



Commission for Energy Regulation

An Coimisiún um Rialáil Fuinnimh

**Accession to the Trading and Settlement Code  
A Response Paper by the Commission for Energy  
Regulation**

**4<sup>th</sup> July 2002  
CER/02/58**

## Comments Received and CER Response regarding Accession to the Trading and Settlement Code

### 1 General Comments

1. One respondent requested clarification regarding the particular requirements in the Electricity Regulation Act 1999, that are identifiable with the very low surplus electricity output from a CHP generator.
2. One respondent requested recognition of the existing CHP generators with a potential surplus electricity for export that were installed prior to the Electricity Regulation Act 1999.
3. One respondent noted that (some) PPAs and the terms associated with (them) were obviously in existence far in advance of the formation of the CER and liberalisation of the electricity market. The pricing regime agreed in the contract for purchase of the output from the farm was based on the situation prevailing at that time. The proposals outlined in the consultation document CER/00/67, if implemented, would have the effect of increasing the costs of generation at (some) wind farms and therefore altering the basis on which pricing was agreed. The Trading and Settlement Code, if applied to electricity from wind farms in the same way as from other sources, would result in significant disadvantages to producers with a power purchase agreement with ESB PES.
4. One respondent stated that the proposals do not adequately address the consequences for generators and the ESB PES in terms their contractual relationships. Is it proposed that the existing PPAs be replaced with new PPAs or are the existing contractual arrangements to take precedence?
5. The proposals do not adequately address the implications for generators of implementing the proposed modification.
6. One respondent noted that it is not clear from the proposals what the impact of such accession might be. Currently the respondent stated wind farms are required under their Generation Licence under Section 14(1)(a) of the Act to *comply* with the Code in so far as it is relevant. Is the term “accede” intended to imply anything other than the existing requirement of ‘complying in so far as is relevant’? If so, what precisely?

7. One respondent noted their concern about the proposals and about how they might impact on the existing PPAs with the PES under which the projects were financed. One respondent welcomed the CER's proposal to require generators contracted to the PES to accede to the Code. One respondent noted that it is important that the modifications required are put through as soon as possible as once State Aid in the form of PSO has been approved for these AER supported generators, it will be necessary that ESB PES allows other Suppliers access to this power. It will therefore be important that appropriate interval metering is in place.
8. One respondent commented that the CER proposal on generators having to accede to the Code is unworkable. Arguing that it seems to ignore the nature of PPAs between wind generators and suppliers (whether private suppliers or the PES). These take-all contracts isolate the generator from final customer (and from the Code) in a commercial and legal sense.
9. One respondent commented that it is not apparent when or on what basis the Commission formulated or established the principle that all generators must accede to the Code and it is not clear that such a general principle is appropriate in all cases. It was asserted that this is a very significant issue in itself, in respect of which the Commission should carry out a separate consultation before taking any decision in respect of the current consultation.
10. One respondent commented that the application of the Code to a PPA generator, which applies to generators with a PPA with any independent supplier or ESB, under the terms of which all of the generator's is contracted to the sole purchaser, is inappropriate.
11. One respondent asserted that in the event that a generator with a PPA is made to accede to the Code, it would become subject to a number of onerous obligations as a result of provisions of the Code, which make no practical sense in the context of its PPA.
12. For the reasons outlined above the application of the Code to Generator with a PPA has highly artificial and unintended results.
13. One respondent remarket that it is inappropriate for generators with PPAs to accede to the Code since they do not operate in the independent trading market.
14. One respondent argued that the Commission's proposals regarding accession to the Code suggest that a decision has

already been made that all generators should accede to the Code and suggest that a financial accommodation (regarding the deposit obligation) be applicable to small generators with PPAs.

### ***Commission's Response***

*Accession to the Code means joining and trading under the Code. The Commission and the Settlement System Administrator have put various steps in place including a de-minimus level, an agent procedure AP12, the ability to make long term standing bilateral contracts and are considering the issue of security cover, therefore smaller players will not be disadvantaged. Secondly it is inappropriate that smaller generators who trade with the independent sector would have different requirements to those trading with ESB PES.*

*The Commission considers that the issue of the PPAs is for the consideration of the supplier and generator in question.*

*The Commission is currently considering the issue of wind above the 30MW site limit and how they should trade, under a separate consultation process.*

*The CHP issues have been dealt with in the intervening period. The Commission's decision was published on the 9<sup>th</sup> December 2001 and is available on its website (<http://www.cer.ie/CER01155.doc>).*

### **Efficiency**

15. The point was made that in the absence of an explanation as to the efficiencies which are likely to accrue to the competitive market, it would appear that the additional regulatory burden would not be offset by any benefit to the market.

