



STATUTORY INSTRUMENTS.

S.I. No. 86 of 2024



ENERGY (WINDFALL GAINS IN THE ENERGY SECTOR) (CAP ON
MARKET REVENUES) ACT 2023 (RETURNS) REGULATIONS 2024

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ENERGY (WINDFALL GAINS IN THE ENERGY SECTOR) (CAP ON MARKET REVENUES) ACT 2023 (RETURNS) REGULATIONS 2024

The Commission for Regulation of Utilities in exercise of the powers conferred on it by section 3(3) of the Energy (Windfall Gains in the Energy Sector) (Cap on Market Revenues) Act 2023 (No. 30 of 2023), having consulted with the Minister for the Environment, Climate and Communications, hereby makes the following regulations:

Citation

1. These Regulations may be cited as the Energy (Windfall Gains in the Energy Sector) (Cap on Market Revenues) Act 2023 (Returns) Regulations 2024.

Interpretation

2. (1) In these Regulations—

"ACER" means the European Union Agency for the Cooperation of Energy Regulators;

"Act of 1999" means the Electricity Regulation Act 1999 (No. 23 of 1999);

"Act of 2023" means the Energy (Windfall Gains in the Energy Sector) (Cap on Market Revenues) Act 2023 (No. 30 of 2023);

"Commission" means the Commission for Regulation of Utilities;

"person" shall be construed in accordance with section 6 of the Act of 2023;

"Regulation (EU) No 1227/2011" means Regulation (EU) No 1227/2011¹ of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency;

"relevant period" has the meaning given to it by section 8 of the Act of 2023;

(2) In these Regulations—

(a) a word or expression that is used in these Regulations and is also used in the Act of 1999 has, unless the contrary intention appears, the same meaning in these Regulations as it has in the Act of 1999;

(b) a word or expression that is used in these Regulations and is also used in the Act of 2023 has, unless the contrary intention appears, the same meaning in these Regulations as it has in the Act of 2023.

¹ O.J. No. L 326, 8.12.2011 p. 1.

Prescription of form for returns made under section 15(1)

3. For the purposes of section 15(1)(a) of the Act of 2023, returns shall be submitted to the Commission:

- (1) in the applicable form as published by the Commission in December 2023, or as may be updated in a revised form and published by the Commission from time to time, and
- (2) by electronic means.

Prescription of information to be contained in returns made under section 15(1)

4. For the purposes of section 15(1)(b) of the Act of 2023, the information to be contained in a return to be made by a person to the Commission shall include:

(1) Information regarding the person submitting the return which shall include the details and particulars of the person submitting the return, including identifier information, ownership information and contact information.

(2) Information pertaining to each relevant generating unit, as defined by section 2(1) of the Act of 2023, which shall include:

- (a) the installed capacity of each generating unit;
- (b) the identifier information of each generating unit;
- (c) the fuel source of each generating unit or, where a generating unit produces electricity from more than one source of fuel, the fuel source from which the generating unit produces the highest percentage of electricity;
- (d) the details and identifier information of any other person subject to the cap on market revenues under the Act of 2023 by consequence of a contractual arrangement relating to each generating unit; and
- (e) whether any such persons referred to in subparagraph (d) of this paragraph are affiliated persons, as defined by section 2(1) of the Act of 2023.

(3) Information from which the adjusted surplus revenue is calculated for each relevant generating unit, which shall include:

- (a) the allowable cost of production within the meaning of section 8 of the Act of 2023 for each month within the relevant period, where applicable;
- (b) the allowable margin within the meaning of section 8 of the Act of 2023 for each month within the relevant period, where applicable;
- (c) the relevant quantity, as defined by and calculated in accordance with section 10(5) of the Act of 2023, for each month within the relevant period, where applicable;

