Introduction

Dear Members of the Commission for Regulation of Utilities,

Community Law & Mediation (CLM) is writing to address the need for consistency with climate objectives in the development of a Large Energy Users (LEU) connection policy.

CLM notes the obligation of the Commission for Regulation of Utilities (CRU) to exercise its decision-making power in a manner that contributes towards the achievement of climate goals under section 15 of the Climate Action and Low Carbon Development Act 2015 (as amended) and does not consider there to be any overriding statutory requirements which circumvent this obligation.

To ensure data centres do not affect the State's Carbon Budgets Programme, Community Law & Mediation recommends that the CRU:

1. Imposes a moratorium on data centre connections until a legislative and regulatory framework is established to prevent data centres causing a further increase in fossil fuel usage;
2. Prioritises projects that contribute to identified social goals and/or projects that will result in net GHG emissions reductions in bulk supply point/substation capacity allocation;
3. Requires flexible power contracts for all new data centre connections that are in accordance with the objective of mitigating GHG emissions.
4. Prohibits the connection of islanded data centres to the gas network.

Community Law & Mediation would welcome the opportunity to meet with the CRU to discuss these recommendations.

About Community Law & Mediation

Community Law & Mediation ("CLM") is an independent community law centre and charity which provides free legal advice, advocacy, mediation and education services in communities experiencing disadvantage. CLM (previously known as Coolock Community Law Centre) was established in Coolock in 1975 and opened a second law centre in Limerick in 2012. Today, it assists more than 4,000 people annually. In 2021, CLM established the Centre for Environmental Justice which works to ensure climate change and other environmental harms do not disproportionately affect those who have contributed least to the problem, and that the State's response to environmental issues addresses inequality and protects the rights of present and future generations. For more information, visit

https://communitylawandmediation.ie/centre-for-environmental-justice/ or contact info@communitylawandmediation.ie.

Context

Ireland is committed to reducing emissions in line with the legally binding carbon budgets 2021-2030 and to achieving climate neutrality (i,e, net-zero) emissions no later than 2050.[1] While net-zero is a critical milestone, it is cumulative CO_2 emissions that determine total global warming which is why Ireland's climate targets are framed around carbon budgets and sectoral emissions ceilings.[2] Planning the sustainable energy transition to deliver net-zero by 2050 is not sufficient, it is the pathway and timing of net-zero in each sector and the delays in delivering mitigation that will determine success.[3] Emissions from Ireland's energy system must fall to net-zero, or close to zero, well before 2050, and thereafter turn negative.[4]

According to EPA, Ireland's first two overall carbon budgets (2021-2030) are projected to be exceeded by a significant margin of between 17 and 27 per cent.[5] In November 2024, the Sustainable Energy Authority of Ireland published its annual National Energy Projections report. This stated that even with full delivery of the Climate Action Plan 2024, it is likely the energy sector will not keep within its share of the carbon budget for the first two budget periods and Ireland could overshoot its Energy Efficiency Directive 2030 target by approximately 20% in the most ambitious scenario.[6] SEAI projections are modelled using the Irish Government's National Energy Modelling Framework.[7] The data centre demand forecast used in this framework exclusively covers electricity demand and does not include direct demand for natural gas as a result of data centre gas connections.[8] This is a blind spot in the SEAI's energy projections and the EPA's greenhouse gas projections which rely on the same modelling meaning there is more than likely an even greater gap between sectoral emissions ceilings and GHG emissions than projected.[9]

If GHG emissions overshoot committed and legislated carbon budgets, the goals of the Paris Agreement and Ireland's Climate Action and Low Carbon Development (Amendment) Act become increasingly out of reach. Any overshoot must be compensated for in subsequent carbon budgets mandating drastic changes. An overshoot would furthermore increase carbon lock-in, force reliance on unproven carbon dioxide removal and put a just transition at risk.[10] A recent report from the Climate Change Advisory Council and Irish Fiscal Advisory Council

