	2.73 per customer
Small commercial (maximum import capacity of less than 30kVA)	€99.03 per customer	€8.25 per customer
Medium and large customers (maximum import capacity equal to or greater than 30kVA)	€13.82/kVA	€1.15/kVA



## **7.2 Consumer Protection**

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

### **7.2.1 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).

#### ***Electricity***

Regulation 31 of Statutory Instrument Number 445 of 2000 (European Communities (Internal Market in Electricity) Regulations 2000) conferred on the CER the duty to examine and approve electricity supply charges levied by the ESB Public Electricity Supplier.

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.

#### ***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.

## **7.2.2 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 serving residential customers. The application of these measures to business customers is at the discretion of the CER.

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; 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 and they have been operating for the duration of this report.

### ***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***

Statutory Instrument SI 452 of 2004 for Natural Gas and SI 60 of 2005 for Electricity increased the CER's responsibility in the area of customer protection. In particular both SI 452 and SI 60 provide the CER with the 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.

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 spoke or corresponded with over 1,900 customers during 2009 with respect to their queries or complaints; this included 262 complex complaints on which the CER issued formal decisions. This was a 45% increase in complex complaints when compared to 2008. The table below provide a breakdown of the type of issues these customers raised.

**Table 13 - Customer Complaints 2009**

<b>Standard Complaints</b>		<b>Complex Complaints</b>	
Billing / High Cost	81	Billing / Incorrect	118
Charges	48	Network Charges	27
CER Policy	13	Estimated Meter Reads	55
Supplier Deposits	27	Meter issues	27
Tariffs	193	Account Problems	19
Switching	35		
Voltage Problems	16	Switching	7
Network Charges	36	Voltage Problems	4
Non CER issues	18	Charges	5
<b>Total</b>	<b>467</b>	<b>Total:</b>	<b>262</b>

### **7.2.3 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.

#### **7.2.4 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. 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.

