

Deputy John McGuinness
Chairman, Oireachtas Public Accounts Committee
Leinster House
Kildare Street
Dublin 2.



7th February 2013

Ref: D/13/4170

Re. CER Information following Oireachtas Committee Meeting

Dear Deputy McGuinness,

I am writing with information requested from the Public Accounts Committee in a letter dated 24th January 2013, following the CER's attendance at a Committee meeting on 17th January.

In the letter the Committee Secretariat noted the information to be supplied to the Committee following the 17th January meeting, and I now respond accordingly. For ease of reading I have divided the information into the various CER cost and energy policy issues queried. I trust this is helpful. If the Committee needs any further information, we will be most happy to provide it.

(i) Customer Disconnections

In relation to disconnections, at the outset I wish to emphasise that the disconnection of a customer's energy supply should be the last resort. Suppliers are required by the CER to offer a payment plan and prepayment solution - Pay As You Go Meters (PAYGs) - to customers in advance of proceeding to disconnect for non payment of account. The CER is working with suppliers to understand what proactive measures suppliers are adopting to reduce the number of customer disconnections; including early customer engagement, increasing the number of customer contacts and the installation of PAYG meters, all of which is having a positive impact on the level of disconnections.

The CER audits suppliers to ensure that they are compliant with the relevant Codes of Practice which deal with customer disconnections and prepayment. However it is also vital that customers who find themselves in arrears engage with their supplier regarding a payment plan or PAYG meter early in the process, and this is a position that is reiterated by MABS and St. Vincent de Paul.

The CER monitors the levels of customer disconnections regularly and also publishes industry statistics on a quarterly basis (a quarter in arrears) as part of its combined retail market report. The latest published report showed that there were 3,610 electricity and 2,387 gas disconnections in the period Q2 2012. The vast majority of these relate to domestic as opposed to business premises, as shown in the tables below. This equates to approximately 0.18% of

domestic electricity connections and 0.37% of all domestic gas connections being disconnected for reasons of non-payment of account in the period Q2 2012. In overall terms, the disconnection figures for electricity in Q2 2012 were down by 18% on Q2 2011 and by 29% on Q1 2012. However, the total gas disconnection figures for Q2 2012 rose considerably, with gas disconnections up 84% on Q2 2011 and by 39% on Q1 2012.

However, it is important to note that vacant premises (where there are no longer people living in the home) are having a significant impact on these Q2 2012 disconnection numbers – it is estimated that 29% of electricity disconnections and 39% of gas disconnections for non-payment of account relate to vacant premises, which significantly reduces the headline figures.

The CER publishes a breakdown of disconnections by individual supplier both in absolute terms and relative to market share on its website, www.cer.ie. We include total disconnections by supplier to Q2 2012 in the tables below. Please note that Q3 2012 disconnection data is due to be published shortly on our website.

Gas Market	Bord Gais Energy	Airtricity	Flogas	Energia	Electric Ireland	Total	% of total that are domestic
Q1 2011	479	28	55	34	-	596	78%
Q2 2011	1,104	48	99	46	-	1,297	81%
Q3 2011	1,403	136	244	35	1	1,819	89%
Q4 2011	643	128	56	21	-	848	85%
Q1 2012	1,342	189	153	21	1	1,706	90%
Q2 2012	1,815	283	274	10	5	2,387	92%

Electricity Market	Electric Ireland	Airtricity	Bord Gáis	Energia	Total	% of total that are domestic
Q1 2011	2,051	699	406	142	3,298	77%
Q2 2011	2,389	1,477	355	182	4,403	80%
Q3 2011	2,894	2,277	727	243	6,141	84%
Q4 2011	1,191	1,940	690	131	3,952	82%
Q1 2012	887	2,658	1,325	193	5,063	83%
Q2 2012	1,248	1,276	892	194	3,610	82%

(ii) Wind Farms and health issues

The CER has no statutory role regarding health issues associated with renewable generators, including the impact of wind farms on pacemakers or other biomedical devices.

