



Commission for Energy Regulation

An Coimisiún um Rialáil Fuinnimh

## PUBLIC SERVICE OBLIGATION LEVY 2009/2010

DOCUMENT TYPE:	<b>Decision Paper</b>
DATE PUBLISHED:	31 <sup>st</sup> July 2009
REFERENCE:	<b>CER/09/119</b>
RESPONSES TO:	James Mc Sherry jmcsherry@cer.ie



Commission for Energy Regulation

An Coimisiún um Rialáil Fuinnimh

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

[www.cer.ie](http://www.cer.ie)

## CER – Information Page

### Abstract:

Section 39 of the Electricity Regulation Act 1999 ('the Act') sets out the legal basis for the Public Service Obligation (PSO) levy in Ireland. The Department for Communications, Energy and Natural Resources is responsible for determining PSO policy in line with the relevant State Aid Notifications to the EU. Statutory Instrument No. 217 of 2002 made under Section 39 requires that the Commission for Energy Regulation ('the Commission') calculates and certifies the costs associated with the PSO and sets the associated levy for the required period. The PSO levy takes into account the estimated and actual costs incurred in undertaking generation activities which are covered in the relevant PSO legislation, including costs associated with the Renewable Energy Feed In Tariff (REFIT) scheme. This decision paper sets out the PSO levy for the period 1<sup>st</sup> October 2009 – 30<sup>th</sup> September 2010.

### Target Audience:

Electricity generators and suppliers, including those participating in the REFIT scheme, and electricity customers.

### Related Documents:

- Electricity Regulation Act 1999  
<http://www.irishstatutebook.ie/1999/en/act/pub/0023/index.html>
- S.I. No. 217 of 2002 - Electricity Regulation Act 1999 (Public Service Obligations) Order 2002 as amended  
<http://www.irishstatutebook.ie/2002/en/si/0217.html>
- S.I. No. 284 of 2008 – Amending S.I. No. 217 of 2002 for REFIT  
<http://www.attorneygeneral.ie/esi/2008/B26313.pdf>
- Proposed 2009/10 PSO levy Decision CER/09/084  
<http://www.cer.ie/en/renewables-current-consultations.aspx?article=a46c025a-094c-4627-98e5-fec787c6753d>
- Proposed Approach to Setting the PSO benchmark Price in SEM AIPSEM- 07-240 PSO Consultation Paper: Published June 1st 2007

- PSO Benchmark Price Setting Methodology AIP-SEM-07-431 PSO Decision Paper : Published July 31<sup>st</sup> 2007  
<http://www.allislandproject.org/GetAttachment.aspx?id=d5e5c834-8551-4551-81df-f0cf94326045>
- Calculation of the R-factor in determining the PSO levy (CER 08/234)  
<http://www.cer.ie/en/renewables-decision-documents.aspx?article=39ce537a-1620-486d-b93e-bc70ab5934ca>
- Arrangements for the Public Service Obligation Levy – A Decision by the Commission for Energy Regulation (CER 08/093)  
<http://www.cer.ie/en/renewables-current-consultations.aspx?article=39ce537a-1620-486d-b93e-bc70ab5934ca>
- November 2000 Notification to the EU of PSO obligations to be imposed on ESB [Link](#)
- Relevant EU State Aid Clearance Decisions  
State Aid N 6a/2001: Peat Stations [Link](#)  
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>
- DCENR's Website with links  
<http://www.dcenr.gov.ie/Energy/Sustainable+and+Renewable+Energy+Division/>

For further information on this decision paper, please contact James Mc Sherry ([jmcsherry@cer.ie](mailto:jmcsherry@cer.ie)).

## **Executive Summary**

The PSO levy is charged to all electricity customers and is designed to recoup the additional costs incurred by ESB and other suppliers in meeting their obligations to purchase electricity from sustainable, renewable, and indigenous sources pursuant to the relevant support scheme, in accordance with the Electricity Regulation Act 1999 (Public Service Obligations) Order 2002 (SI No. 217 of 2002).

Under Section 9(2) and (3) of the Electricity Regulation Act 1999, (Public Service Obligations) Order (Amended) 2002, (SI No. 217 of 2002), the Commission is obliged to approve parties' estimated additional and administrative costs to be incurred in complying with the PSO and apportion those costs in a levy, 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). 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. 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.