#### **7.2.5 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.

#### **7.2.6 Information on Energy Sources for Electricity**

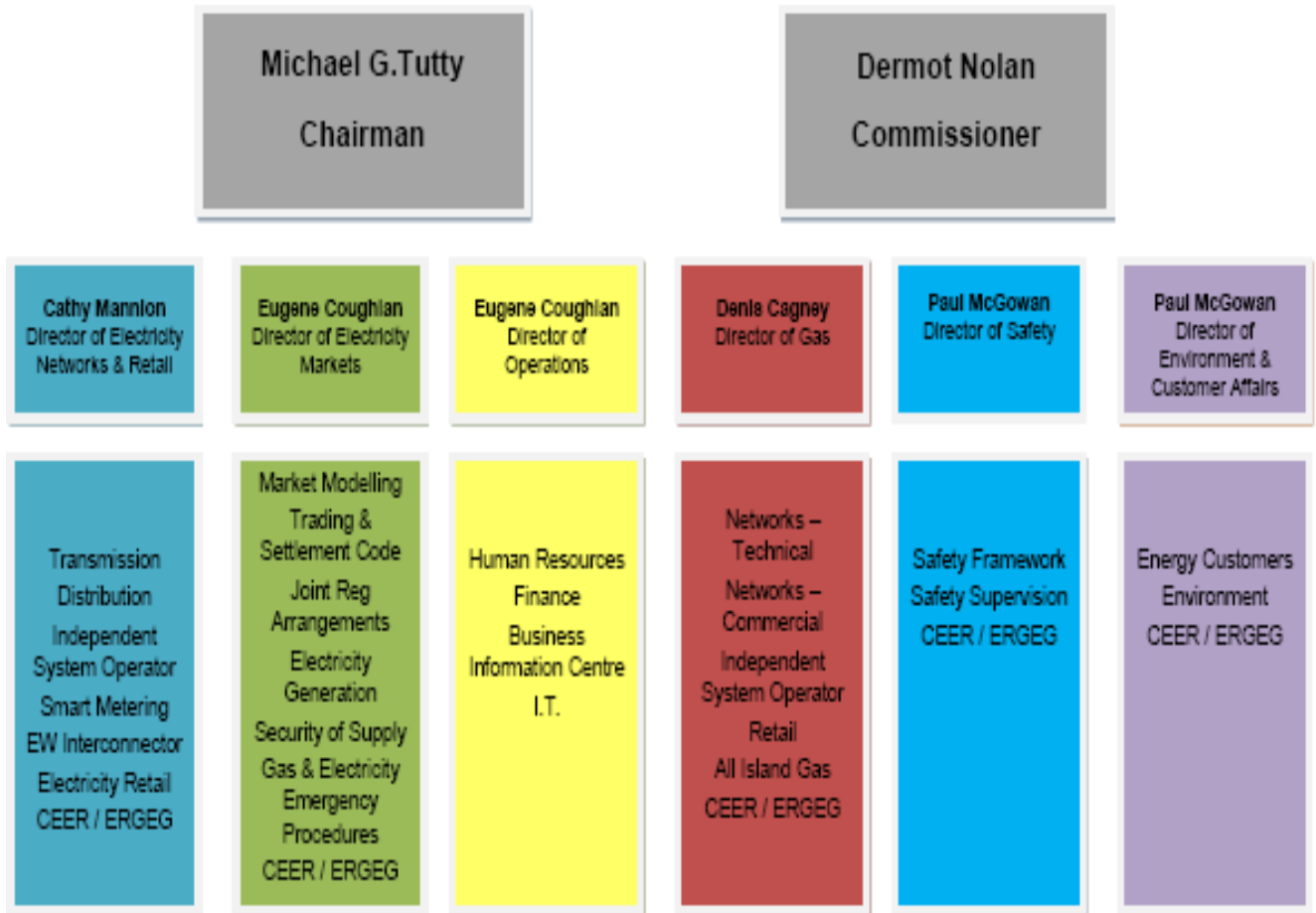
As required by Directive 2003/54/EC and S.I. 60 of 2005 all suppliers must provide reliable information on all bills/ promotional material sent to customers regarding the contribution of each energy source to the overall fuel mix of the supplier concerned over the preceding year. In July 2009 the SEM Committee published a decision on the Interim Arrangements for fuel mix disclosure. New arrangements were required due to the introduction of the SEM however 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.

With the introduction of the SEM in November 2007, the requirement for how the fuel mix for suppliers was to be calculated changed because all electricity is now sold into and purchased from a gross mandatory pool. This replaced the old bi-lateral trading arrangements and fuel mix arrangements outlined for same. With the introduction of the SEM, the calculation of the fuel mix also became an ‘all island’ matter, requiring consultation with the UR. To facilitate the disclosure of fuel mix information for 2008, a joint CER/UR interim solution has been implemented and was the basis of the 2008 and 2009 disclosure figures.

In 2010 the CER will continue to work with the UR on the implementation of an enduring method regarding fuel mix disclosure in the SEM. This is an all-island fuel mix disclosure and will ensure the same rules regarding fuel mix disclosure apply to all suppliers in the SEM, whether they are based in Ireland or Northern Ireland.

# Appendix A: CER Organisational Chart

## CER Organisational Chart at end of 2009



## CER Organisational Chart as of June 2010



## Appendix B: Functions of the CER

Section 8 of the Electricity Regulation Act, 1999 established the Commission for Electricity Regulation. Section 9 detailed the functions of the new Commission with respect to its role in the Irish electricity sector. This Act came into practical effect in September 1999.

Section 5 of the Gas (Interim) (Regulation) Act, 2002 extended this legal role and the functions of the CER to the gas sector, thereby renaming the CER as the Commission for Energy Regulation. This Act also extended the functions of the CER in the electricity industry.

