

**MINUTES OF THE TWENTIETH MEETING OF THE NORTHERN IRELAND
AUTHORITY FOR UTILITY REGULATION (THE 'AUTHORITY') HELD ON
THURSDAY, 12 FEBRUARY 2009 AT QUEENS HOUSE, BELFAST**

Present	Mr Peter Matthews Mr Clive Elphick Mr Jim Oatridge Mr Chris Le Fevre Mr Alan Rainey Ms Etain Doyle	Chairman
In attendance	Mr Donald Henry Ms Jo Aston Mr Brian McHugh Mr Dermot MacCann Mr Greg Irwin Mr JP Irvine Mr Kevin Shiels Mr Peter Naylor	Director of Corporate Affairs Director of Water Director of Gas Director of Electricity Board Secretary and Communications Manager Head of Legal Strategy Manager (for agenda item 9) Water Directorate (for agenda items 10, 11 and 12)

1. APOLOGIES FOR ABSENCE

Iain Osborne, Philip Johnson

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

No declarations of interest were made.

4. MINUTES OF THE PREVIOUS MEETING

The minutes of the previous meeting were agreed.

5. ACTION POINTS FROM THE JANUARY MEETING

The action points recorded at the last meeting had been circulated to the Board and progress against each action point was noted.

6. CHIEF EXECUTIVE'S REPORT

a) In the absence of the Chief Executive, relevant Directors in attendance reported on their specific sections of the Report.

The Board noted that satisfactory undertakings had now been received from NI Water, within the time period specified by Board. The Board requested that a copy of the final undertakings be provided.

An update was provided by the Director of Water on non-domestic bills for 2009-10 and the general situation regarding water funding. Board members were conscious of the continuing uncertainty regarding water funding and the wider implications for overall public spending in Northern Ireland.

It was also noted that the Authority had published a document outlining its overall approach to Price Control 2010, and copies of this were made available to the Board. The forthcoming publication of the Cost and Performance Report for NI Water was also discussed. In seeking clarification on the data contained in this report, board members were keen that a comprehensive and accurate account of the costs and performance of the water company would be presented.

The Director for Electricity briefed the Board on developments relating to energy procurement processes, in the light of last year's experiences and the resultant impact of consumer prices, and a proposal to the SEM Committee regarding a review of the capacity mechanism. A recent announcement by the Minister for Communication, Energy and Natural Resources in the Republic of Ireland, asking the Commission for Energy Regulation to review energy prices, was also discussed.

Board members also noted the plans to publish an overview of the Authority's response to Douglas McIlldoon's independent review of the electricity tariff setting process.

An update was also provided on the consultation on the requisite licence modifications required as a consequence of the proposed acquisition of SONI by Eirgrid. In response to queries from board members, a briefing was provided on the responses received. It was noted that the next step in the process would be a draft decision paper to be presented to the SEM Committee.

There was some discussion regarding the North-South Interconnector. Board members discussed several of the contentious issues associated with the practical implementation of the interconnector project. Specifically, the need to understand the impact on costs, associated with the options for the installation of the interconnector, was stressed by board members.

The Director of Gas indicated that a wider discussion on the Common Arrangements for Gas (CAG) was a specific item on the board agenda. An update on progress relating to the firmus and Phoenix price controls was also provided. Finally, the Director of Gas provided further information for board members on work relating to options for the further roll-out of gas in Northern Ireland. It was stated that the terms of reference for a study into the options had been finalised and the expectation was that the report would be forthcoming during the summer.

Resulting from the discussion on the impacts of the wider financial crisis, Board members discussed potential vulnerabilities for related regulated network entities that might possibly arise. Further information was sought by the board, including clarification on relevant licence controls, was requested for the March meeting of the Board.

The Director of Corporate Affairs briefed board members on corporate affairs and management issues. He indicated that the retail team is now operational and has commenced work on a range of key issues.

Board members noted the situation regarding developments for making offers of direct employment contracts to on-loan staff.

Briefing on a recent health and safety incident was provided to the Board. A short discussion ensued on methods for mitigating specific health and safety risks, and the Board considered that the incident was an opportunity to review current practice.

