

**To:** Commissioner for Environmental Information

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**Re:** Submission on Appeal CEI/11/0003 related to Access to Information on the Environment Request with regard to RTE Prime Time programme on Wind Energy and Statements made by Minister Ryan; response from Department of Communications, Energy and Natural Resources.

## 1.0 The Principles of the Aarhus Convention

The United Nations Economic Commission for Europe (UNECE) Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters is a key element in strengthening local democracy. It derived from the 1992 United Nations Rio Declaration on Environment and Development, which stated in Principle 10 that:

- “Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided”.

Pillar I of the Aarhus Convention requires States to provide both access to information on the environment upon request and to actively and systematically disseminate it. This ensures that the public can understand what is happening in the environment around them and is able to participate in an informed manner.

Pillar II requires the activity of members of the public in participation with public authorities to reach an optimal result in decision-making and policy-making. As a minimum it requires effective notice, adequate information, proper procedures, and appropriate taking account of the outcome of public participation.

Pillar III requires that the public have legal mechanisms that they can use to gain review of potential violations of Pillar I and II provisions, as well as of domestic environmental law. These legal mechanisms must be “fair, equitable, timely and not prohibitively expensive”.

Ireland, essentially alone in Europe with Russia, has failed to ratify the Convention. However, the EU ratified the Convention in February 2005 and in September 2007 the position of the Aarhus Convention on Community legal order in Ireland was clarified<sup>1</sup>, i.e. in theory it applies to Community legal order here. Note: Community legal order includes the 300 of so Directives in the Environmental Sphere, commonly called the Environmental Acquis. Furthermore the implications of the EU ratification

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<sup>1</sup> <http://www.unece.org/env/pp/compliance/C2006-17/Response/ECresponseAddl2007.11.21e.doc>

of the UNECE Aarhus Convention, as was clarified in the European Court of Justice case C-239/03, was that the mere European Community accession would per se introduce the Aarhus obligations into Community legal order as part of the “*acquis communautaire*”<sup>2</sup>, thus making them binding both for the Member States and for the institutions.

Under Article 2 of the Convention, Environmental Information includes factors such as energy and cost-benefit and other economic analyses and assumptions used in environmental decision-making. This fact is also implemented through Directive 2003/4/EC, which is adopted in Irish Law through S.I. No. 133 of 2007, i.e. Pillar I of the Aarhus Convention. Note: Pillar II and III are not transposed into Irish Law and this is the subject of current legal proceedings by the European Commission against the State at the European Court of Justice. Note the EU Commission has the role as the Guardian of the Treaties.

A recent decision of the Aarhus Convention Compliance Committee is leading to a reform of the UK legal system to reduce cost of access, which was considered to be in non-compliance with Pillar III on the Convention on Access to Justice. The 54<sup>th</sup> Case of the Compliance Committee was opened recently in my name against the EU, in relation to the implementation of the Convention in Ireland and renewable energy policy in particular.

- <http://www.unece.org/env/pp/compliance/Compliance%20Committee/54TableEU.htm>

Note: It is not possible to take a case against the Irish State at the UNECE, as it refuses to ratify the Convention and has failed to implement the necessary EU Directives. Therefore the Party, which is under investigation by the Compliance Committee, is the EU.

## **2.0 The Statements Related to Wind Energy**

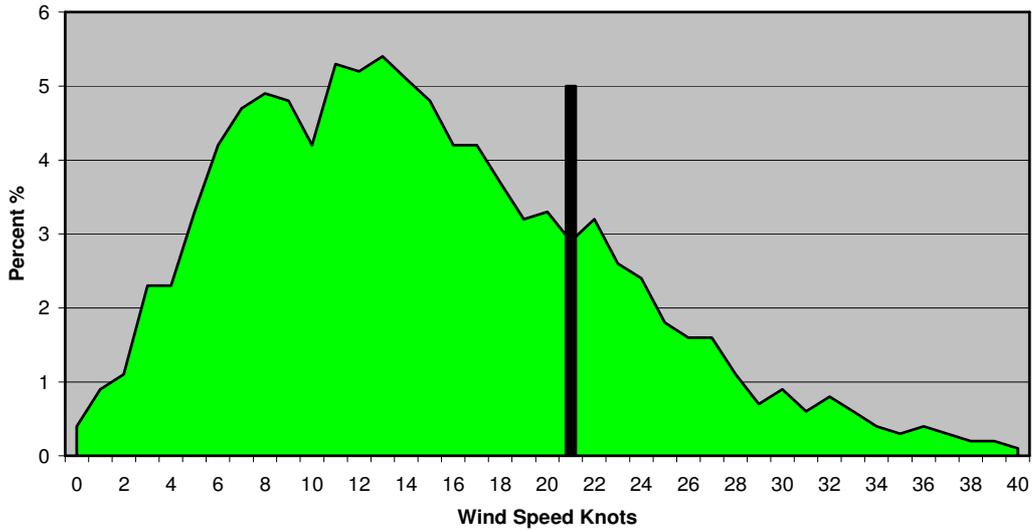
On the RTE Prime Time programme on the 14<sup>th</sup> December related to Ireland’s Wind Energy Programme, it was stated repeatedly by Minister Ryan that wind energy would lower the cost to consumers and how this was confirmed by several national and international technical studies.