This paper sets out the PSO levy to apply from 1<sup>st</sup> October 2009 to 30<sup>th</sup> September 2010.

## Table of Contents

1.0	Introduction .....	6
1.1	The Commission for Energy Regulation .....	6
1.2	Purpose of this Paper .....	6
1.3	Background Information.....	6
2.0	Submissions to Proposed Decision (CER/09/084) .....	9
2.1	Submissions on Proposed Levy and Commission’s Responses.....	9
3.0	PSO Levy 2009/10 – Key Considerations .....	13
3.1	Benchmark Price .....	13
3.2	Capacity.....	13
3.3	Emissions Trading .....	13
3.4	R-factor.....	14
4.0	PSO Levy 2009/10.....	15
	Appendix A - Demand Allocation & Components of PSO Levy.....	17

## **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 sectors. 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 outlines 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 PSO benchmark price and resulting PSO levy for the upcoming PSO period of the 1<sup>st</sup> of October 2009 to the 30<sup>th</sup> of September 2010.

### **1.3 *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 then 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.

The original Notification (November 2000) ('the Notification') whilst setting out the broad areas that may be covered by the PSO (as listed in Section 39 of the Electricity Regulation Act 1999), namely security of supply, use of indigenous fuel sources and environmental protection, refers specifically to the schemes

envisaged to be covered by the PSO at that juncture, i.e. the imposition on ESB of a requirement to have available to it the output of electricity generating stations using peat and stations using renewable, sustainable or alternative forms of energy.

Subsequent to the Notification, new schemes have been notified to the EU in accordance with Article 88(3) of the Treaty and Directive 2003/54/EC and have received state aid clearance. SI No. 217 has been amended by subsequent Statutory Instruments to provide for the recovery of costs under the PSO for such schemes. These included the recovery of costs associated with peaking plant and plant that entered the market under a competition held by the CER due to security of supply concerns. Most recently, REFIT has been notified to the EU and received state aid clearance. S.I. No. 284 of 2008 amends S.I. 217 of 2002 to take account of additional parties receiving support under the PSO.

In June 2007 the Regulatory Authorities ('the RAs') published a consultation paper, *Proposed Approach to Setting the PSO Benchmark Price in SEM: A Consultation Paper* (AIP/SEM/07/240). This was driven by the desire to align the processes for setting the benchmark prices for the PSOs in Ireland and Northern Ireland.

In July 2007 the RAs published the follow-up decision paper, *Proposed Approach to Setting the PSO Benchmark Price in SEM: A Decision Paper* AIP/SEM/07/431 the RAs decided that the benchmark price will be based on a series of forecast modelled pool prices using the same model as that adopted in determining directed contract prices. Both the software and inputs used to develop the modeling results are available to all market participants<sup>1</sup>. Finally, the paper states that there will be one price in Ireland and three separate prices in Northern Ireland.

Payments in relation to the REFIT scheme were first made under the 08/09 PSO levy. A number of areas relating to the calculation, collection, and distribution of the PSO levy were consulted upon as a result of suppliers other than ESB Customer Supply now being eligible for PSO supported payment. The Commission has issued decisions<sup>2</sup> in relation to the issues outlined therein.

The PSO levy is determined each year based on estimates of costs to be recovered by all relevant parties, relative to the PSO benchmark price. In line with the Notification, this amount is corrected retrospectively two PSO periods

---

<sup>1</sup> Visit [www.allislandproject.org](http://www.allislandproject.org)

<sup>2</sup> The consultations and decisions are available at the following link. CER/08/236 and CER/08/153 are the relevant decision papers. <http://www.cer.ie/en/renewables-decision-documents.aspx?article=39ce537a-1620-486d-b93e-bc70ab5934ca>

later, once actual, audited costs are verified and the true market price is known. The PSO levy in a given year is therefore composed of estimates for the upcoming PSO levy period and an adjustment ('R-factor') relating to PSO amounts two PSO periods previous.

The Commission published a proposed PSO levy decision paper for the 2009/10 PSO period on its website on 12<sup>th</sup> June 2009. This paper sets out the decision in relation to the PSO levy for the 2009/10 PSO levy period.



