

An Coimisiún um Rialáil Fóntais  
**Commission for Regulation of Utilities**

# Compliance Investigation

## ESB Networks

### Information Paper

|                   |           |                        |            |                      |     |
|-------------------|-----------|------------------------|------------|----------------------|-----|
| <b>Reference:</b> | CRU/20139 | <b>Date Published:</b> | 25/11/2020 | <b>Closing Date:</b> | N/A |
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## **Commission Decision to close investigation into ESB Networks DAC compliance with the requirements of Condition 30 of its Electricity Distribution System Operator Licence**

1. ESB Networks currently holds the electricity distribution system operator licence granted by the Commission for Regulation of Utilities ('the Commission') under section 14(1)(g) of the Electricity Regulation Act 1999.
2. On 26 February 2020 the Environmental Protection Agency ('the EPA') published a report on its investigation into leaks from fluid filled underground electricity cables<sup>1</sup>. The investigation found that;
  - (i) ESB Networks failed to notify Local Authorities in the case of 48 of 68 'historic' leaks between 1993 and June 2019, in accordance with Section 14(1) of the Local Government (Water Pollution Act) 1977, as amended, and
  - (ii) ESB Networks failed to screen the impact of fluid leaks, which occurred since 1st April 2009, for the applicability under Regulations 7 and 9 of the European Communities (Environmental Liability) Regulations 2008, as amended, until after June 2019.
3. Based on the findings of its investigation, the Commission was of the opinion that ESB Networks had contravened Condition 30 of its electricity distribution system operator licence for the period of 1993 – June 2019, by its failure to comply with all applicable environmental legislation as determined in the EPA investigation, and in its failure to provide accurate annual environmental compliance reports to the CRU for the period 2009-2017.
4. On 29 July 2020 the Commission issued a notification to ESB Networks under Section 24(2) of the Electricity Regulation Act (1999) stating that it was of the opinion that ESB Networks was in breach of certain elements of its licence.
5. Under Section 24(1), the Commission may issue a notification to a licence holder where it is of the opinion that a licence holder has contravened, is contravening, or may be likely to contravene a condition or requirement of the licence.
6. ESB Networks was given 28 days in which to make comment and/or representation.
7. The Commission has now considered ESB Networks response and has concluded that ESB Networks was in breach of Condition 30 of its electricity distribution system operator licence.
8. Condition 30(1) requires that ESB Networks *shall comply with all applicable European Union and Irish Environmental Laws*. The investigation carried out by the EPA found ESB Networks

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<sup>1</sup> [Environmental Protection Agency Investigation into ESB Networks Fluid Filled Underground Electricity Cable Leaks 2020](#) ISBN: 978-1-84095-1

not to have been in compliance with the Local Government (Water Pollution Act) 1977 (as amended) and the European Communities (Environmental Liability) Regulations 2008 (as amended). This non-compliance persisted until June 2019 when ESB Networks implemented new protocols to remedy past instances of non-compliance and prevent similar future non-compliance occurring.

9. Condition 30(3) requires that ESB Networks reports annually to CRU on its environmental performance. In the environmental compliance reports submitted to CRU in the period 2009-2017, ESB Networks reported that it was “*in substantial compliance*” with its obligations. This statement has proved to be incorrect, given the evidence outlined in the EPA report. The Commission does not believe this was an intentional misrepresentation by ESB Networks of its environmental compliance, as the Commission accepts that ESB Networks was unaware of the breaches when submitting those reports and subsequent environmental compliance reports (for 2018 and 2019) reflected the compliance issue.
10. The Commission has reviewed the issue, considering the scale of the impact and behaviour of the regulated entity as outlined in the CRU-Compliance-and-Enforcement-Policy-Statement<sup>2</sup>, and notes the following:
  - ESB Networks did not contest the Commission’s finding but noted the new protocols which have been implemented to improve its overall environmental compliance.
  - ESB Networks has engaged to remedy the issues and introduce new protocols to prevent future instances of non-compliance.
  - The Commission is satisfied at this time that the specified issues have been resolved by ESB Networks.
  - ESB Networks states that it has carried out a number of actions since the identification of these issues to review and improve overall environmental monitoring, reporting and compliance procedures.
  - ESB Networks is engaging with the CRU in relation to implementing more general improvements on its environmental monitoring procedures and enhancing reporting arrangements.
11. Noting that the breach was limited to the stated time period, and the actions taken by ESB Networks as outlined above, the Commission will not take any further compliance action in this matter.

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<sup>2</sup> CRU19134 CRU Compliance and Enforcement Policy Statement<sup>2</sup>