



STATUTORY INSTRUMENTS.

**S.I. No. 583 of 2007**



ELECTRICITY REGULATION ACT 1999 (PUBLIC SERVICE  
OBLIGATIONS) (AMENDMENT) (No. 2) ORDER 2007

**(Prn. A7/1550)**

## ELECTRICITY REGULATION ACT 1999 (PUBLIC SERVICE OBLIGATIONS) (AMENDMENT) (No. 2) ORDER 2007

I, EAMON RYAN, Minister for Communications, Marine and Natural Resources, in exercise of the powers conferred on me by section 39 of the Electricity Regulation Act 1999 (No. 23 of 1999) and the Communications, Energy and Geological Survey of Ireland (Transfer of Departmental and Ministerial Functions) Order 2002 (S.I. No. 300 of 2002) (and as adapted by the Marine and Natural Resources (Alteration of Name of Department and Title of Minister Order 2002 (S.I. No. 307 of 2002)), in consideration of general social, economic and environmental factors and following consultation with the Minister for the Environment, Heritage and Local Government, and having, in accordance with section 39(10) of the Electricity Regulation Act 1999, given a draft of this Order to the Electricity Supply Board, being the person upon whom the obligations are to be imposed, hereby order as follows:

1. This Order may be cited as the Electricity Regulation Act 1999 (Public Service Obligations) (Amendment) (No. 2) Order 2007.

2. In this Order “Principal Order” means the Electricity Regulation Act 1999 (Public Service Obligations) Order 2002 (S.I. No. 217 of 2002).

3. (1) Article 2(1) of the Principal Order is amended—

(a) by inserting the following after the definition of “AER VI Notification”:

“ ‘CADA’ means a capacity and differences agreement between the Board and a third party power producer and includes alternative arrangements prepared pursuant to that agreement and in accordance with its terms;”,

and

(b) by inserting the following after the definition of “EU Commission”:

“ ‘Generation Contracts Notification’ means the correspondence referred to in paragraph 1 of EU Commission C(2003) 4488 fin dated 16 December 2003 relating to a notification to the EU Commission (Reference No. N475/2003-Ireland) pursuant to Article 87 of the Treaty and subsequent correspondence between the Irish authorities and the EU Commission in relation to that EU Commission document;”,

*Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 17th August, 2007.*

(2) Article 2 of the Principal Order is amended by inserting the following paragraph after paragraph (3A):

“(3B) (a) For the purposes of Article 8(1) (*bd*) and Article 10(1) (a) ‘additional costs’ includes costs incurred by the Board in complying with its obligations under Article 6C either before or after the coming into operation of this paragraph and which are not otherwise recovered.

(b) nothing in subparagraph (a) shall entitle the Board to recover additional costs unless those costs are in accordance with the method for determination of costs provided for in the Generation Contracts Notification and this Order.”.

4. Article 4 of the Principal Order is amended by inserting the following paragraphs after paragraph (1D):

“(1E) The period of the public service obligations to be imposed pursuant to Article 6C commences, as respects a particular CADA, on the date specified in column (3) of Part 3 of Schedule 1C which relates to such CADA, and, subject to paragraph (1F), continues until the date specified in column (4) of Part 3 of Schedule 1C.

(1F) (a) Subject to subparagraphs (b) and (c), and notwithstanding paragraph (1E) the public service obligations imposed pursuant to Article 6C shall not continue for a period in excess of 10 years as respects any particular CADA.

(b) The period of 10 years referred to in subparagraph (a) need not be a continuous or uninterrupted period where, by reason of *force majeure* as described in the CADA concerned, the period is interrupted.

(c) Notwithstanding subparagraphs (a) and (b), the obligations imposed pursuant to Article 6C shall not as respects any particular CADA continue beyond the date specified in column (5) of Part 3 of Schedule 1C which relates to such CADA.”.

5. The Principal Order is amended by inserting the following Article after Article 6B:

*“Public service obligation for generation contracts*

6C. (1) There shall be imposed by the Commission on the Board a requirement that the Board, subject to the provisions of this Article, make payments in accordance with the CADAs referred to at Part 3 of Schedule 1C, for the respective terms of those contracts.

(2) Subject to paragraphs (3) and (4), the obligation to make payments in accordance with the CADAs referred to at Part 3 of Schedule 1C, shall not, as respects the counterparty to a particular CADA, require the Board to make such payments for a period in excess of 10 years.

