

NIRIG response to DETI Energy Bill Policy Consultation

14th September 2012

The Northern Ireland Renewables Industry Group (NIRIG) is a joint collaboration between the Irish Wind Energy Association and RenewableUK. NIRIG represents the views of the renewable energy industry in Northern Ireland, providing a conduit for knowledge exchange, policy development support and consensus on best practice between all stakeholders in renewable energy.

NIRIG welcomes the opportunity to comment on the Department of Enterprise, Trade and Investment Policy Consultation on the Energy Bill. We believe that the consultation is timely and that there is significant opportunity for the proposals within the consultation to contribute to supporting the achievement of the Strategic Energy Framework goals. We have some concern that the proposed Energy Bill does not include offshore renewable provisions, particularly relating to safety zones. We would urge DETI to prioritise this consultation on legislative proposals for offshore renewable energy issues.

Please see below for responses to the questions outlined in the consultation:

Small-scale Feed-In Tariffs

CONSULTATION QUESTION 3.1

Do you agree that framework powers for a small scale (below 5MW) FIT incentive mechanism should be included in the Energy Bill? If not, please give detailed reasons.

NIRIG agrees that these framework powers should be included in the Energy Bill. Due to the timeframe required to provide the legislative framework, we suggest that the current NIROC scheme continues at the revised levels of support until 2017 in line with the current proposed regime. After this time a small scale FIT should be introduced to replace the NIROC to bring NI into line with the rest of the UK for small scale renewables. It is also important that no further reviews of NIROC banding levels are considered prior to 2017 in order to allow the medium scale sector to mature.

Duties and obligations of DETI and NIAUR in respect of sustainability

NIRIG welcomes this timely consultation on the duties and obligations of both DETI and NIAUR. Policy developments at the Northern Ireland, UK and European levels mean that the energy sector and energy regulator must now contribute to a much broader range of

public policy goals than before. NIRIG would suggest that now may be an opportune moment to look at alternative models of fulfilling these functions.

For example, the Commission for Energy Regulation in the Republic of Ireland has a structure which incorporates up to a maximum of three Commissioners. Such a structure enables division of responsibility among Commissioners, ensuring that the increasing range of duties can be allocated across more than one individual. The functions of the Commissioners include, but are not limited to: licensing, European Regulatory matters, networks and interconnections, security of supply, research and development, conventional generation, fuel disclosure, safety, common arrangements, retail electricity and gas, the Single Electricity Market (SEM), Smart Metering, environmental policy and customer care matters. Given the broad range of these functions, then it would appear appropriate that a structure is put into place in Northern Ireland that would allow all these matters to move forward with appropriate resourcing.

However, we understand that the current consultation does not directly address broader issues of structure and resourcing and as such we have focused the remainder of our response on the questions outlined.

CONSULTATION QUESTION 4.1

Looking at the current duties and objectives of the Department and the Utility Regulator set out in Annexes A-D, do you consider that we have the right balance to take us into the future?

NIRIG does not believe that the current duties and objectives of the Department and the Utility Regulator have the right balance to take account of the changing environmental and policy context. Since the 1980s there have been substantial shifts in the European, UK and Northern Ireland policy landscapes, which mean that the energy sector and the energy regulator must now contribute to a much broader range of public policy goals.

For example, in 1992 the UK committed to reducing greenhouse gas emissions by signing up to the Rio Framework Convention on Climate Change. By 2008, this had become a legally binding domestic commitment to reduce UK emissions to 80% below 1990 levels by 2050. This has major implications for energy supply and use. By 2008, the UK had signed up to deliver its share of an EU renewables target for 2020.

Two years later DETI published its own Strategic Energy Framework (SEF). At the core of the SEF is a target of 40% of electricity consumption from renewable energy sources by 2020. This figure was based on sound evidence and was a clear statement of intent by the Northern Ireland Assembly and Executive to improve security of energy supply, reduce reliance on expensive imported fossil fuels, reducing carbon emissions and improving sustainability.

Northern Ireland also has a committed renewables industry which is dedicated to contributing to these targets, within the correct regulatory and policy frameworks. NIRIG believes that more now needs to be done to establish strategic, statutory goals for Northern

Ireland and ensure that an appropriate framework is in place to enable delivery of these goals.