First of all, it is necessary to clarify a few points. Ireland’s average wind speed is somewhat higher than other regions, but not markedly so, for instance in Scotland it is significantly higher. A wind turbine will not reach full power output until about 26 knots; note a small craft warning would be given for 22 knots, so this is a very blustery and strong wind. The power output of a turbine is related to the cube of the velocity - nature’s law. So if the wind speed is halved, then the power goes down by a factor of eight. In Ireland’s case our average wind speed is about 11 knots, a gentle breeze, so wind energy generation is only really effective for the period of time the wind speed is to the right of the line in the figure below, in other words the wind speed to bring a turbine to full power output, which is more than double our average wind speed, simply doesn’t happen very much.

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<sup>2</sup> *Acquis communautaire* is a French term referring to the cumulative body of European Community laws, comprising the European Community’s Objectives, substantive rules, policies and, in particular, the primary and secondary legislation and case law – all of which form part of the legal order of the European Union.

Graph 1: Average Hourly Wind Speed Measured over a Year



Therefore wind energy generators are a completely parallel system to the previous infrastructure, which pre-dated the implementation of this new renewable infrastructure. For instance we have over 1,500 MW of wind energy now installed on our grid, but at times these can be producing as little as 10 MW, such as on the 30<sup>th</sup> January 2011<sup>3</sup>. Furthermore to balance these enormous and rapid fluctuations on the grid, the existing thermal plants have to run in a variable, stop / start manner, burning more fuel than if they were running in steady load without the fluctuations in the grid.

Then there is also the massive amount of grid connections required to connect up thousands of wind turbines. If we take the Irish Government's policy of 37% of Ireland's electricity to be generated by wind, which is based Portfolio 5 of the All Island Grid Study<sup>4</sup>, this Study demonstrated that our grid has to be doubled by essentially another 5,000 km of new high voltage systems to meet this objective.

	Portfolio 6A	Portfolio 6B	Portfolio 5	Portfolios 4,3,2	Portfolio 1
Total length (km) of new 220 or 275 kV lines (km of double circuits)	498 (254)	370 (262)	370 (227)	282 (130)	n.a.
Total length (km) of new 110 kV lines	255	294	228	182	37.4
Total length (km) of uprated 110 kV lines	216	253	190	191	37.4

**All Island Grid Study – Workstream 3: Grid modifications required**

<sup>3</sup> <http://www.eirgrid.com/operations/systemperformancedata/windgeneration/>

<sup>4</sup> <http://www.dcenr.gov.ie/Energy/North-South+Co-operation+in+the+Energy+Sector/All+Island+Electricity+Grid+Study.htm>

The reasoning for this can be best explained by the following example, the skyline of Dublin is dominated by the early nineteen seventies Poolbeg Power Plant:



***Dublin's Poolbeg Power Station, the two 200m high chimneys even featured in a well known U2 video***

Poolbeg was designed with a capacity of 510 MW. In a good year one would get a 30% capacity from wind turbines, i.e. they would generate 0.3 MW for each MW installed. So to generate 510 MW of electricity by wind one would need to install  $510 / 0.3 = 1,700$  MW of wind turbines. For on-shore turbines the largest size is about 2 MW, so one would need 850 of these turbines. Turbulence from one turbine affects the downwind turbine, so a distance of at least five turbine diameters has to be left between the turbines. Note a 2 MW turbine has a 90 m diameter. So for good efficiency, if we were to space the turbines 0.6 km apart, then we would end up with a string of 850 turbines stretched along a line of 510 km. In comparison as the crow flies, from Malin Head to Mizzen Head, the northern most tip of Ireland to the southern most tip, is only 466 km.

