Ireland Publishes Green Paper on Energy Policy

Introduction

On 12 May 2014, the Department of Communications, Energy and Natural Resources published a Green Paper on Energy Policy in Ireland. The Green Paper is a precursor to a White Paper that will follow and which will seek to define Irish energy policy for the coming years. The publication of the Green Paper is to be welcomed as an important step in the future development of Irish energy policy. The Green Paper comes seven years after the 2007 Energy Policy Paper, “Delivering a Sustainable Energy Policy for Ireland.” Much has happened in the interim.

Successes

The Single Electricity Market for the Island of Ireland introduced in 2007 is generally considered to be a success. The drive towards increased renewable penetration, the key facet of our pursuit of deep and deeper decarbonisation, has also been very successful. The generation capacity shortages of the last decade have been addressed in a managed fashion by our policy makers and regulators and in a less managed fashion by the fall off in demand consequent on the economic malaise of the past six years. Other positive developments since 2007 have included increased competition in the electricity generation and supply markets; successful measures aimed at curtailment and management of market dominance; the successful deployment of the East-West Interconnector by EirGrid; and deeper regulatory un-bundling of our vertically integrated monopolies.

Improvement needed

The news however has not all been positive. Ireland’s continued failure to put in place a regulatory and permitting framework that would enable the State and/or private enterprise to bring ashore significant proven gas reserves persists to the detriment of our economy and citizens. We have not addressed security of supply through the facilitation of the development of new gas storage and/or LNG. This is despite the fact that plans to develop the latter have been in train for almost a decade now. Key electricity transmission infrastructure is not progressing for reasons of social acceptability, whilst any assessment of the potential for the exploitation of non-conventional on-shore gas resources has been deferred pending the outcome of a lengthy state-sponsored study that will focus solely on environmental aspects. We still await a single gas market for the Island of Ireland to parallel the Single Electricity Market, even though the proposal was first mooted six years ago.

Policy review and consultation process

It is hoped that the Department’s policy review will give due consideration to the cost of policy options from a regulatory perspective. The implementation of policy choices can very often require the support of complex and burdensome regulation, and continued regulatory intervention, with significant cost implications for market participants and ultimately consumers. As a small peripheral nation on the edge of Europe, we have little actual influence on the final make-up of the European energy policy and regulation that drives our own energy policy and the manner in which we regulate our market. The Green Paper presents six energy policy priorities for discussion followed by a series of questions aimed at encouraging debate on key issues that should be taken into account in the development of...
future energy policy for Ireland. Feedback is sought from interested parties and responses need not be confined to the questions posed.

The closing date for submissions is 31 July 2014 and the Green Paper can be viewed at: http://www.dcenr.gov.ie/Energy/Energy+Planning+and+Electricity+Corporate+Division/

The six priorities listed in the Green Paper are as follows:

**Priority 1 - Empowering Energy Citizens**

**Priority 2 - Markets, Regulations and Prices**

**Priority 3 - Planning and Implementing Essential Energy Infrastructure**

**Priority 4 - Ensuring a Balanced and Secure Energy Mix**

**Priority 5 - Putting the Energy System on a Sustainable Basis**

**Priority 6 - Driving Economic Opportunity**

**Some Key Issues for Consideration**

**Social Acceptability**

Priority 1 focuses on how Ireland as a nation can encourage its citizens to participate in the policy and regulatory decision making process. The questions asked in this regard are timely. Through the work of the Sustainable Energy Authority of Ireland (SEAI) and the Commission for Energy Regulation (CER) and other government agencies there has never been more information available to market participants and consumers. Market consultation has played a fundamental part in our policy and regulatory development for some time now. In particular, it has played a key role at a market participant level in ensuring that regulatory decisions are (for the most part) seen as having been arrived at in a fair, inclusive and transparent manner. At the level of ordinary citizens, and despite the excellent state information initiatives, the message has however become somewhat corrupted. Rather than focusing on the benefits of lower energy prices that are available from increased competition and the facilitation of additional energy infrastructure, much of the debate in the community is regrettably directed at hindering the development of critical energy infrastructure to the detriment of the consumer and the wider economy. As a consequence, the development of key infrastructure that will give increased security of supply and potentially lower prices for consumers is facing formidable challenges on the grounds of social acceptability. Indeed it is strongly arguable that in this area the citizen has become “empowered” to an extent that it is materially detrimental to the interests of the wider economy and the community at large. This needs to be addressed both at a policy level and through engagement with citizens. The issue would seem to be recognised in the Green Paper which questions how Ireland can increase public awareness of the scale of the energy challenges facing us and the ways that citizens can be part of collective solutions.
Fitness for Purpose of the Regulator

