

**MINUTES OF THE SIXTEENTH MEETING OF THE NORTHERN IRELAND
AUTHORITY FOR UTILITY REGULATION (THE ‘AUTHORITY’) HELD ON FRIDAY, 10
OCTOBER AT QUEENS HOUSE, BELFAST**

Present	Mr Peter Matthews Mr Clive Elphick Mr Philip Johnson Mr Chris Le Fevre Mr Jim Oatridge Mr Alan Rainey Ms Etain Doyle Mr Iain Osborne	Chairman Chief Executive
In attendance	Mr Donald Henry Ms Jo Aston Mr Brian McHugh Mr Greg Irwin Mr JP Irvine Mr Ian Campbell Mr Kevin Shiels Mr Samuel Connolly Ms Eimear Smyth Mr Neil Bingham Mr Leo O'Reilly	Director of Corporate Affairs Director of Water Director of Gas Board Secretary and Communications Manager Head of Legal Finance and Administration Manager (for agenda item 10) Strategy Manager (for agenda item 16) Gas Directorate (for agenda item 12) Gas Directorate (for agenda items 12-14) Head of Gas Distribution and Supply (for agenda items 12-14) Permanent Secretary, Department of Finance and Personnel (for agenda items 10-12)

1. APOLOGIES FOR ABSENCE

Dermot Mac Cann.

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

Board members asked for amendments to the sections of the minutes relating to the Audit Committee report, the NIAUR Board and NI Water Board discussion and the Forward View electricity tariffs from 1 October.

5. ACTION POINTS FROM THE JULY MEETING

The action points recorded at the last meeting had been circulated to the Board and progress against each action point was noted. It was also noted that all actions need to be closely monitored from one Board meeting to the next.

6. CHIEF EXECUTIVE'S REPORT

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

It was noted that the Chairman and Chief Executive had had a useful and constructive meeting with the First Minister and Deputy First Minister, about cost of living issues. The Chairman said he had made the key contextual point that although the Authority was as an economic regulator, it was also ready to make an appropriate contribution to addressing issues that negatively impacted on Northern Ireland customers.

A meeting between the Chairman, the Director of Water and the Minister for Regional Development and his officials was also noted. While the meeting reflected on elements of uncertainty around water

charging and the need to be flexible, it was clear that there was a desire for effective regulation of NI Water. Board members were concerned that plans were in place should ministerial guidance not be forthcoming in the short-term.

The Chief Executive mentioned the purchase of the System Operator of Northern Ireland (SONI) by Eirgrid. He confirmed to Board members that a genuinely open bidding process for the purchase of SONI had taken place, and outlined contingencies that had to be addressed - around competition and regulatory clearance - before the final transfer of ownership could take place.

It was noted that the statutory time limit on the Judicial Review appeal relating to AES Kilroot had expired.

The Chief Executive also updated Board members on the proposed communications initiative discussed at the July Board meeting. He confirmed that although the televised documentaries were due to go ahead, broadcasting guidelines would prevent a direct financial contribution by the Authority.

Board members were apprised of developments relating to the staff delegation.

b) The Director of Corporate Affairs provided a report on organisational finances and performance. Although it was noted that the financial profile showed an underspend in relation to staffing and consultancy, it was pointed out that profiled consultancy requirements would significantly diminish the underspend by the end of the financial year.

The dashboard was also reviewed. The HR statistics and progress in achieving FWP targets were both noted and there was also a short discussion on the inter-relationships between expenditure, performance and risk.

7. REPORTS FROM BOARD SUB-COMMITTEES

Audit Committee

Jim Oatridge, Chairman of the Audit Committee, reported on the last meeting of the Committee, which took place on 10 September. He informed the Board that the Audit Committee had reviewed the Code of Good Practice and Managing Public Money guidance. The Audit Committee concluded that the Authority was broadly compliant with this guidance. The Audit Committee agreed the Internal Audit Plan for the current year subject to minor changes. The Audit Committee also noted the considerable improvement in the Register of Contracts over the past year.

Energy BAG

Chris Le Fevre, Chairman of the Energy BAG, noted that several items previously discussed at the Energy BAG - relating to Gas – were on the Board meeting agenda. He also indicated that the Energy BAG, at its 10 September meeting, had considered a paper on the Aggregation of Small Generators, and the implications in relation to the Single Electricity Market. A discussion had also taken place on the Viridian disposal and particularly the question over brand ownership. Finally, he indicated that the Energy BAG had discussed the need to provide a forward work programme of items that would provide the basis for BAG meeting agendas.

