

Ronan Larkin  
Director of Finance and Regulation  
Northern Ireland Water Ltd  
Northland House  
BELFAST  
BT1 2NS

5<sup>th</sup> October 2007

Our Ref: W/COM/43/JA/22

Dear Ronan

#### **Reference Notice**

We refer to your letter of 13 September 2007 in which you request an Interim Determination of the Domestic Base Allowed Revenue and non-Domestic Based Allowed Revenue. We would express concern that no prior notification of your approach was provided.

As I understand your application, NIW seeks an interim determination under Licence Condition 15.2 of the Instrument of Appointment of NIW in respect of two Notified Items (Changes up or down in the number of meter optants and Payments under Guaranteed Service Standards (GSS)) and a Relevant Change of Circumstance ("an increase in electricity tariffs as a consequence of the introduction of the Single Electricity Market (SEM)").

It is clear from your letter that you are not in a position to submit the necessary and reasonable details of your claim as required under Licence Condition B paragraph 15.4 and paragraph 19.1. You have therefore not enabled us to make a determination. Indeed you state in your letter of 13 September 2007 that "given the inherent uncertainty associated with the above and the unknown outcome of the review by the Independent Review Panel NIW are unable to further specify the materiality of the notified items and relevant changes of circumstances.....". Due to the complete absence of essential detail in your application we also are unable to assess your application's triviality (see Licence Condition B paragraph 15.2(3)(i-ii)(i) or materiality (see Licence Condition B paragraph 15.2(6-7) as required under the Licence.

In view of your non-compliance with Licence Condition B, paragraphs 15.4 and 19.1, I have confirmed with the Utility Regulator's Legal Department that your letter does not constitute a valid Reference Notice in accordance with the provisions of the Instrument of Appointment of NIW (Licence Condition B15.2 and B15.4). Our would-be duty to make a determination has therefore not arisen.

I would also point out that the costs you anticipate have not transpired and are unlikely to, if at all, until 2008/09 at the earliest. On a point of principle common to other utility regulators we are not minded to allow costs to be borne by customers upfront. More simply, both SEM and GSS have not commenced and we are unaware of any change in metering policy, either as a consequence of the Independent Review Panel or otherwise.

In addition, and in a spirit of helpfulness, your letter of 13 September 2007 does not indicate that NIW is making an application under Licence Condition B15.3 which it could have. We confirm however that such a notice would not constitute a valid legal application under that provision. In regard to Condition B15.3 we would remind NIW that a circumstance under Condition B15.3 can have a "substantial adverse effect" or a "substantial favourable effect" on the appointed business. Such an application can be double edged. It could be that NIW has made substantial savings in a number of areas, such as part performance of the Crystal Alliance contract, and costs relating to metering due to the deferral of domestic charges.

However as indicated, we do not regard your letter as a valid Reference Notice under Condition B15.2 or B15.3.

I would encourage NIW to approach this office as soon as any requirement for such an application emerges in future so that we might determine the matter expeditiously. You will appreciate the requirement for a 15 September deadline (see Licence Condition B 15.4(1)) is based upon a reasonable period of time to inform our determination after appropriate consultation and advice so to, inter alia, inform an approved Charging Scheme going forward into your billing run to enable new bills to issue from 1 April of the year following the application.

In a bid to move forward constructively, and to aid the development of the regulatory relationship, we would suggest that you enter into dialogue with the Utility Regulator in the coming months to discuss and agree a shared understanding of the process which would apply in the case of future interim determinations which either one of us may wish to instigate. Without prejudice to the principles of best regulatory practice I would envisage such processes will require commencement around your submission of the Annual Return by mid-July of each year.

Yours sincerely



**JO ASTON**  
Director – Water Group

cc K Bryan  
I Osborne  
C Swales  
JP Irvine