**Decision of the Commissioner for Environmental Information on an appeal made under article 12(5) of the European Communities (Access to Information on the Environment) Regulations 2007 to 2014 (the AIE Regulations)**

**Case CEI/15/0029**

**Date of decision:**  9 June 2016

**Appellant:** Mr Francis Clauson

**Public Authority:** ESB Networks Limited (ESBN)

**Issues**: Whether ESB Networks was justified in refusing the appellant's request for access to information on the generated output of a wind farm on the ground that the request was manifestly unreasonable under article 9(2)(a) of the AIE Regulations, whether the information requested falls within the definition of environmental information under article 3(1) of the AIE Regulations, whether refusal of the request was justified under article 9(1)(d) of the AIE Regulations, whether article 10(1) of the AIE Regulations applies to the appellant's request, whether refusal of the request was justified under article 9(1)(c) of the AIE Regulations, whether the public interest in disclosure outweighs the interest served by refusal.

**Summary of Commissioner's Decision**: In accordance with Article 12(5) of the AIE Regulations, the Commissioner reviewed ESBN's decision to refuse the appellant's request. The Commissioner found that the information requested was environmental information under paragraph (c) of the definition set out in article 3(1) of the AIE Regulations. The Commissioner found that ESBN was not justified in refusing the appellant's request for environmental information under article 9(2)(a) of the AIE Regulations on the ground that the request was manifestly unreasonable with regard to volume or range. The Commissioner found that refusal was not justified under article 9(1)(d) of the AIE Regulations. The Commissioner found that article 10(1) of the AIE Regulations regarding emissions into the environment did not apply to the information requested by the appellant. The Commissioner further found that article 9(1)(c) of the AIE Regulations relating to commercial and industrial confidentiality applied to the information requested. He found under article 10(3) that the public interest served by disclosure outweighed the interest served by refusal. Accordingly, he annulled the decision of ESBN to refuse the appellant's request, and required ESBN to make the requested environmental information available to the appellant.

**Background**

ESB Networks Limited (ESBN) is a ring fenced subsidiary of ESB Group and carries out a number of statutory functions in the electricity market. ESBN is the distribution system operator (DSO), responsible for building, maintaining, and operating the distribution level network infrastructure, (including overhead electricity lines, poles and underground cables). ESBN manages the connection of generators to the distribution system.

This appeal relates to two requests made by the appellant under the AIE Regulations concerning Knocknalour wind farm. Knocknalour wind farm is owned and operated by Knocknalour Wind Farm Limited, a private company. The wind farm is connected to the distribution system operated by ESBN, and has a maximum export capacity of 8.95 megawatts.

The Irish wholesale electricity market is known as the Single Electricity Market (SEM) and is organised on an all-island basis operated by the Single Electricity Market Operator (SEMO). The sale and purchase of electricity is carried out on the basis of a mandatory gross pool, where generators with a maximum export capacity exceeding 10 megawatts must sell into the pool. Generators with a maximum export capacity of less than 10 megawatts, such as Knocknalour wind farm, are not required to participate in the SEM pool. SEMO publishes generation information for generators participating in the SEM (including generators of renewable energy); however, the same data publication system does not apply to generator units which do not participate in the SEM.

**The First Request**

On 5 September 2014, the appellant emailed ESBN's DSO Generators Commercial and Renewable Regulation Section, and requested access to the following information:

"For the period 1-nov-2013 to the 20-Feb-2014 the electrical output from the Wind Farm at Knocknalour, Co Wexford in as granular details as possible"

In a written decision of 3 October 2014 by the Head of Asset Management, ESBN refused to provide access to the requested information. The appellant requested an internal review and was notified of an internal review decision on 31 October 2014. The internal review was carried out by the AIE Regulations Appeals Manager, an employee of ESB's Business Service Centre. The internal review affirmed the initial decision to refuse the request. The appellant did not appeal his first request to my Office.

**The Second Request**

On 18 November 2014, the appellant made a second request under the AIE regulations to ESBN. At the time of making his second request, the appellant was within time to appeal the refusal of the first request to my Office. The second request was emailed to ESBN's Head of Asset Management and sought access to the following information:

"For the period

1-nov-2013 to the 20-Feb 2014 and

1st August 2014 to the 30th October 2014

Kindly provide the electrical generated output from the Wind Farm at Knocknalour, Co Wexford in as granular detail as possible - ideally in 10 minute time periods."

