

**Responses to
Forward Work Plan and
Corporate Strategy
Consultation**

Airtricity Response to Consultation on NIAUR Corporate Strategy and Forward Work Programme

Introduction

Airtricity welcomes the Utility Regulator's publication of its draft strategy and forward workplan. All stakeholders will find it a useful document for understanding the framework within which regulatory Decisions are made and against which they may be measured. In general we support the proposed strategy, although we have made some comments on areas where we believe the emphasis could be improved.

General

Not all the levers necessary for delivery of the strategy are under the control of the Utility Regulator. We believe that the differing statutory objectives governing regulation of electricity and gas may no longer be appropriate; might not protecting the interests of gas customers involve promotion and development of the gas industry? Might not the objectives for regulating network operators differ from those that are appropriate for suppliers, shippers and generators? Would it be reasonable to provide greater flexibility in licensing processes to make sense

The energy marketplace in Northern Ireland has changed significantly since the original legislation was enacted. The increased level of supply competition and number of parties developing small renewable generation projects, suggest that a review should take place to ensure that any unnecessary constraints or anomalies are addressed. For example;

- if a Generation Licence holder acquires an already-licensed asset, is it really necessary to go through a relicensing process for the new asset?
- would a legal amendment, that permitted assignment of a licence with the consent of the Authority, reduce unnecessary administrative effort without undermining proper regulatory safeguards?

Review of strategic themes

Protecting customers

The purpose of regulation is to correct market failure in circumstances where the market delivers weak or perverse signals on conduct or economic behaviour. We absolutely support the need for regulation of monopolies (or effective monopolies), however competition does exist in a number of areas of the Northern Ireland energy market and we would suggest that it is dominance and the exercise of dominant behaviour that is the issue affecting customers. Dominance may not always

lie with one particular participant in a competitive market, therefore to focus solely on monopolies is unnecessarily to restrict the scope of customer protection.

It is also unclear whether efficient action by dominant parties is always a good thing; after all, efficient action that undermines competition is highly undesirable. The purpose of regulation should be to ensure that dominant parties do the right things for customers and do these effectively. Therefore we believe the enduring strategic goal in this area should be to protect customers by ensuring that dominant parties act effectively in delivering their service.

It is not only in the area of price that customers may need to be protected. Incumbents may deliver market systems and interfaces with great efficiency, but if these are costly, bespoke to Northern Ireland and result in potential competitors incurring significant investment costs to enter the market, then competition may be slow to develop - if at all. Yet customers still have to pay the development cost although receiving none of the benefits of competition. This is a lose-lose situation for customers.

Protection of customers must include early consideration of the most effective means to deliver policy objectives, rather than assuming a delivery model then seeking the cheapest implementation. There is now considerably wider technical and commercial experience amongst energy stakeholders than was the case ten years ago and for the sake of effective investment of customers' money, the Utility Regulator must make full use of this expertise when making fundamental decisions on the direction and management of the market.

In focusing on effective and timely price control of the dominant supplier, the Utility Regulator must always be cognisant of the potential for collateral commercial damage to the independent sector. The form of regulation that guarantees revenue to the incumbent is potentially ruinous to other suppliers not protected in this way and we welcome the Regulator's willingness to take difficult pricing decisions during the recent period of volatile energy prices.

We believe the Utility Regulator's proposed review of the mutual ownership model for key assets is timely. Customers face the unquantified, but hidden, underwriting risk of meeting any revenue shortfall on these loans. It is important to balance any political/philosophical preference for a particular ownership structure with proper consideration of whether this type of risk transfer serves a useful purpose or merely disguises a fundamental business risk.

Environmental sustainability and security

Recent events in the gas market have highlighted the fact that plentiful existence of gas may not necessarily result in unconstrained availability for consumption. The position of Northern Ireland, at the end of a very long pipeline needs no further emphasis. We support the Utility Regulator's recognition of the need to avoid putting off important but non-urgent decisions. This is one area

where the strategic tension of addressing urgent, important issues without ignoring preparations for the long term is most obvious.

Our response to the consultation on barriers to competition in the Northern Ireland energy market highlighted our support for expansion of natural gas usage. However it is not clear why development of the gas industry should have a higher priority than protection of customer interests in the Utility Regulator's statutory objectives. Perhaps it would be opportune to consider whether the legislative framework for regulation should be reviewed to provide consistency within the energy sector.

In terms of metering, we believe that customers should be empowered through the use of smart meters; their provision should not be regarded merely as a technical issue. When keypad metering was being introduced, technical considerations were to the fore and an opportunity to reduce costs in the competitive market was lost. Customers deserve better when it comes to the introduction of smart meters. The widest range of stakeholders must be involved in deciding the requirements for such meters, before any purchase order or pilot implementation is approved. We do not believe that Northern Ireland customers should be expected to carry the cost of reinventing this particular wheel and the widest possible use should be made of experience in GB and elsewhere. Furthermore the project should be delivered by the Utility Regulator, to prevent the natural incentive on the incumbent business – for efficient delivery of an inappropriate solution – resulting in a second-best outcome for customers. It will also be important to ensure that the solution does not preclude future technical innovation.

In facilitating enhanced levels of renewable generation, it is essential to remember that connection costs can make or break projects. A clear set of charging principles must be established to ensure that developers are charged appropriately for equipment that is required, that refund rules are defined where temporary equipment is installed or connection capacity is shared and contestability is always an option – even for shared connections. The rules on connection asset transfer, treatment of these free assets in the Networks RAB and impact on charges must also be clarified as a matter of urgency. A right of appeal to an independent technical review must also be introduced without delay.

Protecting vulnerable customers

It is likely that energy prices will increase in the medium term, in spite of any relief that may be seen as a result of the current economic environment. The only reasonable response to high energy prices is to plan policy around the expectation of higher costs and aim to reduce consumption. We therefore support the Utility Regulator's objective of protecting the poorest members of society through development of the social action plan. However we believe that inflexibility of some heating systems (such as storage heaters), lack of education in best practice on heating controls (technological as well as not opening windows if a room is too hot), legislation

on the existence of standby settings that cumulatively consume considerable amounts of energy, are issues that must be addressed in addition to those identified in the consultation.

Boosting competition

Our response to the consultation on barriers to competition highlighted the need for all-Island market solutions to reduce the cost of introducing competition. The Northern Ireland market is too small for bespoke market designs that heap unnecessary costs on the customers who ultimately pay. Northern Ireland customers should be able to benefit from industry developments already carried out by participants in the RoI market and neither these participants nor customers should be expected to pay to reinvent solutions already developed. Instead, customers should only be expected to pay for solution implementation in Northern Ireland. We therefore support the Utility Regulator's strategic intent to work with the Commission for Energy Regulation on joint work programmes.

A key issue that affects development of retail competition and the volatility of prices impacting customers, is the lack of availability and poor product range of wholesale SEM hedging contracts. Unlocking this blockage must be a key objective in delivering the full benefits of the Single Electricity Market. We support the proposed review of the long-term power purchasing agreements; believing that individual generators should be able to offer hedging contracts and thereby increase the number of independent wholesale contracting parties.

Harmonising energy markets

The SEM is an example of a very successful joint implementation project. It has delivered a transparent and fair market structure in which generators and suppliers are all treated equally. It is a major improvement on previous arrangements in both jurisdictions and customers will benefit from the improved pricing and support for retail competition that this wholesale market provides. We therefore wholeheartedly support the development of further commonality of arrangements envisaged by the CAG. We also look for full harmonisation of the gas retail arrangements to result from this project and believe that retail market synchronisation across the island of Ireland is the best route to deliver the benefits of competition to customers in Northern Ireland.

In terms of infrastructure, we strongly support Eirgrid's Grid 25 development strategy and we look forward to publication of the equivalent strategic review of the Northern Ireland transmission network. Improvements in this area would also support the strategic goal of environmental sustainability and security of supply.

Evolving regulatory framework

We have stated earlier that we believe a review of the legislative framework for Northern Ireland regulation may now be appropriate, as the market has developed considerably since the original legislation was enacted. The proposed Utility Regulator's review of its regulatory powers and

functions ought also to consider potential changes that would support consistency across the energy sector and resolve tensions within and between existing legislation.

Utility Regulator's organisation

The Utility Regulator's significant restructuring means that it is now not always clear who is responsible for what. We therefore ask that the website be redesigned to provide better access to documentation and within this a "user guide to the Utility Regulator" be included.

ESB Independent Response to the NIAUR 5 Year Corporate Strategy 2009-14 & Forward Work Programme 2009-10 Consultation

9th January 2009

General Comments

ESB Independent Energy welcomes this valuable opportunity to comment on the NIAUR's 5-Year Corporate Strategy 2009-14 & Forward Work Programme 2009-10 and to contribute to the debate on the important factors affecting the electricity market in the medium-term. ESB Independent Energy operates in the electricity sector in both Republic of Ireland (ROI) and Northern Ireland (NI) and therefore has an obvious interest in the work programmes of both the NIAUR and the Commission for Energy Regulation (CER).

In general, we believe the paper identifies the key challenges and issues e.g. environmental sustainability, security of supply, further competition in the wholesale and retail markets, further harmonisation of energy markets North and South etc. However, in our view some issues are of greater significance than others. The electricity sector in Ireland faces many challenges over the next decade none more so than the need to increase the penetration of renewable generation to minimise our over-dependence on fossil fuel electricity generation whilst still ensuring a competitive market for investors and the lowest possible price for customers. Renewables, particularly wind, also has the ability to contribute to the solution of other key challenges (security of supply, cost of climate change/carbon) but their orderly connection and operation in the market needs to be carefully considered from an All-Island perspective.

Whilst ESB Independent Energy recognises that the NIAUR are responsible for protecting NI customers, we believe that an All-Island Market Framework offers both regulators the best opportunity to protect their customers over the medium to long-term. Therefore, it is important that the objectives NIAUR's 5-year strategy are aligned to those in the CER's 5-year strategic plan. In our view this would be best achieved through the development by NIAUR/CER of a joint 5-year strategy specifically addressing the issues affecting the further development of the All-Island Electricity Market post-SEM. We believe that the most efficient way to safeguard customer interests and all market stakeholders is through effective sustainable competition in the All-Island market. Key to this is ensuring a level-playing field for all market participants within the market in as many areas of operation as possible.

Another key challenge over the timeframe of this strategy is to ensure that investment in infrastructure and increasing energy demands can continue to be met. Competition for investment will mean that investors will weigh up the risks and opportunities associated with the regulatory environment before committing to new projects. Therefore, the whole regulatory environment itself and the role of NIAUR in the evolving regulatory framework are of paramount importance. Regulatory stability is vital to ensure investor confidence in the market. Stability in the regulatory process in addition to a clear

strategic direction allows current and potential investors to forecast risk more accurately and therefore minimise the cost of business to them.

There will continue to be a major focus at European Union (EU) policy making level on energy market integration, security of supply and improved market competitiveness. For example, the imminent EU Third Package of energy market liberalisation reforms will require to be transposed into national legislative and regulatory regimes. In this regard, ESB Independent Energy welcomes actions identified by the NIAUR in the Forward Work Programme (FWP) to review the finalised Third Package and consider implementation issues associated with the challenges posed by the further EU market liberalisation reform agenda.

Specific Comments

ESB Independent Energy would also like to highlight the following points from our perspective as an independent second tier retail supplier operating in the NI electricity market:

NIE Energy Tariff Setting/Pass-Through Charges/K-factor/Price Control Exercise

It is well clear from previous consultations that many existing independent suppliers and potential new entrants consider the current tariff structures unfair. Incumbents are shielded from procurement risk by pass-through and from estimation risks by the K-factor which can undermine the development of competition in the retail market and potentially hinder new entry by protecting the regulated supply business against changes in market conditions. End customers ultimately bear these risks. ESB Independent Energy believes that the whole issue of the K-factor and pass-through needs to be reviewed with a view to shifting these risks back somewhat towards the regulated supplier who is in the best position to manage these risks.

The current process of setting an annual tariff in itself has the potential to create risk for both existing independent suppliers and new entrants as they tend to offer their own tariff products in a hedging market that offers products over multiple time horizons or different contract timelines. Therefore, at a minimum, we believe that there needs to be far greater transparency, timeliness and opportunity to input into the whole NIE Energy retail tariff structure setting process and price control exercise. We are of the view that there is a general lack of published consultative information on past tariff setting and insufficient time given to address consultations. ESB Independent Energy believe a full, open and timely consultative framework for setting NIE Energy retail tariffs would add significant value to the whole transparency of tariff setting consultations.

At present, there is no appropriate regulatory forum in NI for suppliers to discuss issues such as PSO/ISSS charges, NIE tariffs, UoS/DUoS charges etc despite requests from suppliers and other customer representatives for the re-establishment of such a forum. The resultant lack of timely information and transparency on these issues not only puts suppliers in a very weak position when passing through any changes to customers, but can also have significant operational implications due to systems changes and short timescales for implementation e.g. recent PSO reduction announcement. ESB Independent Energy would like to see this issue specifically addressed in the RWP for 2009.

At the recent workshop in Belfast there was some discussion about the establishment of a "Retail Market Forum" comprising suppliers and other key stakeholders under the new Retail Market Development Group in NIAUR. ESB Independent Energy would welcome such a forum and signal our willingness to participate in it.

Many of the issues detailed in the FWP, and in this response, are likely to be discussed and debated at this Retail Market Forum which we feel would be a valuable advisory body and sounding board for the industry. We would also suggest that either the Retail Market Forum or the other regulatory forum suggested above, incorporate regular updates on the "SEM Committee Workplan" and the "DETI Strategic Energy Framework".