- (d) the loss-adjusted metered quantity, as construed and calculated in accordance with Sections F.2.5 and F.4 of Part B of the Trading and Settlement Code, for each month within the relevant period, where applicable;
- (e) the monthly market revenue, as construed in accordance with section 10 of the Act of 2023, for each month within the relevant period;
- (f) the monthly capped revenue, as construed in accordance with section 10 of the Act of 2023, for each month within the relevant period;
- (g) the preliminary surplus revenue, as construed and calculated in accordance with section 11 of the Act of 2023, for each month within the relevant period;
- (h) all losses and gains incurred or earned from every hedging arrangement, as construed in accordance with section 14 of the Act of 2023, for each month within the relevant period, where applicable;
- (i) difference charges, as defined in section 12(4) of the Act of 2023, for each month within the relevant period, where applicable;
- (j) in relation to a producer, any monies liable to be paid by the producer to a trader who is not, in relation to the producer, an affiliated person, for each month within the relevant period, where applicable;
- (k) in relation to an intermediary, any monies liable to be paid by the intermediary to a trader who is not, in relation to the intermediary, an affiliated person, for each month within the relevant period, where applicable;
- (l) in relation to an intermediary, any monies liable to be paid by the intermediary to a producer who is not, in relation to the intermediary, an affiliated person, for each month within the relevant period, where applicable;
- (m) in relation to an intermediary, any monies which exceed the intermediary's monthly capped revenue and which are liable to be paid by the intermediary to a producer who is, in relation to the intermediary, an affiliated person, for each month within the relevant period, where applicable;
- (n) in relation to a trader, any monies liable to be paid to the trader by a producer or an intermediary, for each month within the relevant period, where applicable;
- (o) in relation to a trader, any monies liable to be paid by the trader to a producer who is not, in relation to the trader, an affiliated person, for each month within the relevant period, where applicable;

- (p) in relation to a trader, any monies liable to be paid by the trader to an intermediary who is not, in relation to the trader, an affiliated person, for each month within the relevant period, where applicable;
- (q) in relation to a trader, any monies which exceed the trader's monthly capped revenue and which are liable to be paid by the trader to a producer who is, in relation to the trader, an affiliated person, for each month within the relevant period, where applicable;
- (r) in relation to a trader, any monies which exceed the trader's monthly capped revenue and which are liable to be paid by the trader to an intermediary who is, in relation to the trader, an affiliated person, for each month within the relevant period, where applicable;
- (s) the adjusted surplus revenue as calculated in accordance with section 12 of the Act of 2023, for each month within the relevant period;
- (t) where requested by the Commission, information in the same manner as set out in subparagraphs (a) to (r) of this paragraph, or other relevant information, or both for periods outside of the relevant period; and
- (u) where requested by the Commission, a further breakdown of any of the information referred to in subparagraphs (a) to (t) of this paragraph into half-hourly intervals and any methodologies that derive the monthly values.

(4) Information that identifies any hedging arrangements, as construed in accordance with section 14 of the Act of 2023, either on a generating unit basis or on a portfolio of generating units' basis, which shall include:

- (a) the identifier information of each generating unit to which the hedging arrangement is related, where applicable;
- (b) the details of the hedging contract, such as the type of contract, the person with whom the hedging arrangement is made, the relevant product, the start and end dates of the contract, the date on which the contract was entered into, the contract price and currency, the contract quantity and reference commodity, where applicable;
- (c) to the extent the hedging arrangement is not allocated to a specific unit, the weighting allocated to each generating unit; and
- (d) for each relevant generating unit, trade data, such as the hedging quantity traded, the loss-adjusted metered quantity and the associated hedging losses and gains associated with the contractual hedging information for each month within the relevant period.

(5) In relation to an intermediary, information pertaining to the amount paid directly by the intermediary to final customers in accordance with section 13 of the Act of 2023. In providing this information to the Commission, the intermediary shall either:

- (a) provide the following information:
 - (i) the intermediary's revenues from the sale of electricity to final customers for each month within the relevant period,
 - (ii) the intermediary's revenue from the sale of electricity to final customers for each year during the fiscal years 2018 to 2021,
 - (iii) the wholesale cost of purchasing electricity for each month within the relevant period,
 - (iv) the wholesale cost of purchasing electricity for each year during the fiscal years 2018 to 2021,
 - (v) the volume of electricity sold by the intermediary to final customers for each month within the relevant period, and
 - (vi) the volume of electricity sold by the intermediary to final customers for each year during the fiscal years 2018 to 2021; or
- (b) provide the following information:
 - (i) the number of individual payments made by the intermediary to final customers within each month during the period beginning on 1 December 2022 and ending on 31 December 2023, and
 - (ii) the value of each individual payment referred to in subparagraph (i) of this subparagraph.

(6) In relation to a producer who does not participate directly in the electricity market and who has a generating unit with installed capacity of greater than 10 megawatts, information pertaining to the total revenue obtained by the producer pursuant to a contract to which section 10(2)(a)(i) of the Act of 2023 applies, which shall include:

- (a) the identifier information of each generating unit to which the producer's contract is tied;
- (b) details of the contract, including:
 - (i) the identifier information of any other person subject to the cap on market revenues under the Act of 2023 by consequence of a contractual arrangement relating to each generating unit;
 - (ii) the relevant identifier associated with Regulation (EU) No 1227/2011 that is reported to ACER, where applicable;
 - (iii) the start and end dates of the contract;
 - (iv) whether the contract is a REFIT 1 power purchase agreement, a REFIT 2 power purchase agreement, a

- REFIT 3 power purchase agreement or other form of power purchase agreement;
- (v) the contract reference quantity, reference commodity and currency;
 - (vi) the details of any market upside sharing arrangements, including information for periods outside of the relevant period that is necessary to calculate the adjusted surplus revenue within the relevant period; and
 - (vii) trade data associated with each generating unit, such as the product traded, whether it is baseload, mid-merit or peak, the quantity traded as part of the contract and the total revenue obtained by the producer pursuant to the contract for each month within the relevant period per contract.

