

ANNEX 1 Charge Restrictions

1. Definitions

1.1 In this Annex:

"average specified rate"	means the arithmetic mean of the daily base rates of Northern Bank Limited (or such other bank as the Authority shall specify from time to time) current from time to time during the period in respect of which the calculation falls to be made;
"maximum regulated SSS/TUoS revenue"	means the revenue calculated in accordance with the formula in paragraph 2;
"Moyle Interconnector Collection Agency Agreement"	has the meaning given to that expression in Condition 37.
"Moyle revenue"	means the revenue which the Licensee is allowed to recover in respect of CAIR _t in accordance with paragraph 2(B) (such revenue being zero where CAIR _t is zero);
"quantity entering the total system"	means the aggregate quantity of units metered on entry to the total system in relevant year t (minus any units consumed by generation sets and imported from the total system);
"regulated SSS/TUoS revenue"	means the revenue (measured on an accruals basis) derived from SSS/TUoS charges (including any revenue received from any Separate Business) in relevant year t after deduction of value added tax (if any) and any other taxes based directly on the amounts so derived;
"relevant year"	means a financial year commencing on or after 1 April 1992 up to 1 April 2008, thereafter meaning a year commencing on or after 1 October 2009;
"relevant year t"	means that relevant year for the purposes of which any calculation falls to be made; "relevant year t - 1" means the relevant year preceding relevant year t or, in respect of the period prior to 1 April 1992, the period of 12 calendar months commencing on 1 April 1991; and similar expressions shall be construed accordingly
"SSS/TUoS charge(s)"	means the charges for System Support Services and for transmission use of the All-Island Transmission Networks system-charges as provided for under Condition 30;

"SSS/TUoS charge restriction condition" means this Annex as from time to time modified or replaced in accordance therewith or pursuant to Article 14, 17, 17A or 18 of the Order, under the Energy Order, the SEM Order or the Directive Regulations;

"uncollected SSS/TUoS revenue" means any amount owed to the Licensee in respect of regulated SSS/TUoS revenue, which amount remains unpaid six months after the date it first fell due for payment or which amount the Licensee deems (in accordance with the payment security policy) to be unrecoverable before the expiry of that six month period; plus the reasonable recovery costs incurred by the Licensee in respect of such amount and the reasonable interest attributable to such amount (calculated, in both cases, in accordance with the payment security policy);

"unit" means a kilowatt hour;

"Wheeled Unit" means a unit (whether generated inside or outside Northern Ireland) which enters the total system at any point and is delivered to a place outside Northern Ireland.

2. **Restriction of SSS/TUoS charges: basic formula**

The Licensee shall, in setting the SSS/TUoS charges, use its best endeavours to ensure that in any relevant year the regulated SSS/TUoS revenue shall not exceed the maximum regulated SSS/TUoS revenue which shall be the aggregate of:

- (A) the maximum core SSS/TUoS revenue in relevant year t (M_{TSOt})
Plus
- (B) the CAIR_t amount.

The maximum core SSS/TUoS revenue shall be calculated as follows:

$$M_{TSOt} = A_{TSOt} + B_{TSOt} + D_{TSOt} + K_{TSOt}$$

where:

A_{TSOt} means:

- (a) the cost of System Support Services in relevant year t ~~including the cost of the gas turbines contracted under the cancellable generating unit agreements as outlined in the relevant Schedule of the NIE Energy Supply Licence in relevant year t~~ and including amounts payable by the Licensee to any person for the provision or use of any System Support Services provided over any interconnector in relevant year t; plus
- (b) amounts payable to the Transmission Owner Business for the provision of transmission services in relevant year t; plus
- (c) amounts levied in relevant year t on the Transmission System Operator Business by the Market Operation Activity in accordance with annex 1 of the Northern Ireland Market Operator Licence;

B_{TSOt} means the allowed SSS/TUoS revenue in pounds millions in relevant year t which is derived from the following formula:

in the relevant year commencing on 1 November 2007, B_t shall equal $(£3.080m * RPI_{2008}/RPI_{2007}) + (0.5 * £8.238 * RPI_{2009}/RPI_{2007})$;

in the relevant year commencing on 1 October 2008, B_t shall equal $0.5 * (£8.238m * RPI_{2009}/RPI_{2007}) + £8.291m * RPI_{2010}/RPI_{2007}$;

in the relevant year commencing on 1 October 2009, B_t shall equal $£8.291m * RPI_{2010}/RPI_{2007}$

$$B_{TSOt} = B_{TSOt-1} * (1 + RPI_t / 100)$$

where:

