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Eamon, A Chara,

I am making this submission on behalf of Sinn Féin. Please disregard earlier submission as, due transmissions errors, formatting was lost.

Please accept my apologies for any inconvenience caused.

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**Sinn Féin response to NIAER Consultation September 2004**  
**Friday 8<sup>th</sup> October 2004**

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## **0. Sinn Fein response to NIAER consultation on the proposed acquisition of Premier Transmission Limited facilitated by Team Northern Ireland Limited**

### **0.1 Summary**

0.1.1 The party welcomes any moves that could result in a reduction in the high price of gas to consumers and industry within the North of Ireland however any changes in the present arrangement must ensure that the welfare of consumers is paramount both in the short and long term.

0.1.2 Having examined the consultation document which contains somewhat limited information we have concerns with a number of aspects of the proposal as presently constituted.

0.1.3 In general these relate to the lack of accountability and transparency which we believe exists with respect to the involvement of TEAM NI, Moyle Holdings and PTL in this venture. Specifically, the methodology of selection of both members and the Board of Management of the new Company Limited by Guarantee – ‘SNIP CLG’.

0.1.4 Questions also arise as to the suitability of an arrangement that would result in both the Moyle Electricity Interconnector and the Scotland to NI Gas Pipeline being held within one grouping even when the group is nominally a Company Limited by Guarantee. There are obvious conflicts which may be to the detriment of consumers.

0.1.5 Sinn Féin is not convinced that the proposal in its present form meets the test set by the regulator p2

*..on whether the proposals set out in this paper are adequate to protect consumers' interests.*

(NIAER, 2004: p2)

0.1.6 Thus we believe that a number of changes need to be made to the proposal to ensure that consumers' interests are safeguarded.

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(1) Specifically with respect to TEAM NI, Moyle Holdings, their membership and performance.

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0.1.7 Regarding the key issues presented for consideration by NIAER (in italics below) we provide general views as follows

1) *Are the benefits to consumers outlined in the paper sufficient to offset the potential risks?*

We believe that in principle they are if appropriate additional safeguards are put in place.

2) *Are there any significant risks and benefits to consumers in the proposed structure which we have not assessed in the paper?*

All known risks appear to have been identified.

3) *In the absence of shareholders, are the proposals for efficiency incentives/corporate governance sufficient to protect consumers?*

We would express serious reservations regarding this aspect of the proposal. These are detailed elsewhere.

4) *Is the process for appointing Members robust enough to prevent undue influence by any one interest group or insufficient monitoring?*

We believe that this is one of the weakest aspects of the proposed regulatory framework and additional safeguards must be introduced.

5) *Should support from the electricity consumer via the proposed collection agency arrangements/levy be used to decrease the financing costs of this transaction?*

We are unconvinced of the necessity of this, the likelihood of the need to call upon the CAA is stated to be extremely low, if this is the case then the impact of the imposition of this risk upon the CLG should be small. In addition we believe that the general public, who are now being asked to undertake this risk are largely unaware of either the proposal or its implications.

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A more detailed outline of our position is as follows.

0.1.8 We refer to the section p4 of the NIAER document

*In order to permit PTL and TNI to proceed with developing the proposed transaction and related financing, in April 2004 the Authority authorised an amendment to the PTL Licence, to permit it to pass through all costs, fees and expenses reasonably and properly incurred by TNI, PTL and their respective advisers, in developing and implementing the proposed transaction as approved by the Authority.*

0.1.9 How much of the cost of this transaction, which we believe will be debt financed, will go to either Team NI, Moyle Holdings or persons associated with these organizations. Is there a limit to these costs and if so who imposes this limit and ensures it is met?

0.1.10 We note the comment that members need to be broadly representative of the community (p7) we believe that the evidence to date does not suggest that this is, or will be the case here. The regulator must ensure that the welfare and rights of consumers are fully protected through the imposition of some mechanism which ensures SNIP Members and Board is truly representative of community life. Who will appoint the Appointments Board?

0.1.11 It is unclear whether the claim on p7 that ‘Members .. have no financial interest in the company’ is true. Can the regulator clarify whether this is in fact the case and that Members cannot act as consultants etc in relation to the company.

0.1.12 We have additional concerns as to whether sufficient safeguards are in place to ensure that any potential conflicts of interest are dealt with in an ethical manner. In particular, we would draw the regulator’s attention to the possibility of members of SNIP, its directors or those associated with TEAM NI or Moyle Holdings tendering for contracts. These concerns would relate to both a possible impression of favouritism on the part of those awarding the tenders and the ability of those involved indirectly or directly in the project to be in possession of information not publicly available.

