

SEM Committee Meeting

Minutes Meeting No. 26

Location: Bewley's Hotel, Dublin
Date: 25th March 2010
Time: 10.00 – 3.00 pm

Attendees: Iain Osborne (NIAUR, Chairman), Michael Tutty (CER), Dermot Nolan (CER), Garrett Blaney (CER), Dermot MacCann (NIAUR), Alan Rainey (NIAUR), Ignacio Perez-Arriaga, Jose Sierra.

In attendance:

For all items Eugene Coughlan (CER), Shane Lynch (NIAUR);
For Agenda Item 4b and 6 Dana Kelleher (CER);
For Agenda Item 4b Walter Carlton and Ciarán O'Brien from Deloitte ("The Auditors"); For
Agenda item 4a Denis Cagney (CER);
For Agenda items 1,2,3,4a, 4b, 4c, 4fc, 4g, 5, 7,8,9,10 Michael Tutty (CER).

Minute Taker: Laura Steerman

1. Adoption of agenda

Agenda adopted.

2. Approval of Minutes.

Minutes of the meeting of 25th February 2010 were approved subject to a minor edit.

3. Review of Action List.

Items 107, 111, 112, 116, 119 were tabled for discussion today
Items 107, 116, 119, 117 and 118 are complete.
Items 111, 112, 113, 114, 115 are ongoing

4.a Dispatch & TSC Workstream Update – DC (Oral Update)

DC provided an overview the matters consulted upon and key issues raised in the Dispatch and Scheduling consultation, published in July 2009, and gave a summary of key issues in the responses received. DC updated the SEM Committee on the progress being made by the Regulatory Authorities on this workstream and noted that a discussion paper was due to be submitted to the April meeting of the SEM Committee.

Action: Discussion paper to be prepared for the next SEM Committee Meeting on Dispatch and Scheduling (DC/SL)

4.b SEM Market Audit Report (DK)

A previous draft of the Audit Report had been submitted to the SEM Committee. A final signed version of the SEM Market Audit Report was tabled by the Chairman to be reviewed at the meeting. The Auditors took the meeting through the contents of the Audit Report and noted the 'clean audit' opinion reached. Questions and comments were taken from the SEM Committee and answered by the Auditors. The report was noted by the Committee and the Auditors were thanked for their work.

Action: DK/ SR to pass comments made by the SEM Committee to SEMO.

4.c SEM Committee Annual Report (PB)

The final draft of the SEM Committee Annual Report ("Annual Report") was discussed. Some edits to the paper were suggested and comments were made by the Committee which are to be forwarded to Paul Bell to incorporate/ address. The SEM Committee agreed that the final version of the Annual Report could be approved for publication by the Oversight Committee.

It was noted by the Chairman that three different information reports were prepared by the SEM Committee within a short time period this year and that this work might be consolidated (if possible or appropriate) next year.

Action: PB to make amendments and prepare final version of the Annual Report and present to Oversight Committee for approval to publish.

4.d Jurisdictional Audit

LS outlined background to the Jurisdictional Audit which reviewed existing information sharing procedures between the Regulatory Authorities ("RAs") and the RAs and the SEM Committee. It was noted that the existing procedures were working well and were fit for purpose but that amendments might be made to existing procedures to codify existing information sharing practice between the RAs and the RAs and the SEM Committee.

The recommended amendments to the SEM Committee Rules of Procedure, Joint Regulatory Arrangements, Oversight Committee Agenda and Terms of Reference were approved subject to a minor modification.

The publication of the documents amended as approved is to be delayed until an internal review of the governance arrangements is completed by the Chairman and DN.

4.e Jurisdiction on cancellation of GUAs

SL gave a detailed overview of the background to the two Generating Unit Agreements for the coal-fired units at Kilroot ("the Two GUAs") owned by AES Kilroot ("the Generator"). SL informed the Committee of the NIAUR Board decision on 12th March 2010 in which NIAUR concluded the action it proposes to take in regard to the Two GUAs. SL pointed to the SEM Committee decision of 24th November 2009 that:

"[It] was minded to take the view that the cancellation or otherwise of the Generator Unit Contracts is not a SEM Matter, but noted the difficulty of assessing the materiality of impact of a wide range of possible cancellation decisions at different dates. The Committee agreed that NIAUR should take the matter forward but that the SEM

Committee would review the question of jurisdiction again once NIAUR has concluded what action it proposes to take, and before cancellation powers were exercised”.

Accordingly, a decision was requested of the SEM Committee on jurisdiction to exercise the NIAUR functions in relation to the cancellation, or otherwise, of the Two GUAs.

SL then outlined the economic analysis conducted and the policy considerations relevant to the cancellation or otherwise of the Two GUAs.

The SEM Committee reiterated the central decision making rule in the SEM which governs the question of jurisdiction that any decision as to the exercise of a relevant function of the CER or NIAUR in relation to a SEM Matter shall be taken on behalf of the CER or NIAUR by the SEM Committee. A SEM Matter is one which the SEM Committee determines that the exercise of a relevant function of the CER or NIAUR in relation to that matter materially affects, or is likely to materially affect, the SEM.