In an email of 19 November 2014, an unnamed "AIE Co-ordinator" with ESB's Business Service Centre replied to the second request, and stated that all requests under the AIE Regulations are processed centrally by ESB on behalf of its subsidiaries. The AIE Co-ordinator stated that the subject matter of the second request was the same as the first request, and noted that reasons had been provided for refusal of the first request. The AIE Co-ordinator went on to state "we do not intend to enter into protracted correspondence with you in relation to those decisions". No reference was made to a right of internal review, nor was the email described as a decision on an AIE request.

The appellant renewed his correspondence with ESBN's Head of Asset Management. Between 19 November and 9 December 2014, the appellant emailed staff of ESBN on seven occasions. The ESBN decision maker replied on 27 November 2014 referring the appellant to the reply of 19 November.

On 10 December 2014, the Legal Manager and Compliance Officer of ESBN emailed the appellant in connection with the two requests, and stated:

"You have been informed of your right to appeal the decisions made to the Information Commissioner in accordance with the Regulations. ...The purpose of this letter is to advise you that ESB Networks Limited remains fully satisfied that your requests have been properly dealt with fully in compliance with the AIE regulations."

The letter of 10 December did not purport to be an internal review decision, and did not mention the right of appeal to my Office (the above reference to the Information Commissioner was not correct, and should have referred to the Commissioner for Environmental Information).

In an email sent to the Managing Director of ESBN, the appellant requested an internal review of the second request. There was no response to the appellant's request for an internal review, and he subsequently made an appeal to my Office in January 2015 on the basis of a deemed refusal. On 5 November 2015, ESBN provided the appellant with a statement of its position on the second request. The appellant indicated to my Office that he was not satisfied with the reasons provided by ESBN, and accordingly it falls to me to make a formal, binding decision on appeal.

For the purposes of my review, ESBN provided my Office with the information requested by the applicant, contained in two spreadsheet files and recording the aggregated electrical output of the wind farm in kilowatts at quarter-hour intervals for the dates requested.

**ESBN's Position**

As a preliminary matter, ESBN submitted that the appellant's second request was manifestly unreasonable with regard to range under article 9(2)(a) of the AIE Regulations. ESBN submitted that the appellant's second request was functionally identical to the first request, as it referred to the same information, albeit with the addition of a second period of time. ESBN characterised the appellant's second request as an abuse of process.

In addition, ESBN submitted that article 9(1)(c) applied to the second request as the disclosure of information on the electrical output of the wind farm would adversely affect commercial confidentiality as provided for by law.

**The Appellant's Position**

The appellant disputed ESBN's characterisation of his second request as manifestly unreasonable. The appellant submitted that the information requested related to emissions into the environment for the purposes of article 10(1) of the AIE Regulations, and therefore the exception under article 9(1)(c) could not apply. The appellant submitted that, even if article 10(1) did not apply, the exception under article 9(1)(c) could not be relied upon, as similar information to that sought (i.e. information on the output of a renewable electricity generator) is routinely published for generators units participating in the Single Electricity Market system.

**The Third Party's Position**

In a letter of 14 November 2014, copied to the appellant, ESBN wrote to Knocknalour Wind Farm Ltd to ascertain if the wind farm would consent to the release of the requested information. In a letter of 2 December 2015, sent to ESBN and copied to my Office, a Director of Knocknalour Wind Farm Limited stated that the company did not consent to release as the information was "commercially sensitive" and "fundamental to the economic interests" of the company. An Investigator with my Office wrote to the company seeking further submissions. In a submission of 13 April 2016, Knocknalour Wind Farm Limited stated that it is not a public authority for the purposes of the AIE Regulations and contended that the information sought does not fall within the definition of environmental information under the AIE Regulations. The company also submitted that it was the owner of the information requested, and that the information was commercially sensitive.