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[1] Climate Action Plan 2024 www.gov.ie/pdf/?file=https://assets.gov.ie/296414/7a06bae1-4c1c-4cdc-ac36-978e3119362e.pdf#page=null
[2] Hannah Daly, Vahid Aryanpur, Bakytzhan Suleimenov & Dr. Paul Deane, 'Pathways for Ireland's Energy System to 2050: Modelling analysis to support the Climate Change Advisory Council on the Second Carbon Budget Programme' Energy Policy and Modelling Group, University College Cork 2024 https://www.climatecouncil.ie/media/CBWG%20Report%20TIMES-Ireland%20Model.pdf 23
[3] (n 2)
[4] (n 2)
[5] Environmental Protection Agency, 'Ireland's Greenhouse Gas Emissions Projections 2023-2050' May 2024 https://www.epa.ie/publications/monitoring--assessment/climate-change/air-emissions/EPA-GHG-Projections-Report-2022-2050-May24--v2.pdf 3
[6] Sustainable Energy Authority of Ireland, 'National Energy Projections 2024' November 2024 https://www.seai.ie/sites/default/files/publications/National-Energy-Projections-Report-2024.pdf
[7] (n 6) 6
[8] Hannah Daly, 'Data Centres in the Context of Ireland's carbon budgets' Energy Policy and Modelling Group, University College Cork (December 2024) Report-data centres-FoE2024-HDaly - final 12
[9] (n 8) 12
[10] Vahid Aryanpur, Olexandr Balyk, James Glynn, Jason McGuire and Hannah Daly, 'Implications of accelerated and delayed climate action for Ireland's energy transition under carbon budgets' npj Climate Action 97(2024) https://www.nature.com/articles/s44168-024-00181-7

highlights the €8 to €26 billion in potential compliance costs Ireland faces if it fails to meet EU climate commitments.[11]

Such climate inaction poses an immediate and pervasive threat to the natural environment and societies throughout the world, including Ireland.[12] The adverse impacts of climate change – the increasing frequency of extreme weather events and natural disasters, rising sea levels, floods, heat waves, droughts, desertification, water shortages, and the spread of tropical and vector-borne diseases – directly and indirectly threaten the full and effective enjoyment of a range of human rights.[13] This includes the right to life, water and sanitation, food, health, housing, self-determination, culture and development. Internationally and in Ireland, these impacts are disproportionately borne by communities experiencing disadvantage or marginalisation owing to geography, poverty, gender, age, disability, cultural or ethnic background amongst other factors.

The Preamble of the Paris Agreement makes it clear that all States "should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights".[14] Moreover, the European Court of Human Rights has found that Article 8 of the European Convention on Human Rights encompasses a right to effective protection by the State authorities from the serious adverse effects of climate change on lives, health, well-being and quality of life.[15]

For the energy sector to adhere to its share of Ireland's carbon budgets and ensure protection of human rights, accelerated mitigation measures are required. The electrification of transport, heat and industry, complemented by the decarbonisation of electricity supply are the main mitigation levers.[16] According to the SEAI, two of the factors which determine the rate at which electricity generation can be decarbonised are;

1) the rate at which electricity demand grows,
2) the rate at which renewable energy generation capacity can be deployed and its energy integrated.[17]

In this respect, for data centres to be compatible with the rate of decarbonisation necessary to adhere to committed carbon budgets, renewable energy deployment must grow faster than energy demand growth from data centres.[18]

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[11] Climate Change Advisory Council and Irish Fiscal Advisory Council, 'A colossal missed opportunity: Ireland's climate action and the potential costs of missing targets' March 2025 https://www.climatecouncil.ie/councilpublications/otherpublications/Ireland%E2%80%99s%20climate%20action%20and%20the%20potential%20costs%20of%20missing%20targets%20FINAL.pdf

[12] Irish Human Rights and Equality Commission, 'Climate Change is a Human Rights and Equality Issue' https://www.ihrec.ie/our-work/justtransition/

[13] United Nations Human Rights Office of the High Commissioner, 'The Impacts of Climate Change on the Effective Enjoyment of Human Rights' https://www.ohchr.org/en/climate-change/impacts-climate-change-effective-enjoyment-human-rights

[14] Conference of the Parties, Adoption of the Paris Agreement, U.N. Doc. FCCC/CP/2015/L.9/Rev/1 (Dec. 12, 2015) https://unfccc.int/resource/docs/2015/cop21/eng/l09r01.pdf

