**MINUTES OF A MEETING OF THE NORTHERN IRELAND AUTHORITY FOR UTILITY REGULATION (THE ‘AUTHORITY’) HELD ON FRIDAY, 28 JUNE 2013 IN QUEENS HOUSE, BELFAST AT 8.30 A.M.**

**Present:**

Bill Emery (Chairman), Richard Rodgers, Bill Cargo, Alan Rainey, Shane Lynch (Chief Executive)

**In attendance:**

Jo Aston (Director of Water), Donald Henry (Director of Corporate Affairs), Kevin Shiels (Director of Retail and Social), Brian McHugh (Director of Gas), Tanya Hedley (Director of Electricity), Greg Irwin (Board Secretary/Communications Manager)

Paul Harland (Manager, Gas directorate, for agenda item 5), Michael Campbell (Manager, Retail and Social directorate, for agenda item 4), Nicola Sweeney (Analyst, Retail and Social directorate for agenda item 4), Robert Stewart (Analyst, Retail and Social directorate for agenda item 4), Roisin McLaughlin (Manager, Gas directorate, for agenda items 6,8 and 9), Graham Craig (Analyst, Gas directorate, for agenda item 9), Sarah Brady (Social and Environmental Manager, for agenda items 6 and 10), Jim Oatridge (independent audit committee chairman, for agenda item 16)

1. **APOLOGIES FOR ABSENCE**
   1. None.

1. **FIRE DRILL**
   1. The board members were informed of the evacuation procedures which apply at Queens House in the event of a fire.

1. **DECLARATIONS OF INTEREST**
   1. Richard Rodgers declared a potential interest relating to the NISEP item and voluntarily absented himself from the meeting during consideration of that agenda item.
2. **POWER NI PRICE CONTROL**
   1. Kevin Shiels introduced this item which sought the board’s approval for price control proposals in relation to duration, opex and allowed margin.
   2. Initial board member queries were addressed in respect of: opex allocation between the regulated and unregulated businesses of Power NI and consumer impact.
   3. The board also discussed the issue of an opex efficiency challenge. The discussion balanced the need to continue to promote efficiency by regulated entities while at the same time recognising the efficiencies that have been achieved by Power NI to date. In this context it was agreed that, while the draft determination should present the opex allowance as proposed, views should also be sought on whether an efficiency challenge would be appropriate.
   4. An extended discussion took place on the allowed margin. Board members reviewed analysis on the allowed margin by external advisors commissioned by the Authority as well as an assessment produced by Power NI’s advisors. The risks faced by Power NI were also discussed. At the culmination of the discussed it was agreed that allowed margin in the draft determination should be 2.2%.
   5. The board also approved other proposals relating to the duration of the price control (three years) and the opex allowance.
3. **GD14 DRAFT DETERMINATION: KEY PROPOSALS**
   1. Brian McHugh introduced a paper which sought the board’s approval for key proposals relating to the gas distribution price control (GD14). His introductory comments focused on capex, opex, the total regulatory value (TRV) and the rate of return. The impact of the proposals on consumers was also summarised. The board was also apprised of internal governance issues in respect of the resourcing of the price control.
   2. The board considered the options for the treatment of Phoenix Natural Gas Limited’s (PNGL) TRV. Specifically, there was a discussion about historic outperformance. Board members also considered the most appropriate approach to treating the future delivery of deferred projects. A discussion on the proposed rate of return also took place and the need to engage with key stakeholders on the issue, in advance of the next price control (GD17), was endorsed.
   3. The issue of under-recovery of revenues by firmus was also discussed. Board members clarified the reasons for under-recoveries and the impact on gas consumers. The rate of return earned by the company on under-recoveries was also noted and discussed. There was agreement that a plan should be advanced to wind down the under-recoveries over a period of time.
   4. The need to generally ensure consistency between both the companies covered by the price control and other utilities across the UK was emphasised. Board members also made specific drafting suggestions. With these points noted the board approved the key GD14 proposals.
4. **IME3**
   1. Sarah Brady introduced this item, which set out proposals for licence modifications in relation to electricity transmission system operator certification and unbundling and several other licence modifications relating to the EU Third Internal Energy Market Package (IME3).
   2. Clarification was provided on specific query associated with the scope of the approval being sought from the board.
   3. The board approved the licence modification proposals contained in the paper and noted that drafting of the proposed modifications would be finalised by the office.
5. **ENFORCEMENT ACTION POLICY AND RULES OF PROCEDURE AND SCHEME OF DELEGATION**
   1. Donald Henry presented a proposed statement of policy in respect of enforcement action and related paper reflecting relevant amendments to the rules of procedure and scheme of delegation. He outlined the background to, and rationale for, the proposed statement of policy.
   2. Board members discussed several aspects of the proposed statement of policy. This included: the scope of the policy, sanctions arising from the application of the policy, the role of the enforcement committee and its relationship to the board. Specific drafting suggestions were also made.
   3. It was agreed that board member comments would be taken into account in the development of a paper that would be presented to the board at a future board meeting prior to consultation. .
   4. A brief discussion also took place on arrangements for addressing any potential licence breaches.
6. **GAS CERTIFICATION**

(a) BGE (UK)

8.1 Roisin McLaughlin briefed the board on the Authority’s preliminary decision on BGE(UK) certification.

8.2 The board noted the briefing and endorsed the proposed approach in relation to the BGE (UK) preliminary decision on certification. It was agreed that the executive team will subsequently finalise the text of the preliminary decision and submit it to the European Commission.