**Scope of Review**

Under Article 12 of the AIE Regulations, my role is to review ESBN's deemed refusal of the appellant's second request (as provided for by article 10(7) and 12(4)(a)(ii) of the AIE Regulations). My review is concerned with whether disclosure of the information requested is required by the AIE regulations. Having had regard to the submissions of the parties, I have considered the following aspects of the AIE Regulations in the course of this review:

1. Whether the information sought falls within the definition of "environmental information" set out in article 3(1);
2. Whether the appellant's second request was manifestly unreasonable under article 9(2)(a), or otherwise;
3. Whether the exception under article 9(1)(d) applies;
4. Whether the request relates to emissions into the environment under article 10(1);
5. Whether the exception under article 9(1)(c) applies;
6. Whether, under article 10(3), the public interest served by disclosure outweighs the interest served by refusal.

Directive 2003/4/EC (the Directive) implements the first pillar of the United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters ("the Aarhus Convention"). The Directive is transposed into Irish law by the AIE Regulations. In making this decision I have had regard to the *Guidance for Public Authorities and others on implementation of the Regulations* (May 2013) published by the Minister for the Environment, Community and Local Government [the Minister's Guidance]; and *The Aarhus Convention: An Implementation Guide* (Second edition, June 2014) [the Aarhus Guide].

**Analysis and Findings**

**Does the request fall within the definition of environmental information?**

Article 3(1) of the AIE Regulations defines "environmental information" as

"any information in written, visual, aural, electronic or any other material form on-

(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites . . . and the interaction among these elements,  
(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment,  
(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those elements,...

The third party to this appeal asserted that the information requested is not environmental information under the AIE Regulations. Having had regard to the definition, I first note that the generation and transmission of electricity by wind farms is an activity under paragraph (c) of the definition, as an activity likely to affect the elements of the environment, particularly in terms of effects on the landscape caused by construction of infrastructure. I considered whether the information requested was on the activity in question. The request refers to details of the electrical output of the wind farm for specified dates. I consider that information on electrical output of the wind farm accurately reflects the true generation capacity of the undertaking, and is information on the activity of power generation. Accordingly, I find that the information requested on electrical output is environmental information under paragraph (c) of the definition.

**Manifestly Unreasonable Requests for Environmental Information**

Article 4(1)(b) of Directive 2003/4/EC provides for refusal of a request which is "manifestly unreasonable". The Aarhus Guide states at page 84:

"If a Party decides to provide for this exception it will need to define “manifestly unreasonable” so as to assist public authorities in determining when a request is so unreasonable that it may be refused under this exception, and to protect the public’s interest that the test will not be applied arbitrarily."

Article 9(2)(a) of the AIE Regulations allows a public authority to refuse access to environmental information where the request is manifestly unreasonable "having regard to the volume or range of information sought". Accordingly, the AIE Regulations adopt a narrower standard for manifestly unreasonable requests than that set out in the Directive.

Article 10 of the AIE Regulations specifies a restrictive interpretative approach to the exceptions under articles 8 and 9. Article 10(3) requires that a public authority "consider each request on an individual basis and weigh the public interest served by disclosure against the interest served by refusal." Article 10(4) states that the "grounds for refusal of a request for environmental information shall be interpreted on a restrictive basis having regard to the public interest served by disclosure."

Article 7(4) sets out the obligations of public authorities refusing a request as follows:

"Where a decision is made to refuse, in whole or in part, a request for environmental information, the public authority concerned shall—

(a) subject to paragraph (b), notify the applicant of the decision not later than one month following receipt of the request,

(b) in a case to which sub-article (2)(b) applies, notify the applicant as soon as possible but not later than 2 months following receipt of the request,

(c) specify the reasons for the refusal,

(d) inform the applicant of his or her rights of internal review and appeal in accordance with these Regulations, including the time within which such rights may be exercised."

Is repetition of a request manifestly unreasonable under 9(2)(a) of the AIE Regulations?

ESBN contended that the appellant's second request was invalid as it was manifestly unreasonable under article 9(2)(a) of the AIE Regulations, due to the range of information sought. ESBN submitted that the range was manifestly unreasonable, not because it was too broad, but instead because it was too similar to the first request. ESBN also emphasised the burden on resources that resulted from the appellant's frequent attempts at correspondence, which were often addressed to multiple staff members or public authorities, and in some cases contained sharp criticism of ESBN staff. In its submissions, ESBN referred to decisions of the UK Information Commissioner and Information Tribunal, which I have considered in the course of this decision.