Primary responsibility for the decision of where to site a renewable generator lies with the local planning authority, and where applicable An Bord Pleanála. The Department of Environment, Heritage and Local Government issued guidelines in 2006 setting out various considerations for planning authorities when considering development plans and determining applications for planning permission¹. This document focuses on land use and environmental matters and addresses related issues of health and safety. This document addresses the noise and visual effects a windfarm can have on dwellings in the vicinity. Thus, any possible health issues need to be examined in the Environmental Impact Statement for windfarm planning and, as such, comes under the remit of local planning authorities (or An Bord Pleanála if applicable).

In the discussion with the Public Accounts Committee, Deputy Sean Fleming raised the issue of a possible effect of windfarms on biomedical devices, including pacemakers. We would refer the committee to a comprehensive report on the issue published by the Department of Communications, Marine and Natural Resources on the broad issue of health effect of electromagnetic fields which includes a discussion of pacemakers and other biomedical devices². We note that in the press release to this report that the Department indicates that responsibility in this area will be given to the Radiological Protection Institute of Ireland³.

Where renewable energy has an impact on occupational health then this is generally the responsibility of the Health and Safety Authority.

(iii) BGÉ Interconnector Tariffs & Shannon LNG

The CER is of the view that the current gas transmission entry tariffing regime from the UK to Ireland needs reform. Without reform, and assuming the investments in the two gas interconnectors (ICs) from the UK to Ireland are not to be stranded⁴, new sources of gas coming on stream from elsewhere would reduce the amount of gas coming through the ICs and significantly increase the unit IC entry tariff. This higher IC entry tariff would, in turn, push up the wholesale price for gas in Ireland, which seems a perverse outcome. This would be inefficient and damaging to both consumer interests and Ireland's energy competitiveness. This issue is outlined further in the paragraphs below.

¹ <http://www.environ.ie/en/Publications/DevelopmentandHousing/Planning/FileDownload,1633,en.pdf>
² <http://www.dcenr.gov.ie/NR/rdonlyres/9E29937F-1A27-4A16-A8C3-F403A623300C/0/ElectromagneticReport.pdf>
³ <http://www.dcenr.gov.ie/NR/rdonlyres/9E29937F-1A27-4A16-A8C3-F403A623300C/0/ElectromagneticReport.pdf>

⁴ Note that construction of the two interconnectors, which bring gas from the UK to Ireland, was approved by the Government prior to the CER having any powers or functions in the gas area.

New sources of gas, such as Corrib, Shannon LNG or others, will lead to significant reductions in gas flows through the ICs which currently account for over 90% of gas supplies to Ireland. To date the largely fixed costs of the ICs (approx. €50 million per annum) have been underwritten by the bulk of Irish gas customers who account for over 90% of the gas supplies through a single IC entry tariff. A significant reduction in the amount of gas flowing through the ICs will lead to a significant increase in the unit IC entry tariff under the current tariff regime, where the fixed costs are divided by the total “throughput” to derive the tariff.

This IC entry tariff plays a crucial role in determining Irish gas wholesale prices for all customers. This is because the Irish wholesale price is determined by and large by the clearing price or National Balancing Point (NBP) Price in Great Britain plus the cost of transporting gas to Ireland. This conventional view of Ireland as essentially a “price taker” for as long as the ICs remain the marginal source of gas supply, was not seriously challenged in the responses to the CER consultation process on this issue.

Developers of new sources of gas will be free to price their supplies up to this new higher Irish wholesale price for gas, or as near to it as the market allows. So, while Irish gas customers would enjoy new sources of supply and the associated security of supply benefits, they could also see significantly higher gas tariffs and a significant transfer of wealth from them to producers/importers of gas. This is all assuming no change in the current tariff regulatory regime.

