

**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/13/0015

Date of Decision: 23 May 2016

Appellant: Mr. Lar McKenna

Public Authority: EirGrid plc

Issue: Whether Eirgrid was justified in refusing the appellant's request for access to records relating to the upgrade of the Maynooth-Reybrook 110kV electricity transmission line and pylons (otherwise referred to as "the upgrade works")

Summary of Commissioner's Decision: The Commissioner reviewed the decision of EirGrid under article 12(5) of the AIE Regulations. He was satisfied that article 9(1)(c) applied to certain redacted information relating to the main beneficiary of the upgrade works, but he found that EirGrid was not justified in refusing access to other relevant information falling within the scope of the appellant's request, including information that had effectively been refused under article 7(5) of the Regulations. Accordingly, he affirmed the decision in part and annulled in part, directing that certain information be released and that a fresh decision-making process be undertaken in relation to the addition relevant information held by or for EirGrid.

Right of Appeal: A party to this appeal or any other person affected by this decision may appeal to the High Court on a point of law from the decision, as set out in article 13 of the AIE Regulations. Such an appeal must be initiated not later than two months after notice of the decision was given to the person bringing the appeal.

Background

In a request dated 4 April 2013, the appellant sought access to all records relating to the upgrade of the Maynooth-Reybrook 110kV electricity transmission line and pylons, including, but not limited to, certain specified categories of records or information. It is common knowledge that the upgrade works were carried out in response to a Maximum Import Capacity (MIC) request made by a major "demand customer" operating in Co. Kildare. On 30 April 2013, EirGrid notified the appellant under article 7(2)(b) of the Regulations of an extension of the deadline for making its decision because of the volume of the environmental information requested. Subsequently, in June 2013, EirGrid issued a two-part decision in which it provided some information in response to certain matters identified by the appellant as being of particular interest to him and also provided links to publicly available information relevant to the upgrade works; otherwise, however, EirGrid refused access to any relevant records held on the basis that they comprised commercially sensitive information (article 9(1)(c)) or internal communications (article 9(2)(d)).

On 8 July 2013, the appellant applied for an internal review of EirGrid's decision to refuse access to the records requested "other than internal communications". In a belated decision dated 6 September 2013, EirGrid affirmed its original decision but on different grounds. It stated that the information sought related to matters at issue in proceedings before the High Court and suggested that disclosure would adversely affect the course of justice. On 7 October 2013, the appellant appealed to this Office against EirGrid's decision. Regrettably, however, a long delay then arose in dealing with the appeal, which was due to a shortage of resources that has now been addressed.

I have now completed my review under article 12(5) of the Regulations. In carrying out my review, I have had regard to the submissions made by EirGrid and the appellant. I have also had regard to: the Guidance provided by the Minister for the Environment, Community and Local Government on implementation of the Regulations; Directive 2003/4/EC, upon which the AIE Regulations are based; the 1998 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); and *The Aarhus Convention: An Implementation Guide* (Second edition, June 2014) [the Aarhus Guide].

As discussed below, I am not satisfied with EirGrid's handling of this case. However, given the length of time this review has been ongoing, the increasingly confusing and difficult process of seeking to determine the exact extent of the relevant records held by EirGrid, and the third party interests involved in relation to the numerous additional records which have come to light to date, I consider that I should bring my review to a close at this stage. I have decided to conclude this matter by way of a formal, binding decision in which I annul EirGrid's decision in part and direct it to make a fresh decision on the request insofar as it relates to the third party records which EirGrid has declined to release and any additional relevant records that EirGrid may hold.

Scope of Review

Difficulties in establishing what information is held

As indicated above, my Office initially was not in a position to deal with the appeal due to a shortage of resources. However, once my Office began its investigation of the matter, further delay arose because of confusion over the scope of the review. EirGrid initially forwarded

nine records of a technical nature for the purposes of my review. (Another document entitled "Land Registry Folio 9748" was also referred to in a submission dated 6 August 2015, but it is not disputed that this is a publicly available document that was already made available to the appellant.) EirGrid claimed that it did not hold any additional relevant records other than internal communications and the publicly available information relating to the upgrade works. In support of its claim, EirGrid made a detailed submission outlining the steps taken to search for relevant records.