0.1.13 The suggestion by Team NI that there be a significant overlap between SNIP CLG and NI Electricity Holdings is not thought to be in the general interests of consumers within NI. Any action which centralises power within such an arrangement is thought to be anti-competitive in nature and the benefits of such a policy are not outweighed by its potential negative impact upon the public interest and we would again have serious concerns regarding the potential for conflicts of interest.

0.1.14 The regulator’s point regarding the Moyle and SNIP’s common management is well taken and something to be avoided at all costs.

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0.1.15 Sinn Féin is not convinced that the creation of a parent energy company is in the interests of the public.

0.1.16 While we would always want consumer gas costs to be kept to a minimum especially in light of recent price rises, it is unclear to us from any theoretical point of view why if energy costs are expected in the very long term to increase that there is a choice in favour of present day consumers and against future consumers. Undoubtedly, this makes the financing arrangement appear more attractive but this should not be the criterion to judge this decision.

0.1.17 The estimation that SNIP CLG can operate in the North of Ireland with savings of £500,000 per annum raises questions as to why if these savings are really and readily attainable that PTL have not been in a position to exploit them? Thus raises an additional question as to whether these potential savings are real or not. If not real then has there been a sensitivity analysis carried out with respect to the impact of such a scenario?

## **0.2 Risks**

0.2.1 The TNI proposal that

To improve the rate at which the proposed acquisition can be financed, TNI has proposed the removal of the normal regulatory control over allowed operational and maintenance expenditure.

0.2.2 It is believed that this is a significant transfer of risk to the consumer and that the present suggested corporate governance arrangements need to be substantially strengthened to take account of this risk-transfer. At present we are unconvinced that this is indeed the case.

## **0.3 Regulatory Framework**

0.3.1 While it is accepted that it is in no one's interest to create bureaucratic, complex governance it is still the case that the public interest must be protected at all costs. Consumers do bear the ultimate risk in a non-share capital company and as such there is a strong argument for increased transparency in the appointment of Member and Directors.

0.3.2 The combined effect of the Collection Agency Arrangement, the removal of the constraint on operating costs and the effective amalgamation of the management of the electricity Interconnector and Gas pipeline is to raise serious concerns about the amount of risk that is being imposed upon consumers with zero financial risk on either TNI, Moyle Holdings or the proposed members of SNIP CLG.

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0.3.3 It is agreed as NIAER notes that there is a real concern that the Board of SNIP be dominated or captured by one interest. The licence conditions suggested on p19 go some way to meeting these concerns but a question arises as to the ability of SNIP to significantly change its Memorandum and Articles of Association. While the licence conditions mention 'consultation' with NIAER this is felt to be too weak and should be replaced with 'subject to approval by' NIAER.

0.3.4 It is our view that a real open public appointment process overseen by the NIAER be agreed with all interested parties if this proposal is to be accepted.

0.3.5 We do not see the necessity at this early stage to include a provision which allows SNIP CLG to invest any surplus in other energy projects. This could easily be dealt with at a later date and agreement now of unknown ventures is thought to be premature and increasing the risk to consumers of SNIP becoming involved in areas of business outside its core remit. We would strongly oppose this provision being included at this stage of the process.

0.3.6 The section regarding 'ring fencing provision' should be made as watertight as possible and the whole issue of potential conflicts of interest is one that needs explored in significantly more detail.

#### **0.4 Collection Agency Arrangement**

0.4.1 We are unconvinced that there is a need to include this provision within the proposal. This is based first, on a view that existing consumers are unaware that they will be taking on this risk. Second, although cost savings in gas will be passed through to electricity consumers it is also the case that the benefits will accrue mostly to those using gas as domestic consumers.

0.4.2 The NIAER view that the risk of calling upon the CCA arrangement is 'very unlikely' in turn suggests that the premium risk on the interest rate should also be low. If this is the case then this provision should be removed.

0.4.3 The suggestion that NIAER would have no veto over the triggering of the CAA is unacceptable in our eyes and gives SNIP CLG too much discretion. In the context already explored of all the changes it is felt that SNIP should have no autonomy in this regard and that the public interest would be best served by leaving the ultimate decision with the regulator. This should be removed from the proposal again we would assert that if this event is so unlikely then it should be dealt with in some other way.