

Minutes of a Meeting of the Gas and Electricity Markets Authority

Thursday, 10 November 2016 at 8.15 am

Edinburgh

Minutes of the Authority meeting held in October 2016

1. The minutes of the meeting held on 13 October 2016 were agreed subject to minor amendments, which were noted.

Introductory remarks by the Chairman

2. The Chairman noted that declarations of interest were recorded from a Member who was a non-executive director of the Low Carbon Contracts Company; another Member whose institution was in receipt of some funding from the energy industry including in relation to advice on the possible changes to network charges to embedded generators; and from the Secretary, who was connected with a body that had granted an option to provide a site and technical support to a service provider tendering to provide firm frequency response to National Grid. The Chairman noted also that Ofgem itself would be affected by any changes to charging arrangements for embedded generation through its ownership of a small combined heat and power plant at 9 Millbank.
3. The Chairman reported on meetings with Ministers and senior stakeholder representatives. These included a meeting with the board of one major industry participant where the challenges that would arise from the changes in the energy market were discussed.
4. The Chairman also noted that the Ofgem staff conference had been positive and successful and thanked the Chief Operating Officer for organising it and the Non-Executive Directors for participating, noting that their active involvement had been particularly appreciated by staff.

Report by the Chief Executive

5. The Chief Executive reported on discussions and correspondence with Ministers, senior civil servants and other senior stakeholders, and on plans for forthcoming meetings with Ministers. He reported that formal clarification was required on the status of the Government's previously-announced plans to legislate to enable the separation of E-Serve from Ofgem and it was agreed that a letter seeking clarification should be sent to the Minister. The Managing Director, E-Serve's appearance at the Northern Ireland Public Accounts Committee's hearing on the non-domestic Renewable Heat Incentive Scheme was discussed. Clarifications had been sought by the Committee after the hearing and Ofgem had submitted

further evidence. It was noted that BEIS were reviewing the issues that had arisen in Northern Ireland with a view to learning any lessons that might be applicable to the equivalent schemes in Great Britain.

6. The Chief Executive reported that the impact of rising and volatile wholesale electricity prices was being closely monitored.
7. The Chief Executive reported that the joint BEIS-Ofgem flexibility paper was being published on the day of the meeting.

Report by the Chief Operating Officer

8. The Chief Operating Officer reported that there remained concerns about capability gaps in certain areas that might be constraining the organisation from delivering its strategic outcomes. She reported on a review taking place on the way that Ofgem works to better meet the challenges ahead. This would be discussed at the Authority's Awayday in December.
9. The COO reported on the financial outlook which showed that Ofgem was likely to have an underspend against budget in the financial year 2016-17. She reported that additional pressures such as implementing the remedies from the Competition and Markets Authority (CMA) report meant that remaining within budget for the financial year 2017/18 would be more challenging. The project and portfolio office was working closely with teams to scrutinise budgets and review business cases for some key projects to inform decisions about what to continue, pause or stop.
10. The COO reported that the staff conference had been very well received and the post-conference evaluation by staff was positive. She also reported that progress was being made on the Greater Working Environment project and Ofgem should be in a position to move to the new site in Canary Wharf in February 2018.

Informed tariff choices principles

11. The Authority considered a paper proposing to consult on introducing enforceable high-level and narrower principles on enabling consumers to make informed tariff choices. This followed the removal of the RMR "simpler" rules and accompanied the plan to remove the majority of prescription from the existing marketing licence condition. This approach was in line with the CMA recommendations and Ofgem's implementation of principles based regulation.
12. There was a discussion of whether a high level principle could achieve the intended outcome on its own or whether the narrower principles were required to give more certainty and clarity about what was meant. It was suggested that, to ease the transition from detailed rules to principles, it would be beneficial to introduce both high level and narrow principles at the

outset. It might subsequently be appropriate to remove the narrow ones at a later date when the principles had become established and well understood.

13. It was noted that fast and efficient compliance and enforcement activity was essential to improve the market for consumers and that this would be better supported by the new principles rather than the rules based approach. The Authority agreed that the proposed compliance and enforcement activity should be therefore be emphasised in communicating the new principles. In addition it was noted that Ofgem should build on recent improvements to its compliance and monitoring function and take action quickly where things have gone wrong. Some examples of rapid action were mentioned and it was noted that the recent Enforcement Conference had highlighted the, often invisible, work of compliance.
14. There was some discussion of the wording of the draft principles and it was agreed that some aspects should be reviewed further with a view to reducing the scope for successful challenge of enforcement activity.
15. After discussion, the Authority agreed to proceed to statutory consultation on
 - introducing an enforceable, high-level principle that would make it clear to licensees that they were responsible for enabling consumers to make informed tariff choices;
 - introducing a suite of enforceable, narrow principles, some of which would mandate specific requirements on tariff comparability within a supplier's portfolio and others which would relate to sales and marketing;
 - implementing a system of monitoring and evaluation to enable the Authority to keep the impact of the principles under review; and
 - removing the majority of prescription from the existing marketing licence condition. This would include rules around management and training arrangements, the provision of bill estimates, the requirement to provide prepayment meter customers with comparisons and rules around point-of-sale and post-sale information provision.
16. The Authority delegated authority for making a final licence modification decision to the Project SRO, subject to no major issues arising from the consultation.

