

EU issues for renewables in Ireland

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The primary objectives of the energy policy of the European Union and the Member States are to secure energy supplies, at minimal cost, while protecting the environment. Renewable energy receives special attention, as it is the source of energy that can most effectively address all three objectives, which is why there is a Renewable Energy Directive¹.

However, there are a number of ways in which other aspects of EU policy and law are not fully in synch with the renewable energy policy as reflected in that Directive. The three primary disconnects arise from electricity market directives and regulations, environmental protection directives and state aid rules.

Electricity Market

To enable the integration of the European Single Electricity Market, the EU has focussed considerable attention on the rules governing inter-state trade, both as regards infrastructure and market rules. Regulation (EC) No 714/2009 deals exclusively with this matter², while the 3rd electricity package places those rules in the overall electricity market context³.

In Ireland, arising from these various laws, the following dispatch hierarchy has been adopted by the All-island SEM Committee⁴:

- 1. re dispatch price making generation and SO counter trading on the interconnector after Gate Closure;*
- 2. re dispatch price taking generation:*
 - a. Peat*
 - b. Hybrid Plant*
 - c. High Efficiency CHP/Biomass/Hydro*
 - d. Windfarms, and within windfarms*
 - i. windfarms which should be controllable but do not comply with this requirement/are not derogated from same;*
 - ii. windfarms which are controllable;*
 - iii. windfarms which are not required to be controllable/are derogated from this requirement/those in commissioning phase.*
 - e. Interconnector re-dispatch;*

¹ Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC

² Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003

³ Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC

⁴ Single Electricity Market, "Principles of Dispatch and the Design of the Market Schedule in the Trading and Settlement Code", SEM Committee Decision Paper, 26th August 2011, SEM-11-062

f. Generation the dispatch down of which results in a safety issue to people arising from the operation of hydro generation stations in flooding situations.”

So while renewables are to be dispatched down after fossil fuel plant, as per the Renewables Directive, they can be dispatched down before interconnectors. Clearly, the above-mentioned laws are being interpreted as not only granting interconnectors priority of dispatch, but one that is higher than renewables. The effect of this hierarchy has recently become clear, as described below.

However there is no evident statement in those laws that establishes such a clear priority. Article 16 of the Regulation does say:

“2. Transaction curtailment procedures shall only be used in emergency situations where the transmission system operator must act in an expeditious manner and re-dispatching or countertrading is not possible. Any such procedure shall be applied in a non-discriminatory manner.”

This clause and similar ones may have been interpreted here as a form of priority, with a higher ranking than that in the Renewables Directive. Mind you, the electricity package makes specific reference to implementing Article 16 of the Renewables Directive, which grants priority of dispatch, but makes no similar reference to priority for interconnectors.

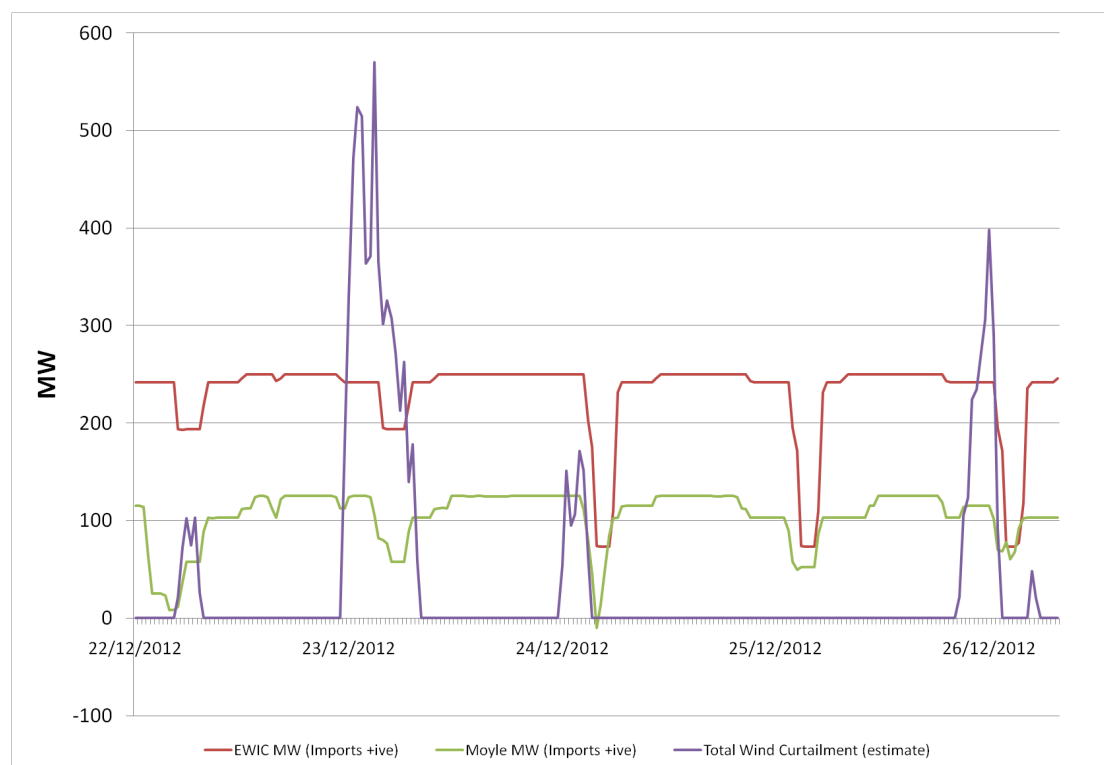
This recently became an issue because the opening of the East-West Interconnector between the Republic and the UK (EWIC) gave rise to this sort of conflict of priorities. Given the dispatch hierarchy as adopted by the SEMC, the result was imports of electricity from the UK at the same time as curtailment of wind generation.