Further Harmonisation of energy markets North and South

ESB Independent Energy believes that the further development of an All-Island Market Framework offers both regulators the best opportunity to address the substantial and difficult challenges the Island of Ireland faces over the next decade in the electricity market and thus ultimately the best opportunity to protect customers. The All-Island Wholesale Market has been in operation now for just over a year since 1st November 2007. ESB Independent Energy believes there are now possibly further ways in which the two markets could operate as one, specifically the following:

- Currently, ESB Independent Energy operates two different network market messaging business process systems for dealing with new customer registrations, de-energisations & re-energisations and meter readings processing etc. Harmonisation of these systems will, firstly, reduce the cost of doing-business in both markets especially in relation to reducing the cost of entry into the market since a new entrant is unlikely to consider the Republic of Ireland or Northern Ireland in isolation. Secondly, it is likely that by harmonising the two systems, the overall cost of providing the networks market messaging service could be reduced.
- Currently, ESB Independent Energy are involved in the recruitment of a number of our own customers in ROI for participation in a comprehensive pilot testing scheme in advance of the main roll-out of SMART Metering across all of ROI. This requires the development of a functional specification. This is being conducted without the inclusion of NI who is also now beginning to separately investigate the roll-out of SMART Metering across NI. To minimise customers' current and future costs, it would be more beneficial if this whole SMART Metering initiative was conducted on a co-ordinated All-Island basis. ESB Independent Energy believes that the benefits

and costs associated with SMART Metering must be studied and determined from an All-Island Market perspective.

- At present in NI there is an Energy Efficiency Levy programme or scheme to fund energy efficiency measures which is currently being reviewed but there is no such formal scheme at the moment in ROI. However, a new formal energy efficiency scheme of some sort for ROI, yet to be finally determined, is now being considered for proposal by the Department of Communications, Energy & Natural Resources (DCENR). Again, to achieve meaningful results in terms of improved and enhanced energy efficiency measures, climate change and reductions in carbon emissions, and indeed energy cost savings for all customers, ESB Independent Energy believes, again, that such a significant initiative would be better served if conducted from an All-Island Market perspective.
- An investigation into the effect of and the subsequent harmonisation of the differing payment schemes for renewables in NI and ROI (ROCs and Feed-in tariffs) would be very useful. Currently, the divergence in the value of ROCs and Feed-in tariffs acts as a financial incentive to locate windfarms in Northern Ireland. If these payments were harmonised, investment would more likely take place where it is most strategically beneficial from a system perspective instead of where it is possibly more financially beneficial to do so. The impact of the current regime should be examined and evaluated against the cost of windfarm development as set out in the All-Island Grid Study, which endeavoured to find the least cost solution to renewables penetration.
- A harmonisation of the processes in both ROI and NI in relation to Fuel Mix Disclosure would also make more sense in an All-Island context. Currently, fuel mix is disclosed in ROI and displayed on customer invoices in ROI along with environmental CO2 information. However, this is not the case as of yet in NI. Currently, fuel mix is determined from the SEM pool but a new single combined process for determining the exact fuel mix including renewables explicitly should be put in place on an All-Island basis.

Customer Switching & Switching System

Due to the physical switching limit of 90,000 sites (150,000 with some additional spend) on NIE ICT systems a number of issues/questions arise that could potentially act as a barrier to new entrants or indeed a barrier to expansion of existing second tier suppliers e.g.

- If for example a new entrant in the domestic sector (where acquisition numbers are likely to be highest) takes on a significant number of new customers then the physical limit would be quickly reached, blocking any other supplier gaining customers either I&C or domestic.
- If a number of suppliers were to start registering new sites at the same time, and the number of "remaining" available places were low, how would the places in NIE systems be assigned?

Given that the "Enduring Solution" is unlikely to be in place before 2012, we feel that NIAUR should give some consideration to these issues soon.

Long-Term Customer Contracts

There is some confusion as to whether this relates to "incumbents" or "entrants" offering long-term customer contracts. However, ESB Independent Energy believes that, whatever about the incumbent, there should be no restrictions placed on the ability of independent suppliers to lock customers into long-term customer contracts. In an open and competitive market, suppliers and customers should be able to contract freely in a manner that is to the mutual benefit of both parties and this may well include long-term customer contracts. To place any restrictions on this would be to the detriment of all parties concerned and could, for example, lead to switching just for the sake of it and for the optics of it as opposed to open and fair competition. Customers should have no limit or restriction on choice including contract duration.

Liquidity of contract market and further regulatory action to promote a more developed secondary hedging market

At present the SEM is quite illiquid and ESB Independent Energy would support any measures to improve this in the context of supporting a sustainable competitive market but with the caveat that we believe the market would be best served by entities with a supply and associated generation position.

**ESB Response to NIAUR Consultation on its 5-Year Corporate
Strategy (2009 – 2014) and Forward Work Programme (April 2009 –
March 2010)**

ESB welcomes this second opportunity to respond to NIAUR's 5-Year Strategy and Forward Work Programme, which follows on from the submission made in September 2008. It will be important that the strategy and work programme are finalised so as to build on the many achievements of the last number of years while recognising the regional and global challenges facing the sector and also aligning with initiatives at a European level.

ESB believes that the key areas identified as priorities for the period 2009 to 2014 are those that will provide the greatest benefit to consumers in the energy sector on the island of Ireland. NIAUR has identified certain steps that it will endeavour to follow to realise these objectives. ESB suggests other initiatives that could be undertaken to further develop these objectives over the same proposed timeframe. ESB has not made any comment on the strategic objectives or workplan proposed for the water sector, and limits this response to the energy sector. ESB has grouped its comments on strategic and workplan proposals under various headings below.

Alignment of Policy, Strategy and Action on All-Island Basis

Reference is made to other strategic reviews in the energy sector (DETI Strategic Energy Framework and SEM Committee Work-plan) which are taking place over the same timeframe. Where these reviews result in similar objectives and goals, with interdependencies between work-plans, it will be necessary for increased cooperation and coordination between the government departments and the regulatory authorities in order for all key priorities on an All-island basis to be achieved. This cooperation and coordination will allow for regulatory stability over the period where these priorities are being delivered upon.

The successful experiences of the SEM establishment programme and the working relationships that were developed over that period should continue to be leveraged, in conjunction with the key stakeholders in Great Britain to further promote the

expansion of the wholesale electricity market definition into a GB-Irl Market, which it is envisaged will introduce further competitive forces in both wholesale and retail for the benefit of all consumers.

Harmonisation of All-Island Markets

A consistent theme throughout the NIAUR draft strategy is that concerning further harmonisation of energy markets and fostering enhanced levels of competitive pressures within them. ESB supports this goal and the continued close working of NIAUR with CER on practical initiatives such as promoting increased liquidity in the wholesale electricity market, bringing significantly forward during 2009 the implementation of IT systems within Northern Ireland to support high-volume customer switching and further standardisation of operational processes at retail level. These initiatives should encourage and facilitate greater retail market competition within the Mass Market and lower end of the Industrial and Commercial sectors.

Reference is made within the NIAUR workplan to the cancellation of the long term Kilroot contract and to its potential replacement with a future PPA contract. ESB requests that the NIAUR workplan contains consultation on its proposals in this regard so that the implications within SEM can be understood and to ensure that the outcome is competitively neutral.

Great Britain – Ireland Electricity Market

ESB believes that it is now timely, with further levels of electricity interconnection planned between Great Britain and Ireland, to consider advancing a single Great Britain – Ireland electricity market. The proposed increase in interconnection by 2012 has the potential to greatly reduce the level of congestion between the two power systems and to allow for a high degree of market coupling, which should in turn facilitate market competition dynamics to take effect.

This will require co-operation of all key stakeholders – in particular it will be necessary to ensure support of all governmental and regulatory authorities (NIAUR, CER and Ofgem) behind any such initiatives. ESB believes that NIAUR in conjunction with CER is best positioned to promote industry consideration of GB-Irl in the near term, and encourages it to do so. Such initiatives will complement the

current activities of the FUI (France UK Ireland) regional initiative working groups which are currently focusing on increasing interconnector capacity and the operational arrangements for same.

Gas Market Initiatives

ESB supports the promotion of further gas market competition on an All-Island basis. As such it awaits further progress under the Common Arrangements for Gas initiatives, in particular with regard to conclusion of the known issues relating to interconnection between both jurisdictions (North and South) and transmission tariffs.

ESB also awaits with interest the views and proposals of NIAUR regarding the promotion of gas storage capability.

Sustainability – Treatment of Wind

ESB fully supports sustainability as being a key strategic objective of NIAUR over the coming years. Indeed ESB's own corporate strategy framework to 2020 is structured with sustainability being a key overarching principle.

The All-Island Grid Study concluded that significant strengthening of the electrical transmission and distribution systems are required within Northern Ireland to accommodate higher levels of renewable generation in the coming years. Obviously connection of wind generation onto the power system and integration within the market will be important over the coming years. ESB notes that NIAUR plans to work closely with NIE to implement the necessary network developments required to support sustainability.

With the purchase of SONI by EirGrid scheduled to be completed during the first quarter of 2009 there is a very good opportunity to develop a consistent Grid Development Strategy across the whole transmission system both north and south and for system planning and development to be closely aligned from now on. The drafting of network development plans, involving close coordination in order to maximise any resulting efficiencies, requires to be progressed urgently to allow for increased connection of wind onto the power system over the coming years.

Furthermore, it will be important that support mechanisms are reviewed and enhanced if appropriate, in conjunction with CER, to encourage renewable generation to locate where most strategically beneficial on the island of Ireland, rather than in other European jurisdictions should more favourable support mechanisms exist elsewhere.

In addition, at present there is significant uncertainty regarding the treatment of wind within SEM going forward. This has a direct impact on the ability of wind-farm developers to secure funding and as such this clarity in this area is urgently required.

It will equally be important that mechanisms are supported which allow for the timely application and connection of conventional plant onto the power system as necessary in the event that the projected build of renewable generation does not occur or for other security of supply reasons.

Sustainability – SMART Metering

It will be beneficial for electricity consumers that SMART metering strategies are aligned north and south, as this will further support retail market competition on an All-island basis going forward. Alignment of the technology and its capabilities and the supporting data management systems will further facilitate retail market transactions and demand side management on an All-Island basis. The CER led SMART Metering Project in Ireland is progressing well, with installation of meter technology for pilot phase already commenced, and customer behavioural trials scheduled to occur during 2010.

Progress in Northern Ireland is not as advanced and NIAUR is therefore urged to drive forward agreement, within Northern Ireland, on the fundamental metering technology and Meter Data Management System decisions with recognition of Smart Metering decisions taken in Ireland as soon as possible. Opportunity still remains for alignment of trials and subsequent recognition of implications and benefits on an All-Island basis however, to achieve this, an agreed approach on SMART metering technology across all suppliers in Northern Ireland will be required in the very near future.

NIE Energy Limited (PPB) Response to the NIAUR 5 Year Corporate Strategy 2009-14 & Forward Work Programme 2009-10 Consultation

9th January 2009

Introduction

NIE Energy Power Procurement Business (PPB) is pleased to have this opportunity to contribute to the development of the Utility Regulator's 5 year corporate strategy and forward work programme for 2009-10, which we welcome as a constructive step towards providing more visibility for market participants of the way forward for regulatory strategy and an indication of the more immediate regulatory priorities.

Comments

We note that no reference is made to PPB responding to the first consultation on NIAUR's corporate strategy and PPB's response has not been published. It is not clear whether this response was not received or has been overlooked.

In PPB's response paper of 19 September 2008, we suggested that the strategy would need to reflect the following key challenges.

- Market power / dominance.
- Interfaces with GB notably on the NTS entry / exit reform arrangements.
- The need for the Utility Regulator to engage directly at EU level on regulatory issues (e.g. through participation in CEER).

We welcome the Utility Regulator's commitment, expressed in the November consultation paper (ref. 2.1.38), to "continue to work with CER under the aegis of the SEM Committee on ensuring the effective operation of the SEM including ongoing market monitoring to tackle dominance and market abuse".

The November consultation paper does not appear to make specific reference to the NTS issue or to closer EU engagement. We continue to believe that these are important issues for Northern Ireland that the Utility Regulator needs to address.

We note that, under Ref 37 (page 49), the Utility Regulator will consider contract cancellation options for Kilroot and may consult "on any decisions on future PPA contract". A final decision on Kilroot is scheduled in the FWP for either 2010-11 or 2011-12. It should be recognised that this matter is not limited to Kilroot as there are other power purchase contracts at Ballylumford and Coolkeeragh in respect of the open cycle gas turbines that can also be cancelled from November 2010. Hence we consider this theme should be more generic rather than just focused on Kilroot (although we acknowledge those contracts are the major ones).

NIE Energy Supply's Response to the NIAUR 5 Year Corporate Strategy 2009-14 & Forward Work Programme 2009-10 Consultation

9th January 2009

Introduction

NIE Energy Supply (NIEES) is pleased to have this opportunity to comment on and contribute to the development of the Utility Regulator's 5 year corporate strategy and forward work programme for 2009-10, which we welcome as a constructive step towards providing more visibility for market participants of the way forward for regulatory strategy and an indication of the key short and medium term regulatory priorities.

General Comments

In NIEES's response paper of 19 September 2008, relating to the earlier consultation on NIAUR's corporate strategy, we suggested that the strategy would need to reflect the following key challenges.

