

THE HIGH COURT  
JUDICIAL REVIEW

Record No. 2022/507 JR

Between:

GR WIND FARMS 1 LIMITED, CNOC WINDFARMS LIMITED, TRA INVESTMENTS LIMITED, BALLYBANE WINDFARMS LIMITED, BEAM WIND LIMITED, MEENAWARD WIND FARM LIMITED, CORDAL WINDFARMS LIMITED, SIGATOKA LIMITED, GLANARUDDERY WINDFARMS LIMITED, GLENCARBRY WINDFARM LIMITED, GORTAHILE WINDFARM LIMITED, KILLALA COMMUNITY WINDFARM DESIGNATED ACTIVITY COMPANY, KILL HILLS WINDFARM LIMITED, KNOCKNACUMMER WIND FARM LIMITED, KNOCKNALOUR WIND FARM LIMITED, SEAHOUND WIND DEVELOPMENTS LIMITED, LISDOWNEY WIND FARM LIMITED, MONAINCHA WIND FARM LIMITED, RONAVER ENERGY LIMITED, TULLYNAMOYLE WIND FARM II LIMITED

Applicants

-AND-

THE COMMISSION FOR REGULATION OF UTILITIES

Respondent

-AND-

EIRGRID PLC

Notice Party

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Record No. 2022/501 JR

Between:

ENERGIA GROUP HOLDINGS (ROI) DAC, ENERGIA CUSTOMER SOLUTIONS LIMITED, WIND GENERATION IRELAND LIMITED, HOLYFORD WINDFARM LIMITED, CORNAVARRROW WINDFARM LIMITED AND ESHMORE LIMITED

Applicants

-AND-

THE COMMISSION FOR REGULATION OF UTILITIES

Respondent

-AND-

EIRGRID PLC

Notice Party

### Consolidated table of draft orders

Draft order by GR Wind Farms (enclosed to the submissions)	Draft order by Energia (enclosed to the submissions)	Draft order by EirGrid (enclosed to its letter of 22 December 2023)	Draft order by the CRU (set out in its submissions)
(i) An Order of Certiorari quashing the Decision made by the Respondent acting through the Single Energy Market Committee (the " <b>SEM Committee</b> ") on 22 March 2022 entitled Decision Paper on Dispatch, ReDispatch and Compensation Pursuant to Regulation (EU) 2019/943 (SEM-22-009) (the " <b>Decision</b> ").	(i) An Order of Certiorari quashing the Decision made by the Respondent acting through the Single Energy Market Committee (the " <b>SEM Committee</b> ") on 22 March 2022 entitled Decision Paper on Dispatch, ReDispatch and Compensation Pursuant to Regulation (EU) 2019/943 (SEM-22-009) (the " <b>Decision</b> ").	(i) An Order of Certiorari quashing the Decision made by the Respondent acting through the Single Energy Market Committee (the " <b>SEM Committee</b> ") on 22 March 2022 entitled Decision Paper on Dispatch, ReDispatch and Compensation Pursuant to Regulation (EU) 2019/943 (SEM-22-009) (the " <b>Decision</b> ").	<p>The CRU accepts that an order of certiorari, quashing the Decision, is an appropriate order in light of the Court's Judgment. Once that order is made, the CRU submits that no further orders are necessary.</p> <p>Without prejudice to the foregoing, if the Court is minded to make declarations, then it should not go beyond the following:</p>
(ii) A Declaration that Regulation (EU) 2019/943 (the " <b>Regulation</b> ") entered into force and was directly applicable as of 1 January 2020 and was required to be implemented from that date and has full force of law from that date.	(ii) A Declaration that Regulation (EU) 2019/943 (the " <b>Regulation</b> ") entered into force and was directly applicable as of 1 January 2020 and was required to be implemented from that date and has full force of law from that date.	(ii) A Declaration that Regulation (EU) 2019/943 (the " <b>Regulation</b> ") entered into force and was directly applicable as of 1 January 2020 and was required to be implemented from that date and has full force of law from that date.	(i) A Declaration that Regulation (EU) 2019/943 (the " <b>Regulation</b> ") entered into force and was directly applicable as of 1 January 2020 <del>and was required to be implemented from that date and has full force of law from that date.</del>
(iii) A Declaration that compensation for non-market based redispatching is required to be paid pursuant to Article 13(7) of the	(iii) A Declaration that compensation for non-market based redispatching is required to be paid pursuant to	(iii) A Declaration that compensation for non-market based redispatching is required to be paid pursuant to Article 13(7) of the Regulation from 1 January	(ii) A Declaration that compensation for non-market based redispatching is required to be paid pursuant to Article 13(7) of the

