

MINUTES OF A MEETING OF THE NORTHERN IRELAND AUTHORITY FOR UTILITY REGULATION (THE 'AUTHORITY') HELD ON THURSDAY, 18 MAY 2017 IN QUEENS HOUSE AT 11.00 A.M.

Present:

Bill Emery (Chairman), Jenny Pyper (Chief Executive), Bill Cargo, Teresa Perchard, Alex Wiseman, Richard Rodgers, Jon Carlton

In attendance:

SMT - Kevin Shiels, Brian McHugh, Donald Henry, Tanya Hedley, Jo Aston, Greg Irwin

Veronika Gallagher (agenda items 4 and 7), Graham Craig (agenda item 4), John Mills, Caspar Swales and Alan Craig (agenda item 6), Nicola Sweeney (agenda item 8), Jody O'Boyle (agenda items 10 and 11), Roisin McLaughlin.

1. APOLOGIES FOR ABSENCE

1.1 None.

2. FIRE DRILL

2.1 The board members were informed of the evacuation procedures which apply in the event of a fire.

3. DECLARATIONS OF INTEREST

3.1 None.

4. GAS TRANSMISSION PRICE CONTROL 2017-22 LICENCE MODIFICATIONS

4.1 Tanya Hedley introduced this item which sought the board's approval for licence modifications to the conveyance licences of GNI (UK), Premier Transmission, Belfast Gas Transmission and West Transmission. Approval was also sought for the operating expenditure and capital maintenance allowance for GNI (UK) and Mutual Energy.

4.2 Board members were provided with the proposed modifications and details in respect of engagement with the relevant companies and the timeline for the price control were also outlined. A report on the consultation responses was also provided with key issues identified by the companies drawn to the board's attention.

4.3 Board members explored the responses provided by the companies and there was a discussion on the different issues raised by each company.

4.4 There was also clarification on the proposed allowances for the price control. Board members noted that the proposed cost of debt may change following the general election and this may necessitate a change to the weighted average cost of capital (the WaCC). The potential to address the GNI (UK) concern around special operating expenditure or unforeseen operating expenditure, by modifying the licence to enable dis-application decisions in these areas, was also considered.

4.5 More broadly the board discussed the live price control appeals and the changes to the process for referring regulatory decisions to the Competition and Markets Authority (CMA) which has resulted in a significant increase in the number of appeals. Nevertheless, the board

agreed that it was important that the focus should continue to be on protecting the interests of consumers in price control decisions.

- 4.6 The board approved the licence modifications and the proposed capital and operating expenditure allowances as set out section 2b of the paper. There was also endorsement of the recommendation not to modify the GNI (UK) licence to enable the dis-application of decisions regarding special operating expenditure or unforeseen operating expenditure.

5. RP5 LICENCE MODIFICATIONS

- 5.1 Brian McHugh introduced this item which sought the board's approval for the Article 14 RP5 licence modifications as set out in the decision paper. He provided relevant background and context in respect of the decision paper.
- 5.2 The board noted and briefly discussed the response to the consultation and the overall licence modifications process.
- 5.3 The board approved the licence modifications as presented.

6. RP6

- 6.1 Brian McHugh introduced this item which sought the board's endorsement of the approach to several areas of the RP6 price control. He provided an update on progress since the last board meeting, noting the publication of the draft determination in particular. The board was also briefed on engagement with NIE Networks (NIEN) to the planned publication of the final determination on 28 June. Caspar Swales provided a presentation to aid the board's consideration of several areas of the RP6 price control.
- 6.2 Board members noted, and explored the reasons for, the difference between the draft RP6 determination and NIEN's position on the issue of Specialist Labour Premium Real Price Effects (RPEs). It was noted that NIEN's response to the draft determination may provide information which could support the company's position. At this stage, however, the board were minded to endorse the position which rejected any split between 'General' and 'Specialist' for RPEs subject to consideration of the DD responses.
- 6.3 In noting the potential to revise the Opex baseline, board members sought information to explain the difference compared with the draft determination position. There was a broader discussion around the provision of, and veracity of, data from regulated companies. In this respect, board members raised concerns about the quality of NIEN's data and IT systems. It was agreed that, in assessing the Opex allowance in this scenario, there was an element of judgement and risk to be applied. There was also a brief discussion on the benchmarking model and the assurance provided by the use of a reporter in other regulated companies. On balance, the board accepted a new Opex baseline based on actual costs reported by NIEN in its October 2016 submission and a separate financial error identified by the company. However it was agreed that in future the onus should be placed firmly on NIE to ensure the quality of its data.
- 6.4 A key aspect of the board discussion on financeability and the weighted average cost of capital (Wacc) was the impact of recent changes to the cost of debt. Board members also clarified the gearing assumptions relative to other regulated companies. The board discussed the position of NIEN's owner on the payment of a dividend. The view of credit rating agencies on NIEN's financeability was also explored. In endorsing the proposed approach on financeability and Wacc there was agreement that while it was important to set an appropriate rate of return it

was NIEN's responsibility to address any financeability issues. The board emphasised the importance of clearly presenting the rationale for financeability and Wacc decisions in the final determination.

