Minutes of a Meeting of the Gas and Electricity Markets Authority

Thursday, 12th June 2014 at 8.15 am

Ofgem, London SW1P 3GE

Introductory remarks by the Chairman

1. The Chairman noted that there had been one apology for absence from David Ashbourne and that Carola Geist-Divver would be covering legal matters for the Authority that day. Declarations of interest were recorded from a Member whose institution was in receipt of some funding from the energy industry; and from another Member who had an independent role on a Committee advising a Bank on the protection of customers’ interests in respect of two investment funds. A potential conflict of interest on one item on the agenda was noted for a Member who was an independent Non-Executive Director assisting the Low Carbon Contracts Company, and who agreed that he would withdraw from any Authority discussion for the item on EMR.

2. The Chairman recalled a number of senior staff changes and prospective movements over the past months. Hannah Nixon would be departing Ofgem that week for a new post with the FCA as the MD of the new Payments Systems Regulator. The Chairman, on behalf of the Authority, thanked Hannah for her very considerable achievements over her six years with Ofgem, notably the new approaches to price control through the RIIO processes: these had represented an innovative series of step-changes in Ofgem’s work and delivery, widely acclaimed. It had been agreed that Rachel Fletcher and Martin Crouch would be substantively promoted to Senior Partner, Rachel continuing to lead the work of Markets Division and Martin the SG & G Transmission and European policy portfolios. Both were congratulated on promotion to their new posts. Maxine Frerk would take on the work of SG & G Distribution Division, on temporary promotion to Senior Partner.

3. The Chairman also noted that Tony Burne, Secretary to the Authority and Adviser to the Chairman, would be stepping down in September. His successor had been appointed, and the Chairman of the Remuneration Committee set out the steps taken by the Committee and Ofgem to fill the post. The new Secretary would take over from the September meeting.

Minutes of the Authority Meeting held in May 2014

4. The record of the May meeting was agreed.
5. The Chief Executive led a discussion on the current state of play and growing external interest in Ofgem’s work on and publication of Consolidated Segmental Statements, and the ways in which these might be built upon in future to improve transparency about energy companies’ overall costs and their make-up. The Authority welcomed the initiatives planned, and their potential value, noting the likely timetable for taking this work forward.

6. Markets Division’s monthly report began with a set of data summarising key developments on wholesale and retail energy prices; and gas and electricity security of supply indicators.

7. On mid-decade balancing services and security of supply, Ofgem had published the Authority’s decision to approve NGET’s methodologies for new services, and NGET had now started procurement action, initially though a pilot scheme on demand side products for Winter 2014.

8. Ofgem had received a request for a derogation from a company under the 4-tariff rule, as part of the RMR measures, in respect of a new zero/low standing charge tariff. This was not favoured under the present restrictions, or indeed underpinning criteria which enabled tariffs with a social purpose, which were innovative or which could support collective switching. However, Ofgem would look favourably at proposals for low standing charge tariffs for vulnerable customers. Ofgem were also reviewing matters and would communicate with all suppliers on their practices to ensure that these were fair, notably in respect of standing charges for “zero consumers”.

9. The Authority noted that, as it had approved in principle in exchanges prior to the meeting, a Service Level Agreement had been now been signed between Ofgem and ACER enabling registration of market participants under the REMIT measures. There were plans to start this process later in 2014.

10. On other matters, DECC’s plans for the Electricity Market Review were progressing with a “go live” date still planned for August. The Ofgem consultation on the proposed new licence conditions to give effect to the Government’s planned electricity rebate had closed without adverse comment. DECC were expected to consult soon on the policy aspects, and statutory consultation by Ofgem would follow. Work with interested parties continued on establishing a Code of Practice for those Third Party Intermediaries serving business customers, requiring that suppliers deal only with accredited TPIs. An update would follow for the Authority in the Autumn.
11. Distribution Division’s report updated the Authority on a potential Judicial Review following an Ofgem decision and the action planned. On DPCR4 losses, Ofgem had published the decision on closing out the distribution losses incentive mechanisms with final values to be recovered or paid by each DNO under this price control process. This had followed extensive work and consultation, following difficulties with DNOs’ settlement data. The Authority noted the next steps and possibility that aspects of the settlements may be challenged. It also was briefed on the current state of play on a claim for losses incurred by NG on the supply of gas insulated switchgear and resultant compensation, following a competition case brought by the EU, last reviewed by the Authority at the end of 2012. A further report would follow on the legal and financial implications.

12. On European matters, the Commission’s Smart Grid Task Force had completed some studies on flexibility, including the uses for and benefits of demand-side response. The next stage would be to look at the regulatory and commercial arrangements, then potential models for incentives. Ofgem had taken a leading role on behalf of CEER.