[15] *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (2024) 53600/20 https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2024/20240409_Application-no.-5360020_judgment.pdf

[16] (n 2) 23

[17] (n 6) 26

[18] (n 8) 10

Data centres are increasingly driving Ireland's energy demand. Between 2015 and 2023, total electricity demand grew by 2.6% annually.[19] Of this, data centre demand grew by 22.6% annually, while demand in all other sectors grew by 0.4% annually.[20] Without data centres, Ireland's electricity demand would have been relatively stable.[21]

Renewable energy deployment has not been able to overtake this growth rate. Between 2017 and 2023, all the additional electricity generation from Irish wind energy has been overtaken by the growth in energy demand from data centres.[22] Data centre electricity demand also surpassed the additional renewable energy procured through Corporate Power Purchase Agreements (CPPAs). Daly estimates that renewable energy generation from CCPAs met only 16% of the new electricity demand from data centres between 2020 and 2023.[23]

With data centre demand expanding at the same rate as renewables generation, renewables are not delivering net reductions in fossil fuel use.[24] Data centres are causing greater fossil fuel usage directly and indirectly. Directly, by driving energy demand that has to be met by additional fossil fuels and indirectly by diverting renewables capacity away from powering existing energy demand.[25] This affects a just transition with households left to pay expensive fossil fuel bills and exposed to the effects of rising GHG emissions. Ireland has the second highest electricity prices for household consumers in the EU, with prices almost 30% above the EU average.[26]

Bitpower estimates that data centres' electricity demand emitted 1.53 million tonnes of CO2 in 2023, 2.5% of Ireland's total GHG emissions or 4.5% of total CO2 emissions.[27] Per Daly, if it is assumed that 16% of new data centre loads are realised with renewables through CCPAs, and the remainder through grid-scale gas generation, the cumulative emissions from power demand from data centres over 2021-2030 will be 14.6 million tonnes.[28] Data Centres are not, therefore, an ancillary matter for the State's Carbon Budget Programme – on these projections they will profoundly affect it.

In Eirgrid's median projected scenario, demand for electricity is expected to increase 45% by 2034 from 2023 levels.[29] The largest driver of this growth is data centres and new technology loads which Eirgrid estimates will form 31% of all electricity demand by 2030.[30] Notably, this estimation only considers data centres with an existing contract.[31] Renewable energy deployment cannot overtake this level of demand growth meaning data centres will continue to drive GHG emissions. This was acknowledged in the CRU/202504 discussion of why real-

[19] (n 8) 8
[20] Ibid
[21] Ibid
[22] (n 8) 10
[23] (n 8) 22
[24] (n 8) 3
[25] (n 8) 16
[26] Eurostat. 'Electricity price statistics.' 2024 https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Electricity_price_statistics#:~:text=For%20household%20consumers%20in%20the,(%E2%82%AC0.1256%20per%20KWh)
[27] Bitpower Energy Solutions 'Ireland – Q 4 2024 Market Update' 2024_Q4_Market_Update_Ireland_v1-2.pdf
[28] (n 8) 16
[29] Eirgrid, SONI, 'All-island Resource Adequacy Assessment 2025-2034' March 2025 https://cms.eirgrid.ie/sites/default/files/publications/AIRAA-2025-2034.pdf 13
[30] Ibid
[31] (n 24) 11

time zero emissions from data centres are not achievable at this stage.[32] Appendix A reads "Respondents highlighted the different development timelines between LEUs and renewable generation, suggesting renewable timelines are outside of an LEUs control."[33] While the timelines may be outside the control of LEUs, the Commission for Regulation of Utilities has an obligation to perform its functions in a manner consistent with the objective of mitigating GHG emissions and this should be reflected in any LEU connection policy.

Section 15 of the Climate Change and Low Carbon Development Acts 2015-2021

Section 15(1) of the Climate Action and Low Carbon Development Act (as amended) (the Climate Action Act) imposes an obligation upon "relevant bodies" to:

> *in so far as practicable, perform [their] functions in a manner consistent with—*
>
> *(a) the most recent approved climate action plan,*
> *(b) the most recent approved national long term climate action strategy,*
> *(c) the most recent approved national adaptation framework and approved sectoral adaptation plans,*
> *(d) the furtherance of the national climate objective, and*
> *(e) the objective of mitigating greenhouse gas emissions and adapting to the effects of climate change in the State.*[34]

As acknowledged in CRU/202504, the CRU and System Operators are considered "relevant bodies" for the purpose of this section.[35] In this regard, section 15(1) imposes a functional duty on the CRU; it requires the CRU to act in a manner that is compatible with the relevant climate change strategies outlined in (a)-(e) in the exercise of all its functions.