As the OFMDFM Sustainable Development Strategy 2010 states,

*'The Earth Summits of Rio de Janeiro (1992) and Johannesburg (2002), along with the UN Conference on Climate Change in Bali (2007) and the UNFCCC Copenhagen Conference (2009) have had significant impacts on the way in which we think about our planet and it is our goal to ensure that our children, the leaders of tomorrow, can inherit a political legacy which makes 'sustainability thinking' the norm, rather than the exception.'*¹

Consumer interests and sustainability

The principal objective of the Department and Authority in “protecting the interests of consumers of electricity supplied by authorised suppliers” does not necessarily preclude the Utility Regulator and Department having significant regard to sustainability, but the interests of consumers as defined in the Energy (Northern Ireland) Order 2003 can be interpreted in broad or specific terms. When a narrow interpretation is applied, the interest of consumers could be defined as the cost of electricity supplied year to year, which would not accurately reflect changes in policy at an EU, UK or NI level.

NIRIG believes that the regulatory framework and decision making in connection with regulatory functions needs to take account of the long-term needs of consumers and policy objectives. NIRIG believes that the regulatory framework in NI at the moment seems to be focused on short-term cost-efficiency rather than long-term needs of delivering a secure sustainable energy supply.

In NIRIG's opinion, it would be helpful if the duties and obligations of the Utility Regulator could be amended so as to specifically refer to regulatory best practice as it does in GB to ensure that regulatory decision making in Northern Ireland is in line with best practice elsewhere in GB in relation to the long-term interests of consumers. NI must show reliability and stability in its regulatory decision making. The statutory duties of Ofgem in GB that NIRIG would like introduced in NI can be found at section 178 of the Energy Act 2004.

The consultation paper notes the amendments made to Ofgem's principal objectives in section 17 of the Energy Act 2010 which add clarification to the Regulator's duties as initially set out in section 3A of the Electricity Act 1989

“(1A) Those interests of existing **and future consumers** are their interests taken as a whole, including –

- a) their interests in the reduction of electricity / gas supply emissions of targeted greenhouse gases; and
- b) their interests in the security of the supply of electricity / gas to them.”

A similar amendment which would add clarity to the existing duties and obligations of the Department and Utility Regulator would fit closely with the overarching policy framework set

¹ Everyone's Involved - Sustainable Development Strategy, OFMDFM, 2010

out by the Executive and underpinned by European Directives. This could prevent the unnecessary conflict, and unnecessary cost between Government policy set to protect the long term interests of consumers and regulation that has a different interpretation of those needs.

CONSULTATION QUESTION 4.2

The Department welcomes any comments or suggestions for the improvement of Utility Regulator's duties and objectives, bearing in mind that wording introduced by the European Third Package legislation cannot be unpicked at Northern Ireland level. The Department also welcomes comments and suggestions for the improvement of its own duties and objectives. Where you have comments and suggestions, please give detailed reasons.

There are a number of ways to improve the duties and objectives of the Utility Regulator to better take account of changes in the EU, UK and NI policy landscape, some of which relate to how the objective and duties are worded and some of which could relate to how the Authority is resourced to properly perform its duties, particularly considering the primary objectives it has taken on with the transposition of the Electricity and Gas Directives. As noted above, an Authority led by 3 members might better reflect the broad interests of consumers that the Authority must now balance across the different sectors it regulates.

Duties and obligations

There is an ambitious Executive framework in place for the achievement of renewable energy targets and NIRIG would recommend an obligation is put in place for the Utility Regulator to implement decisions with clear regard for Government policy and specifically to the Strategic Energy Framework.

Independent regulatory decisions should form a logical and coherent part of this broader strategic policy framework. Consequently, to support a predictable regulatory environment DETI should

- communicate clearly its policy goals for the gas and electricity markets and the respective roles and responsibilities of Government and NIAUR in defining and delivering those goals;
- ensure that all relevant departments communicate and coordinate the same policy goals as they relate to strategic direction
- define policy outcomes that NIAUR has an important role in delivering, or in helping to deliver, and seek legislative provision to require NIAUR to justify its independent regulatory decisions against these outcomes.

Governance

As noted above, NIRIG believes that this would be an appropriate juncture to assess the broader issues of structure and resourcing within NIAUR. However, with respect to the

specific question of sustainability, we note that additional expertise on the NIAUR Board could be an additional mechanism for ensuring that renewable energy is given appropriate weight.

Good corporate governance is fundamental to any effective organisation. This includes the role of the board, which is to provide strategic leadership and direction for the organisation. The Department of Finance and Personnel (DFP) appoints the Chairman and members of the NIAUR Board and NIRIG believes that the composition of the Board could be enhanced.

