

Why regulators need politicians: an analysis of how regulatory power remains dependent on political support.

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Abstract

When a government locks down the framework of economic regulation, it both sets out and limits the ways the state can deal with, and interfere in, the workings of a privatised utility. After that, whatever scope remains for radical action would then appear to depend to a great extent on the approach adopted by successive regulators. But how much reform can be achieved if regulators can only command limited political backing for their proposals?

Northern Ireland offers some insight. Its electricity system was privatised in the early 1990s. The hope was that power prices would fall broadly in line with those in Great Britain. Instead costs for both consumers and industry have remained stubbornly high burdening households and firms alike.

The regulators, charged with overseeing the electricity industry, tried to remedy the situation. One adopted a conventional approach, the other a much more radical strategy. Neither enjoyed effective political backing. Though some significant progress has been achieved, the cost of power in Northern Ireland remains significantly higher for both domestic and industrial consumers.

The experience of the electricity industry in NI suggests that regulators, denied powerful support, remain highly constrained by the framework set up, and the contracts entered into, at the start of the process.

Methodology

This report is based on a detailed study of annual reports, consultative documents and other material published by the Northern Ireland energy regulatory body Ofreg together with interviews conducted with: senior executives, from Northern Ireland Electricity, owners of the Province's Transmission and Distribution business, and from Premier Power, AES Kilroot and ESBI, owners of the major generating stations in Northern Ireland; senior civil servants, both former and serving; the Directors General of Offer NI/Ofreg; independent power producers; the Confederation of British Industry and energy watchdogs. While the interviewees were mostly "on the record", a few wished some of their remarks not to be attributed to them directly.

Introduction

Northern Ireland's electricity industry was privatised later than those in the rest of Great Britain. In theory the experience gleaned should have enabled the Government

and its advisers to transfer state owned assets into the private sector more successfully. In one sense it did. By and large the assets here were sold off at a relatively high price compared with GB. However that meant that investors needed a higher return on those assets to justify the rather full price they were paying. Combine that with limited regulatory powers to review the long-term generator contracts and one had the makings of a fairly intractable problem. What is examined in this report is the attempts that were made to remedy the faults of privatisation and why despite displays of regulatory ingenuity these efforts have proved less than wholly successful.

History of electricity regulation

The history of electricity regulation begins before the launch in April 1992 of the Office of Electricity Regulation for Northern Ireland (Offer N.I.) and the appointment a month earlier of its first Director General Geoff Horton. It starts with the drawing up of contracts for the trade sale of N.I.'s power stations. The biggest Ballylumford was bought by British Gas and is now operated by a subsidiary, Premier Power. A Belgian/U.S. consortium acquired Kilroot and Belfast West. The latter is now closed and while the former is now wholly owned by one of the partners, AES. Coolkeeragh was bought out by its management¹. It is now partly owned by a subsidiary of ESB, the state-owned electricity company in the Irish Republic.

To sweeten the deals NIE was required by HM Treasury to enter into Power Purchase Agreements (PPAs) with the new owners. The most contentious element of the PPAs was the so-called availability payments which guaranteed the generators a fee for having their generating sets in a state of readiness to produce power. While the principle was sound, the Government's "very expensive"² advisers underestimated the extent to which the plant could be made available. The four power stations were sold for £352.5 million, a price which implied an expected availability level of just over 80%.³ In fact the power stations achieved levels around 95%.

Since the plants could recoup their fuel costs ultimately from consumers, it did not help that the sets were in the main older and less efficient than their counterparts in GB. Furthermore they were smaller and thus could not benefit from efficiencies of scale.

These contracts not only produced high prices, they severely limited the scope for regulators to reduce prices. Not surprisingly the privatisation has been condemned as botched by industrial and domestic consumers. Electricity prices for domestic consumers and industrial consumers in January 2001 were respectively 16% and 23% higher than the next most expensive region in the UK.⁴

¹ Electricity Association (1999), The UK electricity system.

² Anon

³ Northern Ireland Audit Office (1994) The Privatisation of Northern Ireland Electricity. Report by the Comptroller and Auditor General for Northern Ireland, October, 1994.