~~B_{TSOt} for relevant year 16 (or the year 2007/08) shall assume that B_{TSOt-1} equals £6.402m;~~

RPI_t means the Retail Price Index (1987 = 100) published or determined with respect to October in relevant year t;

RPI₂₀₀₆ means the value of RPI_t in the relevant year commencing on 1 April 2006 which is 200.4; and

RPI₂₀₀₇ means the value of RPI_t in the relevant year commencing on 1 April 2007 which is 208.9;

rpi_t means the percentage change (whether a positive or negative value) in the Retail Prices Index between that published or determined with respect to October in the relevant year t and that published or determined with respect to the immediately preceding October;

D_{TSO_t} means the aggregate of the allowed charge ~~in pounds millions~~ in relevant year t for excluded SSS/TUoS costs as defined in paragraph 8.1 of this Annex and the allowed change of law revenues as determined by the Authority in accordance with paragraph 5.1

CAIR_t (a) in respect of relevant years commencing after SEM Go-Live, has the same meaning as is given to that expression in the Moyle Interconnector Collection Agency Agreement in respect of relevant year t; and (b) in respect of the relevant year t in which SEM Go-Live occurs, means an amount submitted by the Licensee to the Authority (following agreement with the Transmission Owner) and approved by the Authority (subject to such adjustments as the Authority reasonably determines following consultation with the Licensee) based on the meaning such expression has in the Moyle Interconnector Collection Agency Agreement in respect of that relevant year, but reflecting the portion of that relevant year that remains unexpired at SEM Go-Live.

K_{TSO_t} means the correction factor (whether a positive or negative number) to be applied to the maximum core regulated SSS/TUoS revenue in relevant year t derived using the following formula:

$$K_{TSO_t} = (M_{TSO_{t-1}} - R_{TSO_{t-1}}) (1 + I_t / 100)$$

Where:

M_{TSO_{t-1}} means the maximum core SSS/TUoS revenue in relevant year t-1

R_{TSO_{t-1}} means the regulated SSS/TUoS revenue less (other than the Moyle revenue which is attributable to the financing and other costs associated with the Moyle Interconnector (as referred to in the definition of the term CAIR_t below))

I_t means the average specified rate.

~~In respect of the first and ninth relevant years commencing 1st April 1992 K_{TSO_t} will have the value zero.~~

In relevant year t ending 30 September 2009 31 March 2009 K_{TSO_t} shall be as submitted by the Licensee to the Authority and approved by the Authority (with such

adjustments as the Authority reasonably considers appropriate in the circumstances) and calculated as the sum of the amounts resulting from the application of the following: (a) the formula above being applied (in place of t-1) to the period from SEM Go Live to 31 March 2008; and (b) the K_{TSO_t} factor under Schedule 5B of NIE plc's combined transmission and public electricity supply licence in effect as at 1 June 2007, applied (in place of t-1) to the period from 1 April 2007 up to SEM Go Live.

3. **Restriction of SSS/TUoS charges: adjustments**

3.1 If, in respect of any relevant year, ~~except the ninth relevant year~~, the regulated SSS/TUoS revenue exceeds the maximum regulated SSS/TUoS revenue by more than the permitted one-year percentage, the Licensee shall furnish an explanation to the Authority and in the next following relevant year the Licensee shall not effect any increase in the SSS/TUoS charges unless it has demonstrated to the reasonable satisfaction of the Authority that the regulated SSS/TUoS revenue would not be likely to exceed the maximum regulated SSS/TUoS revenue in that next following relevant year.

3.2 If, in respect of any 3 successive relevant years ~~excluding the ninth relevant year~~, the sum of the amounts by which the regulated SSS/TUoS revenue has exceeded the maximum regulated SSS/TUoS revenue is more than the permitted 3-year percentage, then in the next following relevant year the Licensee shall, if required by the Authority, adjust the SSS/TUoS charges such that the regulated SSS/TUoS revenue would not be likely, in the judgement of the Authority, to exceed the maximum regulated SSS/TUoS revenue in that next following relevant year.

3.3 In this paragraph:

"permitted one-year percentage" means 4 per cent of the maximum regulated SSS/TUoS revenue; and

"permitted 3-year percentage" means 5 per cent of the maximum regulated SSS/TUoS revenue in the second of the relevant years.

