

**Submission by ESB ESOP Trustee Limited to the Energy Planning Division,
Department of Communications, Marine and Natural Resources
on the Energy Green Paper**

Introduction

We welcome the opportunity to make this submission on the Green Paper Towards A Sustainable Energy Future for Ireland (the Energy Green Paper).

This submission focuses on the role of ESB ESOP Trustee Limited; its position as holder, on behalf of over 10,000 beneficiaries, of 5% of the issued capital stock of ESB; the legal rights and duties of the Trustee and the impact certain proposals could have on its role and duties to its beneficiaries which are clearly defined legal obligations arising under statute and common law.

Role of ESB ESOP Trustee Limited

ESB ESOP Trustee Limited (the Trustee) is a single member company, wholly owned but not controlled by ESB and established solely to act as Trustee of the ESB Employee Share Ownership Trust (ESOT) and of the ESB Approved Profit Sharing Scheme (APSS). Both the ESOT and the APSS are duly approved by the Revenue Commissioners under the provisions of the Taxes Acts and together comprise the ESB Employee Share Ownership Plan (ESOP).

In December 2001, the Trustee acquired 5% of the capital stock of ESB on behalf of the ESOT. In due course, the capital stock will pass into the APSS. However, while the stock continues to be held in the ESOT, the obligations to manage it and to protect its value – which arise both under the Trust documentation and at common law – rest with the Trustee.

Under the legislation governing ESOT's, the Trustee cannot acquire shares or stock in any company other than the founding company – namely ESB. If the capital stock were to be sold from the ESOT, any sale proceeds would be fully taxable at income tax rates in the hands of the beneficiaries. The effect of this is that the Trustee is tied in as an investor in ESB and cannot diversify its stock nor dispose of it in order to mitigate risk.

Position of ESB ESOP Trustee Limited as ESB Stockholder

Given the very limited powers of the Trustee as regards divestment or diversification, the primary focus of the Trustee must be to ensure that no step is taken that has, or is likely to have, the effect of diminishing the value of the Trust Fund (i.e. ESB capital stock).

As such, we welcome the statement that the “Government believes that it is important to retain a strong, commercially viable ESB ...”. However, we are concerned to note the many references to “State-owned enterprises” and would request that the role and rights of the ESOP as a 5% stakeholder in ESB be recognised.

We would also draw to your attention the possible conflicting roles of policy maker and stakeholder of the other stockholders in ESB – the Ministers for Finance and for Communications, Marine & Natural Resources. The Ministers clearly have a general duty to act in the public good and to protect the value of State assets. However, as beneficial stockholders, they have no direct obligation in respect of the value of ESB per se. This is clearly at odds with the interests and legal obligations of the Trustee. As the stockholder with legal obligations to protect the value of the capital stock, the Trustee must be consulted and its rights as a stockholder recognised in relation to any proposals that could impact on that value (e.g. the price paid to ESB for any transfer of ESB generation sites to a State-owned land bank).

As set out above, the interest of the Trustee is as a long-term investor and we welcome the initiative to develop an energy strategy that looks towards 2020. We would caution strongly against short term fixes that may have adverse effects on the value of ESB capital stock.

Conclusion

We look forward to playing a constructive role in addressing the three pillars of energy policy identified in the Green Paper - security of supply, environmental sustainability and competitiveness – while at the same time not prejudicing the rights and interests of the ESOP's beneficiaries.

ESB ESOP Trustee Limited
30 November 2006