(3) The period of 10 years referred to in paragraph (2) need not be a continuous or uninterrupted period where, by reason of *force majeure* as described in the CADA concerned, the period is interrupted.

(4) Notwithstanding paragraphs (2) and (3) the obligation referred to in paragraph (1) shall not as respects a particular CADA continue beyond the date specified in column (5) of Part 3 of Schedule 1C which relates to such CADA.

(5) Notwithstanding paragraphs (1) to (4) the obligation of the Board to make payments in accordance with the CADAs shall, as respects a particular CADA, stand amended, if at any time prior to the termination date specified at column (4) or (5) of Part 3 of Schedule 1C, the counterparty specified in column (1) of Part 3 of Schedule 1C exercises its right to reduce the quantity of electricity in respect of which it is obliged to declare availability under the CADA so that the obligation of the Board in respect of such CADA shall thereafter be limited to making payments in respect of such reduced quantity of electricity.”.

6. Article 8 (1) of the Principal Order is amended by inserting the following subparagraph after subparagraph (bc):

“(bd) the additional costs of the Board in the period concerned in complying with the obligation imposed on it by Article 6C, as determined by the Commission pursuant to Article 9;”.

7. Article 8(2)(a) of the Principal Order is amended by inserting “or the Generation Contracts Notification” after “or the Short-Term Peaking Generation Notification”:

8. Article 9 of the Principal Order is amended by inserting the following paragraphs after paragraph (2D):

“(2E) The PSO Levy in respect of the requirement imposed pursuant to Article 6C in the levy period to 31 December 2006 shall be determined by the Commission on the basis of the estimates made by it of the amounts required to meet the costs and expenses specified at subparagraph (bd) of Article 8(1) and any over recovery or under recovery of those amounts in the period ending on 31 December 2006 shall be taken into account in setting the amount of PSO Levy in respect of the levy period commencing on 1 January 2008.

(2F) The PSO Levy in respect of the requirement imposed pursuant to Article 6C in the levy period to 31 December 2007 shall be determined by the Commission on the basis of the estimates made by it of the amounts required to meet the costs and expenses specified at subparagraph (bd) of Article 8(1) and any over recovery or under recovery of those amounts in the period ending on 31 December 2007 shall be taken into account in setting the amount of PSO Levy in respect of the levy period commencing on 1 October 2008.”.

9. Article 9(3)(a) of the Principal Order is amended—

(a) by inserting “or the Generation Contracts Notification” after “or the Short-Term Peaking Generation Notification”

and

(b) by inserting the following clause after clause (iv):

“(v) the additional costs, which will be incurred by the Board in the levy period concerned in complying with the obligation imposed on it by Article 6C.”.

10. Article 10(1)(a) of the Principal Order is amended by substituting “Articles 5, 6, 6A, 6B and 6C” for “Articles 5, 6, 6A and 6B”.

11. Schedule 1C to the Principal Order is amended by inserting the matter in the Schedule to this Order after Part 2 of Schedule 1C as Part 3 of that Schedule.

## SCHEDULE

## “PART 3

## NEW GENERATING CAPACITY

(1) Name of Legal Counterparty	(2) CADA Signing Date	(3) Commercial Operation Date	(4) Scheduled CADA Termination Date	(5) Latest CADA Termination Date	(5) Capacity (MW)
Aughinish Alumina Ltd. Co. Limerick	24 December 2003	31 March 2006	31 March 2016	31 March 2017	As detailed in the CADA
Tynagh Energy Ltd., Co. Galway	24 December 2003	31 March 2006	31 March 2016	31 March 2017	As detailed in the CADA

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GIVEN under my Official Seal,  
30 July 2007

EAMON RYAN

Minister for Communications, Marine and Natural Resources.

## EXPLANATORY NOTE

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

The Electricity Regulation Act 1999 (Public Service Obligations) Order 2002, (SI No. 217 of 2002), is amended so as to allow for the imposition of further public service obligations on the ESB, in the interest of security of supply.

This Order places a requirement on ESB to make payments in respect of 10 year electricity generation contracts awarded to Aughinish Alumina Ltd. and Tynagh Energy Ltd. on foot of the CER's Capacity 2005 Competition. It provides for the compensation of ESB for the additional costs, if any, incurred in complying with these obligations.

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ón  
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TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2  
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