### ***Commission's Response***

*The Electricity Regulation Act, 1999 Section 9 requires that the Commission develop a trading system in electricity. The Commission is of the opinion that all parties above a certain threshold should have to trade in the same manner. The Commission has put a number of processes in place to minimise the impact to small players.*

### **The Nature of Generators with PPA's**

16. One respondent noted that generally under the terms of such a PPA, the supplier will purchase the entire net electrical

output of a generating plant. Thus it was asserted most of the return to a generator from such a PPA comprises consideration for making capacity available and, in order to incentivise the generator, the PPA would usually impose penalties for failing to achieve a guaranteed level of capacity availability. Therefore, the respondent asserted that the contractual terms of this type of PPA have the result that such generators:

- have no control over nominations to the transmission system operator and
- have no need to participate in the trading arrangements which are subject to the Code or to operate in the sector of market to which the trading system applies.

### ***Commission's Response***

*These issues have been dealt with by creating limits under which units and sites are not centrally dispatchable. Units and sites above these thresholds have to act in accordance with the Code, including nominations as they have an impact on the transmission system and the Transmission System Operator (TSO) has a requirement to balance the system at all times. The Commission has however allowed for an agent to make the nominations on a generator's behalf.*

### **Imbalances and Nominations**

17. One respondent noted that individual wind turbine generators are maintained on a regular basis and this generally requires the generator to be shut down. In addition, to this faults occur which can affect one or more turbines resulting in reduced wind farm output. However the remainder of the farm will continue to operate. This point is of importance if half-hourly nominations were to be required but would not be of major significance if the settlement mechanisms referred to in the last two paragraphs of 3.1 above were implemented. Therefore, the respondent advocated that if half-hourly nominations of farm output were to be required then each wind turbine generator should be classified as a unit in its own right.

18. One respondent commented that the Trading and Settlement Code is based fundamentally on generators nominating in advance what they will produce at a specified time in the future; the time period concerned being half-hour intervals. However it was pointed out that wind speed, like many other weather phenomena, is not something that can be forecast with even a moderate degree of

confidence or accuracy from day to day. Obviously to nominate output from a wind farm over a day in advance and expect to have any reasonable probability of actual output being similar for specified half-hourly intervals would be an impossible task for the farm owner and would ultimately be misleading if taken as an accurate and realistic nomination by the TSO. Therefore the respondent argued that any attempt to put such a mechanism in place for wind generated electricity and associate it directly for the half-hourly intervals with top up and spill prices would be a severe penalty on the producers and entirely contrary to the Governments national policy on renewable energy.

19. In the discussion of possible modifications to the Code arising from the proposals there is discussion of the settlement of imbalances through Topup and Spill arrangements, possibly through the use of an Aggregator. We cannot understand how this can be relevant for a project whose PPA provides for a guaranteed offtake of all electricity generated. There is simply no requirement for Topup and Spill. Since, as far as we are aware, all projects with PPAs with the ESB PES have such guaranteed offtake contracts, such discussion on Topup and Spill is confusing and irrelevant. We would be grateful for clarification on this point.
20. One respondent noted that the capacity of the generator is not available for nomination by the generator, other than on the instruction of the supplier. It was argued that electricity dispatched by it is not available for trade in the energy market since any and all energy dispatched by it has been pre-purchased by its supplier. Therefore, the generator does not need to participate in the energy balancing market, as there will never be a difference between its final contract quantity and its units' tradable volume.
21. One respondent stated that a generator with a PPA, suffers an instructed imbalance, it will suffer penalties under both the PPA and the Code. If it has a positive instructed imbalance, the energy produced will form part of the output pre-sold to the supplier and accordingly, the incremental costs of generating such energy will be due to the supplier. If it suffers a negative instructed imbalance it will be obliged to make a payment to the TSO, but will not (under the terms of its PPA) be permitted to trade in the units forgone. There are also likely to be penalties payable by the generator to the supplier under the PPA as a result of operating at an instructed imbalance.

