

Annex 4

Moyle Participation in Transmission Licence

|

Formatted: Different first page header

LICENCE DOCUMENT

**in respect of licence under Article 10(1)(b) of the
Electricity (Northern Ireland) Order 1992
granted to**

MOYLE INTERCONNECTOR LIMITED

Note

The licence holder is subject to the environmental obligations set out in Schedule 9 (Preservation of Amenity and Fisheries) of the Electricity (Northern Ireland) Order 1992.

CONTENTS

PART I:	TERMS OF THE LICENCE	1
PART II:	THE CONDITIONS.....	2
Part II A	102
Condition 1:	Interpretation and construction	102
Part II B	2143
Condition 2:	Maximisation of Capacity Receipts etc.....	2143
Condition 3:	Delivery of Statutory Accounts	2244
Condition 4:	Economic Purchasing of Interconnector Services	2345
Condition 5:	Health and Safety of Employees	2446
Condition 6:	Provision of information to the Authority.....	2547
Condition 7:	Provision of Information to other persons.....	2749
Condition 8:	Payment of fees	2820
Condition 9:	Disposal of relevant assets.....	3122
Condition 9A:	Availability of Resources and Undertaking from Ultimate Controller	
	3526	
Condition 9B:	TSO Certification	3829
Part II C:	Compliance With Codes	3930
Condition 10:	Security arrangements	3930
Condition 11:	Compliance with Grid Code.....	4034
Part II D:	Maintenance And Other Matters.....	4132
Condition 12:	Operation and Maintenance Standards, Availability and Quality of Service	4132
Condition 13:	The Licensee’s regulated revenue entitlement.....	4334
Condition 14:	Prohibited Activities	4536
Part IIE:	Use Of The Moyle Interconnector.....	4637
Condition 15:	Basis of charges for use of Moyle Interconnector.....	4637
Condition 16:	Non-discrimination in the provision of use of Moyle Interconnector	
	4738	
Condition 17:	Requirement to give third party access pursuant to relevant access arrangements	5044
Condition 18:	Functions of the Authority.....	5344

Condition 19: SEM Trading and Settlement Code and GB Balancing and Settlement Code.....	5546
Part II F: Restriction On Use Of Certain Information	5748
Condition 20: Restriction on use of certain information	5748
Schedule 1: Authorised Transmission Area	6657
Schedule 2: Revocation	6758

PART I: TERMS OF THE LICENCE

1. The Director, in exercise of the powers conferred by Articles 10(1), 10(6), 11 and 13 of the Electricity (Northern Ireland) Order 1992 (hereinafter referred to as the "**Order**") hereby grants to Moyle Interconnector Limited (hereinafter referred to as the "**licensee**") a licence to participate in the transmission of electricity for the purpose of giving a supply to any premises or enabling a supply to be so given in the authorised transmission area designated in Schedule 1 during the period specified in paragraph 3, subject to the Conditions set out in Part II.
2. The Conditions set out in Part II are subject to modification or amendment in accordance with their terms or with Articles 14, 17, 17A (as inserted by Article 36(2) of the Energy (Northern Ireland) Order 2003) or 18 of the Order and/or with any provision for the modification of the same in the Energy (Northern Ireland) Order 2003. The licence hereby granted is further subject to the terms as to revocation specified in Schedule 2.
3. The licence hereby granted shall come into force on the date on which it is granted and, unless revoked in accordance with the terms specified in Schedule 2, shall continue in force until determined by not less than 25 years' notice in writing given by the Authority to the licensee, such notice not to be served earlier than the tenth anniversary of the date on which the licence is granted.

.....
Director

28 February 2003

PART II: THE CONDITIONS

Chapter 1

Condition A: Application of Other Licence Conditions and Further Modification

Application of Conditions

- 1— ~~Notwithstanding any other provision of the Licence, the following Conditions shall have effect as follows:~~
 - (a) ~~Conditions B and C shall cease to have effect on the date 3 months after SEM Go Live (or such later date as the Authority may direct);~~
 - (b) ~~Condition D shall cease to have effect on the date 18 months after SEM Go Live (or such later date as the Authority may direct); and~~
 - (c) ~~save for Condition 19 of Chapter 3, which shall be effective from the date this Condition becomes effective, the Conditions contained in Chapter 3 shall (subject to paragraph 8) be of no effect.~~

Further Modification of Conditions

- 2— ~~At SEM Go Live, the Conditions contained in Chapter 2 shall automatically be modified insofar as is necessary to ensure that they are identical in form and content to the Conditions contained in Chapter 3.~~
- 3— ~~Immediately following SEM Go Live, the Conditions shall automatically be modified by the deletion of Chapter 3 (and the Conditions contained in it).~~
- 4— ~~Where a Condition ceases to have effect in accordance with paragraph 1(a) or 1(b), the Conditions shall automatically be modified by the deletion of that Condition.~~
- 5— ~~Once all of the Conditions referred to in paragraphs 1(a) and 1(b) have been deleted in accordance with paragraph 4, the Conditions shall automatically be modified by the deletion of this Chapter 1 (and the Conditions contained in it), and by the deletion of the heading “Chapter 2” (but without prejudice to the continuation of the Conditions then contained in Chapter 2).~~

Interpretation

~~6— In Conditions A, B, C and D, references to “Chapter 1”, “Chapter 2” and “Chapter 3” are to the sections of the licence created as such by the licence modifications by which this Condition A was included in the licence.~~

~~7— Except in the Conditions contained in Chapter 3, references to a numbered condition are (unless expressly stated otherwise) to the relevant numbered condition contained in Chapter 2. In the Conditions contained in Chapter 3 references to a numbered condition are (unless expressly stated otherwise) to the relevant numbered condition contained in Chapter 3.~~

~~8— Notwithstanding paragraph 1(c), in the period prior to SEM Go Live, the Conditions contained in Chapter 1 and Chapter 3 shall be interpreted in accordance with Condition 1 of Chapter 3, as if the provisions of Condition 1 of Chapter 3 were set out in (and applicable only to) those Conditions.~~

~~9— In Conditions A, B, C and D, unless the context otherwise requires:~~

~~**“Republic of Ireland
electricity operator”**~~

~~means any person engaged in the generation, transmission, distribution or supply of electricity in the Republic of Ireland, including any holder of a licence or authorisation to do so, or a person who has been granted a permit under Section 37 of the Electricity (Supply) Act 1927.~~

Condition D: Run-Off Steps (General)

General Requirement

~~1 The Licensee shall take all reasonable steps, and do all such reasonable things, as are (in each case) within its power and necessary or expedient in order to fully and effectively run off, from SEM Go Live, the Pre SEM Arrangements for which it is Responsible.~~

Requirement to Co-operate

~~2 Without prejudice to paragraphs 1 and 3, the Licensee shall cooperate with authorised electricity operators and Republic of Ireland electricity operators (and with the Department, the Authority and such other persons as the Authority may direct) and shall take all reasonable steps, and do all such reasonable things, as are (in each case) within its power and necessary or expedient in order to enable:~~

~~(a) authorised electricity operators to comply with their statutory or licence obligations to fully and effectively run off, from SEM Go Live, the Pre SEM Arrangements for which they are Responsible;~~

~~(b) authorised electricity operators to comply with any directions by the Authority under a provision of their licence equivalent to paragraph 4; and~~

~~(c) Republic of Ireland electricity operators to comply with their statutory or licence obligations (if any) to fully and effectively run off, from SEM Go Live, the Pre SEM Arrangements for which they are Responsible,~~

~~and in the event of any dispute between the Licensee and such other person as to whether a particular step, or thing, is reasonable, the Licensee or such other person may refer the matter to the Authority for determination (which determination shall be final for the purposes of this paragraph).~~

Requirements to Comply with Directions

~~3 Without prejudice to paragraphs 1 and 2, the Licensee shall take all reasonable steps, and do all such reasonable things, as are (in each case) within its power and necessary or expedient in order to comply with any direction made from time to time by the~~