However, following the applicant's submissions indicating that an overly broad approach to the term "internal communications" may have been taken, EirGrid carried out a new search and, according to a submission dated 22 January 2016, located 66 additional records comprising third party email communications and attachments. The number of additional third party records eventually climbed to 80 following further communications with this Office; these records are listed in a schedule that was provided to this Office on 27 January 2016.

In addition, Eirgrid forwarded two new documents of a technical nature (a "North-West Dublin Demand Strategy Study" and a "Transmission adequacy survey") to this Office without explanation. A third document, - a "Project Implementation Plan" - was referred to in a submission made on 19 January 2016, but no copy of this document had been provided at the time. It seems, however, that EirGrid's failure to acknowledge the existence of these documents previously was an oversight, since its treatment of the records has otherwise been similar to the nine records initially forwarded to my Office. Another document, referred to as "EirGrid PMO public planning unit document", was also belatedly identified as relevant, but is subject to article 7(3)(a) of the Regulations, because it is available for public inspection at the Kildare County Council Planning Department.

My Investigator raised additional search queries based on references that she found suggesting that yet further relevant records may exist. As a result, EirGrid carried out yet another search and apparently located over 45 additional records of a technical nature, as listed in a spreadsheet that was provided to this Office on 9 February 2016. For the sake of some clarity, these additional records will be referred to as the "new" technical records, as distinguished from the "first set" of technical records (the nine records initially identified, plus the North-West Dublin Demand Strategy Study, Transmission adequacy survey, and the Project Implementation Plan).

Redactions to certain records

During the course of the review, the appellant indicated that he is well aware of the identity of the main beneficiary of the upgrade works, but in a submission made on 29 November 2015, he accepted that the name of the particular demand customer concerned and the MIC increase figure may be redacted from the records at issue in order to "ensure that Eirgrid's commercial sensitivity obligations are secured". Subsequently, in February 2016, in response to a progress update that issued from this Office, the appellant accepted that he had "confirmed [his] willingness to accept redacted records", but he asked that this Office nevertheless make a determination on whether the name of the demand customer and the MIC figure should be released. However, once the scope of a review has been narrowed, I do not consider it reasonable to expect this Office to widen it again, particularly where, as here, a considerable amount of work has been undertaken on the basis of the scope of the review as limited.

In this case, EirGrid was informed on 30 November 2015 that the appellant was willing to accept redacted records. EirGrid in turn agreed that, with two exceptions subject to its claim for refusal under article 9(1)(b) of the Regulations (see below), the first set of technical documents could be released subject to, for the most part, limited redactions. In the circumstances, and particularly in light of the third party interests involved, I do not consider that it would be fair or appropriate to make a determination on information that the appellant agreed could be redacted from the records concerned.

However, an examination of the supposedly redacted versions of two documents entitled "Line Condition Assessment" and "Project Agreement for Materials", respectively, reveals no redactions; therefore, I take it that EirGrid has in fact agreed to release these documents in full. EirGrid has also agreed to release eight of the third party records, but it maintains that the remaining 72 third party records are either subject to refusal or require third party consultation before release could be considered.

Information already agreed for release

I consider that the publicly available information and the information that EirGrid has agreed to release also do not form part of my review. However, although my Investigator explained to EirGrid in January 2016 that any requested information that is not subject to refusal should be released to the appellant without delay, it is not clear what, if anything, has actually been made available to him apart from the publicly available information. Therefore, for the sake of clarity, I wish to specify that the information that EirGrid has agreed to release should be made available to this appellant within one week of the date of this decision.

I should add that, while I am pleased that EirGrid's efforts to search for additional relevant records during the course of the review yielded results, it is apparent that EirGrid's initial handling of the appellant's request and its initial submissions to this Office were seriously deficient, to the point of being misleading. By no reasonable interpretation of the term "internal communications" could the 80 third party records have been considered as excluded from the scope of the appellant's request for internal review. The failure to identify the "new" technical records that are referred to in the "first set" of technical records despite the searches previously carried out has yet to be adequately explained. Moreover, to date, no complete schedule of records has been provided, which has added to the confusion in seeking to determine the full extent of the relevant records held by EirGrid.

