



Commission for Energy Regulation

An Coimisiún um Rialáil Fuinnimh

**PUBLIC SERVICE OBLIGATION LEVY 2008/2009
A DECISION BY THE COMMISSION FOR ENERGY
REGULATION**

DOCUMENT TYPE:	Decision Paper
REFERENCE:	CER/08/129
DATE PUBLISHED:	23 rd July 2008
QUERIES TO:	iburke@cer.ie



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*The Commission for Energy Regulation,
The Exchange,
Belgard Square North,
Tallaght,
Dublin 24.*

www.cer.ie

CER – Information Page

Abstract:

Section 39 of the Electricity Regulation Act 1999 sets out the legal basis for the Public Service Obligation (the PSO) levy in Ireland. Statutory Instrument No. 217 of 2002 made under Section 39 requires that the Commission for Energy Regulation (the Commission) reviews the costs associated with the PSO and sets the associated levy for the required period.

Further to the Commission's proposed PSO levy paper (CER 08/092) for the upcoming PSO period published on the 16th of June 2008, this paper sets out the Commission's final decision on the level of the PSO levy for the period 1st of October 2008 to the 30th of September 2009.

Target Audience:

Electricity generators and suppliers, including those participating in the Renewable Energy Feed in Tariff, and electricity customers.

Related Documents:

- Electricity Regulation Act 1999
- S.I. No. 217 of 2002 - Electricity Regulation Act 1999 (Public Service Obligations) Order 2002 as amended
- S.I. No. 284 of 2008 – Amending S.I. No. 217 of 2002 for the REFIT
- Public Service Obligation (PSO) Proposed 2008/2009 Charges (CER 08/092)
<http://www.cer.ie/en/renewables-current-consultations.aspx?article=d96d9b61-b24f-414e-b93e-abe0f4ce561e>
- Arrangements for the Public Service Obligation Levy - A Consultation Document (CER 08/093)
<http://www.cer.ie/en/renewables-current-consultations.aspx?article=39ce537a-1620-486d-b93e-bc70ab5934ca>
- Relevant EU State Aid Clearance Decisions

State Aid N 475/2003: Capacity and Differences Agreements (CADA) [Link](#)
State Aid N 553/2001: AER [Link](#)
State Aid N 571/2006: RES-E Support i.e. REFIT [Link](#)
State Aid N 826/2001: AER I-V [Link](#)

- Previous PSO Decision Papers
<http://www.cer.ie/en/renewables-decision-documents.aspx#PSODecisions>
- PSO Notifications

For further information on this decision paper, please contact **Jamie Burke** (jburke@cer.ie) **Analyst - Environment**, at the Commission.

Executive Summary

The Minister for Communications, Energy and Natural Resources (Minister), in accordance with relevant legislation, has set out a Public Service Obligation (PSO) which requires ESB to purchase electricity from specified sources, including sustainable, renewable and indigenous sources. The PSO levy is charged to all electricity customers and is designed to recoup the additional costs incurred by ESB in meeting this obligation.

In May of 2006 the Minister announced a new support scheme for renewables replacing the AER support mechanism. Under the Renewable Energy Feed in Tariff (the REFIT) all suppliers that contract with qualifying renewable generators are entitled to receive payments to cover the costs of balancing undispatchable output from renewable generation stations, and the opportunity cost of contracting with such generators where it arises. In addition, where suppliers contract with certain technologies other than large scale wind, a technology difference payment will arise to promote diversity in our renewable generation portfolio. The necessary amendments to SI. No. 217 of 2002 have now been made and, on this basis, the costs associated with the REFIT as provided for in the governing legislation can now be recovered via the PSO levy.¹

Under Section 9(2) and (3) of the Electricity Regulation Act 1999, (Public Service Obligations) Order (Amended) 2002, (SI 217 of 2002), the Commission is obliged to approve supplier's estimated additional costs to be incurred in complying with the Public Service Obligation imposed on suppliers and apportion those costs, recoverable from all final customers of electricity, based on the proportion of maximum demand attributed to each category of demand (Domestic, Small/Medium and Large).