13. In respect of RIIO-ED1, a meeting of the Authority’s price control committee had taken place with the DNOs on 15 May for them to present their business plans.

14. Sustainable Development Division’s briefing first covered the complaints record of a supplier company, their billing problems and their progress under a recovery plan; and the steps taken by Ofgem, given that substantial improvements were still needed, under the Standards of Conduct and Complaints Handling Regulations. Complaints figures had recently been reported by all the major suppliers.

15. The Authority had agreed to review the Priority Service Register which formed part of the Consumer Vulnerability Strategy, this requiring suppliers and DNOs to maintain a register of consumers who fell into the vulnerable category in terms of age, disability or illness. The provision of non-financial services to customers needing support was viewed as particularly important. A consultation would soon set out proposals for equalising the consumer experience in three areas covered by the PSR measures, namely safety, access and communication. This would propose accordingly that DNOs and GDNs should take steps to identify customers who would benefit from such services, to share information appropriately with others, and raise awareness of these measures through cross-industry branding.

16. Community Energy England had been launched earlier that month and there had been much interest. DECC were understood to be introducing, as heralded through an infrastructure Bill announced in the Queen’s Speech, a community right to buy into local renewables and shale
There continued to be growing stakeholder interest in local generation, supply balancing and tariffs. These would be explored further at a meeting of the Ofgem’s Sustainable Development Advisory Group.

17. Transmission Division’s report provided the Authority with a briefing on the progress of the TransmiT project noting the responses to the consultation, now closed. Many respondents saw merit in the proposed position – Option 2 – and noted the merits of implementation, if possible, before April 2016, given the value of certainty before capacity auctions began under the DECC EMR proposals. Some respondents had raised concerns on cost-reflectivity and projected consumer benefit and its modelling. A full analysis was in progress and the Authority would be consulted at its July meeting.

18. Under the Strategic Wider Works programme, a consultation on the proposed Caithness-Moray transmission project had recently been concluded. The Authority’s initial view had been that the £1.3 billion HVDC offshore proposals, based on current cost/benefit analyses, appeared finely balanced compared to an on-shore option. A majority of consultees favoured the HVDC solution. Further analysis was in preparation with close liaison with SHE Transmission, and a recommendation would come to the July Authority meeting addressing the needs case and cost assessments.

19. On the review of respective roles of Ofgem and National Grid, and the links to the ITPR, there had been a useful discussion at the Offshore Committee of the Authority. Proposals for ways forward would be presented to the Authority’s next meeting, following which draft conclusions could be published.

20. The report from E-Serve set out the highlights and developments across the main business areas as follows:

- Under the Renewable Obligation, the scale and implications of the high load factors seen for wind generation in 2013/14.

- As regards offshore, progress on the Thanet project under TR1 regarding commercial discussions between the parties involved over the treatment of some cable faults.

- The progress of discussions with DECC on the EU unbundling measures.

- The full commencement of the OFTO regime as from mid-June, extending to offshore transmission projects of 132kV or higher in the renewable energy zone. This would also enable offshore generators to commission self-build transmission assets for up to 18 months before transferring them to an OFTO.
- On renewable heat, some changes to the non-domestic scheme, permitting new technologies, with data on current and projected levels of uptake and their financial impacts.

- For domestic RHI, the completion of some 1150 accreditations since the scheme’s recent launch, with some 30,000 legacy applicants eligible to apply from July 2014.

- A significant forecast decline in the numbers of ECO measures being notified and approved, and the link to forthcoming legislation.

21. The Authority noted these points and welcomed the progress being made. It also approved a minor change to the terms of reference for the Offshore Transmission Tender Review Committee, to update a job title.

22. The Authority noted the report from the Group Finance Director which offered an analysis of estimated income and costs for 2014/15 and the year to date figures. A review of staff headcount and current vacancies was noted. The monthly major projects portfolio summarised progress and assurance reports for all major areas of activity, including their RAG status, and the resource demands. The Authority was invited to offer any comments on the presentations provided, noting that future reports would address both risks and new planned approaches to project management. On strategy themes, there had been a number of SMT meetings to develop themes and approaches, as well as internal consultation in progress across the organisation. The topic would form a substantial Awayday agenda item.

**Electricity Capacity Assessment, 2014**

23. The Authority was presented with further analyses on the potential risks to security of electricity supply over the five coming winters, continuing its debate at the previous meeting. It had then been agreed that it would be appropriate to test sensitivities around the four National Grid scenarios, to provide a balanced view of future uncertainties. The paper and presentation confirmed the final results of this work, with additional information as requested on the matter of the probability of disconnections. It dealt also with the role of balancing services as one of the tools available to address potential losses of load. The paper also set out proposed key messages and a communications plan with associated timeline.