As a preliminary matter, I find that ESBN failed to acknowledge the second request as required by article 7(4) of the AIE Regulations. The email reply of 19 November from the unnamed AIE Co-ordinator made no reference to article 9(2)(a) as the basis for the refusal, did not inform the appellant of his right to an internal review, and incorrectly identified the appeal body.

I also note that, in circumstances where a public authority decides that a request is manifestly unreasonable under article 9(2)(a), the next appropriate step is to notify the appellant that they may seek an internal review or appeal to my Office. It is not open to a public authority to disregard a request on the basis that it is manifestly unreasonable; the review process provided by the AIE Regulations must be followed.

I do not consider that making a second or subsequent AIE request on a similar subject to be unreasonable in every case. Article 10(3) of the AIE Regulations places an obligation on public authorities to consider each request on an individual basis. This is an essential feature of the AIE Regulations, particularly because circumstances may change rapidly, giving rise a potentially different outcomes on similar requests. An applicant may also legitimately repeat a request in order to seek access to information created after an earlier request.

It is apparent to me that the appellant's second request was made in nearly identical terms to the first request, with the only difference being the inclusion of a second time period. The appellant described his rationale for the second request, which was accompanied by a more detailed submission to ESBN, as follows:

"In the case of the “second request” the supporting material was to afford the ESB the opportunity to consider its reasons for refusal during the “first request” and to offer argument as to why my request should be responded to. They did not take the opportunity to afford me a reply to any of the issues raised. I could have referred the “first request” to the OCEI for appeal but with a barrier to entry at the time of €150 and a knowledge that they were taking over 1 year to respond to appeals I took a completely legitimate choice of resubmitting the request – differently constructed – with more content and a surfeit of supporting arguments as a fresh and new AIE request."

I do not support the appellant's strategy of repeated requests, which asked the same question in expectation of a different answer despite the unambiguous refusal of his first request. While I acknowledge that my Office has experienced challenges in recent years, the appellant's approach served only to complicate and delay his eventual appeal. Notwithstanding this, I must have regard to the express provisions of articles 10(3) and (4), which require a restrictive interpretation of article 9(2)(a). I cannot reconcile ESBN's interpretation of article 9(2)(a) (i.e. that a single repeated request is manifestly unreasonable with regard to range), and the express statutory direction of article 10(3) to consider each request individually. Accordingly, on the facts of this case, I am satisfied that article 9(2)(a) does not apply.

Is there an inherent jurisdiction to refuse a manifestly unreasonable request?

ESBN also submitted that my Office enjoys an inherent jurisdiction to refuse a request found to be an abuse of process. In the case of Mr. Tony Lowes, Friends of the Irish Environment and the Office of the Attorney General (CEI/09/0014) my predecessor, Commissioner Emily O'Reilly, found that a request was capable of being manifestly unreasonable by its very nature. Similarly, in the case of Wind Noise Info and Wexford County Council (CEI/14/0017) I emphasised that applicants should act reasonably and in good faith when exercising their AIE rights, having regard to the resource demands placed on public authorities.

In the present case, ESBN contended that the repeated request was an abuse of process, as it was an attempt to revisit a decided matter. I do not consider that the appellant's second request was determined by the outcome of the first decision, as this would disregard the express provisions of article 10(3) which requires individual consideration of each request. I infer from the construction of article 10(3), and the AIE Regulations generally, an intention on the part of the legislator to expressly permit repeated requests for environmental information*.*

On the facts of this case I find that the appellant's single repetition of a request, although counter-productive, was not so unreasonable as to justify a finding that it was manifestly unreasonable. I nevertheless acknowledge that ESBN was placed under an administrative burden by the appellant's repeated requests and excessive correspondence.

On the basis of the above, I find that the second request was not manifestly unreasonable under Article 9(2)(a), or otherwise.

**Does the exception under article 9(1)(d) apply to the information?**

Article 9(1)(d) provides that a public authority may refuse a request for environmental information where disclosure would adversely affect intellectual property rights.

