

NATIONAL GRID UK PENSION SCHEME TRUSTEE LIMITED

National Grid House, Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA
Telephone: 01926 65 4655

BY EMAIL

William McKenzie
Senior Manager, Regulatory Finance
Ofgem
william.mckenzie@ofgem.gov.uk

29 November 2013

Dear Mr McKenzie,

Reasonableness review of energy network operators pension costs

I am writing on behalf of National Grid UK Pension Trustee Limited in its capacity as sole trustee of the National Grid UK Pension Scheme.

In his letter dated 28 October 2013, your colleague Ian Rowson, Associate Partner Regulatory Finance and Compliance, has invited comments on the draft terms of reference for the forthcoming reasonableness review.

The Trustee would like any Ofgem terms of reference to be clear on the roles and responsibilities of trustees and in particular to comment on 3 aspects of the draft terms of reference – the recognition of consumers as stakeholders, the identification by consultants of “outliers” and confidentiality.

Consumers as stakeholders

Section 3 of the draft terms of reference set out the objectives for the initial review. At paragraph 3.1 it is stated:

“The initial review is to provide assurance that the consumer is effectively recognised as a primary stakeholder in any pension scheme sponsored by NWO’s.”

The Scheme (like most private sector occupational pension schemes) is established under trust, so the administration and management of the Scheme is vested in the Trustee. As a fiduciary, the Trustee is subject to the principles of trust law. The Trustee is required to have regard to the financial interests of the Scheme’s beneficiaries and to seek to safeguard the accrued benefits of those beneficiaries under the Scheme.

The Trustee does not consider it has any fiduciary obligations to other third parties such as consumers and would be concerned if that is what is being implied by the consumer being “*recognised as a primary stakeholder*”. Consumers will, of course, be a relevant consideration in assessing the covenant of National Grid because it may be necessary to understand both the extent to which pension costs can, under the regulatory regime, be passed on to consumers and the impact such passing on of costs may have on the loyalty of such consumers to National Grid. However, neither of these things can be said to be the same as the trust duties which the Trustee owes to the Scheme’s beneficiaries.

Outliers

Section 3 (objectives) notes that consultants will be required to assess that (among other things) scheme benefits, investment strategies and funding assumptions are not “outliers” compared to other private sector DB schemes including those in the utility sector.

Section 8 (limitations) notes that “*Identification as a possible outlier should not be seen as actual or implied criticism of a scheme or NWO...It is recognised that...a “one-size fits all” approach is not appropriate.*”

The Trustee wishes to stress the importance of those limitations recognised in section 8. The circumstances of every scheme and its sponsor, including the terms of the governing documentation, any restrictions on changes to that governing documentation and the historical make-up of the membership and liability profile, will be different in every scheme.

Part 3 of the Pensions Act 2004 is fully intended to be a “scheme specific” funding regime. Over recent months and years, the Pensions Regulator has stressed the flexibilities which exist in that funding regime for arriving at solutions which cater for the particular position of a scheme and its employer. The Trustee respectfully submits that it would be inappropriate for Ofgem to seek to impose rigidly a commonly applicable outcome across all schemes and sponsors which are subject to the review.

Confidentiality

The Trustee notes the invitation for trustees, among others, to meet with Ofgem as part of its review. Whereas the Trustee has not yet given any formal consideration as to whether that would be something which it would wish to do, the Trustee would note the importance of confidentiality in any information which might be shared with Ofgem should it choose to do so. The Trustee is expected to participate in an arms-length negotiation with National Grid and it is perfectly possible that any discussion between the Trustee and Ofgem could involve the sharing of information which is commercially sensitive to the Trustee. Whereas it is noted that Ofgem will not be prepared to enter into hold harmless arrangements, it would be helpful if further clarity could be provided about what commitments (if any) Ofgem is prepared to give in relation to the Trustee’s confidential information.

Yours sincerely

A handwritten signature in black ink, appearing to read 'AW, 12', with a long horizontal line extending to the right.

Adam Wiltshire

Chairman on the National Grid UK Pension Scheme Trustees