Summary of scope

Having regard to the above, I consider that the scope of this review is now concerned with the question of whether EirGrid was justified in refusing access to the following records, apart from the name of the particular demand customer concerned and the MIC increase figure, insofar as the records contain information relating to the upgrade of the Maynooth-Reybrook 110kV electricity transmission line and pylons:

- I. Corduff-Maynooth Corridor Capacity Assessment Report [original record 1, otherwise referred to a "EirGrid Planning Internal Report"] (redactions)
- II. Committed Project Parameters Maynooth Reybrook 110kV Line Uprate [original record 2] (in full)
- III. Scope of Works [original record 4] (in full)
- IV. Corduff-Reybrook OHL Uprate Capital Approval [original record 6] (redactions)
- V. Maynooth Reybrook 110kV line Uprate Capital Approval [original record 7] (redactions)
- VI. Dublin North West Strategic Study Final Report [original record 8] (redactions)

- VII. Dublin North West Strategic Study - Assessment of Capacity in the Corduff to Maynooth 110kV corridor in 2014 [original record 9] (redactions)
- VIII. North-West Dublin Demand Strategy Study (redactions)
- IX. Transmission adequacy survey (redactions)
- X. Project Implementation Plan (redactions)
- XI. Records numbered 1-41 and 50-80 on the schedule of third party records forwarded to this Office during the course of the review
- XII. The "new" technical records and any other existing records held by or for EirGrid which may be relevant to the request.

I note that the upgrade works directly involved the corridor extending to Corduff. However, the records include information relating to demand and distribution customers operating beyond Reybrook and Corduff. I do not consider that the information pertaining to customers operating beyond Reybrook and Corduff falls within the scope of this request.

Definition of "environmental information"

As noted, the AIE Regulations are based on Directive 2003/4/EC. In line with Article 2(1) of the Directive, 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 including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms 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,

(d) reports on the implementation of environmental legislation,

(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in paragraph (c), and

(f) the state of human health and safety ... conditions of human life, cultural sites and built structures ...affected by the state of the elements of the environment...or through those elements, by any of the matters referred to in paragraphs (b) and (c)".

It is not in dispute in this case that the records at issue consist of environmental information. For the sake of clarity, however, I note that the records consist of information on a major energy infrastructure development project affecting or likely to affect factors (most notably, energy) and elements of the environment, including land and landscape. The records therefore qualify as environmental information under paragraph (c) of the definition. The records also include information relevant to a cost-benefit analysis of the project that qualifies as environmental information under paragraph (e) of the definition.

Analysis and Findings

The grounds for refusal of a request for environmental information are set out in articles 8 and 9 of the AIE Regulations, but any proposed refusal is subject to the provisions of article 10 of the Regulations. Article 10(1) states: "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". Article 10(3) of the Regulations requires public authorities to consider each request on an individual basis and to weigh the public interest served by disclosure against the interest served by refusal. Article 10(4) provides that the grounds for refusal of a request shall be interpreted on a restrictive basis having regard to the public interest. I take this to mean, in line with the Minister's Guidance, that there is a presumption in favour of the release of environmental information.

Article 9(1)(b)

Article 9(1)(b) of the Regulations allows a public authority to refuse to make available environmental information where disclosure of the information requested would adversely affect the course of justice (including criminal inquiries and disciplinary inquiries).

Litigation involving a company of which the appellant is or was a director commenced following the date of the original request in this case. In an initial submission dated 29 November 2013, EirGrid claimed that the litigation concerned matters that were the subject of the request and that article 9(1)(b) therefore applied. Following contacts with my Investigator, EirGrid withdrew its blanket claim for refusal on the basis of article 9(1)(b), but it indicated that redacted versions of two of the documents at issue (Scope of Works and Committed Project Parameters Maynooth Ryebrook 110kV Line Uprate) had been produced on discovery. This raised the question of whether the release of the records under AIE, without restrictions, would be contrary to undertakings that may have been given the Court on discovery and would therefore constitute a contempt of court.