In its submission to my Office, Knocknalour Wind Farm Limited contended that the information at issue was its property, and stated that it disclosed data to ESBN for operational and commercial settlement purposes. Knocknalour Wind Farm Limited did not specify what type of property rights applied to the information, nor did it indicate how disclosure would adversely affect its intellectual property rights. Nevertheless, I considered the application of article 9(1)(d) to the information requested. The generation data requested is not created to be marketed by the company; it is recorded to meet the technical requirements of market participation. Therefore, I am not satisfied that the company's intellectual property rights would be adversely affected by disclosure of the information requested, and I find that article 9(1)(d) does not apply.

**Does the request relate to emissions into the environment for the purposes of article 10(1) of the AIE Regulations?**

Article 10(1) of the AIE Regulations provides that: "notwithstanding articles 8 and 9(1)(c), a request for environmental information shall not be refused where the request relates to information on emissions into the environment". In the case of Marine Terminals Limited and Dublin City Council - (CEI/14/0013), I applied the judgment of the General Court of the Court of Justice of the European Union in *Stichting Greenpeace Nederland-v-Pesticide Action Network Europe* (Case T-545/11), which held that in order for environmental information to constitute information on emissions, "it suffices that the information requested relates in a sufficiently direct manner to emissions into the environment". I therefore take the view that for article 10(1) to apply the information requested (and not the request itself) must relate to emissions into the environment in a sufficiently direct manner.

I also note the view of Advocate General Kokott in *Ville de Lyon v Caisse des dépôts et consignations* (Case C-524/09). In her Opinion, the Advocate General stated that information on emission allowances was likely to fall within the definition of environmental information, but went on to state at paragraph 71:

"It is doubtful, however, whether the restriction of the exceptions to the right of access *[where a request relates to emissions into the environment]*...is intended to encompass indirect information on emissions in exactly the same way as the definition of environmental information. The two provisions have different functions which preclude a uniform interpretation."

Applying a purposive interpretation of article 10(1) in this way, I consider that in order for information to relate in a "sufficiently direct" manner to emissions, there must be a significant correlation between the information requested and the particulars of an emission.

The appellant submitted that article 10(1) applied to his request, as the transmission of electrical current creates emissions of heat and electromagnetic fields. The appellant suggested that there is a direct link between the generated electrical output of the wind farm and the extent of emissions caused. ESBN submitted that, although heat and electromagnetism may be types of emission, the electrical current itself was contained by the transmission cable and not emitted, and therefore could not be considered an emission. ESBN also argued against a broader interpretation of article 10(1) which would negate the operation of the exceptions under articles 8 and 9(1)(c).

The AIE Regulations do not define the word "emissions" for the purposes of article 10(1), and I accept that a broad interpretation of an emission is possible, including emissions of magnetic fields and heat. I accept ESBN's argument that an electrical charge is not an emission into the environment, as it is contained by the conductor. I also accept the view that emissions of heat and magnetism from electrical conductors fall within the description of an emission into the environment for the purposes of article 10(1), as these factors are not contained by the transmission system and are transmitted into the environment.

The relevant question in this appeal is whether details of generated electrical output are linked in a sufficiently direct way to information on emissions of heat and magnetic fields into the environment. Although the amount of electricity generated by the wind farm may have a proportional relationship with the level of emissions, there are many technical considerations which determine the actual level of emissions at any particular point in space and at any given time. Factors which may determine emissions include the location, design and geometry of the distribution system, as well as possible cancellation of magnetic fields by other sources. Accordingly, I am not satisfied that information on electrical output relates in a sufficiently direct manner to information on an emission into the environment

I therefore find that article 10(1) of the AIE Regulations does not apply to the information requested.

**Does the exception under article 9(1)(c) of the AIE Regulations apply to the information?**

Article 9(1)(c) of the AIE Regulations provides a discretionary ground for refusal of a request where "disclosure of the information requested would adversely affect commercial or industrial confidentiality, where such confidentiality is provided for in national or Community law to protect a legitimate economic interest". Article 9(1)(c) is subject to public interest considerations under articles 10(3) and 10(4), as set out above.

Is the information commercial or industrial in nature?

