

For Information

Ref: 04B - 11/07

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**SUMMARY OF THE MINUTES OF THE SEVENTH MEETING OF THE NORTHERN
IRELAND AUTHORITY FOR UTILITY REGULATION (NIAUR) HELD ON
WEDNESDAY 3RD OCTOBER AND THURSDAY 4TH OCTOBER AT OFWAT
HEADQUARTERS, BIRMINGHAM**

Present:	Dr Peter Matthews	Chairman
	Mr Jim Oatridge	Acting Chair (for part of the meeting)
	Ms Etain Doyle	
	Mr Philip Johnson	
	Mr Clive Elphick	
	Mr Chris LeFevre	
	Mr Alan Rainey	
	Mr Ian Osborne	Chief Executive

In attendance:	Ms Jo Aston	
	Mr Brian McHugh	
	Mr JP Irvine	
	Mr Tadhg O'Briain	
	Mr Richard Haigh	Skyplex
	Mr John Cooper	Wragge & Co.

1. APOLOGIES FOR ABSENCE & APPOINTMENT OF ACTING CHAIR

Philip Johnson and the Chairman were late to the meeting due to unforeseen delay (by approximately one hour). James Oatridge was nominated as Acting Chair until the arrival of the Chairman.

2. FIRE DRILL

The Board Members were informed of the evacuation procedures which apply in Ofwat in the event of a fire.

3. DECLARATIONS OF INTEREST

Mr. Rainey raised a question about the operation of the declarations of interest procedure and conflict of interest procedure. The board discussed the value of declaring any activities or background which could create any perception of bias, and recognized that this was a separate process from identifying when a board member had a possible pecuniary interest in Utility Regulator decisions. The board took the collective view that Mr Rainey did not have an interest or duty (as currently defined in the Rules of Procedure) which was either material or relevant so as to warrant frequent declarations at each and every meeting. In subsequent discussion (on day 2) the board asked its audit committee to review the conflict of interest rules and register of conflicts.

4. MINUTES OF THE PREVIOUS MEETING

The minutes of the previous meeting were agreed subject to a few minor amendments.

5. ACTION POINTS FROM THE SEPTEMBER MEEING

A note on the action points recorded at the last meeting had been circulated to the Board and it was noted that the majority of these points had been actioned.

6. CHIEF EXECUTIVES REPORT

Management

After listening to the monthly report from the Chief Executive, the Board voiced its concern at the general lack of engagement of DFP in quite important management and funding matters. The Board requested that the Chief Executive escalate the matter and that a letter should be issued to the Minister with all due urgency.

Regulatory Developments

The board discussed the 3rd package of legislative reform connected with the liberalization of energy markets. It resolved to keep a close eye on developments as the same would affect the Northern Ireland markets which it regulates in due course.

7. SEM UPDATE

a) Overview of business / update from previous meeting

The Chief Executive provided the board with an overview of the latest project developments and the progress made in market trials, an explanation as to the development of the four potential decisions which the board would be invited to make at the end of the session.

At this point the Chairman indicated his understanding that a further board meeting later in the month may not be required for the purposes of taking the four decisions if each of them could be taken at today's meeting. He added that if all relevant material was in place to allow the decisions to be taken presently, then it may be reasonable to proceed to take the decisions responsibly and definitively today. The board reserved judgement until it had heard and contributed to all evidence being discussed as to whether it would be necessary to commit to an extraordinary board meeting later in October.

b) "Requisite Arrangements" Decision Relevant to Potential Cancellation of Generator Unit Agreements

A presentation on the recent consultation process in relation to the Potential Cancellation of Generator Unit Agreements and the responses received was given to the Board. The board were taken through the paragraph 2, paragraph 3, and the other legal requirements within the cancellation licence condition, and informed as to the issues which they will be asked to consider in due course.

The board considered the range of responses received to date, and were sympathetic to a critical and concerned response received from one respondent. The board insisted that the executive team take up the offer of a meeting to allow the respondent to articulate its complaints about the process and substance in connection with the cancellation issue, and the SEM.

The board took the view that it was not equipped with the totality of relevant evidence at this time, and would wait until the outcome of the meeting with the respondent, and until it had received and been appraised of all responses to the consultation before it would consider the

suite of tests it had to undertake as part of the cancellation condition. The board resolved to consider the issue later in October.

c) Energy BAG feedback on licence changes

A presentation explaining the licence changes followed. The board questioned the team on the nature of any contentious licence conditions which had come to light. The board approved in principle the range of matters and licence changes before it, though in doing so sought clarification on the corporate grouping and structure of the NIE businesses, and the proposed delegation to its Director of Electricity with respect to concluding the licence change in connection with the economic purchasing obligation and the timing/operability of that provision. That clarification was given and the delegation agreed as discussed in the formal resolution of the board to be discussed at item (f).

d) Overview of Contracts and Agreements

The board were updated on the latest progress with the various contractual arrangements which need to be in place by Go- Live. A matrix of relationships was presented to the board to aid the understanding of the inter-related contracts and agreements.