In relation to regulatory developments, the Chairman of the Water BAG (Clive Elphick) outlined a number of issues in Great Britain, principally the Westminster Environment, Food and Rural Affairs Select Committee's announcement of an inquiry into OFWAT's Price Review 2009, and the referral of an OFWAT interim determination to the Competition Commission by Sutton and East Surrey Water Company. There was also some discussion about the prospect of a pan-European regulator for energy.

b) Finance and Performance Report

The Director of Corporate Affairs presented the report. It was noted that it was likely that there would be an under-spend in salaries and consultancy items at the end of the current financial year. Other indicators from the dashboard were discussed with the Board: the continuing low absence rate, the third round of review with Directors on the Forward Work Plan, and the downgrading of the significant risk - failure to deliver objectives due to resourcing pressures – following the recent directorate performance reviews. The outcome from the mid -year review of risk was discussed and it was noted, as discussed in the previous item that actions was being taken utilize consultancy support, as appropriate, in areas where limited staffing resources are available.

7 REPORTS FROM BOARD SUB-COMMITTEES

Audit Committee

The Chairman of the Audit Committee, Jim Oatridge, indicated that the Committee would be considering the 2009-2010 budget as the substantive item at its next meeting, which would commence after the Board meeting.

Energy BAG

Chris Le Fevre, as Chairman of the Energy BAG, provided an update on its January meeting. The Energy BAG discussed Gas storage, the Northern Ireland Energy Holdings (NIEH) governance review, NTS Exit Reform, Market Monitoring Unit report, the PPB Price Control.

In relation to the NIEH governance review, board members were briefed on the key findings of the review, carried out by Ernst and Young. In noting the recommendations from the review, board members focused on the remuneration of non-executive members, the question of whether NIEH members exercised a significant challenge/ accountability role to its board and the role of the Authority vis a vis the governance arrangements of the mutualised company. Board members were content that the Authority had exercised due diligence in commissioning an independent review, had thoroughly reviewed the development of the report of the review and had engaged with NIEH members on communicating the findings. While there was some concern about the remuneration of non-executive directors, it was recognised that the independent review had benchmarked NIEH with similar companies and found no significant disparity in remuneration levels. After some discussion, board members noted the importance of NIEH members exercising an appropriate challenge function to the board of the mutualised company.

On the PPB Price Control, it was noted that as well as a discussion at the Energy BAG, a presentation had subsequently been made to Energy BAG members by PPB. A fundamental issue that emerged related to the treatment of PPB as a standalone entity and the implications for its funding.

Water BAG

The Chairman of the Water BAG, in a brief report, noted that the last meeting considered two key issues – (1) the NI Water Costs and Performance report, and (2) PC10. The Director of Water indicated that in order to manage the considerable programme of work associated with PC10, it was intended that monthly meetings of the Water BAGs would be convened. The timing of critical elements of the PC10 process and their submission before the Board was also outlined, with the likelihood that the final determination would need to be considered by the Board at the end of November. There was support for the idea that NI Water representatives would be invited to make presentations to the Water BAG on critical elements associated with the PC10 programme.

Remuneration Committee

Etain Doyle, Chairman of the Remuneration Committee, provided a brief update on the Remuneration Committee's January meeting. The meeting considered PriceWaterHouseCooper's report on remuneration for the Chief Executive and Directors, and approved remuneration levels for the rest of the staff complement. It was noted that a further meeting of the Remuneration Committee would take place in March to finalise the position on remuneration for the Chief Executive and Directors.

SEM Committee

Given the discussion of the items under the Chief Executive's report had addressed the key elements of the SEM Committee business, it was not necessary to report further.

8 BRIGHT IDEAS

The Chairman noted that developments relating to the need for fuel stamps negated the need to pursue this further. The Board Secretary/ Communications Manager briefly updated board members on the work that had been undertaken to advance the Guide to Regulation.

9 CORPORATE STRATEGY/ FORWARD WORK PLAN

The Strategy Manager introduced this item.

The Chairman congratulated all those involved in developing both documents, and stated that the Strategy document was a significant step forward and an important achievement for the Authority.

There was further praise for both documents for other board members and it was agreed that arrangements for publication should now be advanced subject to several minor drafting comments on the strategy.

10 NI WATER LICENCE – CONDITION B MODIFICATIONS

The Director of Water introduced this item and Peter Naylor outlined the detail of the proposed modification, making reference to appendices attached to the main board paper.