Subsequent pieces of secondary legislation, or statutory instruments, have been enacted since 1999, which have further added to these functions. Following the introduction in 2003 of electricity Directive 2003/54/EC and gas Directive 2003/55/EC, three pieces of legislation amended these functions. One of these concerned the CER's electricity functions and two concerned the gas sector – Statutory Instrument Number 60 of 2005 (European Communities (Internal Market in Electricity) Regulations 2005); Statutory Instrument Number 452 of 2004 (European Communities (Internal Market in Natural Gas) Regulations 2004) (Number 2), and Statutory Instrument Number 320 of 2005 (European Communities (Internal Market in Natural Gas) Regulations 2005).

In addition, the enactment of the Energy (Miscellaneous Provisions) Act 2006 has expanded the functions of the Commission to include the development and regulation of an all island energy market and the regulation of natural gas and electricity with respect to safety.

As such, the consolidated legal 'Functions of Commission', as contained in section 9 of the Electricity Regulation Act, are as follows:

"9.—(1) The Commission shall have the following functions, namely—

- (a) to publish, pursuant to a policy direction or directions of the Minister, which shall be made publicly available when given to the Commission, proposals for a system of contracts and other arrangements, including appropriate rights and obligations, for trading in electricity,
- (b) It shall be, and be deemed always to have been, a function of the Commission to participate in the development of an all-island energy market, including the preparation of proposals and the provision of advice to the Minister in regard to any part or aspect of the establishment, management and operation of such a market,<sup>11</sup>
- (c) It shall be a function of the Commission to regulate the activities of electrical contractors with respect to safety.
- (d) The Commission may appoint a person or persons to be a designated body for the purposes of this section and such body may be referred to as an Electrical Safety Supervisory Body,

Details of function 9 (c) above are contained in the Energy (Miscellaneous Provisions) Bill 2006, Section 4, 9D (1) – (28),

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<sup>11</sup> Details of this function are outlined in the Energy (Miscellaneous Provisions) Act 2006, Part 2, Section 3, 9B (2) – (6).



- (e) to engage in a public consultation process on the Procedures to be adopted by the Commission to implement the proposals drawn up under paragraph a),
- (f) to regulate the activities of natural gas installers undertakings and natural gas installers, with respect to safety,<sup>12</sup>
- (g) to advise the Minister on the impact of electricity Generation in relation to sustainability, and international agreements on the environment to which the State is or becomes a party,
- (h) following the public consultation process referred to in Paragraph (b) and taking account of matters raised in the public consultation process, to make regulations, subject to the consent of the Minister, establishing a system of trading in electricity, including the supervision and review of such a system by the Commission, and
- (ha) to facilitate arrangements, to apply until 19 February 2005, approved of by the Commission, which have the effect of securing that the public electricity supplier is able to satisfy demand for electricity from final customers, who are not supplied in accordance with a licence issued under paragraphs (b), (c) or (d) of *section 14(1)*, in the first instance from generation stations currently owned by the Board,
- (hb) to examine charges, and the costs underlying such charges, or any proposals to alter such charges, for electricity supplied by the public electricity supplier in accordance with paragraph (da) to final customers who are not being supplied in accordance with a licence issued under paragraphs (b), (c) or (d) of *section 14(1)*,
- (hc) following an examination pursuant to paragraph (db) and where the Commission considers it necessary, to issue directions or approvals to the public electricity supplier in relation to either or both the nature and the amount of any charge or proposed charge referred to in paragraph (db),
- (hd) to facilitate arrangements on an economic basis after 19 February 2005, approved by the Commission, which have the effect of securing that the public electricity supplier is able to satisfy demand for electricity from final customers, who are not supplied in accordance with a licence issued under paragraphs (b), (c) or (d) of *section 14(1)*,
- (he) to examine charges, and the costs underlying such charges, or any proposal to alter such charges, for electricity supplied by the public electricity supplier to final customers who are not supplied in accordance with a licence issued under paragraphs (b), (c) or (d) of *section 14(1)*,
- (hf) following an examination pursuant to paragraph (de) and where the Commission considers it necessary, to issue directions or approvals to the public electricity supplier in relation to either or both the nature and the amount of any charge or proposed charge referred to in paragraph (de),
- (hg) to ensure such arrangements are in place, as the Commission deems appropriate, which have the effect of securing the extent to which each generating station, group of generating stations or all generating stations, owned by the Board, supplies electricity to or is supplied with electricity by, either or both, the public electricity supplier, suppliers and generators licensed under *section 14(1)*,
- (hh) to examine charges, and the costs underlying such charges, or any proposal to alter such charges, as the Commission deems appropriate, for electricity supplied from each generating station, group of generating stations or all generating stations, owned by the Board, to the public electricity supplier, suppliers and generators licensed under *section 14(1)*,