The board discussed the suite of arrangements, paying particular emphasis to the PSIA document which is intended to govern the system operator – PPB relationship.

The board concluded that it was happy that all bilateral contracts were on track to be in place in time for Go-Live.

(e) Overview of Readiness for Go-Live

CER gave a presentation to the board which included a substantial readiness plan. The board were told that the executive teams and management/steering groups do not see any impediments to the legal and regulatory framework being put in place on schedule, and in the correct manner.

The board questioned the level of provision for last minute hitches that could theoretically affect the timetable and the viability of the project going live. It was confirmed that there was a large degree of monitoring, self-certification, and commissioned auditing in place. The board were further assured that facilities for resolving any last minute issues to readiness do exist – in multiple for a. Communication with all stakeholders and participants underpinned daily progress and assessments of readiness.

(g) Joint Regulatory Arrangements - Rules of Procedure

The board were updated on their legal obligations with respect to the publication of a statement describing how the Authority will work with CER in the exercise of their respective statutory functions in relation to the SEM, and setting out the necessary changes to the Utility Regulator's rules of procedure to make way for the SEM Committee to take decisions on SEM matters from the date of its creation.

The board accepted the principles provided but in the interests of time resolved to defer taking the formal decision in respect of this item until its meeting later in the month. Head of Legal confirmed that updated or final drafts will be presented to the board at its extraordinary meeting.

(f) Consideration of resolutions

The SEM Project lawyers explained the legal duties and considerations which apply to each separate decision the Authority is being asked to make. Mindful of the evidence the board had heard today, and being satisfied with the answers to all of its investigations and questions, the board resolved to accept three of the proposed decisions (Decisions A, B and C) at this meeting, but agreed to consider the decisions and assessments required by proposed Decisions D and E at the meeting later in the month. The text of the decisions made by the board was agreed and further agreed to be appended to these minutes of the meeting in accordance with good regulatory practice and in a spirit of transparency.

(h) Arrangements for 15 October Extraordinary Board Meeting (RH) (Decision)

The board agreed the time and date of its extraordinary meeting, and agreed on a number of the items to be taken at that meeting.

8. Phoenix Price Control

The Gas director explained the latest position on negotiations with Phoenix, and advised as to the rationale behind the Phoenix price control paper. A series of principles and issues were discussed. These included,

- The 40 year basis for the price control
- The type of price control which was best suited (either revenue cap or price cap)
- Measures taken with respect to relevant benchmarks for elements of the price control
- All constituent elements of the Distribution operational expenditure
- All constituent elements of the Distribution capital expenditure
- All constituent elements of the Supply business price control

At each stage of the discussion the board was appraised on each individual price control element, and its impact on tariffs/prices in terms of price per therm. A discussion on the

overall tariff was also held. The board placed keen emphasis on the appropriate kinds of incentives which could be applied to Phoenix.

The board broadly approved the guiding principles and the approach adopted, making a number of suggestions on particular items where they wished to see further progress.

9. Financial Penalties policy

A paper recommending a Statement of Policy on Financial Penalties for the water sector had been circulated. It was suggested that in keeping with Best Regulatory Practice, and to created operational synergies, the board may be minded to adopt a cross-utility approach to the adoption of a financial penalties policy.

The board discussed the detail of the draft statement of policy and following a few amendments to the aggravating factors the board were content that the policy to proceed to consultation.

10. Water Enforcement Matters

The board approved the decision paper and noted with interest the explanatory guidance notes presented to them by the Water Director and Head of Legal. A wide-ranging discussion which focused on the need for sound evidential grounds before enforcement action could be taken followed. In pursuance of this discussion, the board agreed to seek confirmation from DRD on its legislative programme and an analysis from EHS as to levels of compliance in the sewerage sector.

The board was of the view that it would be pre-emptive to enter detailed enforcement/undertakings discussions with NIW until further confirmations and expert assessments were sought from the appropriate authorities.

11. Water Update

The Board were updated on recent political and regulatory developments in the water sector was presented by the Water Director. The board noted the ongoing commitment of time and resource to the review of the strategic business plan. It noted the work being undertaken to deliver the vast array of legal and regulatory building blocks which are needed to be put in place – and conveyed its view that establishing clear and sensible memoranda of understanding with the relevant bodies would be much welcomed. The board also commented on the price-setting plan from April 2010 and how this would largely be shaped by the ongoing Independent Water Review Panel. The Water Director agreed to provide updates on all these matters of particular interest as and when developments arose.

12. Mutualisation of the Belfast Transmission Pipe

A brief update was provided by the Gas Director. The board accepted the timing implications of the price control work and its impacts on potential delays to the proposed corporate deal between Phoenix and Northern Ireland Energy Holdings.

13. Electricity Prices

The board held a very brief discussion on electricity prices.

14. Financial Reporting Update

The Chief Executive presented the board with a financial update. The board discussed the potential for re-profiling the annual budget. In terms of presentation, the board made it clear that they would like advertising as an item to be split out from other regulatory consultancy.