22. The respondent commented that a generator would probably also suffer a double penalty arising from an uninstructed imbalance. It was asserted that if it suffers a power shortfall it will most likely be subject to a penalty under its PPA (for failing to reach its nomination). It will also be obliged under the Code to purchase top up from ESB Powergen which is an additional and unnecessary cost. Generators may not benefit from trading in spill as any “excess” they produce would be part of the energy pre-purchased by their supplier. None of the reasoning behind the existence of an energy balancing market has any meaning when applied to generators operating under a PPA since, because any energy they generate has been pre-purchased, the need to purchase top up or opportunity to sell spill does not arise.

### ***Commission’s Response***

*The Commission made a decision to implement Standing Bilateral Contracts in the settlement system. This means that a generator can say that all of its tradable quantity be traded with a certain supplier, irrespective of output level. This means that the generator never enters top-up and spill and has no additional administration, in particular as an agent can act on their behalf.*

*In addition, only centrally dispatchable units have to make nominations or submit INC and DEC bids and receive imbalances. Thus most generators with PPA’s will not face this issue. The Commission is currently considering the issue of wind above the 30MW site limit and how they should trade, under a separate consultation process.*

#### **a. Dispatchable Units**

23. One respondent noted that the Commission proposes that all dispatchable generating units be required to sign up to the Code with the proposal stating as the sole reason for this that any generator subject to central dispatch by the Transmission System Operator may impact upon constraint costs and needs to be included in the TSO’s *ex post* unconstrained schedule (EPUS). The respondent queried the meaning of this statement. It was argued that it is not the case that a generator may impact upon constraint costs simply because it is subject to central dispatch. Generators with PPAs, for example, are a category of generator, which regardless of whether or not they are centrally dispatched, will not have such an impact.

24. **Constraint costs:** These are the costs to the TSO (which are apparent from EPUS) of resolving constraints *ex post* by clearing instructed imbalances at a generator's incremental and decremental prices. Where a Generator with a PPA has incurred an instructed imbalance, its incremental and decremental bids will have been made by ESB Powergen through the EMC.
25. Accordingly, the incremental and decremental prices of such a generator are received and paid by ESB Powergen. These generators do not, therefore, impact upon constraint costs other than through ESB Powergen which should be treated as the generator for the purposes of the Code. The fact that generators with PPAs are subject to central dispatch is not a material point and does not mean that the generating capacity of such generators should be included in EPUS other than as an amount available through ESB Powergen.

### ***Commission's Response***

*The Commission considers that centrally dispatched or greater than 10MW generators have some impact on the system in terms of constraint costs. There are generators who have PPAs with ESB PES, and who are not part of ESB PowerGen. Therefore it would not be appropriate for them to trade as part of ESB PG's portfolio of plant. However, it is the case that where a party is purchasing all the electricity from the generator there may be a case for the purchaser to act as an agent as they are the end user who ultimately gains or loses in financial terms where INC and DEC payments are made.*

### **Sector issues**

26. One respondent commented that generators with PPAs do not fall within the scope of the independent sector, which is the sector of the market to which the trading system applies. The respondent noted that, the policy direction issued by the Minister for Public Enterprise on 27 July 1999 in accordance with Section 9(1)(a) of the Electricity Regulation Act 1999 defines the independent sector as all suppliers (other than the Public Electricity Supplier (PES)) and all generators (other than ESB generating plant contracted to ESB PES). The Commission clarified its understanding of this statement in its paper "Summary comments/responses on proposals for an electricity trading system for Ireland" dated 9 December 1999 as meaning that "generating capacity not supplying the PES will be part of the independent system". Therefore, the respondent argues generators with PPAs

are part of the franchise (and not the independent) sector as their capacity is not available to the independent sector or, indeed, to the generators themselves.