The non-executive membership of NIAUR needs to have a balance of policy expertise and experience relevant to NIAUR'S duties, as well as skills relevant to the board's leadership of the organisation. NIRIG believes that the range of expertise among the Board's non-executives needs to be better aligned with the policy goal of meeting the 40% renewable energy target by 2020. NIRIG would therefore suggest enhancing the composition of the board by including a new member with a strong background in the area of renewable energy

NIRIG would further recommend that the Board be required to include at least one member with expertise in renewable energy.

Predictability and efficiency

NIRIG believes that the framework of economic regulation should provide a stable and objective environment enabling anticipation of the context for future decisions and allowing long term investment decisions to be made with confidence. The framework of economic regulation should not unreasonably unravel past decisions, and should allow efficient and necessary investments to receive a reasonable return, subject to the normal risks inherent in markets.

Grid development

However, recent experience of the NIE 5th Price Control undermines somewhat this notion of predictability. Planning for increased renewable electricity penetration needs to happen in a timely manner and there must be confidence in the authorisation process for renewables projects. The draft determination on RP5, while allowing significant ring-fenced funds for renewables projects, does not provide any certainty regarding the timeframe for these projects. This is a particular concern in relation to large scale projects, such as the NI offshore renewables leasing round, which are expected to become operational by 2020.

Most new renewable energy projects in NI will not have firm access to the transmission network during and beyond the current five year price control period and will be faced with grid constraints which would require grid reinforcements projects to address. NIRIG queries whether this is sufficient for the UK to be in compliance with the RES Directive (Directive 2009/28/EC) which provides for priority access for renewable generators.² For example, Denmark uses a feed-in-tariff where all eligible renewable projects are automatically guaranteed grid access and a certain price for the electricity that they produce. In addition,

² See also NIRIG's response to DETI's Consultation on Priority Dispatch under the Renewable Energy Directive.

in times of constraint on the network, renewable energy is given preferential access over non-renewable generation.

A recent DETI consultation³ asked whether there is a necessity for the Utility Regulator to consider longer term planning than the current five year price control period. To facilitate predictability, NIRIG would strongly support the Utility Regulator taking a longer term consideration for approving grid development. Grid development requires a strategic approach rather than consideration within a 5 year planning period. This could be achieved either through longer price controls or better use of uncertainty mechanisms modelled on those used by Ofgem in GB.

NIRIG welcomes NIE's Grid 25 strategy but for this strategy to be successful it needs the full endorsement of the NI Government and the Utility Regulator. Without a longer term plan longer than 5 years endorsed by the Utility Regulator and NI Government, developers will not be able to fully assess the impact of grid constraints on their projects thus making investment decisions and financing difficult.

Accountability

Independent regulation needs to take place within a framework of duties and policies set by a democratically accountable Government. NIRIG does not believe that the current duties and responsibilities provide an effective level of accountability to government policies.

For example, in the most recent Forward Work Plan⁴ and with regard to the policy framework, NIAUR merely states that it is 'mindful' of the Strategic Energy Framework's (SEF) target for the consumption of renewable electricity.

Similarly, the NIAUR Annual Report 2010-11⁵ makes reference to the DETI strategic Energy Framework by saying that

'Its target of 40% of electricity generated from renewable sources by 2020 is a major reference point for our work on environmental sustainability in the years to come'.

However, the Strategic Energy Framework sets out a clear vision of the scale of investment required for Northern Ireland's electricity infrastructure:

"Extensive investment in electricity grid improvements must happen if Northern Ireland is to maximise its use of onshore and offshore renewable electricity resources. In addition, a robust and stable electricity transmission system is an essential prerequisite for a competitive electricity market and is critical to a modern economy."

NIRIG does not believe that government policy should merely be a reference point or something to be 'mindful' of, but should be a robust framework within which regulatory decisions are made. Government policy is defined by a Department with the same duties

³ Draft Onshore Renewable Electricity Action Plan, DETI, 2011 <http://www.nirgridenergysea.co.uk/wp-content/uploads/2011/10/Draft-OREAP-Oct-2011.pdf>

⁴ NIAUR Forward Work Programme 2012-13

⁵ NIAUR Annual Report 2010-11 http://www.uregni.gov.uk/uploads/publications/2010-11_Annual_Report.pdf

and obligations as the Authority; the difference in emphasis is due to contrasting interpretations of the interests of consumers. This is unhelpful for the sector, as it can lead to conflict between the policy direction and regulatory decisions that companies are expected to follow.

