

**SUMMARY MINUTES OF THE THIRTEENTH MEETING OF THE NORTHERN IRELAND AUTHORITY FOR UTILITY REGULATION (THE ‘AUTHORITY’) HELD ON THURSDAY, 3 APRIL AT QUEENS HOUSE, BELFAST**

Present:	Dr Peter Matthews	Chairman
	Mr Clive Elphick	
	Mr Philip Johnson	
	Mr Chris Le Fevre	
	Mr Jim Oatridge	
	Mr Alan Rainey	
	Ms Etain Doyle	
	Mr Iain Osborne	Chief Executive
In attendance:	Mr Dermot MacCann	Director of Electricity
	Mr Donald Henry	Director of Corporate Affairs
	Ms Jo Aston	Director of Water
	Mr Brian McHugh	Director of Gas
	Mr Kevin Shiels	Strategy Manager
	Ms Sarah Brady	Social and Environmental Manager
	Mr Alan Smith	Principal Economist
	Mr Michael Campbell	Analyst
	Mr Greg Irwin	Board Secretary and Communications Manager
	Mr JP Irvine	Head of Legal

**1. APOLOGIES FOR ABSENCE**

None.

**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**

Alan Rainey indicated that he carried out some specific consultancy work for Eirgrid, although this did not relate to any subject being discussed on the Board meeting agenda.

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

The minutes of the Board meeting on 6 March were agreed subject to one minor wording amendment.

It was noted by the Chairman that the Bright Ideas item had not appeared on the Board agenda for some time and asked that this be advertised to promote contributions and reinstated.

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

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

On Action item 1, it was noted that Ministerial approval had been given to DFP officials to progress the HR delegation. Board members discussed the need for appropriate communication with the Authority's staff.

Action items 2 to 7 were either on the meeting agenda or had been completed.

It was agreed that the final Forward Work Programme and Scheme of Delegation should be sent to Board members.

Additionally, there was an undertaking that all Board members would be included in the organisation's consultation list.

In response to a query from a Board member the Director of Electricity provided clarification and an update on the final position regarding the SONI Price Control and an assurance on the position with regard to Castlereagh House. It was agreed with SONI and NIE that £500,000 would be added to

SONI's Regulatory Asset Base on the transfer of Castlereagh House (bounded by the security fence) from NIE to SONI and that NIE would realise the value of the property on the sale of SONI.

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

a) The Chief Executive presented his report, focusing on several areas in particular.

An update on recent meetings was provided in relation to Water issues, noting in particular a meeting with the Minister for Regional Development. It was also noted that the Chairman and Chief Executive had also met with the Chairman and Chief Executive of the Consumer Council. Finally, Board members also reflected on their recent dinner with the Chairmen of the Regional Development and Enterprise, Trade and Investment Committees.

A brief discussion took place on the outlook for energy tariffs in Northern Ireland. It was evident that cost pressures on regulated companies were likely to lead to price increases for customers. Board members sought further information on the basis for price increases and were concerned that the customers of the regulated energy companies were provided with enough information to enable them to understand the rationale for the increased tariffs. It was felt that the Authority was uniquely positioned to provide the relevant information for energy customers and it was agreed that a factsheet would be prepared explaining the rising energy prices.

The Head of Legal provided the Board with a further update on the AES Kilroot judicial review. It was noted that affidavits had been submitted by the Authority on 2 April and that the other party would have 3 weeks to provide a response to these affidavits.

It was noted that the Memorandum of Understanding between the Authority and the Commission for Energy Regulation on Common Arrangements for Gas had been published and that the purchase of the Phoenix transmission assets had been completed on 31 March. The Director of Gas also reported that a favourable geological report had been received by the developer on the potential for developing a gas storage facility at Larne.

The Chief Executive indicated that the Sustainable Development consultation had been issued and that the Retail Competition paper was nearing completion. In regard to the Sustainable Development consultation paper, the Chairman passed on his congratulations to those staff involved in producing the document.

b) The Director of Corporate Affairs provided a verbal report on organisational finances. He stated that he expected the 2007/08 outturn to be within budget with SEM and other consultancy accruals still to be identified.

## **7. REPORTS FROM BOARD SUB-COMMITTEES**

### **Energy BAG**

Chris Le Fevre, Chairman of the Energy BAG, provided Board members with a brief update on the March meeting. He indicated that the Energy BAG had received an update on SEM and the work of the Market Monitoring Unit (MMU) and price behaviour. It was also noted that the Energy BAG had had an initial discussion on SONI divestment.

### **Water BAG**

As all Board members had attended the Water BAG meeting it was agreed that a report was not necessary on this occasion. Clive Elphick, Chairman of the Water BAG, provided an update on wider developments on Water. He made reference to the OFWAT review of its price control methodology, a report by the All Party Parliamentary Water Group and developments in relation to retail competition in Water.

### **Audit Committee**

Jim Oatridge, Chairman of the Audit Committee, reported to the Board that a special meeting of the Audit Committee had been convened prior to the Board meeting to consider the Authority's investigation into the information disclosure by Northern Ireland Water on the mis-allocation of volumes between domestic and non-domestic customers. He outlined the Terms of Reference for the investigation that had been agreed by the Audit Committee, and the process and timetable. Board members were content with the action taken by the Audit Committee and were agreed that the Board

should reserve the right to convene - by tele-conference if necessary - to consider outcomes in advance of the publication of the Stage One investigation report.