However, when invited to make submissions on the matter, the appellant disputed that any undertakings had been given to the Court in respect of the documents at issue in this case. Accordingly, my Investigator sought further information from EirGrid regarding the Order of Discovery made. It ultimately transpired that the two documents were not in fact produced on discovery but rather were merely exhibited as an attachment to an affidavit made by an employee of ESB on behalf of ESB and EirGrid, the plaintiffs in the litigation before the High Court, in the context of responding to a motion for discovery. While the affidavit refers to an undertaking, the undertaking was given by the plaintiffs, apparently for the purpose of addressing some confusion that had arisen in distinguishing between ESB, ESB Networks, ESB Networks Limited, and EirGrid in relation to a notice that had been served on the defendant on 28 June 2013.

In a telephone conversation with my Investigator on 19 January 2016, a representative of EirGrid acknowledged the fact that the documents concerned were not produced on discovery and that no relevant undertaking therefore applies. Nevertheless, in a written submission made shortly after that (dated 22 January 2016 and received by my Office on 25 January 2016), EirGrid suggested that article 9(1)(b) did apply because the documents "were exhibited in the context of the Discovery Process within these proceedings". No support for this position has been provided. In the circumstances, I find that article 9(1)(b) does not apply. I also note that, despite being given the opportunity to do so, EirGrid has not identified any material for redaction from the documents concerned on the basis of any other grounds for refusal. Accordingly, I find that these records should be released in full.

Article 9(1)(c)

The primary ground for refusal that has been explicitly relied upon by EirGrid in this case is article 9(1)(c) of the Regulations. Article 9(1)(c) allows a public authority to refuse access 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". EirGrid maintains that it is obliged under Directive 2009/72/EC and article 12(1) of the European Communities (Internal Market in Electricity) Regulations 2000 (S.I. No. 445/2000), as well as under its licensing conditions (in particular, Condition 22), to preserve the confidentiality of the commercially sensitive information that it holds. EirGrid also notes that it is required under another condition of its licence, Condition 34, to take all reasonable steps to protect persons and

property from injury and damage that may be caused by Eirgrid as the licensee when carrying out its business as the TSO.

In a submission made on 6 August 2015, EirGrid explained that, as part of its statutory duties, it is obliged to facilitate every reasonable demand request from customers seeking connection to the national grid. It described the competitive nature of its demand customers, particularly those operating in the Information and Communications Technology industry, and also the competition between different EU members states seeking to attract "inward investment from those firms, with its associated employment and fiscal benefits".

According to Eirgrid, the identity and details of such firms seeking connection to the grid and their associated MIC requests are regarded as being of huge commercial sensitivity.

"The information regarding such potential national grid connections is commercially sensitive in that it can and would be used by rival commercial entities to assess the projected increase in industrial capacity of the demand customer. If such information was to become available to its rivals, it would give an insight into the future operational planning of the demand customer, which could be used to the detriment of that demand customer. Should existing and future demand customers perceive a risk that EirGrid as a public authority would under the AIE Regulations or otherwise, allow the release of commercially sensitive information which is subject to both statutory and contractual legal protection, there is a real danger that such existing and potential demand customers would look to other jurisdictions where their commercially sensitive information is afforded greater protection by that state's TSO. This could cause real adverse effects to the national interest."