Discussion focused on the question of materiality. The SEM Committee considered the background to the Two GUAs and the market position of Generator who is subject to the Two GUAs. The SEM Committee noted that only two GUAs were at issue here which related to two coal fired units at Kilroot. The results of the economic analysis undertaken by NIAUR in relation to the Two GUAs were reviewed and discussed. Furthermore the SEM Committee took into account and discussed in detail, the potential effects of the cancellation, or otherwise, of the Two GUAs on the Generator, the all-island customer and the Northern Ireland customer. Additionally, the duties of the SEM Committee and potential effects, if any, of cancellation or otherwise, on competition, security of supply, diversity of supply, environmental impacts and liquidity in the SEM were deliberated upon at length.

It was decided that the exercise of relevant functions in relation to the cancellation, or otherwise, of the Two GUAs was not a SEM Matter as it would be unlikely to materially affect the SEM. The decision was based upon on the economic analysis presented and consideration of the relevant policy factors and statutory duties set out above.

The SEM Committee requested that it be updated of the ongoing review by NIAUR of the other GUAs. It was agreed that where the RAs were in doubt as to the question of jurisdiction in the future the matter should be referred to the SEM Committee for consideration.

4.f ESB Re-Integration

a. Approval of Terms of Reference for Market Power/Liquidity Study

The Terms of Reference were approved subject to modifications on the scope of the terms of reference. The matter of payment for the consultancy work on the Terms of Reference was discussed.

b. Update on Action Points from February SEM Committee Meeting (Oral)

The update had been provided under Agenda Item 3 above.

c. Review of ESB Liquidity Proposals (if submitted)

EC had received a note from ESB which signalled that ESB would submit a proposal on same in due course. This note is to be considered at Oversight Committee.

Action: EC to circulate the note received to the SEM Committee for information. The Oversight Committee is to consider the proposal, when received, in more detail and provide the SEM Committee with comments on the proposal for the April SEM Committee Meeting.

d. Review of ESB Implementation Measures

The ESB Implementation Measures proposal was noted

Action: Oversight Committee to consider further

4.g Review update on DC/NDC/PSO contracting (Oral)

EC provided an update on the proposed SEM contracting process for 2010/'11.

A Consultation Paper on the 2010 DC process was published in February. Comments were received and an overview was given of responses. A decision paper on the DC process, and separately, the Validation Report for the Plexos Model are due for publication in the next week. An indication of the timeline for the DC subscription/auction of quarterly products and the primary and supplemental windows was given.

It was noted that there has been progress on NDC offerings with encouraging supplier uptake on offerings. EC outlined that while ESB PG has not yet provided commitments on future NDC auctions it has committed to facilitating liquidity via different types of PSO-backed CfDs.

5. MMU Update. PB/CB

The SEM Monitoring Report for March 2010 was noted by the SEM Committee.

6. Update on TSC Modifications

DK took the meeting through the SEM TSC Update paper which was noted by the SEM Committee. The SEM Committee noted the good work done by the TSC Modifications Committee and that the modifications process was working well.

7. Reporting of the decisions of the Oversight Committee. LS

The decision of the Oversight Committee and recent publications on the All Island Project website were noted by the Committee.

8. Updates CER/NIAUR/Independent members

- DN told the meeting that the CER expects to have a final decision on the de-regulation of PES Tariffs in the coming month and would report back to the SEM Committee in this regard.
- MT provided an update of the Regulators meeting at Farmleigh House.
- SL provided an overview on the findings of the NIAUR investigation into business tariffs.

9. Draft Agenda items for March. LS

Draft agenda items were noted. The Chairman requested that a draft agenda be drawn up for the next six/twelve months so the SEM Committee became better aware of upcoming issues for its attention, and for the purpose of better briefing the NIAUR board.

Action: The Secretariat and Oversight Committee to develop a draft six month 'forward' Agenda for consideration at the SEM Committee meeting in April.

10. AOB

- DN updated the SEM Committee on the proposed carbon windfall tax in the Republic of Ireland. It was agreed that some modification of the BCOP, or a transparent guidance note for industry participants on our interpretation of the Code, would likely be required so as to ensure the tax was not passed through to SMP (which would be contrary to the government's intention in taking this step).
- LS requested that the SEM Committee fill out the Register of Interest forms.
- The Chairman reminded the SEM Committee that certain mandates (to be a member of the SEM Committee Members) were due to expire in November 2010 having begun in November 2007. The Chairman noted that owing to DMCC's partial retirement, NIAUR were minded to ask the Departments to appoint SL in his place on the SEM Committee.
- IO and DN noted that they had been reviewing the operation and governance structure of the SEM Committee and its subcommittees – the Oversight Committee and Joint Management Units and intended to present a short paper to the SEM Committee in due course with recommendations
- Paul O'Neill was thanked for his hard work and contribution to the SEM Committee as Secretariat over the past two years.

Date of next meeting: SEM Committee, 29TH April. 10.00 – 3.00 Belfast