So what above is highlighting, is that there are massive capital costs and operational costs associated with the installation and operation of what are now two duplicate systems, i.e. the grid we always had before the investment in wind energy began and now the second parallel one requiring massive investment in turbines and grid expansions. The Department of Communications, Energy and Natural Resources clearly recognised this, as they approved massive capital investment, including €4 billion for Eirgrid to expand the national grid<sup>5</sup>. The only way this wind energy programme could work out to be cheaper, is if the unit of electricity generated by the wind turbine was significantly cheaper than a unit generated in a conventional power station. (Note: As regards environmental benefits, the 1,500 MW installed on the Irish grid to date, has caused so much instability and inefficient operation on the existing plants, that nearly as much fuel is being burned than if no turbines had been installed).

However, the price of electricity from wind energy is considerably more expensive than that of conventional generators, so the conventional generators have to come off line when the wind power is available and a higher tariff has to be paid to the wind energy suppliers. This is the principle behind the Renewable Feed in Tariff (REFIT) scheme of the Department of Communications, Energy and Natural Resources<sup>6</sup>.

	2010	2011
Large Wind	€66.353	€66.353
Small Wind	€68.681	€68.681
Hydro	€83.814	€83.814
Landfill	€81.486	€81.486
Biomass	€83.814	€83.814

### **Current REFIT tariffs in € per MWh**

With regard to conventional generators the current price is generally less than €50 per MW, with short peaks corresponding to peak demand periods on the grid<sup>7</sup>. Therefore the whole REFIT programme had to be subsidised and was subject to approval under the State Aid rules by the EU Commission:

- In their Reply to the EU Commission's first query concerning REFIT I in January 2007, State Aid for Environmental Protection rules were quoted by the Department of Communications, Energy and Natural Resources, in which *"the aid may also cover a fair return on capital if Member States can show that this is indispensable given the poor competitiveness of certain renewable energy sources"*. It was also clearly stated that: "A primary concern in developing the REFIT model was therefore to deliver a business case acceptable to investors". The aim of the programme was to bridge the gap between the market price and averaged production costs in each RES-E<sup>8</sup> technology to ensure a fair return on capital in order to deliver investors.

One can highlight a few more examples of similar documentation available in the public domain relevant to the Department of Communications, Energy and Natural Resources related to wind energy costs:

- As part of a public participation step (Pillar II of Aarhus Convention), the Irish Academy of Engineering made a Submission to the Joint Oireachtas Committee on Climate Change and Energy Security<sup>9</sup>. Their review of Ireland's Energy Policy clearly demonstrates in Section 1.4 of the Executive Summary, the relevant cost of power generation and wind energy in particular.
- While the same report concluded that the Department of Communication, Energy and Natural Resource's All Island Grid Study "is not a sufficiently

<sup>6</sup> <http://www.dcenr.gov.ie/Energy/Sustainable+and+Renewable+Energy+Division/Electricity+from+Renewables+inc+REFIT+and+AER.htm>

<sup>7</sup> <http://www.sem-o.com/Pages/default.aspx>

<sup>8</sup> RES-E: Renewable Energy Source – Electricity

<sup>9</sup> [http://www.oireachtas.ie/viewdoc.asp?fn=/documents/Committees30thDail/J-Climate\\_Change/Submissions/document1.htm](http://www.oireachtas.ie/viewdoc.asp?fn=/documents/Committees30thDail/J-Climate_Change/Submissions/document1.htm)

robust exercise on which to base Ireland's future energy policy", part 4 of this All Island Grid Study did look at the potential costs and benefits, albeit in a very limited and insufficiently accurate manner. However, it clearly concluded that there were significant additional costs involved with this programme.