Board members sought clarification on the timing of the modification, the extent of the change and the impact of NI Water's objection to or agreement of modifications. The Board was clear that NI Water's agreement to the modifications, with the licence to be modified in early March, would be the favoured outcome. There was unease at the possibility that the licence could not be modified in time and the Scheme of Charges would have to be approved 'off-licence'.

The Board gave approval to the Director of Water to modify condition B in accordance with the appendices provided, whilst accepting that, following the recent consultation, additional modifications may be required. The consultation responses will be given full consideration and where further amendments are made, any impact will not depart from the original intention of the licence modification.

11 NI WATER – INTERIM PRINCIPAL STATEMENT, SCHEME OF CHARGES AND TARIFF MODEL 2009-10

The Director of Water briefed the Board on the overall situation regarding this matter.

There was considerable concern by the Board that NI Water had as yet been unable to submit its Scheme of Charges 2009-10 to the Authority. Board members discussed the implications of, and the options resulting from, the non-return of the required information.

Extended discussion led to the Board view that the Authority should formally write to NI Water seeking the required submission as a matter of urgency. Furthermore, the letter should stress the Board's concern that the failure to make a submission would have serious implications for the Scheme of Charges. Finally, the letter should insist that the submission must to be sent in good time by NI Water to enable the Authority to approve tariffs by mid March 2009.

The Board also agreed that should the letter not provoke the desired response, this should be followed up by further letters until a submission has been received, or the Board directs otherwise.

Although it was agreed, given the time constraints, that responsibility should be delegated to the Chief Executive and the Director of Water to approve the Scheme of Charges, there was specific recognition that the resolution of the issue may necessitate direct intervention by the Board. The Chairman of the Water BAG was delegated on behalf of the Board to play a part in the decision making process alongside the Chief Executive and Director of Water. The understanding was reached that - should a resolution of the issue with NI Water prove elusive - the Board would be convened at the request of the Water BAG Chairman at an appropriate time (either in advance of, or at, the scheduled board meeting in March), to discuss the issue.

12 NI WATER LICENCE – CONDITION F 6A.6 (1) – CREDIT RATING

A short paper on this matter was presented by the Director of Water, who also provided further background.

Board members' questions regarding the costs of non-enforcement and the application of enforcement exemptions were addressed.

The Board decided that enforcing the licence condition would not be appropriate in the circumstances, and will look to a proportionate modification of this towards the end of 2009, after the NI Executive has concluded its review of the water industry, and that the Authority will advise NI Water accordingly.

13 CONFIRMATION OF OPERATING STRUCTURES FOR HANDLING OF A CONNECTION DISPUTE

The Board confirmed its satisfaction with the proposed separation of the functions of case management and decision making, and delegated the role of decision maker in respect of the complaint to be undertaken jointly by the Chairman of the Energy BAG and the Director of Corporate Affairs. Discussion also took place on the availability of an oral hearing and opportunities for representations/appeal, and the board concluded its discussion by stating its preference not to use an arbitrator in this case.

14 NEW GB CLIMATE CHANGE ACT 2008

The Board noted the content of this paper, provided by the Head of Legal.

A request was made for a legal view on where the Authority is positioned in respect of Ministerial duties regarding environmental issues generally and climate change in particular.

15 COMMON ARRANGEMENTS FOR GAS (CAG)

The Director of Gas provided a verbal update on overall progress on CAG.

The risks to the overall delivery of the CAG project within the project timetable, arising from a possible delay to the legislation, were discussed. It was evident that both departments needed to reach decisions on elements of the project and finalise their legislative timetables as delay in doing so would have knock on effects on the project itself.

While the Board re-iterated its support for CAG, endorsed the action plan as originally detailed, and wished to implement CAG in the best interests of consumers in Northern Ireland, board members were conscious of the sensitivities involved. There was, nevertheless, agreement that the Chairman and the Chief Executive would seek an affirmation of the Minister for Enterprise Trade and Investment's support for CAG at a forthcoming meeting.

16 ANY OTHER BUSINESS

- Correspondence from the Office of the First Minister and Deputy First Minister (OFMDFM) – the Chairman noted a letter from OFMDFM encouraging public appointees to complete a disability survey, and urged board members to complete the questionnaire

All items of business having been discussed the Chairman brought the meeting to a close at 2.00 p.m.