



**The Consumer Council**

**Response to the Utility Regulator's  
Consultation on**

**“Northern Ireland Energy Holdings  
Corporate Governance Review”**

***April 2009***

## 1. Introduction

- 1.1. The Consumer Council's role is to give consumers a voice - and to make sure that voice is heard by those who make decisions that affect consumers. A Non-Departmental Public Body, the Consumer Council was set up by statute in 1985 to promote and safeguard the interests of all consumers in Northern Ireland.
- 1.2. The Consumer Council has certain specific responsibilities for energy, passenger transport, food, and water.
- 1.3. A key feature of the Consumer Council's work is the need to carry out research to determine consumer concerns and to campaign for the best possible standards of service and protection. The Consumer Council has a major role to play in educating consumers so that they will have the skills and confidence to meet future challenges.
- 1.4. The Consumer Council welcomes this opportunity to respond to the Northern Ireland Authority for Utility Regulation's (NIAUR) consultation paper on Northern Ireland Energy Holdings (NIEH) Corporate Governance Review. We called for, and therefore welcome the review of, the corporate governance arrangements of NIEH, to ensure optimum performance and efficiency of their management of the Scottish and Northern Ireland Pipeline (SNIP), Moyle Interconnector and Belfast Gas Transmission Pipeline (BGTP) on behalf of energy consumers in Northern Ireland.
- 1.5. However, we must note with disappointment that respondents have only been afforded with a six week consultation period. Given this also incorporated the St Patrick's Day Bank Holiday and the Easter Holiday period, in effect the consultation period was just over the five week period.

- 1.6. We reserve our right to ensure consumers interests are protected in the ever changing energy environment and that we are not tied to previous responses made in different circumstances, or indeed this position should the context or environment change.

## **2.0 Executive Summary**

- 2.1 The Consumer Council welcomes the findings of Ernst and Young's review which was conducted on behalf of NIAUR into NIEH's corporate governance and remuneration structure. It has been found to be compliant with the Combined Code on Corporate Governance<sup>1</sup> (the Combined Code), and we note that the arrangements also scored appropriately against Ernst and Young's governance maturity model.
- 2.2 Further, we welcome the commitment of NIEH to adopt the recommendations made by Ernst and Young, and approved by NIAUR, to improve their corporate governance and remuneration arrangements. We are also heartened that NIEH has already taken action to implement some of these recommendations and look forward to their schedule of implementation of the remaining recommendations and being kept updated on same.
- 2.3 Nevertheless, the consultation document does not provide us with the detailed information upon which many of its conclusions are based. In particular we are not having sight of the Ernst and Young report to NIAUR upon which the consultation is based. In the interests of transparency and openness we believe more information should be made available to the Consumer Council as a statutory consultee and to others including public availability, particularly in the following areas:
- The benchmark comparators used;

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<sup>1</sup> Financial Reporting Council, June 2008

- Details of key elements of all NIEH's Committees, including terms of reference;
- Ernst and Young's report to NIAUR following their review.

2.4 We particularly support Ernst and Young's recommendation to assess the performance of Board Members. While we do not deny the difficulties in achieving this, nevertheless we believe this is a necessary process for a mutualised company given the fact that the risk is borne by consumers of ineffective performance or inefficient management.

2.5 A review into the performance targets for NIEH Directors is welcome.

2.6 We acknowledge the independent role of NIAUR, however we believe that mechanisms must be in place to protect consumers should it ever be proven that NIEH are not managing the business in the best interests of Northern Ireland consumers. To this end, we believe NIEH and NIAUR must agree on a mechanism whereby NIAUR can offer guidance and support.

### **3.0 CORPORATE GOVERNANCE REVIEW**

#### **3.1 Northern Ireland Corporate Governance Structure**

3.1.1 The Consumer Council notes that one of the measures used to assess NIEH's corporate governance structure was Ernst and Young's governance maturity model. This measures NIEH's performance against particular components under indicative best practice, average practice and leading practice. While there was an explanation provided in the consultation document of these terms, it would also be useful to learn of other organisations or the type of organisation that would fit under these categories. This would provide a useful context for the benchmark against which NIEH's performance would be assessed, and

provide evidence of the assumptions made in the consultation document that NIEH would not be expected to reach the higher end of the leading practice category due to its size and complexity.