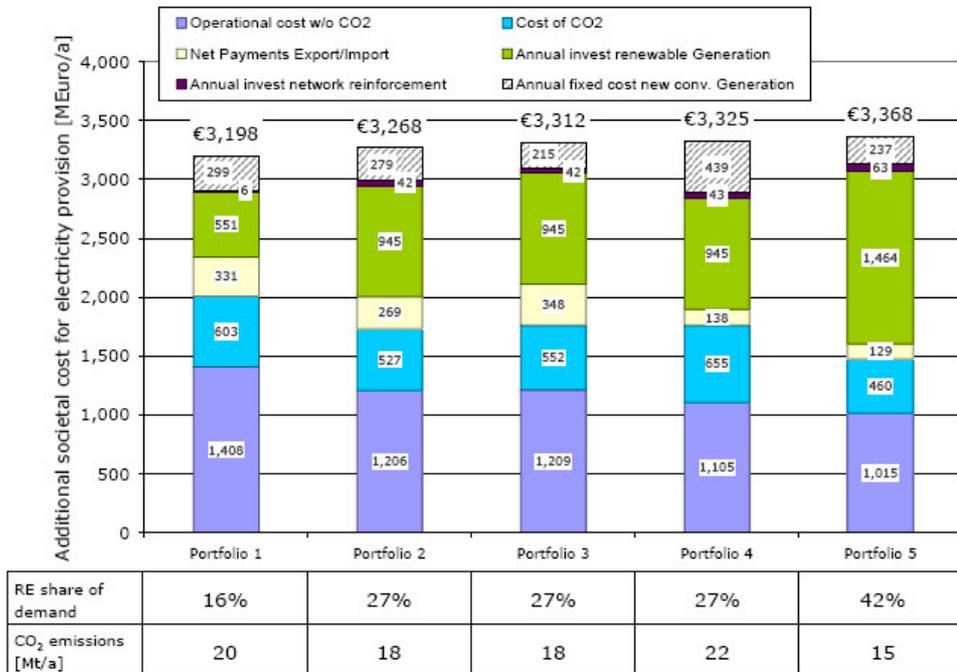


Figure E-9: Additional societal costs for provision of electricity in M€/annum, share of renewable demand and CO<sub>2</sub> emissions

**All Island Grid Study, additional costs which would have to be recovered within the price of electricity charged to end users**

- The in-depth study completed by the engineering company Poyry<sup>10</sup>, which Eirgrid participated on, demonstrated that electricity prices would soar if this wind energy programme went ahead. However, Eirgrid refused to comment on this report, a matter which was a separate appeal to the Commissioner for Environmental Information<sup>11</sup>.
- Despite a programme of investment in new thermal power plants since market liberalisation in the late nineties, which saw the generating efficiency of Irish plants increase by about a third, electricity prices continue to soar. Companies cannot carry the burden of these industrial electricity rates, see for instance recent submissions (Pillar II of Aarhus Convention) by major companies to Commission for Energy Regulation<sup>12</sup>, rates which are

<sup>10</sup> <http://www.powergenworldwide.com/index/display/articledisplay/370323/articles/power-engineering-international/volume-17/issue-9/power-reports/wind-a-storm-set-to-blow-into-power-markets.html>  
[http://www.poyry.com/index\\_cases/index\\_cases\\_12.html](http://www.poyry.com/index_cases/index_cases_12.html)  
[http://www.poyry.com/media/media\\_2.html?id=1275477975.html&C=0&Y=2010](http://www.poyry.com/media/media_2.html?id=1275477975.html&C=0&Y=2010)

<sup>11</sup> <http://www.ocei.gov.ie/en/DecisionsOfTheCommissioner/Name,12416,en.htm>

<sup>12</sup> <http://www.cer.ie/en/renewables-current-consultations.aspx?article=d7a3e817-e64d-47e4-8f50-e0b6b187ad69>

essentially the highest in the EU and rising rapidly as the wind energy programme is implemented.

- One must consider it bizarre, not to mention it inappropriate, that the European Commission is essentially financing the wind energy industry to run its own public relations campaign. However, even that 'biased' website clearly documents the higher costs associated with wind energy<sup>13</sup>.

Clearly the above demonstrates that both the nature of the technology and the documentation and the policies of the Department of Communications, Energy and Natural Resources, provide clear evidence that wind energy is going to result in massive additional capital and operating costs, which will have to be passed on to the Irish consumer in increased electricity charges and levies. The fact that the Minister of Communications, Energy and Natural Resources, Eamon Ryan of the Green Party, was repeatedly stating on National TV that wind energy brings down the cost of electricity to the consumer, simply demonstrates that he was actively and systematically disseminating false information on the environment.

### **3.0 The Reply from the Department of Communications, Energy and Natural Resources**

In my Access to Information on the Environment request under S.I. No. 133 of 2007 on the 23<sup>rd</sup> December 2010 to Minister Ryan's office, I stated:

- "I completely fail to how the existing and proposed wind energy installations are going to bring down electricity costs for the consumer. It clearly defies logic. I am therefore requesting a full list of the documentation that Minister Ryan said existed and the relevant sections in them indicated, which confirm that the above analysis is wrong and thereby justify the statements made on Prime Time, with regard to reduced costs for the end user versus the option of a generation system with no wind energy on the grid".

Given the billions of Euros involved in this programme<sup>14</sup>, it is completely unacceptable that the Department of Communications, Energy and Natural Resources could not provide an official document of the cost to the consumer related to the implementation of this wind energy programme. Although the absence of this was already the subject of a previous appeal to the Commissioner for Environmental Information, CEI/09/0016<sup>15</sup>, which is now part of the Aarhus Convention Compliance Committee Case ACCC/C/2010/54 against the EU in relation to renewable energy in Ireland and the implementation of the Convention. Instead what was received in reply was:

- The ESRI Working Paper No. 334 on: "The Likely Economic Impact of Increasing Investment in Wind on the Island of Ireland<sup>16</sup>".