In subsequent submissions made after EirGrid agreed to the release of redacted versions of the first set of technical records, EirGrid stated that the redacted material includes references which provide "explicit information as to a single piece of critical [transmission] infrastructure on which one customer is reliant for a secure supply and indeed, when a facility is at greatest risk including specificity as to the period within the year at which this risk is at its highest". Eirgrid claimed that the release of such details to the general public would adversely affect industrial confidentiality by facilitating an attack resulting in "real and significant harm, not only to the connected party" but also possibly the wider public. EirGrid also claimed in relation to the "dedicated station" within the business complex of the demand customer concerned that "the load information related to that station is confidential and commercially sensitive". It explained that the load information is a "contracted value specific to the individual company connected", and said that disclosure "would harm the company's commercial ability to negotiate key supply and long term supply contracts"; would "reveal the commercial exceptions/planned corporate investment decisions of the companies concerned - such investment signals can and do have a real and measurable impact on share prices for listed companies"; and would also have "adverse implications" on the outcome of any property transactions where land is required for new stations. EirGrid also made comments relating specifically to the Transmission Adequacy Survey (TAS), which is used to

"provide an update on the likely timing of known network problems and to highlight potential deficiencies in the existing and planned transmission network". The material redacted from the TAS includes industrial customer demand projections, but also "the economic merit order used for the dispatch of generation in the studies".

I accept that EirGrid, as the Transmission System Operator, is required to preserve the confidentiality of "commercially sensitive information" as that term is defined in the relevant Regulations, S.I. No. 445/2000. Article 2 of S.I. No. 445/2000 defines "commercially sensitive information" to mean "any matter the disclosure of which would materially prejudice the interests of any person".

As noted above, the appellant has accepted that the name of the main beneficiary of the upgrade works and the amount of its MIC request may be redacted from the records at issue. I note, however, that I do not accept, as a general matter, that the identity of an existing demand or distribution customer, of itself, is commercially confidential. It is apparent that any business operating on a scale such that its interests are taken into account in EirGrid and/or ESB project documents of the sort at issue here is a consumer of large amounts of electricity and is either an EirGrid demand customer or a distribution customer of ESB Networks. Indeed, one of the difficulties for me in making this decision is the artificiality involved in being constrained from naming the main beneficiary of the upgrade works despite the fact that its identity is very well known.

However, EirGrid demand customers, as compared to distribution customers of ESB Networks, are those with direct access to the national grid through a substation. The position is that a demand customer's specific MIC would not only be indicative of its current and projected industrial capacity, but that the records at issue in this case involve details of the demand customer's installations. In particular, the records include technical details relating directly to the infrastructure of the substation that is located within the demand customer's business complex. Based on EirGrid's submissions, and having regard to the nature of the records concerned, I accept that the details of the load information and the infrastructure of the substation are correctly regarded as commercially sensitive within the meaning of article 2 of S.I. No. 445/2000. This is not to say that other sources of information about the demand customer's industrial capacity, installations, or future development plans are not available elsewhere. However, I note that, in *House of Spring Gardens Limited v. Point Blank Limited* [1984] I.R. 611, Costello J observed:

"As to (ii) [the nature of the information], if the information has been compiled by the expenditure of skill, time and labour by the informant then, although he has obtained it from sources which are public, (in the sense that any member of the public with the same skills could obtain it had he acted like the compiler of the information) the information may still, because of its value, be regarded as 'confidential' information and subject to an obligation of confidence."

Thus, if it takes skill, time and labour to compile the information concerned, the information may still be regarded as confidential even if the component parts were sourced from the public domain. In this case, I accept that the specific details at issue are not in the public domain and would give insights regarding the particular demand customer's current and

projected operational requirements that are not otherwise available. While the appellant argues that the possibility of "an attack" on electricity infrastructure is remote, I accept that the details relating to the infrastructure of the substation are entitled to industrial confidentiality because of the risks that disclosure would entail. I am therefore satisfied that article 9(1)(c) applies to the relevant redactions relating to the particular demand customer concerned. I note, however, that the number and extent of the redactions relating specifically to the infrastructure of the substation appear to be minimal.

I am also satisfied that the information concerned is not information on emissions into the environment within the meaning of article 10(1) of the Regulations. I accept that there is a public interest in the disclosure of information about the energy usage of demand customers, especially one that requires EirGrid and ESB to undertake such a project as the Maynooth-Reybrook upgrade works in order to serve its energy needs. On the other hand, both the AIE Directive and Directive 2009/72 recognise a legitimate interest in protecting the confidentiality of commercially sensitive information. Having regard to the amount of relevant information that is already in the public domain and the information that EirGrid has now agreed to release or which falls for release as a result of this decision, I find that the public interest served by the disclosure of the redacted information qualifying for refusal under article 9(1)(c) is not outweighed by the interest served by refusal.