Coolglass v An Bord Pleanála [2025] IEHC 1, provides a comprehensive judicial analysis of the substantive obligation section 15 imposes on relevant bodies.[36] The Court described section 15 as a "comply with" – type obligation which denotes a mandatory adherence to certain standards or objectives and the words "as far as practicable" were found to be a very high standard which only just fall short of unconditional compliance.[37]

Humphreys J commented:

> *…all vectors of interpretation point strongly in the same direction – the need for an imperative reading of s. 15(1) in line with what it says, namely that the board and any other relevant body is required to act in conformity with the climate plans and objectives set out in the subsection unless it is impracticable to do so.…*[38]

The Court provided a summary of principles for the application section 15.

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[32] Commission for Regulation of Utilities, 'Large Energy Users Connection Policy – Proposed Decision Paper' CRU/202504 February 2025 90
[33] Ibid 90-91
[34] Climate Action and Low Carbon Development Act 2015 (as amended) s.15
[35] (n 32) 11
[36] *Coolglass v An Bord Pleanála* [2025] IEHC 1
[37] Ibid 11
[38] Ibid [117]

The conclusion is that where the board (or mutatis mutandis any other relevant body) is called on to make a decision of relevance to the achievement of the matters set out in s. 15(1), it should proceed as follows:

(i) The board must ask itself what substantive disposition of the matter that is practicably available would contribute to achieving the s. 15 goals. In the case of renewable energy projects, the answer to that will almost always be a grant of permission, and is obviously so here. It is not an answer that the permitting of any one project won't achieve climate goals on its own. That is the drop-in-the-ocean fallacy that is rejected globally, and would obviously strangle the effort to address climate change at the starting line.

(ii) The board should then ask whether the substantive disposition of the matter in a way that furthers climate goals is precluded by a mandatory and non-fixable legal requirement that confers no discretion or evaluative judgement on the decisionmaker. If so, the project has to be refused no matter how climate-friendly it is.

(iii) If the answer to that is No, the board should then ask if its discretion or evaluative judgement can be exercised in such a way as to support the outcome favouring climate goals. Examples include the following:

(a) insofar as concerns an overall judgement as to proper planning and sustainable development, that must be exercised in an evaluative way that furthers climate goals if practicable, albeit that it could allow the board to form an independent judgement that a project did not comply with the principles of proper planning and sustainable development, if those two concepts are properly considered together;

(b) insofar as concerns material contravention, if such contravention arises, the board should exercise the power to permit such contravention in whatever way that furthers climate goals if practicable to do so – as the applicant submits, the board cannot merely defer to a limitation in an individual development plan if to do so would contribute to an inconsistency (the avoidance of which is not impracticable) with climate plans and objectives contrary to s. 15;

(c) if non-mitigable impacts on European sites arise, the board must apply the public interest override in a manner that furthers climate goals, if practicable to do so; and

(d) if there is some impracticability in a grant of permission, but it can (or could potentially) be resolved by a procedural decision that is not impracticable, then the board is required to make the procedural decision that is most consistent with climate goals to enable the problem to be fixed – for example to require further information or to carry out any additional steps open to it regarding assessments if the developer's initial assessment information is deemed inadequate.[39]

[39] Ibid [131]

In light of the assertion that the current provisions of the Climate Action Act do not provide a sufficient legal basis to allow the CRU to explicitly mandate specific emissions reduction and offsetting measures, it is worth considering the second question outlined above, namely whether the legislative framework in which the CRU operates prohibits it from exercising its decision-making power in a way that contributes towards achieving the climate goals specified in (a)-(e).