- The development of effective wholesale and retail competition, and in particular;
 - availability of suitable hedging products, and the effectiveness of the current hedging process
 - development of appropriate price controls
- Protection for vulnerable customers

We note, and are pleased, that there are a number of actions planned for 2009/10 that pick up on these important challenges, and we look forward to working closely with NIAUR, and other stakeholders where relevant, in the development of practical solutions.

NIEES also looks forward to being fully engaged in the wider strategic energy debate which will follow the publication of DETI's Strategic Energy Framework, and examining along with NIAUR, the McIlidoo Review report recommendations.

Energy Retail Competition – the way forward

NIEES generally supports NIAUR's strategy but has the following more detailed comments to make regarding the decision paper included in this consultation, that focuses specifically on NIAUR's strategic intent of developing a more competitive energy retail market in Northern Ireland.

We agree that contract market liquidity remains a concern. The annual market remains insufficiently flexible and generators seem unable, or unwilling, to offer full cover. We are concerned that NIAUR's strategy may not give sufficient emphasis to longer term considerations.

A supply business will seek a balanced portfolio that includes longer term contracts. These may well be CfDs but PPAs may also serve as effective

hedges. It is often easier for upstream and downstream businesses to hedge their opposite market risks through vertical integration rather than through longer term contracts. There is a continuing debate on the merits of generation/retail vertical integration and we feel that NIAUR should at least keep an open mind on the subject as it develops its retail strategy.

There are some economies of scale and scope in energy retailing and so a larger market would be likely to assist competition. There are two obvious opportunities for market integration – within the electricity SEM and between retail gas and electricity in a dual fuel market – but we do not think that there is the same potential for market integration in other directions, either geographically with the GB market or with other products such as telecoms or banking.

Perhaps the most important part of the decision paper concerns price control, cost pass-through and correction (k) factors. Modifications of pass-through might perhaps be introduced through collars & caps and yardsticks but these would increase risk (and so the required margin) without removing the need for a k-factor.

The removal of the k factor would require a more fundamental change in the price control – possibly a switch from average revenue control to a “tariff basket”¹. This raises considerable difficulties which we think outweigh those of the k-factor. Average revenue control with a correction factor remains our preferred option for the regulated market.

If the correction factor is to be removed and the control changed to be on tariffs, a system would need to be set up to do so. This would be difficult and complex. The risk to NIEES would be greatly increased and a much larger margin would be required.

As regards the other aspects of the action plan:

- Data availability: Aggregate information collected from all suppliers under reporting requirements in their licences could be published by NIAUR. Data on individual customers should not be passed between suppliers other than as part of the switching process.
- Branding: We note NIAUR’s plans for full branding separation in the electricity and gas sectors. We look forward to engaging in the related consultation exercises on this policy objective². We assume that this would not only be a feature of a strategy for Northern Ireland, but would be reflected in a harmonized all-island policy development process.
- Long term contracts, with the potential for locking in price stability, are a choice that should be open to customers. Unfortunately, aspects of the wholesale market make it difficult to offer this option. Any move to

¹ ie a price cap form of regulation for particular groups of tariffs, or service products

² Including any related further business separation relating to NIE Energy Ltd

prevent such contracts being offered would restrict innovation and customer choice.

- As regards switching harmonisation, that between NI and RoI markets and that between gas and electricity markets are more important than that with GB.
- Meter reading: The action item under meter reading is unclear. The service of meter reading in the electricity sector in NI has already been transferred to Northern Ireland Electricity, and therefore is a "regulated monopoly" or common service.



197 AIRPORT ROAD WEST
BELFAST BT5 9ED
TEL: 028 9055 5555
FAX: 028 9055 5500

Elena Ardines
NIAUR
Queens House
Queen Street
Belfast
BT1 6ER

8th January 2009

Dear Elena,

**NIAUR Draft Corporate Strategy (2009 – 2014) and
Forward Work Programme (April 2009 – March 2010)**

Thank you for the opportunity to comment on the Utility Regulator's (UReg's) draft Corporate Strategy and Forward Work Plan. We welcome the clarity this document will ultimately provide for the forthcoming period and believe that by adopting a transparent strategy, UReg will ensure that the most prevalent issues faced by the energy sector are prioritised.

The Phoenix Natural Gas Group (Phoenix) has already provided a comprehensive response to UReg's recent consultation on the key issues in developing this strategy¹ and also to the Consultation on Electricity and Gas Retail Market Competition in Northern Ireland². Therefore, we do not remake every comment in this response.

The evidence from Northern Ireland's (NI's) homes and businesses show that significant savings on energy and carbon emissions can be made by switching to natural gas and we welcome the indication that UReg will work with DETI to promote the environmental benefits of natural gas over the next five-year period.

In our previous response we commented that the market penetration of natural gas is severely skewed on a geographical basis and highlighted that with some economic intervention, there is an immediate opportunity to

¹ The Utility Regulator, Development of our 5-year Corporate Strategy, Consultation on Key Issues, 27th June 2008

² Phoenix Supply Ltd Response to the Utility Regulators Consultation on Electricity and Gas Retail Market Competition in Northern Ireland, 16th July 2008

develop the natural gas network at Hillsborough, the Maze and along the Downpatrick economic corridor.

UReg and DETI are in a unique position to promote the development of our natural gas industry and Phoenix would like to take this opportunity to offer our support to increasing the take up of natural gas within the existing licensed areas and extending the natural gas network throughout NI in line with UReg's undertaking.

Phoenix is actively engaged in the current process of investigating the potential for Common Arrangements for Gas on an all-island basis and we welcome the indication from UReg that projects will be pursued only where they can deliver real benefits for consumers.

The 'Energy Retail Competition – Way Forward' section states that placing commercial incentives on suppliers in respect of procurement activities should over time allow lower overall costs than the current pass-through arrangements. In this regard, we would be interested on reviewing any evidence UReg can provide us that the current pass-through treatment of gas costs has led to an inefficient gas purchasing strategy.

We agree with the view stated in the paper that any measures in respect of Retail Competition must take account of the market conditions in Northern Ireland, including the impact any measure may have on other customer sectors.

We believe that the current review of the Energy Efficiency Levy is one of a number of key consultations for NI given the current economic pressures faced by consumers alongside rising wholesale energy costs, increasing fuel poverty and the challenge of reducing NI's carbon footprint. We have significant experience of the NI energy market and will continue to provide UReg with comprehensive responses to such consultations in an effort to ensure that future policies are as informed as possible.

We also support UReg's aim of co-ordinating the work of its cross-utility groups and would welcome the development of a transparent and informative website to enhance UReg's communications capabilities.

We hope that these comments are useful but please do not hesitate to contact me should you wish to discuss any of these further.

Yours sincerely,

Abigail

Abigail McCarter
Senior Business Analyst - Regulation



Viridian Power & Energy Limited

Mill House
Ashtowngate
Navan Road
Dublin 15
T:+353-1-869 2000
F:+353-1-869 2040

Elena Ardines
Strategy branch
the Utility Regulator
Queens House
14 Queen Street
Belfast
BT1 6ER

9 January 2009

Dear Elena,

CONSULTATION ON NIAUR CORPORATE STRATEGY AND FORWARD WORK PROGRAMME

Thank you for the opportunity to comment upon NIAUR's forthcoming strategy and programme.

Set against the context of a very challenging economic climate, volatile commodity markets, the need for urgent action to mitigate climate change and the inevitable security of supply concern to 'keep the lights on', the next five years will present significant challenges for NIAUR, Northern Ireland and its energy customers. These are, and will continue to be, unprecedented times; the present global credit crisis has placed a serious strain on investment decision making.

Given this context, NIAUR's methodical and disciplined approach to a five year corporate strategy is very welcome. The best regulatory response to the unprecedented changes in the energy sector is to ensure a stable regulatory environment where decisions are made on a rational economic basis and in a transparent manner.

With the above in mind, we reiterate three prime objectives that should underpin NIAUR's strategy:

1. Improving Northern Ireland's international competitiveness, by reducing and removing barriers to open, competitive and efficient energy markets.
2. Reducing regulatory risk to attract new investment, and a focus on incentive based regulation where timely decisions are underpinned by rational economic justification.
3. Enhancing regulatory process to improve transparency and accountability.

Our responses to proposed action priorities in section 2.2 of the programme are set out within the attached annex. In summary, the main points we make are as follows:

- **Strategic network planning:** create and implement a strategic network plan, integrated with the Eirgrid Grid Development Strategy (GDS) in the RoI, to connect new generation capacity, especially renewable capacity, to load centres. This is particularly important in the light of UK Government renewable energy targets and it is important that Northern Ireland achieves its share of national targets. Given the small size and rural nature of the network this presents significant challenges. However Northern Ireland has a strong wind resource and access of wind to the grid on economic terms is critical to being able to maximise our contribution to UK targets.
- **Delivering competition for retail gas key to domestic competition:** It is widely accepted in industry that competition for domestic customers will be based on a dual fuel product of electricity and gas. VPE are concerned at the continuing lack of competition in retail gas and see this as the most significant impediment to delivery of competition for domestic customers.
- **SEM reform:** The strategy and programme set out the high level principles of good regulatory practice but is not clear how this will be implemented, particularly through the SEM Committee process. The final programme and work plan would benefit from a clear delineation of NIAUR and SEM Committee activities and what areas of opportunity, eg. governance and transparency, are available for reforming SEM regulation.
- **Regulatory and market transparency:** this is of increasing concern and requires relatively simple action to ensure the market has access to data and information. It also requires timely, easy to access, comprehensive, and well thought out market communication systems. An SEM appeals mechanism would increase accountability and provide a more secure basis for investor confidence.

Please do not hesitate to contact us if we can elaborate further on any of the points we make.

Yours sincerely



Garrett Blaney
Head of Regulation

ANNEX

Response to Proposed Action Priorities, section 2.2

Ref: 35

Branding separation

VPE suggest that the efficiency of the all-Island market will be improved if ringfencing issues, such as branding separation, is harmonised between NIAUR and CER to ensure that jurisdictional distortions are not created.

Ref: 48

The issues of long-term arrangements for security of supply are best secured through a stable capacity pot which is addressed in Ref: 50

Ref: 50

We note the SEM Committee minutes of the 2 September 2008 states

"The methodology for calculation the Capacity Pot should be reviewed to consider among other things:

Whether the volatility of the capacity pot can be reduced, and if so how.
Whether residual values should be included
The proposed capacity requirement calculation
International comparisons."

This minute suggests a more rigorous review than suggested by the reference.

Ref: 65

We suggest that a review of good governance should extend to the SEM Committee activities as well as NIAUR and that new methods of transparency improvement are considered.

The Federal Energy Regulatory Commission in the US provides a good template for transparency in regulatory decisions. Their website (www.FERC.gov) provides clear up-to-date information and commission meetings can be viewed by webcast.¹

¹

<http://www.ferc.gov/EventCalendar/EventDetails.aspx?ID=4204&CalType=%20&CalendarID=101&Date=01/15/2009&View=Listrow>

Ref: 68

We suggest that stakeholder communications should also address methods for enhancing industry engagement.

We understand that a new website launch is likely in 2009 and suggest this should receive prominence in this action.

Other Actions:

There has been significant increase in the levy's imposed by NIAUR on suppliers in NI and we suggest that a forecast of future levys may be worth considering, together with a review on how the levy is distributed among suppliers, network owners, and producers (generators).

Consumer Council's

Response to the Utility Regulator's Consultation on

Draft Corporate Strategy (2009 – 14)

and

Forward Work Programme

(April 2009 – March 2010)

January 2009
Our reference: PD20080203

1. Introduction

- 1.1. The Consumer Council's role is to give consumers a voice and to make sure that voice is heard by those who make decisions that affect consumers. A Non-Departmental Public Body, the Consumer Council was set up by statute in 1985 to promote and safeguard the interests of all consumers in Northern Ireland.
- 1.2. The Consumer Council has certain specific responsibilities for energy (including natural gas, electricity and coal), passenger transport, food, and water.
- 1.3. The Consumer Council welcomes this opportunity to respond to the Utility Regulator's consultation paper on their draft Corporate Strategy 2009-2014 and Forward Work Programme 2009/10.
- 1.4. The Consumer Council's response outlines some high level principles for consideration during the period of the Utility Regulator's Corporate Strategy and comments on some Forward Work Programme projects which are of particular interest. We have not and will not outline our position on policy on any matter until more information is available.
- 1.5. Consumers need more effective, tougher regulation. We look forward to working fully with the Utility Regulator on all areas of their work alongside participating in all of the proposed consultation exercises. Our position on particular matters will develop further. Therefore, we would like to advise that our position as outlined is largely influenced by the current situation faced by consumers and on some of these matters will develop and change once more information becomes available or circumstances change. We reserve our right to ensure consumers' interests are protected in the ever changing energy and water sectors and that we are not tied to previous responses made in different circumstances.

- 1.6. It is vital that consumers' interests are at the heart of all the Utility Regulator's work. The Utility Regulator must demonstrate consideration and a balancing off these interests over the short, medium and long term.
- 1.7. Following the structure of the consultation document the Consumer Council's response is split into two sections - the draft Corporate Strategy and the Forward Work Programme. Many of the points raised span different priority themes and Forward Work Programme projects and read across both documents. Some points may be repeated, but where possible we have merged the draft Corporate Strategy areas of Strategy Challenges and Drivers together with the Strategic Themes to avoid unnecessary repetition.