No case for refusal has been made for the other types of information redacted from the records, e.g., the circuit ratings and general amounts of spare capacity in the Corduff-Reybrook-Maynooth corridor, the MVA amounts going to other locations served by corridor, or the information relating to the costs of the project. It might be the case that the circuit ratings or spare capacity could indirectly reveal the amount contracted to or requested by the particular demand customer concerned, but no such claim has been made, nor is it apparent from my examination of the records. On the contrary, it seems that, although the upgrade works were carried out "on foot of the additional demand request" made by the particular demand customer concerned, EirGrid also explored options for accommodating the overall anticipated increases in demand in the corridor; thus, it was not simply a case of making the spare capacity available to the particular demand customer concerned. I also note that Eirgrid's claims of commercial confidentiality focus on demand customers, not distribution customers, with its submission dated 23 February 2016 clarifying that certain third parties named in the records are distribution customers rather than demand customers. Three of the records dating from 2011 refer to the possibility of a particular distribution customer (a State-owned company) applying for connection to the grid at a particular site, but given the passage of time since the reports were prepared, and the confirmation that the company remains a distribution customer, it seems that the proposed connection to the grid did not happen. In short, it has not been shown that the other redacted information falling within scope is commercially sensitive within the meaning of S.I. No. 445/2000 or is otherwise protected from disclosure by confidentiality provided for by law. In the circumstances, I am not satisfied that article 9(1)(c) applies to the following redactions made insofar as such redactions are within scope:

- Corduff-Maynooth Corridor Capacity Assessment Report (otherwise referred to "EirGrid Planning Internal Report"): the amounts of spare capacity stated in the Executive Summary, Table 1, pages 6, 9, 11, 13, 16-18, 20-23, 25-28; Comment [RC1]; the redactions made on page 7 apart from the amount contracted to the primary demand customer referred to; the rating amounts referred to on pages 15-16, 21-22, 25-28; the redactions made on page 19; the redactions from the diagram on page 24.

- Corduff-Ryebrook OHL Uprate Capital Approval: costs on pages 1, 2, and 5.
- Maynooth Ryebrook 110kV line Uprate Capital Approval: the rating amounts referred to on page 3.
- Dublin North West Strategic Study Final Report:
 - from the Executive Summary - the redactions relating to the State-owned company that was regarded at the time as a potential new demand customer (pages 3-8); the rating of the circuit (page 3); the "cut-off point" or maximum load amount (pages 5, 6, 10); the amount of the "considered demand level" (which is not the actual or projected demand level of any demand customer); the maximum loads of the circuits referred to on pages 6 and 10; the amount of the "additional" MVA on pages 6-7, 9; the costs and lead times information on page 7-8; the redactions made from the first paragraph under "Recommendations & Conclusions" on page 10; the location of the potential new station and the viability level referred to on page 10; the location referred to on page 11
 - the redactions made from the main body of the report that correspond to the above, plus any other information relating to estimated costs
- Dublin North West Strategic Study - Assessment of Capacity in the Corduff to Maynooth 110kV corridor in 2014 (as with the "EirGrid Planning Internal Report"): the references to the circuit ratings and spare capacity amounts; the redactions on pages 7, 15, 17 apart from the amounts related to the particular demand customer concerned
- North-West Dublin Demand Strategy Study: the redactions corresponding to the redactions described above in relation to the Dublin North West Strategic Study [original record 8] as well as the redactions made from appendices B, C, and E (I note, however, that appendices B & C appear to be largely outside scope)
- Project Implementation Plan: the estimated costs on page 10 (i.e. this record should be released in full).

