

Minutes of the Meeting of the Gas and Electricity Markets Authority

Thursday, 11th December, 2008 at 8.15 am

9 Millbank, London SW1P 3GE

Introductory remarks by the Chairman

1. The Chairman noted apologies for absence from John Wybrew and Jayne Scott, both of whom were abroad, each of whom had provided views on a number of agenda items and to which the Chairman referred in the course of the meeting. George Yarrow and Steve Smith would be joining the meeting by video link from Cambridge. Jake Wood, one of Ofgem's graduate scheme entrants, would attend part of the meeting as an observer. It was suggested and agreed that the EDF/BE proposed merger should be discussed as an additional item. On appointments to the Authority, the Chairman reported that the Secretary of State had agreed the appointment of four new Non-Executive Members of the Authority over the next six months, and the re-appointment of three Non-Executive Members of the Authority, and to some updating of remunerations last amended in 2003/4. Details would be provided in due course. Finally, the Chairman noted that there were no declared conflicts of interest in respect of any items on the agenda.

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2. These were approved, subject to a small drafting correction.

Reports from the Chief Executive and Managing Directors

3. The Chief Executive offered a short report, looking ahead to the main challenges for 2009 for Ofgem, with a more detailed supporting annex, and which concentrated on the following main themes:
 - The outlook for markets and prices and the main issues emerging from the Probe.
 - Ofgem's commitment to review key aspects of current energy market structures, including constraint management, liquidity and cash out, and medium term assumptions.
 - The pressures and dangers for liberalised market structures seen from the context of interventionist actions – and their impact – taken in certain countries abroad.
 - The twin impacts of the credit crisis and carbon targets and the ability of markets to deliver, including on needed investments.
 - The work on handling potential financial distress and Ofgem's monitoring activities.
 - Ofgem's role in taking part and informing evolving debate on public policy on energy matters and the environment.
 - On networks, the relevance of the RPI-X@20 project.
4. On markets, the Authority was briefed on the further falls in oil prices, - though their impact in the UK was counteracted by substantial increases in the dollar against sterling. Forward oil prices for 2010 delivery were significantly higher than prompt prices, which was a more relevant benchmark for determining forward gas prices. The premia in near term electricity prices were now less marked. Analysis pointed to increasing scope for lower retail prices, most likely in Spring 2009, though their extent and timing would continue to depend upon hedging strategies, demand and the position on generation. On supplier of last resort, revised guidelines had been issued by Ofgem incorporating the experience

gained from recent problems in the retail market. Finally, the Authority noted the initial proposals from NG on system operator (SO) incentives and that Ofgem was seeking further information from National Grid on the drivers of the projected increases in SO costs relative to the current year.

5. The Authority was given a short briefing on key corporate affairs issues. This included further work on the proposed changes in Ofgem's statutory duties and their introduction in 2009. Information was soon to be published on the monitoring of companies' actions on social tariffs, and their uptake and value to consumers. Suppliers were progressively adopting Ofgem's proposed minimum standards. The Authority noted that complaints had been received about supplier practices in adjusting consumers' direct debit payments. Information had been requested from suppliers and a meeting with the ERA was planned. On governance matters, a consultation paper was being developed on the central elements of the Code Governance review dealing with major policy reviews and self-governance. Additional work would follow on the role of code administrators and was designed to improve performance and accountability. Progress with these consultations - and others on environmental themes, and timing and decision procedures for modification processes - would be presented to the Authority in Spring 2009. The Authority was briefed on enforcement action in respect of two companies, now in administration, in default on RO payments. The Authority was also updated on the appeal against Ofgem's CA98 decision in respect of National Grid's Metering Service Agreements.
6. On networks issues, the present position on the Authority's recent decision to approve Mod 195AV on gas offtake reform was explained, including the late notification of legal errors noted by industry interests impacting on recoverable costs. The Authority agreed the importance of the early implementation of the new arrangements, and delegated to the MD Networks the approval of a revised version of Mod 195AV, subject to there being no new or material issues arising. The Authority reviewed the proposed arrangements for agreeing a new 5-year contract to 2014, with a new service provider, to be funded by NG through its system operator incentives, and which would provide funding for high volume communication through call centres or via text messaging services, as needed, in the event of a rota disconnection. The Authority approved the proposed arrangements, as a reserved matter. On transmission charging, the Authority was informed that a company had raised a new modification proposal under the Balancing and Settlement Code on seasonal zonal transmission losses; and on which further advice would come forward. National Grid had issued a number of pre-consultation papers on transmission charging including on the suggestion that transmission charges be introduced on a "postalised" basis. Finally, the Authority was informed that, on gas distribution networks, the final arrangements for gas network extensions incentives under GDPCR1 had been notified to GDNs; and that, on GDPCR re-openers for additional capex following the first round of interruptible exit capacity auctions, just one request had been received.

Corporate Plan

7. The Authority considered the latest draft of the Corporate Strategy and Plan 2009-14 and proposed Foreword. The proposal was to revise the text in the light of further input from the Authority and issue a draft for consultation in January 2009, concluding with a final version for publication in March 2009. The Authority welcomed the draft, confirming the continuing relevance of its main themes. The speed of developments on energy issues over coming months argued in favour of a later review of the Foreword, the overall balance of the text, and the emphasis to be given to key, planned activities. It was agreed that the draft would be considered further at the next Authority meeting.

