VIRIDIAN GROUP PLC

The Proposed Acquisition of Viridian Group PLC by ElectricInvest Acquisitions Limited

Viridian's Response to NIAER's Consultation Paper

22 December 2006.

NIAER'S CONSULTATION

ON

THE PROPOSED ACQUISITION OF VIRIDIAN GROUP PLC BY ELECTRICINVEST ACQUISITIONS LIMITED

VIRIDIAN'S RESPONSE

Introduction

Following Arcapita's acquisition of Viridian Group PLC, we do not expect to see any significant change in the day-to-day running of Viridian's business. Our strategy remains strongly focused on our energy businesses in Ireland, delivering a quality, value-for-money customer service through investing in the reliability and maximizing the efficiency of our regulated assets in Northern Ireland Electricity (NIE) and growing Viridian Power and Energy (VP&E) as an integrated energy business in competitive markets North and South. The commitment of our management team to the customer, the Regulators and the Governments North and South is that under new ownership it will be "business as usual".

UK regulators generally look positively on competition for ownership of regulated utilities since it has the potential to be beneficial for customers by enhancing efficiency, provided there are appropriate customer safeguards in place. The level of takeover activity experienced to date amongst regulated utilities in the UK has given rise to a broadly standard set of regulatory arrangements that are designed to ensure that customers are protected. We welcome NIAER's statement that, in responding to Arcapita's acquisition of Viridian, it intends to have regard to good practice as developed by Ofgem and Ofwat.

The following paragraphs set out Viridian's response to Ofreg's specific questions.

Financial ring fencing

Are the current ring fencing and cash lock-up provisions sufficient to ensure that the financial position of the licensed undertaker does not reflect financial risks taken by other group entities? If not, what additional ring fencing provisions might be appropriate and what might be the costs and benefits of these?

As part of the agreement on the Transmission & Distribution (T&D) price control for 2007-2012, NIE accepted licence modifications proposed by NIAER to update the financial ring fencing provisions for T&D, essentially to bring them into line with those of the Distribution Network Operators in Great Britain. We believe that the design of these conditions will be fully adequate

to provide the required assurance that NIE will remain in a position to finance its functions and that consumers' interests are properly protected.

Undertakings from "ultimate controller"

Are existing obligations to provide ultimate-controller undertakings appropriate? Should any additional undertakings also be required?

NIE has also accepted a modification to the existing licence condition that requires it to have in place a legally enforceable undertaking from the holding company that it and its subsidiaries will refrain from any action that could cause NIE to breach its licence. The effect of the modification is that the undertaking is to be obtained from the "ultimate controller". We therefore do not see a requirement for any additional undertakings which go beyond common GB practice.

Information issues

Should Ofreg require NIE to provide information on the same basis as a listed company in addition to NIE's annual regulatory accounts and Viridian's accounts? Would other transparency obligations be appropriate?

There will be no less publicly available information on NIE following the acquisition of Viridian by Arcapita. NIE will continue to publish its own statutory and regulatory accounts. NIE's statutory accounts will continue to be prepared in accordance with the relevant company legislation and contain all the necessary disclosures required under international accounting standards and company law. Both NIE's statutory and regulatory accounts contain a segmental analysis of NIE's results.

We consider there is no need to increase the disclosure requirements in respect of NIE over those which exist currently. To do so would increase costs unnecessarily. It is noted that, under Condition 6 of Part II of NIE's licence document, NIAER has the right to request NIE to provide additional financial information where it deems it necessary.

Corporate Governance

Should Ofreg impose licence obligations relating to corporate governance and management, for instance requiring the majority of NIE's board to be independent non-executives?

In relation to any obligation to have a set number of independent non-executive directors on NIE's board, we note that Ofwat requires South Staffordshire Water, also ultimately controlled by Arcapita, to maintain three independent directors on its board.[1] It would appear that NIAER may be

[1] We understand that the same requirement applies in respect of Bristol Water following its recent acquisition in May 2006.

suggesting the imposition of a requirement to go further than this, viz to have a majority of independent directors on the Board.

In reality, all of the directors of NIE acting as such will have a fiduciary duty to uphold the interests of NIE as their primary objective. We believe it is unnecessary to require that a majority of NIE's directors be independent non-executives and that, in keeping with regulatory precedent, it should be sufficient to require that a prescribed number of independent non-executive directors be maintained on the Board of NIE.

We believe it would not be appropriate to impose any other obligations relating to corporate governance and management.

Special Administration Regime

Do respondents agree with Ofreg's position that the introduction of a special administration regime for energy networks in Northern Ireland would significantly strengthen security of supply?

We note that, whilst Ofreg agrees that the change of ownership will not increase the risk of NIE insolvency, it considers that the acquisition provides an appropriate opportunity to consider whether a special administration regime should be introduced for energy networks in Northern Ireland.

NIE would broadly support the introduction of such a scheme (which we understand would require primary legislation) on the basis of the GB precedent, if Ofreg should conclude that it is desirable.

Supplier of Last Resort (SoLR)

Do respondents believe the creation of a legal basis for appointment of a supplier of last resort in the event of supplier insolvency is appropriate?

NIE's response of 11 March 2005 to DETI's consultation paper on the implementation of the Electricity Directive (Directive 2003/54/EC) identified the need to establish a binding legal relationship between the customers of a failed supplier and the Supplier of last resort (SoLR) which was not open to challenge. In order that customers can be transferred to the SoLR without delay, such a relationship should be underpinned by legislation with statutory provision being made for either deemed contracts (as is the case in GB) or a deemed tariff. This remains NIE's view.

We understand that it is DETI's intention to legislate for a SoLR within the scope of legislative changes required for full market opening. Accordingly, regulations are to be introduced pursuant to Section 2(2) of the European Communities Act.