⁴ Electricity Association (2002) – International Electricity Prices – Issue 28, Jan 2002.

Despite the fact of the obvious miscalculation by government on availability levels, few in Northern Ireland doubt that the contracts were designed to extract as much money as possible for the benefit of the Treasury. This conclusion is reinforced by the disclosure by one generating company that it was rebuffed in its attempt to persuade government to scale back the size of the availability payments.

There is another way of looking at the deals however. According to Horton,⁵ who advised against lengthy contracts, there was a worry that if they were shorter, then the power stations would be in a position to drive a very hard bargain at the time of their renewal. Competition might not work to keep prices in check in a small market.

Privatisation was completed in 1993 with the flotation of Northern Ireland Electricity. Again a relatively high price was paid for the assets – another factor feeding into high cost of power.

At the same time as Offer NI was set up, the Department of Economic Development transferred the General Consumer Council's (GCCNI) responsibility for electricity to a newly created Consumer Committee for Electricity (NICCE), separate from Offer NI but based in the same building in Belfast's Fountain St. NICCE quickly enquired about the future trend in electricity prices and was apprised by the Director General of the likely divergence between here and GB, an outcome flagged up in the body's very first annual report.⁶ It was an early indication that privatisation here was going to prove problematical.

DED role

With the electricity industry now in private hands, it left the DED with a new role. How it handled it is the subject of some critical comment.

The Electricity (Northern Ireland) Order (1992) and the Gas (Northern Ireland) Order (1996) lay down the same responsibilities on both the Department of Economic Development (DED) and its successor the Department of Enterprise, Trade and Investment (DETI) and the Office of Electricity Regulation (Offer) and its successor the Office for the Regulation of Electricity and Gas (Ofreg). These are: to secure all reasonable demands for electricity are met, to secure that licensees can finance their licensed activities, to promote competition in electricity generation and supply and, in the case of gas, to promote the development and maintenance of an efficient, economic and co-ordinated industry. According to NIE the sharing of duties between the Regulator and Department created confusion as to who was going to take issues forward. In the view of several industry players, the Department took a back seat after 1992. It was believed that DED felt that the market was going to take care of most issues, and anything left over was the responsibility of Offer. Says one organisation, it was "almost like they went to sleep".⁷ Where they had to make key decisions, they largely copied what GB did. One body consulted for this report said that DETI was supposed to provide policy but was struggling with it.

⁵ Drawn from transcript of interview with Geoff Horton (2003) Director General of Offer NI (1992-1995)

⁶ Northern Ireland Consumer Committee for Electricity (1992) Annual Report.

⁷ Anon.

Former DED Permanent Secretary Sir Gerry Loughran denies the Department sat on its hands after 1992. All the effort on extending the gas network was driven by the Department. He says that civil servants did a lot of work but many of the outcomes proved disappointing but in the last analysis he points out that one doesn't privatise an industry and then tell it what to do.⁸

Ofreg clearly doesn't accept that last comment. Though politicians are supposed to give a lead, Direct Rule ministers didn't come to Northern Ireland with a policy agenda, according to the present Regulator. He says nobody seemed to be prepared to go forward with any kind of energy plan. He even went to the length of writing to the then Secretary of State Mo Mowlam pointing out the need for political support but it was never forthcoming. As a result Ofreg, he says, has existed for most of its life in a policy vacuum. The upshot was that he, an unelected official with very little authority and a limited range of powers, could only effect change slowly.⁹

If Departmental policy making slowed down after privatisation in 1992, and DETI itself says there could have been a greater concentration on energy after the sell-off, then most are agreed that the advent of the Northern Ireland Assembly and the arrival of a Minister with a specific energy brief brought a new urgency to gas and electricity matters. However, political disagreements led to the suspension of the Assembly last October before it was able to take any key decisions on energy.

Competition

Horton was already an experienced regulator when he came to Northern Ireland in 1992 to run Offer NI and oversee the electricity industry. He did not devise the system he had to operate. Indeed, pre-privatisation, he had argued against lengthy contracts with the generators. His view had been that tying things down looks a safe strategy but is in fact risky as it leaves less room to adapt to emerging circumstances. Nevertheless once in harness he felt he had to operate what he had been given.