~~Authority in accordance with paragraph 4 (and shall by so doing be taken to have complied with such direction).~~

~~4 The Authority may issue directions to the Licensee setting out the steps to be taken (or procured) by the Licensee which are, in the Authority's reasonable opinion, appropriate in order to fully and effectively run off, from SEM Go Live, the Pre SEM Arrangements for which it is Responsible.~~

~~5 The Authority may, at any time, by a further direction in accordance with paragraph 4 (in order to fully and effectively run off, from SEM Go Live, the Pre SEM Arrangements for which the Licensee is Responsible) amend or cancel any direction (or part thereof) previously made under paragraph 4.~~

~~6 The Authority may not make a direction under paragraph 4 until it has undertaken such period of prior consultation with the Licensee (and such other persons as the Authority deems appropriate) as is reasonable in the circumstances. No direction made under paragraph 4 shall be effective until a copy is served on the Licensee.~~

Requirement not to Frustrate

~~7 Without prejudice to any public or administrative law right, or statutory right, that the Licensee may have to bring any claim against any public body or person, the Licensee shall not take any step, or exercise any right, which is intended to hinder or frustrate the full and effective run off, from SEM Go Live, of the Pre SEM Arrangements.~~

Potential Conflict

~~8 If the Licensee is aware of any conflict between its compliance with the provisions of this Condition or any direction under paragraph 4 and its compliance with any other Condition of the Licence, the Licensee shall promptly inform the Authority of such conflict.~~

~~9 Provided the Licensee complies with paragraph 8, the other Conditions of the Licence shall prevail over this Condition in the event of conflict. If there is any conflict between a direction made under paragraph 4 and another requirement of the Licence, the provisions of the direction shall prevail.~~

Information

~~10 The Licensee shall provide to the Authority, in such manner and at such times as the Authority may reasonably require, such information and shall procure and furnish to it such reports as the Authority may reasonably require or deem necessary or appropriate to enable the Authority to monitor the Licensee's compliance with the requirements of this Condition.~~

~~11 If the Licensee is aware (or should reasonably be aware) of any matter or circumstance which it considers will (or which the Licensee should reasonably consider likely to) hinder or frustrate the full and effective run off, from SEM Go Live, of the Pre SEM Arrangements, the Licensee shall promptly inform the Authority of such matter or circumstance.~~

Definitions

~~12 In this Condition, unless the context otherwise requires:~~

~~“core industry documents” means those documents which~~

- ~~(a) are established or required to be entered into pursuant to or in accordance with a licence granted under the Order; or~~
- ~~(b) are in the Authority's opinion central industry documents associated with the authorised activities of the Licensee or authorised electricity operators and which have been designated as such by the Authority.~~

~~“Power Procurement Business” has the meaning given to that expression in Condition 16 of Chapter 3.~~

~~“Pre SEM Arrangements” means:~~

- ~~(a) the Supply Competition Code;~~

- ~~(b) the Interim Settlement Code and Interim Settlement Agreements;~~
- ~~(c) the renewable output factor arrangements;~~
- ~~(d) the small renewable spill arrangements;~~
- ~~(e) the top up and standby arrangements (if any);~~
- ~~(f) the arrangements for payment of the bulk supply tariff;~~
- ~~(f) the arrangements for wheeling; and~~
- ~~(g) any other core industry document as the Authority may direct for the purposes of this paragraph.~~

~~“Responsible”~~

means, in respect of:

- ~~(a) the Supply Competition Code, the Power Procurement Business (or such other person as the Authority may direct following consultation with the Power Procurement Business and such other person);~~
- ~~(b) the Interim Settlement Code and the Interim Settlement Agreements, the Power Procurement Business (or such other person as the Authority may direct following consultation with the Power Procurement Business and such other person);~~
- ~~(c) the renewable output factor arrangements;~~

~~the Power Procurement Business (or such other person as the Authority may direct following consultation with the Power Procurement Business and such other person);~~

~~(d) the small renewable spill arrangements, the Power Procurement Business (or such other person as the Authority may direct following consultation with the Power Procurement Business and such other person);~~

~~(e) the top up and standby arrangements, the Transmission Owner (or such other person as the Authority may direct following consultation with the Transmission Owner and such other person); and~~

~~(f) the arrangements for payment of the bulk supply tariff, the Power Procurement Business (or such other person as the Authority may direct following consultation with the Power Procurement Business and such other person);~~

~~(f) the arrangements for wheeling, the Transmission Owner (or such other person as the Authority may direct following consultation with the Transmission Owner and such other person); and~~

~~(g) any other core industry document~~

~~specified by the Authority for the purposes of this paragraph, such person or persons as the Authority considers to be responsible for such document (as specified in the relevant direction).~~

~~“run-off”~~

~~means, in relation to any arrangements, the bringing to an end of those arrangements, which shall include the determination and settlement (including by way of reconciliation) of electricity and payments in connection with periods up to and including the point at which such arrangements are brought to an end.~~

~~“Transmission Owner”~~

~~means the holder of the transmission owner licence.~~

~~13 References to documents and arrangements in the definitions of “Pre-SEM Arrangements” and “Responsible” set out in paragraph 12 shall (if such documents or arrangements are not otherwise defined in the Licence) be to such documents and arrangements as defined (or, if not defined, referred to) in the conditions of the transmission owner licence, as they existed immediately prior to SEM Go Live.~~

Chapter 2

Part II A

Condition 1: Interpretation and construction

1. Unless the contrary intention appears:
 - (a) words and expressions used in the Licence Document shall be construed as if they were in an enactment and the Interpretation Act (Northern Ireland) 1954 applied to them; and
 - (b) references to an enactment shall include subordinate legislation and in both cases any statutory modification or re-enactment thereof after the date when the licence granted by this Licence Document comes into force.

2. Any word or expression defined for the purposes of any provision of Part II of the Order or of the Energy Order or of the SEM Order shall, unless the contrary intention appears, have the same meaning when used in the Licence Document.

3. In the Licence Document, unless otherwise specified or the context otherwise requires:

“affiliate” in relation to the licensee or any subsidiary of a holding company of the licensee, means any holding company of the licensee or any subsidiary of the licensee or any subsidiary of a holding company of the licensee, in each case within the meaning of [Article 4section 1159](#) of the Companies ~~(Northern Ireland) Order 1986~~[Act 2006](#);

“Auditors” means the licensee's auditors for the time being holding office in accordance with the requirements of the Companies (Northern Ireland) Order 1986;

“authorised” in relation to any business or activity means authorised by licence granted under Article 10 or

	exemption granted under Article 9 of the Order;
“authorised electricity operator”	means any person (other than the licensee) who holds a licence granted pursuant to Article 10 of the Order or whose activities are exempt pursuant to Article 9 of the Order, and any person (other than the licensee) transferring electricity to or from Northern Ireland across an interconnector or who has made application for use of interconnectors which has not been refused;
“Authority”	means the Northern Ireland Authority for Utility Regulation;
“Competent Authority”	means the Department, the Authority and any local or national agency, authority, department, inspectorate, minister, ministry, official or public or statutory person (whether autonomous or not) of, or of the government of, the United Kingdom or the European Community;
“Conditions”	means the Conditions in Part II;
“Department”	means the Department of Enterprise Trade and Investment or any successor and (where the context requires) any predecessor;
“designated”	in relation to any agreement, arrangement, code, notice, proposal therefor or other document, means designated by or on behalf of the Department by means of initialling or descriptive reference whether for the purposes of any of the Conditions or otherwise, but so that an agreement, arrangement, code, notice, proposal therefor or other document so designated may at the discretion of the Department cease to be designated if

amended or modified in any material respect;