## **2.0 Submissions to Proposed Decision (CER/09/084)**

The Commission received ten submissions to the proposed PSO levy paper CER/09/084. It was requested that one submission not be published. The following submissions have been published with this decision paper:

- Bord Gáis Energy
- Cement Manufacturers Ireland
- Conoco Phillips
- Elfotec Technology Ltd
- IBEC Large Energy Users
- Irish Hotels Federation
- Lufthansa Technik
- Novertis Ringaskiddy Ltd
- Viridian Power and Energy

### **2.1 Submissions on Proposed Levy and Commission's Responses**

In the following section, an outline of the submissions to the proposed PSO levy paper is given. Each issue raised is then followed by the Commission's *italicised* response.

- i) Some respondents raised concerns regarding the proposed re-introduction of the PSO levy.

*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.*

*It is important to note that the PSO levy is not being re-introduced for the period 1<sup>st</sup> October 2009 – 30<sup>th</sup> September 2010. The PSO levy for each of the three PSO periods preceding this one has, however, been set to zero.*

*For the PSO periods of 1<sup>st</sup> January 2007 to 30<sup>th</sup> December 2007 and 1<sup>st</sup> January 2008 to 30<sup>th</sup> September 2008<sup>3</sup>, the PSO levy was set to zero to be recovered in subsequent years because the amount to be collected each year was small relative to the costs to be recovered. It was considered that the administrative burden of collecting these levies would have been excessive. For the 1<sup>st</sup> October 2008 to 30<sup>th</sup> September 2009 PSO levy period, a negative PSO levy of €13.9m was determined based on a forecasted benchmark price of €112.25/MWh. The actual outturn average SMP price for the October 2008 to September 2009 PSO levy period will likely be lower than this. The PSO levy was set to zero because PSO legislation<sup>4</sup> does not provide for a negative PSO levy amount.*

*All three PSO levy amounts were to be rolled forward into the relevant R-factor year (2 PSO periods later) to be debited/credited to/from the relevant PSO levy.*

- ii) A number of respondents requested that a more detailed breakdown be provided in relation to the PSO levy R-factor from 2008.

*This is provided in section 3.4. The Commission has attempted to provide as detailed a breakdown of the R-factor as possible, whilst bearing in mind the need to ensure that all sensitive commercial information of any party involved in the PSO is kept confidential.*

- iii) One respondent noted that prices seen by wind are lower than average SMP prices. It was suggested that the benchmark price for wind should be refined to reflect this.

*The Commission is aware that the typical price seen by wind may be lower than the average SMP price for a given PSO period. This is accounted for, however, in the ex-post reconciliation of audited submissions by suppliers for REFIT and AER wind-powered plant. In this reconciliation (the R-factor) suppliers are compensated for the purchase of wind generation relative to ex-ante estimates of output and market price, once known audited income and generation information are provided.*

- iv) It was suggested that the proposed carbon cost of €15.50 chosen based on the 11<sup>th</sup> – 22<sup>nd</sup> May period represented the upper end of available rates during that period and not the average.

*The price included in the proposed decision paper represents the average forward cost of carbon over the period in which the modelling occurs, for*

<sup>3</sup> See <http://www.cer.ie/en/renewables-decision-documents.aspx#PSODecisions>

<sup>4</sup> Section 9(2) and (3) of the Electricity Regulation Act 1999, (Public Service Obligations) Order (Amended) 2002, (SI No. 217 of 2002)

*the PSO period 1<sup>st</sup> October 2009 to 30<sup>th</sup> September 2010. The Commission acknowledges that the wording in the proposed decision implied the carbon price was an average over the two week period in May, and not an average of the forward carbon prices during that period. The revised carbon price chosen is outlined in section 3.3.*

- v) A number of respondents indicated that they felt the manner in which the PSO levy was distributed across categories was uneven and should be reviewed.

*The PSO levy is allocated among three different categories, domestic profile, small and medium profile (<30kVA), and large energy users (>30kVA). The PSO levy is distributed to each category according to each category's percentage of the overall aggregated maximum demand of each the categories. This is carried out in line with section 3(c)(iii) of S.I. 217 of 2008. The manner in which the maximum demand for each category is determined is outlined in CER/03/013<sup>5</sup>*

*The PSO levy is divided within each category according to Section 3(c)(v) of S.I. No. 217 of 2002. The total PSO levy associated with the domestic category is divided by total customer numbers to get a charge per customer. The same process is applied for the small and medium (<30kVA) category to get a charge per customer. The PSO levy for the large profile category (>30kVA) is divided by the sum of the network connection capacities for such account holders, to give a standard charge per kVA to be applied to each individual account holder's registered Maximum Import Capacity (MIC). The TSO and the DSO provide this information to the Commission, as outlined in section 1 of CER/03/013.*

*The Commission notes manner in which the PSO levy is calculated and distributed this year is consistent with the approach taken in previous years and the relevant PSO legislation.*

- vi) It was noted by some respondents that there is a relative difference in the PSO subsidy level attributable to ESB Power Generation's peat plants and that attributable to Edenderry Power Ltd given that all three are comparably sized peat fired stations.