As he had been working on price controls in England, he realised pretty quickly that prices here would diverge from those across the water, although the gap turned out to be bigger than anyone expected because of the surprisingly big decline in GB prices. Nevertheless he hoped he could make a difference by bringing in competition.

After commissioning some research, in 1994 he proposed a wholesale electricity trading system (WETS), soon dubbed the Horton Pool, which he intended to launch late in 1996.¹⁰ Under the scheme, all generators above a certain size would have to sell their output into a pool from which all suppliers would be required to buy. If the pool price delivered returns lower than the power stations were entitled to, a levy

⁸ Drawn from transcript of interview with Sir Gerry Loughran (2003).

⁹ Drawn from transcript of interview with Douglas McIlldoon (2003) Director General of Electricity Supply for Northern Ireland (1995-2003) and Chairman of the Northern Ireland Authority for Energy Regulation (2003-).

¹⁰ Offer NI (1995) Annual Report.

would be applied to suppliers to make up the difference. Conversely greater returns would result in the pool price being reduced.

Would the system bring in benefits? Few if any believed that it would. Horton consulted widely and found his plan lacked support. Never put into operation, it was abandoned by the next Director General Douglas McIlldoon.

Horton recognises the limitations of his plan. He accepts it would not have driven prices down significantly, though he doesn't believe it would have proved less effective than what replaced it. He argues that it could have created momentum for change. By splitting the cost of electricity into two components: a fair market price and a levy to cover the extra costs of the generator contracts, it would have made absolutely transparent the excess costs faced by consumers. In that way political pressure might have been brought to bear to find a solution to what the former Regulator himself described as "outrageously high prices".

In the middle of 1995 Horton left Offer NI and several months later a new man came in with a new approach.

Generator contracts

McIlldoon was sent into Offer by the Department of Economic Development with a very clear brief. He was directed to try and bring down electricity prices. And the strategy, in the slightly colourful language of a former DED official, was "to lean"¹¹ on NIE and the generators.

A former Head of Energy within DED, the new Regulator turned his attention to the twin tasks facing him: tackling the generator contracts and conducting the five yearly price control review for NIE.

However, for the Regulator, the main priority was to reduce generator costs by the greatest extent possible. He commissioned research from consultants London Economics which was published in 1997.¹² It showed that cost of generation in Northern Ireland in 1997/8 was expected to be 4.15p per kWh, over 40% higher than the 2.9p per kWh forecast for GB

His solution was in essence to buy out the uncompetitive costs of the contracts with Ballylumford and Kilroot, to incentivise the power stations to operate more efficiently and to encourage the replacement of old, inefficient plant. The Regulator said he would have preferred to have a voluntary settlement but in the absence of agreement he was forced to refer the matter to the MMC. The idea was to accuse the generators of operating a complex monopoly.

What alarmed the generator companies was the threat to cap the charges arising from the availability payments. This would reduce the profits guaranteed to them under the original contracts signed in 1992 with NIE. One company describes it today as

¹¹ Anon.

¹² Ofreg (1997) Annual Report.

expropriation and said it came as a massive surprise. Lawyers in London were consulted and their findings sent to the Treasury.

Though it caused nervousness, the generators say the Regulator's plan to go the MMC would have failed. They were confident their contracts were watertight. Nevertheless the threat was described by one of the companies as a useful tool which got minds focussed.¹³

In due course as the generators produced their plans for reform, the threat was lifted. The management of Kilroot power station proposed to convert its equipment to allow it to burn, in addition to oil and coal, orimulsion, an oily fuel from Venezuela which at the time was 25% cheaper than coal and a quarter of the price of oil. Such a move would have allowed the station to boost its output from 390 Megawatts (MW) using coal to 520MW, producing cheaper energy and benefitting from an economy of scale. In return Kilroot would have its contract continue beyond 2010, when it could have been cancelled, to 2024. NIE, with whom the new deal would have been signed, balked at extending the lifetime of the contract. They were also environmental concerns at the prospect of using orimulsion as a fuel, though Kilroot had promised to install Flue Gas Desulphurisation equipment to clean up emissions. The Kilroot plan was never adopted. In theory it is still on the table though, with an increase in the price of orimulsion, the economics of the proposal have completely changed. Recently Kilroot has proposed that its contract continue beyond 2010 but that availability payments should be substantially reduced after that time.