- “Directive”** means Directive ~~2003~~[2009/54/72](#)EC of the European Parliament and of the Council of ~~26 June 2003~~[13 July 2009](#) concerning common rules for the internal market in electricity;
- “Directive Regulations”** means the Electricity Order 1992 (Amendment) Regulations (Northern Ireland) 2005 and/or the Electricity Regulations (Northern Ireland) 2007;
- ~~**“Director”** means the Director General of Electricity Supply for Northern Ireland;~~
- “Effective Date”** means the date on which the direction described in paragraph 2 of Part II Condition 13 is issued by the Authority;
- “Energy Order”** means the Energy (Northern Ireland) Order 2003;
- “enforcement matter”** means any matter in respect of which any functions of the Authority under Article 42 of the Energy Order are or may be exercisable;
- “financial year”** bears the meaning ascribed to it in paragraph 1 of Condition 3 of Part II;
- “Grid Code”** means the code of that name prepared and approved in accordance with the transmission system operator licence;
- “holding company”** means a holding company within the meaning of ~~Article 4~~[section 1159](#) of the Companies ~~(Northern Ireland) Order 1986~~[Act 2006](#);
- “Interconnector Business”** means the business of the licensee as holder of this licence in making available for use the Moyle

Interconnector and all activities and matters incidental thereto (including the financing of the Moyle Interconnector);

“Interconnector Services” means any services which are being, or (as the context requires) are to be, provided to the licensee which fall within any of the following categories, namely:

- (a) the carrying out of works of maintenance on the Moyle Interconnector (including by way of the refurbishment of any component or the provision of any replacement components);
- (b) the carrying out of any survey or inspection works on the Moyle Interconnector;
- (c) the carrying out of any repair or reinstatement works in the aftermath of the occurrence of any damage to or destruction of the Moyle Interconnector or any part of it;
- (d) the effecting or maintenance of insurances;
- (e) management, consultancy or other services in relation to any of the matters described in (a), (b), (c) or (d) above;

“land” includes any right, easement or other interest in land and any wayleave;

“lease” includes an underlease and a sub-underlease;

“this licence” means the licence granted by this Licence Document;

“Licence Document”	means this document (comprising Parts I and II and Schedules 1 and 2);
“modification”	includes any addition, omission, amendment and substitution, and cognate expressions shall be construed accordingly;
“Moyle Interconnector”	means the electrical interconnector between Scotland and Northern Ireland which is owned by the licensee and which comprises the converter stations at Ballycronan More, Co. Antrim, Northern Ireland and Auchencrosh, Ayrshire, Scotland and the undersea and underground electric lines which interconnect such converter stations, together with its connections to the transmission system in Northern Ireland and the transmission system in Scotland;
“NIE”	means Northern Ireland Electricity plc Limited , an incorporated company registered in Northern Ireland under number NI026041;
“NIE Energy Supply Licence”	means the licence granted under Article 10(1)(c) of the Order to Northern Ireland Electricity plc on 31 March 1992, which is to be and transferred to NIE Energy Limited (a body corporate registered in Northern Ireland under company number NI27394) on 1 November 2007 pursuant to a statutory scheme on or around SEM Go Live ;
“Northern Ireland Fuel Security Code”	means the document of that title designated as such by the Department as from time to time amended in accordance with its provisions, dealing with the co-operation of licence holders in strategic contingency planning in respect of fuel stocks, the

Formatted Table

modification of the merit order and certain other systems and procedures under the Grid Code during periods when the Department has given and there is in force one or more directions under Article 37(4) of the Order, the entitlement of the licensee and authorised electricity operators to and the collection of certain payments in anticipation of, during and after the expiry of any such periods, and connected matters;

“Northern Ireland Market Operator Licence” means the licence granted, under Article 10(1)(d) of the Order, to SONI on 3 July 2007;

“notice” means (unless otherwise specified) notice given either in writing or by electronic data transfer;

“Order” means the Electricity (Northern Ireland) Order 1992;

“permitted purpose” means the purpose of all or any of the following:

- (a) the Interconnector Business;
- (b) without prejudice to the generality of paragraph (a), any payment or transaction lawfully made or undertaken by the licensee in relation to the disposal of or relinquishment of operational control over any relevant asset in accordance with Part II Condition 9; and
- (c) without prejudice to the generality of paragraph (a), any payment or transaction lawfully made or undertaken by the licensee for a purpose within sub-paragraphs (i) to (vi) of paragraph 5(b) of Part II Condition 9;

“related undertaking”	in relation to any person means any undertaking in which that person has a participating interest as defined by Article 268 of the Companies (Northern Ireland) Order 1986 <u>within the meaning of section 421A of the Financial Services and Markets Act 2000;</u>
“relevant access arrangements”	means arrangements approved by the Authority for the entering into by the licensee with other persons of agreements to transport across the Moyle Interconnector electricity to be provided by or on behalf of such persons (which arrangements may, without limitation, include provision for the granting of rights to use the Moyle Interconnector by way of the transmission system operator inviting competitive bids, on behalf of Moyle, through an auction or other process);
“relevant year”	means :- (a) the period commencing on the later of 1st April 2003 and the Effective Date and ending on 31st March 2004; and (b) a financial year commencing on or after 1st April 2004;
“SEM Go-Live”	means the time and date designated as such by the Authority (with the consent of the Department) for the purpose of licences granted under the Order, being the commencement date for a number of matters including the Single Electricity Market;
“SEM Order”	means the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007;

“Single Electricity Market” means the single wholesale electricity market for the Island of Ireland, implemented in Northern Ireland pursuant to Section 23 of the Northern Ireland (Miscellaneous Provisions) Act 2006;

“Single Electricity Market Trading and Settlement Code” has the meaning given to that expression in the Northern Ireland Market Operator Licence;

“SONI” means SONI Limited, an incorporated company registered in Northern Ireland under Number NI38715;

“subsidiary” means a subsidiary within the meaning of [Article 4section 1159](#) of the Companies (~~Northern Ireland~~) ~~Order 1986~~[Act 2006](#);

“transmission owner licence” means the licence ~~granted, held by Northern Ireland Electricity Limited which has effect~~ under Article 10(1)(b) of the Order, ~~to Northern Ireland Electricity plc (a body corporate registered in Northern Ireland under company number NI026041) on 31 March 1992~~[\(to participate in the transmission of electricity\) pursuant to Regulation 90\(1\)\(a\) of the Internal Markets Regulations](#);

Formatted: Font: Character scale: 0%

“transmission system” means the transmission system in Northern Ireland (but excluding the Moyle Interconnector);

“transmission system operator” means the person authorised, from time to time, under the transmission system operator licence in its capacity as the holder of that licence;

“transmission system operator licence” means the licence granted, under Article 10(1)(b) of the Order, to SONI on 3 July 2007;

“ultimate controller”

means:

- (a) any holding company of the licensee, which is not itself a subsidiary of another company; and/or
- (b) any person who (whether alone or with a person or persons connected with him) is in a position to control, or to exercise influence over, the policy of the Licensee, or any holding company of the Licensee, by virtue of:
 - (i) rights under contractual arrangement to which he is a party or of which he is a beneficiary;
 - (ii) rights of ownership (including rights attached to or deriving from securities or rights under a trust) which are held by him or of which he is a beneficiary.

but shall exclude any director or employee of a corporate body in his capacity as such and any minister, ministry, department, agency, authority, official or statutory person;

and a person shall be considered to be connected with another person if he is a party to any arrangement regarding the exercise of any such right as are described in paragraph (b) above;

“undertaking”	bears the meaning ascribed to it by section 1161 of the Companies Act 2006 Article 267 of the Companies (Northern Ireland) Order 1986;
“use of Moyle Interconnector”	means use of the Moyle Interconnector for the transfer of electricity; and
“year”	means a period of 12 months commencing on 1st January.

