

**MINUTES OF THE FORTY FOURTH MEETING OF THE NORTHERN IRELAND  
AUTHORITY FOR UTILITY REGULATION (THE 'AUTHORITY') HELD ON THURSDAY  
AND FRIDAY, 15 AND 16 DECEMBER 2011 AT QUEENS HOUSE, BELFAST**

Present: Mr Peter Matthews Chairman  
Mr Philip Johnson  
Mr Jim Oatridge  
Mr Alan Rainey  
Mr Clive Elphick (except for items 10 – part of and 11)  
Mr Bill Cargo  
Mr Richard Rodgers  
Mr Shane Lynch Chief Executive

In attendance:

|                   |  |
|-------------------|--|
| Ms Jo Aston       | Director of Water                                    |
| Mr Donald Henry   | Director of Corporate Affairs                        |
| Mr Kevin Shiels   | Acting Director of Retail and Social                 |
| Mr Brian McHugh   | Director of Gas                                      |
| Ms Tanya Wishart  | Director of Electricity                              |
| Mr Greg Irwin     | Board Secretary/ Communications<br>Manager           |
| Ms Mary Jones     | Legal department                                     |
| Mr John Cooper    | Wragge and Co (for agenda items 10<br>and 11 only)   |
| Ms Sarah Friedel  | Electricity directorate (for agenda<br>item 10 only) |
| Mr Simon Scott    | Electricity directorate (for agenda<br>item 10 only) |
| Mr Albert Shaw    | Electricity directorate (for agenda<br>item 10 only) |
| Ms Leigh Smyth    | Electricity directorate (for agenda<br>item 10 only) |
| Mr PJ McCloskey   | Electricity directorate (for agenda<br>item 10 only) |
| Mr Kevin O'Neill  | Electricity directorate (for agenda<br>item 10 only) |
| Mr Dermot MacCann | Project Zeus (for agenda item 10<br>only)            |
| Mr Paul Harland   | Gas directorate (for agenda item 11<br>only)         |
| Mr Carl Hashim    | Gas directorate (for agenda item 11<br>only)         |

## **1. APOLOGIES FOR ABSENCE**

Clive Elphick (for 15 December)

## **2. FIRE DRILL**

The board members were informed of the evacuation procedures which apply at Queens House in the event of a fire.

## **3. DECLARATIONS OF INTEREST**

The following board members declared a potential interest in relation to specific items and subsequently voluntarily absented themselves from the meeting whenever the board came to that agenda item: Bill Cargo (relating to the PNG price control and the IC Mitigation and Security of Supply), Richard Rodgers (PNG price control), and Alan Rainey (NIE T and D price control – part of relating to pensions). Tanya Wishart also absented herself from the discussion on the NIE T and D price control – relating to the pensions element.

The Chairman took a further opportunity to review, in general, the interests of board members.

## **4. MINUTES OF THE PREVIOUS MEETINGS**

The minutes of the board meetings on 12 October and 25 November were agreed subject to a small number of minor amendments to the 12 October minutes.

## **5. ACTION POINTS FROM THE PREVIOUS MEETING**

The Action Points from the previous board meetings were reviewed.

The Chairman updated the board on his discussion with the NI Water Chairman.

## **6. CHIEF EXECUTIVE'S REPORT**

(a) The Chief Executive presented his report and identified several areas for discussion.

The Chief Executive provided a report on the recent mock incident exercise undertaken by NI Water. Board members clarified specific aspects of the exercise and also discussed the broader state of readiness of NI Water in preparation for any adverse weather event.

There was an update on timing and process issues relating to the Power NI price control. The effective date of implementation of the price control was clarified. The Board expressed some concern at the delay in the overall price control process.

A factual update was provided on specific issues relating to the Common Arrangements for Gas (CAG). The impact of delay on the overall timetable for implementation and compliance with EU directives was clarified.

The latest position on wholesale gas prices was reported to the board.

It was noted that the Consumer Council has re-joined the Water Stakeholder Partnership.

(b) The Director of Corporate Affairs presented the Finance and Performance report which was considered and approved. A report was provided on the latest budget position and queries on expenditure pressures were addressed. An overview of progress against Forward Work Plan targets was also presented. The mid-year review of risk was also discussed and suggestions for changes were received from board members.

## **7. REPORTS FROM BOARD SUB-COMMITTEES/ADVISORY GROUPS**

### **Audit Committee**

The Chairman of the Audit Committee, Jim Oatridge, provided a report of the most recent meeting of the Audit Committee, which took place on 10 November 2011. The Committee discussed the broad issue of risk and the risk process. It was noted that further work on declaration of interests had taken place.

## **Energy BAG**

The Chairman of the Energy BAG, Philip Johnson, noted that the key issues discussed by the Energy BAG at its most recent meeting were on the board agenda.

## **Water BAG**

The Chairman of the Water BAG, Clive Elphick, noted that the key issues discussed by the Water BAG would be covered at the board meeting.

## **Remuneration Committee**

The Chairman of the Remuneration Committee, Bill Cargo, stated that the Committee had recently considered remuneration, performance management arrangements and the Committee's terms of reference at its recent meetings.

## **SEM Committee**

The Director of Electricity provided a high level update on current SEM policy matters, identified key consumer risks and identified key policy decisions to be made by the SEM Committee over the coming months. In particular, she updated the board on: the position regarding the judicial review in relation to the Irish carbon levy, the publication of guidelines on certification obligations arising from the EU IME3 directives and the repair to the Moyle Interconnector. She also addressed board member queries in relation to the capacity payment mechanism and fuel mix disclosure.