The CRU's legislative framework

Section 34 of the Electricity Regulation Act 1999 (the 1999 Act) provides that the CRU has the power to issue directions to the electricity Transmission System Operator (TSO) and Distribution System Operator (DSO) in relation to the terms and conditions offered to parties seeking to connect to and use the distribution and transmission systems.[40] The directions may provide for a range of purposes as set out in section 34(2) which also provides that the electricity System Operators shall comply therewith.[41] Under section 34(2), directions given by CRU may provide for, inter alia, those matters which the CRU considers necessary or expedient for the purpose of making an offer for connection to or use of the transmission or distribution system.[42]

Sections 9(4) and 9(5) of the 1999 Act require the CRU in the carrying out of its duties to have regard to a range of matters, the most relevant of which for present purposes are contained at section 9(4)(a)(i) - to secure that all reasonable demands by final customers of electricity for electricity are satisfied, section 9(4)(a)(v) - to promote the continuity, security and quality of supplies of electricity, and section 9(4)(a)(vi) - to promote the use of renewable, sustainable or alternative forms of energy.[43]

Regulation 28 of the European Communities (Internal Market in Electricity) Regulations 2005 (SI No 60 of 2005) sets out the CRU's duty in respect of the security of supply of electricity.[44] Regulation 28(5) provides that the CRU 'shall take such measures as it considers necessary to protect security of supply.'[45] That obligation is in the same regulation as the monitoring obligation which states (regulation 28(1)-(2)):

> *(1) It shall be the duty of the Commission to monitor security of supply of electricity.*
> *(2) The monitoring referred to in paragraph (1) shall include the monitoring of— (a) the balance between supply and demand,*
> *(b) the level of expected future demand,*
> *(c) the envisaged additional capacity being planned or under construction,*
> *(d) the quality and level of maintenance of the transmission networks,*
> *(e) the measures to cover peak demand, and*
> *(f) the measures to deal with a shortfall of capacity by one or more suppliers*[46].

[40] Electricity Regulation Act 1999 s.34
[41] Ibid
[42] Ibid
[43] Electricity Regulation Act 1999 s.9(4)
[44] European Communities (Internal Market in Electricity) Regulations 2005 S.I. No. 60/2005
[45] Ibid
[46] Ibid

The European Communities (Internal Market in Electricity) Regulations 2000 (SI 445/2000) list (regulation 8(1)) the exclusive functions of TSOs, which include (regulation 8(1)(a)):

> *to operate and ensure the maintenance of and, if necessary, develop a safe, secure, reliable, economical and efficient electricity transmission system, and to explore and develop opportunities for interconnection of its system with other systems, in all cases with a view to ensuring that all reasonable demands for electricity are met and having due regard for the environment;*[47]

Where section 34 directions are being considered by the CRU in respect of the TSOs, it seems reasonable to expect that the obligations on the TSOs to have regard to the environment and the reasonableness of the demands being made for electricity supply will be an aspect of the decision-making process.

Thus, even before section 15 obligations arise in respect of the CRU, the CRU is under an obligation to have regard to the environment and the reasonableness of the demands being made for electricity supply under The European Communities (Internal Market in Electricity) Regulations 2000 and to promote renewable energy under section 9(4)(4)(a)(vi) of the 1999 Act.

In the absence of further information about the legal review upon which the aforementioned section 15 assertions were made, it does not seem there are any overriding statutory requirements which would circumvent the CRU's section 15 obligation. The CRU, in drafting the LEU connection policy, is required to exercise its decision-making power in a way that contributes towards achieving climate goals.

If, as asserted, the CRU does not somehow have sufficient legal basis to explicitly mandate emissions reductions and offsetting measures, it must be questioned why such a significant lacuna in the law went unnoticed in the four years since the amendment of the Climate Action Act and more importantly what steps are being taken to ensure the CRU has the legal mandate to exercise its decision-making power in a way that contributes towards achieving climate goals in accordance with section 15.

Exercising decision-making power in a way that contributes towards achieving climate goals

In 2024, the SEAI stated:

> *"In the context of our legally binding national and international climate and energy obligations, the negative consequences versus the benefits of allowing new large electricity users, such as datacentres, to establish in Ireland needs to be considered"*[48]

In light of this statement, the aforementioned GHG emissions projections and the importance of ensuring a rapid and just transition, a moratorium on data centre connections cannot be considered disproportionate. To ensure achievement of section 15 climate objectives, the CRU should impose an immediate moratorium on data centre connections until a legislative

[47] European Communities (Internal Market in Electricity) Regulations 2000 S.I. No. 445/2000
[48] (n 6) 25

and regulatory framework is established to prevent data centres causing a further increase in fossil fuel usage.