(b) PTL/BGTL

8.3 Roisin McLaughlin presented a paper which sought the board’s approval for the decision to certify Premier Transmission Limited (PTL) and Belfast Gas Transmission Limited (BGTL) as fully ownership unbundled (FOU) under the Gas Directive.

8.4 The board discussion focused on the issue of whether all of the PTL/BGTL directors fully meet the requirements to certify these entities as FOU and whether a conflict of interest issue may arise. The board, in discussing this issue, noted the opinion of the European Commission. Following a discussion of the options for addressing the potential conflict of interest issue the need for change at director level was agreed..

8.5 The board’s decided to certify PTL and BGTL as FOU and delegated the drafting of the final decision to the executive team.

8.6 The Board also discussed the fully ownership licence modifications presented in the paper and noted the responses received to the consultation. The Board approved the policy approach to the licence modifications and delegated the finalisation of the licence changes to the executive team in line with the policy approach.

1. **GAS TO THE WEST**

9.1 Brian McHugh provided an update on progress on the competitive process for the award of licence for the gas network extension to the west of Northern Ireland.

9.2 Board members noted the responses to the consultation paper on the competitive process for the licence award.

9.3 The criteria to be used for the award of the licence was noted. The board also provided guidance on the competitive process for the licence award and commented on the network design and development plan documents to be used as the basis for the competitive licence award. A query around the feasibility of transporting gas to the east of Northern Ireland using the proposed transmission pipeline for gas to the west was addressed.

9.4 Brian McHugh provided an update on next steps and it was noted that the board would receive a paper on the legal framework for gas to the west in September.

1. **NISEP**

10.1 Sarah Brady introduced this item which sought the board’s approval for continuing the Northern Ireland Sustainable Energy Programme (NISEP). She briefed the board on the background to, and rationale for, the proposal to continue NISEP.

10.2 The board noted the briefing and approved the approach and next steps set out in the paper and agreed to continue NISEP for another three years or until such time as an alternative has been introduced in Northern Ireland, whichever comes sooner. It was also agreed that the office would make any adjustments to the scheme that may be required in the interim such as those to reflect any requirements arising from the Energy Efficiency Directive.

1. **PROPOSED BOARD AND BOARD SUB-COMMITTEE SCHEDULE 2014**

11.1 Greg Irwin presented the draft schedule for the board and board sub-committee schedule for 2014.

11.2 The board noted, and was content to approve, the schedule subject to two amendments.

1. **NI WATER DRAFT LICENCE MODIFICATIONS**
   1. Jo Aston provided an update on the current series of draft modifications to be made to NI Water’s Instrument of Appointment (the ‘licence’).
   2. The board noted the update.
2. **MINUTES**
   1. The minutes of previous board meeting held on 9 May were approved subject to two minor amendments. The minutes of the board meeting held on 13 June were approved.
3. **ACTION POINTS**

14.1 The board reviewed the action points from previous meetings.

1. **REPORT FROM THE EXECUTIVE TEAM**
   1. Shane Lynch introduced this report. Several items in the report were drawn to the board’s attention.
   2. The board was briefed on further developments stemming from the publication of the Authority’s electricity price comparison paper and, in particular, a briefing on the issue to the Assembly’s Enterprise, Trade and Investment Committee.
   3. Developments in respect of electricity security of supply were discussed. An update on the north-south interconnector was also provided.
   4. He also noted progress between BGE (UK) and Mutual Energy Limited (MEL) in regard to forming a Contractual Joint Venture (CJV) for the TSO role in NI.
   5. It was noted that the developing of the corporate strategy was progressing in line with the project plan. The continuing engagement with NIPSA was noted and the fact that the office would, if possible, agree a new voluntary recognition agreement that was broadly consistent with the negotiation and consultation arrangements that are in place elsewhere in the NICS was also noted .
   6. The board noted the finance and performance report. Board members were briefed on the budgetary position and noted that the budget would be updated as a consequence of the mid-year review of the budget due in the autumn. Following this discussion the board approved the finance and performance report. The board also approved the draft risk register as presented.
2. **REPORTS FROM BOARD SUB-COMMITTEES/ ADVISORY GROUPS**

* **AUDIT COMMITTEE**

Jim Oatridge (independent chairman of the audit committee) presented the annual report of the audit committee. In his introductory comments he noted that the Authority’s accounts for the 2011-12 had received an unqualified opinion. He noted that the recommendation for the 2012-13 accounts was also for an unqualified opinion. His report focused on five areas: (1) external accounts and audit 2012-13, (2) external quality assessment of internal audit, (3) internal audit programme, (4) internal audit contract and (5) representation from the non-executive board members on the audit committee. Board members were also briefed, in respect of the accounts and external audit 2012-13 and noted the ongoing work to clarify the vires position and liability for costs in the case of SEMC related litigation.

1. **ANY OTHER BUSINESS**

Business case - water industry regulation and engineering consultancy support – Jo Aston outlined the need for the proposed support and the board was content to approve the business case.

There being no other business, the meeting concluded at 12.50 p.m.