I first considered whether the information was commercial or industrial in nature. The information requested relates to the electrical output in Watts of a private wind farm, at particular times. Publicly available information on the wind farm indicates that its maximum export capacity is 8.95 megawatts. This represents the maximum amount of power which the wind farm has been contracted to export. Information on the actual generated output of the wind farm therefore has a commercial component, as it accurately reflects the level of output by the undertaking. The information is also industrial in nature, as it reflects the efficiency of an industrial process, and the viability of wind generation at a given geographic location.

Is confidentiality provided for in law?

In submissions to my Office, ESBN relied on statutory requirements for confidentiality under Regulation 24(1) of the European Communities (Internal Market in Electricity) Regulations 2000 to 2008, which provides that the DSO "shall preserve the confidentiality of commercially sensitive information obtained by it in the discharge of its functions under these Regulations and the Act of 1999 unless required to disclose such information in accordance with the law." The same Regulations define “commercially sensitive information” as "any matter the disclosure of which would materially prejudice the interests of any person". I therefore find that the confidentiality of commercial information is provided for in law, to the extent that disclosure would materially prejudice the interests of a person.

Would disclosure materially prejudice the legitimate economic interests of the company?

In order for confidentiality to apply to the information held by the ESBN, such confidentiality must be provided for the purpose of protecting a legitimate economic interest. The Minister's Guidance addresses article 9(1)(c) at paragraph 12.4, and suggests that "the public authority must satisfy itself that real and substantial commercial interests are threatened." in order for this exception to apply.

ESBN submitted that regulation 24(1) protects the legitimate economic interests of third parties. ESBN characterised information on the amount of electricity generated as commercially sensitive, because such information could be used by a competitor to assess the financial position of the operator, the suitability of the area for wind farms, or the likely return on investment that the wind farm owner is making. ESBN did not clarify how a competitor could gain an advantage by having knowledge of the output of an established generator. I also note that many public resources, such as weather information and metered generation data for SEM connected generators in the vicinity of Knocknalour, would also tend to reveal details of the suitability of the area for wind farms.

In its submission to my Office, Knocknalour Wind Farm Limited contended that generation information was its property, and stated that it was within the remit of the company to classify the information as confidential. It submitted that it disclosed information to ESBN with the expectation that the confidentiality of such information would be protected. Knocknalour Wind Farm Limited submitted that disclosures of certain technical information could potentially infringe duties of confidentiality owed to other parties, such as the manufacturer of the wind turbines. Knocknalour Wind Farm Limited did not expressly claim that metered generation data would breach such duties of confidentiality.

In contending that the metered generation of the wind farm was not commercially sensitive, the appellant submitted that information of the same type is routinely published by SEMO for SEM participant generators.

Having considered the submissions of the parties, I am not satisfied that ESBN or Knocknalour Wind Farm Limited have clearly identified any reasonably likely outcome of disclosure of metered generation data which would prejudice the economic interests of the company. Notwithstanding this, I am prepared to accept that disclosure of detailed information on the generated output of the wind farm may reasonably have an adverse effect on the company in respect of commercial and industrial confidentiality, as the price paid to the company for generation is defined by commercial negotiations with suppliers, and publication of information on the technical operation and productivity of the wind farm would affect the bargaining position of the company in future contract negotiations with suppliers.

I therefore find that the exception under article 9(1)(c) of the AIE Regulations applies to the information, subject to the public interest test which I discuss below.

**Consideration of the Public Interest**

Article 10(3) of the AIE Regulations requires the public interest served by disclosure to be weighed against the interest served by refusal. In considering the public interest served by disclosure it is important to have regard to the purpose of the right of access as reflected in recital (1) of the Preamble to Directive 2003/4/EC, which states: "Increased public access to environmental information and the dissemination of such information contribute to greater public awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision-making and, eventually, to a better environment."

ESBN submitted that, in weighing the public interest in disclosure against the interest served by refusal, it considered the obligation to preserve the confidentiality of commercial information to be of greater importance. The appellant submitted that the ongoing publication of half-hourly generation data by SEMO demonstrated that disclosure of such information does not unduly disrupt the electricity market or the interests of the market participants, and that this should be reflected in when assessing the public interest.