24. The Authority agreed the analyses and approved the planned date for their publication in early July. It agreed that Authority members would be given an opportunity to review the executive summary but that final approval of the publication copy should be delegated to the Senior Partner, Markets.
State of the Market

25. The Authority was briefed on the results of the Ofgem consultation proposing a Market Investigation Reference to the Competition and Markets Authority, the majority of interested parties arguing that this would give a definitive view on competition and offered the best solution to improving customer and investor confidence in the market. While some among the largest suppliers had raised points on aspects of the analysis, Ofgem recommended that these did not alter the view that a MIR would be in the best interests of consumers, or detract from the analyses and conclusions on those features of the market, and their impacts, which were seen as harming competition.

26. The Authority agreed that the test for making a MIR had been met and that there should be a provisional decision to make a MIR subject to confirmation at a further and special Authority session on 26 June, approving both the analyses of market features considered to harm competition and the terms of the reference to the CMA.

E-Serve Annual Report

27. At this item, the Authority reviewed the Annual E-Serve report updating on the progress made by each business unit over the past year, including the challenges faced and action to deliver successful outcomes. The report provided an overview of performance and achievements in each business area including a balanced scorecard and governance information. The report also offered a Forward Look at issues ahead, with information on budgets and priority setting.

28. The Authority welcomed the progress made and suggested that consideration be given to publication of some of the data contained in the Report.

Enforcement Decision Panel

29. The Authority was briefed on a number of constitutional and legal changes now necessary to give effect to its earlier decision to set up an Enforcement Decision Panel such that the EDP could begin its work later that month. It was recommended to agree an Ordinary Resolution to modify the Authority's Rules of Procedure so as to delegate decision-making powers to the EDP and to set Terms of Reference for the EDP and Settlement Committees. These measures would, taken together, appropriately reserve and delegate matters so as to enable the EDP to carry forward its tasks. A further note recommended a proposed approach to guidance to the EDP on matters such as risk, impact and deterrence. Training and induction had been arranged for EDP Members.
30. The Authority discussed the documents and agreed the recommended changes to the Rules of Procedure (in respect to the establishment of the EDP), the EDP Terms of Reference and the Terms of Reference for the two Settlement Committees. The working of the EDP would be kept under review.

Non-Domestic supplies: automatic roll-over of contracts

31. Advice was provided on the work Ofgem had been carrying out to improve the information available to small business customers when their contract was coming to an end. The Authority was briefed on the background and the key differences between the domestic and non-domestic market; and the current practice of rolling over micro-businesses’ fixed term contracts for a further year at a fixed price if no action were taken to negotiate a new contract or switch supplier. While some firms appreciated the convenience of roll-over contracts, a key issue was the new much higher prices for such extended arrangements set by a very small number of independent suppliers.

32. The RMR had committed Ofgem to review practices; and, in 2013, the largest suppliers had agreed voluntarily to end roll-over contracts for small businesses, the result being that only an estimated 1% of consumers would remain on roll-over contracts. In February 2014, a consultation had proposed new information remedies from suppliers to alert business customers, with data on current and new contract prices. The results of the consultation exercise were summarised.

33. While there were arguments for stopping the practice of roll-over contracts altogether, in the light of the advice and analyses, the Authority agreed that Ofgem should proceed at first to devise licence conditions requiring suppliers to put in place a number of further information remedies. These should involve renewal letters to businesses with price comparisons for current and new rates for businesses; and reductions in the maximum termination notice periods with appropriate acknowledgement by suppliers of termination requests. The Authority would revisit this matter in six months following a report on a) the effect of the RMR remedies already in place; b) any changes in the practices of the very small number of suppliers who appeared to be charging excessive premia to customers who were automatically rolled onto a new contract; and c) further consumer research to understand attitudes and experience of automatic rollovers.

Beauly-Denny Project

34. Following the report at its last meeting, the Authority discussed a paper providing an updated forecast for increased costs associated with the work planned by Scottish Power Transmission for this project. After a public
enquiry, the proposed reinforcement line project had been subject to the imposition of a range of additional planning conditions, land access restrictions, construction constraints (including some required under- grounding), there being significant, resultant delays. Some reductions in the cost forecast had been agreed with SPT; and Ofgem had sought independent technical advice, concluding that the change in costs still met the criteria for funding.

35. The Authority agreed the revised figuring. A “minded to approve” consultation would follow on the proposed revenue adjustment under the TIRG arrangements. The Authority would be kept informed of the results particularly if material issues arose during or after consultation.