## **8. UPDATES**

### **a) Network finance**

There was nothing to report on this issue on this occasion.

### **b) NI Water investigation update**

The Director of Water introduced a paper which provided the board with a progress report on the delivery of the Freeze/Thaw Recovery plan. She noted in particular the improvements delivered by NI Water, which were summarised in the paper.

## **9. BRIGHT IDEAS**

There was no further update to the previous report.

## **10. NIE T AND D PRICE CONTROL (RP5)**

The Director of Electricity introduced this paper, and subsequently voluntarily absented herself from the discussion on the pensions aspect of this agenda item. She provided some background commentary to RP5, outlined the purpose of the briefing to the board and provided an update on the timetable. It was also noted that the Energy BAG had extensively reviewed and discussed RP5 at recent meetings.

Board members were provided with a comprehensive range of documentary material, and this information was drawn on in a presentation by Kevin O'Neill.

His presentation focused on the following key areas: a review of the previous price control (RP4) – particularly with regard to Powerteam and NIE's capitalization practice, the RP5 capex and opex submission made by NIE, the weighted average cost of capital (WACC), incentive arrangements and NIE pensions issues.

Board members took the opportunity to clarify information and an extended discussion ensued on several key issues.

The key issues discussed included: engagement with NIE during the price control process, the overall treatment of the Powerteam subsidiary, NIE's capitalization practice during RP4 and the extent of its financial impact, NIE's capex submission and the justification for the allowance sought, the opex submission and benchmarking, new approaches to incentive arrangements, proposals for the WACC, and, the profile of the NIE pension scheme membership and the extent, management and repair of the scheme deficit.

There was agreement that high level engagement with NIE was necessary to ensure that the company was given one last opportunity to provide further information and evidence to inform the draft determination. The key areas were in regard to the capex submission and the pension deficit. It was also agreed that accountancy consultants would be appointed to examine NIE's capitalization practice in detail and that NIE should be informed immediately about this course of action.

## **11. PHOENIX NATURAL GAS LTD PRICE CONTROL**

The Chairman, in preliminary comments on this agenda item, noted the extensive consideration already given to this issue by the Board and the Energy BAG at previous meetings.

The Director of Gas then provided an overview of the proposed price control decisions and updated the board on changes to the draft decision paper since the last board meeting.

John Cooper also provided an update on legal issues and clarified a specific timing issue regarding the publication of the Authority's decision paper and associated licence modifications.

The Board discussed key issues relating to the treatment of outperformance and alternative options available.

Following this discussion, the Board agreed to the price control proposals. There was also agreement that the decision paper should be published, along with the associated licence modifications, once a review of the document - to take account of drafting issues - had been completed. It was also agreed that an amended version of the board cover paper, to reflect board member comments, should be provided.

## **12. GENERATING UNIT AGREEMENTS**

The Director of Electricity introduced this item, which provided an analysis of the financial position of generating units which are subject to Generating Unit Agreements (GUAs).

Board members clarified timing issues associated with the GUAs.

The Board agreed that it would not instruct the cancellation of any GUA at present, and noted that a further paper would be presented to the February 2012 board meeting.

## **13. FIRMUS ENERGY LICENCE BREACH**

The Director of Gas introduced this item which considered whether firmus energy was in breach of its licence in respect of a failure to provide a distribution network code for the ten towns area.

He provided an update to the papers originally circulated to board members, and confirmed that firmus energy had recently provided a distribution network code.

The Board discussed the late submission of information by firmus energy and considered whether enforcement action would be appropriate.

While there was some support for enforcement action, the Board, on this occasion, decided not to pursue this course of action. The Board did however instruct the Chief Executive to formally convey its dissatisfaction at the failure of firmus energy to comply with its licence condition.

#### **14. DRAFT EQUALITY SCHEME**

The Director of Corporate Affairs introduced this paper which sought the board's approval for the Authority's draft Equality Scheme. In noting that the draft scheme was developed in compliance with the Equality Commission's model scheme, he did draw the Board's attention to the Authority's proposed approach to screening.

The Board approved the Authority's draft Equality Scheme.

#### **15. PC13 PROGRAMME AND GOVERNANCE**

The Director of Water briefed the board on the timetable of PC13 dates. The Board noted the content of the update.

#### **16. SECURITY OF SUPPLY OUTCOME**

The Director of Gas briefed the board on the annual assessment of the all-island gas transmission network to meet forecast gas demand and potential supply scenarios over the next ten years and the resultant consultation on potential mitigation measures. Board members discussed the assumptions covered by the assessment.

The Board noted the briefing.

#### **17. IC MITIGATION AND SECURITY OF SUPPLY**

The Board noted correspondence from the European Commission. The correspondence fully supported the Authority's view that Northern Ireland gas shippers should be able to access the IC gas interconnector without paying an ongoing charge.

#### **18. ANNUAL INFORMATION REPORT**

The Board Secretary introduced this item which provided an overview of media and information requests and website activity in the last year.

In noting the report, the Board requested details of Freedom of Information requests and the analysis of media coverage.

#### **19. ANY OTHER BUSINESS**

Capital budget approval for NIE T and D for RP4 Extension period (1 April-30 September 2012) - Kevin O'Neill briefed the board on this issue and clarified queries relating to average expenditure in the previous period and assumptions relating to connections and load growth. With no further issues to be addressed, the Board approved the capital budget for NIE T and D for the RP4 extension period.

Health and safety undertakings – following a query raised by a board member, the Executive agreed to discuss health and safety arrangements across regulated companies.

All items of business having been discussed, the Chairman brought the meeting to a close on 16 December at 12.15 p.m.