Premier Power's plan for Ballylumford plan was accepted. It has involved: a £170m buy out of the uncompetitive costs of the existing 1992 contract, the replacement of 600MW of output by a new more efficient combined cycle gas turbine (CCGT) producing power at a competitive price, and the retention of a 117MW unit generating power at cost price.

Premier Power was nonetheless disappointed on several counts. It has described the four year period to get to financial close on the CCGT as ridiculously long. In the company's view it should have taken half the time. It believes the benefits from the haggling during the last 18 months of negotiations were outweighed by the delay in getting the CCGT up and running. Premier Power says Ofgem should have ensured earlier closure through its powers to force economic purchase.¹⁴

The Premier Power team is even more annoyed at the decision by DETI to postpone a measure in the new Energy Order intended to reduce the costs of servicing the £170m buy out loan. The provision would have enabled the charge, which customers currently pay, to be transformed into a sort of tax. The virtue of the plan was that the certainty of the levy would have persuaded the lenders to accept a lower interest payment. It appears that the Department of Finance and Personnel (DFP) was concerned that if lenders were ready to take lower return, it implied their level of risk

¹³ Drawn from transcript of interview with Shane Lynch of AES Kilroot.

¹⁴ Drawn from transcript of interview with Premier Power management team (2003). Those taking part in the interview were: Bill Cargo, Paddy Larkin, Jim McElnay, Robert Apsley and Philip Flynn.

had been reduced. The only way that could happen, DFP concluded, is that risk would be transferred to customers.

For its part DETI points out the low cost levy sets a precedent for the UK. Interestingly this is presented as a difficulty rather than an opportunity for Northern Ireland to be first to realise savings. The Department says that with the complexities of the issues it just ran out of time. DETI stresses that the issue is still definitely on the table.¹⁵

Premier Power is not impressed by the arguments for delay. Management accuses civil servants of frustrating the will both of the Regulator and the Assembly. They're described as being very cautious to the point where they're stifling innovation and creativity. The Confederation of British Industry (CBI) uses more moderate language but it is also disappointed by the postponement. If needed, expert help could have brought in at an earlier stage, it says. The proposal should have been adopted or abandoned six months ago. The CBI sees it as evidence that civil servants have not got a "can do" mentality.¹⁶

For the record, Premier Power does stand to gain from the introduction of the low cost levy. Its removal would release the company from certain contractual obligations to NIE.

Strikingly no one blames the Direct Rule Minister who actually made the decision to postpone, which says volumes about who is really believed to run the country.

The management of Coolkeeragh power station in the North West of the Province also proposed to build a CCGT albeit on a smaller scale than Ballylumford. It will have 400MW of output and will be fed by the planned gas pipeline from the East coast to the North West. The present management and employee shareholders have agreed to sell out their interest to their current partner ESB International (ESBI), the investment arm of the semi-state power company in the Republic. The new Coolkeeragh is a merchant plant operating without the guarantee of long-term contracts. It is expected to sell at least part of its output to consumers in Donegal in the Irish Republic.

It is rather obviously not a generator but the Moyle Interconnector linking Northern Ireland to the Scottish grid across the Irish Sea behaves in the market as if it were since it supplies power. Its construction was agreed in 1991 between DED and the then state-owned NIE. Later that year NIE signed a 'Heads of Agreement' with Scottish Power on the price Northern Ireland would pay for power through the Moyle.¹⁷ This was later renegotiated to take advantage of falling prices in Great Britain. Originally the interconnector was intended to carry 250MW. NIE later discovered that the capacity could be doubled for relatively little extra cost – two for the price of one, the company called it.

¹⁵ Drawn from transcript of interview with Jim McKeown of the Department of Enterprise, Trade and Investment (2003).