2. DRAFT CORPORATE STRATEGY

- 2.1. The Consumer Council welcomes the inclusion and importance given in the strategy to forging relationships with key stakeholders. It is through working together, and understanding others' objectives, that good direction, advice and policy is developed.
- 2.2. A major factor in constructive working relationships is transparent and timely communication and cooperation. We are encouraged by the Utility Regulator's recognition of this necessity throughout all of their work and look forward to this being demonstrated.
- 2.3. There must also be timely and effective communication with all consumers in accessible formats and ensuring customers understand the information being conveyed.
- 2.4. We agree with the benefits of the cross-utility approach being proposed by the Utility Regulator. The Consumer Council has also found benefit in taking a cross

utility perspective on many issues and looks forward to working with the Utility Regulator in this fashion.

- 2.5. The Utility Regulator's corporate strategy reflects that the regulation and operation of the current water and sewerage regime is new to all stakeholders (and we note that several projects in the Forward Work Programme look at the development of various aspects of this regulatory regime). Given this fledgling and faltered status and the present uncertainty of long term decisions over, for example, metering or direct domestic charging for water a sufficient degree of flexibility must be built into the systems and structures proposed by the Utility Regulator to ensure adaptability to synchronize and link with any decisions and outcomes from the NI Executive's consultation. This flexibility must allow for the development of a specific regulatory regime to reflect the unique position of Northern Ireland.

3. Protecting consumers, rising prices and the need for concerted action

- 3.1. The Consumer Council agrees with many of the challenges that the Utility Regulator has identified throughout the strategy. It is our view that high prices and the human impact of this is without doubt one of the most challenging, yet crucial, issues to be addressed. Given the extent to which prices have risen in Northern Ireland we believe this issue needs to be addressed urgently, and consider the Utility Regulator to have a significant and important role to play.
- 3.2. The Utility Regulator makes decisions which affect the amount of money in people's pockets. Therefore we believe that the Utility Regulator is well placed to contribute to solutions within Departmental and Executive strategic direction and policy to help alleviate financial pressure on the most vulnerable consumer, for example variable tariffs based on consumption and ability to pay.

- 3.3. Urgent and priority consideration must be given to combating the impact of high energy costs for households in Northern Ireland and the divergence in prices for electricity and gas in Northern Ireland compared to Great Britain.
- 3.4. The issue of fuel poverty is the most important issue and challenge which campaigners and energy stakeholders face today. Following over 50 per cent price rises in both Phoenix Supply Ltd and NIE Energy's tariff in a six month period, eradicating fuel poverty must be at the top of the agenda. We fully believe that the Utility Regulator has a role to play in combating fuel poverty given their responsibilities in approving price increases for monopoly supply companies and we look forward to working with the Utility Regulator in this regard. We are disappointed that no steps have been taken to develop variable tariffs to date.
- 3.5. We strongly agree that the protection of consumers must be the dominant theme throughout the water reform process and beyond. Consumer protection and water affordability must remain central in all considerations and decisions on price control and wider sustainability, security of supply and EU issues.
- 3.6. The Utility Regulator's final Corporate Strategy needs to reflect the ongoing work in developing the water and sewerage price control process and principles. This should link to the new governance structures within which the Price Control will take place and carry to the evolutionary nature of the water and sewerage regulatory environment and the ongoing progressive decisions being made.
- 3.7. The development of the price control processes and principles must reflect the unique position in Northern Ireland with one water and sewerage company, one multi-utility Utility Regulator and one multi-utility consumer representative. It must also work within the strategic direction set by Ministerial guidance and the Water Stakeholder Steering Group established to provide this. Therefore, there

is the opportunity for all stakeholders to develop unique processes specifically to manage the price control process in the interests of Northern Ireland.

- 3.8. The Utility Regulator will be aware that the Consumer Council designed and developed the Water Affordability tariff. We are happy to share our knowledge of policy development in this area and explore its wider applications e.g. for social tariffs and Social Action Plans.
- 3.9. The Utility Regulator should look at delivering and brokering new models, for example mutualisation, tailored to deliver the greatest benefit to all consumers.
- 3.10. We believe that consideration must be given to the reasons for high energy prices, notably the link between gas and oil at Continental levels and whether more can be achieved to mitigate the impact rises in oil has on the price of gas and subsequently on electricity on an national, European and global level.
- 3.11. Further, much can be done regarding incentivising and penalising supply companies for their decisions in purchasing commodities. This is of particular importance in an environment where wholesale energy costs are passed directly through to the consumer. The purchasing window for electricity needs to be explored, as recommended in the McIlldoon Review of the October 2008 electricity price increase. The forthcoming price control supply consultations for Phoenix Supply Ltd and NIE Energy provide an excellent opportunity for the Utility Regulator to implement mechanisms that work in the best interests of consumers.
- 3.12. Given that wholesale energy costs has been cited as the reason for recent rises in gas and electricity, urgent action is required to minimise the impact on consumers, particularly the most vulnerable. The current processes of direct pass through does not act as sufficient incentive for supply companies to purchase gas and electricity economically or in the best interests of consumers.

We seek urgent remedial action to incentivise and penalise supply companies over their purchasing decisions. The double price rises in both gas and electricity during 2008 left many consumers struggling to cope financially, however supply companies are able to pass through costs directly. A fairer system, which works to the benefit of consumers must be in place.

- 3.13. We believe options must be developed to mitigate exposure to fluctuating wholesale energy prices to protect consumers, and provide stable prices. Gas storage is one such way, and we welcome development of this area. Increasing our reliance on renewable technology is certainly another method which requires consideration, however a cost benefit analysis must be completed to ensure that any option is in the economic interest of consumers, in the short, medium and long term.
- 3.14. The Consumer Council is concerned at the effectiveness of regulation in ensuring the market gives a fair deal to both consumers and industry. Along with learning from regulatory best practice, fundamental discussion on better and tougher regulation to protect consumers is timely.
- 3.15. We welcome the Utility Regulator's recently released consultation on Social Action Plans. We have pressed for this for some time and remain committed and look forward to working with the Utility Regulator in these areas.
- 3.16. Technological advancements may facilitate an environment of development and progress. However it is also important to consider the cost associated with this and the impact this may have on household budgets. Following recent price increases, more homes have been plunged into fuel poverty. Therefore the short term impact on consumers must be considered when making decisions on technological projects, as well as the long term benefits these may bring.

4. Environmental Sustainability and Security of Supply Issues

- 4.1. There are many challenges in both the energy and water sectors in Northern Ireland. Both are essential services for consumers and the challenge is to ensure continuity of supply at reasonable cost. The additional challenge is protecting the most vulnerable consumer against high prices and inequalities. The Consumer Council does not underestimate the complexities in achieving this.
- 4.2. The Utility Regulator emphasises the importance of the green agenda. The links to the Utility Regulator's sustainability strategy need to be clearly stated in the Corporate Strategy along with clear objectives and rationale that takes account of the changing context of high energy prices and forthcoming decisions about water and sewerage services.
- 4.3. The balance needs to be found between long term sustainability and short term stability. Developments in regulatory frameworks should be developed in the context of wider Government policy areas.
- 4.4. We believe that environmental sustainability will be a challenging topic and look forward to participating in the public debate on this issue on behalf of consumers in Northern Ireland. We expect that the interests of consumers will be at the forefront of any policy on this issue. We do not accept that consumers should simply have to pay more to reflect the cost of carbon emissions or other environmental considerations. Justification for any projects or initiatives taken must be accompanied by a full cost benefit analysis. The benefits to all consumers and Northern Ireland society must be demonstrated and made clear.
- 4.5. Given that in areas where natural gas is available there has only been 40 per cent take up, we believe that an explanation must be sought regarding reasons for this, before further roll out is started.

4.6. We are aware that the element of the current Smart Meter pilot scheme that would test the experience of Northern Ireland consumers has been removed. We understand that this is because the cost was high and the Utility Regulator is of the view that consumer research from GB and the Republic of Ireland will cover this. It is essential that the interests of Northern Ireland consumers remain at the centre of the pilot scheme including evidence to show how the GB and Republic of Ireland research will be sufficient in volume, detail and crucially relevance, to reflect the experience and interests of Northern Ireland consumers.

5. **Boosting competition in the retail and wholesale sectors**

5.1. A key consumer principle is choice, and competition may offer that choice to consumers. However it is not enough to say that competition is an end goal in itself that Northern Ireland must strive toward at any cost. Consumers must see real benefits, in terms of driving down pricing and availability of innovative products that could otherwise not be implemented through good regulation. We do not accept that consumers will have to pay more to get competition in the energy market or water sector. Consumers must see real benefits, both in the short, medium and long term.

5.2. The Consumer Council understands that there are barriers to competition and that the role of the Utility Regulator is to act as proxy to competition. In doing so, we strongly advocate that the interest of consumers, particularly the most vulnerable, is represented first and foremost in all aspects of the Utility Regulator's role. We look forward to working with the Utility Regulator in relation to achieving this goal, both in the development of competition and all regulatory duties.

5.3. We are concerned with statements made in the McIlldoon review that a prospective market entrant was encouraged that the regulator had rubber stamped the NIEE 33 per cent increase in the NIE Energy tariff. We believe that the market should work in consumers' best interests and do not accept that

consumers simply have to pay more for competition. The McIlldoon report was commissioned independently by the Utility Regulator and its recommendations must be acted upon or evidence provided as to why not.

- 5.4. The Consumer Council stands ready to play their part in protecting consumers in a market which may potentially become more competitive. We look forward to ensuring that the interests of consumers are prioritised when considering the interface between consumers and the competitive market.

6. Harmonising strategy

- 6.1. With regards to an All Island Energy market, urgent consideration must be given to the role of the Single Electricity Market (SEM) and the benefits it has delivered or is likely to deliver in both the short and medium term and weigh this against costs both short and medium term. It is vital to know and identify the benefits and costs of one all island market before entering into another or extending the market further. The benefits to consumers, especially the most vulnerable in Northern Ireland, must be at the forefront of the Utility Regulator's thinking on all island / all Europe energy markets.
- 6.2. With regards to the liquidity of contracts that operate alongside the SEM, the Consumer Council believes that both Regulators, North and South, have a role to play in enabling markets to become more liquid. When the market does not operate as efficiently as it could, it is the end user, the consumer, who is ultimately disadvantaged. Consumers in Northern Ireland deserve a market that works in their short, medium and long term interests. Therefore it is imperative that work is undertaken immediately to enhance the levels of liquidity, including contract and hedging options into the market. The recommendation of the McIlldoon review must be acted upon or evidence provided as to why not.
- 6.3. In relation to any proposed work on the Common Arrangements for Gas the Consumer Council would expect that any options consider first and foremost the

best interests of the consumer in the short, medium and long term. We would not expect consumers to be disadvantaged in the short term while the market develops. The Consumer Council looks forward to working with the Utility Regulator in relation to this issue.

7. Evolving Regulatory Framework and EU level factors

- 7.1. EU obligations provide opportunities for change to be introduced into the water and sewerage industry and the energy markets. The Utility Regulator should provide information on how they will work to ensure that all EU factors are adapted and adopted in Northern Ireland to the advantage of all consumers to realise the same benefits as consumers throughout the EU.
- 7.2. The affect of EU level factors on Northern Ireland not only has to be considered and taken into account by the Utility Regulator but also needs to be clearly explained to all stakeholders and consumers.
- 7.3. We do not underestimate the potential impact of the Water Framework Directive (WFD) on the water reform process in Northern Ireland. The implementation of WFD must fully consider the impact on the consumer.
- 7.4. Given the current climate of high energy prices, we believe that it is important to look outside current traditional market-based options for answers. We welcome consideration and analysis of the extent to which the debt-based model of mutualisation may be appropriate, desirable or achievable in gas and electricity supply, distribution or transmission markets, and also whether other models are of economic benefit to consumers. For example, the Utility Regulator will be aware of the Energy Brokering Feasibility Scheme being co-commissioned by NIHE and the Consumer Council which will be significant in future models of affordable energy.

8. Organisational Development

- 8.1 In the Utility Regulator's previous consultation on their draft Corporate Plan¹, it identified an opportunity for Northern Ireland to move more quickly and become a centre of excellence in various spheres across the utility sector. We agree with this, and believe this should be attained alongside the first priority and corporate strategy of the Utility Regulator in becoming a centre for excellence in better and more effective, efficient, targeted cross-utility regulation.
- 8.2 The Consumer Council recognises the need for balance between the Utility Regulator's strategic themes, for example sustainability and affordability, and we look forward to working with the Utility Regulator in future to mitigate the impact of this conflict for Northern Ireland consumers.
- 8.3 Given that, at a high level, the protection of customers is at the heart of what the Utility Regulator does, we believe that a key priority in 2009 is for the Utility Regulator to drive down regulated costs to narrow the gap between Northern Ireland and Great Britain's electricity and natural gas prices. Therefore we believe the Utility Regulator should incorporate this objective into one of its strategic themes.
- 8.4 The Consumer Council notes throughout the document the Utility Regulator's intention to consult with stakeholders on many of the areas outlined in their corporate strategy. We welcome the Utility Regulator's commitment to consult with stakeholders and we look forward to playing our part in these consultations.
- 8.5 The Utility Regulator should undertake pre-consultation work and gather views to inform their consultations. Notification of the release of consultations should also be provided. This will allow consultees to be better prepared and able to participate fully. This work should be in a more open and transparent environment where the Utility Regulator should provide timely and understandable explanations.