Formatted: Not Highlight

Formatted: Not Highlight

4. Unless otherwise specified:

- (a) any reference to a numbered Part or Schedule is a reference to the Part or Schedule bearing that number herein;
- (b) any reference to a numbered Condition or to a numbered Schedule is respectively a reference to the Condition or the Schedule bearing that number in the Part in which the reference occurs;
- (c) any reference to a numbered paragraph is a reference to the paragraph bearing that number in the Part, Condition or Schedule in which the reference occurs; and
- (d) (without prejudice to any provision which restricts such variation, supplement or replacement) any reference to any agreement, licence (other than this licence), code or other instrument shall include a reference to such agreement, licence, code or other instrument as varied, supplemented or replaced from time to time.

5. The heading or title of any Part, Condition, Schedule or paragraph shall not affect the construction hereof.

6. Where any obligation of the licensee is expressed to require performance within a specified time limit that obligation shall continue to be binding and enforceable after that time limit if the licensee fails to perform that obligation within that time limit (but without prejudice to all rights and remedies available against the licensee by reason of the licensee's failure to perform within the time limit).

7. The provisions of section 24 of the Interpretation Act (Northern Ireland) 1954 shall apply for the purposes of the delivery or service of any document, direction or notice to be delivered or served pursuant to this Licence Document, and directions issued by the Authority pursuant to this Licence Document shall be delivered or served as aforesaid.

8.
 - (a) Each relevant legal instrument shall, if the condition under which it was issued is modified at SEM Go-Live ~~in accordance with Condition A~~, continue to have effect under any corresponding provision ~~of Chapter 2~~ as modified, as if it had been made under that corresponding provision.

 - (b) For the purposes of paragraphs 8(a) and 8(c) a “**relevant legal instrument**” means any direction, consent, approval, determination, designation or other instrument issued by the Authority or the Department, prior to SEM Go-Live, in accordance with a condition ~~in Chapter 2 of this licence~~.

 - (c) For the purposes of paragraph 8(a), a “**corresponding provision**” ~~of Chapter 2~~ shall be any provision which, following its modification at SEM Go-Live ~~in accordance with Condition A~~, has (notwithstanding that it has been renumbered, moved, deleted and replaced, or otherwise amended in any way) substantially the same purpose and effect as the provision under which a relevant legal instrument was issued.

Part II B

Condition 2: Maximisation of Capacity Receipts etc.

The licensee shall perform its functions with respect to the Moyle Interconnector in such manner as it considers is best designed to secure the objectives of:-

- (a) maximising the revenues payable pursuant to agreements for use of the Moyle Interconnector which are entered into pursuant to relevant access arrangements;
- (b) maintaining the capacity and functionality of the Moyle Interconnector; and
- (c) optimising the efficiency, reliability, availability and operational life of the Moyle Interconnector.

Part II B: General Provisions

Condition 3: Delivery of Statutory Accounts

1. The first financial year of the licensee shall run from 1 April 2003 to 31 March 2004 and thereafter each financial year of the licensee shall run from 1 April to the following 31 March.
2. The licensee shall deliver to the Authority a copy of the accounts (comprising a balance sheet and profit and loss account), together with the directors' report and the auditors' report thereon, prepared by or for the licensee in respect of each financial year in compliance with the Companies ~~(Northern Ireland) Order 1986~~ [Act 2006](#).
3. The licensee shall procure that such accounts and reports are delivered to the Authority at the same time as they are sent by the licensee to its members.
4. The licensee shall take all appropriate steps within its power to procure a report by the Auditors and addressed to the Authority verifying whether the [licensee has adopted such processes and procedures as, in the opinion of the Auditors, enable it to comply with its](#) obligation to avoid discrimination and cross-subsidies, as referred to in paragraph 3 of Article 19 of the Directive, ~~has been respected~~.
5. The licensee shall, where requested to do so by the Department, provide to the Department a copy of its accounting records for the period specified in the request.

Part II B

Condition 4: Economic Purchasing of Interconnector Services

- 2 The licensee shall contract for the provision of such Interconnector Services as the licensee considers appropriate in order to enable the licensee to discharge its obligations under the Order and Part II Condition 2.
- 3 In contracting for the provision of Interconnector Services pursuant to paragraph 1, the licensee shall, consistent with the objectives stated in Part II Condition 2, purchase or otherwise acquire Interconnector Services from the most economical sources available to it having regard to the quantity and nature of the Interconnector Services required to enable the discharge of its obligations under the Order and Part II Condition 2 and to the diversity, sources and reliability of such Interconnector Services which are available at that time for purchase or other acquisition.
- 4 This Condition shall not extend to prescribing the manner or circumstances in which the licensee shall at any time call for the delivery of the Interconnector Services under any contract entered into pursuant to paragraph 1.
- 5 The licensee shall not be in breach of this Condition by reason only of performing any obligation imposed on it by any enactment or by any of the Conditions or by reason of its giving effect to the relevant access arrangements in force from time to time.

Part II B

Condition 5: Health and Safety of Employees

1 The licensee shall:

- (a) acting jointly and in co-operation with the holders of other licences granted under the Order, consider and discuss matters of mutual concern in respect of the health and safety of persons employed by them; and
- (b) establish and maintain appropriate processes for consultation with representatives of the licensee's employees in respect of the health and safety of those employees.

Part II B

Condition 6: Provision of information to the Authority

1. Subject to paragraphs 3 and 4, the licensee shall furnish to the Authority, in such manner and at such times as the Authority may require, such information and shall procure and furnish to the Authority such reports, as the Authority may consider necessary in the light of the Conditions or the Schedules or as it may require for the purpose of performing the functions assigned or transferred to the Authority by or under any legislation:-

~~(a) the functions assigned to the Authority by or under the Order, the Energy Order, the SEM Order or the Directive Regulations; and~~

~~(b) any functions transferred to the Authority under the Order, the Energy Order, the SEM Order or the Directive Regulations.~~

Formatted: Indent: Left: 1.69 cm, First line: 0 cm

2. The Licensee shall, within 7 days after the date when this paragraph 2 first becomes effective or after the person in question becomes an ultimate controller (as the case may be), procure from each person which the Licensee knows (or reasonably should know) is at any time an ultimate controller of the Licensee a legally enforceable undertaking in favour of the Licensee in a form specified by the Authority, which shall provide that that ultimate controller will give to the Licensee, and will procure that each subsidiary of that ultimate controller (other than the Licensee and its subsidiaries) will give to the Licensee, all such information as may be necessary to enable the Licensee to comply fully with paragraph 1 of this Condition. Such undertaking shall remain in force for as long as the Licensee remains the holder of this Licence and the giver of the undertaking remains an ultimate controller of the Licensee.

Formatted: Indent: Left: -1.21 cm, Hanging: 2.96 cm, Tab stops: Not at 2.96 cm

~~2.3.~~ Without prejudice to the generality of paragraph 1, the Authority may call for the furnishing of accounting information which is more extensive than or differs from that required to be prepared and supplied to the Authority under Condition 3.

[34.](#) The licensee may not be required by the Authority to furnish the Authority under this Condition with information for the purpose of the exercise of its functions under Article 7 of the Energy Order.

[45.](#) The licensee may not be required by the Authority to furnish the Authority under this Condition with any information in relation to an enforcement matter which the licensee could not be compelled to produce or give in evidence in civil proceedings in the High Court.

[65.](#) The power of the Authority to call for information under paragraph 1 is in addition to the power of the Authority to call for information under or pursuant to any other Condition.

[76.](#) In paragraphs 1 to [56](#), “**information**” shall include any documents, accounts, estimates, returns or reports (whether or not prepared specifically at the request of the Authority) of any description specified by the Authority.