If, as stated in CRU/202504, the CRU is committed to "enabling the twin transitions of the digitalisation and decarbonisation of our economy and society" as outlined in 2022 Government Statement on the *Role of Data Centres in Ireland's Enterprise Strategy,*[49] conditions must be created for the deployment of renewable energy to grow faster than energy demand growth from data centres. A Large Energy Users connection policy based on "connection measures" is not appropriate in this regard.

A CRU "connection measures" policy that facilitates fossil fuel usage by data centres is also incompatible with a just transition. Enabling a data centre driven increase in energy demand that has to be met by fossil fuels or that diverts renewables capacity away from powering existing demand has a disproportionate impact on communities who experience disadvantage or marginalisation. It leaves such communities reliant on expensive harmful fossil fuels thereby putting them more at risk of energy poverty, the health effects of pollution and the impacts of climate change. It favours data centre profit and prevents communities from experiencing the benefits of renewable energy.

For the energy sector to adhere to its share of Ireland's carbon budgets and a just transition, an immediate moratorium is necessary.

Community Law & Mediation recommends that, in accordance with its section 15 obligations, the CRU should impose a moratorium on data centres connections until a legislative and regulatory framework is established to prevent data centres causing a further increase in fossil fuel usage.

Having introduced Community Law and Mediation's overarching position, this submission now turns to answering listed questions.

Q1. Comments are invited from interested parties in relation to the topics covered in Section 2 Constrained regions of the electrical system and security of supply.

In section 2 it is stated:

> *In the development of this proposed decision paper, ESB Networks has highlighted risks that, in the absence of an adequate policy response, the potential level of data centre demand could significantly impact its ability to accommodate demand connections required to support Government policy targets such as 550,000 new homes by 2040 (Project Ireland 2040 - National Planning Framework, 2018)), 680,000 heat pumps and 945,000 EVs by 2030, major electrified rail projects explicitly identified in the National Development Plan(e.g. DART+, Metrolink etc) and other social infrastructure.*[50]

The allocation of capacity at bulk supply points or substations should not be on a first-come, first-served basis. The principles of a just transition demand the equitable distribution of the

[49] (n 32) 26
[50] (n 32) 41

resources necessary for a sustainable energy transition. This includes bulk supply point/substation capacity and therefore priority should be given to Government policy targets such as those listed that contribute towards the public good not data centre profit.

It is stated in section 2 that the CRU does not have sufficient statutory powers under current legislation to prioritise certain government policy objectives over others.[51] It can be argued, however, that for the CRU to act in accordance with its section 15 obligations it should prioritise projects that will mitigate GHG emissions. In this regard, the allocation of bulk supply point/substation capacity for the fulfilment of heat pump and electric vehicle (EV) targets results in GHG emissions savings. The allocation of capacity for data centres does not. Daly estimates that the rollout of EVs and Heat Pumps in accordance with the EPA's With Additional Measures scenario, results in 5.81 and 7.97 million tonnes of CO_2 emissions savings respectively whereas data centres and new tech load connections result in an increase of 5.77 million tonnes of CO_2 emissions (based on EirGrid's Median demand scenario for data centre growth).[52]

The SEAI also states:

> *From a national greenhouse gas emissions perspective, increased electricity demand from replacing fossil fuel heating systems with heat pumps or fossil fuelled cars with EVs results in an overall net reduction in emissions. This is because the emissions from the increased electricity demand are more than compensated for by a reduction in emissions in the heat and transport sectors, leading to lower overall emissions. In contrast, increased electricity demand from datacentres and continued growth in the industry, services and residential sectors does not displace fossil fuel use elsewhere in the economy. If total electricity demand increases ahead of the roll-out of renewable generation capacity it will lead to higher emissions. This will make it extremely challenging for the electricity sector to meet its national greenhouse gas emissions reduction obligations. The same principle applies with the requirement to reduce total final energy use in line with the EU Energy Efficiency Directive target, and the requirement to increase renewable energy share in line with the EU Renewable Energy Directive (RED) target. Increased electricity demand from replacing fossil fuel heating systems with heat pumps or internal combustion engine (ICE) vehicles with EVs results in less energy use overall because of the much higher efficiency of heat pumps and EVs compared to boilers and fossil fuelled cars. In contrast, increased electricity demand from datacentres increases total final energy demand and will make it very challenging to meet both the EED and RED targets. The surge in usage of generative artificial intelligence will compound this issue.*[53]