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<sup>13</sup> <http://www.wind-energy-the-facts.org/en/home--about-the-project.html>

<sup>14</sup> Over €30 billion in capital cost alone, not to mention the environmental impacts of doubling the grid by an extra 5,000 km and installing over 3,000 turbines into the landscape.

<sup>15</sup> <http://www.ocei.gov.ie/en/DecisionsoftheCommissioner/Name,12832,en.htm>

<sup>16</sup> [http://www.esri.ie/publications/latest\\_publications/view/index.xml?id=2936](http://www.esri.ie/publications/latest_publications/view/index.xml?id=2936)

- SEM-09-002: “Impact of High Levels of Wind Penetration in 2020 on the Single Electricity Market<sup>17</sup>”.
- Wind Energy and Electricity Prices: A literature review by Poyry for the European Wind Energy Association<sup>18</sup>.
- The “Impact of Wind on the LMP Market”. By Dale L. Osborn, Member, IEEE<sup>19</sup>.

If we consider the first report then the ESRI make it clear in that:

- “ESRI working papers represent un-refereed work-in-progress by researchers who are solely responsible for the content and any views expressed therein. Any comments on these papers will be welcome and should be sent to the author(s) by email. Papers may be downloaded for personal use only”.

Furthermore the ESRI report fails to assess the price of electricity without wind generation and assumes a minimum installed capacity of 2,000 MW. It therefore cannot be used to present a comparison of wind energy costs versus the situation without installation of wind energy. It is also worth pointing out the lack of quality in this document. For instance the following table is presented.

**Table 4. Capital Cost of new plant, € million per MW of installed capacity**

Type	Overnight Capital	Asset's Expected Lifetime
Wind	1.1 to 1.4	20
CCGT	0.67	25
OCGT	0.737	20
Interconnector	1.0	40

The installed cost of wind turbines is actually about €2 million per MW for onshore systems and more than €3 million per MW for offshore systems. Even the Irish Wind Energy Association was recognising this in 2008<sup>20</sup>, while the Irish Academy of Engineering in their June 2009 Submission to the Joint Oireachtas Committee were stating that in the recent past installed wind turbine costs ranged from €1.75 to €1.9 million per MW.

Worse, wind turbines have a far shorter economic life than conventional power plants. An asset life of 20 years as stated above for this technology has simply not been proven, major gearbox failures are common and indeed two large offshore wind

<sup>17</sup> [http://www.allislandproject.org/en/project\\_office\\_sem\\_publications.aspx?year=2009&section=2](http://www.allislandproject.org/en/project_office_sem_publications.aspx?year=2009&section=2)

<sup>18</sup> <http://www.ewec2010.info/index.php?id=185>

<sup>19</sup> [http://www.labplan.ufsc.br/congressos/IEEE\\_2006\\_ATLANTA/0000216.pdf](http://www.labplan.ufsc.br/congressos/IEEE_2006_ATLANTA/0000216.pdf)

<sup>20</sup> <http://www.thepost.ie/archives/2008/0504/wind-energy-blown-off-course-32576.html>

farms off the Danish and UK coast had to be rebuilt after a year as they were simply unable to withstand the harsh environment. Indeed an Access to Information on the Environment Request to the Department of Communications, Energy and Natural Resources has shown that the Arklow Bank offshore wind farm, which had 25 MW of capacity installed in 2004<sup>21</sup>, now only has a maximum output of 10.9 MW, with two of the seven turbines simply not turning. As for gas turbines (CCGT and OCGT), there are already units in operation with a lifespan exceeding thirty years, indeed some such in Ireland. Typically for thermal power plants a lifespan of at least 35 years occurs, so the lifespan quoted of 25 years (CCGT) and 20 years (OCGT) in the ESRI table are wrong.

With regard to the second report, SEM-09-002, this report is based on the fact that the peak fuel prices in 2008 apply. This is clearly false, the bulk of Ireland's electricity is generated by gas and gas prices have been dropping considerably and are no longer connect to the price of oil, as was highlighted in a latter Submission in March 2010 by the Irish Academy of Engineering to the Joint Oireachtas Committee on Climate Change and Energy Security (Pillar II of the Aarhus Convention)<sup>22</sup>. Furthermore the SEM-09-002 report is based on the five scenarios developed for the All Ireland Grid Study, which included a minimum of 2,000 MW of wind energy. The same comment as before applies; the report simply does not consider the base case of no wind generation on the grid.