Water BAG

Clive Elphick, Chairman of the Water BAG, provided a report on the meeting which took place on 10 September. A discussion had taken place around the staffing needs of the Water directorate and engagement with the Department of Regional Development on the matter. The Water BAG had also discussed the time period for PC10 and it was noted that the Board would be discussing the question at this meeting. Discussion also taken place in relation to cost of capital and efficiencies issues.

SEM Committee

The Chief Executive updated Board members on the SEM Committee. An away day had taken place which discussed short to medium term priorities for the SEM, as well as considering the longer term perspective. In relation to short to medium term priorities there was discussion around the capacity pot and procurement risk issues. Longer term, there was a discussion around the importance of

promoting market integration with Great Britain and the rest of North-Western Europe. The Chief Executive tabled the minutes of the SEM away day.

8. BRIGHT IDEAS

The Chairman made reference to discussions on energy stamps.

9. ELECTRICITY AND GAS TARIFF RISES

The Chief Executive presented this paper which outlined the rationale behind the price announcements and provided a report on the response by the Authority.

Board members sought clarification on issues associated with the specifics of the price rises, comparisons between price rises in Northern Ireland and other jurisdictions, and also more widely on process issues. The Board specifically endorsed the approval of the tariff increases by the Executive. It was also noted that recent significant falls had taken place in the gas wholesale market, and that these developments would continue to be monitored by the gas and electricity teams on a daily basis, which may lead to a formal tariff review if this trend continued.

The Board also discussed the public reaction to the price rises, and the independent review. There were some concerns that an independent review might impinge on the Authority's regulatory independence and establish an unnecessary precedent. The Board strongly reinforced the importance of independent regulation, and discussed how the review could impact upon such an important principle. In this context, the Board therefore considered it important that the review is being commissioned by and is reporting to the Utility Regulator, and that this should not set a precedent. The Board re-iterated its support for the action taken by the Chief Executive, in consultation with colleagues, in commissioning the independent review. The Board reinforced the importance of timely communication during fast-moving events to enable consultation and provide information.

10. EQUALITY COMPLIANCE

At this stage, the Chairman welcomed Mr Leo O'Reilly to the Board meeting, and indicated that Mr O'Reilly was invited to attend some time ago to observe the Board at its work. He emphasized that Mr O'Reilly's attendance was strictly as an observer.

The Director of Corporate Affairs introduced this item and outlined the background to, and the rationale for, the range of papers being presented to the Board.

Board members noted the progress made in this area, and were supportive of efforts to advance equality in the Authority's work. In particular, Board members expressed the desire that the Authority's work should focus on delivering equality outcomes.

There was recognition that the Authority had received specific advice from the Equality Commission about the Equality Scheme. The Board agreed that the Equality Scheme should be adopted *mutatis mutandis* and in the knowledge that a revised Equality Scheme will be produced after the Equality Commission issues the revised guidelines which it has been consulting on.

The Chairman in concluding, affirmed the Board's commitment to the promotion of equality generally, and the specific proposals contained in the paper.

11. OVERALL COST AND PRICE CONTROL – CONSIDERATION OF THE TIME PERIOD FOR PC10; 2 YEARS OR 3

The Director of Water, in introducing this paper, emphasised the importance of a robust price control. She outlined the opportunities and risks of adopting a three year time period for the price control, and these were discussed by the Board. However, the question of a two or three year time period for the price control was seen as less important to the need to move forward on the price control process as quickly as possible.

There was some disquiet as to how a decision to extend the price control period from two to three years would be interpreted by NI Water. The Water Directorate reported that the Utility Regulator's assessment of NI Water's ability to meet PC10 reporting requirements and their programme for systems to render improvements in data quality would inform the decision to have a 2 or 3 year price control.

In bringing the discussion to a close, the Chairman noted that the Board, while minded to support a price control period of three years, could not reach a final decision at the meeting. Although the Board

mandated the Chief Executive and Director of Water to make the final decision on whether to adopt a two or three year price control, it was agreed that a further discussion on this issue should take place at the Water BAG on 5 November.

12. FIRMUS ENERGY 2ND PRICE CONTROL REVIEW

The Director of Gas introduced this paper, which asked for an initial discussion of strategic issues on the price control, in advance of a decision paper that would be considered at the next Board meeting.