While Community Law & Mediation acknowledges the inaccessibility of heat pumps and EVs for many communities, ensuring the prioritization of such GHG emissions saving

[51] Ibid
[52] (n 8) 16
[53] (n 6) 27

measures in bulk supply point/substation capacity allocation is an important first step in achieving the equitable distribution of climate action benefits.

Community Law & Mediation recommends that the CRU prioritises projects that contribute to identified social goals and projects that will result in GHG emissions savings in bulk supply point/substation capacity allocation.

Q2. Comments are invited from interested parties in relation to the topics described in Section 3 Proposed decision on electricity connections.

Section 3 states:

> *The Commission has made a proposed decision that data centres connecting to the electricity network will be required to provide dispatchable onsite or proximate generation and/or storage capacity which matches their MIC (subject to derating requirements), with this generation required to participate in the wholesale electricity market.*

The proposed failure to compel new data centres to use renewable energy sources in providing dispatchable onsite or proximate generation is of very significant concern and, if adopted, raises questions about the ability of the CRU to comply with its aforementioned obligations pursuant to Section 15 of the Climate Action Act.

Requiring data centres to self-report to the System Operator annually in relation to their use of renewable energy and their sites' emissions is not a sufficient deterrent for fossil fuel use. Without a requirement to use renewable energy sources, data centres will continue to connect to the gas network. This presents an enormous risk to Ireland's carbon budgets. Daly estimates, based on Gas Networks Ireland projections, that additional emissions arising from natural gas use by new industrial and commercial loads (i.e. data centres with connections to the gas network) will cause the Commercial and Public Services sector to exceed its sectoral emissions ceiling by a minimum of 2.6 $MtCO_2$ (Gas Networks Ireland's "Low" scenario), and up to 3.6 $MtCO_2$ (the "High" scenario).[54] The Low scenario is limited to emissions from data centre customers with connection agreements already in place.

In the absence of further information about the legal review upon which section 15 assertions were based, there does not appear to be any overriding statutory provisions that would prevent the CRU from mandating the use of renewable energy in onsite or proximate generation in accordance with the requirement for it to act in conformity with the climate plans and objectives set out in section 15.

Community Law & Mediation recommends that the CRU exercises its decision-making power in a manner that contributes towards the achievement of climate objectives by requiring the use of renewable energy sources in onsite or proximate generation.

[54] (n 8) 18

Q4. Comments are invited from respondents on the proposed approach of providing the System Operators with the ability to require demand flexibility from data centres on the local system as deemed necessary on a case-by-case basis.

Section 3 states:

> *The Commission has made a proposed decision that there is no additional requirement for demand flexibility provisions on all new data centre connections, however the System Operators can require demand flexibility provisions from data centres on the local system as deemed necessary on a case-by-case basis.*[55]

The Climate Action Plan 2023 set the aim of 20% to 30% of electricity to be flexible by 2030 and the expectation that LEUs would make up a higher proportional contribution to this flexibility target.[56]

Considering this expectation and the potential of demand flexibility to enable greater emission reductions, placing no additional requirements for demand flexibility provisions on new data centre connections is not appropriate. Demand flexibility requirements being decided on an ad hoc basis by System Operators is an approach incompatible with the objective of mitigating GHG emissions. To limit peak demand impact, flexible power contracts should be mandated for all new data centre connections. Demand flexibility requirements should not, however, shift demand to onsite fossil fuel generation or gas connections. This again is incompatible with GHG emissions mitigation.

Community Law & Mediation recommends that the CRU requires flexible power contracts for all new data centre connections that are in accordance with the objective of mitigating GHG emissions.