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<sup>12</sup> Details of this function are outlined in the Energy (Miscellaneous Provisions) Act 2006, Part 3, Sections 12 & 13.

- (hi) following an examination pursuant to paragraph (hh) and where the Commission considers it necessary, to issue directions or approvals to the Board in relation to either or both the nature and the amount of any charge or proposed charge referred to in paragraph (hh),
- (i) to advise the Minister on the development of the electricity and gas industries, as appropriate, and on the exercise of the functions of the Minister under this Act.”,
- (j) to contribute towards the development of the internal market by co-operating with other national regulatory authorities and with the European Commission,
- (k) to grant, monitor the performance of, modify, revoke and enforce licences and authorisations pursuant to this Act,
- (l) to publish information and advice and settle disputes in accordance with the provisions of this Act,
- (m) to carry out the role assigned to it by *section 39*, and
- (n) to ensure that there is, in accordance with Article 3.5 of the Directive, a high standard of protection for final customers in their dealings with licensed suppliers,

(1A) For the purposes of this Act, the functions of the Commission under the European Communities (Internal Market in Electricity) Regulations 2000 and 2005 shall be deemed to be functions of the Commission under this Act.

(1B) The Commission shall be responsible for ensuring non-discrimination, effective competition and the efficient functioning of the natural gas market, by monitoring in particular –

- (g) the rules on the management and allocation of interconnection capacity, in conjunction with the regulatory authority or authorities of those Member States with which the interconnection exists;
- (h) any mechanisms to deal with congested capacity within the natural gas system;
- (i) the time taken by transmission and distribution system operators to make connections and repairs;
- (j) the publication of appropriate information by transmission and distribution system operators concerning interconnectors, grid usage and capacity allocation to interested parties, taking into account the need to treat non-aggregated information as commercially confidential;
- (k) the effective unbundling of accounts to ensure that there are no cross subsidies between transmission, distribution, storage, LNG and supply activities;
- (l) the access conditions to storage, linepack and to other ancillary services;
- (m) the extent to which transmission and distribution system operators fulfil their functions;
- (n) the level of transparency and competition.

(1BA)

(a) Any dispute between a transmission, distribution or LNG system operator and a person as respects–

(i) the matters specified in section 9(1B),

(ii) the terms and conditions for the provision of balancing services or the methodologies used to calculate such terms and conditions, or

(iii) the terms and conditions, including tariffs or the methodologies used to calculate or establish such terms and conditions for connection and access to the national networks

shall, upon the application of such person, be determined by the Commission, and the Commission shall issue a direction regarding its determination and the system operator shall comply with and be bound by any such determination.

(b) The Commission shall issue the determination referred to in paragraph (a) within 2 months from the date of the receipt of the complaint. This 2 month period may be extended by 2 months where the Commission seeks additional information in the matter, and such further extension as may be consented to by the applicant.

(c) This section does not apply to a dispute between a final customer and a system operator where the dispute concerns a refusal to offer to enter into a third party access agreement within the meaning of section 10A or 10B of the Gas Act 1976.

(1C) The Commission shall in its annual report under paragraph 25(c) of the Schedule, include details on the outcome of their monitoring activities of the natural gas market referred to in subsection (1B).