The CER is committed to a tariff policy which incentivises new entry which can be shown to be efficient by reference to other entry, in particular to entry from GB across the ICs which, it is assumed, will continue to be the marginal source of gas supply for the foreseeable future. The CER has decided to base this tariff policy on forward-looking long-run marginal cost (LRMC) considerations rather than historic cost considerations, e.g. a prescribed portion of the historic costs of the ICs which would be deemed to constitute an efficient price signal to new investors.

This preference for a forward looking LRMC approach is grounded on:

- (i) sound economic principles;
- (ii) the specific circumstances of the Irish gas system;
- (iii) avoiding arbitrary regulatory judgment calls which would arise with the historic based approach; and,
- (iv) compatibility with the applicable EU rules.

The European Commission (DG Energy) services have advised the CER that its plans are, in principle, compatible with EU rules. The CER will keep the situation under review as current proposals for harmonising cross-border tariffs within the EU are progressed within the ACER and ENTSOG framework provided for in the Third Energy Package. The new tariff regime will come into effect in October 2014, in line with the expected completion date of the European harmonisation work streams referenced above.

In summary, if the CER did not act, then gas prices to consumers would rise as a result of new sources of gas supply which seems a perverse outcome. By taking the action it has done, the CER is protecting the interests of consumers by preventing them from facing unnecessarily high gas prices in the future, and also providing an appropriate signal for efficient new entry in a manner that is consistent with EU policy.

On 28th August the CER was put on notice that Shannon LNG Ltd. and Shannon Energy Ltd. have applied to the High Court for leave to seek judicial review of CER Decision Paper CER/12/087 ("The Regulation Treatment of the BGÉ Interconnectors and Future Gas Transmission Tariff Regime") of 29th June 2012. This matter is before the Commercial Court on 28th February 2013.

(v) Staff numbers and salary levels

Under the Employment Control Framework (ECF) the CER has approval of an end ceiling in 2013 of 85 Full Time Equivalent's (FTEs). This number has been reduced from the original number of 103 approved by the Department of Communications, Energy & Natural Resources and the Department of Finance. Currently there are 73 employees /70.6 FTE's. The CER is currently recruiting to move to its approved number of staff under the ECF.

Salary

- i. Chairperson = €180,910.
- ii. Commissioner €164,464
- iii. Director's salary scale €124,476 - €153,916.
- iv. Salary bands of remaining staff are as follows:

Pre January 2010	Min	Max
Level 3 Band A / Managers	78,293	102,225
Level 3 Band B /Managers	63,401	93,938
Level 4 Band A /Regulatory Analysts	33,247	61,422
Level 4 Band B / Executive Administrators	30,618	49,373
Level 4 Band C / Clerical Administrators	24,539	36,591

The salaries of new staff recruited since January 2010 are 10% less than the above rates.

Staff salaries are generally linked to Civil Service salaries. Commissioner salaries are in line with the salaries of Deputy Secretary-Generals. I would note that the CER does not pay any overtime to any staff despite staff working significantly more hours than their contract specifies.

(vi) Performance Related Pay

When the CER was established in 1999, a Performance Management & Development Scheme (PMDS) was introduced. The PMDS scheme was approved by both the then Department of Public Enterprise and the Department of Finance.

All CER staff, except for Commissioners and Directors, are part of the PMDS scheme which means that currently 67 of the 73 staff are eligible. PMDS forms part of the terms and conditions of individual contracts of employment for these staff. It sets realistic yet challenging targets for the following twelve months for each employee. These targets are specific to the set of competencies required for an individual's specific role /job. A full detailed note of how the scheme operates and the criteria laid down for this is attached in Appendix 1.

These 67 staff are all automatically eligible to receive some performance related pay by the terms and conditions of their contracts. The PMDS scheme and individual contracts of employment entitle employees to performance related pay of between 0 and 15% of their base salary, and the CER therefore sets an overall average of 7.5% for the organisation. Staff who perform particularly well are likely to receive in excess of 7.5% while others will receive less. This leads to a range of outcomes across the staff but with an overall organisational average of 7.5%. In 2012, this range of outcomes was from 0% to 14.5%.

