Mr Kevin O'Neill
Electricity Directorate
Utility Regulator
Queens House
14 Queens Street
Belfast
BT1 6ED

16 July 2012

Dear Mr O'Neill

Northern Ireland Electricity Transmission and Distribution Price Control 2012 - 17:
Draft Determination 19 April 2012

I am writing on behalf of the member elected trustees of the Northern Ireland Electricity Pension Scheme (NIEPS) regarding the Utility Regulator's consultation on its RP5 proposal as it applies to pensions.

The Trustees received a briefing from NIE at our quarterly meeting on 12 June. We also had the opportunity at that meeting to discuss the potential implications of the proposals for NIEPS with our actuarial and investment advisors.

We understand that NIE will be responding separately on the draft determination. However, the views they expressed to us indicate that the proposed heavy restrictions to capex and opex costs, in addition to pension costs, will severely limit the affordability of the current and future schedules of contributions.

Specifically on pensions we fail to see the logic of:

- ignoring post valuation date experience
- excluding deficit attributable to NIE Powerteam
- treating past benefit improvements as legally avoidable

Post valuation date experience

The Utility Regulator will, we are sure, be aware that the latest actuarial valuation was brought forward a year to 31 March 2011 at NIE's request in order to recognise for RP5 purposes the reduction in liabilities resulting from the Government's change to the CPI index for public sector pension increases.

The adverse market conditions that have applied since mid 2011 appear to be with us for some time to come and their impact was for good reason an integral part of the valuation, bearing in mind the valuation had been brought forward a year.

It strikes us as far from even-handed on the Utility Regulator's part to recognise the positive impact of CPI based pension increases but to ignore a fundamental and continuing shift in market conditions.

NIE Powerteam

As we understand it, NIE Powerteam only provides services to NIE's Transmission and Distribution activities. If a part of the current deficit is allocated to NIE Powerteam outside of RP5, the only source of funding would be from shareholder's return on equity in NIE Powerteam.

This fundamentally changes our view on the sponsor covenant provided to NIEPS by the participating employers.

Past benefit improvements

We cannot understand the logic of disallowing associated costs of benefit improvements granted out of past valuation surplus. These were granted as a result of negotiations in the context of financial conditions, and Inland Revenue surplus regulations, at the time and are now contractual commitments. At the same time the employer and its customers enjoyed reduced costs through reduced pension contributions. It seems to be an argument of "with hindsight" to regard these as avoidable costs.

We would also wish to point out that, following a special contribution of £50m paid in 2006 when Arcapita acquired Viridian/NIE, NIEPS was for a time fully funded and this was reported to members in Newsletters issued in 2007. Like many UK pension schemes, all of the current NIEPS funding deficit can be attributed to a deterioration in economic and financial conditions and increased life expectancies.

Your proposals if confirmed in the final determination by the Utility Regulator, would substantially alter our view of the sponsor covenant and its ability to meet the funding deficit. Having discussed this with our actuarial and investment advisors, the consequence of this would be to review risk budgets and to consider adopting more cautious funding and investment principles. A more risk averse investment strategy, driven by the maturity of NIEPS, would see a much greater allocation to UK gilts, a reduction in investment returns and an increase in pension costs, including the proportion to be picked up by NIE's Transmission & Distribution business.

We also understand that the Utility Regulator's approach to pension costs for each of the above issues is at odds with Ofgem's approach for energy utilities under its regulation. We are advised that the pass through of efficiently incurred pension costs is a fundamental component of the strength of covenant offered by the regulated activities of the participating employers.

To avoid the Trustees needing to revisit our funding and investment principles, we would urge you to review your proposals and, consistent with previous price controls, recognise that:

- all of the current funding deficit is attributable to adverse investment conditions and recognition of increased life expectancies since 2007; and

- following the separation of NIE from Viridian's generation and supply activities, substantially all of NIEPS now relates to NIE's regulated activities.

We would welcome the opportunity to meet with the Utility Regulator to discuss our response.

Yours sincerely

Noel McKeown

Noel McKeown
For and on behalf of Member Elected Trustees