### ***Commission's Response***

*Section 9 of the Electricity Regulation Act, 1999 states that "following a public consultation process ... 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". This makes no distinction between ESB PG, ESB PES, the independent sector or those on long term PPAs.*

*The Commission notes that ESB PG and ESB PES trade through the trading system and therefore it is not merely a system for the independent market.*

#### **a. Equality of treatment**

27. One respondent raise the issue of the difference made between AER1 projects, AER3, Thermie and TPA generating companies as an area of concern. Presently the respondent stated TPA generators, which operates purely as generator, in a similar fashion as to the AER projects, with a PPA under which all power produced is sold to a supply company, has to join the T+S code, whereas an AER generator does not have to join. The TPA generator has to put in place the Security of EURO 20,000, even though he is not trading on the market any more than an AER generator is. This is an unfair burden on the TPA generator.
28. One respondent stated that the requirement of independent generators to accede to the code but not PES contracted generators represents discrimination that is not fairly based on any other provision of the Electricity Regulation Act.
29. One respondent noted that while the ability of the CER to discriminate in favor of the renewable sector is very important, discrimination between renewable generators with state subsidized contracts to the detriment of those financed at no cost to the market is not justifiable.
30. One respondent acknowledged that all generators which have not pre-sold their capacity should be treated equally as clearly all such generators are licensed on the same terms and

compete with each other within the same framework. However the respondent commented that all generators with a PPA should also be treated equally as between themselves. Equality before the law, or the duty to treat all generators equally, does not mean a mechanical uniformity. Any such uniformity, in failing to appreciate the existence of categories naturally different, would work inequality in its result, rather than equality. Differences between the situations of generators may in justice call for a differentiated response to the dissimilarity. Therefore the respondent argued that the principle of equality may be breached not only by the unlike treatment of like situations but, by the converse, like treatment of unlike situations.

### ***Commission's Response***

*The Commission's decision creates a level playing field for all parties trading electricity. As regards equality of situations, the Commission notes that generators operating in the independent sector often have PPA's also.*

### **Inequality in Transmission Loss Adjustment Factors**

31. Another issue, which was raised, is the equality between AER1/Thermie generators and the difference of treatment of AER3 generators. It would appear that any generator, being it AER1, Thermie or AER3, which started generating before 19<sup>th</sup> February 2000, are not subject to site specific TLF's. Whereas AER3 generators, which connected after this date are subject to TLFs. The respondent noted that most windfarms are in areas with positive losses, those windfarms can be at a significant financial loss. Most AERs windfarms connected after the 19<sup>th</sup> February will therefore gain an unfair financial advantage over windfarms connected before 19<sup>th</sup> February 2000. In all cases the price/kWh will have been bid in before anything was known about TLFs. The financial models for the AER3 projects were decided by the developers in 1998, when the competitive bidding took place.
32. Another respondent noted that in relation to the requirement to establish more equality between generators of similar nature and particularly in relation to the proposals to require accession to the Code, they would like to draw the Commission's attention to a continuing case of inequality in relation to the treatment of transmission loss adjustment factors for some generators. The respondent argued that such an inequality should be amended should the Commission decide to require all generators to accede to the Code. In addition, it was asserted that there are good

grounds for addressing the inequality even if the Commission decides not to require such accession. The respondent noted that because of a decision by the Commission to exempt embedded generators connected before 19/2/00 from being subject to site-specific TLFs, some generation is suffering significantly. In effect it is providing a benefit to the system but is not being recompensed. Despite being a cornerstone of the TSC, some generators are not receiving recompense for the system benefits they provide. The stated reasons for exempting projects before 19/2/00 has been given in various CER papers, most notably Treatment of Transmission and Distribution Losses, 5 April 2000. Here it is stated “*existing embedded generators have been developed under different charging mechanisms and as their overall burden on the transmission system is so small, they have been exempted from the effect of transmission losses as a transitional arrangement*” (Footnote 3, Section 2.1).

33. The respondent noted that in some cases the benefit from such generation is not “so small” It is the view of the respondent that it is also not equitable to argue that the project was developed under a different mechanism. This can be illustrated by consideration of the AER 3 projects. The respondent further commented that it seems illogical to define a date for a cut-off point when all projects (whether connected before or after the cut-off date) will be responsible for either transmission losses (or savings). The respondent recognised that the CER decision regarding the exemption was a transitional arrangement and requested that the CER to revisit this decision.

### ***Commission’s Response***

*The issue of the application of Transmission Loss Adjustment Factors is beyond the scope of this decision and consultation. The Commission notes the comments and will consider them in the appropriate forum.*

### **Accession Deposit**

34. One respondent noted that to accede to the Code requires a deposit of 20,000 (there is no unit of currency specified in the Code). This sum appears to apply to all participants regardless of size. One respondent believed that a deposit system scaled proportionately in relation to the generators share of the country's total installed capacity would be a more equitable means of approaching this and would provide better security for the system

in relation to the risk and consequences of any generator defaulting for any reason.

