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Dear Ian

**Northern Ireland Energy Holdings
Corporate Governance Review**

Thank you for the opportunity to comment on the corporate governance review of Northern Ireland Energy Holdings (NIEH). This response is on behalf of Phoenix Energy Holdings Limited (PEHL).

We welcome the Utility Regulator's (UReg's) commitment to monitor NIEH's corporate governance arrangements to assure industry and consumers that the mutualised model is protecting consumer interests.

It would however be useful to understand the terms of reference for this review. The consultation confirms that NIEH's corporate governance arrangements are broadly consistent with best practice but we believe the remit of this review could have been widened to include comment on NIEH's actual corporate governance performance. For example:

1. We would have expected the review to comment on whether investment of the BETTA rebate is delivering the expected consumer benefits given the concerns expressed at the time of UReg's approval of a £10m investment in the Irish Renewable and Sustainable Energy Fund¹.
2. We also note that UReg opted to delay its final decision on the optimal way to utilise the remaining amount of the BETTA rebate until SEM was established. We are not aware of any decision having been taken now that the SEM market has crystallised and ask if this was also invested in the European Renewable Energy Fund or has a final decision yet to be made?

¹ NIAER Comment on Responses to 'Maximising Customer Value: Options for Northern Ireland Energy Holdings' February 2006 Consultation, September 2006

3. We support NIEH having sought approval from UReg before engaging a management company to undertake consultancy work on the acquisition of PTL given its association with one and possibly two of NIEH's directors. However for transparency we would have expected UReg to comment on its decision in this review.
4. We would expect actual performance to be a significant driver in a review of corporate governance in any business and would therefore have expected UReg's review to comment on whether NIEH's actual performance to date is delivering the anticipated NPV savings of mutualising each energy asset.

We agree with the recommendation by Ernst & Young (EY) that NIEH have a Board Charter to define membership and role of the Board and welcome UReg's indication that NIEH are currently developing this. We hope that this will bring more visibility and a more transparent appointments and accountability process given the apparent circularity of the current process.

We would also welcome further clarification from UReg on its role in selecting two independent representatives for NIEH's Membership Selections Committee. We have full confidence in UReg's impartiality and integrity but this is an unusual arrangement in respect of a regulated company and may give rise to a perception of a conflict of interest because UReg is ultimately responsible for providing overall regulatory oversight of the company.

We welcome EY's recommendation that NIEH's Membership Selections Committee considers developing assessment criteria for Member's performance. However we note that EY did not suggest a detailed proposal nor were they aware of any comparisons used elsewhere.

In relation to risk management the consultation paper implies that UReg wouldn't expect a formal training programme or communications strategy based on the size of NIEH. We believe that systems for Health and Safety and risk management should be consistent with the value and importance of the asset that the company manages and the strategic consequences of that asset not operating effectively on Northern Ireland as a whole. Therefore we would expect UReg to ensure that the appropriate procedures are in place irrespective of how NIEH chooses to manage its resource structure.

Mutualisation has effectively reduced NIEH's level of risk for operating and maintaining each asset when compared to the regulatory structure of other utilities. We note that UReg undertook a remuneration review and whilst we appreciate that a direct comparator is limited, it is unclear whether EY also considered benchmarking NIEH against companies operating at a similar level of risk. We believe that this would also be a suitable benchmark going forward.

Yours sincerely

Abigail

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