- 6.5 The board noted that, to date, no significant concerns had been expressed in respect of the ex-ante capex allowances outlined in the draft determination. A significant discussion took place on optional capex investments. The board explored the extent to which NIEN had made a case endorsing the optional investments. Evidence of support for the optional investments from consumer engagement was also discussed. The board members also noted the views of NIEN in respect of guaranteed standards of service (GSS) proposals. Overall the board were minded to endorse the position not to support the optional investments because NIE had failed to submit any evidence to demonstrate the need for them. It was emphasised that the presentation of the final determination decision should make clear the expectation that work should continue in RP6 to continue consumer engagement work. There was also agreement that the final determination should acknowledge concerns expressed by NIEN in respect of GSS.
- 6.6 The board also considered the impact of the draft determination on consumer bills, particularly as it related to the gap between the draft determination revenue provision versus NIEN's submission.
- 6.7 The board discussed engagement with NIEN in advance of the price control determination publication. There was agreement on the extent of board involvement in advance of the board meeting at the end of June to approve the final determination. Finally, the team involved in the RP6 workstream were congratulated for their commitment and professionalism.

7. GAS TRANSMISSION LICENCE MODIFICATIONS FOR THE IMPLEMENTATION OF A SINGLE SYSTEM OF OPERATION

- 7.1 Tanya Hedley introduced this item which provided a briefing to the board on responses to the consultation on proposed licence modifications to the gas conveyance licences.
- 7.2 Board members clarified the co-operative arrangements for the single system operation and explored key aspects of the consultation responses.
- 7.3 The board noted the responses and endorsed the approach to the licence modifications. It was agreed that, given the timing issue, the board will be asked to approve the final licence modifications by correspondence in early June.

8. MEASURES TO ENHANCE THE OPERATION OF THE SMALL BUSINESS ENERGY MARKET

- 8.1 Kevin Shiels introduced this item which outlined the approach and approach to bringing forward measures to enhance the operation of the small business energy market.
- 8.2 Board members explored the nature of the customers in the small business energy market. There was a discussion around the different needs of the various customers in this market and the potential to use segmentation.
- 8.3 Opportunities to work with key organisations in this area were endorsed. It was noted that the Consumer Council (CCNI) planned to carry out work in this area and the need to engage with CCNI and secure the involvement of other consumer advocacy bodies was supported.

- 8.4 A brief discussion also took place on the role of energy brokers in the market and the extent to which brokering had been introduced to the local energy sector.
- 8.5 The board endorsed the intention to carry out work in this area and it was agreed that an update would be provided to the board at a later meeting.

9. DRAFT ANNUAL REPORT 2016-17

- 9.1 Greg Irwin introduced this item which provided a draft in progress version of the annual report for comment by board members.
- 9.2 There was clarification in respect of the overall structure of the draft annual report.
- 9.3 It was agreed that any comments on the draft annual report by board members should be provided by the end of the following week.

10. GD17 CMA APPEAL UPDATE

- 10.1 Brian McHugh provided a verbal update on the Competition and Market Authority (CMA)'s provisional determination on the GD17 price control appeal. He emphasised that, since the provisional determination was not published, the document was confidential.
- 10.2 He provided an overview of progress to date and an outline of the next steps in the process was also provided. Board members clarified the award of costs arising from the CMA appeal outcome.
- 10.3 The board noted the update.

11. SONI CMA APPEAL UPDATE

- 11.1 Tanya Hedley provided a presentation, as a complement a board paper, on the appeal to the CMA by SONI of the price control. The presentation provided an overview of the grounds of the appeal, key risks and the outlined timetable for the appeal.
- 11.2 The board clarified and discussed several aspects of the presentation including: the ex-ante versus ex-post approach to regulation, the margin sought by SONI, financeability considerations, the impact on I-SEM and the governance of SONI and its relationship with its parent company, Eirgrid.
- 11.3 The board noted the update.

12. MINUTES

- 12.1 The minutes of the board meeting on 10 March were agreed for publication subject to one minor amendment.

13. ACTION POINTS

- 13.1 The action points were reviewed by the board.

14. REPORT FROM THE EXECUTIVE TEAM

- 14.1 Jenny Pyper provided an overview of the Executive team report.
- 14.2 She noted the ongoing work pressures associated with CMA appeals, the I-SEM and the RP6 price control in particular.

- 14.3 Developments in respect of the retail energy market monitoring and the PC15 price control mid-term review were also drawn to the board's attention.
- 14.4 In noting developments on investors in people accreditation the board was also apprised of the staff volunteering day which was planned for 1 June.
- 14.5 Jo Aston provided an overview on progress with delivering the I-SEM. She clarified board member queries in respect of market IT systems and market issues identified by several suppliers. It was noted that a communications programme for I-SEM go-live had been endorsed at a recent SEM Committee meeting.
- 14.6 The Finance and Performance report was presented and approved. An update on the provisional outturn for the 2016-17 year was provided. The budgetary impact of the recent CMA appeal referral by SONI was briefly discussed and board approval for resourcing to challenge this appeal, via correspondence, was noted. It was agreed that the budgetary implications of this should be provided for in the context of the mid year review of the budget. It was noted that there had been several changes to the risk register and it was agreed that the board would consider this as a separate agenda item at its June meeting. Progress against Forward Work Programme targets were also noted. The board commended the low level of absence identified in the report.
- 14.7 The board was reminded of a meeting with the board of Phoenix Natural Gas Ltd on 21 June and members were asked to indicate whether they would be able to attend.
- 14.8 There being no other business, the meeting concluded at 3.15 pm.