¹ SI 284 of 2008 – Amending S.I. No. 217 of 2002 for the REFIT

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1.0 Introduction

1.1 The Commission for Energy Regulation

The Commission for Energy Regulation ('the Commission') is the independent body responsible for overseeing the regulation of Ireland's electricity and gas sector's. The Commission was initially established and granted regulatory powers over the electricity market under the Electricity Regulation Act, 1999. The enactment of the Gas (Interim) (Regulation) Act, 2002 expanded the Commission's jurisdiction to include regulation of the natural gas market, while the Energy (Miscellaneous Provisions) Act 2006 granted the Commission additional powers in relation to gas and electricity safety. The Electricity Regulation Amendment (SEM) Act 2007 outlined the Commission's functions in relation to the Single Electricity Market (SEM) for the island of Ireland. This market is regulated by the Commission and the Northern Ireland Authority for Utility Regulation (NIAUR). The Commission is working to ensure that consumers benefit from regulation and the introduction of competition in the energy sector.

1.2 Purpose of this Paper

The purpose of this paper is to outline and describe the Commission's decision with regard to the level of the PSO levy for the upcoming PSO period of the 1st of October 2008 to the 30th of September 2009. The Commission has carried out a public consultation on this topic, with a proposed decision regarding the PSO levy (CER 08/092) for the upcoming PSO period being published on the Commission's website on the 16th of June 2008, and has considered fully the comments and submissions received. Issues raised throughout the consultation process are addressed in this decision paper.

1.3 Comments Received

The Commission received fourteen submissions to the Proposed Levy paper (CER/08/092). Submissions were received from the following organisations or individuals:

- Viridian Power and Energy Limited
- Airtricity
- Bord Gáis Energy Supply
- Q.K Cold Stores Limited
- Dawn Farm Foods
- EMC Ireland Limited

- Charleville Foods
- Dawn Meats (Exports) Limited
- Meadow Meats Limited
- Conocophillips Whitegate Refinery
- Glenpatrick Spring Water Company Limited
- Dawn Country Meats

The Commission has published each of the responses received from the parties listed above with this decision paper, except in cases where the respondent has requested that their submission be kept confidential.

1.4 Background Information

Under Section 39 of the Electricity Regulation Act 1999 the Commission is responsible for the imposition of public service obligations on the Board, licence holders and holders of permits under Section 37 of the Principal Act.

S.I. No. 217 of 2002 was made by the Minister under Section 39 which sets out more detail in relation to the above matters. S.I. No. 217 of 2002 provides, *inter alia*, for the calculation of the PSO levy by the Commission to provide for the recovery of costs by relevant parties in accordance with the notifications to the EU regarding the various mechanisms supported by the PSO.

On the 16th of June 2008, the Commission published two papers concerning the PSO levy. The first one as previously mentioned was the “PSO Levy proposed 2008/2009 Charges” paper (CER 08/092) which set out a proposed PSO levy figure of €55,744,912. The second paper, “*Arrangements for the Public Service Obligation Levy – A Consultation Document*” (CER 08/093), consulted on the following;

- the ex-post calculation of the correction factor to apply in calculating the actual costs incurred by all parties complying with their obligations in relation to the PSO in the SEM;
- the ex-ante benchmark price for the REFIT, and
- and the revisions required to the current procedures for the collection and distribution of PSO monies in light of the introduction of the REFIT.

Links to both of these papers can be found in the “Related Documents” section of this paper.

This paper sets out the decision taken by the Commission in relation to the 2008/2009 PSO levy following the publication of CER/08/092.

1.5 Structure of this paper

This paper is structured in the following manner:

- **Section 2.0** outlines the detail of the substantive issues which the Commission sought views on and is now making its decision on;
- **Section 2.2** provides an overview of the key issues raised by respondents to CER/08/092 and the Commission's responses to same;
- **Section 2.2.2 provides** a summary of the decision being made by the Commission on the level of the PSO levy for 2008/2009; and
- **Section 3.0** outlines the next steps with regard to the PSO.