*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 ESB's estimated additional costs to be incurred in complying with the Public Service Obligation imposed on ESB*

---

<sup>5</sup> See CER 'Documents by Year', *PSO Collection and Distribution Procedures CER/03/013*  
<http://www.cer.ie/en/documents-by-year.aspx?year=2003>

*by the DCENR and apportion those costs, recoverable from all final customers of electricity, across the relevant PSO categories. These additional costs incurred by the ESB are calculated annually in accordance with parameters specified in the PSO Notification to the European Commission. These parameters were agreed by the then Minister of Public Enterprise and notified to the European Commission and approved by i in the context of state aid requirement's in the relevant state aid decision<sup>6</sup>.*

*As outlined in the November 2000 State Aid Notification to the EU, the PSO levy payable to the ESB in relation to its peat stations is the difference between the allowable costs detailed in the Notification and the income earned by the ESB from the market. The Edenderry plant was constructed after successful bidding by a Finnish company, Fortum, in the Europeat competition in 1998. The ESB went to open competitive tender in 2002 to build its plants.*

---

<sup>6</sup>EU State Aid decision N 6a / 2001:

[http://ec.europa.eu/competition/state\\_aid/register/ii/by\\_case\\_nr\\_n2001\\_0000.html#6a](http://ec.europa.eu/competition/state_aid/register/ii/by_case_nr_n2001_0000.html#6a)

## **3.0 PSO Levy 2009/10 – Key Considerations**

### **3.1 Benchmark Price**

For the purposes of this consultation paper, the Commission has forecasted that the benchmark price for the upcoming PSO period of 1<sup>st</sup> October 2009 to 30<sup>th</sup> September 2010 is €52/MWh. 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 (29<sup>th</sup> June – 10<sup>th</sup> July 2009) based on indices as referred to in the Directed Contracts process<sup>7</sup>. For more information on the validation process see the relevant documents on the AIP website, [www.allislandproject.org](http://www.allislandproject.org).

### **3.2 Capacity**

Revenues associated with the capacity payment have been estimated for the relevant period for each plant supported under the levy. These have been calculated in advance of the finalisation of the Annual Capacity Payment Sum for 2009 and are based on the consultation paper on Fixed Cost of a Best New Entrant Peaking Plant and Capacity Requirement for the Calendar Year 2010<sup>8</sup>. The share of capacity for each unit was estimated based on installed capacity and availability, adjusted to account for special treatment and shares for interconnectors, wind and hydro units.

### **3.3 Emissions Trading**

In calculating emissions costs for the 2009/2010 period, the Commission has assumed a carbon allowance cost of €13.71 per tonne for the PSO year 1<sup>st</sup> October 2009 to 30<sup>th</sup> September 2010. This figure is an average of the 1<sup>st</sup> October 2009 to 30<sup>th</sup> September 2010 forward carbon prices over the 29<sup>th</sup> June – 10<sup>th</sup> July 2009 period used to determine the benchmark price. Generation plants

---

<sup>7</sup> Relevant information at the following link:

<http://www.allislandproject.org/en/modelling-group-minutes-presentations.aspx?article=f565fdf1-0bdb-4674-9633-c6a933d1dd99>

<sup>8</sup> Consultation paper on Fixed Cost of a Best New Entrant Peaking Plant & Capacity Requirement for the Calendar Year 2010

<http://www.allislandproject.org/en/capacity-payments-consultation.aspx?article=f6ff1ea8-5f01-416d-a863-cb945a3d71d9>

will have to purchase carbon allowances in excess of those allocated to them for free under the National Allocation Plan (NAP).