Consumer redress policy

17. The Authority considered a paper proposing new arrangements under which an expert third party appointed by Ofgem would determine allocation of

funds becoming available from voluntary redress payments made by licensees in lieu of a financial penalty (in the context of Ofgem's enforcement work). The proposed arrangements took into account responses to consultation and stakeholder discussions.

18. It was noted that the proposed move away from the defaulting party selecting beneficiaries (in consultation with Ofgem) would be likely to be a positive step for the interests of energy consumers. However, it was not a risk free option. In order to mitigate the risks, the initial contract should be limited, for example to two years, and external expertise should be sought to help draft a strong contract which included appropriate oversight processes, and an exit clause in the event of a significant problem.
19. The Authority discussed whether the third party should be able to allocate funds directly to Local Authorities (LAs). It was noted that there was a risk that such funding could stretch the limits of the intended scope of the payments, which were not intended to be used as a substitute for public funding. It was agreed that the guidelines to the appointed third party should permit allocation of funding to charitable organisations who partner with a LA, rather than directly to LAs themselves, although this restriction might be reviewed in due course in the light of experience.
20. After discussion, the Authority agreed to publish a decision in December and commence a process to appoint an expert third party to allocate future voluntary redress payments made by licensees in lieu of a financial penalty.
21. The Authority also agreed to delegate to the Senior Partner, Improving Regulation, in consultation with the Chairman and CEO, the authority to take all decisions relevant to the appointment of a third party and the Authority's future engagement with it.

Finalisation of Regulatory Stances for publication

22. The Authority considered a paper attaching Regulatory Stances intended to provide further detail supporting the approach set out in the Authority's published strategy.
23. It was noted that the Regulatory Stances would build on the framework set out in the Ofgem strategy and provide a more detailed context to inform Ofgem policy and decision makers to ensure consistency. It was also noted that publication should improve external understanding of Ofgem's approach to policy development and therefore increase confidence in predictability of regulation.
24. After discussion, the Authority agreed to publish the stances, subject to some minor drafting changes, and noted the way that they would be used by Ofgem staff.

Ofgem's 2017-18 work programme and draft FWP Document

25. The Authority considered a paper outlining the proposed key areas of content in the planned work programme for 2017-18 and highlighting areas of significant change in activity between 2016/17 and 2017/18. The proposals were based on an initial "wish-list" of initiatives which remained subject to scrutiny.
26. There was a discussion of the approach that was being adopted to develop the detail of the programme and it was noted that all areas of activity were being subjected to critical review against the criteria of sufficiency of the work to deliver the intended outcomes, capability of the organisation to deliver the work, and the affordability of the work. This would be a continuing process, reinforced by regular reviews both on a divisional and on a thematic basis. Where long-running projects were being undertaken, the scope for shortening the timetable was being examined. Where this was not possible, the feasibility of introducing rapid interim measures which might enable significant progress towards the ultimate objective to be demonstrated would also be considered.
27. It was noted that work was being done to take a more rigorous approach to the delivery of various aspects of core business activity. In particular, consideration was being given as to whether every area of core business activity remained necessary and relevant, and whether there were ways of carrying out the work that would either be more effective or more efficient. Making improvements could require some initial investment of time and effort. There would be a discussion of related issues, and of ways to speed up delivery without adverse effects on quality, at the Awayday in December.
28. The Authority suggested a number of questions and comments to be considered in the development of the final draft Forward Work Programme, which would return to the Authority for approval in December prior to publication for consultation.

Network charging for embedded generation

29. The Authority considered a paper summarising the themes that had emerged in response to the Open Letter on possible changes to network charging for embedded generation that had been published earlier in the year and the related proposed Targeted Charging Review (TCR). The paper also set out the process and timetable for formal consideration of the proposed Code modifications that had been submitted. In addition, views

were sought on the actions which might be taken to provide greater clarity to market participants ahead of the forthcoming Capacity Market auction.