¹ The Utility Regulator's consultation on the development of the five year corporate strategy June 2008

- 8.6 When issuing consultation documents, the Consumer Council seeks assurances from the Utility Regulator that the recommended twelve week consultation period outlined by the Department for Business, Enterprise and Regulatory Reform (BERR)² will be adhered to.
- 8.7 Further, if a consultation document is going to be issued over a public / bank or summer holiday period more time should be allowed. We are also firm on the view that numerous consultation documents are not issued around the same time and should be published on a staggered basis. Taking the number of consultations the Utility Regulator has issued to date, over half of them were between a 3.5 month period from 1 June to 19 September. Consideration must be given to the limited resources of consultees, to ensure comprehensive responses are returned.
- 8.8 The final Corporate Strategy should contain a definitive set of aims and objectives to be achieved within the five year timescale.

² <http://www.berr.gov.uk/files/file44374.pdf>

9. FORWARD WORK PROGRAMME

9.1. The Consumer Council looks forward to working with the Utility Regulator across all of their directorates to achieve projects specified in their work programme. Without entering into the detail of all the projects, and without limiting the Consumer Council's involvement in all appropriate work areas, we have commented below on some of the Forward Work Programme's projects which are of particular interest to the Consumer Council.

10. Protecting consumers and Monopoly Regulation

10.1. During 2008 more consumers in Northern Ireland have struggled to pay for energy following unprecedented prices increases. Therefore we believe protecting consumers is the key priority for the Utility Regulator.

10.2. We recognise that work in price controls may reduce some costs, however we do not believe that this is the only mechanism the Utility Regulator should use to drive down regulated costs. With such volatility in wholesale prices more must be done to drive down costs from the distribution, transmission and operating cost element of the final tariff. We urge the Utility Regulator to identify ways to achieve this in the short term for the benefit of Northern Ireland consumers.

10.3. We welcome the Utility Regulator's proposed review of the economic purchasing obligations of regulated companies. Given that the regulated companies can pass through costs directly to consumers it is only consumers who are bearing the risk. This needs to be addressed in the short term, with a penal system imposed should regulated companies not purchase in the most economic or advantageous manner. We look forward to having further discussions with the Utility Regulator regarding how this can be achieved.

10.4. We welcome the work the Utility Regulator intends to do in implementing and updating guaranteed service standards across all directorates. We have long campaigned for the

introduction of guaranteed service standards for all gas and water consumers to end the disparity with electricity consumers. We will continue our work with the Utility Regulator in relation to guaranteed service standards for swift implementation.

- 10.5. We welcome price controls for mutualised companies and of the Utility Regulator's intention to consider the performance of mutualised companies. Given these assets are being managed on behalf of consumers we believe this is essential to ensure the management is efficient and in the best interests of consumers.
- 10.6. We look forward to working fully with the Utility Regulator to ensure consumer views are included and correctly represented in Ministerial Guidance on water and sewerage services, NI Water's 2010 Price Control Business Plan submissions and the ongoing improvement of the Price Control principles. Additionally we will continue to engage and work with the Utility Regulator to monitor NI Water's performance, identify and improve poor performance and ensure value for money.
- 10.7. We will continue to work productively with the Utility Regulator on the annual review and approval of NI Water's Scheme of Charges.
- 10.8. We would recommend that the Utility Regulator considers a review of NI Water's Codes of Practice following NI Executive decisions on water reform.

11. Sustainability and Security of Supply

- 11.1. In line with their principle objective under the Energy Order (Northern Ireland) 2003, we recognise that the main objective for the Utility Regulator is to promote the gas industry in Northern Ireland.
- 11.2. We acknowledge the environmental benefits of natural gas over other fossil fuels. We also recognise that an extension of the natural gas industry to other areas will provide more choice to consumers, a key consumer principle. However we believe that before extending the natural gas network, at a huge cost which is ultimately borne by Northern

Ireland consumers, research is required to understand why there is not maximum take up of natural gas in the two licence areas where it is currently offered. Barriers to the uptake of natural gas must be identified before considering further expansion.

- 11.3. Given the volatility in energy prices, acutely demonstrated during 2008 by over 50 per cent price increases in electricity and Phoenix Natural Gas, we understand the need for gas storage facilities in Northern Ireland and support the Utility Regulator's identification of storage facilities as a key objective over the next five years.
- 11.4. We welcome the Utility Regulator's intention to conduct a cost benefit analysis to determine a smart metering implementation policy. While we understand the benefits smart metering can bring to consumers, the cost per consumer to introduce this technology must also be given due consideration, particularly at this time of high energy costs.
- 11.5. We look forward to working with the Utility Regulator, DETI and regulated companies with regards to developing and implementing the Strategic Energy Framework.
- 11.6. The consumer must be represented adequately and appropriately in the development of work on sustainability in the water and sewerage services. We look forward to working with the Utility Regulator in the development of NI Water's sustainability and water resource management strategies and their integration into the Price Control process.

12. Harmonisation of market arrangements

- 12.1. We look forward to working with the Utility Regulator to ensure there is consumer representation for the Common Arrangements for Gas (CAG). We are aware that publication of a detailed cost benefit analysis is imminent and will comment on this accordingly. We urge the Utility Regulator to learn from lessons from setting up SEM, and to consider the recommendations from the McIlDoon Review, to provide a market that demonstrably works in the best interests and which is cost effective for Northern Ireland consumers.

13. Boosting Competition

- 13.1. As mentioned above, choice is a key consumer principle. However it must not be obtained at any cost for the consumer. At this time of high energy prices, we believe that every effort must be taken to drive cost down. However, the facilitation of competition in Northern Ireland is likely to only add costs ultimately borne by consumers with no proven benefits. We believe full cost benefit analysis is necessary before undertaking any action to facilitate competition.

14. Regulatory Framework

- 14.1. We welcome the Utility Regulator's commitment to monitor and influence developments in the European Union, given that legislation is made there which ultimately affects Northern Ireland.
- 14.2. The Consumer Council recognises that alterations may be needed to the regulatory framework to implement outcomes from the NI Executive consultation on water and sewerage services. We are keen to work fully with the Utility Regulator on these work areas.
- 14.3. We look forward to working with the Utility Regulator regarding the implementation of the EU's third package on energy issues to ensure consumers interests are represented at this level.
- 14.4. Further to the recommendations made in the McIlDoon Review we would wish to see the Regulator giving urgent consideration to the recommendations of the report in the short term.
- 14.5. The Consumer Council has a major role to play in communicating with and educating consumers so that they will have the skills and confidence to meet future challenges. We look forward to engaging fully with the Utility Regulator in this area of work.

15. CORPORATE AFFAIRS

- 15.1. We welcome the Utility Regulator's commitment to give priority to working with Government to address fuel poverty issues. We have outlined our view of the proposed reforms to the Northern Ireland Renewables Obligation (NIRO) and the Energy Efficiency Levy (EEL) in public consultation documents.
- 15.2. The Consumer Council looks forward to working with the Utility Regulator on their recently published Social Action Plan consultation.
- 15.3. We are pleased to see the stakeholder communications work project and are keen to work more closely with the Utility Regulator to benefit consumers. We also welcome the proposed enhancement of online communications and the Utility Regulator's website.

For more information on the above response contact Ciara McKay or Graham Smith on

028 9067 2488.

Department for Regional Development (DRD)

**Response to consultation on the
NIAUR 5-Year Corporate Strategy 2009-2014
& Forward Work Programme 2009-2010**

January 2009

Introduction

The Department for Regional Development's Water Policy Division welcomes this opportunity to comment on the consultation paper on the Utility Regulator's 5-Year Corporate Strategy 2009-2014 and Forward Work Programme 2009-2010 as they relate to water and sewerage services in Northern Ireland.

We are grateful for the clear, helpful layout of the Forward Work Programme (FWP). We are also grateful for the pre-consultation workshop which was held on 10 December 2008.

Corporate Strategy

- 2 In general terms, we are pleased to note that Corporate Strategy has taken account of the current political and strategic context of the water industry in Northern Ireland. However we believe that the document would benefit if the Utility Regulator further strengthened those contextual references in order to acknowledge the significant impact of such key external drivers on its future work priorities. For example, it is particularly important to fully explore the implications of the Executive's recent decision to defer domestic payments for at least one year and the need to implement future Executive decisions following public consultation on the Independent Review of Water and Sewerage Services.

- 3 We believe that the Corporate Plan should also more clearly acknowledge the difficulties faced by NIW in transforming the company into a fully regulated utility. To this end, the Utility Regulator should consider highlighting specific proportionate actions that it intends to take – indeed is already taking - to help NI Water to address these issues in a way that promotes maximum confidence for consumers.

- 4 The Corporate Strategy should be worded to ensure that it clearly states that water is not yet a fully regulated utility and is therefore subject to a much greater degree of Executive control than electricity and gas. This is an inevitable consequence of continued subsidy payments by the Executive on behalf of customers.
- 5 It is particularly important to take a cautious approach to 'social' issues such as affordability as there is likely to be Executive policy intervention in a way that doesn't apply to the other two fully regulated utilities. While the adoption of cross-sectoral thinking and approach can be a 'valuable tool' (page 17 refers), it is important to bear in mind the water industry is not yet regulated in the same way as electricity and gas and may require a different.
- 6 The draft Corporate Strategy should more clearly distinguish between cross-cutting strategic priorities and those that relate specifically to water, energy and gas. For example, its research work on SMART metering cannot realistically apply to water without pre-empting Executive agreement on the reports of the Independent Review Panel (page 28 refers).
- 7 The Corporate Strategy lists a number of key themes for the NIAUR Water Directorate including sustainability, security of supply and compliance with European Directives as being important aspects within PC10. While we have no argument with these themes per se, their inclusion at this point in the process runs the risk of appearing to pre-empt ministerial guidance which will set the strategic direction for PC10. It is important that both the Corporate Strategy and the Forward Work Programme give proper emphasis to the role of the Minister and the Executive in setting the strategic direction of the water industry as a whole and the price control process in particular.
- 8 On a similar note, Page 22 indicates that security of supply will drive a significant proportion of all required regulated expenditure. Again, there is a risk that NIAUR may appear to be anticipating the findings of the various working groups established to make recommendations on PC10 investment priorities.

- 9 We support the need to build an efficient regulatory regime by developing an effective network with statutory partners (pages 26 and 27 refer). NIAUR might consider including specific actions it intends to take to improve and build on stakeholder relationships. Indeed there is already much good work being undertaken by NIAUR and the other key stakeholders. For example, NIAUR's involvement in the recent stakeholders Workshops and the development of Partnership Agreement and its continuing role in top-level Water Stakeholders Steering Group.
- 10 DRD welcomes the acknowledgement that there are significant outstanding issues which will affect the price control process and the development of regulatory structures (pages 26 & 27). However, the Corporate Strategy and Forward Work Programme should also clearly acknowledge continued government subsidy and its impact on all budget or funding issues. The Utility Regulator might also acknowledge that it receives its own funding through customer charges via charges levied on NIW and could use this opportunity to highlight its own role as economic regulator to consumers.

Forward Work Programme

- 11 The format of the Forward Work Programme is clear, concise and easy-to-read. However in line with Article 4 of the Water and Sewerage Services (Northern Ireland) Order 2006, and as recently agreed with NIAUR , we believe that it should include a more detailed estimate of costs than currently available on page 53.
- 12 The 'Introduction to Water' in the NIAUR Forward Work Programme 2009-10 (page 36) makes no mention of the current political and strategic circumstances. As with the Corporate Strategy, we suggest that the Utility Regulator should clearly acknowledge the impact of key external drivers - such as the Executive's recent decision to defer domestic payments and the implementation of the outcome of public consultation on the Independent Review - on its future work priorities.
- 13 Pages 36 & 37 'Overall Cost and Price Control from April 2010' states one of the aims of PC10 is to *'set budgetary limits consistent with environmental improvements, addressing historic under-funding*

and ensuring that future generations are required to pay only for the service that they receive'. This does not seem to take into account the need to keep bills as low as possible or the impact of deferral and the subsequent continuation of Government subsidy.

- 14 Pages 37 & 38 discuss the need for PC10 to embrace policy decision from the Assembly including charging policies, affordability and the Independent Review Panel's recommendations on the future of water and sewerage services. We believe that the wording of this section could be strengthened to emphasis the importance of these issues and make it clear that they are not merely a part of PC10 but are the chief drivers which set the overall strategic direction for the water and sewerage industry.
- 15 Page 38 states that NIAUR is responsible for advising the DRD Minister on the amount of revenue that NIW needs to provide a sustainable service to customers and to fund its investment programme. Given continued government subsidy it might be more accurate to say it is responsible for advising on revenue requirements and associated charges within the strategic direction set by the Minister for Regional Development and ensuring Ministerial priorities are met.
- 16 The Forward Work Programme provides further detail on NIAUR's plans to review and implement its social action plan (pages 44 and 46 refer). Again, the Utility Regulator should be careful not to appear to anticipate Government decisions on social issues such as affordability.
- 17 Under 'Ensuring Delivery – Resources and Risks' NIAUR states that it will ensure delivery of its Forward Work Programme through partnership and consultation (page 52 refers). With this in mind, and in line with our comments made about the Corporate Strategy at paragraph 8 of this response, it may be appropriate to include reference to the 'Partnership Agreement' which all stakeholders recently endorsed.
- 18 The specific action priorities set out in relation to water in the tables on pages 48 - 52 and the actions proposed to manage the associated risks (pages 59 – 62) largely seem reasonable and proportionate. However, there are a number of issues which require further consideration:

- a) The actions listed under project 'Price Control Customer Views' (page 48) should clearly distinguish between the role of CCNI as the consumer representative for water and sewerage and NIAUR's role as economic regulator.

- b) An action listed 'Price Control Value for Money' is to '*establish principles of regulation to incentivise NI Water to out perform and deliver for the customer*' (page 48). This action should include an acknowledgement that the principles of regulation are dependent on a final executive decision following public consultation decision on the recommendation of the Independent Review Panel.