4. **Information to be provided to the Authority in connection with the SSS/TUoS charge restriction conditions**

4.1 Where any change is intended to be made in the SSS/TUoS charges regulated under paragraph 2, the Licensee shall not later than the time referred to in paragraph 4.2 provide the Authority with:

- (a) a written forecast of the maximum regulated SSS/TUoS revenue, together with its components, in respect of the relevant year t in which such change is to take effect and in respect of the next following relevant year t + 1;
- (b) a written estimate of the maximum regulated SSS/TUoS revenue, together with its components, in respect of the relevant year t-1 immediately preceding the relevant year in which the change is to take effect unless a statement complying with paragraph 4.6 in respect of relevant year t-1 has been furnished by the Licensee to the Authority before the time referred to in paragraph 4.2.

4.2 The relevant time referred to in paragraph 4.1 shall be 14 days prior to the date of publication of such charges.

- 4.3 If within 3 months of the commencement of any relevant year t the Licensee has not provided the aforementioned forecasts pursuant to paragraph 4.1 for the purpose of such changes in charges as are referred to in paragraph 4.1, the Licensee shall forthwith provide the Authority with a written forecast of the maximum regulated SSS/TUoS revenue (together with its components) in respect of relevant year t .
- 4.4 The Authority may issue directions providing that any forecast or estimate provided in accordance with paragraph 4.1 or 4.3 shall be accompanied by such information as regards the assumptions underlying the forecast or estimate as may be necessary to enable the Authority to be satisfied that the forecast or estimate has been properly prepared on a consistent basis and the Licensee shall comply with any such directions.
- 4.5 Not later than 6 weeks after the commencement of each relevant year t , the Licensee shall send to the Authority a statement as to:
- (a) whether or not the provisions of paragraph 3 are likely to be applicable in consequence of the regulated SSS/TUoS revenue in the preceding relevant year $t-1$ or the 3 preceding relevant years $t-1$, $t-2$ and $t-3$; and
 - (b) its best estimate as to the relevant correction factor K_{TSO_t} calculated in accordance with the formula set out in paragraph 2 to be applied in calculating the maximum regulated SSS/TUoS revenue in respect of relevant year t .
- 4.6 Not later than 3 months after the end of each relevant year the Licensee shall send to the Authority a statement, in respect of that relevant year, showing the specified items referred to in paragraph 4.8.
- 4.7 The statement referred to in the preceding paragraph shall be:
- (a) accompanied by a report from the Auditors that in their opinion:
 - (i) such statement fairly presents each of the specified items referred to in paragraph 4.8 in accordance with the requirements of the SSS/TUoS charge restriction conditions; and
 - (ii) the amounts shown in respect of each of those specified items are in accordance with the Licensee's accounting records which have been maintained in respect of each of the relevant Separate Businesses in accordance with Condition 2; and
 - (b) certified by a director of the Licensee on behalf of the Licensee that to the best of his knowledge, information and belief having made all reasonable enquiries:
 - (i) there is no amount included in its calculations under paragraph 2 which represents other than
 - (aa) Not used
 - (bb) an amount permitted under the SSS/TUoS charge restriction conditions to be so included;

- (ii) all amounts which should properly be taken into account for the purposes of the SSS/TUoS charge restriction conditions have been taken into account.

4.8 The specified items to be contained in the statement referred to in paragraph 4.6 shall be the following:

- (a) the regulated SSS/TUoS revenue;
- (b) the maximum regulated SSS/TUoS revenue;
- (c) the cost of A_{TSO_t} , calculated as provided under paragraph 2 (showing separately each component thereof);
- (d) the allowed SSS/TUoS revenue, being B_{TSO_t} , calculated as provided under paragraph 2;
- (e) any other excluded SSS/TUoS costs and allowed change of law revenues, being D_{TSO_t} calculated as provided under paragraph 2 (showing separately each component thereof);
- (f) such other items as shall be specified in directions issued by the Authority from time to time for the purposes of this Annex.

5. Duration of SSS/TUoS charge restriction conditions

5.1 This Annex other than this paragraph 5 shall apply so long as this Licence continues in force but shall cease to have effect (in whole or in part, as the case may be) if the Licensee delivers to the Authority a disapplication request made in accordance with paragraph 5.2 and:

- (a) the Authority agrees in writing to the disapplication request; or
- (b) the application (in whole or in part) of this Annex (other than this paragraph 5) is terminated by notice given by the Licensee in accordance with either paragraph 5.4 or paragraph 5.5.

5.2 A disapplication request pursuant to this paragraph 5 shall (a) be in writing addressed to the Authority, (b) specify this Annex (or any part or parts thereof) to which the request relates and (c) state the date from which the Licensee wishes the Authority to agree that the specified paragraphs of this Annex shall cease to have effect.