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Regulation from 1 January 2020 and that such payments cannot be deferred.	Article 13(7) of the Regulation from 1 January 2020 and that such payments cannot be deferred.	2020 and that such payments cannot be deferred ( <del>save insofar as time is required for the Notice Party to be funded sufficiently to make the payments</del> ).	Regulation from 1 January 2020 <del>and that such payments cannot be deferred</del> .
(iv) A Declaration that revenues from foregone financial supports, such as REFIT and RESS, must be included in the calculation of "net revenues" for the purpose of Article 13(7)(b) of the Regulation.	(iv) A Declaration that revenues from foregone financial supports, such as REFIT and RESS, must be included in the calculation of "net revenues" for the purpose of Article 13(7)(b) of the Regulation.	(iv) A Declaration that revenues from foregone financial supports, such as REFIT and RESS, must be included in the calculation of "net revenues" for the purpose of Article 13(7)(b) of the Regulation.	(iii) A Declaration that revenues from foregone financial supports, such as REFIT and RESS, must be included in the calculation of "net revenues" for the purpose of Article 13(7)(b) of the Regulation.
(v) A Declaration that Article 13(7) of the Regulation requires that a generator subject to non-market based redispatch be made "whole" or indifferent to redispatch and be paid such sum by way of compensation as will put the generator in the same position as if it had not been redispatched.	(v) A Declaration that Article 13(7) of the Regulation requires that a generator subject to non-market based redispatch be made "whole" or indifferent to redispatch and be paid such sum by way of compensation as will put the generator in the same position as if it had not been redispatched.	(v) A Declaration that Article 13(7) of the Regulation, <del>properly interpreted, was intended to ensure</del> that a generator subject to non-market based redispatch would be made "whole" or indifferent to redispatch ( <del>with deductions made to reflect any payments previously recovered through existing mechanisms</del> ).	<del>(v) — A Declaration that Article 13(7) of the Regulation requires that a generator subject to non-market based redispatch be made "whole" or indifferent to redispatch and be paid such sum by way of compensation as will put the generator in the same position as if it had not been redispatched.</del>
(vi) A Declaration that, in accordance with Article 13(7) of the Regulation, a single determination must be made by a single decision-maker in respect of the financial	(vi) A Declaration that, in accordance with Article 13(7) of the Regulation, a single determination must be made by a single	(vi) A Declaration that, in accordance with Article 13(7) of the Regulation, a single determination must be made by a single decision-maker in respect of the financial compensation to be paid	(iv) A Declaration that, in accordance with Article 13(7) of the Regulation, <del>a single determination must be made by a single decision-maker in respect of</del> the financial

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<p>compensation to be paid for non-market based redispatching which cannot be separated into separate determinations in respect of "market revenues" and "foregone financial support" and that the decision as to whether compensation for foregone financial support should be paid cannot be left to the governments of Ireland and Northern Ireland.</p>	<p>decision-maker in respect of the financial compensation to be paid for non-market based redispatching which cannot be separated into separate determinations in respect of "market revenues" and "foregone financial support" and that the decision as to whether compensation for foregone financial support should be paid cannot be left to the governments of Ireland and Northern Ireland.</p>	<p>for non-market based redispatching which cannot be separated into separate determinations in respect of "market revenues" and "foregone financial support" and that the decision as to whether compensation for foregone financial support should be paid cannot be left to the governments of Ireland and Northern Ireland;</p>	<p>compensation to be paid for non-market based redispatching <b>which</b> cannot be separated into separate determinations in respect of "market revenues" and "foregone financial support" and that the decision as to whether compensation for foregone financial support should be paid cannot be left to the governments of Ireland and Northern Ireland.</p>
<p>(vii) A Declaration that participation in ex-ante electricity markets in the single electricity market (the "<b>SEM</b>") is not a requirement in order to receive compensation for non-market based redispatching pursuant to Article 13(7) of the Regulation.</p>	<p>(vii) A Declaration that participation in ex-ante electricity markets in the single electricity market (the "<b>SEM</b>") is not a requirement in order to receive compensation for non-market based redispatching pursuant to Article 13(7) of the Regulation.</p>	<p>(vii) A Declaration that participation in ex-ante electricity markets in the single electricity market (the "<b>SEM</b>") is not a requirement in order to receive compensation for non-market based redispatching pursuant to Article 13(7) of the Regulation;</p>	<p>(v) A Declaration that participation in ex-ante electricity markets in the single electricity market (the "<b>SEM</b>") is not a requirement in order to receive compensation for non-market based redispatching pursuant to Article 13(7) of the Regulation.</p>
<p>(viii) A Declaration that, in accordance with Article 13(7) of the Regulation, financial compensation for non-market based redispatching must be paid by the transmission</p>	<p>(viii) A Declaration that, in accordance with Article 13(7) of the Regulation, financial compensation for non-market based</p>	<p>(viii) A Declaration that, in accordance with Article 13(7) of the Regulation, financial compensation for non-market based redispatching must be paid by the transmission system</p>	<p>(vi) A Declaration that, in accordance with Article 13(7) of the Regulation, financial compensation for non-market based redispatching must be <del>paid by the transmission</del></p>