As can be seen in the graphic below, at times, there has been windfarm curtailment while the Moyle and East West interconnector were both importing. At other times, some counter-trading by the TSO was reducing curtailment. However, the TSO has no mandate from the regulator to take losses on counter-trades, so that the scope for reducing curtailment through countertrades over the interconnector is currently rather limited.

This problem may arise from a misinterpretation of the relative priorities as intended by the EU; but EU law is at least unclear on this point. While development of the single market is clearly a correct and very important objective, its purpose in turn is to facilitate the three primary objectives of energy policy as mentioned at the start. Surely there is little point in the EU setting objectives and binding targets for climate change and renewable energy (which also benefit security of supply in particular), only to compromise that by allowing the market to undermine the rules put in place to achieve those objectives and targets. In other words, as part of the compromise between the three primary objectives of energy policy, absolute market rules must be tempered to avoid compromising renewable projects, so as to allow them to continue to develop, in order to get the other benefits in terms of climate and security.

In the case of the EWIC, it was promoted as a means of reducing curtailment in Ireland, and indeed its economic justification was in part based on the costs savings from doing so. It is therefore odd to find that it is, at times anyway, contributing to curtailment.

In conclusion on this point, the EU needs to clarify the relationship between the priorities of renewables and interconnectors.



SEMO system data for 22nd to 26th of December (source Mullan Grid)

Environmental Protection

The EU has a set of very important environmental Directives, which seek to protect sensitive species and habitats. The experience of those wishing to develop wind projects in particular is that the site designations arising under these Directives act as *de-facto* exclusion zones. However it is not the intent of those Directives to exclude development in designated sites. Rather proposed projects seeking consent inside or adjacent to those sites need to be subject to an additional Appropriate Assessment. EU Guidance on this point has been issued, but falls far short of what is required to enable more effective deployment of renewable energy projects.

Ireland has been recalcitrant in implementing the Habitats Directives, both as regards adequate designations and Appropriate Assessments, and is therefore the subject of ongoing litigation. Ireland's response has been to issue sufficient site designations to meet the minimum standards required by the Commission, but in most cases without providing the relevant 'conservation objectives' for the specific sites, even for sites dating from the '90s. This is a backdoor method of blocking any

development in or near such sites, since projects cannot even start their Appropriate Assessments. There appears to be no legal requirement in the Directives to produce those objectives when designating sites, which seems to be a major gap in the law at EU level.

Renewable projects are not typical development. They are a major plank of the growing (but so far inadequate) human effort to arrest climate change and indeed protect the very species that are so endangered that they need protection through site designation. They have been usefully described as the 'fire engines of climate change'⁵. This suggests a need for specific EU legislation for the assessment of projects that have the potential to avert climate change, which would be much more favourable to development in such sites.

In his last book, 'The Energy Imperative', the late Herman Scheer MdB proposed what he termed 'priority planning' for renewable energy projects, so that the normal assumption outside nature protection areas would be consent⁶. To this we could add that the only grounds for refusal within a designated site would be a serious demonstrable threat to the habitat or the species for which the site is designated. Finally, visual impact ought to be removed as a basis for refusal, with the possible exception of situations where projects would cause significant visual impact at world heritage sites which in themselves could be specifically sensitive to visual intrusion by contemporary development such as wind projects⁷.

Such an approach ought now to be considered by the EU institutions for future environmental Directives.

State aid rules

The Treaties of the European Union have a general ban on aid being given by Member States to businesses, but provide certain bases for exceptions, such a social, regional development or environmental protection. The European Commission has a very large measure of autonomy in enforcing these Treaty rules, though the ultimate arbiter is the European Court of Justice. DG Competition of the European Commission provides guidelines to assist the Member States, and the relevant ones here are the "community guidelines on state aid for environmental protection⁸."

State aid rules are an issue because the support schemes for renewable energy projects have generally been designated as state aid by the European Commission. The effect is to both limit the extent of the would-be 'aid' to renewable projects, as well as to hamper the Member States' ability to operate appropriately flexible and responsive support schemes,

⁵ attributed to Dr Josef Pesch, FESA GmbH

⁶ Page 119, "The Energy Imperative", Hermann Scheer, Earthscan, 2012

⁷ for example Newgrange, which is a globally significant Neolithic site, where windmills nearby (rather than in the distance) could compromise the appropriate context.

⁸ Notices from European Union institutions and bodies, Commission community guidelines on state aid for environmental protection (text with EEA relevance) (2008/C 82/01)

which enable them to achieve the various targets proposed for them by the European Commission itself. EU state aid rules are thus cutting across the legally binding renewable energy targets set in the Renewables Directive, as adopted by the EU itself.

Curiously, the support payments made to renewable energy projects arise from Member State regulations that generally draw the funds from the electricity consumer not the Member States themselves. It is by a curious twist that these funds are considered state resources by the European Commission⁹; specifically the fact that they pass through bank accounts in the control of state bodies, like state-owned TSOs and regulators¹⁰. However, in the PreussenElektra case, the European Court of Justice ruled in 2001 that the German support scheme was not state aid, since the funds never touched the State, because its TSOs are privately owned. Surely replicating this situation in some way, where the support funds do not come under the control of the Member State, should be encouraged by the EU, or at the very least tolerated, so as to enable the Member States to meet their EU legal obligations as regards renewables?

⁹ what I term the 'Father Ted Effect', since the funds merely rest in the bank account in question.

¹⁰ See the development of this argument by the Commission in sections 12 to 15 of state aid decision N553/2001 addressed to Ireland's AER V scheme here: http://ec.europa.eu/eu_law/state_aids/comp-2001/n553-01.pdf