Prescription of particulars and documents to be attached to returns made under section 15(1)

5. For the purposes of section 15(1)(c) of the Act of 2023, the particulars and documents that are to be attached with a return that is to be made by a person to the Commission shall include:

- (1) In relation to hedging gains or losses,
 - (a) a declaration from the person confirming the following:
 - (i) that all relevant hedging arrangements, including both those with a gain and those with a loss, have been reported by the person;
 - (ii) that each hedging arrangement is directly related to hedging the fluctuations in the Single Electricity Market wholesale electricity prices and directly associated with the sale and delivery of electricity in the Single Electricity Market within the relevant period;
 - (iii) that each hedging arrangement is made with a person other than the producer, intermediary or trader concerned and that it provides for the price, volume, duration and terms of settlement;
 - (iv) that each hedging arrangement is associated with specific megawatt per hour quantities and has been allocated over all generating units to which each hedging arrangement refers;
 - (v) that the losses assigned to the hedging arrangement to a generating unit in any month within the relevant period are based on a quantity of energy that is less than or equal to the generating unit's average volume in that month;
 - (vi) that each hedging arrangement represents an arm's length transaction executed at a market price at the time of the

transaction and that the parties to the transaction are not affiliated persons;

- (vii) that each hedging arrangement has not been unwound or counterbalanced by another transaction conducted by the producer, intermediary, trader or any affiliated person of that person; and
- (viii) that there is no separate arrangement to provide a benefit to any person as a result of the hedging arrangement, between the producer, intermediary or trader and the other party to the hedging arrangement or with any affiliated person of a party to the hedging arrangement.

(2) The declaration at paragraph (1)(a) shall be completed and signed by:

- (a) where the person is a company, a duly authorised director or the secretary of the company, or
- (b) where the person is an unincorporated body, the person who is, or who performs the duties of, secretary of the body.

(3) Relevant sections of any and all power purchase agreements, as defined by section 10 of the Act of 2023.

(4) Dated invoices confirming the monthly market revenue figures reported in accordance with regulation 4(3) of these Regulations.

(5) Dated invoices confirming all monies liable to be paid between persons as reported in accordance with regulation 4(3) of these Regulations.

(6) Dated invoices and relevant contractual agreements confirming trade data reported in accordance with regulation 4(4) of these Regulations.

(7) Where requested by the Commission, particulars and documents set out in paragraphs (1) to (6) of this regulation, or other particulars and documents, or both for periods outside of the relevant period.

Prescription of form for returns made under section 15(2)

6. For the purposes of section 15(2)(a) of the Act of 2023, returns shall be submitted to the Commission:

- (1) in the applicable form as published by the Commission in December 2023, or as may be updated in a revised form and published by the Commission from time to time, and
- (2) by electronic means.

Prescription of information to be contained in returns made under section 15(2)

7. For the purposes of section 15(2)(b) of the Act of 2023, the information to be contained in a return to be made by a person to the Commission shall include:

(1) Information regarding the person submitting the return which shall include the details and particulars of the person submitting the return, including identifier information, ownership information and contact information.

(2) Information pertaining to each relevant generating unit, as defined by section 2(1) of the Act of 2023, which shall include:

- (a) the installed capacity of each generating unit;
- (b) the identifier information of each generating unit;
- (c) the fuel source of each generating unit or, where a generating unit produces electricity from more than one source of fuel, the fuel source from which the generating unit produces the highest percentage of electricity;
- (d) the details and identifier information of any other person subject to the cap on market revenues under the Act of 2023 by consequence of a contractual arrangement relating to each generating unit; and
- (e) whether any such persons referred to in subparagraph (d) of this paragraph are affiliated persons as defined by section 2(1) of the Act of 2023.