3.1.2 The Consumer Council is supportive of the recommendation from Ernst and Young that the terms of reference for NIEH's sub committee be made available on NIEH's website. This will ensure public accountability and transparency. However, it is not clear from the consultation document whether the scope of the review considered if the terms of reference for the audit committee followed the guidelines set out for listed companies under the Guidance on Audit Committees<sup>2</sup>. We consider this an important aspect for the review into Corporate Governance arrangements and would request a response on this issue.

3.1.3 The Consumer Council welcomes the commitment from NIEH to implement a Board Charter to outline the roles and responsibilities of the Board. In developing this Charter, NIEH should adopt best practice as a benchmark and engage with NIAUR.

3.1.4 The recommendation by Ernst and Young that NIEH should consider a formal measurement process to assess overall output and efficiency of individual Members is, we believe, an important one. While we note that Members are not remunerated for their involvement in the business, given that the risk of inefficiencies is borne by consumers it is imperative that there is a formal, independent assessment of the performance of members. While we appreciate the difficulties in implementing a formal assessment process, we do not consider that that in itself is a sufficient reason not to proceed.

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<sup>2</sup> Financial Reporting Council, October 2008

3.1.5 The Consumer Council seeks assurance from NIAUR that there is a sufficient audit function in place to ensure, at least on an annual basis, that NIEH are duly following their internal processes.

3.1.6 We seek assurances that the risk borne by consumers through the impact of potential inefficiencies in the management of the energy assets is included within the risk register.

## **3.2 NIEH Membership Structure**

3.2.1 As NIAUR nominate two independent Members for NIEH's board, we are interested to learn of the measures NIAUR takes in ensuring and assessing the independence of its nominees in an open and transparent way. Given that NIAUR does not make the final decision regarding the selection and appointment of Members it is important that independence is maintained.

3.2.2 The Consumer Council recognises the important independent role NIAUR has in the regulation of NIEH. We recognise the benefits of NIAUR and NIEH Members meeting on a regular basis to discuss a range of issues, specifically the effectiveness of NIEH as a group. It is our view that the minutes of these meetings should be publicly available given that NIEH manage the energy assets on behalf of Northern Ireland consumers.

## **3.3 Consistency of NIEH's Governance Structure with Code**

3.3.1 The Consumer Council is pleased that the review concluded that NIEH were operating in line with the Combined Code, and that any recommendations made are purely to enhance existing practises rather than to address any deviation from the Combined Code. We commend NIEH for this. The Consumer Council is supportive of the recommendations made by Ernst and Young, specifically the assessment of Board Members performance, publication of terms of reference and the development of a Board Charter.

#### **4.0 Remuneration Review**

- 4.1 The Consumer Council appreciates that the levels of remuneration should be sufficient to attract, retain and motivate Directors and that the level of remuneration is published in NIEH's Annual Report. We recognise that Ernst and Young took into account the size of organisation, in terms of market capitalisation and revenue, the type of organisation and the sector within which it operates and the level of responsibility of post when benchmarking the remuneration of NIEH. In the interests of transparency and openness, it would be beneficial to publicise the organisations that Ernst and Young used to compare NIEH's remuneration levels.
- 4.2 We are pleased that NIEH has agreed to consider Ernst and Young's recommendation to review the performance targets, which Ernst and Young suggested may not be sufficiently challenging.
- 4.3 Given the lack of financial incentive for NIEH, we believe any performance bonuses for Members or staff should reflect the market norm for mutualised companies.

#### **5.0 Regulatory Review**

- 5.1 The Consumer Council is supportive of NIAUR's plans to implement a licence condition, (to ensure adequate and appropriate corporate governance arrangements) as part of Moyle's licence, in line with BGTL and PTL's licence arrangements.
- 5.2 Further, we are supportive of NIAUR's recommendation to include a licence condition as part of Moyle's licence to monitor Moyle's operating expenditure, to facilitate public scrutiny and provide a benchmark for NIEH's operating expenditure. The very ethos of NIEH's mutual model is to act in the best interests of Northern Ireland

consumers. To this end, we seek that NIEH agree on a mechanism whereby NIAUR offer guidance and support if it is perceived that NIEH cannot meet this objective.

- 5.3 The proposed review by NIAUR of NIEH's Membership Policy is welcome. Terms of reference for this review should be made publicly available, as should NIAUR's conclusions following this review.

**For more information please contact Ciara McKay on 028 9067 2488**