- c) An action listed under 'Price Control Ministerial Guidance' is to '*work with statutory stakeholders and particularly DRD Policy Unit to inform the development of ministerial social and environmental guidance*' (page 48). As the development of Ministerial Guidance is the responsibility of the Minister for Regional Development rather than NIAUR, it would be more appropriate to state that '*NIAUR will work with other statutory stakeholders to inform the development of the Minister for Regional Development's consultation on ministerial social and environmental guidance*'.

- d) The specific nature of the various aspects of sustainability to be considered under 'Sustainability – Price controls' (page 49) risk appearing to anticipate the outcome of the Ministerial Guidance on social and environmental issues.

- e) A mitigating action in the Register under 'Price Control is '*Cross Directorate Group work on price control principles including as necessary sustainability issues*' (page 59). Again, NIAUR needs to exercise caution in carrying out work which assumes that water is in the same regulatory position as energy or gas.

19 Finally, we believe that the development of the Corporate Strategy and Forward work Programme could enable us to align our work much more closely to avoid duplication of effort and demand on NIW. This may be some way off, but our vision is that we will, effectively, be able to share work programmes in the future (with due regard to statutory roles). We urge the Utility Regulator to give full consideration to all views and comments received and look forward to further discussion on the revised documents prior to their publication in early 2009.

ESB International Ltd
Stephen Court, 18/21 St Stephen's Green, Dublin 2, Ireland
Telephone +353-1-703 8000 Fax +353-1-703-7097
www.esbi.ie

Elena Ardines,
NIAUR,
Queens House,
Queens St.
Belfast BT1 6ER

Ref: NIAUR – Draft Corporate Strategy (2009 – 2014),
Forward Work programme (April 2009 – March 2010)

Dear Elena,

I attach ESB International (ESBI) response to the above consultation.

Kind regards

Claire Kierans
**Market Strategy Manager,
Independent Generation,
ESB International**

ESBI Response to the NIAUR 5 Year Corporate Strategy 2009-14 & Forward Work Programme 2009-10 Consultation

Introduction

This response is submitted by ESB International on behalf of Coolkeeragh ESB Ltd. ESBI appreciates the opportunity to comment on these important regulatory parameters and we have no objection to all or part of it being published by the Regulatory Authorities (RAs).

This response comments on the specific questions posed on Regulatory Authorities (RAs) paper.

We would like to draw your attention to our response to the NIAUR Consultation on NIAUR Corporate Strategy submitted September 2008. The comments made in our response are still applicable and are summarised in Appendix 1 at the end of this document.

In this document we comment specifically on 3 NIAUR action priorities;

- Treatment of renewables in SEM – constraint payments
- Potential Changes in Capacity payments
- Harmonisation of Generator Transmission Use of System Charging

We then comment on specific points made in the document.

NIAUR interacts with other departments in SEM e.g. DETI, SONI, CER. It would be helpful for Northern Ireland Participants to understand the relationships with these departments and the extent to which NIAUR can influence them. The electricity sector in Northern Ireland faces many challenges over the coming decade with the increase in the penetration of renewables, while still ensuring a competitive market for investors and the lowest possible price for customers. Careful consideration must be given to these complex issues. We also refer to other current strategic reviews currently taking place in relation to energy specifically the DETI Strategic Energy Framework, SEM Committee Work Plan and a number of live consultations in the areas of sustainability and the retail market. It is imperative that the relevant government departments and RAs take a cohesive approach to work together in the development of plans and the issuing of consultations to ensure the further development of the All Island electricity market.

Comments on the Forward Work Plan

Renewables Ref Page 60 & 64

We are pleased to note that NIAUR states that "sustainability" is being a key strategic objective over the coming years.

Connection of wind generation onto the power system and integration within the market will be important over the coming years. We note that NIAUR plans to work closely with the Northern Ireland network owner and D&ETI to implement the necessary network developments required to support sustainability. The drafting of network development plans requires to be progressed urgently, to allow for increased connection of wind onto the power system over the coming years. Due to the issue of the economic viability of a peaking plant (see below) NIAUR must consider how best to complement wind generation with conventional generation.

Capacity Payment Ref Page 50 & 64

ESBI values simplicity, stability and transparency in the approach to CPM in general. We would like to draw your attention to our response to AIP/SEM/08/083, Fixed Cost Best New Entrant Peaking Plant, where we discussed the philosophy of the Capacity Payment mechanism and the valuations provided for Best New Entrant. We would like to reiterate our analysis cited made in the response that point that a new peaking plant is not economically viable in the SEM as currently designed. We would welcome consultation on the best approach to providing peaking plant.

Generation Tariffs – Transmission Use of System Charging

We would like to draw your attention to our response to SEM/08/067, where we supported the decision to harmonise the Transmission Use of System Charging in the 2 jurisdictions in the SEM. However we also indicated that a delay in implementing the increased TUCS proposals to allow these costs to be reflected in the capacity (ENE) calculation and that a separate capacity calculation may be required for Northern Ireland Generators. We believe that the harmonisation is biased towards the ROI generators and detrimental to the NI generators. We believe a forum with is required with NIAUR and CER, SONI and other NI generators to examine the best approach to the harmonisation of the tariffs.

General comments on Strategy Challenges and Drivers

1.3.15 – the growing importance of EU-level factors – It is commonly accepted that an aspiration of the EU is to have a single European energy market in electricity and a single European energy market in gas. Such single market regimes are argued to bring many benefits to customers and markets, including greater transparency, greater competition, etc. However it should be recognised that “one size fits all” is not necessarily true in all markets in the EU given that markets differ in size, complexity, maturity, etc. We would request that NIAUR act proactively and use its influence to ensure lobbying is done for Northern Ireland on an EU basis to;

(i) ensure that changes that may be costly and/or burdensome to introduce in Northern Ireland and/or may bring little real benefit to Northern Ireland customers are classified as optional (as opposed to mandatory);

(ii) ensure that any gas market or electricity market regulations or directives that are passed at EU level are at such a high level that national regulators preserve/be given the power to decide at a local level how best to achieve the high level regulation/directive (appropriate to the particular market).

1.4.10 – The paper outlines several “significant challenges” that NIAUR and others face;

(i) pricing of fossil fuels is likely to be driven solely by market fundamentals. Carbon pricing will be dealt with as a separate issue as a result of the emissions caused by the use of fossil fuel. Hence pricing of fossil fuels to reflect carbon may not necessarily be an issue that will arise and we do not see NIAUR having a role

(ii) assessing and delivering the optimal mix of power generation and end-fuel use.

The EU appears to be the main driving force behind many environmental initiatives including goals to achieve significant emission reductions by 2020, and further reductions by 2050. Part of these goals appear to include the achievement of a carbon neutral electricity generation sector, therefore the mix of power generation and end-fuel use is likely to be decided by the market as mentioned in (i) above once the appropriate legislation has been put in place.

1.4.11 – Expansion of the natural gas industry – while there may be certain benefits to expanding the gas network in terms of increased choice for customers

and diversification of energy resources, these are argued to be of lesser importance than the economic justification for same given that NIAUR have stated that any expansion of the gas network will be costly. Any consideration of expanding the Northern Ireland gas network should include a cost/benefit analysis, and include a comparison of final end users gas costs to other fuels. Only if such cost/benefit analysis proves a positive benefit, and gas is competitive to other fuels (not just in the short term) should any gas network expansion be seriously considered.

1.4.21 – Long term power procurement contracts – We support NIAUR's proposal to have a review and assessment of the optimal way forward in relation to the future of the long-term Power Procurement contracts. A formal public consultation should occur as part of this review to ensure feedback from all key stakeholders in this regard. The advent of the SEM has given rise to an open, competitive, mandatory electricity market on the island of Ireland where prices are set under strict rules related to current market conditions. In such a scenario justification for the continued existence of the long term power procurement contracts must be questioned. Further the continued existence of the long term power procurement contracts may act to distort the market. As such, these long term power procurement contracts should be terminated as soon as possible to ensure market pricing is set on a common basis for all, and to enable the SEM to achieve its full potential.

2.1.29 – Cancellation of the Kilroot contract – following on from the comment above (1.4.21) concerning long term power procurement contracts, given the advent of the SEM and what it brings to the electricity market in NI, it does appear that maintaining the Kilroot contract is no longer in the best interest of customers or the SEM market.

2.2.2 – Monopoly regulation – a key strategic aim of NIAUR is stated to be 'protecting customers by ensuring utility monopolies act efficiently'.

To achieve this aim, we suggest that NIAUR should devote resources to the task of investigating the aftermath of the break-up from the one company of the Viridian Group i.e; SONI, NIE Energy PPB and the networks part of NIE and where gaps have since appeared. There are operational issues that have arisen that need to be addressed e.g. the failure of performance economic penalties to be incurred by

generators through their long term contracts with PPB. (Some of these issues have been raised at the regular NI generator meetings with SONI).

We look to NIAUR to ensure that all the various entities of Viridian operate on a true arms length basis for a level playing field for all parties.

ESB International Coolkeeragh welcomes the opportunity to comment on NIAUR Draft Strategy and the ambitious Forward Work Programme (April 2009 – March 2010). It is important that the strategy and work programme are finalised to build on the achievements to date and to support the development of the All-Island market. We look forward to working with NIAUR over the coming year. We would also welcome a chance to comment on the Douglas McIlidoo Report as unfortunately we were not involved in the preparation of the Report.

Appendix 1.

Summary of NIAUR Consultation on Key Issues - Development of a 5 year Corporate Strategy.

Renewables - ESBI agree that the primary challenges facing Northern Ireland electricity are sustainability and environmental issues. Specifically renewables and in particular wind) can contribute to addressing these primary challenges.

ESBI would welcome the opportunity for further discussion on how they could co-operate with NIAUR to bring about a greater penetration of renewables in Northern Ireland.

As previously stated, we would welcome a harmonised joint approach from NIAUR and CER in relation to the issues around the further development of the All Island electricity market., particularly for the planning, licensing process and payment incentives for renewable.

Additionally, the present differential in payments for renewables, RoCs vs. Feed-in-tariffs, is inefficient. Harmonisation of these payments would make investment in renewables more transparent and fair. It would also ensure that windfarms are developed where it is strategically beneficial instead of where it is simply financially viable.

Access to the electricity network: Given the stated ambitions of the UK Government in relation to renewable energy, it is suggested that it may be more appropriate to give renewable generators a preferred status in relation to gaining access to the electricity grid as opposed to having a policy of ensuring "renewable generation can be equitably accommodated on the electricity networks" as stated

Commodity Prices and Competition

From the Consultation - "At the same time there is a need to maintain as much downward pressure on business utility costs for economic development reasons". It is not clear what influence the Regulator can have on rising commodity prices

3.2 (i) Goes on to say - "Our principal objective in electricity is to protect consumers interests and in gas to promote the efficient, economic and co-ordinated gas industry" We find this statement regarding electricity to be incomplete and draw your attention to the description of NIAUR statutory duties contained in Annex 1, Relevant Excerpt from Energy order 2003, Objectives of Regulation of Electricity.

"The principle objective of the Department and Authority in carrying out their respective electricity functions is to protect the interests of consumers of electricity...whenever appropriate by promoting effective competition between persons engaged in commercial activities connected with the generation, transmission or supply of electricity."

Fuel Mix: The paper outlines a situation where in the future NI will be in the main dependent on renewables (mainly wind and hydro) and gas for its electricity requirements. Given that renewables require back-up from fossil fuel plant there is a real concern about the lack of diversity in the fuel mix in NI. This concern is further highlighted by a similar position in the ROI. It is suggested that NIAUR should proactively examine ways to widen the fuel mix in NI so as not to leave it totally dependent on gas as a fossil fuel.

(i) a primary driver for Wholesale (and thus end user) electricity prices is the cost of fuel (predominantly gas) purchased by the generators in the SEM. Currently the SEM dictates that the price bid into the SEM market by generators must reflect current market prices regardless of whether the generator has bought gas better or worse than this previously. If there is a desire to reduce wholesale electricity prices a consideration could be given to altering the SEM bidding rule so as to set the use of current gas prices as a cap of SEM bid prices, but if the generator has previously bought gas at a better price than this, it would be allowed to bid in a lower SEM price to reflect this. This is likely to bring benefits to electricity consumers while protecting end users.

(ii) Another wholesale issue is to re-examine incentives to oil and gas exploration companies to encourage them to explore off the coast of Ireland. Having access to gas close to home, given proper regulation of such entities, or the manner in which they operate, should bring economic benefits to the Island of Ireland given the reduced distance to market (and thus reduced transportation tariffs) as well as bring huge security of supply benefits.

**Firmus Energy Response to the NIAUR 5 Year Corporate Strategy 2009-14 &
Forward Work Programme 2009-10 Consultation**

8 January 2009

Elena Ardines
Queen's House
Queen Street
Belfast
BT1 6ER

Dear Elena

**Re: NIAUR Draft Corporate Strategy (2009-2014) and Forward Work Plan (April 2009-
March 2010)**

Thank you for providing firmus energy with this opportunity to respond to the above.

We note that this consultation document aims to provide two main purposes, the first being the Draft Corporate Strategy and the second the Forward Work Programme.

We have taken this consultation as an opportunity to note the following points to each section of the consultation.

1. Draft Corporate Strategy:

We note that you refer to the Strategic Energy Framework (SEF) development work being initiated by DETI and we have responded to that consultation under separate cover.