Part IIB

Condition 7: Provision of Information to other persons

1. Subject to the provisions of Part II Condition 20, the licensee shall provide (in such manner and at such times as may reasonably be requested by the relevant operator or as may be directed by the Authority) to any other transmission system operator or distribution system operator (where such phrases have the meanings given to them in the Directive) with whose system the Moyle Interconnector is connected:
 - (a) sufficient information to ensure the secure and efficient operation, co-ordinated development and interoperability of, the Moyle Interconnector and such other system; and
 - (b) (subject to the prior written consent of the Authority) such other information as such transmission system operator or distribution system operator requires in order to enable it to comply with its obligations under its licence or under any enactment.
2. The licensee may make a charge for the information given or sent pursuant to paragraph 1 of an amount which shall not exceed the maximum amount specified in directions issued from time to time by the Authority for the purposes of this Condition.

Part II B

Condition 8: Payment of fees

1. The licensee shall, at the times stated hereunder, pay to the Authority fees of the amount specified in or determined under the following paragraphs of this Condition.
2. In respect of the relevant year ending on 31st March 2004, the licensee shall pay to the Authority a fee of such amount as the Authority shall determine in relation to this licence for such relevant year. Any fee so determined shall be paid by the licensee to the Authority within one month of the Authority giving notice to the licensee of its amount.
3. In respect of the year beginning on 1 April in 2004 and in each subsequent year, the licensee shall pay to the Authority a fee which is the aggregate of the following amounts:
 - (a) an amount equal to the proportion which the Authority shall determine in relation to this licence of the amount estimated by the Authority, according to a method which has previously been disclosed in writing to the licensee, as likely to be its costs during the year in question ~~(i) in relation to the exercise of its functions relating to electricity assigned or transferred to it by or under any legislation under the Order, the Energy Order, the SEM Order and the Directive Regulations in relation to the holders of licences granted under Article 10 of the Order and~~ (ii) in connection with the establishment of the Authority and the transfer to the Authority of the functions, property, rights and liabilities of the Director;
 - (b) an amount which is a proportion as determined by the Authority of the amount estimated by the Authority (in consultation with the Competition Commission) as having been incurred in the calendar year immediately preceding the 1 April in question by the Competition Commission in connection with references made to it under Article 15 of the Order with respect to this licence; and

- (c) the difference (being a positive or negative amount), if any, between:
- (i) the amount of the fee paid by the licensee in respect of the year immediately preceding the 1 April in question in relation to this licence less any refund paid to the licensee in respect of that year under paragraph 4 below; and
 - (ii) the amount which that fee would have been in respect of that year had the amount comprised therein under sub-paragraph (a) above (or, where that year commenced on 1 April 2003 had the amount comprised therein which was attributable to the matters referred to in that sub-paragraph, as determined by the Authority according to a method disclosed in writing to the licensee) been calculated by reference to the total costs of the Authority in connection with its functions ~~relating to electricity under the Order, the SEM Order and the Directive Regulations and its functions in relation to electricity under the Energy Order~~, and the proportion thereof actually attributable to this licence, such total costs being apportioned as determined by the Authority according to a method previously disclosed in writing to the licensee;

and the fee shall be paid by the licensee to the Authority within one month of the Authority giving notice to the licensee of its amount if that notice is given within 6 months of the beginning of the year in respect of which the fee is payable.

4. In respect of the year beginning on 1 April 2004 and for each subsequent year, the Authority may pay the licensee an amount (“**the refund**”) calculated in accordance with the method previously disclosed in writing to the licensee and by reference to the difference between:
- (a) the proportion of the licence fee for that year paid by the licensee which is attributable to the Authority’s estimates in accordance with paragraph 3(a) above; and
 - (b) the Authority’s reasonable revised estimate of those costs;

provided that any such refund shall be paid to the licensee on or before 31 March in the year to which the licence fee relates.

Part II B

Condition 9: Disposal of relevant assets

1. The licensee shall not dispose of or relinquish operational control over any relevant asset otherwise than in accordance with the following paragraphs of this Condition.
2. Save as provided in paragraph 3, the licensee shall give to the Authority not less than 2 months' (or such shorter period as the Authority and the licensee may agree in any specific case) prior written notice of its intention to dispose of or relinquish operational control over any relevant asset, together with such further information as the Authority may request relating to such asset or the circumstances of such intended disposal or relinquishment of control or to the intentions in regard thereto of the person proposing to acquire such asset or operational control over such asset.
3. Notwithstanding paragraphs 1 and 2, the licensee may dispose of or relinquish operational control over any relevant asset:
 - (a) where:
 - (i) the Authority has issued directions for the purposes of this Condition containing a general consent (whether or not subject to conditions) to:
 - (aa) transactions of a specified description; and/or
 - (bb) the disposal of or relinquishment of operational control over relevant assets of a specified description; and
 - (ii) the disposal or relinquishment of operational control in question is effected pursuant to a transaction of a description specified in the directions or the relevant asset in question is of a description so specified and the disposal or relinquishment of operational control is in accordance with any conditions to which the consent is subject; or
 - (b) where the disposal or relinquishment of operational control in question is required by or under any enactment; or

- (c) where the person in favour of whom the relevant asset is proposed to be disposed or operational control is proposed to be relinquished will hold at the time of such disposal or relinquishment a licence under Article 10(1)(b) of the Order which authorises it to participate in the transmission of electricity within the meaning of Article 8(4) of the Order, as inserted by Article 28(3) of the Energy (Northern Ireland) Order 2003, by making the Moyle Interconnector available for use.
- 4. Notwithstanding paragraph 1, the licensee may dispose of or relinquish operational control over any relevant asset specified in any notice given under paragraph 2 in circumstances where:
 - (a) the Authority confirms in writing that it consents to such disposal or relinquishment (which consent may be made subject to the acceptance by the licensee or any third party in favour of whom the relevant asset is proposed to be disposed or operational control is proposed to be relinquished of such conditions as the Authority may specify); or
 - (b) the Authority does not inform the licensee in writing of any objection to such disposal or relinquishment of control within the notice period referred to in paragraph 2.
- 5. Without prejudice to paragraphs 1 to 4, the licensee shall not without the written consent of the Authority after disclosure of all material facts by the licensee to the Authority:
 - (a) create any mortgage, charge, pledge, lien or other form of security or encumbrance whatsoever, undertake any indebtedness to any other person or enter into any guarantee of any obligation otherwise than:
 - (i) on an arm's length basis;
 - (ii) on normal commercial terms;
 - (iii) for a Permitted Purpose; and

- (iv) (if the transaction is within the ambit of paragraph 1) in accordance with paragraphs 3 and 4,

Provided that nothing in this Condition shall prevent the licensee guaranteeing any obligations owed by an affiliate or related undertaking of the licensee which has been or is to be incurred for a Permitted Purpose;

- (b) transfer, lease, license or lend any sum or sums, asset, right or benefit to any affiliate or related undertaking of the licensee otherwise than by way of:
 - (i) repayment of capital or a distribution or other return of assets on a winding-up;
 - (ii) payment properly due for any goods, services or assets provided on an arm's length basis and on normal commercial terms;
 - (iii) a transfer, lease, licence or loan of any asset, right or benefit on an arm's length basis and on normal commercial terms;
 - (iv) repayment of any loan or payment of any interest on such a loan on an arm's length basis and on normal commercial terms;
 - (v) payments for group corporation tax relief;
 - (vi) a loan not prohibited by sub-paragraph (c);
- (c) make loans to any affiliate or related undertaking of the licensee, other than loans for a Permitted Purpose.

6. In relation to a material disposal, any consent of the Authority pursuant to paragraph 4 shall be given after the Authority shall have consulted and taken into consideration any representations timeously made by any authorised electricity operator liable to be materially affected by the disposal in question.

7. In this Condition:

“**disposal**” includes any sale, assignment, gift, lease, licence, the grant of any right of possession, loan, security,

mortgage, charge or the grant of any other encumbrance or the permitting of any encumbrance to subsist or any other disposition to a third party and “**dispose**” shall be construed accordingly;

“indebtedness”

means all liabilities now or hereafter due, owing or incurred, whether actual or contingent, whether solely or jointly with any other person and whether as principal or surety, together with any interest accruing thereon and all costs, charges, penalties and expenses incurred in connection herewith;

“relevant asset”

means:

- (a) any asset for the time being forming part of the Moyle Interconnector; and
- (b) any legal or beneficial right, title or interest in the Moyle Interconnector or any land upon which the Moyle Interconnector is situate.