Priority 2 raises the issue of the fitness for purpose of our energy regulators. Over the past decade, the Irish energy regulatory framework has, in response to both domestic and European policy and regulatory requirements, become complex and the statutory remit of the regulator has been extended in line with the new requirements. Going forward, the added complexity of the proposed new market arrangements for electricity, the extension of the regulator’s remit to include the regulation of the water sector; and the increase in the number of new market entrants in both the gas and electricity sectors as a result of unbundling requirements, increased competition and privatisation, will all serve to make the role of the regulator more challenging and more costly. There are undoubtedly cost advantages and synergies in keeping the regulation of utilities under the same umbrella. Since the establishment of the CER in 1999, the office of the regulator has grown significantly in terms of strength of regulatory competency, decision making, market engagement and perceived independence. At a time when the office of the regulator is engaged in a complex market re-design exercise, amongst other things, there is real risk that a wholesale review process would give rise to unnecessary distraction and regulatory uncertainty. Any review of the role of the CER should not be seen to reopen the allocation of responsibilities assigned to the CER; rather it should focus, by reference to comparable international models, on the optimum levels of funding and resourcing for the regulator to ensure that the regulator is adequately resourced and funded to enable it to fully engage with the market, cross border institutions and consumers; and meanwhile be regarded as a strong and independent regulator. On the other hand the fitness for purpose and effectiveness of other regulatory bodies that play a significant role in permitting key aspects of energy infrastructure should be subject to a detailed review in light of recent experiences. The role of the State as both policy maker and owner of significant energy infrastructure should also be reviewed to determine whether the existing structure and governance is optimum from the perspective of Irish consumers.

Fitness for Purpose of Regulation

Priority 2 also looks at the fitness for purpose of our regulation. Quite apart from any specific substantive shortcomings in our regulatory framework, it should be noted that Ireland’s legislative framework in the energy sector has developed at a rapid pace over the past 15 years in response to EU and domestic policy initiatives. The manner in which the majority of these significant and extensive changes have been implemented in Ireland has been through a myriad of successive amendments mostly, though not by any means exclusively, to the Electricity Regulation Act 1999 with no consolidation. Each of the amending instruments sits separately (often with amendments made to it in turn). The result is that Irish energy legislation in the gas and electricity sectors has become impenetrable for lawyers and industry alike. This gives rise to significant confusion and unnecessary costs especially for new market entrants and smaller industry players. This matter needs to be addressed as a matter of some urgency. An attempt should now be made to formally consolidate and set out, in one place, a definitive set of current legislation.

Regulatory and Policy Uncertainty

Regulatory and policy certainty are critical elements in securing investment in Irish energy infrastructure. Whilst consultation is absolutely essential and has played an important role in the
evolution of the Irish energy sector, there is a concern that endless overlapping rounds of consultation around market fundamentals is undermining confidence in the stability of the regulatory framework. Examples include the lengthy and complex consultations around Wind in the SEM, the publication of a General Scheme of Geothermal Energy Development Bill in 2010 without any further progress and the proposed revised Foreshore Legislation first mooted at least five years ago and with the General Scheme of Maritime Area and Foreshore (Amendment) Bill published in 2013.

Preserving the Fundamentals of the Irish Electricity and Gas Market

The Green Paper poses some difficult questions as to what should be Ireland’s long-term approach to, and strategy for, electricity and gas market integration for the period after 2016. In light of the level of economic uncertainty, the uncertainties as to how the European energy market will evolve especially in the post 2020 world (ie the period after the effectiveness of the 2020 renewable energy targets is spent) and the proposed UK Referendum on EU membership, it would seem prudent to avoid policy commitments that tie Ireland and Irish consumers to any particular outcome in relation to any of these areas. The focus should instead be on preserving the fundamentals of the All Island Market to ensure that there is continued investment in energy infrastructure, renewable energy and security of supply.