With regard to the third report, the cost of generation, which is paid by the consumer, is a combination of the spot price plus the fixed price provided to renewable generators. Renewable generators are not only provided priority access to the grid, but are provided with a tariff, which is higher than the market price for the no wind situation. Furthermore as wind energy is highly variable it has to be fully backed up by spinning reserves and hot standby generation, which have to be funded by additional capacity charges. There are also additional grid costs associated with wind energy and increased investment required in fast response less efficient power stations (peakers). In others words a more complex generation and grid system has to be paid for by the consumer. The cost of electricity to the end user, as referred to in my Access to Information on the Environment Request, is not the spot price but the cost of generation, capacity payments, grid costs, etc. These issues are not address in the EWEA report, as it stated on the Note at the bottom of page 12: "The calculation only shows how the production contribution from wind power influences power prices when wind is blowing. The analysis cannot be used to answer the question - what would the power price have been if wind power was not part of the energy system?"

If we consider the IEEE paper, this is solely based on a simulation of prices completed in 2005 for the US Midwest region, prior to the significant investment in wind energy there, in which the data on which the simulation is run is not presented. Indeed the Author even concluded that: "Some inferences may be made, but more experience will be needed for definitive conclusions". With regard to this factor a number of points can be made, the Midwest is characterised by coal plants which are experience major problems adjusting to the variability, which has now been

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<sup>21</sup> [http://www.gepower.com/businesses/ge\\_wind\\_energy/en/image\\_gallery/arklow.htm](http://www.gepower.com/businesses/ge_wind_energy/en/image_gallery/arklow.htm)

<sup>22</sup> See page 9 of 18 of:  
[http://www.iae.ie/site\\_media/pressroom/documents/2010/Mar/04/Joint\\_Oireachtas\\_Climate\\_Change\\_Report\\_-\\_March\\_2010.pdf](http://www.iae.ie/site_media/pressroom/documents/2010/Mar/04/Joint_Oireachtas_Climate_Change_Report_-_March_2010.pdf)

introduced into the grid by these wind generators<sup>23</sup>. This variability is causing increased cost and emissions in the necessary thermal plants, a factor apparently not addressed in the IEEE simulation report. Secondly a capacity factor of 40-45% was used, with a statement that the majority of the wind *resources* are in the western MISO states of MN, IA, SD, ND. However, if we consider the Iowa (IA) Utilities Board<sup>24</sup>, then the Iowa average wind capacity factor is now reported as 33.3%, a reduction of 25% on the figure used for the simulation. While measurements have shown high wind speeds in the Midwest States near the Rockies, which in places correlate with a capacity factor of 40-45%, it is another thing to actually generate that level of electrical output on a proven basis. Furthermore, those wind speeds do not occur in Ireland, unless one was to locate several kilometres off-shore. Note: Capacity factors in Ireland over the last few years have ranged from 23 to 32%, i.e. a far lower electricity output for the same investment in a turbine installation.

### 3.0 The Violations of the Aarhus Convention

Article 5 of the Aarhus Convention relates to Collection and Dissemination of Environmental Information, in which public authorities must ensure that they possess and update environmental information which is relevant to their function. Furthermore, within the framework of national legislation, the Parties to the Convention must ensure the way in which public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible.

In the Republic of Ireland the relevant national legislation is S.I. No. 133 of 2007, which implements Directive 2003/4/EC on public access to environmental information. Indeed the Directive itself forms a schedule to the Regulations. This Directive is clear in that “environmental information is progressively made available and disseminated to the public in order to achieve the widest possible systematic availability and dissemination to the public of environmental information. To this end the use, in particular, of computer telecommunication and / or electronic technology, where available, shall be promoted”. Article 8 of the Directive on the quality of environmental information is clear in that: “Member States shall, so far as is within their power, ensure that any information that is compiled by them or on their behalf is up to date, accurate and comparable”.

If we consider the Government programme to generate 37% of Ireland’s electricity by wind within the context of the Aarhus Convention, then Article 5 paragraph 7 (a) of the Aarhus Convention requires that; “each party shall publish the facts and analyses of facts which it considers relevant and important in framing major environmental policy proposals”. The Aarhus Convention: An Implementation Guide<sup>25</sup> is clear with regard to Article 5 paragraph 7 (a) that:

- “If a party considers that certain facts and analyses of facts are relevant and important in framing major environmental policy proposals, it must publish them, parties have the liberty to decide which facts and analyses of facts are relevant and important. In implementing this provision, Parties can consider facts such as water and air quality data, natural resource use statistics, etc. and analyses of facts, such as cost-benefit analyses, environmental impact

<sup>23</sup> <http://www.bentekenergy.com/WindCoalandGasStudy.aspx>

<sup>24</sup> [http://www.state.ia.us/government/com/util/energy/wind\\_generation.html](http://www.state.ia.us/government/com/util/energy/wind_generation.html)

<sup>25</sup> <http://www.unece.org/env/pp/acig.pdf>

assessments, and other analytical information used in framing proposals and decisions”.