1.6 Other Relevant Information

Any queries on the decision as set out in this document regarding the PSO levy for 2008/2009 should be directed to the following, preferably in electronic format:

Jamie Burke
Analyst - Environment
Commission for Energy Regulation
The Exchange
Belgard Square North
Tallaght
Dublin 24

E-Mail: jburke@cer.ie
Tel: 00 353 1 4000800
Fax: 00 353 1 4000850

2.0 PSO Levy 2008 / 2009 Inputs

2.1 Introduction

Section 39 of the Electricity Regulation Act 1999 sets out the legal basis for the Public Service Obligation (the PSO) levy in Ireland. Statutory Instrument No. 217 of 2002 made under Section 39 requires that the Commission for Energy Regulation (the Commission) review the costs associated with the PSO and set the associated levy for the required period.

For the purposes of the “PSO Levy Proposed 2008/2009 Charges” paper (CER 08/092), the Commission had forecasted a benchmark price for the upcoming PSO period of the 1st of October 2008 to the 30th of September 2009 of €95.37 per MW/hr. This figure is an annual, average time-weighted price calculated using the validated PLEXOS model. In calculating this price, the model was run thirty times using fuel, carbon and exchange rate averages over a two week period (8th to 21st May 2008), based on publicly available indices as referred to in the Directed Contracts process.

In the proposed levy paper the Commission committed to the benchmark price being updated prior to this decision paper on the final PSO Levy for 2008/2009. The proposed levy paper stated that, *“this benchmark price will be updated prior to the Commission’s decision paper on the final PSO Levy for 2008/2009 in July. The updated time weighted average SMP for the period 1st October 2008 to 30th September will be based upon average fuel, carbon and exchange rates for the period 30th May to 12th June 2008. The methodology for setting the benchmark price for the final decision on the PSO for 1st October 2008 to 30th September 2009 will also be used for setting the reserve prices in the PSO contract auctions being held in the latter half of June”*.

Regarding the capacity element of the benchmark price, the proposed PSO levy paper also noted that the revenues associated with the capacity payment were estimated for the relevant period for each plant supported under the levy. These figures were calculated in advance of the finalisation of the Annual Capacity Payment Sum for 2009 and were therefore based on the most up to date information available prior to this decision paper.

Section 4.1 of the proposed levy paper proposed a PSO levy of €55,744,912 for the period 1 October 2008 to 30 September 2009. Appendix 1 of the proposed levy paper set out the detailed allocation of the costs by customer category and described the components of the PSO levy.

2.2 Overview of Responses to Proposed 2008/2009 PSO levy Paper

The majority of the respondents listed above raised concerns regarding the proposed 'resurrection' of the PSO levy and the effects that possible energy price increases, in addition to the proposed PSO levy, would have on the economic viability of their companies.

One respondent requested that the Commission allow suppliers an opportunity to finalise their output estimates for REFIT for the upcoming PSO Levy by extending the deadline for of REFIT submissions to the Commission to the 11th of July 2008. This request was made to the Commission on the respondent's belief that extending the deadline would reduce the R-factor to as low a level as possible, which would in turn be in the interest of suppliers and the general public.

Another respondent requested that the Commission provide a greater breakdown of the various inputs to the 2008/2009 PSO Levy, as listed in Schedule 1 of the Proposed Levy Paper. The respondent requested a breakdown of the following PSO costs; Lough Ree Power Station, West Offaly Power Station, Capacity 2005 and a further breakdown of the R-Factor being carried from the PSO period of 1 January 2007 to 31 December 2007. Finally, this respondent expressed the opinion that the large PSO increases "*do not lend themselves to a transparent, open and fair market and certainly not to a competitive and efficient market*".

2.2.1 Commission's Response to Comments

With regard to the first issue respondents raised; it is important to clarify that the PSO levy is not being 'resurrected' for the period of the 1st of October 2008 to the 30th of September 2009. There was a PSO levy for both PSO periods of the 1st of January 2008 to the 30th of September 2008 and the 1st of January 2007 to the 31st of December 2007. However, in consideration of the level of costs to be recovered via the PSO levy for both PSO periods of the 1st of January 2008 to the 30th of September 2008 (€1,891,4360) and the 1st of January 2007 to the 31st of December 2007 (€2,786,166) and the resultant very low levy, the Commission decided that the PSO levy for both PSO periods would be set to zero. This decision was made by the Commission on the basis that the administrative work involved in collecting the levy from all customers would have been unduly onerous relative to the costs to be recovered. It was decided that PSO costs for both PSO periods would be rolled-over to the following year's allowed PSO costs.

