

19 July 2012

Kevin O'Neill
Electricity Directorate
Utility Regulator
Queens House
14 Queen Street
BELFAST BT1 6ED

Dear Kevin

Northern Ireland Electricity Transmission and Distribution Price Controls 2012-2017 Draft Determination 19 April 2012

Viridian Group is responding to NIAUR's Draft Determination in relation to Northern Ireland Electricity's price control for the period 2012-2017. Viridian Group is primarily interested in any potential read across to aspects of the price controls of its own regulated businesses (Power NI and its power procurement business), specifically in this case to pensions. That this response deals only with pensions should not be taken to mean that Viridian Group agrees with the Draft Determination in any other respect.

There are a number of aspects of the Draft Determination which raise concern regarding the treatment of pension deficit for regulated businesses in Northern Ireland. These include:

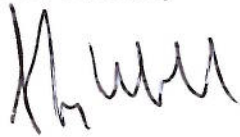
- the choice of a deficit valuation potentially chosen because it represents a point in time when the deficit was measured to be less than the amount a prudent employer and pensions trustees properly advised would agree to fund. Regulated businesses should be entitled to recover the cost of funding pension deficit calculated on the basis of best pensions practice;
- the enunciation of a regulatory principle that the regulated licence holder should recover in respect of deficit repair costs only to the extent that an unavoidable legal liability rests with it. This is an overly legalistic approach given the complexity of the legislation which applies to pensions, particularly in the privatised electricity industry, and fails to take account, *inter alia*, of the structure of corporate groups containing regulated entities and the manner in which pension liabilities in relation to individuals may be allocated amongst employers within them. Customers

should be reasonably expected to discharge deficit attributable to service related to the carrying on of regulated activities which gave rise to the deficit;

- the choice of a last employer test for the allocation of deficit amongst a group of employers. Similarly to the above, this is an over-simplistic approach. An appropriate apportionment should be incurrence based and will most likely be most closely aligned with option 3 as described in the Draft Determination (length of Service) provided always that this sufficiently reflects a reasonable attribution of deficit to employment for the purpose of regulated activities which gave rise to the deficit;
- the concept of reviewing funding, benefit and other decisions taken in previous regulatory periods for the purpose of adjusting the amount of the deficit which the regulated entity is allowed to recover going forward. Such retrospective regulation is contrary to good regulatory practice.

This note does not deal with all of the aspects of pensions covered in the Draft Determination and should not be regarded as implying that Viridian Group agrees with other aspects of the Draft Determination which relate to pensions.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Alwyn Whitford', written in a cursive style.

Alwyn Whitford
Company Secretary