Condition 9A: Availability of Resources and Undertaking from Ultimate Controller

Availability of Resources

1 The licensee shall at all times act in a manner calculated to secure that it has sufficient resources to enable it to:

- (a) carry on the Interconnector Business; and
- (b) comply with its obligations under the Order, the Energy Order, the SEM Order and this licence.

2 The Licensee shall submit a certificate addressed to the Authority, approved by a resolution of the Board of Directors of the Licensee and signed by a director of the Licensee pursuant to that resolution. Such certificate shall be submitted no later than [insert date for first certificate] and thereafter within 7 days of [insert anniversary date] of each subsequent year. Each certificate shall be in one of the following forms:

- (a) “After making enquiries, the directors of the Licensee have a reasonable expectation that the Licensee will have available to it sufficient resources to enable the Licensee to carry on the Interconnector Business and comply with its obligations under the Order, the Energy Order, the SEM Order and the Licence for a period of 12 months from the date of this certificate”
- (b) “After making enquiries, the directors of the Licensee have a reasonable expectation, subject to the Terms of this certificate, that the Licensee will have available to it sufficient resources to enable the Licensee to carry on the Interconnector Business and comply with its obligations under the Order, the Energy Order, the SEM Order and the Licence for a period of 12 months from the date of this certificate. However, they would like to draw attention to the following factors which may cast doubt on the ability of the Licensee to do so.”
- (c) “In the opinion of the directors of the Licensee, the Licensee will not have available to it sufficient resources to enable the Licensee to to carry on the Interconnector Business and comply with its its obligations under the Order, the Energy Order, the SEM Order and the Licence for a period of 12 months

from the date of this certificate.”

- 3 The Licensee shall submit to the Authority together with the certificate referred to in paragraph 2 of this condition a statement of the main factors which the directors of the Licensee have taken into account in giving that certificate.
- 4 The Licensee shall inform the Authority in writing immediately if the directors of the Licensee become aware of any circumstances which cause them no longer to have the reasonable expectation expressed in the then most recent certificate given under paragraph 2.
- 5 The Licensee shall use its best endeavours to obtain and submit to the Authority with each certificate provided for in paragraph 2 a report prepared by the Auditors and addressed to the Authority stating whether or not the Auditors are aware of any inconsistencies between, on the one hand, that certificate and the statement submitted with it and, on the other hand, any information which they obtained during their audit work.

Undertaking from ultimate controller

- 6 The Licensee shall procure from each company or other person which the Licensee knows or reasonably should know is at any time an ultimate controller of the Licensee a legally enforceable undertaking in favour of the Licensee in a form specified by the Authority that the ultimate controller will refrain from any action, and will procure that every subsidiary of the ultimate controller (other than the Licensee and its subsidiaries) will refrain from any action, which would then be likely to cause the Licensee to be in breach of the certification ground on which it is, in accordance with Article 3 of the Electricity Regulation, certified by the Authority as a transmission system operator.
- 7 The undertaking referred to in paragraph 6 shall be obtained within 7 days after the date when this Condition 9A first become effective, or after the person in question becomes an ultimate controller (as the case may be) and shall remain in force for as long as the Licensee remains the holder of this Licence and the giver of the undertaking remains an ultimate controller of the Licensee.

8 The Licensee shall:

- (a) deliver to the Authority evidence (including a copy of each such undertaking) that the Licensee has complied with the obligation to procure undertakings pursuant to paragraph 6;
- (b) inform the Authority immediately in writing if the directors of the Licensee become aware that the undertaking has ceased to be legally enforceable or that its terms have been breached; and
- (c) comply with any direction from the Authority to enforce any such undertaking.

Formatted: Body1

Condition 9B: TSO Certification

Certification

1. The licensee shall where it is certified in accordance with Article 10E of the Order:

(a) use its reasonable endeavours to ensure that the certification ground on which it is certified continues to apply;

(b) as soon as practicable after it becomes aware of it, give notice (in writing) to the Authority of:

(i) any proposed or actual change in control of the licensee;

(ii) any event, change in circumstance, or transaction undertaken (or proposed to be undertaken) by the Licensee or any affiliate or related undertaking of the Licensee, which:

(A) affects, or is likely to affect, the licensee continuing to be certified on the certification ground on which it is certified; or

(B) requires, or is likely to require, a review by the Authority of whether the grounds for certification continue to apply.

Definitions and Interpretation

2. In this Condition “certified” and “certification ground” have the meaning given to it in Article 10L of the Order.

Formatted: Body1

Part II C: Compliance With Codes

Condition 10: Security arrangements

1. The licensee shall comply with the provisions of the Northern Ireland Fuel Security Code and such provisions shall have effect as if they were set out in this Licence Document.
2. The Northern Ireland Fuel Security Code may be amended in accordance with its provisions.

Part IIC

Condition 11: Compliance with Grid Code

1. The licensee shall comply with the provisions of the Grid Code insofar as applicable to its Interconnector Business.
2. The Authority may (following consultation with the licensee and the transmission system operator) issue directions relieving the licensee of its obligation under paragraph 1 in respect of such parts of the Grid Code and, in each case, to such extent as may be specified in those directions.

Part II D: Maintenance And Other Matters

Condition 12: Operation and Maintenance Standards, Availability and Quality of Service

1. The licensee shall:-
 - (c) through an agreement with the transmission system operator in terms approved by the Authority entered into on or before the Effective Date, make arrangements for the transmission system operator to operate the Moyle Interconnector in conjunction with its operation of the transmission system and for the transmission system operator to make arrangements for the entering into by the licensee of agreements for use of the Moyle Interconnector with third parties; and
 - (d) maintain the Moyle Interconnector,

in each case, in accordance with such standard of operation and maintenance as the licensee may, after consultation with the transmission system operator and with the approval of the Authority, adopt from time to time.
2. The licensee shall not make or agree to any amendment or variation (excluding an amendment or variation which is of a formal, technical or administrative nature) to the agreement referred to in paragraph 1(a) without the consent of the Authority.
3. Revisions to the standard referred to in paragraph 1 proposed by the licensee shall require to be approved by the Authority.
4. The Authority may issue directions requiring the licensee to revise the standard referred to in paragraph 1 in such manner as may be specified in the directions, and the licensee shall forthwith comply with any such directions.
5. The licensee shall give or send a copy of the standard referred to in paragraph 1 to the Authority.
6. The licensee shall (subject to paragraph 7) give or send a copy of such standard to any person requesting the same.

7. The licensee may make a charge for any copy given or sent pursuant to paragraph 6 of an amount reflecting the licensee's reasonable costs which will not exceed any amount specified for the time being for the purposes of this Condition in directions issued from time to time by the Authority.
8. The licensee shall within three months after the date of grant of this licence and thereafter whenever requested to do so by the Authority, draw up and submit to the Authority for the Authority's approval a statement setting out criteria by which the performance of the licensee in maintaining the availability of the Moyle Interconnector and the quality of service which it provides may be measured.
9. The licensee shall within 2 months after the end of each financial year submit to the Authority a report providing details of the performance of the licensee during the previous financial year against the criteria referred to in paragraph 8.