35. One respondent commented that if the proposals that all generators will still individually have to pay Euro 20,000 as a deposit? If the latter, then we note the CER observations in CER / 00 / 12 (Discussion Paper on Green Issues, Section 6.3) that “the Commission recognises that the scale of the security deposit should in some way reflect the scale of the installed capacity and the potential imbalances of the generator”. If a project, by virtue of its PPA, has no imbalances, why should it be required to pay any deposit to cover for the possibility of default by a participant in the trading and settlement market?

### ***Commission’s Response***

*The Commission recognises the difficulty such a sum might present for very small players. The Commission has gone to consultation on this issue and will be taking these points into consideration and will make a decision in due course.*

### **Aggregators**

36. An "aggregator" as described in the consultation paper would simply increase the costs of small-scale generators and involve extra administration which is entirely unnecessary.
37. One respondent stated that they agreed with the CER’s proposals on the use of “Aggregators” for non-dispatchable units. However, the respondent noted that careful thought will be needed over the exact changes to the Code and that a full legal review of the proposed changes should be undertaken. The respondent included some thoughts on the way that Aggregators might be handled and some of the issues that will need resolution. The respondent noted that these thoughts are included as topics for discussion only and do not necessarily represent their final views on this issue. The respondent noted above that an “Agent” (as proposed for a dispatchable Generator) is different from an “Aggregator” for non-dispatchable Generators and therefore included proposed definitions for these two roles:
38. The respondent commented that if Aggregators are to accede to the Code as agents for the non-dispatchable generators, and undertake all Participant activities under the Code on their behalf, there may strictly be no need for the non-dispatchable generators

also to be signatories. Under Irish agency law, where an authorized agent enters into a contract on behalf of its principal, the contract will be between the principal and the third party. If the Aggregator discloses the non-dispatchable generator for whom it acts then only the non-dispatchable generator and not the Aggregator can sue or be sued under the contract. Liability can, however, be varied by express or implied agreement. Careful consideration would therefore need to be given both to the terms of any agency agreement and the terms of the Code to ensure that the desired result is achieved. A key question noted by the respondent was whether the Aggregator should, in addition to the provision of security cover, undertake any activities under the Code for the non-dispatchable generators collectively or only for each generator individually. Some of the issues that this question raises are considered further below in a section titled aggregator rules issues.

39. The respondent commented that if it is envisaged that the Aggregator or the non-dispatchable generators will carry out any activities under the Code on their own this will need to be clearly spelt out in the Code and in any agreement the Aggregator has with its principals. The terms of the latter could either be prescribed in the Code or negotiated between the parties, but in either case would need to be notified to other Code participants. In respect of any activities they undertake independently under the Code, non-dispatchable generators should also be signatories to the Code. In practice the respondent suspected that it may be desirable to have the non-dispatchable generators signed up to the Code in any event (although the Aggregator may save them from much of the day-to-day work of being a Participant).
40. The respondent believed that an Aggregator is unlikely to be willing to guarantee the non-dispatchable generators' debts. As set out above, where the Aggregator acts as agent for a non-dispatchable generator, it will not generally be liable for these debts unless the terms of the agreement specify otherwise. Again it is essential that the terms of the agreement, consistent with Code, clearly allocate liability to the principal to enable other Participants to pursue them individually for debts. This would strengthen the argument for the terms of the agency agreement being laid down as part of the Code, or at least for there being something in the Code that clearly indicates the boundaries of, and restrictions on, the terms of the agency agreement.
41. One respondent queried whether the Green Tracking rules apply across the Aggregator's portfolio of units or will it apply at a "principal" level. Although the green generation licence does not

- currently require a balance between green sales and green production, a change in the licence is proposed. If this requirement is set as a simple generator-level requirement then the Aggregator's work becomes more difficult.
- The respondent provided the following example. Consider the case where in the first half of the year where the Aggregator's green generators (Generating companies - "Gencos" A, B and C) produce 50MWhs and sells 45MWhs under contract and 5MWhs as spill. At the end of this period a new Genco D joins, but Genco B terminates its agreement with this Aggregator and joins another. In the second half of the year the Aggregator's green generators (Gencos A, C and D) produce 40MWhs, sells 45MWhs under contract and buy 5MWhs of Top Up. For the Aggregator 90MWhs was produced and 90MWhs was sold. But, what happens in regard to Gencos B and D?
  - The respondent stated that possibly an obligation has to be made to track output and bilateral trades at either Unit or at Genco level. This makes the questions about Top Up entitlement and Tradable Quantity moot for Green Generators. The respondent noted that because of the Green Tracking issue, it may be advisable to prohibit a single Aggregator agency agreement from covering both green and non-green trading.