Reporting

Furthermore, there is a need to provide explicit reports on the progress towards attaining Government targets. In the NIAUR Annual report 2010-11 under the section ‘Sustainability and Security of Supply’, Outcome 2 focuses specifically on ‘Developing practical approaches that support environmental sustainability and security of supply’. However, beyond mentioning engagement with DETI on support mechanisms, NIAUR has no specific actions relating to facilitating an increased proportion of renewable generation in Northern Ireland, particularly with regard to the development of grid infrastructure, which is widely regarded a key component to facilitate these targets.⁶

In Annex 1 of this same paper, only one reference is made to sustainability targets with regard to government policy:

| | | | |
|----------------------|---|--|--------------------|
| 19 Sustainability | Contributing to wider government policy | 1. Work with DETI in respect of interpretation and implementation of the DETI Strategic Energy Framework (SEF) | Partially achieved |
| | | 2. Work with DETI to help develop policies in relation to the renewable heat in Northern Ireland | Achieved |

NIRIG believes that this reporting is inadequate and does not fulfil key principles of regulation, namely that regulatory frameworks should form a logical part of the Government’s broader policy context, consistent with established priorities, and enable cross-sector delivery of policy goals where appropriate.

The interests of existing and future consumers are explicitly defined in broad terms as part of the Department and Authority’s primary objective. However, while these are explicitly part of the Authority’s primary objective as designated regulatory authority, they are not reported on as part of the Authority’s forward work programme. We would suggest that the reporting requirements could be improved by an amendment to Section 5 to:

5. — *(1) The Authority shall, before each financial year, publish a document (the “forward work programme”) containing a general description of the projects, [which it plans to undertake during the year in the exercise of its relevant functions (other than projects comprising routine activities in the exercise of those functions)].*

(2) The forward work programme will include a detailed description of how the Authority will take all reasonable measures to promote the interests of

⁶ ‘Inquiry into Barriers to the Development of Renewable Energy Production and its Associated Contribution to the Northern Ireland Economy’, Committee for Enterprise, Trade and Investment, 2010

consumers under each of the objectives set out in Article 36(a) to (h) in the Electricity Directive and Article 40 (a) to (h) of the Gas Directive

*(2) That description shall include the objectives of each project **and how they relate to the primary objective and general duties of the Authority.***

(3) The forward work programme for any year shall also include an estimate of the overall expenditure which the Authority expects to incur during the year in the exercise of its [relevant functions].

Words to this effect would add further accountability to the Authority to ensure that it is taking all reasonable measures to promote the interests of consumers, and that its work programme properly reflects the interests of consumers.

Likewise, we would suggest that the Annual and other reports of Authority section of the Energy (Northern Ireland) Order 2003 is updated to reflect the Authority's primary objective and the broad interests of consumers defined under the Electricity and Gas Directives:

“(2) The annual report for each year shall include—

(a) a general survey of developments in respect of matters falling within the scope of the Authority's relevant functions.

(b) a report on progress toward the objectives set out in Article 36(a) to (h) in the Electricity Directive and Article 40 (a) to (h) of the Gas Directive

(c) a report on the progress of the projects described in the forward work programme for that year

(d) a summary of final and provisional orders made, and penalties imposed, by the Authority under Part VI during the year; and

(e) a report on such other matters as the Department may from time to time require.

As outlined above, NIRIG would recommend that the DETI Energy Bill makes provision for improved regulatory reporting on the delivery of government targets. An additional mechanism for improved regulatory reporting can be found within the DECC Draft Energy Bill is provision for a 'Strategy and Policy Statement'. NIRIG believes that DETI should also make provision within the Energy Bill for a similar Strategy and Policy Statement. This would give clear direction to the Utility Regulator regarding the strategic aims of Government and focus on the policy outcomes that the Utility Regulator can contribute to.

Such a statement would:

- strengthen the existing regulatory framework
- increase regulatory certainty by requiring Government to be clearer about its strategic policy framework, and ensuring that there will be coherence between this framework and the regulator's actions

- provide a transparent, enduring and holistic process through which the Government and NIAUR can consider progress and barriers to meeting strategic policy goals
- allow Government to provide the strategic context within which NIAUR should interpret its duties

This statement should include the following:

1. **Energy policy and strategy:** a clear description of the Government's strategic goals for the gas and electricity markets, reflecting established policy.
2. **Roles and responsibilities:** a description of the roles of Government, the regulator, business and other organisations in the energy market, with a focus on how Government's energy strategy would be delivered.
3. **Policy outcomes:** clearly defined policy outcomes that NIAUR has a particularly important role in delivering, and against which NIAUR will be required to justify its independent regulatory decisions.