- “Paragraph 7 (a) requires Parties to publish background information underlying major policy proposals, and thus contribute to effective public participation in the development of environmental policies. This is information that the Party considers “relevant and important” in framing policy proposals. Since article 7 provides for public participation during the preparation of policies, article 5, paragraph 7, is intended to ensure that the public will be properly equipped with the information necessary to take advantage of this opportunity”.

Article 7 of the Aarhus Convention on Public Participation Concerning Plans, Programmes and Policies Relating to the Environment states that:

- “Each party shall make appropriate practical and / or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public. Within this framework, article 6, paragraphs 3, 4 and 8, shall be applied. The public which may participate shall be identified by the relevant public authority, taking into account the objectives of this Convention. To the extent appropriate, each Party shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment”.

Note: Article 6, paragraphs 3, 4 and 8 states:

- “The public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making”.
- “Each party shall provide for early public participation, when all options are open and effective public participation can take place”.
- “Each Party shall ensure that in the decision due account is taken of the outcome of the public participation”.

The Aarhus Convention: An Implementation Guide states:

- “While the Convention does not oblige Parties to undertake assessments, a legal basis for the consideration of the environmental aspects of plans, programmes and policies is a prerequisite for the application of article 7. Thus, proper public participation procedures in the context of Strategic Environmental Assessment is one method of implementing article 7. Strategic Environmental Assessment provides public authorities with a process for integrating the consideration of environmental impacts into the development of plans, programme and policies. It is, therefore, one possible implementation method that would apply to both parts of article 7 – the provisions covering public participation in plans and programmes, and the provision covering public participation in policies”.

The situation with regard to Ireland’s renewable energy programme, which is almost exclusively based around generating 37% of electricity by wind, is that the mandatory Strategic Environmental Assessment required under Directive 2001/42/EC was

simply not done. Neither is any information available on (a) a ranking system for technology alternatives in terms of their ability to meet the criteria in the Directive and (b) options to reach the objectives in legislation<sup>26</sup>. **The wind energy programme is in violation of Article 5 paragraph 7 (a) and Article 7 of the Aarhus Convention.**

Despite this the REFIT programme was approved which created a business model for wind energy, which resulted in the installation of 1,500 MW of wind energy, with a capital investment in turbines and grid investments, which was in the region of €3 billion. This capital investment, the operating costs and profit margin associated with the wind installations, plus the higher electricity tariff paid to them has to be paid back by passing the costs to the end user. Naturally costs rise. Further public consultations were held, such as highlighted previously by the Joint Oireachtas Committee on Climate Change and Energy Security and the Commissioner for Energy Regulation. Both industry and the Irish Academy of Engineering pointed out the high costs which were resulting and the inappropriateness of this wind energy programme.

The public started to notice that their electricity bills were continuously rising and the landscape was being increasingly intruded by these wind turbines. A programme was made for National TV questioning the basis for the wind energy policy and the Minister for Energy Eamon Ryan repeatedly stated on it that wind energy is lowering the price for consumer. This clearly demonstrates that 'black can be white' to suit the occasion. However, **his statements were also a complete violation of Article 5 of the Convention, in which public authorities must ensure that they possess and update environmental information which is relevant to their function. Furthermore, they must ensure the way in which they make environmental information available to the public is transparent.** Furthermore Article 6 paragraph 8 is clear in that:

- "Each Party shall ensure that in the decision due account is taken of the outcome of the public participation".

**The statements of Minister Ryan clearly demonstrated that he had ignored his obligations under Article 6 paragraph 8 of the Convention in regard to the public consultations on Ireland's future electricity needs and increases in electricity costs.**

The Aarhus Convention is clear in that environmental information shall be available upon request without an interest having to be stated (Article 4 paragraph 1a). Article 9 paragraph 1 of the Aarhus Convention requires each party to ensure that any person who considers that his or her request for information under Article 4 has been ignored, wrongly refused, whether in part or in full, **inadequately answered**, or otherwise not dealt with in accordance with the provisions of that article, has access to a review procedure before a court of law or another independent and impartial body established by law.