15. Bright Ideas

The board received the views from its Head of Legal as to the relevance of developments in the environmental governance sector in Northern Ireland to the business, structure and functions on the Utility Regulator. Key individuals were discussed as being important and useful contacts to the board – whom should be invited to meet with the board to discuss environmental governance, EU matters, NI infractions of EU law, and related topics.

It was agreed that the scoping of such a meeting needed to be carefully prepared and so it was agreed that such scoping would be undertaken by the CEO and relevant senior staff as appropriate.

16. Any Other Business

Board members agreed that any strategic items for further discussion could be picked up as part of the wide-ranging sessions on corporate strategy which would be chaired and recorded separately to these minutes.

17. Arrangements for November Meeting

The November meeting was scheduled to take place in either Derry or Belfast on 8th November. Board presence at a metering seminar 9th November in Belfast, coupled with an invitation to attend an evening dinner in Derry with key business and energy representatives from the North West was also factored into the discussion.

All items of business having been discussed, the Chairman brought the meeting to an end.

Appendix

Decisions of the Northern Ireland Authority for Utility Regulation

(the “Authority”)

Meeting 3rd October 2007

Introduction

These decisions relate to:

- the introduction of a Single Electricity Wholesale Market for the Island of Ireland (the **SEM**) pursuant to the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (the **SEM Order**); and
- the further implementation of Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 (the **Directive**).

The date for the introduction of the SEM and the further implementation of the Directive is referred to as **Go-Live**.

The Authority hereby makes the following decisions concerning Go-Live and the relevant date for Go-Live.

- A.** Approve the general principle of moving to the SEM/Directive Go-Live phase and accordingly designate the Go-Live time and date.
- B.** Approve modifications to generation, supply, SEM Operator and participation in transmission licences.
- C.** Approve modifications to the revocation terms of all supply licences.

A. Go-Live Determination

- (1) The Authority agrees that relevant and sufficient steps have been undertaken and progress made since Go-Active to move to SEM/Directive Go-Live.
- (2) Subject to paragraph (3) below, the Authority –
 - (a) in accordance with its duties under section 9 of the SEM Order,
 - (b) in accordance with the provisions of Condition 1 of Chapter 3 of: NIE’s Transmission Licence; all electricity supply licences; all generation licences; and the Moyle transmission licence, and
 - (c) for the purpose of giving effect to those conditions not already in effect in Chapter 3 of: NIE’s Transmission Licence; all electricity supply licences; all generation licences; and the Moyle transmission licence,hereby designates 00:00 hours on the 1 November 2007 as the SEM Go-Live date and time.
- (3) The decisions referred to in paragraphs (1) and (2) above are subject to:

- (a) the Authority receiving further reports and updates from the All Ireland Project Team that:
 - (i) the central and each market participant's systems necessary to implement or operate the SEM satisfy and are likely to continue to satisfy the applicable technical and operational requirements; and
 - (ii) each market participant has submitted a final self-certification letter or form confirming the above;
- (b) the CER also determining the SEM Go-Live time and date as 00:00 hours on 1 November 2007;
- (c) DETI consenting to the SEM Go-Live time and date as being 00:00 hours on 1 November 2007;
- (d) the Authority Board ratifying this Decision A at its further meeting on 15 October 2007.

B. Licence Modifications

- (1) Subject to paragraph (2) below, the Authority hereby agrees:
 - (a) in accordance with its duties under Article 9 of the SEM Order, and in the exercise of its powers under Article 3 of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007; and
 - (b) in the exercise of its powers under Regulation 60 of the Electricity Regulations (Northern Ireland) 2007,

to modify, with effect from 1 November 2007, the conditions of all generation licences, the public electricity supply licence, all private electricity supply licences, the SEM Operator licence and the participation in transmission licences in accordance with the draft licence conditions at Annex A.

- (2) The decision referred to in paragraph (1) above is subject to:
 - (a) any legal drafting changes which it is appropriate to make to the drafting at Annexes A that do not materially amend the effect of those drafts;
 - (b) DETI consenting to the modifications; and
 - (c) the receipt by the Authority, from CER, of confirmation that CER considers that the proposed licence modifications are likely to be to the benefit of consumers in the Republic of Ireland,

and the Authority hereby delegates to the Director of Electricity (Dermot MacCann) (or in said officer's absence, the Chief Executive (Iain Osborne)) the decision as to whether any changes should be made, or whether any event has occurred, within the terms described in sub-paragraphs (a) to (c) above.

C. Terms for Licence Revocation

- (1) Subject to paragraph (2) below, the Authority agrees in the exercise of its powers under Regulation 36 and Regulation 41 of the Electricity Regulations (Northern Ireland) 2007, to modify with effect from 1 November 2007 the terms of

revocation schedules in all supply licences in accordance with the draft schedules set out in Annex B.

- (2) The decision referred to in paragraph (1) above is subject, in so far as it is concerned with the exercise of powers under Regulation 36 of the Electricity Regulations (Northern Ireland) 2007, to the making by the Authority – by means of a decision delegated to the Director of Electricity (Dermot MacCann) (or in the said officer's absence, the Chief Executive (Iain Osborne)) – of a licensing scheme under Regulation 35 of the Regulations.