Article 7(5)

Article 7(5) of the AIE Regulations provides that where information requested is not held by or for a public authority, it must inform the applicant as soon as possible. Articles 11(5)(b) and 12(3)(a) provide that an applicant may appeal an internal review decision to my Office where the request has been inadequately answered. My approach to dealing with cases where a public authority has refused a request in full or part on the basis that relevant information is not held is set out in previous decisions published on our website at www.ocei.gov.ie, such as CEI/11/0009, Ms. Rita Canney and Waterford City Council (7 June 2012), and CEI/08/0012, Cllr Cullen and Department of Environment, Heritage and Local Government (27 Oct. 2009). As these decisions explain, I must be satisfied that adequate steps have been taken to identify and locate relevant records, having regard to the relevant circumstances. In determining whether the steps taken are adequate in the circumstances, I consider that a standard of reasonableness must necessarily apply. It is not normally my function to search for information.

In this case, EirGrid effectively refused access to all but the first set of technical records and the eight third party records that it has now agreed to release on the basis of article 7(5) of the Regulations. As I have outlined above, however, numerous additional records were located following further searches carried out during the course of this review, but no decision to release these records has been made. It seems, moreover, that in the interests of procedural fairness, third party consultation would be required before such a decision could be made in respect of at least some of the records concerned. I do not consider that I should make a first instance decision in regard to records that a public authority has failed to consider adequately

under the AIE Regulations (see CEI/14/0008, Stephen Dowds Associates on behalf of Derrybrien Development Society Limited and Galway County Council (15 April 2016), available at www.ocei.ie). In addition, as I explained in CEI/15/0009, Ms Fand Cooney and Commission for Energy Regulation (7 April 2016), available at www.ocei.ie, it is for the public authority to which the request was made to consider the interests of third parties in the first instance, where such concerns are relevant.

I also note that EirGrid has detailed the steps taken to search for the third party communications using a software tool called Clearwell Search together with relevant keyword search terms. While I do not dispute that Clearwell is an efficient and effective tool for carrying out electronic searches using relevant keyword search terms, I am not satisfied that an adequate search for all relevant technical documents has been carried out to date. The technical documents forwarded to this Office reflect that there are electronic files of project documents relating to the upgrade works. Submissions made on 14 January 2016 and 23 February 2016, respectively, also refer to folders and files relating to the project. I recognise that a lot of information about the project is publicly available, but it remains unclear to me whether the relevant folders and files were adequately checked in their entirety.

In the circumstances, I find that EirGrid's effective decision to refuse the additional records relevant to the appellant's request was inadequate for the purposes of article 11(5)(b) of the Regulations. EirGrid must therefore undertake a fresh decision-making process in relation records numbered 1-41 and 50-80 on the schedule of third party records forwarded to this Office during the course of the review, the "new" technical records, and any other existing records which may be relevant to the request.

I should add here that, although the extent and complexity of the information actually sought by the appellant has transpired to be an extremely significant factor in my review, it was not open to me to consider the volume or range of the information sought. This is because Eirgrid did not identify the scope of the request when it was received and, thus, does not appear to have considered exercising its discretion to refuse to make the information available on the basis that the request was manifestly unreasonable having regard to the volume or range of information sought (article 9(2)(a) of the Regulations refers).

Where a public authority decides that the request is not unreasonable and goes on to identify and consider under the Regulations whether the information falls to be released, I would strongly advise it to prepare a schedule of the records. As highlighted earlier in this decision, the absence of a complete schedule caused confusion in this case and made it difficult to assess the adequacy of the searches carried out for the purposes of article 7(5) of the Regulations.

Decision

On the basis of the foregoing, I affirm EirGrid's decision in part and annul it in part as follows: I affirm the decision in relation to certain redactions relating to the particular demand customer concerned. I annul the decision in relation to the Scope of Works document, the Committed Project Parameters Maynooth Ryebrook 110kV Line Upgrade document, and the remaining redactions within the scope of the request (as outlined above) and direct that the information be released. I also annul the decision in relation records numbered 1-41 and 50-80 on the schedule of third party records forwarded to this Office during the course of the review, the "new" technical records, and any other existing records

which may be relevant to the request; EirGrid should undertake a fresh decision-making process in relation these records in accordance with the AIE Regulations.

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