Q5. Comments are invited from interested parties in relation to the topics described in Section 4 Gas connections

Section 5 states:

> *"The CRU considers that the provisions under the Climate Action Act and Gas Act 1976 do not provide a sufficient legal basis to the CRU for measures in relation to islanded data centre gas connections and emissions provisions. The CRU is not proposing to introduce any new decisions relating to connections to the gas network as part of this review process."*[57]

As stated above, the risk data centre gas connections pose to the Commercial and Public Services' sectoral emissions ceiling is significant. This risk is particularly strong for data centres which intend to fully bypass the electricity network and power all operations using on-site natural gas (islanded data centres).[58] This was acknowledged in the July 2022 Government Statement on the *Role of Data Centres in Ireland's Enterprise Strategy*, It

[55] (n 32) 68
[56] Climate Action Plan 2023 www.gov.ie/pdf/?file=https://assets.gov.ie/270956/94a5673c-163c-476a-921f-7399cdf3c8f5.pdf#page=null 140
[57] (n 32) 75
[58] (n 8) 14

outlined that islanded data centres are not in line with national policy, run counter to emissions reductions objectives and do not serve the wider efficiency and decarbonisation of the energy system.[59]

In 2024, 11 data centres were approved to connect to the gas network and an additional 22 have made connections requests which GNI are not progressing, pending publication of the LEU connection policy.[60] In 2023, despite awareness of the 2022 Government Statement, GNI stated:

> *"GNI is obliged to connect all system users in line with its published connection policy and legal obligations. Subject to any changes to connection policy arising from the ongoing engagement with the Commission for Regulation of Utilities, GNI will be open to connecting more data centres in line with its approved connection policy."*[61]

Therefore, in the absence of a decision by the CRU on islanded data centre gas connections and emissions provisions, GNI will connect more islanded data centres to the gas network presenting a direct threat to the State's carbon budget programme.

A recent decision of An Bord Pleanála refusing permission for an islanded data centre provides a clear interpretation of the duties of state bodies regarding islanded data centres. The Board held that a grant of permission for the relevant islanded data centre would be inconsistent with 'the overarching objectives of the Climate Action Plan 2024, by reference to reducing Greenhouse Gas emissions'.[62] In reaching the decision, the Board stated it had performed its functions 'in a manner consistent with Section 15(1) of the Climate Action and Low Carbon Act 2015, as amended by Section 17 of the Climate Action and Low Carbon Act 2021'. It is unclear why the CRU's interpretation of the Climate Action Act does not align with that of An Bord Pleanála.

As stated, the CRU must not only have regard to the climate objectives listed in section 15 of the Climate Action Act but ensure that the decisions it reaches are consistent with the specified criteria. Refusing to propose measures in relation to islanded data centre gas connections and emissions provisions is not a decision consistent with the objective of mitigating GHG emissions.

Community Law & Mediation recommends that the CRU makes a decision to prohibit the connection of islanded data centres to the gas network.

[59] (n 32) 75
[60] (n 8) 12
[61] Paul Hosford, 'Gas Networks Ireland will connect 11 data centres to gas grid despite emissions target concerns' Irish Examiner November 2023 https://www.irishexaminer.com/news/arid-41264824.html
[62] An Bord Pleanála, Board Direction BD-018882-25 ABP-317936-23 https://www.pleanala.ie/anbordpleanala/media/abp/cases/directions/317/s317936.pdf?r=731083071317

Conclusion

Recommendations

Community Law & Mediation recommends that the CRU:

1. Imposes a moratorium on data centre connections until a legislative and regulatory framework is established to prevent data centres causing a further increase in fossil fuel usage;
2. Prioritises projects that contribute to identified social goals and/or projects that will result in net GHG emissions reductions in bulk supply point/substation capacity allocation;
3. Requires flexible power contracts for all new data centre connections that are in accordance with the objective of mitigating GHG emissions;
4. Prohibits the connection of islanded data centres to the gas network.

Cases

Coolglass v An Bord Pleanála [2025] IEHC 1

Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (2024) 53600/20

Legislation

Climate Action and Low Carbon Development Act 2015, as amended

Electricity Regulation Act 1999

Statutory Instruments

European Communities (Internal Market in Electricity) Regulations 2005 S.I. No. 60/2005

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