We welcome that this Draft Corporate Strategy focuses on a number of key drivers and challenges including a review of rising prices, to boost competition and to promote the development of the natural gas industry.

- Rising prices to consumers and the need for concerted action:

firmus energy is keen to deliver long term sustainable prices which offer gas consumers in the 10 towns an affordable alternative to coal and oil home heating.

Indeed, one way that we have attempted to limit customers' exposure to fluctuating wholesale gas costs over recent years was to undertake an inventory gas storage trial using the NW and SN gas pipelines.

The Utility Regulator's recent decision to decline firmus energy's request for an extension to the inventory product trial was a disappointment to us given the potential for this trial to reduce NBP commodity costs and in reaching this decision, the strategic benefits of this trial did not appear to have been fully considered.

It's been suggested that the Common Arrangements for Gas project, (which plans to consider the NI and RoI transmission networks being operated as a combined system), may make provision for a future inventory product being, in all likelihood, an all island service.

It is worth noting that firmus energy approached the Utility Regulator in 2006 with plans to run the Northern Ireland Inventory Product. Initially the service was to be a trial with firmus energy as the Supplier and BGE (NI) the Transporter.

Business rules were agreed and it was subsequently proposed to increase injection and withdrawal capacity to 25,000 therms. It was also proposed that within day nominations should be included within the updated business rules.

firmus energy provided an assurance that all parties, including the Regulator, Transporter and Shipper, reserved the right to terminate the trial at any time.

We would be keen to gain the Utility regulator's support for this service that could potentially benefit consumers and indeed reduce costs for our customers in the future.

firmus energy fervently believes that a Northern Ireland inventory service will be of long term benefit to gas consumers. Therefore, we would still be very keen to discuss ways to avail of existing inventory arrangements until such times as CAG warrants an alternative approach being offered to Shippers.

- Boosting competition in the retail and wholesale sectors:

In principle, the Belfast market is fully open to supply competition. However, there are a number of issues that we feel would need to be reviewed before the benefits of full and effective competition can become a reality for both business and domestic consumers in Greater Belfast, not least consideration of the incumbent's dominant position.

We recognise that our experience cannot be viewed as exhaustive. However, we have identified a number of critical areas that do not appear to promote or facilitate effective competition.

Exit Point Tolerance (EPT):

- New Suppliers, with few customers, are very exposed to fluctuations in daily consumption. Given limited accurate daily data increases the likelihood of breaching the EPT and incurring punitive charges.
- Conversely, the incumbent, with a large number of customers' benefits from a "Portfolio" effect of fluctuating consumption and the chances of breaching the EPT are low. This approach acts as an impediment to new suppliers entering the Belfast supply market.

Application of Conveyance Charges:

- We feel that it would leave less scope for ambiguity if worked examples of charges were provided along with the conveyance charge statement.
- firmus energy has also had particular difficulty establishing how peak day capacity was defined in the Distribution Network Code.

Publication and Application of Transmission Charges:

- We feel that it would be easier for suppliers if transmission and distribution charges were harmonised in terms of publication dates.

Distribution Network Code Modifications:

It would be useful if Phoenix Distribution published past and ongoing Code Modification proposals.

Customer Switching Process:

Timescales and deadlines still remain uncertain. We feel that the ability for the incumbent to object to a customer switching supplier up to D-8 is unsatisfactory as this potentially exposes us to being left long on gas. Any objection should be dealt with at the SMP confirmation stage. firmus energy plans to put forward a code modification over the next few weeks that will help improve the switching process and we will be seeking regulatory endorsement of this proposal.

Competition in Practice:

- Billing:
 - o There is only an obligation to “submit invoice documents as soon as reasonably practicable after the billing period to which they relate”. This is wholly inadequate.
- Meter Reads:
 - o Actual meter reads are taken every month by firmus energy. We are billing on this basis because of ambiguity/uncertainty regarding telemetry reads. This should be reviewed.
- Provision of Calorific Values:
 - o CV’s are only made available on D+7 by Phoenix. BGE Transportation provides CV’s on D+1. This needs to be improved upon.
- Expansion of the natural gas industry:

Customers will not switch from their existing heating or hot water systems to natural gas without switching incentives. firmus energy would welcome increased collaboration between DETI and the Utility Regulator to promote the benefits of natural gas and to

challenge policy makers to choose natural gas a low carbon alternative to coal and oil, where it is available.

firmus energy intends to make proposals to both the Department and Government on funding mechanisms along the lines of the Reconnect programme for Renewable solutions which can drive availability and conversion to natural gas in the new gas towns in the NW & SN of the province.

The proposed incentive scheme will deliver a number of benefits:

- Reduce heating costs for home-owners
- Reduce the carbon footprint of a significant proportion of the housing stock in the new gas towns
- Increase gas availability for small businesses, reducing fuel bills and carbon emissions in the private sector
- Reduce cost and CO₂ emissions within the public sector estate

The costs of such an incentive scheme would need to be met by a collaborative funding approach between the network operator, available energy efficiency monies collected through schemes such as the NI Levy Fund and Government support.

2. Draft forward Work Programme

Effective Price Control Exercises:

firmus energy would welcome engaging with the Utility Regulator to improve upon current Price Control Review arrangements.

Retail Market Opening:

Having played an active role within the Gas Market Opening Group and having recently secured our first Belfast customer, firmus energy plans to support the Utility Regulator in promoting and facilitating retail competition.

However, we feel the Gas Market Opening Group forum should be more of a decision making forum and should impediments to the process be identified, it should be the Utility Regulator who ultimately makes the final decision to help facilitate supply competition.

firmus energy would also welcome the opportunity to review with the Utility Regulator our current licence arrangements which suggest a phased opening of the market. We feel that this approach would be ineffective, costly and indeed confusing for customers.

Licence fees:

firmus energy has outlined its concerns on a number of separate occasions regarding the fact that the Consumer Council's costs are split 50:50 between Phoenix and ourselves. We have recently received assurances from the Utility Regulator's office which plans to consult on this over the next 6 months and we would welcome this.

Prepayment metering:

We can confirm that we plan to play an active role in the proposed industry review of gas prepayment metering in Northern Ireland.

Should you wish to discuss any of the above, please feel free to contact me direct on 02894 426840.

Yours sincerely

Michael

Michael Scott

Business Development Manager

Northern Ireland Electricity plc Response to the NIAUR 5 Year Corporate Strategy 2009-14 & Forward Work Programme 2009-10 Consultation

9th January 2009

Introduction

In responding to the Utility Regulator's first consultation on its five year corporate strategy Northern Ireland Electricity plc (NIE) welcomed the initiative as a positive step forward and gave its view of the challenges, opportunities and strategic themes and priorities set out in the June 2008 paper. We also commented that the final version of the document should set out the Utility Regulator's strategic aims over the planning period and a timetable for achieving them.

The strategic themes set out in the Utility Regulator's November 2008 updated draft corporate strategy are recognisable in the context of the strategic challenges and policy goals set out in DETI's draft Strategic Energy Framework 2009. These strategic themes set the framework for the Utility Regulator's Forward Work Programme and our response focuses on those actions which are most relevant to NIE in its role as owner of the transmission system and owner and operator of the distribution system in Northern Ireland. Our comments are in numerical order using the reference numbers in the November paper.

The mutual model (Ref 2 and 13)

We note that, in 2010-2012, the Utility Regulator plans to "consider the performance of the mutualised companies" and "review customer protection in light of different financing models".

The equity model has been very effective in NI. Since privatisation, accountability to equity investors has continuously driven management to seek efficiency savings that have delivered significant real reductions of c. 40% in core electricity transmission and distribution charges. None of the 14 electricity distribution network operators nor the 8 gas distribution networks in GB have adopted the mutual model.

NIE's views on the mutual model are set out in more detail in our response to DETI's recent pre-scoping consultation on its Strategic Energy Framework 2009 and we have included an extract from our response in the appendix.

Connection policy (Ref 12)

We note the Utility Regulator's intention to review in 2009-10 electricity connection policies, taking into account any sustainability issues and, in 2010-12, to create "a competitive framework for electricity connections".

The planned scope of the 2009-10 action is not clear from this brief description. It is assumed that it refers to the environmental sustainability credentials of the connectee and stems from Decision Paper 2 (Sustainability) which states as an action – "Examine the electricity grid connection policy in relation to embedded generators connecting to the electricity grid and consult on the way forward."

Present arrangements ensure that all applicants for connection to the network are dealt with on an equitable basis. We will engage constructively with the Utility Regulator on any proposals it brings forward for changes (including licence modifications) intended to facilitate the connection of embedded generators in particular. For example, we will need to appraise the practicalities of

implementation including any commercial, process and systems implications and in particular, any potential technical impact on the network.

If the objective of the 2010-12 action is the establishment of competition in connections "across the board" NIE considers that this will be a very significant and resource intensive task for NIE, NIAUR and parties who might seek to undertake contestable connection work. There will need to be an early decision on what aspects will be open to contestability. NIE will have to develop equipment specifications that will be appropriate for use by third parties, adoption and testing regimes will need to be developed and consideration given to warranties on the section of network installed under a contestable arrangement. At the outset, it will be important to test whether there is a market for contestable work and review how competition in connections has operated in GB.

Smart metering (Ref 19)

We agree that the proposed cost benefit analysis to determine Smart Metering implementation policy will need to take full account of the benefit that has already been derived from the distinctive high level of keypad usage in Northern Ireland.

Branding separation (Ref 35)

We note the Utility Regulator's intention to finalise plans for full branding separation in the electricity sector in the period 2010-2012. NIE's parent company, the Viridian Group Ltd has already agreed in principle to the separation of branding between NIE and NIE Energy. This will be taken forward in 2009 subject to the Utility Regulator's consultation process.

Data availability (Ref 36)

NIE recognises the importance of the provision of appropriate levels of customer data, as agreed with the Utility Regulator, to suppliers both pre and post customer acquisition and we note that legislation on data access differs between NI and the RoI. We have proposed to the Utility Regulator that we include 'data availability' as one of the work areas within the scope of consultation with industry stakeholders as we move shortly to the next stage of the Enduring Solution work programme.

Meter reading (Ref 39)

In Autumn 2003, in designing the arrangements to support full opening of the non-domestic market, the question of how services including metering activities should be made available to the market was addressed. The Utility Regulator's preferred model was confirmed as one in which NIE would be the sole provider of such services. The rationale for this decision was that, due to the relatively small size of the Northern Ireland market, there would be no cost advantage to customers in establishing multiple organisations responsible for market activities. It is NIE's view that this remains the correct approach since the underlying rationale has not changed.

Enduring solution (Ref 42)

In our response to the consultation of 23 April 2008 on retail market development we highlighted a number of issues, noting that harmonisation was a long and complex process, that legacy systems constrain further market development and that any enduring solution has to involve exit from them, that engagement with the industry is essential as we move forward and that we intend to respond to concerns expressed on issues such as data transparency.

NIE has presented a report to the Utility Regulator regarding the options for technical systems to support further retail market development and it has been agreed in principle to proceed on the basis of a full procurement with a view to implementing an enduring solution in 2012. The procurement documentation will specify, amongst other things, exit from legacy systems and the ability to support customer switches without significant constraint. The Suppliers Interface Group (the electricity industry forum) has been kept fully briefed on developments and plans in this regard.

Within the range of issues to be progressed we recognise the need for a significant input from industry stakeholders around consultation processes. In particular, and in the short term, NIE has highlighted to the Utility Regulator the need for a focused engagement with the industry on a number of matters to arrive at revised market procedures to support the enduring solution. We will continue to work with the Utility Regulator to ensure that the most efficient industry engagement arrangements are put in place which minimise the impact on participants. These arrangements for industry engagement will need to be set out clearly in the overall plan.

Alignment of TSC and tariff years (Ref 52)

NIE would welcome clarification of the meaning of the reference (at para 2.1.37, page 42) to exploring the 'feasibility of alignment of the Trading and Settlement Code (TSC) and tariff years. It is our understanding that this was the rationale for the RAs' decision in April 2007 to change the tariff year to commence on 1 October. Also, it will be important to check whether there would be any implications for the enduring solution.

Demand response (Ref 53)

While the action to review policies on demand response is planned in the context of sustainability and security of supply there will be important network considerations that will need to be taken into account when consideration is given to Smart Grids. If the intention of this action is to develop practical policies, the design and operation of smart grids will have to take account of the existing architecture of the transmission and distribution network, which at present has only limited remote monitoring and control.

Grid development strategy (Ref 54)

We note that the Utility Regulator will "work closely with the network owner and DETI to ensure the planning and delivery of a Grid Development Strategy for NI and the implementation of the necessary network developments". We have commented on the issues that are relevant to the development of the electricity

grid infrastructure in our response to DETI's pre-scoping consultation on its Strategic Energy Framework and we will forward a copy to the Utility Regulator. Network investment to facilitate sustainability policies will put upward pressure on transmission and distribution charges.

EU Third package (Ref 56)

DETI's view is that the divestment of SONI will go a long way to ensuring compliance with the EU third package. Implementation of the Directive's requirements as they relate to networks should take full account of the need to preserve the efficiencies and synergies within the current arrangements for network maintenance and development that create downward pressure on network costs for the benefit of customers.

Private network connections for renewables (Ref 64)

The 2009-10 action appears to be similar to the corresponding action under Ref 12 (the above comments refer).

While the 2010-12 action relating to the creation of a regulatory framework for private electricity networks is contingent upon the outcome of the 2009-10 action, it is difficult at this stage to identify a driver for this particular model. The model requires that any party building a private network must have a range of legal powers and an ongoing operation and maintenance capability, all of which currently exist within NIE. Since NIE has demonstrated consistently that it has been able to deliver efficient connections on-time, a private network model does not seem to be necessary.