5.3 Save where the Authority agrees otherwise, no disapplication following delivery of a disapplication request pursuant to this paragraph 6 shall have effect earlier than the date (the "Disapplication Date") which is the later of:

- (a) the date occurring 18 months after delivery of the disapplication request; and
- (b) 31 March 2010.

5.4 If the Authority has not made a reference to the Competition Commission under Article 15 of the Order relating to the modification of the relevant paragraphs of this Annex before the beginning of 12 months which will end with the Disapplication Date, the Licensee may deliver written notice to the Authority terminating the application of this Annex (or any part or parts

thereof other than this paragraph 5) as are specified in the disapplication request with effect from the Disapplication Date or a later date.

- 5.5 If the Competition Commission makes a report on a reference made by the Authority relating to the modification of this Annex (or any part or parts thereof) specified in the disapplication request and such report does not include a conclusion that the cessation of this Annex, in whole or in part, operates or may be expected to operate against the public interest, the Licensee may within 30 days after the publication of the report by the Authority in accordance with Article 16 of the Order deliver to it written notice terminating the application of this Annex (or any part or parts thereof other than this paragraph 5) with effect from the Disapplication Date or a later date.
- 5.6 A disapplication request or notice served under this paragraph 5 may be served in respect of a specified geographic area.

~~If by the date 4 months after SEM Go Live (or such later date as may be agreed by the Licensee and the Authority) (the "Disapplication Date") the Authority has not made a reference to the Competition Commission under Article 15 of the Order so framed as to at least require the Competition Commission to investigate and report on the question of whether this Annex (or any part or parts thereof) operates or may be expected to operate against the public interest, then with effect from the Disapplication Date paragraph 2 shall be amended to read:~~

~~—————"The Licensee shall in setting the SSS/TUoS charges use its best endeavours to ensure that in any relevant year the regulated SSS/TUoS revenue shall not exceed such amount as the Licensee determines is reasonable in all the circumstances."~~

6. **Change of Law**

- 6.1 Where it appears to the Licensee that there has been, or is likely to be, a relevant change of law which has had or is likely to have a material effect on the financial position and performance of the Transmission System Operation Business, the Licensee may require the Authority to determine whether the relevant change of law has had or is likely to have such an effect, and if so what amounts, if any, should be treated as allowed change of law revenues in calculating D_{TSO} for relevant year t and each succeeding relevant year in accordance with paragraph 2 to ensure that the financial position and performance of the Licensee is likely, so far as reasonably practicable, to be the same as if the relevant change of law had not taken place. In determining the matters provided for in the paragraph above, the Authority shall have regard, where relevant, to:
- (a) its intentions in relation to the development and implementation of the "requisite arrangements", as provided for in condition 60 of the NIE Energy Supply Licence;
 - (b) the period over which the Licensee shall incur costs by reason of the relevant change of law;
 - (c) the incremental costs (including financing costs) which the Licensee has been or will be required to incur as a consequence of the relevant change of law; and
 - (d) the other circumstances of the case.
- 6.2 A notice given to the Authority by the Licensee pursuant to paragraph 6.1 shall contain or be accompanied by all relevant details of the relevant change of law and such other information as the Authority shall require and, unless the Authority shall otherwise consent, shall be given

not later than the first day of ~~April~~~~October~~ immediately preceding the first of the relevant years in respect of which the Licensee wishes any change in such elements to take effect.

6.3 This Annex shall be modified to give effect to any determination made by the Authority under this paragraph 6. Such modification shall have effect from the later of the date of the determination and the date upon which the relevant change of law comes into force.

6.4 In this paragraph:

"legal requirement"

means, in relation to the Licensee, any of the following:

- (a) any enactment to the extent that it applies to the Licensee;
- (b) any regulation made by the Council or the Commission of the European Communities to the extent that it applies to the Licensee or a decision taken by the said Commission which is binding on the Licensee to the extent that it is so binding;
- (c) any interpretation of law, or finding, contained in any judgment given by a court or tribunal of competent jurisdiction in respect of which the period for making an appeal has expired which requires any legal requirement falling within (a) or (b) above to have effect in a way different to that in which it previously had effect;
- (d) any direction of a competent authority other than, insofar as it applies to the Licensee, the Authority (except in the exercise of its powers under paragraph 4 of Condition 16) or the Department;

"relevant change of law"

means any of the following:

- (a) the application to the Licensee of any legal requirement which did not previously so apply or the change of any legal requirement relating to the Licensee (including any such legal requirement ceasing to apply, being withdrawn or not being renewed);
- (b) a change of the United Kingdom Plan, as it applies to Northern Ireland, for the reduction of emissions, made by the Secretary of State on 20 December 1990 pursuant to section 3(5) of the Environmental Protection Act 1990 (as it shall have been amended, supplemented or replaced from time to time).