## **Default Provisions**

42. One respondent raised the issue of default provisions commenting that the application of the default provisions in the Code need careful consideration. It was remarked that it is difficult to give a view at this stage without analysis of the various events that might trigger default. Much will of course depend upon the precise role that is given to the Aggregator (in particular the extent to which it undertakes activities under the Code on behalf of non-dispatchable generators collectively) and how any payments will flow. As a general view, however, the respondent commented that events of default fall into three categories:
43. where the non-dispatchable Generator fails to fulfil its own obligations under the Code (for instance, failure to maintain a generation licence);
44. where the Aggregator, acting as agent for the non-dispatchable Generator, fails to fulfil the generator's obligations under the Code (for instance, failure to pay for Top Up purchases);

45. where the Aggregator fails to fulfil its own obligations under the Code (for instance, the Aggregator becoming insolvent).
46. The respondent commented that it would appear sensible that in the event of a default under case 1 the particular non-dispatchable generator should be the “defaulting participant”. This again strengthens the argument that the generator should be a party to the Code. It would also appear sensible that in the event of a default under case 2, the particular non-dispatchable Generator (or, if the Aggregator is acting collectively on their behalf, the non-dispatchable Generators collectively) should be the “defaulting participant”, as generally only they would be liable under the contract and only they could take action against the agent. The respondent noted that in case 2 there is a danger of tarring all the non-dispatchable generators with the same brush, even though only one or the Aggregator may be at fault. This may, however, simply be the risk that goes with appointing an Aggregator. In case 3 the non-dispatchable generators would simply need to appoint a new agent.

## **Licence Requirement**

47. One respondent noted that in the accession process there is a requirement for the applicant to either demonstrate to the SSA that it has the relevant licence or for the CER to inform the SSA that a licence is not required. An Aggregator will, most likely, not have a licence or require a licence. Is it necessary for the SSA to ensure that the Aggregator’s principals have the relevant licences or is it sufficient to say that an Aggregator can only act on behalf of principals that have the relevant licence?
48. The respondent noted that the Code in 10.3 (Compulsory termination of participation), sub-paragraph (A)(vii) allows for compulsory termination where: “where the Licence granted to the Defaulting Participant is determined or revoked or otherwise ceases to be in force...”. If it is decided that the Aggregator’s principals also need to become parties to the Code then this provision can still be made to apply.

## ***Commission’s Response***

*The Commission has opted to consider the Aggregator issue in conjunction with the security cover consultation and consequently has not taken any decision on the Aggregator issue in the Accession to the Code decision.*

*These comments will be considered when deciding on the way forward regarding security cover and/or aggregation.*

## **49. Proposals**

### **a. Dispatchable Units**

50. One respondent suggested that generators with dispatchable units appoint an Agent to act on its/their behalf in submitting nominations and receiving reports and notices. However, the respondent argued that it should be the Generator that is a Party to the Code in its own right and that all Settlement financial transactions should take place between the Generator and the SSA. In this respect the agency agreement for dispatchable Generators would be very different from that proposed for non-dispatchable Generators (as discussed below).
51. One respondent proposed that since a class of generator (i.e. generators with PPAs), is identifiable as a class for which it would be impractical and inequitable to require accession to the Code, they should not be required to accede to the Code and the Code should be modified so as to expressly exclude that class. Standard Condition 14 of a licence to generate electricity states that the generator must accede to the Code in so far as the Code is applicable to the generator. In the case of generation with a PPA the Code can not be applicable save in a highly artificial manner.
52. It was alternately proposed by one respondent that the Commission amend the Code so that it applies in an appropriate manner to generators with PPAs. The respondent noted that when the Code was prepared it expressly acknowledged that the arrangements which it sets out were incomplete and imperfect and that it may be modified as required. The respondent stated that it understands that ESB Powergen plant at present adheres to a modified version of the Code, namely one that accounts for the differences to such plants of the top up and spill provisions and it was argued that the Commission should consider the possibility that a further version of the Code be developed for generation with PPAs.