Appendix

Extract from NIE's response to DETI's Strategic Energy Framework 2009 Pre-consultation scoping paper.

Financing infrastructure assets

DETI's paper states *"the mutualised model has potential to offer benefits to energy consumers, over the traditional equity model. Both business models have their detractors however. The most significant question involves a consideration of whether the long standing RPI-X model for regulation of key energy assets is preferable to the mutualised model, in terms of cost efficiency, risks to consumers, and stability of ownership, or does the mutualised model provide an acceptable alternative offering the prospect of lower costs and sufficient safeguards for energy consumers."*

The significant enterprise deficit which exists in Northern Ireland suggests that the mutual model poses another key strategic question - is it appropriate to encourage the ownership of assets, which can otherwise be owned and managed efficiently in the private sector, by semi-public structures? A principal objective of public policy should be to encourage private enterprise and entrepreneurship.

There is a very fine line between mutualisation and public ownership – in both cases there is no equity interest. In the rest of the UK, financing utility infrastructure assets on the basis of the mutual model is far from being accepted public policy. In 2004 DTI and HM Treasury formally set out their concerns in a joint paper on the potential public policy consequences of highly geared structures. Their concerns included the increased risk of company failure and the associated risk transfer to customers and taxpayers, weakened efficiency incentives and reduced regulatory flexibility.

The mutual model has very limited application in the utility sector in GB. Glas Cymru (Welsh Water) and Network Rail are the only examples of mutualisation in the utility sector in GB, both cases having arisen as a result of company distress. There are no examples of mutualisation among the 14 electricity distribution network operators or 8 gas distribution networks in GB.

When setting price controls the GB regulators have not pushed companies towards the mutual model. Their approach is reflected in their assumptions and statements on capital structure. In their 2004 price reviews Ofgem and Ofwat adopted gearing assumptions of 57.5% and 55% (of RAB value) respectively. This is similar to the approach adopted by the Utility Regulator in setting NIE's price control for the period 2007 to 2012.

Indications are that neither Ofgem nor Ofwat will depart significantly from their previous decisions on gearing when setting the next price controls. Ofwat's position on 100% debt financed structures was reflected in the following statement from its 2004 final determination "... to rely wholly on debt would risk forcing the whole sector into an unsustainably brittle structure to the ultimate detriment of customers".

Lack of transparency and accountability within the arrangements for corporate governance of a mutualised company are a matter of concern. It is arguable that the weakness in these structures is the absence of any real economic interest by the members in the performance of the company. Without this there is no real guarantee that the structures will work in a rigorous and effective manner as there is no financial consequence for the members in the event that they fail in the role of supervision and calling management to account. In stark contrast, the equity investors in a company lose value in their investment if the company does not perform.

In 2007 the then UK shadow transport secretary was reported in the media as having said that the current structure whereby a group of unpaid members acts as a proxy for shareholders has failed to keep Network Rail in check and that there's a general acceptance that the company is not really accountable to anybody. The report by KPMG into aspects of Network Rail's corporate governance published by the Office of the Rail Regulator last August highlights a lack of clarity about the role of members and the way they are selected. It also draws attention to issues around members having access to appropriate information and analysis in order to take an informed view of Network Rail's performance, including future prospects, so that they can hold Network Rail to account efficiently.

The long term viability of the financial structures underpinning utility assets is a crucial issue. It is possible that if the structures represented by the mutual model fail, then any such failure may affect all mutualised assets.

The equity model has been very effective in NI. Since privatisation accountability to equity investors has continuously driven management to seek efficiency savings that have delivered significant real reductions of c40% in core transmission and distribution charges.

Douglas McIlldoon's November 2008 report (on the October 2008 electricity price increases) highlights where effort should be prioritised. He notes that generation costs account for c 70% of electricity bills for domestic customers. He then highlights the success of regulation in capturing for customers the efficiency gains in the transmission and distribution networks. He goes on to say "Even if it were possible to reduce these costs by – say – a further 25%, the net overall effect on electricity prices would be small." He identifies generation as "... the part of the industry which is most implicated in the need to change and evolve if long term policy objectives of both the British and Irish Governments are to be met."

Northern Ireland Water Response to the NIAUR 5 Year Corporate Strategy 2009-14 & Forward Work Programme 2009-10 Consultation

8th January 2009

Contents	Page
1. Introduction	3
2. Draft UR corporate strategy 2009 - 2014	3
3. Forward work programme 2009 - 2010	5

1. Introduction

- 1.1 Northern Ireland Water (NIW) welcomes the opportunity to respond to this second consultation from the NIAUR (UR) on the development of the UR's strategy for the next 5 years and its forward work programme for April 2009 to March 2010. This response should be read in conjunction with our response to the first consultation from the UR in September 2008. The UR consultation paper is set out under the two broad headings of the draft corporate 5 year strategy and the forward programme for the next financial year. We have followed these broad headings in structuring our response below.
- 1.2 As we indicated in our September response this will be a key period of development in water regulation in Northern Ireland (NI). We believe this presents a unique opportunity for establishing a robust strategy between all the stakeholders involved and we look forward to continuing to actively participate with the UR in the development of this strategy.
- 1.3 At this point we would also like to note that whilst there may be synergies in the presentation of the UR strategy as a document covering all the sectors regulated by the UR we would suggest that separate documents setting out the distinct issues and proposed UR strategies for each area would better enable respondents to focus on the key issues for each sector.

2. Draft UR corporate strategy 2009 - 2014

- 2.1 We welcome the fact that the UR has accepted a number of the comments made by NIW in response to the first UR strategy consultation and in identifying the strategic themes which need to be addressed in the next five years. These themes include:
 - The need to establish a robust regulatory regime for the reformed water and sewerage industry
 - The goal of bedding down the working relationships between the UR and NIW – particularly in the context of price control reviews.

- The aspiration to harmonise best practice GB water regulation with local policy development in the NI context.
- The preparation and implementing of the PC10 and PC13 regulatory reviews within the period to which this consultation applies.

2.2 However, whilst in highlighting these themes the UR has, no doubt, been giving consideration as to how they might be practically addressed, we would find it helpful if in the final document the UR could set out more explicitly and practically how these themes will be worked through in the coming years. This is particularly the case in regard to the need for the UR to set out its approach to the PC13 review which will set a regulatory determination for a 5 year period.

2.3 In our view there are also a number of important areas which we feel have not been fully addressed in the UR consultation and which we feel warrant further consideration. These include for example:

- The need for long term investment planning for an industry whose assets are long-lived and where the challenges of climate change, sustainability, flooding risk and security of supply all require long term approaches – with the implications this has for regulation;
- Discussion of the issues associated with risk management and governance for a publicly-owned and regulated utility with Government-owned equity and also approaches to enhancing financial sustainability within a constrained public finance environment.
- The challenge of applying conventional incentive based regulation to a publicly owned corporation with government as the sole shareholder.
- The UR's views on where it would like to see the NI water industry in 5 years both in terms of corporate status and operational performance.

2.4 Finally we believe the relative newness of the water regulation framework in NI can provide an opportunity to take best practice from the Ofwat and WICS

regulatory frameworks and adapt these to the NI context in fresh and innovative ways. The window for such an opportunity will close over the period referred to in the UR strategy consultation. Were this to occur, an opportunity to take a lead in developing innovative approaches to water regulation in the UK will have been lost. We believe that the UR has a chance to take a lead in facilitating a wider stakeholder dialogue on the development of water regulation in NI and it would be good to see a workstream addressing this as a distinct component of the UR's strategy over the next few years.

3. Forward work programme 2009 - 2010

- 3.1 In this part of the consultation the UR has indicated that protection of the customer is the most dominant theme for the initial and developing phase of water reform. Whilst we recognise the strong need to demonstrate progress in improving customer service, there should be an equal emphasis on ensuring the financeability of NIW. This is especially the case given that one of the key duties of the UR is to ensure that NIW is able to finance its regulated activities.
- 3.2 However, little reference is made to this latter point in the UR consultation and we believe this dimension of the UR's duty is of importance not only to NIW but also to consumers and warrants greater emphasis and detail in such a strategy document. The fulfilment of this financing duty would also appear to raise a distinctive set of methodological issues in the context of a publicly-owned water utility. In addition, we believe the role of the UR is not simply about protecting customers but encompassed within its duties is the role of enabling customers to benefit from the improvements facilitated by the type of effective incentive-based regulation that promotes the delivery of good water and sewerage services for customers in an efficient and sustainable manner.
- 3.3 In paragraph 2.1.10 the UR outlines the issues critical to the water industry at its present stage of development. We believe the UR should be mindful of the interplay between these points. For example a tough approach to driving efficiencies will increase the probability of under-performance and potentially heighten the risks faced by tax payers – something the UR needs to consider how to address in the development of the regulatory framework.

- 3.4 The forward work plan actions outlined by the UR for the Water sector in 2009/10 seem to be a comprehensive list and we look forward to continuing to work with the UR throughout the next financial year on these issues in the consultative and collaborative manner aspired to by the UR.
- 3.5 Finally, we believe the UR and NIW have a shared vision – to create a world class water service for Northern Ireland and we recognise that having an effective approach to regulation has a key role to play in facilitating this. It therefore may be useful for such a vision to be articulated within the context of the UR strategy for the water sector.

Single Electricity Market Operator (SEMO) Response to the NIAUR 5 Year Corporate Strategy 2009-14 & Forward Work Programme 2009-10 Consultation

12th January 2009

1 Introduction

SEMO welcomes the opportunity to comment on "NIAUR Draft Corporate Strategy (2009 – 14) and Forward Work Programme (April 2009 – March 2010): A Utility Regulator Consultation Paper".

SEMO agrees with NIAUR when it states in relation to the development of the all island electricity market that, "The challenge over the coming years is to ensure that the SEM continues to meet its objectives through the provision of a stable market with transparent and equitable trading arrangements".

The following comments address the key themes outlined in the document.

2 Basic Market Conditions

In order for the benefits of the SEM to be fully realised by electricity users in both jurisdictions, SEMO believe that maintaining the stability of market conditions is paramount. This, in our view, does not imply that the SEM cannot change over the coming years. The SEM will be perceived as stable if its behaviour is predictable. Appropriate changes can be introduced into the SEM gradually and in a business friendly way if they do not undermine the ability of participants to meet reasonable financial targets.

Stable market conditions enable businesses to include reasonable expectations of the evolution of the market in their business plans. To ensure this is the case, SEMO believe that following appropriate consultation and proposals, a defined amount of notice is given prior to the introduction of any significant changes. Proceeding in this manner will give confidence to investors and ensure that the SEM is perceived as a stable market. It will also enable the SEM to respond to structural changes taking place in the electricity industry.

To this end, SEMO believe that the Authority's Corporate Strategy and Forward Work Programme play an important role as they give an indication to business of the strategic themes that will be guiding future regulatory thinking and decisions. Equally, given that the SEM, and other aspects of the industry, are regulated by NIAUR and CER under the aegis of the SEM Committee, it would be desirable that a SEM Committee Strategy and Forward Work Program would also be produced.

3 Outcomes

An Appropriate Balance of Generation

With regard to the success of SEM, SEMO note the Authority's statement that a "... measure of [SEM's] success will be the continuing attraction of new investment in generation with an appropriate balance between conventional fossil fuel and renewable generation". While the "attraction of new investment in generation" is an objective of the SEM; attracting an "appropriate balance between conventional fossil fuel and renewable generation" has not been an explicit objective to date. Rather, the SEM has been designed with the primary objective of incentivising investment in capacity rather than influencing the "appropriate balance" referred to in the paper. The ongoing development, using market levers and other policy instruments, of a balanced generation portfolio comprising the appropriate mix of plant will become an increasingly important

consideration as energy policy evolves and develops in both Northern Ireland and the Republic of Ireland and as further renewable, and particularly renewable generation which is intermittent in nature, is connected to the all island transmission networks.

4 Short Term Necessary Actions

Market Monitoring

SEMO agrees with NIAUR that further development of both wholesale and retail market competition is desirable. Competition in SEM is not yet at a stage where the regulatory controls put in place during the All Island Project such as the Bidding Principles can be relaxed. It will be important over the coming years to achieve the structural changes necessary to allow the market function more freely.

In this regard, SEMO supports the work to date of the market monitoring of SEM (Ref 46) and has, and will continue, to contribute to and assist the Regulatory Authorities in carrying out that work.

Contracts Market

The ongoing development of the SEM is likely to require the development of ever more sophisticated traded products to support participants' trading strategies. When carrying out its review of the long term contracts (Ref. 37) and purchasing and hedging strategies (Ref. 5) the Authority may consider measures to stimulate a transparent contracts market (Ref. 43). The absence of such a market for SEM is potentially exposing suppliers in a number of cases to excessive pool price risk. In the case of a mandatory pool, it is important that flexible vehicles exist that enable participants to manage their risk.

While Directed Contracts and Non-Directed Contracts go some way to reducing this risk, their lack of flexibility mean that suppliers and generators enter into annual contracts that may over the course of the year turn out to be very costly for either party. In addition, without a liquid contracts market, generators and suppliers will tend towards vertical integration. This runs counter to the objective of greater transparency in trading arrangements. Furthermore, this may act as a barrier to greater retail competition.

European Developments

Looking forward and to greater regional cooperation, SEMO will continue to maintain critical awareness of developments at a regional and EU level including the ongoing implementation of the Third Package. (Ref. 56, 57).