## **8. SEM COMMITTEE REPORT**

The Director of Electricity provided a verbal report for the Board, focusing on the items considered by the SEM Committee at its most recent meeting.

He noted that the Committee had considered reports in relation to the first quarter operation of the SEM and concluded that performance had been satisfactory with a need to place a greater emphasis on targets for the future.

Other items discussed by the SEM Committee included the Market System Development Plan, a discussion on the complaints received in relation to the operation of the SEM and a report from the MMU.

Board members briefly discussed the progress on the complaints made in relation to SEM and also sought clarification on the publication of MMU prices.

The Chairman thought it was important that the Board continued to receive reports on the SEM Committee and asked that the minutes of the SEM Committee, even in their draft form to facilitate circulation in advance of Board meetings, should be made available to the Board.

## **9. FINANCIAL PENALTIES POLICY STATEMENT**

The Director of Corporate Affairs introduced this item, noting the discussion on this issue at the Board meeting in October, the subsequent consultation on the policy statement and the outcome of the consultation.

He also drew the attention of Board members to the specific issue of responsibility for paying fines that was raised during the consultation, although this was not part of the policy or indeed the consultation on the policy. Board members did however reflect on this specific issue.

There was consensus that the policy statement represented a useful checklist for the Authority's approach to dealing with financial penalties and Board members in principle felt that any fines should be borne by the shareholders of regulated companies. Although there was also some discussion about whether other options were available outside of the payment of fines, it was felt that this was part of a separate, wider discussion on the philosophy of fines.

In concluding the discussion, the Chairman noted the Board's agreement to the Financial Penalties Policy Statement as presented, the in principle view that any penalties should be borne by the shareholders of regulated companies and the need for a paper to be developed on the wider policy issues associated with the imposition of financial penalties and discussed at a future Board meeting. It was agreed in passing that the Authority should take an opportunity to write to the Consumer Council conveying its approach to Financial Penalties.

#### **10. NIE ENERGY CONDITION 53A - FEES FOR VALIDATING RENEWABLES OBLIGATION CERTIFICATES**

Board members considered a paper on licence condition 53A requiring NIE Energy, on request, to offer to enter into 'relevant arrangements' with renewable generators. Specifically, the Board discussed the interpretation of the wording of the licence condition which permits NIE Energy to make charges which '...shall not exceed the total costs reasonably incurred...'.

Initial clarification was sought by Board members on charges prior to and post the introduction of SEM.

The substantive discussion focused on the options for providing informal guidance to NIE Energy on the interpretation of the licence condition. As the discussion progressed it was evident that two of the options generated most debate. On the one hand, Board members considered Option (a) which involved regulating charges so that NIE Energy only recovered its actually incurred administrative and legal expenses. Board members also discussed Option (b) which argued that an appropriate fee should be the actual administrative and legal costs plus an allowance for the increase in risk to the NIE supply business of entering into the relevant arrangements.

At the conclusion of the discussion it was clear that the prevailing view of the Board was to provide guidance which recognised that the market for relevant arrangements was contestable and should seek to promote competitive development. The Board therefore chose Option (b) as the basis for guidance to NIE Energy, whilst being mindful that some examination of the costs of the risks would need to be undertaken. Furthermore, there was consensus that the Board should reserve the right to return to discussion of this issue at a later date.

## **11. SONI DIVESTMENT**

The Director for Electricity introduced this item and a significant discussion ensued.

Board members considered the matter of a written exchange from Eirgrid to the Utility Regulator's Director of Electricity, particularly in relation to the legal position on the SONI licences. The Authority's Head of Legal provided clarification on the legal issues involved particularly with respect to distinct questions of independence vis-à-vis control in the SONI licences. Board members were also clear that, in recognising that the divestment of SONI was due to take place by November 2008, there may be other scenarios and other potential purchasers relating to SONI that would require consideration at the appropriate times.

The Board discussion concluded by recognising the legal advice that it received, that factually the purchase of SONI by Eirgrid would be a breach of the relevant conditions within the SONI licences and would require a modification of the licence. It was agreed that the matter of SONI divestment, covering the range of scenarios available, would more than likely be deemed to be a SEM matter by the SEM Committee, and therefore would primarily fall to be considered by the SEM Committee.

## **12 STAKEHOLDER ENGAGEMENT PROGRAMME**

The Communications Manager presented this paper which outlined a programme of activity associated with the stakeholder engagement workstream.

Board members welcomed the articulation of a programme for engaging with key stakeholders. Clarification was sought on the programme's relationship with other communications activity and

Board members also made specific suggestions and, in particular, the need to engage with organisations working with socially excluded consumers.

A specific concern was raised about the extent to which the focus of the programme neglected regulated companies as stakeholders. It was clarified that, whilst the engagement programme focused on stakeholders which the Authority had limited engagement with, it was expected that ongoing and extensive contact with regulated companies would continue.

There was agreement that BAGs would provide an opportunity for providing engagement opportunities with regulated companies, and that where such interaction was being planned, that this be integrated into the overall stakeholder engagement programme.

All items of business having been discussed the Chairman brought the meeting to a close at 1.40 pm.