



**Consultation on the Utility Regulator's
Draft Forward Work Programme
1 April 2011 – 31 March 2012**

Viridian Power & Energy Response

20 January 2011

Introduction

The Utility Regulator's Draft Forward Work Programme (FWP) for 2011/2012 is clearly an important document that influences and informs the actions and priorities of the Utility Regulator for the year ahead. As a key energy stakeholder Viridian Power & Energy (VPE) appreciates the opportunity to review this document and provide open and constructive feedback. In previous years stakeholders have been afforded the opportunity to openly discuss the draft FWP in a workshop hosted by the Utility Regulator and we have found this very useful. We would therefore welcome its re-instatement.

We note that the draft FWP was published in October 2010 and well before the wide-scale loss of water supply across Northern Ireland during the adverse weather conditions in late December 2010 and early January 2011. We recognise the importance of thoroughly investigating the cause of this most unfortunate event and of putting in place rigorous measures to prevent it from happening again. This could clearly have a material impact on the Utility Regulator's FWP for 2011/12, and beyond. Additional resources specific to resolving this problem may be required and we suggest these should be made available to the Utility Regulator and financed from the parties responsible. Above all we strongly caution against disproportionately affecting resource allocation required to deliver important projects in energy.

The remainder of our response will provide detailed comments primarily concentrating on energy issues.

Detailed comments

Prioritisation

As a general point it would be useful if the FWP clearly identified actions that could not be progressed as planned in the previous year as these could then be given higher priority (as applicable) for completion in the forthcoming year. On this point for example last year's FWP included an action to develop an enduring solution for Fuel Mix Disclosure (FMD). As this has not been implemented and is an important requirement of the Internal Markets in Energy (IME) Directive we would urge the Utility Regulator to work with the Commission for Energy Regulation (CER) and relevant government departments to expeditiously implement the enduring FMD solution in line with the high level methodology published in Decision Paper SEM-09-033¹.

Important IME3 requirements should also be given a high priority in the FWP as discussed in further detail below.

Important IME3 requirements

We note that compliance with the third IME Directive (IME 3) features to some extent in the draft FWP but is primarily limited to specific consumer related issues (ref 36, 37, 40, 43, and 55). Unfortunately not all important aspects of IME3 are covered sufficiently. For example compliance with IME3 in the context of the regulatory framework is very broadly defined (see ref 82) and would benefit from being more specific, incorporating new requirements for all regulatory decisions to be fully reasoned and justified and to provide an independent appeals mechanism for parties affected by regulatory decisions. We expect these measures, appropriately implemented, will enhance regulatory decision making and reduce the burden of regulatory risk to the ultimate benefit of consumers and would therefore consider their implementation an important addition to the FWP².

We suggest the FWP should also include important IME3 unbundling and re-branding requirements. For example it will be important to continue to monitor the

¹ The issue of branding separation in the gas industry (in compliance with IME3) was also an action in last year's FWP that should be carried forward this year with high priority, as discussed further below.

² We understand that establishment of an independent appeals mechanism falls within the remit of DETI but would expect the Utility Regulator to have substantial input into this process. Given that the above measures will enhance the credibility and robustness of regulatory decisions VPE would encourage the Utility Regulator to support their implementation in line with the letter and spirit of IME3. This would mean not restricting the appeals mechanism to licence issues and placing greater emphasis on analysis driven decisions.

electricity market and its compliance with the Directive following the acquisition of NIE by ESB creating a fully vertically integrated utility in Northern Ireland.

In relation to the gas market it is VPE's considered view that competition will not benefit from the 10 towns exclusivity of firmus energy and that the recent "minded to" decision of the Utility Regulator grants excessive timelines before market opening inconsistent with the spirit of IME3. We would therefore encourage the Utility Regulator to re-consider the basis for firmus energy's exclusivity and to put measures in place in the FWP to implement market opening and re-branding. Finally, we consider that re-branding of Phoenix is also required under IME3 and would urge the Utility Regulator to reflect this clearly in the FWP³. We note that the issue of branding separation was reflected in last year's FWP with a specific action item (ref 41) to investigate branding implications for the gas sector in the context of IME3. To our knowledge there has been no consultation or other publication from the Utility Regulator on this issue and we would therefore expect this to be a priority this year.

Other necessary additions

In October 2010 the Utility Regulator published an important consultation on replacing the current temporary licence fee methodology with a permanent one that is long overdue. A number of options were put forward by the Utility Regulator and VPE responded supporting Option 3 to apply Ofgem's methodology as this best addresses the shortcomings of the existing approach. It is the Utility Regulator's stated intention to implement the new enduring methodology in 2011 and it is therefore surprising that this is not reflected in the draft FWP. We therefore suggest this should be included in the final version as a matter of priority.

Quite understandably the draft FWP does not reference the recently proposed Electricity Market Reforms (EMR) in GB (published 16th December 2010). Clearly these are important developments which will have implications for Northern Ireland, and possibly the SEM, that will need to be carefully evaluated by the Utility Regulator in 2011 and reflected in the final FWP.

Other comments

We refer to paragraph 2.46 (p.13) and action Ref 60 (p.28) of the draft FWP, where it is stated / implied that modifications to the Trading and Settlement Code and central market systems will be implemented for the treatment of losses in the interests of boosting competition. This action requires further clarity. Does it refer to implementation of Mod 39_10 covering the change of ESU algebra from section 7 to section 4, or does it refer to the separation of TLAFs in the market schedule and

³ Page 24, Ref 55 of the draft FWP refers to 'branding' in brackets in the context of ensuring customers have clarity in their choice of energy supplier but it is far clear that this refers to branding separation, its investigation and implementation.

dispatch schedule (otherwise known as 'splitting')? If the latter, then VPE does not consider it appropriate to be included in the FWP as an action item, or for it to be included under the heading of 'boosting competition'. As outlined in Decision Paper SEM-10-066 implementation of splitting will be subject to an RA led impact analysis and further consultation and it would hence be inappropriate to pre-empt the outcome of that process and to assume (we would argue incorrectly) that splitting will boost competition.