### **3.4 R-factor**

A significant negative R-factor of (€86.7m) is included in the PSO levy, relating to the 1<sup>st</sup> January 2008 – 30<sup>th</sup> September 2008 PSO period. An outline of the key elements of the R-factor is given below.

a) ESB Power Generation Plant - (€32.2m).

In accordance with S.I. 217 of 2002, ESB PG are responsible for calculating and reporting to the Commission the additional costs incurred in complying with the PSO levy. KPMG were engaged by the ESB to verify the actual costs incurred in the 1<sup>st</sup> January to 30<sup>th</sup> September 2008 period. A benchmark price of €66.52/MWh was used in determining the ESB PG PSO payment in the ex-ante setting of the 2008 PSO levy. SEM pool prices were, on average, higher than the benchmark price for this period and this resulted in higher than expected income being earned by Lough Ree Power and West Offaly Power. The PSO related costs were also lower than expected with CO<sub>2</sub> costs and operating costs being the primary drivers behind the reduction. Higher income and lower costs resulted in a net amount being paid back to the levy by ESB PG through the R-factor.

b) AER - €16m

Edenderry Power Ltd – €16.7m

Capacity 2005 –€21.8m.

The figures above have arisen due to a variance between the estimated output for the above plant used in the calculation of the PSO levy for 2008 and the actual output during that period. It also reflects the difference between the benchmark price of €66.52/MWh and SEM pool prices for the period January to December 2008. SEM pool prices over the January to September 2008 PSO levy period were, on average, higher than the benchmark price. This difference serves increase the R-factor credit to the PSO levy.

## 4.0 PSO Levy 2009/10

This section sets out the PSO levy for 2009/10. The PSO levy is composed as follows:

PSO Item	Totals
Lough Ree	€43,663,541
West Offaly	€38,530,879
Edenderry	€11,321,981
AERs	€24,296,410
CAP 05	€18,400,000
REFIT <sup>9</sup>	€39,778,484
Sub-Total	€175,991,295
Other <sup>10</sup>	-€86,612,887
Estimated PSO related monies	-€79,100,000
<b>PSO</b>	<b>€10,278,408</b>

The proposed PSO levy paper outlined a proposed PSO levy of €57.7m. Using the updated benchmark price of €52/MWh and an updated capacity payment price, a PSO levy of €10.28m has been determined. The final PSO levy has been significantly reduced this year by estimated PSO-related monies. This is largely driven by significant movement in pool prices in the current PSO year (1<sup>st</sup> October 2008 to 30<sup>th</sup> September 2009) relative to the estimated benchmark price for that period. **In the context of the relatively low levy outlined above, it has been decided to set the PSO levy to zero.**

Therefore, the Commission has therefore determined payment by customer category for the levy period 1<sup>st</sup> of October 2009 to the 30<sup>th</sup> of September 2010 to be as follows:

<sup>9</sup> These costs include the administration costs for suppliers other than ESB CS.

<sup>10</sup> These costs include the administration costs for ESB CS & DSO, and the associated 2008 R-Factor. The R-factor is a correction for over/under recoveries in PSO income in 2008.

<b>Customer Category</b>	<b>Levy Amount</b>
Domestic customers	€0/customer
Small commercial customers (maximum import capacity of less than 30kVA)	€0/customer
Medium and large customers (maximum import capacity of equal to or greater than 30kVA)	€0/kVA



## Appendix A - Demand Allocation & Components of PSO Levy

Appendix B – Allocation of PSO Levy – 1<sup>st</sup> October 2009 to 30<sup>th</sup> September 2010

	Individual Peak	% of Individual Peak	PSO Allocation €m	Total Mkt Cust Nos Mid Year (excl PL a/cs i.e. DG3)	Total Non-domestic mkt MICs kVA	Annual Charge		Monthly Charge Monthly €	Monthly Charge
						€ per Cust	€/kVA		
<b>Domestic Profile</b>	2,403,861	0.42	0.00	2,029,956		0.00		0.00	€ per Customer
<b>Small &amp; Medium Profile</b> <small>ie. non-domestic (excl PL) &lt;30kVA</small>	605,537	0.11	0.00	181,111		0.00		0.00	€ per Customer
<b>Large Profile</b>	2,657,913	0.47	0.00		5,901,560		0.00	0.00	€/kVA
<b>TOTAL</b>	5,667,312	1.00	0.00						

*Number of months to recover charge*

12
----