Planning and Implementing Essential Energy Infrastructure

Priority 3 focuses on the permitting and delivery of essential energy infrastructure and asks how the permitting and licensing processes for major energy infrastructure projects can provide for greater collaboration and engagement with community stakeholders as well as what additional improvements could be made to the permitting and licensing processes for energy infrastructure projects to make them clearer and more efficient for project developers, the public, and other stakeholders. Social acceptability is proving to be one of the principal new barriers to energy infrastructure development in Ireland. This needs to be recognised at a policy level and a rebalancing of the existing position is required urgently if critical infrastructure is to be delivered. Contrary to the priority question as it is framed, it is arguable that greater collaboration is not required; rather it is the nature of the collaboration and the constituency with whom the collaboration takes place that is the issue. The legitimate interests and concerns of communities that will actually be impacted by the proposed new infrastructure needs to be taken on board through proper consultation and community gain sharing mechanisms. In return, regulatory and permitting processes need to be refined to ensure firstly, that infrastructure that is strategic in the national interest secures the necessary permits within a commercially acceptable timeframe; and secondly, that scope does not exist for the making of endless legal challenges (the defence of which requires the expenditure of scarce public and private resources) that very often achieve their aim not through any substantive legal victory, but instead through financially strangling the proposed project and/or convincing domestic and foreign investors that Ireland is not an attractive place in which to do business in. There also needs to be recognition of the damage to Ireland’s reputation as a place to invest in and do business in as a consequence of the failures to develop key projects due to challenges.
Ensuring a Balanced and Secure Energy Mix

Priority 4 looks at Ireland’s high dependence on oil and gas. It questions how this might be addressed as well as the optimisation of the policy and regulatory environment to enable the market to decide on an appropriate fuel mix from a grid, market design, carbon, cost and energy security perspective.

In light of new and proposed interconnection with the GB market, and possible interconnection with the French market in the future, as well as the proximity of Ireland to existing UK nuclear facilities, the development of which we have limited legal ability to influence or curb, it is submitted that the policy against the development of nuclear generating capacity in Ireland is no longer credible. The legislative ban on development (which does not prevent import and consumption of electricity from nuclear sources), should be lifted and the technology should be considered on its merits from a cost, sustainability and environmental perspective. Given the cost, scale and complexity associated with this fuel source as well as likely public resistance; the initiative should at least initially lie with the State and State owned energy companies and should be taken forward on a cross-border basis in cooperation with Northern Ireland. Existing decommissioned or soon to be decommissioned generation sites could be considered as possible suitable locations.

The existing policy which appears not to be supportive of LNG also needs to be re-examined and in particular from a security of supply perspective. Security of supply of natural gas needs to be considered in terms of access to both infrastructure and gas molecules. Gas interconnection with GB will not assist from a security of supply perspective (irrespective of whether the UK is or is not in the EU), in circumstances where the UK needs to make decisions as to what it should do in the event that there is a serious disruption to its own gas supplies. Encouragement of investment in new Entry Points that allow for the delivery of indigenous gas and/or LNG must become a matter of policy from an Irish perspective so that Ireland has access to a diverse supply of natural gas. Bearing in mind the length of time it has been proven to take to find, permit, construct and deliver indigenous gas, it is not appropriate to have a policy that defers the consideration of options and investment for the post 2020 world, or the development of a strategy to replace the Corrib field, to some date in the future. Experience has shown that a significant lead in time is and will continue to be required to deliver alternative and supplemental infrastructure alternatives.

As far as off-shore oil and gas is concerned, whilst the economic and fiscal terms must remain attractive if credible E&P companies are to continue to be interested in Ireland’s off-shore, simply offering more favourable terms to a certain extent misses the point because no matter how favourable the terms are, if the policy is defeated by an impenetrable permitting regime, projects will not be delivered or will suffer major delays. There is a real need for a comprehensive and fundamental review and revision of the permitting of onshore and near-shore infrastructure that is part of the development of offshore fields to ensure that the concerns raised by parties with legitimate interests are taken on board prior to project sanction and that permitting proceeds in a coordinated and streamlined manner to ensure that strategic infrastructure projects are then not delayed indefinitely as a result of legal challenges.
Putting the Energy System on a Sustainable Basis

Priority 5 looks at putting our energy system on a sustainable basis. Ireland can continue to secure both domestic and international private capital for the development of renewable generation provided existing market support mechanisms or similar continue to be available in the context of a stable regulatory environment where the operators of the transmission and distribution networks are sufficiently incentivised and have access to sufficient capital to invest in the evolution and development of the networks. The interests of the consumer can be protected by ensuring that grid capacity, capacity payments and market support is directed at only those projects that can deliver rather than those that are merely speculative.

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