Part IID

Condition 13: The Licensee’s regulated revenue entitlement

- 1 The licensee shall be entitled to derive revenues from the following sources, namely:
 - (a) from NIE under the Existing Interconnector Agreement in respect of the period ending on the date of termination of the same;
 - (b) from persons who from time to time are parties to agreements with the licensee for use of the Moyle Interconnector in accordance with Conditions 15 to 18 (inclusive) of Part II; and
 - (c) from recoveries of the Collection Agency Income Requirement made by the Collection Agent through its transmission or transmission and distribution charges under the arrangements described in the agreement referred to in paragraph 4.
- 2 The maximum amount of the revenues which the licensee is entitled to recover from the sources described in paragraph 1 in any relevant year shall be the allowed recovery for such relevant year, as specified in a direction issued by the Authority to the licensee for the purposes of this paragraph 2.
- 3 A direction issued pursuant to paragraph 2 shall not be capable of being revoked or modified without the prior written consent of the licensee.
- 4 The licensee shall on the Effective Date enter into an agreement with the Collection Agent in terms approved by the Authority which makes provision for the Collection Agent to collect the Collection Agency Income Requirement, as part of its transmission or transmission and distribution charges, and to account to the licensee for the revenues so collected.
- 5 The licensee shall not make or agree to any amendment or variation (excluding an amendment or variation which is of a formal, technical or administrative nature) to the agreement referred to in paragraph 4 without the consent of the Authority.
- 6 The licensee shall perform any obligation imposed on it by the direction described in paragraph 2.

7 As used in this Condition:-

- (a) “**Collection Agent**” means, in respect of the period to SEM Go-Live, NIE; and, in respect of the period from SEM Go-Live, SONI; or (in each case) such other person as is from time to time authorised, pursuant to its licence, to receive revenues derived from the use of the transmission system in Northern Ireland;
- (b) “**Existing Interconnector Agreement**” means an Agreement dated 27th March 2002 between the licensee and NIE by which, amongst other things, the licensee grants rights to use the capacity of the Moyle Interconnector to NIE;
- (c) “**Collection Agency Income Requirement**” means, in respect of any relevant year, the amount which the Collection Agent is (or, where there is more than one Collection Agent in that relevant year, the aggregate of the amounts that the Collection Agents are) entitled to recover as part of its (or their) transmission or transmission and distribution charges in such relevant year through the term “**CAIR_t**” in the revenue restriction conditions of its licence (or their licences).

Part IID

Condition 14: Prohibited Activities

- 1 The licensee shall not conduct any business or carry on any activity other than the Interconnector Business without the written consent of the Authority.
- 2 The licensee shall not on its own account purchase or otherwise acquire electricity (including by means of entry into an electricity purchase contract) for the purpose of sale or other disposition to third parties in Northern Ireland unless such purchase or other acquisition or sale or other disposition is made as part of the Interconnector Business.
- 3 The licensee shall not hold or acquire any interest in any generation sets (whether or not located in Northern Ireland) and shall not hold an accountable interest in any generation sets (whether or not located in Northern Ireland), unless such generation sets are required for the purposes of carrying on the Interconnector Business.
- 4 The licensee shall not hold or carry on the Interconnector Business through any affiliate or related undertaking of the licensee without the written consent of the Authority.
- 5 The licensee shall not hold or acquire shares or any other interest in any other person without the written consent of the Authority.
- 6 The licensee shall not enter into any swap, option, derivative or other financially settled transaction without the written consent of the Authority.
- 7 The licensee shall procure that the Interconnector Business does not give any cross-subsidy to, or receive any cross-subsidy from, any other business of the licensee or of an affiliate or related undertaking of the licensee.
- 8 In this Condition:

“**accountable interest**” has the meaning ascribed to it in the NIE Energy Supply Licence.

Part IIE: Use Of The Moyle Interconnector

Condition 15: Basis of charges for use of Moyle Interconnector

1. Unless (and except for so long as) the Authority, upon the application of the licensee, approves otherwise, charges for use of the Moyle Interconnector shall be made in accordance with the procedure for the setting of such charges embodied in the relevant access arrangements applicable to the Moyle Interconnector from time to time.

Part IIE

Condition 16: Non-discrimination in the provision of use of Moyle Interconnector

- 1 In the provision of use of the Moyle Interconnector, the licensee shall not unduly discriminate between any person or class or classes of persons.
2. Without prejudice to paragraph 1, the licensee shall not make charges for the provision of the Moyle Interconnector to any person or class or classes of persons which differ from the charges for such provision to any other person or class or classes of persons except insofar as such differences reasonably reflect differences in the costs associated with such provision or differences in the scope of the services provided under the relevant use of interconnector agreement or result from the operation of relevant access arrangements in accordance with their terms, including without limitation, from the grant of use of interconnector rights pursuant to any auction process contemplated by relevant access arrangements or as otherwise approved by the Authority.
3. The licensee shall not in making charges for use of the Moyle Interconnector restrict, distort or prevent competition in the transmission, distribution, generation or supply of electricity.
4. The licensee shall not be in breach of this Condition:-
 - (a) where by reason of having previously granted rights to use the Moyle Interconnector (including, without limitation, the right granted to the Power Procurement Business for the entire term of the SP Electricity Supply Agreement to use 125 MW of the capacity of the Moyle Interconnector for the purpose of enabling the Power Procurement Business to perform its obligations under the SP Electricity Supply Agreement and rights granted prior to the date of grant of this licence pursuant to any auction process), there is no further available capacity of the Moyle Interconnector in respect of which to grant use of the Moyle Interconnector or where the available capacity of the Moyle Interconnector has been allocated in accordance with the arrangements for such allocation operated by it from time to time in circumstances where it (or the transmission system operator on its behalf)

has determined that any one or more particular interconnection capacities are insufficient to meet the requirements of all persons to whom use of the Moyle Interconnector has been granted; or

- (b) by reason only of a failure to do or not do any thing which it is prevented from doing or not doing by reason of a failure by any co-operator to comply with and perform its obligations under any agreement with that co-operator concerning the Moyle Interconnector or by a party (other than the licensee or any affiliate or related undertaking of the licensee) to a related document or by a person who is obliged to comply with a related document to comply with and perform its obligations under the related document in question; or
- (c) by reason only of limiting use of the Moyle Interconnector to those persons, and in such manner, as is provided for in the Single Electricity Market Trading and Settlement Code; or
- (d) by reason only of its giving effect to the relevant access arrangements in force from time to time.

6. The licensee shall keep and maintain such records concerning the provision of use of the Moyle Interconnector as are, in the opinion of the Authority, sufficient to enable the Authority to assess whether the licensee is performing its obligations under paragraph 1 of this Condition and the licensee shall furnish to the Authority such records (or such of these as the Authority may require), in such manner and at such times as the Authority may require.

7. In this Condition 16 and in Conditions 17 and 18:-

“**co-operator**” means any person (including any person who from time to time performs the role of operator of the transmission system), other than the licensee or any affiliate or related undertaking of the licensee who owns or operates assets which are used in conjunction with the Moyle Interconnector or who is able to exercise jointly with the licensee control over the use made of the Moyle Interconnector;

“**particular interconnection capacity**” means the capacity of the Moyle Interconnector for transferring electricity into or out of Northern Ireland under any particular system conditions;

“**Power Procurement Business**” has the meaning given in the NIE Energy Supply Licence;

“**related document**” means any agreement, code, rules, or arrangement relating to or incidental to the use of the Moyle Interconnector for the time being in force and to which the licensee is a party or with which the licensee is obliged to comply;

“**SP Electricity Supply Agreement**” means an Electricity Supply Agreement dated 29th and 30th March 1999 between NIE and Scottish Power plc (whose interest is at the date of grant of this licence vested in Scottish Power Generation Limited), or any successor.

Part IIE

Condition 17: Requirement to give third party access pursuant to relevant access arrangements

- 1 The licensee shall:-
 - (a) (to the extent, if any, to which it has not done so prior to the date of granting of this licence) establish relevant access arrangements in relation to the Moyle Interconnector, not later than 90 days after such date or such other date as shall be agreed in writing between the licensee and the Authority; and
 - (b) (subject to paragraph 2) give effect to and operate the relevant access arrangements which are in force from time to time.

