

**Minute of the forty-third meeting of the Water Industry Commission for
Scotland**

Held on 2 December 2008 in Stirling

Present:

Sir Ian Byatt (Chairman)
Professor David Simpson (Deputy Chairman)
Professor John Banyard
Dr Michael Brooker
Mr Charles Coulthard
Mr Alan Sutherland (Chief Executive)

In attendance:

Mrs Katherine Russell (Director of Corporate Affairs and
Secretary to the Commission)
Mrs Donna Very
Mr Richard Khaldi (Analyst) (item 5)
Mr Ian Tait (Director of Investment) (item 6)
Dr John Simpson (Director of Analysis) (item 7)
Mr Maynard Xu (Analyst) (item 7)

Chairman's opening remarks

The Chairman welcomed everyone to the meeting and thanked them for attending.

1. Apologies for absence

Nil

2. Minute of previous meeting and review of action points

2.1 Minute of last meeting (09/08)

The Commission agreed that the minute was an accurate account of proceedings.

2.2 Review of action points (AP09/08)

The Commission noted it was in a satisfactory position.

3. Update on current issues

3.1 Working with stakeholders

3.2 Other current issues

The Commission noted CP135/08, an update on the work of stakeholders and significant external events.

The Commission noted CP136/08, a speech given by Tom Winsor, Partner, White & Case LLP, London at the Beesley Lecture on 13 November 2008.

The Commission noted CP137/08, a briefing note provided by Jo Armstrong on the Scottish Government's 2008 budget.

The Chairman reported that he and the Chief Executive had recently held a useful meeting with Sir Angus Grossart, Chairman of the Scottish Futures Trust.

The Chairman also reported that he had met with the Cabinet Secretary for Finance and Sustainable Growth.

Dr Brooker reported that he had attended a workshop held by Ofwat on competition.

The Director of Corporate Affairs reported that she had had a positive meeting with Waterwatch on taking forward qualitative analysis on the Overall Performance Assessment (OPA).

Mr Coulthard updated the Commission on the recent activities of the Audit Committee. The Audit Committee induction will now take place on 21 January 2009.

Mr Coulthard reported that he had attended a National Audit Office Conference. The main issues covered were Information Assurance and Risk Management.

Mr Coulthard reported that a new Chair of OFT's Audit Committee had been appointed.

3.3 Update on the Central Market Agency (CMA)

The Chief Executive of the CMA, Jeremy Atkinson, provided a written update on the company's activities over the last month. The Commission welcomed CMA's involvement in assessing data inaccuracies. The CMA would welcome a more definitive process in the market code relating to issuing invoices.

The Commission noted this update.

4. Corporate Affairs

4.1 Update on the office workplan and strategy for the price review (CP138/08)

The Commission noted that there were no exceptions to report this month and congratulated the office for being on track.

4.2 Update on framework contracts (CP139/08)

The Commission noted this paper and welcome the work to be undertaken by the Audit Committee on value for money.

4.3 Oral update on recruitment

The Director of Corporate Affairs updated the Commission on the recruitment of analysts. The Commission noted that four new analysts had been recruited and are due to start in the New Year.

5. Competition

5.1 Oral update on licensees

The Commission noted that a licence application had been received from Aimeria Ltd.

5.2 Update on communication strategy (CP140/08)

The Commission noted this update and were pleased with developments.

5.3 Update on progress in amending wholesale/retail split (CP141/08)

Mr Khaldi provided the Commission with a brief update on the progress being made on refining the separation of wholesale and retail activities. The Commission agreed that further consultation with stakeholders is required once a proposal has been devised.

The Commission suggested that Mr Khaldi approach OFGEM who have previously looked at competition in connections. The Commission agreed that further work should be carried out to identify future areas of priority.

The Commission noted this update.

5.4 New licence applications: Aimeria Limited

The Commission considered an application from Aimeria Ltd for water and sewerage services licences. The Commission agreed that

Aimera's application did not yet contain sufficient information to determine whether to grant licences.

The Commission requested that further information be sought from Aimera to support its application and in particular further evidence to demonstrate that Aimera was financially capable of fulfilling the requirements of licence conditions.