¹⁶ Drawn from transcript of interview with Nigel Smyth of Confederation of British Industry (2003).

¹⁷ Offer NI (1995) Annual Report.

Eligible Market

The eligible market, consisting of those large companies which, because of the EU directive on the Internal Market in Electricity (IME), can now contract directly with power stations instead of having to buy through NIE's Power Procurement Business, initially covered 26% of electricity demand but has now been extended to 35%. It has been welcomed by industry but not with overwhelming enthusiasm. The reason is that although prices have come down, business here is paying significantly more for power than the rest of Great Britain and Europe. The CBI reports that one of Northern Ireland's top companies with 80 plants round the world finds that it pays more here than anywhere else apart from Japan.

While there are no official figures on the reduction in prices created by the IME, it is estimated that large users are now paying approximately 15% less than they would have been charged under the Bulk Supply Tariff (BST). Currently the BST rate for someone taking 1MW constantly throughout the year is 4.1p per kWh. That implies a charge of in the eligible market around 3.5p per unit.

One of the trickiest issues facing Government has been how to deal with the stranded costs, those uncompetitive charges associated with the high priced generator contracts dating from privatisation. In a quite unexpected move the Direct Rule Industry and Finance Minister has decided to reduce the impact of stranded costs in business. In his draft budget published on October 7, 2003. Ian Pearson has proposed an eight year long programme of stranded cost reduction. The first £30 million will come from economic development spending but at this stage it is unclear as to how the plan will be financially sustained over the long term. It is awaiting EU Commission state aids clearance.

Speed of reform

On the general question of the pace of reform within the industry, the Regulator says delays came about because people resisted change. He specifically accuses NIE of holding up renegotiation of the Coolkeeragh and Power Station West contracts despite evidence those changes would reduce prices. The Regulator doesn't accept he has delayed things although broadly speaking the industry believes that if Ofreg were better resourced some decisions could have come more quickly.

It will be a matter of debate as to whether NIE's tactics on the renegotiation of all the generator contracts were in the best interests of consumers. Clearly NIE believes that they were. However, what is less contestable is the Regulator's assertion that had there been a greater political will, change could have taken place more quickly within the industry.

In a recent paper the Regulator has contended that for the rest of their lives, ie through 2010 and beyond, the Ballylumford and Kilroot plants are in market.¹⁸ Though that assertion is unprovable, if it is true, it implies that a lot more could have been done to reduce prices in the past. It would have required a very radical restructuring of both contracts, most probably stretching the return of the generators' investment over much longer timescales than the ones they were working to. If necessary it might have required the buyout of a part of the contracts.

One way to help the Regulator achieve lower charges would have been to have set an explicit target for prices. It might have required DED/DETI to have made it clear that neither industrial nor domestic consumers should be paying more than an agreed percentage above the costs facing their equivalents in comparator regions within GB.

Such targets would have greatly strengthened the Regulator's hands in his dealings with all parties. As it was, there was only one clear price target set for the Regulator and that was one he set himself. In 1998 among other things he pledged to reduce the cost of electricity, for the domestic consumer using 3300 units per year, to £253 by 2002.¹⁹ While he succeeded in his other aims, he missed that target for three reasons: a hike in fuel prices, a change in approach to the T&D price control review and the failure to renegotiate contracts such as Kilroot.

Price Controls

While McIlDoon may not have gone through with his threat to refer the generators to the Monopolies and Mergers Commission, he most assuredly did act on his warning to Northern Ireland Electricity.

At privatisation Government, rather than any regulatory body, set the first price control for NIE. It fixed returns for all three regulated businesses, Power Procurement, Supply and, by far the most important, Transmission and Distribution, the subsidiary within NIE which takes electricity from the power stations and delivers it through the wires to homes and businesses. DED gave the company permission to raise T&D revenue by 3.5% a year above inflation from April 1992 to March 1997.²⁰ On the assumption of growth in demand of around 2.5%, this allowed the company to increase its charges by about 1% a year. If this seems relatively generous, then it merely reflects the pattern of privatisation elsewhere in the UK where Government, during initial price control periods, did not squeeze the companies it had just sold off.