Such a statement would also comply with the Commitment contained within the OFMDFM Sustainable Development Strategy which states that all government departments will 'explore ways to effectively report on Department's sustainable development performance, in line with established international and good practice'.⁷

To further facilitate transparency and accountability, the regulator should then be required to publish the following:

- **Forward plans:** NIAUR will be expected to set out annually how it plans to deliver its contribution to the policy outcomes and how it will monitor progress.
- **Progress report:** NIAUR will be expected to report annually on progress, outlining and justifying decisions and, where progress is not on track, explaining why this was the case and whether any mitigating action was needed.

Consumer protection

Current and future consumers

Increased worldwide pressure on oil and gas resources, coupled with the investment required to realise a secure and low carbon future, are widely expected to result in higher energy prices. The regulator will also need to play its part both in considering what costs should be placed on today's consumers in return for the benefits that new investment will bring, and in ensuring that the energy markets are operating in the best interests of all consumers.

⁷ Everyone's Involved - Sustainable Development Strategy', http://www.ofmdfmni.gov.uk/sustainable-development-strategy-lowres_2.pdf

As noted in 'Reporting' above, the interests of existing and future consumers are explicitly defined in broad terms as part of the Department and Authority's primary objective following the transposition of the Electricity Directive and Gas Directive. While these are explicitly part of the Authority's primary objective as designated regulatory authority, it would be beneficial if these were reported on as part of the Authority's forward work programme submitted to the Assembly.

Investment in electricity generation and transmission will be needed if we are to ensure future security of supply and the decarbonisation of generation. Through its network price controls NIAUR will play an important role in incentivising such investment, balancing the long term consumer benefits with the cost to the current consumer. In facilitating this transition to a low carbon economy the regulator will also need to help ensure that it happens at least cost.

CONSULTATION QUESTION 4.3

Are there already sufficient sustainability requirements in the Department's and Regulator's duties and objectives or could sustainability be given greater weight? Please give detailed reasons for your views.

NIRIG believes that sustainability could be given significantly greater weight in both the Department's and the Regulator's duties and objectives.

The Regulatory Framework in Northern Ireland appears to be primarily focused on short term cost-efficiency. It resembles the framework previously used by Ofgem to regulate both the gas and electricity industries, and which was successful in driving efficiencies in privatised network companies. However, Ofgem concluded that their process was designed for a specific environment and needed to change to *"encourage network companies to deliver a sustainable energy sector and provide value for money."*⁸

Ofgem have moved to a different framework in order to facilitate the development of a sustainable energy sector, given the significant requirement for network investment and innovation required, they concluded in their RPI-X process that:

"RPI-X was designed for a very different environment to the one we will face in the future."

"The existing regulatory framework has delivered well for consumers but it was designed for a different era. We do not think it would sufficiently encourage or reward network companies to take a leading role in meeting the challenges. It is important that the framework used to regulate network companies changes to encourage network companies to take on a full role."

Ofgem is also currently consulting on proposals to "strengthen strategic and sustainability considerations" in their decision making. This is a welcome move and a similar approach needs to be taken in Northern Ireland to ensure that the Utility Regulator:

⁸ 'RIIO: A new way to regulate energy networks', Ofgem 2010

- incorporates the cumulative cost of carbon in the atmosphere when making decisions;
- incorporates the price of lost energy production, cost of project delays, value of wider momentum and confidence in the industry, etc., when making decisions; and,
- takes a holistic view of risk/reward, rather than coming from a minimal-risk perspective.

Summary

With the overarching aim of strengthening the regulatory environment in a way that would continue to protect consumers and enable cost effective investment in the energy sector, there is a need to deliver clarity on the strategic policy framework within which independent regulatory decisions are made. Northern Ireland consumers, investors and policy makers need to be confident that regulatory decisions are aligned with the Government's strategic policy framework and the use of best practice from other regions, as outlined above, would support this confidence.

CONSULTATION QUESTION 4.4

What are your views on the proposal to introduce a new statutory objective on renewable heat for the Department? Please give reasons for your views.

NIRIG welcomes the proposal to introduce a new statutory objective on renewable heat for the Department. We believe that there is an opportunity to make use of the considerable renewable energy resources in Northern Ireland to contribute not only to targets for electricity from renewable sources, but also targets for renewable heat.

In conclusion, NIRIG welcomes the opportunity to comment on this important consultation. We would like to request a meeting with DETI to discuss our response in more detail at your convenience.

Yours sincerely

**sent by email, bears no signature*

Meabh Cormacain
NIRIG