(1D) The Commission shall in relation to electricity monitor:

(a) the rules on the management and allocation of interconnection capacity, in conjunction with the regulatory authority or authorities of those Member States with which interconnection exists,

(b) any mechanisms to deal with congested capacity within the national electricity system,

(c) the time taken by the transmission system operator and the distribution system operator to make connections and repairs,

(d) the publication of appropriate information by the transmission system operator and the distribution system operator concerning interconnectors, grid usage and capacity allocation to interested parties, taking into account the need to treat non-aggregated information as commercially confidential,

(e) the effective unbundling of accounts to ensure that there are no cross-subsidies between generation, transmission, distribution and supply activities,

(f) the terms, conditions and tariffs for connecting new producers of electricity to guarantee that these are objective, transparent and non-discriminatory, in particular taking full account of the costs and benefits of the various renewable energy sources technologies, distributed generation and combined heat and power,

(g) the extent to which the transmission system operator and the distribution system operator fulfil their functions in accordance with statutory requirements, and

(h) the level of transparency and competition.

(1E) The Commission shall in its annual report under paragraph 25(c) of the Schedule, include details on the outcome of its monitoring activities referred to in subsection (1D).

(1F) It shall be a function of the Commission to ensure that there are adequate safeguards to protect vulnerable customers (including the elderly and disabled) which shall include measures to help such customers avoid disconnection and the Commission may give, to the holder of a licence issued under *section 14*, such directions as it considers necessary to carry out its functions under this subsection.

(2) Notwithstanding the generality of *subsection (1)(a)*, a policy direction of the Minister shall include a direction that procedures of the Commission enable the implementation of orders made by the Minister under *sections 39 and 40*.

(3) It shall be the duty of the Minister and the Commission to carry out their functions and exercise the powers conferred on them under this Act in a manner which—

(a) in relation to electricity, does not discriminate unfairly between holders of licences, authorisations and the Board or between applicants for authorisations or licences,

(b) in relation to gas, does not discriminate unfairly between holders of licences, consents and Bord Gáis Eireann or between applicants for consents or licences, and

(c) the Minister or the Commission, as the case may be, considers protects the interests of final customers of electricity or gas or both, as the case may be.

(4) In carrying out the duty imposed by subsection (3), the Minister and the Commission shall have regard to the need:

(a) to promote competition in the generation and supply of electricity and in the supply of natural gas in accordance with this Act;”,

(b) to secure that all reasonable demands by final customers of electricity for electricity are satisfied;

(c) to secure that licence holders are capable of financing the undertaking of the activities which they are licensed to undertake;

(d) to promote safety and efficiency on the part of electricity and natural gas undertakings;

(e) to promote the continuity, security and quality of supplies of electricity;

(f) to promote the use of renewable, sustainable or alternative forms of energy;

(g) to secure that there is sufficient capacity in the natural gas system to enable reasonable expectations of demand to be met; and

(h) to secure the continuity, security and quality of supplies of natural gas.

(5) Without prejudice to subsections (3) and (4), it shall be the duty of the Commission:

(a) to take account of the protection of the environment;

(b) to encourage the efficient use and production of electricity;

- (c) to take account of the needs of rural customers, the disadvantaged and the elderly;
  - (d) to encourage research and development into—
    - (i) methods of generating electricity using renewable, sustainable and alternative forms of energy and combined heat and power, and
    - (ii) methods of increasing efficiency in the use and production of electricity;
  - (e) to require that the system operator gives priority to generating stations using renewable, sustainable or alternative energy sources when selecting generating stations, and
  - (f) to take account of the rights of customers, particularly household customers and small enterprises, to be supplied with electricity of a quality specified by the Commission pursuant to Regulation 26 of the European Communities (Internal Market in Electricity) Regulations 2005 at reasonable, easily and clearly comparable and transparent prices.,
- (6) In carrying out its functions pursuant to this Act, the Commission shall:
- (a) act in as consistent a manner as practicable, and
  - (b) unless it considers it impractical to do so, give in writing its decisions together with the reasons for reaching such decisions.”