Towards the end of the first price control period, domestic and industrial consumers alike, were looking for, and expecting, cuts in the cost of electricity. The prospective review offered the first opportunity to lower the cost of power albeit by a limited amount since the biggest factor in creating high prices was the cost of generation. Relatively speaking domestic consumers stood to gain most from a Transmission and Distribution price cut since T&D made up around 40% of household electricity bills.

¹⁸ Ofreg (2003) Competition and Customer Empowerment: The Next Steps in the Northern Ireland Electricity Market. A Consultation Paper by the Director General of Electricity Supply March, 2003.

¹⁹ Ofreg (1998) Annual Report

²⁰ Monopolies and Mergers Commission (1997) Northern Ireland Electricity Plc: A report on a reference under Article 15 of the Electricity (Northern Ireland) Order 1992.

In contrast it only comprised 18% of the bills of large industrial users. The balance in each case is made up of generation costs of which 30% or more reflects availability payments and the rest fuel costs

McIldoon proposed a cut of 30% in T&D prices at the start of the new regulatory period followed by 2% reductions in each of the subsequent years²¹. NIE rejected the proposal as well as the extent of cuts advocated for Supply. They did accept Ofreg's review of the Power Procurement Business. When the contested price reviews were examined by the Monopolies and Mergers Commission in 1997²², their report approved many but not all of the Regulator's decisions. In an unusual but not, within the UK, unprecedented move, the Regulator decided not to implement some of the MMC's findings. NIE sought a judicial review. The Regulator won in the High Court but lost in the Appeal Court. It is fair to say that the Regulator did not take his reverse lying down. He has described the whole episode as evidence that the regulatory system as a whole is biased against customers. The MMC was a transitory panel meeting in secret, with no knowledge of the issue, answerable neither to Ministers or customers. He described 1998 as an unmitigated disaster for T&D customers.²³

Relationships

The differences between the Regulator and NIE over the first price control generated some emotion. It is said, though not by the company, that some senior representatives of NIE took the decision to go to the MMC personally. The firm itself describes the period as "slightly vitriolic" and a "turbulent time" in regulatory history. It acknowledges that the Regulator honestly believed the company was trying to hold on to too much money but it says he did a pretty poor job in demonstrating that fact.²⁴

Nowadays NIE is inclined to be more philosophical over the Regulator's approach. It accepts that he is entitled to push his case. If, in its view he goes too far, the company has a statutory right to challenge him. His decisions can be judicially reviewed. However, without accusing him of being unethical, NIE suggests that the Regulator knows the outcome he wants to achieve and "it doesn't matter too much how he gets there."

His approach is contrasted with that of the former regulator Horton who, NIE claims, had a higher regard for regulatory precedent. Whether or not that is true, most if not everyone who expressed an opinion, identified major differences between the way regulation was pursued by the two regulators.

²¹ Ofreg (1996) Price Control Reviews for Northern Ireland Electricity plc: Director General's proposals.

²² Monopolies and Mergers Commission (1997) Northern Ireland Electricity Plc: A report on a reference under Article 15 of the Electricity (Northern Ireland) Order 1992.

²³ Ofreg (1998) Annual Report.

²⁴ Drawn from transcript of interview with Harry McCracken, Ashley Boggs and Robin Greer of Northern Ireland Electricity (2003).

Regulatory styles

McIlldoon was said to have “challenged” the system of regulation but Horton “operated” it. Horton made it clear that he would not be swayed from his approach by what he regarded as political objectives. In doing so he signalled Offer would be pursuing an independent line. While his attitude slightly bemused DED, the Department fully accepted the Regulator’s right to take the view that he did.²⁵ But if it understood the propriety of the Horton line, there is little doubt the Department, like most consumers, was more enthusiastic about the more vigorous approach adopted by McIlldoon.

There are a number of issues involved here but the big question is whether the new tack made any real difference. The CBI while giving a lot of points for effort, accuses McIlldoon of raising expectations around 1997/98 that the price of electricity could be brought down in a fairly short time and then failing to deliver.²⁶ Sir Gerry Loughran, who sympathised with and supported McIlldoon, says in retrospect that maybe together they created the impression that more was achievable through regulation than really was deliverable. It was never going to be possible, he now says, to radically reshape the generator contracts unless money was found for a buyout.

