



STATUTORY INSTRUMENTS.

S.I. No. 495 of 2017



ELECTRICITY REGULATION ACT 1999 (ESTABLISHMENT OF
APPEAL PANEL) ORDER 2017

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I, DENIS NAUGHTEN, Minister for Communications, Climate Action and Environment, in exercise of the powers conferred on me by sections 29(3) and 31 of the Electricity Regulation Act 1999 (No. 23 of 1999) (as adapted by the Communications, Energy and Natural Resources (Alteration of Name of Department and Title of Minister) Order 2016 (S.I. No. 421 of 2016)) and following consultation with the Competition and Consumer Protection Commission, hereby order as follows:

Citation and cesser

1. (1) This Order may be cited as the Electricity Regulation Act 1999 (Establishment of Appeal Panel) Order 2017.

(2) This Order shall cease to have effect on the determination by the Appeal Panel of any appeal made against Commission Decision CER/17/277 under section 29 of the Act and the Appeal Panel having complied with this Order.

Definitions

2. In this this Order—

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

“Appeal” means an appeal under Part IV of the Act;

“Appeal Panel” means the Appeal Panel established under this Order.

Establishment of Appeal Panel

3. An Appeal Panel is established to consider an appeal made under the Act against Commission Decision CER/17/277 following a request made under section 29(3) of the Act to establish such a Panel.

Membership

4. (1) The Appeal Panel shall consist of 3 persons at least one of whom shall be a practising barrister or solicitor with at least 7 years’ experience and the others shall have such commercial, technical, economic, legal, regulatory or financial experience as the Minister deems appropriate.

(2) A person is not eligible for appointment as a member of an appeal panel if the person—

- (a) is a member of either House of the Oireachtas or is, with the person’s consent, nominated as a candidate for election as such a member or is nominated as a member of Seanad Éireann,

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 17th November, 2017.*

- (b) is a member of the European Parliament or is, with the person's consent, nominated as a candidate for election as such a member or to fill a vacancy in the membership of that Parliament, or
- (c) is a member of a local authority (within the meaning of the Local Government Act 2001) or is, with the person's consent nominated as a candidate for election as such a member.

(3) The following are appointed as members of the Appeal Panel:

- (a) Eilís Brennan;
- (b) Joe Jeffers;
- (c) Peggy O'Rourke.

(4) The following may be appointed as substitute members of the Appeal Panel, in the event that a vacancy arises during the course of hearing an appeal:

- (a) Aoife Carroll;
- (b) Emma Doyle;
- (c) Silvia Martinez Garcia.

(5) Peggy O'Rourke is appointed to be the chairperson of the Appeal Panel.

(6) Where the Minister considers it appropriate, he or she may direct that the Appeal Panel hear and determine more than one appeal against Commission Decision CER/17/277 at any given time.

(7) A member of the Appeal Panel may at any time resign from the position by giving notice in writing to the Minister.

(8) A member of the Appeal Panel may be removed from the Appeal Panel by the Minister—

- (a) if, in his or her opinion the member has become incapable through ill health of effectively performing his or her duties,
- (b) for stated misbehaviour, or
- (c) if the removal of the member appears to the Minister to be necessary for the effective performance by the Appeal Panel of its functions.

(9) In removing a member of an Appeal Panel, the Minister shall give a statement of the reason or reasons for the removal of the member.

(10) If a person is, or is to be, a member of the Appeal Panel and the person has or acquires an interest that could conflict with the proper performance of the person's functions in relation to the appeal, that person—

(a) shall disclose the nature of the interest to the Minister, and

(b) may not, without the consent of the appellant and the Commission, take part in the appeal, or exercise any powers in relation to the making of the Appeal Panel of the determination to which the appeal relates.

(11) If the Minister becomes aware that a person who is a member of the Appeal Panel has in relation to the appeal an interest referred to in paragraph (10), the Minister shall arrange for the person's interest to be disclosed to the parties to the appeal where the interest has not already been disclosed under paragraph (10).

(12) Where the appellant or the Commission or both do not give a consent under paragraph (10)(b) within such period as may be specified by the Minister, the Minister shall make a substitute appointment to the Appeal Panel.

(13) If a member of the Appeal Panel dies, resigns, ceases to be qualified for office or is removed from office, the Minister may appoint a substitute member as set out at Article 4(4) above to be a member of the Appeal Panel to fill the vacancy.

(14) Where an Appeal Panel is reconstituted by virtue of a substitution under paragraph (13), the Appeal Panel is to have regard to the evidence in relation to the appeal that was given before it was reconstituted.

(15) The Appeal Panel may, if it considers it appropriate, having regard to the reconstitution of the Appeal Panel under paragraph (13), rehear the Appeal.

Procedure of Appeal Panel

5. (1) The Appeal Panel shall, in accordance with this Order and Part IV of the Act, hear and determine the appeal against Commission Decision CER/17/277.

(2) The Appeal Panel shall hear and determine the appeal and shall specify on notice to the Commission and the appellant the date on which the appeal is to be heard.

(3) Subject to the Act and this Order, the procedure at a hearing shall be determined by the Appeal Panel.

(4) The Appeal Panel shall take such measures as are reasonably practicable to ensure that each party to the appeal is given a reasonable opportunity—

(a) to present its case, whether at a hearing or otherwise, and

(b) to make submissions in relation to the issues arising in the proceedings.

- (9) A party to the appeal may—
- (a) appear without representation, or
 - (b) be represented by an agent.
- (10) The Appeal Panel may do all or any of the following:
- (a) require evidence or argument to be presented in writing and decide on the matters on which it will hear oral evidence or argument.
 - (b) require the presentation of the respective cases of the parties before it to be limited to the periods of time that it determines are reasonably necessary for the fair and adequate presentation of the cases,
 - (c) adjourn proceedings to any time and place, or
 - (d) at any stage dismiss proceedings if the applicant has withdrawn the application to which the proceedings relate.

Determination by Appeal Panel

7. (1) The determination of the Appeal Panel shall be made by a majority. In the case of an equal division of votes the chairperson shall have the casting vote.

(2) The Appeal Panel shall notify the parties to the appeal of its determination in relation to the appeal.

(3) The Appeal Panel shall, as soon as practicable thereafter, cause such determination to be published in such manner as may be decided by the Appeal Panel, to include publication of the determination in a newspaper circulating in the State and (where the determination relates to the Single Electricity Market) in Northern Ireland.

(4) The determination shall set out—

- (a) any findings on material questions of fact, referring to the evidence or other material on which those findings were based,
- (b) the Appeal Panel's understanding of the applicable law, and
- (c) the reasoning processes that led the Appeal Panel to the conclusions that it made.

(5) Upon making its determination and having complied with this Article, the Appeal Panel stands dissolved.



GIVEN under my Official Seal,
10 November 2017.

DENIS NAUGHTEN,
Minister for Communications, Climate Action and
Environment.

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