(vii) Annual Lease

The CER has annual commitments of €411,933 payable on foot of a twenty five year lease effective from the 1st March 2006 for office accommodation at The Exchange, Belgard Square North, Tallaght, Dublin 24, leased from Breydon Developments Ltd (In Receivership), which are the only offices occupied by CER.

The lease contains a provision for a rent review on the first day of the 6th, 11th, 16th & 21st year of the term. Unfortunately, like many other similar leases at that time, it is an "upwards only" rent review and thus it has not been possible to negotiate it downwards.

"The rent first reserved by this lease shall be reviewed at each review date in accordance with the provision of this schedule and, from and including each review date, the rate shall equate the higher of either the rent contractually payable immediately before the relevant review date or the open market rent on the relevant review date, as agreed or determined pursuant to the provision of this schedule"

However the contract contains a breakout clause in 2016 and it is the CER's intention to seek a renegotiation of the lease on the most favourable terms possible in advance of that date.



Commission for Energy Regulation

An Coimisiún um Rialáil Fuinnimh

I hope this response facilitates the Committee's request. As mentioned initially, should you or any member of the Committee wish any further detail, please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Dermot Nolan', is written above the printed name.

Dermot Nolan
Chairperson

CC. Public Accounts Committee Secretariat, Niamh Maguire.

Appendix 1

A detailed note on the criteria for the PMDS Scheme

The purpose of the performance management system is to maximise individual and team work performance in order to achieve the CER's objectives. It enables staff to develop their skills by providing the organisation with the structure and tools that are required to:

- Explicitly and clearly communicate the expectations (strategic, operational and developmental) that the organisation has of each of its employees;
- Focus employees to deliver on those expectations;
- Evaluate the degree to which individuals in the organisation meet those expectations;
- Ensure alignment between the organisation's strategic plan and performance expectations;
- Provide a formal link between individual performance & reward.

The CER's Performance Management System is designed to enable the delivery of the organisation's annual business plan. This in turn pushes progress towards the achievement of the CER's long term strategic plan. It allows employees to develop their skills and reach their full potential. The organisation recognises that its continued success is dependent on its ability to establish and maintain a performance-orientated culture in which management, individuals and teams take responsibility for the continuous improvement of the services provided by the organisation to its customers and of their own skills and contributions. Thus, it is essential that the CER operates a system that measures, recognises and rewards what its members deliver against the needs of the business. The system is also designed to help foster good working relationships between employees and to develop individuals and teams to fulfill their potential.

The system is framed to clarify the role that each individual has in the delivery of the organisation's goals. In addition the importance of on-going communication between individuals and their Director/ Manager in the achievement of objectives is emphasised. This is facilitated through regular progress checks and meetings. This structure allows for the careful and thorough assessment of individual accomplishments; the rewards for which should vary depending upon the standard of performance achieved. Delivery of objectives and development of individuals will prove to be more critical than the rewards themselves in focusing and improving organisational performance. The CER operates a system that is fair and balanced in that unique PMDS percentages are calculated for each individual.

Outlined below is how performance is rated at the end of the year and the procedure for formally linking performance to a PMDS percentage. It includes a work example of a PMDS calculation.

End of year Performance Review

The End-of-Year Performance Review contains three components;

1. Preparation
2. Review Meeting
3. Follow up.

Preparation

Directors / Managers and the employee arrange to meet to discuss and together rate and agree the staff member's performance against each of his or her objectives using the template provided. Prior to the meeting the staff member completes and forwards to their Director / Manager an End of Year Review Form template, but leaving blank the Performance Rating section. When this is received the Director / Manager completes the Performance Rating Section. It is recommended that performance against each objective be rated using five levels. It allows for the differentiation between above-average performance, which is somewhat ahead of expectations and above-average performance that is truly outstanding. It also allows for performance which is slightly lower than expectations and performance which is significantly or seriously below expectations to be differentiated.