Metered generation data is made publicly available by SEMO for individual SEM connected generators. This information is published online in spreadsheet format, and includes half-hourly readings of electrical output in watts for connected generators. In a previous public consultation paper, entitled *"Request for Submissions identifying Commercially Sensitive Data under the SEM"* - AIP/SEM/206/06, the regulatory authorities for the market commented on the publication of market information as follows:

"Overall, any market data potentially could be considered commercially sensitive. Published market data related to Generator Units, for example, can be used to determine how much money a participant was paid by the market for its generation. These data could therefore be considered commercially sensitive by the owner of the generator. Restricting public access to Generator Unit data, however, would be contrary to several of the *[Trading and Settlement]* Code Objectives."

Although the SEMO Trading and Settlement Code does not regulate smaller generators such as Knocknalour Wind Farm, it is significant that the regulatory authorities considered publication of generator data to be necessary in the interest of transparency, even where such publication could reveal commercial aspects of a generation unit.

Directive 2009/28/EC (the Renewable Energy Directive) set renewable energy targets for European Union member states. In order to meet these targets, the Department of Communications, Energy and Natural Resources operates a number of Renewable Feed-In Tariff (REFIT) schemes to develop the renewable energy sector. REFIT is a price support mechanism, funded by a public service obligation levy paid by electricity customers. Under the REFIT scheme, generators benefit indirectly by entering into power purchase agreements with electricity suppliers, on the basis that the supplier will be paid a guaranteed price for renewable energy. REFIT eligible power purchase agreements are listed in the schedules to the Electricity Regulation Act 1999 (as amended by S.I. 556 of 2015). Knocknalour Wind Farm Limited is recorded in the schedules to the 1999 Act as having entered into REFIT power purchase agreements with two suppliers (REFIT 1/5/30 and REFIT 1/2/27), which together provide for 8.95 megawatts of REFIT eligible generation by the wind farm.

Electricity is an essential service, and I consider that a strong public interest exists in the transparent operation of a policy funded by domestic consumers. I also note that the REFIT schemes have a clear environmental objective, i.e. to support the development of renewable energy capacity in Ireland. The generated output of a REFIT participant wind farm reflects an important element of the operation of REFIT, i.e. the amount of actual power generation eligible for price support. I consider that disclosure of such information would contribute to transparency in national energy policy and would facilitate public participation in environmental decision-making concerning the development of renewable energy in Ireland.

I must weigh these interests against the interest served by refusal, which include adverse effects which would occur should commercially or industrially sensitive information be disclosed. I note in this regard that generation data is routinely published for SEM participant generators. I also note that SEM connected generators participate in the REFIT schemes notwithstanding the disclosure of generation information that accompanies connection to the SEM pool. I note that it is not possible to discern the commercial terms of the power purchase agreements entered into between Knocknalour Wind Farm Limited and its contracted suppliers based on generation data. I am therefore not satisfied that the possible adverse effects of disclosure of generation data are of such severity that they dislodge the strong public interest in disclosure of information on the operation of the REFIT schemes. Accordingly, I find that the public interest in disclosure outweighs the interest served by refusal.

I therefore require that ESBN provide the appellant with access to the environmental information requested.

**Decision**

In accordance with Article 12(5) of the AIE Regulations, I have reviewed ESBN's decision to refuse the appellant's request. I find that the information requested is environmental information under paragraph (c) of the definition set out in article 3(1) of the AIE Regulations. I find that ESBN was not justified in refusing the appellant's request for environmental information under article 9(2)(a) on the ground that the request was manifestly unreasonable. I find that refusal is not justified on the basis of article 9(1)(d). I find that article 10(1) does not apply to the information requested by the appellant. I further find that article 9(1)(c) relating to the protection of commercial and industrial confidentiality applies to the information requested. I find under article 10(3) that the public interest served by disclosure of information outweighs the interest served by refusal. I therefore require ESBN to make the requested information available to the appellant.

**Appeal to the High Court**

A party to the appeal or any other person affected by this decision may appeal to the High Court on a point of law from the decision. Such an appeal must be initiated not later than two months after notice of the decision was given to the person bringing the appeal.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Peter Tyndall**

**Commissioner for Environmental Information**

**9 June 2016**