S.I. No. 133 of 2007 implements Directive 2003/4/EC, which transpose the requirements of Articles 4 and 5 (Pillar I) of the Aarhus Convention in the EU. Article 7 (2) of Directive 2003/4/EC is clear in that the information to be made available and disseminated shall be updated as appropriate and shall include at least policies, plans and programmes to the environment. Furthermore Article 8 (1) is clear in that: Member States shall, so far as is within their power, ensure that any information that is

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<sup>26</sup> <http://www.ocei.gov.ie/en/DecisionsoftheCommissioner/Name.12832.en.htm>

complied by them or on their behalf is up to date, accurate and comparable. Given the enormous sums of money, which have been approved by the Department of Communications, Energy and Natural Resources for investment in wind energy in Ireland, it is not only astounding that on request they were unable to produce documentation related to the resulting electricity costs to the consumer, it is also a clear breach of the relevant legislation. With regard to the four reports, which were submitted by the Department of Communications, Energy and Natural Resources in reply to my Access to Information on the Environment Request, none can be considered; up to date, accurate and comparable to the situation of the wind energy programme in Ireland and the resulting cost of electricity to the end-user. Furthermore they were clearly at variance to the documentation and funding programmes, which were in place in the Department of Communications, Energy and Natural Resources to support wind energy. **Therefore with regard to Article 9 paragraph 1 of the Aarhus Convention, my request for information was inadequately answered.**

Article 6 paragraph 1 of Directive 2003/4/EC on Access to Justice, which implements Article 9 paragraph 1 of the Aarhus Convention, states that:

- “Member States shall ensure that any applicant who considers that his request for information has been ignored, wrongfully refused (whether in full or in part), inadequately answered or otherwise not dealt with in accordance with the provisions of Articles 3, 4 or 5, has access to a procedure in which the acts or omissions of the public authority concerned can be reconsidered by that or any another public authority or reviewed administratively by an independent and impartial body established by law. Any such procedure shall be expeditious and either free of charge or inexpensive”.

The Commissioner for Environmental Information clearly fulfils this role in the Irish Republic. According to previous Decisions of the Office of the Commissioner for Environmental Information<sup>27</sup>, the “office does not have the authority to investigate or to comment upon the applicant's views or the Department's actions in relation to the policies involved or the quality of technical information considered”. However, this is at variance to the requirement for public authorities that they maintain the environmental information which is relevant to their functions in a form that is up to date, accurate and comparable. **With regard to this Access to Information on the Environment Request, clearly the reply from the Department of Communications, Energy and Natural Resources was inadequate and there was a failure to comply with both Articles 4 and 5 of the Aarhus Convention. This is the binding ruling, which should be made.**

#### 4.0 Conclusion

What this document clearly demonstrates is how senior elected and non-elected officials have not only by-passed the Aarhus Convention in the funding mechanisms for the wind energy programme, but when the costs of this become apparent to the consumer and are highlighted on National TV, the Minister then makes public statements denying these costs and informing the public that the opposite is true. This no doubt is based on a pre-mediated assumption that there are only a limited number of technical specialists in the country, who would know otherwise, not to mention an extremely limited number of individuals who would know their Rights related to Access to Information under the Aarhus Convention. This final point is of

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<sup>27</sup> <http://www.ocei.gov.ie/en/DecisionsoftheCommissioner/Name.12832.en.htm>

course related to the simple fact that the Irish Administration has failed<sup>28</sup> to comply with Article 3 paragraph 2 of the Aarhus Convention, i.e. to ensure that officials and authorities assist and provide guidance to the public in seeking access to information. Then when a member of the public, who does know his Rights and the reasons why electricity prices are soaring, makes a formal request for information relating to the false statements made on National TV, the Department of Communications, Energy and Natural Resources has no hesitation in deliberately answering the Request in an inadequate manner. In this regard supplying documentation which is not up to date, accurate or comparable and at variance to their published documentation, policies and state aid funding mechanisms for this wind energy programme. Is it no wonder that companies are simply relocating their investments and industrial facilities elsewhere?

**Biography:** Pat Swords is a Fellow of the Institution of Chemical Engineers and a Chartered Environmentalist. Since graduation from University College Dublin in 1986 Pat has worked in developing the high technology manufacturing industry in Ireland. His work experience has also included projects in over a dozen other countries throughout Europe and North America. Since 1999 he has worked extensively on EU Technical Aid Projects in Central and Eastern Europe helping to implement EU Industrial Pollution Control and Control of Major Accident Hazards legislation.

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<sup>28</sup> See conclusion with regard to awareness of the regulations in "Issues Arising in 2009": <http://www.ocei.gov.ie/en/Publications/AnnualReports/AnnualReport2009/File,13407.en.pdf>