30. It was noted that a wide range of views had been expressed in response to the Open Letter, although there was a high level of agreement amongst respondents that the current arrangements were resulting in an increasing distortion that needed to be addressed. There was less agreement on the nature of the steps to be taken and on the degree of protection, if any, that might appropriately be afforded to existing generators that benefit from these arrangements (Triad avoidance payments). There were also calls for these issues to be considered as part of wider-ranging reviews of network charging arrangements, given the risk of unintended consequences. It was also noted that some respondents had overstated the adverse impact on embedded generators because the removal or reduction of Triad avoidance payments would primarily affect those embedded generators which could commit to providing firm output on demand.
31. There was an extended discussion on the likely scope and timetable for the proposed TCR, the types of issues that might be addressed and the interaction with measures that might be taken in the shorter term to address the specific distortion arising from Triad avoidance payments. It was noted that any changes eventually made as a result of the TCR would need to be workable in practice and would likely need to incorporate a degree of pragmatism. The outcome of the TCR would also need to recognise the potential for significant further changes in market circumstances and system configuration. It was noted that further work needed to be undertaken to determine the most appropriate scope for the TCR given possible interactions with any decision to reduce or remove Triad avoidance payments.
32. It was agreed that an update letter providing some further clarity on possible changes to Triad avoidance payments should improve the effective operation of the Capacity Market, and hence reduce risks to security of supply from participants bidding into the Capacity Market on an uninformed basis.
33. It was agreed that the increasing detriment to consumers arising from the increasing Triad payments needed to be addressed in advance of the conclusions from the TCR or any wider charging review. The Authority would not, however, be in a position to take a "minded to" decision on the proposed Code modifications until the Final Modification Report (FMR) from the Code modification panels (due to be received on 28 November) had been considered in detail and an Impact Analysis had been completed. It was, however, desirable to seek to provide some indication of the possible impact of the changes in advance of bidding in the Capacity Market Auction in December.

34. After further discussion, the Authority agreed to issue an update letter in advance of the Capacity Market auction indicating that no decision on changes to Triad avoidance payments had yet been taken but that participants in the auction should not rely on continuation of the Triad avoidance embedded benefit in the future. Participants should not assume that the impact would be any less substantial than that of the most significant Code modification currently under consideration.
35. The Authority delegated to the Chief Executive approval of the terms of the update letter and agreed to consider the stance to be taken on the proposed Code modifications in the New Year, taking account of the FMR and the Impact Assessment. There would also be further consideration of the scope, nature of and timetable for the TCR.

Information paper - North West Coast connections: initial view on whether to competitively tender, and initial project need

36. After brief discussion, the Authority noted the current status of plans for transmission reinforcement for the proposed Moorside nuclear power station and the potential scope for tendering elements of the project.

Information paper - Security of supply 2016/17 and 2017/18 outlook and risks - update

37. After discussion, the Authority noted the paper, which summarised the supply outlook and market conditions moving into the upcoming winter. The Chief Executive confirmed that the wholesale markets continued to be monitored closely against the background of generally increasing prices.

Report of October meeting of Europe Committee

38. The Authority noted the report.

Information paper – outcome of the 2016 Network Innovation Competition

39. The Authority noted the paper.

Information paper – Decision Log update

40. The Authority noted the paper.

Retail market policy

41. There was a discussion of ongoing interactions with Government on retail market policy. Actions to be taken to prepare for a further meeting on the relevant issues were agreed.

Date of next meeting

42. The next meeting of the Authority would be on **Thursday, 15 December 2016** at 9 Millbank. It would be preceded by an "Awayday" strategy session at 9 Millbank on 14 December.

Those present

David Gray
Dermot Nolan
Christine Farnish
David Fisk
Rachel Fletcher
Paul Grout
Nicola Hodson
Jim Keohane
Keith Lough
Andrew Wright

Those attending

Jonathan Brearley
Sarah Cox
Martin Crouch

Others present

David Ashbourne	(Legal Adviser to the Authority)
Peter Jones	(Secretary to the Authority)
Simon Crine	(Director of Communications)
Wendy Watson	(Secretary-designate to the Authority)

For specific agenda items**By teleconference*

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Clem Perry*	" "	" "
Adhir Ramdharsan	" "	" "
Andrew Thomsen*		" "
Kieran Coleman*	Consumer redress policy	17 - 21
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Kiera Schoenemann*	" "	" "
Joe Perkins*	Finalisation of Regulatory Stances for publication	22 - 24
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Emma Powell*		" "
Lisa Symes*	Ofgem's draft Forward Work Programme	25 - 28
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