It should be noted that the Commission acts as the auditor of the PSO levy and as such carries out the function of calculating the level of the PSO on a period-by-period basis, as dictated by the relevant PSO legislation listed in the "Related Documents" section of this paper. It does not lie within the remit of the

Commission to determine the schemes that are supported by the PSO or the nature of those schemes. This is a matter for government, subject to state aid clearance from the EU.

Regarding the request to extend the timeline for receipt of submissions from suppliers participating in the REFIT, the Commission decided to allow parties who had entered into REFIT contracts, and who were not in a position to submit this information before the Commission's previous deadline of the 14th of May, to do so. The Commission also notes that this step was outside of the legal requirements of the PSO and that it was an exceptional one in the circumstances. The Commission also notes that this will not be the case going forward with regard to REFIT submissions for future PSO periods, where full submissions will be made in accordance with the timelines indicated by the Commission, in accordance with legal requirements.

It should be noted that the Commission in the Proposed Levy Paper (CER 08/092), provided a greater breakdown of the inputs of the PSO levy than has ever been provided to industry to date. The Commission considered it necessary to provide a breakdown of the R-factor this year considering its high level and to promote transparency. Separate from this decision, the Commission will review the level of the breakdown provided to industry in future PSO papers, subject to ensuring that all sensitive commercial information of any party involved in the PSO is kept confidential.

The Commission will also attempt to ensure that all relevant PSO information, where applicable, including state aid clearance decisions from the EU, the SI covering the PSO, the PSO Notifications, are published in the public domain for all parties to view.

2.2.2 Commission's Decision

The total amount of the estimated additional costs recoverable via the 2008/2009 PSO levy, which will run from the 1st of October 2008 to the 30th of September 2009 is **minus €13,954,244**. This figure differs from the figure included in the proposed decision paper, published on the 16th of June, due to the increase in the benchmark price of €95.37 MW/hr to **€112.25 per MW/hr** and the effect this increase has had on the various inputs of the PSO, as discussed in section 2.3 below.

The Commission considers it appropriate to set the PSO Levy to zero in light of this negative figure and of the governing legislation.

Appendix B of this paper sets out the detailed allocation of the estimated additional costs by customer category and describes the components of the PSO levy. As evident from the table showing the components of the levy, the net PSO

levy for the upcoming PSO period is **minus €13,954,244**. The intention on the behalf of the Commission is that this money owed to the 2008/2009 PSO will be brought forward into the R-Factor of the 2010/2011 PSO, in accordance with the 2000 PSO Notification.

Therefore, the Commission has determined the following payments by customers for the 1st of October 2008 to the 30th of September 2009 to be as follows:

Customer Category	Levy Amount
Domestic customers	€0.00/customer
Small commercial customers (maximum import capacity of less than 30kVA)	€0.00/customer
Medium and large customers (maximum import capacity of equal to or greater than 30kVA)	€0.00/kVA

Reason for Decision

The total amount of the estimated additional costs recoverable via the 2008/2009 PSO levy, which will run from the 1st of October 2008 to the 30th of September 2009 is **minus €13,954,244**.

In light of the fact that the above figure is a negative one and that, therefore, no collection of monies from final demand customers is required, the Commission has decided to set the PSO Levy to zero. This decision is also made in the context of the legislation governing the PSO. The intention is that the negative PSO amount of €13,954,244 will be brought forward into the R-Factor of 2010/2011, in accordance with the 2000 PSO Notification.

Further to this decision the Commission will examine the legislation governing the PSO, with a view to advising the DCENR what changes are deemed appropriate in the context of future negative PSO Levies.