(3) Information from which the adjusted surplus revenue is calculated for each relevant generating unit, which shall include:

- (a) the allowable cost of production within the meaning of section 8 of the Act of 2023, for each month within the relevant period, where applicable;
- (b) the allowable margin within the meaning of section 8 of the Act of 2023 for each month within the relevant period, where applicable;
- (c) the relevant quantity, as defined by and calculated in accordance with section 10(5) of the Act of 2023, for each month within the relevant period, where applicable;
- (d) the loss-adjusted metered quantity, as construed and calculated in accordance with Sections F.2.5 and F.4 of Part B of the Trading and Settlement Code, for each month within the relevant period, where applicable;
- (e) the monthly market revenue, as construed in accordance with section 10 of the Act of 2023, for each month within the relevant period;
- (f) the monthly capped revenue, as construed in accordance with section 10 of the Act of 2023, for each month within the relevant period;
- (g) the preliminary surplus revenue, as construed and calculated in accordance with section 11 of the Act of 2023, for each month within the relevant period;
- (h) all losses and gains incurred or earned from every hedging arrangement, as construed in accordance with section 14 of the

Act of 2023, for each month within the relevant period, where applicable;

- (i) difference charges, as defined in section 12(4) of the Act of 2023, for each month within the relevant period, where applicable;
- (j) in relation to a producer, any monies liable to be paid by the producer to a trader who is not, in relation to the producer, an affiliated person, for each month within the relevant period, where applicable;
- (k) in relation to an intermediary, any monies liable to be paid by the intermediary to a trader who is not, in relation to the intermediary, an affiliated person, for each month within the relevant period, where applicable;
- (l) in relation to an intermediary, any monies liable to be paid by the intermediary to a producer who is not, in relation to the intermediary, an affiliated person, for each month within the relevant period, where applicable;
- (m) in relation to an intermediary, any monies which exceed the intermediary's monthly capped revenue and which are liable to be paid by the intermediary to a producer who is, in relation to the intermediary, an affiliated person, for each month within the relevant period, where applicable;
- (n) in relation to a trader, any monies liable to be paid to the trader by a producer or an intermediary for each month within the relevant period, where applicable;
- (o) in relation to a trader, any monies liable to be paid by the trader to a producer who is not, in relation to the trader, an affiliated person, for each month within the relevant period, where applicable;
- (p) in relation to a trader, any monies liable to be paid by the trader to an intermediary who is not, in relation to the trader, an affiliated person, for each month within the relevant period, where applicable;
- (q) in relation to a trader, any monies which exceed the trader's monthly capped revenue and which are liable to be paid by the trader to a producer who is, in relation to the trader, an affiliated person, for each month within the relevant period, where applicable;
- (r) in relation to a trader, any monies which exceed the trader's monthly capped revenue and which are liable to be paid by the trader to an intermediary who is, in relation to the trader, an affiliated person, for each month within the relevant period, where applicable;

- (s) the adjusted surplus revenue, as calculated in accordance with section 12 of the Act of 2023, for each month within the relevant period;
- (t) where requested by the Commission, information in the same manner as set out in subparagraphs (a) to (r) of this paragraph, or other relevant information, or both for periods outside of the relevant period; and
- (u) where requested by the Commission, a further breakdown of any of the information referred to in subparagraphs (a) to (t) of this paragraph into half-hourly intervals, and any methodologies that derive the monthly values.

(4) Information that identifies any hedging arrangements, as construed in accordance with section 14 of the Act of 2023, either on a generating unit basis or on a portfolio of generating units' basis, which shall include:

- (a) the identifier information of each generating unit to which the hedging arrangement is related, where applicable;
- (b) the details of the hedging contract, such as the type of contract, the person with whom the hedging arrangement is made, the relevant product, the start and end dates of the contract, the date on which the contract was entered into, the contract price and currency, the contract quantity and reference commodity, where applicable;
- (c) to the extent the hedging arrangement is not allocated to a specific unit, the weighting allocated to each generating unit; and
- (d) for each relevant generating unit, trade data, such as the hedging quantity traded, the loss-adjusted metered quantity and the associated hedging losses and gains associated with the contractual hedging information for each month within the relevant period.

(5) In relation to an intermediary, information pertaining to the amount paid directly by the intermediary to final customers in accordance with section 13 of the Act of 2023. In providing this information to the Commission, the intermediary shall either:

- (a) provide the following information:
 - (i) the intermediary's revenues from the sale of electricity to final customers for each month within the relevant period,
 - (ii) the intermediary's revenue from the sale of electricity to final customers for each year during the fiscal years 2018 to 2021,
 - (iii) the wholesale cost of purchasing electricity for each month within the relevant period,
 - (iv) the wholesale cost of purchasing electricity for each year during the fiscal years 2018 to 2021,

- (v) the volume of electricity sold by the intermediary to final customers for each month within the relevant period, and
 - (vi) the volume of electricity sold by the intermediary to final customers for each year during the fiscal years 2018 to 2021; or
- (b) provide the following information:
- (i) the number of individual payments made by the intermediary to final customers within each month during the period beginning on 1 December 2022 and ending on 31 December 2023, and
 - (ii) the value of each individual payment referred to in subparagraph (i) of this subparagraph.