Competition Act case

8. The Authority considered further a case under the Competition Act 1998, initiated in April, following complaints from a number of parties, concerning the behaviour of two companies in the wholesale electricity market, alleging abuse of a position of dominance in the electricity generation sector.

Supply market investigation: Probe

9. The Authority received a further presentation into energy market prices, and follow-up actions, concentrating on the findings and analyses on price differentials in suppliers' tariffs, and the results of a consultation exercise. The three areas of concern identified were price differentials – and whether they could be justified – between “in and out” of area rates; between the types of payment; and the differentials between gas and electricity margins. The Authority had concerns that these impacted variously and disproportionately on some vulnerable energy customers, and some 4.3 million “off gas grid” customers. During and since the Probe, all of the major supply companies had introduced a range of individual price and tariff changes, these amounting to a reduction in differentials to date with a total value of the order of £300m, including changes for those customers using pre-payment meter arrangements. The details of the changes were examined. Some further reductions had been signalled, also in response to the Probe, where reductions in differentials of up to £200m in aggregate value had been signalled.
10. In debate, the Authority, while welcoming the moves made by some companies to deliver some savings through certain tariff and tariff-related changes, were not convinced that sufficient – and sufficiently urgent – action was being taken to tackle in full the unfair aspects identified in the Probe. In view of this, the Authority considered the range of options open to it to secure fuller and more effective responses to its findings on unfair differentials. These ranged from an immediate reference of retail energy supply to the Competition Commission for a market investigation, to the introduction by Ofgem of licence conditions to deal with undue price discrimination. The Authority concluded that it would proceed to an early consultation in January, lasting six weeks, on the proposed introduction of revised supplier licence conditions with options for tackling unfair or discriminatory pricing practices. The Authority was clear that, if sufficient progress were not made following consultation, further action should be considered, this including a full Market Investigation Reference to the Competition Commission.

Transmission Access Review

11. The Authority recalled that, in the Final Report of the Transmission Access Review, Ofgem made a commitment to provide a progress report to the Secretary of State by late December 2008; and had reviewed a trailer paper on TAR progress at its last meeting. There was a need to report on three main workstrands: enhanced incentives to encourage transmission operators to build infrastructure before full user commitment from generators; enduring transmission access models to improve the use of existing network capacity and to reduce connection queuing times; and short term improvements to allow more renewable generation to connect over the next 24 months before the implementation of the enduring access regime. The Authority considered the text of a recommended letter from the Chairman to Ministers reporting progress. This would also deal with the risks associated with the industry's work to define enduring grid access arrangements through effective and timely policy reform, and subsequent related modifications to the CUSC. The recommendation was approved.

Regulatory reporting

12. The Authority had a brief and preliminary discussion about the key issues arising from the 2007/8 transmission Regulatory Reporting Pack cycle, now nearing completion, which collated information on opex and capex from the three transmission operators. No decisions were required at this stage, and it was agreed that the Authority would review matters, and the publication of the report, at its next meeting, after a further exploration of some of the points arising.

CUSC amendment proposal CAP 148

13. A paper was presented to the Authority setting out the main issues arising from the consultation in July on an impact assessment on the CUSC amendment proposal CAP 148 dealing with deemed access rights to the GB transmission system for renewable generation. The Authority recalled that the CUSC panel had recommended rejection of CAP 148 in November 2007 and all its alternative versions. The matter had last been examined by the Authority in May 2008. In the subsequent consultation on the impact assessment, the Authority had signalled that it was minded to reject the modification on the grounds that it was inconsistent with European law, Ofgem's duties and did not better facilitate the objectives of the CUSC. Action in the TAR, it was argued, should help to deal with the substantive renewables connection issues which CAP 148 was seeking to address. The results of the consultation exercise were presented, along with Counsel's advice. The Authority agreed that it would be appropriate to reflect and consult further on the potential impact of the changes (when in force) to its duties under the provisions of the Energy Act 2008, taking a final decision on CAP 148 at a later stage. It was further agreed that the MD Networks should take this work forward and report in due course.

Confidential trailer paper

14. A confidential trailer paper was discussed relating to the Government's Carbon Capture and Storage competition.

Other business and date of next meeting

15. Under this item, the Authority was given a short briefing on the latest state of play, and Ofgem's role, in providing advice to the European Commission on the proposed BE/EDF merger. The Authority concluded that Ofgem should offer further views on the proposed remedies. There was no other business. The Authority agreed to meet at 8.15 am on Thursday 15 January, 2009 at Ofgem.

Those present

The Lord Mogg, KCMG	(Chairman)
Alistair Buchanan	(Chief Executive)
Dr Robin Bidwell	
Miriam Greenwood	
Sarah Harrison	
Steve Smith	(by video link)
Andrew Wright	
Prof George Yarrow	(by video link)

Those attending

Charles Gallacher	(all items)
David Ashbourne	(")
Maxine Frerk	(Corporate Plan) (CA Case) (Probe)
Andy MacFaul	(Corporate Plan)

Ian Marlee	(CA case)
Duncan Mills	(")
Duncan Sinclair	(")
Emma Kelso	(Probe)
Neil Barnes	(")
Claire Tyler	(")
David Hunt	(Transmission Access Review) (CAP 148)
Cheryl Mundie	(" " ") (CAP 148)
Duncan Innes	(Regulatory reporting)
Bogdan Kowalewicz	(NTS/CCS)
Andy Burgess	(BE/EDF)
Jake Wood	Observer
Michael Brocklehurst	(Legal Adviser to the Authority)
Dr Tony Burne	(Secretary to the Authority)