2.3 Detail of the PSO Levy Decision for 2008/2009

For the purposes of this decision paper (CER08/129) the Commission has forecasted that the benchmark price for the upcoming PSO period of the 1st of October 2008 to the 30th of September 2009 will be €112.25 per MW/hr. This figure is an annual, average time-weighted price calculated using the validated PLEXOS model. In calculating this price, the model was run thirty times using the most up-to-date fuel, carbon and exchange rate averages over a two week period

(23rd of June to the 4th of July 2008), based on publicly available indices as referred to in the Directed Contracts process. The Commission deems it appropriate in the context of the continuing upward trend in fuel prices, to set the benchmark price on this basis, rather than on the basis proposed in the Proposed Levy Paper (CER 08/092).

The capacity revenues included in this paper are based upon updated information used as inputs to the calculation of the Annual Capacity Payment Sum for 2009 and published for consultation in June². The proposed levy paper also noted that capacity has been added for energy traded in, and outside of, the pool. Generation plants will have to purchase carbon allowances in excess of those allocated to them for free under the National Allocation Plan (NAP). In calculating emissions costs for the 2008/2009 period, the Commission assumed in the proposed levy paper a carbon allowance cost of €25.11 per tonne for the year 2008 and €25.72 per tonne for the year 2009, based on prevailing market prices using the validated PLEXOS model and published indices. For the purposes of this decision paper, using the same method of the Proposed Levy Paper, a carbon allowance cost of €25.59 per tonne for the year 2008 and €26.54 per tonne for the year 2009 has been assumed.

2.4 Summary

The Commission has decided that the PSO levy for the 1st of October 2008 to the 30th of September 2009 will be **set to zero**. The intention is that the €13,954,244 owed to the 2008/2009 PSO will be brought forward into the R-Factor of the 2010/2011 PSO, in accordance with the 2000 PSO Notification.

3.0 Conclusions and Next Steps

3.1 Summary

This paper sets out the Commission's decision with regard to the level of the PSO levy for the upcoming PSO period of the 1st of October 2008 to the 30th of September 2009. The Commission has carried out a public consultation on this issue, with a proposed PSO levy paper (CER 08/092) for the upcoming PSO period being published on the Commission's website on the 16th of June 2008. The Commission has considered fully the comments and a submission received,

² <http://www.allislandproject.org/en/capacity-payments-consultation.aspx?article=c992e67e-9ab7-4150-9729-de5edc8deb2c>

as noted above, and has responded in this paper to the issues raised by the various parties.

3.2 Next Steps

The decision on the consultation paper, “*Arrangements for the Public Service Obligation Levy - A Consultation Document*” (CER 08/093), will be made on the **1st of August 2008**.

Appendix A – Glossary of Terms

AER	Alternative Energy Requirement
Board	Electricity Supply Board
Commission	Commission for Energy Regulation
DCENR	Department for Communications, Energy and Natural Resources
NIAUR	Northern Ireland Authority for Utility Regulation
PSO	Public Service Obligation
RAs	Regulatory Authorities, being the Commission for Energy Regulation and the Northern Ireland Authority for Utility Regulation
REFIT	Renewable Energy Feed in Tariff
SEM	Single Electricity Market
SI	Statutory Instrument

Appendix B - Demand Allocation & Components of PSO Levy

Appendix B – Allocation of 2008 PSO Levy – 1st October 2008 to 30th September 2009

Customer Category	Individual Peak kW	% of total Individual peaks	PSO Allocation	Customer Numbers	Total MICs	12 Month Charge		Monthly Charge	
			€million			€customer	€kVA	€customer	€kVA
Domestic Profile	2,343,403	0.41	0.00	2,039,543		0.00		0.00	
Small & Medium Profile	638,141	0.11	0.00	177,482		0.00		0.00	
Large Profile	2,801,024	0.48	0.00		4,859,192		0.00		0.00

Note:-

PSO for 1st October 2008 to 30th September 2009 is made up of the following costs:-

	€
Lough Ree Power Station	3,731,000
West Offaly Power	(8,054,000)
AER	(58,400,000)
Peaking Capacity	4,146,000
Capacity 2005	5,500,000
Edenderry Power Ltd.	(34,200,000)
REFIT	24,417,383
Sub-Total	(62,859,617)
Other ³	48,905,373
Total	(13,954,244)

³ These costs include the administration costs for TSO, ESB CS, DSO and market participants and the associated 2007 R-Factor. R-Factors are corrections for over/under recoveries in PSO income in 2007.