The table below indicates the definition and standard expected of each performance level

Performance Rating		Definition	Link to Competency Framework
Outstanding performance	4	Exceeded objectives all of the time, contributed to the organisation way beyond expectations set	Performance judged will be considered to be exceptional of the standard in the Competency framework and can clearly be identified as being well ahead of the standard set.
Performance in excess of objectives	3	Exceeded some objectives all of the time or exceeded all objectives some of the time	Performance will exceed expectations in certain areas within the Competency Framework
Performance in line with objectives	2	Met all performance and development objectives as outlined at the start of the year	Performance will be in line with the standards set out in the Competency Framework

Performance below objectives	1	Did not meet all objectives, however, showing signs of improvement since last review	Performance is clearly developing in line with the Competency Framework
Performance unacceptable	0	Did not meet all objectives and not showing signs of improvement	Performance significantly below the standards below the standards in the Competency Framework

Each individual objective is rated using the above scale.

Review Meeting

The meeting should take place in month 11 of the performance management cycle, i.e. in November of the review year. It lasts at least 30 minutes and should be focused on the following:

- To go through each objective for the individual;
- Acknowledge key achievements and areas where expectations have been met and exceeded;
- Acknowledge areas where objectives have not been met and identify the reasons for not meeting objectives;
- Give feedback both from the Director/ Manager to the staff member and visa versa
- Discuss any other issues, comments or suggestions that the employee has.

This review meeting is a separate meeting from the performance-planning meeting for the upcoming year. The reason for separating the two meetings is to maximise the effectiveness of both the performance review and performance planning process.

The review meeting should happen before the Performance Planning meeting i.e. close off Year 1 formally, before commencing Year 2.

Linking the Performance Rating to a PMDS Percentage

Following agreement at the review meeting of a performance rating for each objective, the overall performance rating for the year can then be determined. The performance rating can then be linked to the PMDS percentage. This is carried out in the following way.

PMDS Calculation (& work example)

The calculation is based upon a three step process;

1. Rating the performance for each objective on the scale 0–4 as previously mentioned
2. Multiplying the rating for that objective by the overall weighting which that objective was assigned at the start of the year. This gives the individual an overall point score out of the maximum possible 400 points (the individual's overall Performance Rating)
3. The individual's score out of 400 is then multiplied by the maximum PMDS allocation (e.g. 7.5%) to determine the Overall PMDS Score. Each performance rating and each PMDS will be unique to each individual.

The advantages of this model are as follows:

- It is transparent and easily understandable by everyone;
- It links the PMDS paid clearly to the level of performance;
- Provided that objectives have been set effectively and are sufficiently measurable, there should be minimum disputes at review time about performance ratings.

Follow Up Meeting between Directors and Managers

The ratings defined need to be validated against proposed ratings of all other Directors /Managers for vertical and horizontal consistency. This should happen the following way:

- i. Each Director / Manager meets with their Commissioner / Director to validate the ratings for all his or her employees, the Director / Manager has to justify the ratings he or she has proposed;
- ii. All documentation is then sent by the Director to the HR Manager who will present details of all proposed ratings to a panel consisting of the Commissioners and the Director of Operations. The panel will then either approve the ratings proposed by Director/ Manager or make adjustments to some ratings. Any adjustments will be communicated to the relevant Director / Manager. If the Director / Manager have any issue with the adjustment, they will be given the opportunity to communicate to the panel before a final decision is made;
- iii. The final authorised rating is communicated by the HR Manager to the relevant Director or Manager who in turn will communicate it to the relevant individual;
- iv. The final outputs of the review process are documented and recorded centrally in the HR Department;
- v. It is each Manager's /Directors responsibility to chase up all review documentation for his or her team members. HR should not have to contact any individuals to request documentation;
- vi. The approved ratings will be used to determine PMDS awards.