### **a. Non-dispatchable Units**

53. One respondent raised the following specific questions:

- Will there be a *de-minimus* limit whereby units below a certain size will not be covered by the Code? The respondent argued that the question of exemption for small units could be considered.
- Will the existing generators for the AER plants be required to accede to the Trading and Settlement Code (either pre-19 February 2000 commissioning date or post-19 February 2000 commissioning date)? If this is the intention, the respondent suggested that this needs to be a carefully planned process in order to ensure that their accession goes smoothly. The respondent suggested a collective briefing to these generators to ensure that generators understand the workings of the Code and their obligations and rights under the Code.

54. One respondent outlined an alternative proposal to that of the Commission, which was preferably to them, asserting that the proposal will allow all electricity traded in the Irish market to be accounted for while at the same time recognising the realities of generator-supplier contracts. The respondent argues that electricity cannot be traded with final customers by both the generator and the supplier who retails it. If a generator buys from a generator, the supplier also takes over the final selling of the power. In this analysis, the supplier "produces" the electricity for sale. Obligations to supply final customers in terms of timing and capacity therefore rest with the supplier. Ultimately the respondent commented that it would make much more sense that only those holding supply licences should have to accede to the Code.

55. As a consequence of the above, the respondent made the case that the proposal to aggregate generators is unnecessary as these will almost certainly already be aggregated through their contracts with suppliers. The PES will aggregate all AER generators. Similarly, private suppliers will aggregate their PPAs. Aggregation of generators, and the attendant changes to the Code, are then unnecessary if the aggregating supplier has acceded to the Code. Those generators who have already acceded to the code and do not hold a supply licence could be reimbursed their E20,000.

56. One respondent argued that the most efficient way in which to deal with PPAs involving the PES is not to make them subject to the application of the Code as there is no clear benefit in doing this. Should the CER consider that it has jurisdiction to impact on the PES PPA's then the most efficient manner to do so would be by way of express exemption from the Code. This is particularly

applicable to non-dispatchable units, which form the vast bulk of units covered by ESB PPAs.

57. One respondent noted that some of their generation had had to accede to the Trading and Settlement code and lodge the security of 20,000 Euro, whereas earlier units had not. Both projects have a PPA with a guaranteed off take and neither of the projects, trade in the Settlement Market and neither project have a supply licence. The respondent suggested that a generator, which is not trading on the Trading and Settlement market, should not have to lodge a security and suggested that, only companies holding supply Licences and Trading on the Market, should have to pay the security. Secondly, if security is maintained it should be scaled according to size. Thirdly if the rules are changed, any change should be retrospectively to the 19<sup>th</sup> February 2000 to enable generators to reclaim the security already paid and to resign from the code.
58. Another respondent echoed this sentiment stating that if the CER should decide to change the accession to the T+S Code, and the associated Security, in the interest of fairness, the change must be made retrospective, so the TPA generators, which have already had to join and pay the Security, get their money refunded.
59. One respondent argued that any generator, which has a total uptake PPA should not have to pay a Security for the possible default on the T+S market, on matters he is not involved in and has no control over. It also poses a totally unacceptable risk exposure on a small project, if one of the large traders defaults on its payments. ScanEES suggest that only companies trading on the market, presumably companies holding a Supply License, should have to join the T+S Code and only these should pay the Security. Other generators could possibly Comply with the Code as required under a Generation License.

### ***Commission's Response***

*The Commission and the Settlement System Administrator have put various steps in place including a de-minimus level, an agent procedure AP12, the ability to make long term standing bilateral contracts and are considering the issue of security cover, therefore smaller players will not be disadvantaged. Secondly it is inappropriate that smaller generators who trade with the independent sector would have different requirements to those trading with ESB PES. Accession to the Code means joining and trading under the Code.*

*The decision states that all shall accede where they are centrally dispatched or above 1MW. The Commission considers that it is a good idea to fully brief and prepare the generators in question but notes that there is a clear process in place already under Agreed Procedure 09.*

*The Commission notes that it does not consider generators with PPAs to be a different class of generator as there exist independent generators and ESB PG plant with PPA's with both the independent sector and ESB PES.*

*The Commission notes that it has decided not to progress with the Aggregator issue in its published decision regarding accession to the Code on the basis that it is examining the issue in conjunction with the ongoing consultation regarding security cover.*