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<p>system operator ("TSO") licenced by the Respondent pursuant to section 14(1)(e) of the Electricity Regulation Act (the "ERA") to the generator.</p>	<p>redispatching must be paid by the transmission system operator ("TSO") licenced by the Respondent pursuant to section 14(1)(e) of the Electricity Regulation Act (the "ERA") to the generator.</p>	<p>operator ("TSO") licenced by the Respondent pursuant to section 14(1)(e) of the Electricity Regulation Act (the "ERA") to the generator <b>and not to</b> anyone other than the operator of the electricity generation facility in question <b>(with deductions made to reflect any payments previously recovered by the generator through existing mechanisms);</b></p>	<p><del>system operator ("TSO")- licenced by the Respondent- pursuant to section 14(1)(e) of the Electricity Regulation Act- (the "ERA") to the generator</del> made to the generator (with deductions made to reflect any payments previously recovered by the generator through existing mechanisms).</p>
		<p>(ix) A Declaration that the Respondent must ensure that: (a) methodologies and mechanisms are put in place to calculate, and (b) the Notice Party has, or has the means to obtain, the funding necessary to pay the financial compensation identified in (viii);</p>	
		<p>(x) A Declaration that the generators will provide to the [Notice Party] the information regarding payments previously made through existing mechanisms that is required to calculate the payments to be made;</p>	
<p>(ix) A Declaration that, in accordance with Article 13(7) of the Regulation, no distinction can be made between electricity generators in respect of their entitlement to compensation for non-</p>	<p>(ix) A Declaration that, in accordance with Article 13(7) of the Regulation, no distinction can be made between electricity generators in respect of their entitlement</p>	<p>(xi) A Declaration that, in accordance with Article 13(7) of the Regulation, no distinction can be made between electricity generators in respect of their entitlement to compensation for non-market based redispatching</p>	<p>(vii) A Declaration that, <del>in- accordance</del> insofar as the Decision distinguishes between electricity generators based on whether the date of commissioning is pre-or post-04 July 2019 based on</p>

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<p>market based redispatching or the manner in which it is calculated based on the date of commissioning of the electricity generation facility in question.</p>	<p>to compensation for non-market based redispatching or the manner in which it is calculated based on the date of commissioning of the electricity generation facility in question.</p>	<p>or the manner in which it is calculated based on the date of commissioning of the electricity generation facility in question;</p>	<p><del>presumptions as to whether compensation for priority dispatch generators will be considered unjustifiably high or low, the Decision is incompatible with Article 13(7) of the Regulation, no distinction can be made between electricity generators in respect of their entitlement to compensation for non-market based redispatching or the manner in which it is calculated based on the date of commissioning of the electricity generation facility in question.</del></p>
<p>(x) A Declaration that the term "<i>net revenues from the sale of electricity</i>" in Article 13(7)(b) does not refer only to State supports and requires that net revenues from corporate power purchase agreements ("<b>CPPAs</b>") lost by generators as a result of non-market based redispatching must be taken into account in calculating compensation for the purposes of Article 13(7)(b) of the Regulation.</p>	<p>(x) A Declaration that the term "<i>net revenues from the sale of electricity</i>" in Article 13(7)(b) does not refer only to State supports and requires that net revenues from corporate power purchase agreements ("<b>CPPAs</b>") lost by generators as a result of non-market based redispatching must be taken into account in calculating compensation for the purposes of Article 13(7)(b) of the Regulation.</p>	<p>(xii) A Declaration that the term "<i>net revenues from the sale of electricity</i>" in Article 13(7)(b) does not refer only to State supports and requires that net revenues from corporate power purchase agreements ("<b>CPPAs</b>") lost by generators as a result of non-market based redispatching must be taken into account in calculating compensation for the purposes of Article 13(7)(b) of the Regulation.</p>	<p>(viii) A Declaration that the term "<i>net revenues from the sale of electricity</i>" in Article 13(7)(b) does not refer only to State supports and requires that net revenues from corporate power purchase agreements ("<b>CPPAs</b>") lost by generators as a result of non-market based redispatching must be taken into account in calculating compensation for the purposes of Article 13(7)(b) of the Regulation.</p>

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(xi) Liberty to the Applicants to apply for further relief in the event that effect is not given by the Respondent to the Declarations.	(xi) Liberty to the Applicants to apply for further relief in the event that effect is not given by the Respondent to the Declarations.	<del>(xii) Liberty to the Applicants to apply for further relief in the event that effect is not given by the Respondent to the Declarations.</del>	<del>(xi) Liberty to the Applicants to apply for further relief in the event that effect is not given by the Respondent to the Declarations.</del>