The Commission agreed that once this information had been obtained, authority would be delegated to the Chairman and Chief Executive to decide whether to propose to grant licences to Aimera Ltd.

5.5 Update on schedule 3 (CP143/08)

The Commission noted that it had previously requested Scottish Water to confirm whether the charges under each of the 'special agreements' it had made with business customers (prior to the opening of the competitive market) were at least equal to a nationally averaged long-run marginal cost.

The Commission were updated that Scottish Water had responded to confirm that all but one agreement had been calculated on this basis. Scottish Water has now entered into discussions with Business Stream to revise the charging arrangements in the one outstanding special agreement with a view to increasing the charges over a period of time up to an appropriate level.

The Commission requested a further update be provided at the February meeting on progress made with concluding this issue.

5.6 Complaints procedure (CP144/08)

The Commission noted that under Schedule 2 of the Water Services etc. (Scotland) Act 2005, it has a variety of enforcement options where it appears that a licensed provider is not complying, or is unable to comply, with the terms and conditions of its licence. The Commission has previously consulted on and published a monitoring, enforcement and penalties policy in this regard.

The Commission noted, however, that at present it does not have an enforcement procedure for dealing with cases where an allegation of licence breach is made by a stakeholder. Such an allegation had recently been made.

The Commission was therefore asked to consider a proposed enforcement procedure for such allegations in line with current best practice in utility regulation.

The Commission approved the proposed procedure subject to a full consultation being carried out. The Commission agreed to delegate authority to the Chief Executive to amend, if appropriate, and finalise the procedure once this consultation had been carried out.

6. Investment

6.1 Oral update on investment delivery

6.2 Update on investment progress (CP145/08)

The Director of Investment provided the Commission with an oral update on the latest information available on Scottish Water's progress with delivering its investment programme. The Commission noted that although the expenditure profile had marginally improved there was some slippage at earlier delivery stages. The Commission noted that there was early evidence of the potential for there to be a larger than expected overhang of investment projects that would be delivered in the next regulatory period. The Commission also noted that there is no substantial improvement with reaching 'regulatory sign-off targets'.

6.3 Scottish Futures Trust Conference (CP146/08)

Mr Tait reported that he had attended a Scottish Futures Trust Conference held on 17 November 2008 in Edinburgh.

The Commission thanked Mr Tait for this informative paper.

The Commission noted this paper.

6.4 Strategic Studies update (CP147/08)

The Commission noted the current position with regard to the Unsatisfactory Intermittent Discharges (UIDs) strategic studies. The Commission agreed 'Stage 4' approval for 104 UID's in the 15 sub-catchments of Portobello, Meadowhead/Stevenson and Glasgow.

6.5 2010-14 UID programme (CP148/08)

The Commission noted that SEPA (and Scottish Water) had indicated that there was considerable uncertainty about the outputs from the Glasgow City elements of the UID programme.

The Commission also noted that SEPA had proposed to allow these uncertainties to be addressed using a 'seven stage process' rather than to committing to specific outputs at this stage.

The Commission noted this update and its potential impact on the 2010-14 review process.

7. Strategy

7.1 Discussion of draft counsel opinion (CP149/08)

The Commission noted this very useful opinion.

7.2 Update on developments that could affect prospects for prices (CP150/08)

The Commission noted this update and its potential impact on the 2010-14 review process.

7.3 Jon Stern report (CP151/08)

The Commission noted this paper and look forward to Jon Stern's presentation at the February Commission meeting.

7.4 Cost and performance report (CP152/08)

The Commission considered a set of revised key messages for its Costs and Performance report for 2007-08. The Commission requested that Scottish Water's excellent achievements were clearly documented and praised. It also requested that further clarification should be given about the role of good governance and a strong incentive framework in encouraging Scottish Water to make these improvements. The Commission agreed that the report should be published in early 2009.

8. Scheme of charges

8.1 Approval of Scottish Water's scheme of charges (CP153/08)

The Commission considered Scottish Water's charges scheme for 2009-10. The Commission agreed that the scheme was consistent with the charge caps determined in the Strategic Review of Charges 2006-10. The Commission approved this scheme.