Annual Report and Accounts, 2013/2014

36. The Authority reviewed the latest draft of the Annual Report and Accounts 2013/14 which had been considered by the Senior Management Team and the Audit and Risk assurance Committee, and had also reflected some comments from the NAO.

37. The Authority agreed as recommended that the report be signed off by the Chief Executive, as Accounting Officer, and be laid before Parliament and published.

REMIT: penalties policy

38. The Authority reviewed a guidance note outlining some initial recommendations for developing the Authority’s policy on penalties under its REMIT powers. The recommendations had been considered in the light of published interim guidance, the review of enforcement policy more generally and the current consultation on sectoral penalties and redress, and the need for consistency of approach with FCA’s approaches to penalty policy in relation to the markets and activities covered by REMIT.

39. The Authority noted the guidance provided, approved in discussion the approaches outlined, and looked forward to detailed proposals in the Autumn.

EMR: Off-taker of last resort and Ofgem role

40. One Member withdrew from discussion of this item. The Authority noted that DECC would soon be publishing further aspects of their policy on the implementation of the EMR, specifically on Contracts for Difference. These concerned updates on the proposals for the administration of DECC’s Offtaker of Last Resort mechanisms - such that renewable CfD generators could find an offtaker for generated electricity; and the administration of the fuel measurement and sampling (FMS) element of the CfD scheme. The Authority considered the issues arising for any potential proposed
roles for Ofgem in the administration of these new measures, and agreed the understandings needed in respect of funding and liabilities, concluding that Ofgem should proceed accordingly in discussions with DECC, delegating final funding level decisions to the Executive.

**Gas interconnectors**

41. Under this item, the Authority was provided with and noted a paper assessing whether an enduring regulated revenue regime would be appropriate for gas interconnectors. It was noted that this matter has been considered jointly with the Belgian and Dutch regulators, CREG and ACM and the Authority agreed that the principles noted in the paper were right and delegated authority to make any decisions relating to this issue to Rachel Fletcher.

**Enforcement cases**

42. The Authority reviewed its monthly schedule of current enforcement cases, noting the progress being made.

**Other business and dates of next meetings**

43. There was no other business. The Chairman noted the plans ahead:

- There would be a meeting of GEMA on 26 June at 09.00 to make a final decision on whether to make a Market Investigation Reference to the CMA.
- Ofgem would be running a conference on Smarter Markets/Meters in London on 8 July at 14.00. Invitations would follow.
- Briefing for NEDs on ITPR and the National Grid Review would follow that, at Ofgem, at about 16.30.
- Wednesday 9 July would be the Awayday. NEDs would meet first alone in the morning to look at performance and operational themes. The afternoon would be devoted to development of an Authority strategy for 2015 and beyond.
- The Authority would meet at 08.15 on 10 July.

**Those present**

David Gray (Chairman)
Dermot Nolan (Chief Executive)
David Fisk
Paul Grout
David Harker
Sarah Harrison
John Howard
Jim Keohane
Keith Lough
Andrew Wright

Those attending

Rachel Fletcher
Hannah Nixon
Robert Hull
Martin Crouch
Maxine Frerk

Carola Geist-Divver (Legal Partner)
Tony Burne (Secretary to the Authority)

Others present

Philippa Pickford (Capacity Assessment)
Patricia Ochoa ("")
Christos Kolokathis ("")
Steven Becker ("")
Leonardo Costa ("")
Caroline Selman ("")
Adam Cooper (State of Market)
Ben Smithers ("")
Nicola Cocks ("")
Nikki Sharp ("")
Chris Poulton (E-Serve Report)
Cathryn Scott ("")
Anthony Pygram (EDP)
Steve McBurney ("")
Cecilia Parker Aranha ("")
Jane Corera ("")
Jonah Anthony (EMR)
Richard Bellingham ("")
Emily Sam ("")
Adrian Ross ("")
Charles Hargreaves ("")
Min Zhu ("")
Rob Church (Auto Roll-overs)
Meghna Tewari ("")
Jon Lines ("")
Paul Huffer (Auto Roll-overs)
Stephanie Lomax ("")
Philip Cullum (" " " )
Kersti Berge (Beauly-Denny)
Geoff Randall (" " " )
Vanja Munerati (" " " )
Tom Johns (" " " )
Aled Moses (" " " )
Philippa Pickford (REMIT – Penalties Policy)
Anthony Pygram (" " " )
Andy MacFaul (" " " )
Cecilia Parker Aranha (" " " )
Steve Taylor (" " " )
Georgina Seward (" " " )
Jane Corera (" " " )
Carola Geist-Divver (" " " )