All of this comes as little surprise to Horton. He claims his successor hasn’t changed anything or been able to change anything about the costs associated with the generator contracts. McIlldoon might have used “stronger language than is normal” in his dealings with the industry generally, but in the end both of them were very constrained by the same regulatory system which neither of them stepped outside. The differences between the two were more of style than substance, though Horton ruefully admits he looked more like the technical apparatchik and McIlldoon as the man of feeling.

To develop the argument, it might be said that one of the more interesting developments of recent times, that is the creation of the eligible market which allows large electricity users to bypass the PPB and contract directly with the generators or suppliers, came about as a result of an EU directive and not through the activities of the Regulator. Certainly Horton doesn’t accept that we are better off from going down the McIlldoon route rather than the one he was taking us along.

Clearly there is some substance in the former regulator’s claims but objectively it looks as if he may be overstating his case. Consumers may not be hugely better off financially from the renegotiation of the Ballylumford contract. NIE has described the benefits as marginal. But it is leading to lower emissions of greenhouse gases and it has presented us with new, more efficient plant which incidentally only Coolkeeragh is also offering to provide. The Kilroot renegotiation would have delivered benefits along the same lines. That it has so far come to nothing is probably not the fault of the Regulator.

²⁵ Drawn from transcript of interview with Sir Gerry Loughran (2003).

²⁶ Drawn from transcript of interview with Nigel Smyth of Confederation of British Industry (2003).

Nevertheless the Regulator does to some extent blame himself, not for the breakdown in any particular negotiation, but for failing to create the political momentum to drive through in a shorter time the change the industry needed. One is somewhat surprised that he should ever have seen that campaigning role as appropriate for a public servant to pursue. But McIlDoon draws a distinction. His function was not to make policy but to persuade ministers to do so. Not to succeed in doing that he says was his biggest failure.

Conclusions

Northern Ireland has experienced two forms of energy regulation each identified with the Director General in charge at the time. The first was conventional in style though that observation implies no criticism. Horton operated the system according to precepts accepted and approved throughout the UK. He resisted any suggestion that he should change tack to deliver a more acceptable political outcome. Indeed by creating an organisation immune to influence from interest groups Horton bequeathed to his successor an important legacy. Offer would be seen and understood as an independent body.

When McIlDoon took over he set about, as he was free to do, to challenge the system within the limits of the law. His actions may not have been expected but it is difficult to argue that they constituted a form of regulatory risk which added to the cost of capital of NIE. In so far as they were unpredictable, they were risks that large investors could diversify away.

McIlDoon expanded the notion of what a regulator should do. In the absence of political direction, despite his protestations, he created a form of policy. In essence, though the target was never made explicit, it was not just to bring the price of electricity down but to bring it much closer to GB levels. His initiatives have helped but the reform of the industry is still a job in progress. That it hasn't moved faster is down to the lack of political support he needed to force change through. Though he had the implicit backing of senior civil servants for his radical approach, such support was no substitute for overt political approval.

Looking back it is clear competition was supposed to be the engine for change. In the view of DETI itself, it has however done nothing at all for any consumers except the 750 large users who have access to the eligible market. When it became clear that it wasn't having the desired effect, and that conclusion was reached fairly quickly, a radical rethink should have taken place. Putting in a new Regulator with new ideas but then denying him political backing was a flawed approach. An explicit price target should have been set by Government. Broadly speaking it should have been to offer consumers charges which did not exceed an agreed percentage above the costs faced by comparator regions in GB. Such an aim would have concentrated minds wonderfully.

Against that approach it has been argued that the costs bound up in the generator contracts created a burden for consumers that was unavoidable if the contracts with the generators were to be honoured. On that basis, whatever the range, depth and speed of change, electricity users here would always have had to pay a premium for

their supplies until 2010 at the earliest. Perhaps, but it is hard to resist the view that had there been a clear price target and the political will to pursue it, a lot more could have been achieved.