There was a recognition that economic circumstances had changed since firmus's original price control and the impact that these changed conditions may have on the gas company's business. Indeed, the Board discussion focused on the forecasting made by firmus and the question of whether it was now appropriate to put in place a five year price control.

Specific queries were also raised about the proposed rise in prices, and particular items mentioned (e.g. in relation to what the company had sought) that should be included in the more detailed decision paper planned for a future meeting.

The Board reaffirmed its support for a rollout of the gas network throughout Northern Ireland. It was emphasised that there was a need to make sure that price increases are robustly challenged so that customers are protected. Additionally, the Board was keen that costs were kept as low as possible, with some scope for reviewing some of the more expensive capital development. Finally, the Board felt that further consideration should be given to shortening the price control period and the use of re-openers where appropriate.

13. GAS LICENCE FEE METHODOLOGY

The Head of Gas Distribution and Supply introduced this paper which proposed a consultation on the recommended proposal arising from the review of the gas licence fee methodology.

Board members queried what the driver was for the change, issues associated with costs, and the impact on elasticity. Board members also sought, and received, an assurance that, while there would

be some distributional effects from the proposal the overall impact on network tariffs would be minimal.

Board members also noted the simplicity of the new methodology.

The Board agreed to the recommended proposal and to the matter being subject to public consultation.

14. CORPORATE GOVERNANCE AND RING-FENCE ARRANGEMENTS FOR PHOENIX DISTRIBUTION LTD.

The Head of Gas Distribution and Supply presented this paper which proposed specific governance measures that are intended to act in the interests of customers of Phoenix Distribution Ltd (PDL)

Much of the Board discussion concerned the number and costs of non-executive directors on the board of PDL and the question of credit rating for the gas distribution company. Central to the discussions was the extent to which proposals would give the necessary assurances around good governance.

At the conclusion of the discussion, the Board was content to proceed on a requirement for PDL to have a majority of independent non-executive directors, with allowances for reasonable costs based on a fixed number of non-executive directors. In making the specific requirement for PDL to have majority of non-executive directors, the Board was conscious that the overall size of its board was a decision for the gas company (with the any resulting costs implications to be met by company). On balance, the Board felt that the requirement for the distribution company to have an investment grade issuer credit rating provided the greatest security for customers.

15. NI WATER COSTS APPORTIONMENT INVESTIGATION AND OUTCOME – UPDATE AND STRATEGIC OPTIONS

The Head of Legal introduced this item, focusing on NI Water's rejection of the Authority's letter of intent and statement of case qua prima facie breach of licence condition F 6A.1 (1).

Documents provided to Board members outlined a timeline on the matter, the Authority's case, NI Water's response and the actions required by NI Water originally presented to the water company in July. Annexes to the Authority's statement of case and the Reporter's report were also made available at the Board meeting for collective review.

The Board noted that despite significant and regular attempts to engage with NI Water on the topic of remedial action, perceived (and minuted) understandings and agreed actions coming out of the Board meeting on 3 July do not seem to have materialised in full.

Board members voiced their disappointment with the response from NI Water. The Board considered NI Water's response to our statement of case, and did not consider it presented grounds to desist from considering the case for enforcement in due course. The Board therefore requested that the evidence-gathering process should continue, with the necessary documentation being provided for a special meeting of the Board on 5 November.

16. DEVELOPMENT OF NIAUR 5 YEAR CORPORATE STRATEGY AND 2009/10 FWP

The Director of Corporate Affairs introduced this information item, updating Board members on the approach being considered for the Corporate Strategy and Forward Work Plan (FWP). He specifically noted that Board members would be presented with a draft Corporate Strategy/ FWP document on 5 November for consideration and approval, and he also highlighted that the outcomes of the earlier retail, sustainability and Corporate Strategy consultations would also be addressed in that context.

The Board noted the update, and plans were advanced for a further discussion on the Corporate Strategy/ FWP.

17. CAG UPDATE

The Director of Gas briefly outlined the key aspects of this information paper, and this was noted by Board members.

18. SCHEDULE OF MEETINGS 2009

The content of then paper was noted by Board members.

19. NOTE OF NEA ENGAGEMENT EVENT

The content of then paper was noted by Board members.

All items of business having been discussed the Chairman brought the meeting to a close at 2.46 p.m.