(6) In relation to a producer who does not participate directly in the electricity market and who has a generating unit with installed capacity of greater than 10 megawatts, information pertaining to the total revenue obtained by the producer pursuant to a contract to which section 10(2)(a)(i) of the Act of 2023 applies, which shall include:

- (a) the identifier information of each generating unit to which the producer's contract is tied;
- (b) details of the contract, including:
 - (i) the identifier information of each generating unit of any other person subject to the cap on market revenues under the Act of 2023 by consequence of a contractual arrangement relating to each generating unit;
 - (ii) the relevant identifier associated with Regulation (EU) No 1227/2011 that is reported to ACER, where applicable;
 - (iii) the start and end dates of the contract;
 - (iv) whether the contract is a REFIT 1 power purchase agreement, a REFIT 2 power purchase agreement, a REFIT 3 power purchase agreement or other form of power purchase agreement;
 - (v) the contract reference quantity, reference commodity and currency;
 - (vi) the details of any market upside sharing arrangements, including information for periods outside of the relevant period that is necessary to calculate the adjusted surplus revenue within the relevant period; and
 - (vii) trade data associated with each generating unit, such as the product traded, whether it is baseload, mid-merit or peak, the quantity traded as part of the contract and the total revenue obtained by the producer pursuant to the contract for each month within the relevant period per contract.

(7) The amount which, due to a settlement rerun, a hedging arrangement or a power purchase agreement:

- (a) the person is liable to pay to the collection agent, or
- (b) the person has overpaid and is liable to be repaid by the collection agent.

Prescription of particulars and documents to be attached to returns made under section 15(2)

8. For the purposes of section 15(2)(c) of the Act of 2023, the particulars and documents that are to be attached with a return that is to be made by a person to the Commission shall include:

(1) Where a return under section 15(2) of the Act of 2023 is necessitated in part or in full by a hedging arrangement or a power purchase agreement, relevant sections of the hedging arrangement or the power purchase agreement, as applicable, to the extent that they have changed.

(2) Dated invoices confirming the monthly market revenue figures reported in accordance with regulation 7(3) of these Regulations.

(3) Dated invoices confirming all monies liable to be paid between persons as reported in accordance with regulation 7(3) of these Regulations.

(4) Dated invoices and contractual agreements confirming trade data reported in accordance with regulation 7(4) of these Regulations.

(5) Where requested by the Commission, particulars and documents set out in subparagraphs (1) to (4) of this regulation, or other particulars and documents for periods outside of the relevant period.

Prescription of date for the purposes of section 15(2)

9. The date prescribed for the purposes of section 15(2) of the Act of 2023 is 14 August 2024.

Prescription of date for the purposes of section 20(4)

10. The date prescribed for the purposes of section 20(4) of the Act of 2023 is 31 August 2024.

Prescription of date for the purposes of section 20(5)

11. The date prescribed for the purposes of section 20(5) of the Act of 2023 is 31 August 2024.



GIVEN under the common seal of the Commission for
Regulation of Utilities,
5 March, 2024.

JIM GANNON,
Chairperson of the Commission.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

The Commission for Regulation of Utilities, in exercise of the powers conferred on it by section 3(3) of the Energy (Windfall Gains in the Energy Sector) (Cap on Market Revenues) Act 2023 (No. 30 of 2023), having taken into account the matters raised in the public consultation process carried out by the Commission and having consulted with the Minister for the Environment, Climate and Communications, has made these Regulations to prescribe: the form in which returns are to be made; the information to be contained in such returns; the particulars and documents to be attached with such returns; the date by which adjusted returns are to be made where necessitated by a settlement rerun, hedging arrangement, or power purchase agreement; the date by which assessments are to be returned of the amount owed to or by the collection agent due to a settlement rerun, hedging arrangement, or power purchase agreement; the date, not more than 30 days after which, a producer, intermediary or trader shall pay to the collection agent any balance of the adjusted surplus revenue it is liable to pay due to a hedging arrangement or power purchase agreement; and the date, not more than 30 days after which, the collection agent shall pay to a producer, intermediary or trader any overpayment of the adjusted surplus revenue that it is liable to repay due to a hedging arrangement or power purchase agreement.

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