



Commission for Energy Regulation

An Coimisiún um Rialáil Fuinnimh

**SUMMARY OF COMMENTS RECEIVED ON
NOTICE UNDER SECTION 24(2) OF THE
ELECTRICITY REGULATION ACT, 1999, TO
AIRTRICITY LIMITED**

**20 SEPTEMBER 2002
CER/02/133**

Summary

The Commission for Energy Regulation ('the Commission') issued a notice under Section 24(2) ('the notice') of the Electricity Regulation Act, 1999 ('the Act') to Airtricity Limited on the 12th July 2002. This expressed the Commission's opinion that Airtricity Limited, holder of a 'green' supply licence issued on the 18th February 2000 under Section 14(c) of the Act may be contravening Condition 20 of their supply licence.

Condition 20 requires that the holder of a 'green' supply licence complies with the 'balancing criteria' as laid down in the Trading and Settlement Code ('the Code'). A Commission decision (Reference: 29th August 2001) outlines the applicable 'balancing criteria': A green supplier operating during the first year of market opening (2000/01) should not have supplied more energy to their final customers than that which was available to them from 'green' sources, within a five per cent margin of error.

The Commission invited representations or objections on this notice prior to considering whether to issue a Direction to Airtricity Limited under Section 24 (4) or Section 23(2) of the Act. The closing date for receipt of responses was the 13th August 2002. Written submissions were received from six parties.

This document is a summary of all the responses received. It is intended to give the collective view of all the respondents to the notice.

Background

The Commission for Energy Regulation ('the Commission') issued Airtricity Limited¹ with a licence to supply 'green'² electricity to final customers under Section 14(c) of the Electricity Regulation Act 1999 on 18th February 2000. The company subsequently began trading on 18th April 2000.

Condition 20 of a licence to supply 'green' electricity states that:

"The Licensee shall, each year within 90 days of the anniversary of the date of issue of the licence, deliver to the Commission a certificate, duly audited, specifying the source of the electricity supplied for the previous year ending on the anniversary of the date of issue of the licence. This certificate shall also certify that the Licensee has, for the previous year to the anniversary of the date of issue of the licence, complied with the electricity balancing criteria, pursuant to the Trading and Settlement Code."

Condition 20 requires that the holder of a 'green' supply licence complies with the 'balancing criteria' as laid down in the Trading and Settlement Code ('the Code'): A green supplier operating during the first year of market opening (2000/01) should not have supplied more energy to their final customers than that which was available to them from 'green' sources, within a five per cent margin of error.

It is therefore a condition of Airtricity's supply licence that they comply with the above 'balancing' requirements and spill (within the allowed 5 per cent margin of error) the excess of 'brown' over 'green' electricity supplied to their final customers by the second anniversary of their beginning to trade, 18th April 2002.

List of Respondents

In response to the notice six submissions were received from the following parties:

- Airtricity
- Anglo Irish Bank
- Campbell Carr Limited
- ESBI Engineering Ltd.
- Killiney Design Associates
- Viridian

¹ Formally known as Eirtricity Limited.

² 'Green' electricity is defined under the Electricity Regulation Act 1999 as renewable, sustainable or alternative forms of energy which means energy used in the production of electricity which uses as its primary source one or a combination of more than one of the following – wind, hydro, biomass, waste (waste heat), biofuel, geothermal, fuel cells, tidal, solar and wave.

Summary of Key Issues

Comment was invited on the notice to Airtricity Limited by the 13th August in advance of considering whether to issue a Direction to Airtricity Limited under Section 24 (4) or Section 23(2) of the Act. The following is a summary of the key points made by the six respondents:

All of the representations received were supportive of Airtricity Limited. In general, respondents emphasised the need for a suitable regulatory environment that recognises the specific risks posed to a renewable energy company.

A number of respondents drew attention to the obstacles faced by Airtricity Limited in establishing its 'green' supply business:

- Three respondents described the imbalance as a short-term problem arising from delayed access to green generation in the first two years of trading. Another respondent highlighted in particular difficulties for windfarms in obtaining planning permissions and connections to the grid.
- One respondent referred to the delay in obtaining commercial flows on the Moyle interconnector until January 2002 despite earlier indications that it would be operational by October 2001. It is suggested that this factor should be taken 'into account as a significant mitigating circumstance in their failure to meet their annual balancing criteria for 2001.'

On the issue of what action the Commission should take. A number of respondents cautioned against the Commission adopting an excessive or near-sighted view. One respondent stated, 'It would be incumbent on you in arriving at a decision to impose draconian conditions as the loss of a licence to take an overall view going forward as it would appear that you are removing competition from the sector that it would be difficult to replace.'

Another respondent expressed the viewpoint that a supportive regulatory environment is needed in order to sustain financial investment in the renewables area. This respondent stated that unsupportive treatment of Airtricity Limited would have a detrimental effect on the growth of renewables within the Irish market and the available investment potential.

The Commission considered the submissions in coming to its decision.