7. Unit Coverage

The component of maximum regulated ~~SSS/TUoS System Support Service~~ revenue relating to ~~System Support Services~~ (or certain parts of that component ~~the maximum regulated System Support Services revenue~~) can potentially be recovered from the quantity entering the total

system in the authorised transmission area and from Wheeled Units. The final decision regarding which units in particular the **component of maximum regulated SSS/TUoS revenue relating to System Support Services** (or certain parts of **that component**) ~~the maximum regulated System Support Services revenue~~ will be recovered from in relevant year t (“unit coverage”) rests with the Authority. In each relevant year t on the decision of the Authority regarding unit coverage of the System Support Services charge, the Licensee will then draw up for the relevant year t the schedule of System Support Services charges in accordance with Condition 30 in a manner which is consistent with the decision of the Authority regarding unit coverage. If the Licensee draws up for relevant year t the schedule of System Support Services charges in accordance with Condition 30 in a manner which is not consistent with the decision of the Authority regarding unit coverage then the Authority’s approval under Condition 30 paragraph 6 for the form of this schedule will not be granted.

8. Excluded SSS/TUoS Costs

- 8.1 Subject to paragraphs 8.2 and 8.3 the following costs and revenues of the Licensee (whether a positive or negative amount) shall be treated as excluded **TUoS/SSS** ~~system support service~~ costs in relevant year t:
- (a) any reasonable costs incurred by the Transmission System Operator Business (in relevant year t) in complying with the requirements imposed on the Licensee under legislation and other legal requirements through which Directive 2003/54/EC is implemented, whether before or after the coming into effect of this Annex, as approved by the Authority, and to the extent not recovered under another part of the Licence or under the Northern Ireland Market Operator Licence or under the Transmission Owner Licence;
 - (b) any reasonable costs incurred by the Transmission System Operator Business (in relevant year t) in complying with the requirements imposed on the Licensee under the arrangements for the Single Electricity Market (being the project described in the Memorandum of Understanding dated 23 August 2004 and made between the Authority and the Commission for Energy Regulation in Dublin), whether before or after the coming into effect of this Annex, as approved by the Authority, and to the extent not recovered under another part of the Licence or under the Northern Ireland Market Operator Licence or under the Transmission Owner Licence,
 - (c) costs incurred in relevant year t associated with any future divestment of the Transmission System Operator Business;
 - (d) the pension costs (in relevant year t) of the Transmission System Operator Business to the extent reasonably approved by the Authority;
 - (e) amounts that become uncollected SSS/TUoS revenue in relevant year t less any amount or part of an amount treated as uncollected SSS/TUoS revenue in respect of a preceding relevant year that has been paid to the Licensee in relevant year t;
 - (f) **costs incurred in relevant year t in respect of those items referred to in Appendix 3 of the Authority’s decision paper entitled “SONI Price Control 2007 – 2010” dated 4 April 2008 and as reasonably approved by the Authority**
 - (g) **costs incurred in relevant year t to finance the difference in the estimated CAIRt used in the preparation and approval of the tariffs prior to the relevant year t and the CAIRt amount approved by NIAUR prior to the end of March during the relevant year t. The financing costs are to be charged at [base rate plus 2%].**

- (h) costs incurred in relevant year t to finance the working capital requirements of SEMO. The financing costs are to be charged at [base rate plus 2%].
- (i) any other costs and revenues of the Transmission System Operator Business which:-
 - (i) were not taken into account in setting A_{TSOt} or B_{TSOt} ;
 - (ii) in the case of costs, those which cannot reasonably be controlled by the Transmission System Operator Business; and
 - (iii) the Authority determines, upon an application to it by the Licensee, shall be included for the purposes of this paragraph.

8.2 The Licensee shall, in a timely manner, give the Authority notice of any claim for costs pursuant to paragraph 8.1. Such notice shall contain or be accompanied by all relevant details of the costs claimed and such other information as the Authority shall require in order to determine whether such costs can be recovered by the Licensee. Any claim for recovery of costs by the Licensee pursuant to paragraph 8.1 shall require to be approved by the Authority and shall not become effective until approved by the Authority.

8.3 No costs incurred or revenues received by the Transmission System Operator Business shall be included in more than one of the categories in sub-paragraphs (a) to (i) of paragraph 8.1.