- 2 The licensee shall not be obliged pursuant to this Condition to offer to enter into or to enter into an agreement for use of the Moyle Interconnector with any person:-
 - (a) if to do so would be likely to involve the licensee:-
 - (i) in breach of its duties under Article 12 of the Order;
 - (ii) in breach of the Electricity Supply Regulations (Northern Ireland) 1991 as amended by the Electricity Supply (Amendment) Regulations (Northern Ireland) 1993 or of any regulations made under Article 32 of the Order or of any other enactment relating to safety or standards applicable to the Moyle Interconnector; or
 - (iii) in breach of any of the Conditions; or
 - (b) (and shall not enter into such an agreement with any person) if the person making the application does not undertake to be bound by the terms of:-
 - (i) such parts of the Grid Code and to such extent as the Authority shall from time to time specify in directions issued by the Authority to the licensee for the purposes of this Condition;
 - (ii) the Single Electricity Market Trading and Settlement Code;

- (iii) the terms of any code of general application or agreement made between the licensee and any co-operator of the Moyle Interconnector governing the operation and maintenance of the Moyle Interconnector approved for the time being by the Authority; and
 - (iv) a transmission use of system agreement with the transmission system operator; or
 - (c) where, on the application of the licensee or any other person, the Authority in its discretion shall determine that (having regard to the part of the capacity of the Moyle Interconnector already contracted by the licensee to third parties, including the 125 MW contracted to the Power Procurement Business as referred to in paragraph 4(a) of Condition 16 and capacity contracted prior to the date of grant of this licence pursuant to any auction process) the capacity of the Moyle Interconnector is insufficient to accommodate the requirements of that other person.
- 3 The licensee shall (in consultation with authorised electricity operators liable to be materially affected thereby and any relevant co-operator) periodically review (including upon the request of the Authority) the relevant access arrangements which are in force from time to time. Following any such review, the licensee shall send to the Authority:-
 - (a) a report on the outcome of such review; and
 - (b) any proposed revisions to the relevant access arrangements which the licensee (having regard to the outcome of such review) reasonably thinks fit; and
 - (c) any written representations or objections from authorised electricity operators or co-operators (including any proposals by any such person for revisions to the relevant access arrangements not accepted by the licensee in the course of such review) arising during the consultation process and subsequently maintained.

- 4 Revisions to the relevant access arrangements proposed by the licensee and sent to the Authority pursuant to paragraph 3 shall require to be approved by the Authority.
- 5 Following such consultation (if any) as the Authority may consider appropriate, the Authority may issue directions requiring the licensee to revise the relevant access arrangements in such manner as may be specified in the directions, and the licensee shall forthwith comply with any such directions. In making such directions, the Authority shall have regard to any review undertaken by the licensee under paragraph 3 and any written representations or objections as are referred to in paragraph 3(c).
- 6 The licensee shall give or send a copy of the relevant access arrangements from time to time in force to the Authority.
- 7 The licensee shall (subject to paragraph 8) give or send a copy of the relevant access arrangements from time to time in force to any person requesting the same.
- 8 The licensee may make a charge for any copy given or sent pursuant to paragraph 7 of an amount which will not exceed any amount specified for the time being for the purposes of this Condition in directions issued by the Authority.
- 9 The licensee shall within 28 days following receipt of a request from any person, give or send to such person such information in the possession of the licensee as may be reasonably required by such person for the purpose of completing the appropriate paragraphs of the Electricity (Applications for Licences and Extensions of Licences) [\(No. 2\) Regulations \(Northern Ireland\) 1992-2007](#) or such provisions to like effect contained in any further regulations then in force made pursuant to Articles 10(3) and 64 of the Order.

Part IIE

Condition 18: Functions of the Authority

- 1 Upon the application of any person wishing to question the terms of an agreement for use of the Moyle Interconnector offered by or to be entered into by the licensee pursuant to any relevant access arrangements applicable to the Moyle Interconnector or required to be offered under the terms of any agreement previously entered into for use of the Moyle Interconnector by the person or persons entitled to use thereunder, or upon the application of the licensee, the Authority may, pursuant to Article 11(3)(c) of the Order, settle any terms of the agreement in dispute between the licensee and that person or between such persons (as the case may be) in such manner as appears to the Authority to be reasonable having (insofar as relevant) regard in particular to the following considerations:-
 - (a) that such person should pay to the licensee charges determined in accordance with the procedure for the setting of such charges embodied in the relevant access arrangements applicable to the Moyle Interconnector;
 - (b) that the obligations of the licensee under the agreement should not be in conflict with the provisions of any related document for the time being approved by the Authority;
 - (c) that the performance by the licensee of its obligations under the agreement should not cause it to be in breach of those provisions referred to in subparagraphs (a) or (b) of paragraph 2 of Condition 17; and
 - (d) that the terms and conditions of the agreement so settled by the Authority and of any other agreements entered into by the licensee for the use of the Moyle Interconnector pursuant to relevant access arrangements should be, so far as circumstances allow, in as similar a form as practicable.
- 2 Insofar as any person who has received an offer such as is referred to in paragraph 1 wishes to proceed on the basis of the agreement as settled by the Authority, the licensee shall forthwith enter into and implement such agreement in accordance with its terms.

- 3 If either party to an agreement entered into pursuant to relevant access arrangements proposes to vary the contractual terms of such agreement in any manner provided for under such agreement, the Authority may, at the request of the licensee or other party to such agreement, settle any dispute relating to such variation in such manner as appears to the Authority to be reasonable.

Part IIE

Condition 19: SEM Trading and Settlement Code and GB Balancing and Settlement Code

SEM Trading and Settlement Code

- 1 The licensee shall accede to the Single Electricity Market Trading and Settlement Code, register the Moyle Interconnector pursuant to the Single Electricity Market Trading and Settlement Code, and comply with the Single Electricity Market Trading and Settlement Code insofar as applicable to it in its capacity as the owner of the Moyle Interconnector.

Moyle Interconnector Operation and Agency Agreement

- 2 Paragraphs 3, 4 and 5 shall only apply in respect of the period to the time at which the Moyle Interconnector Operation and Agency Agreement terminates or expires in accordance with its terms.
- 3 The licensee shall appoint SONI to act as and perform the functions of the Interconnector Administrator and the Interconnector Error Administrator (as such expressions are defined in the GB Balancing and Settlement Code) in respect of the Moyle Interconnector under and in accordance with the GB Balancing and Settlement Code.
- 4 The licensee shall nominate SONI to act as and perform the functions of the Interconnector Administrator (as such expression is defined in the Single Electricity Market Trading and Settlement Code) in respect of the Moyle Interconnector under and in accordance with the Single Electricity Market Trading and Settlement Code.
- 5 The licensee shall, to the extent registration is required under the Single Electricity Market Trading and Settlement Code, nominate SONI to register the “Interconnector Error Unit” (as such expression is defined in the Single Electricity Market Trading and Settlement Code) relating to the Moyle Interconnector in accordance with the Single Electricity Market Trading and Settlement Code.

Definitions

6 In this Condition, unless the context otherwise requires:

“GB Balancing and Settlement Code” means the balancing and settlement code established by the transmission system operator for Great Britain.

“Moyle Interconnector Operation and Agency Agreement” means the agreement of that name between the Licensee and SONI, as amended and restated on 28 June 2006, which, amongst other things, makes provision for the Moyle Interconnector to be operated by SONI.

Part II F: Restriction On Use Of Certain Information

Condition 20: Restriction on use of certain information

1. The licensee shall procure:
 - (a) that the licensee shall not obtain any unfair competitive advantage from its possession of protected information; and
 - (b) that protected information is not used by any other person for the purpose of obtaining for that other person:
 - (i) any unfair commercial advantage from its possession of protected information;
 - (ii) any licence under Article 10 of the Order;
 - (iii) any right to purchase or otherwise acquire electricity;
 - (iv) any right to sell or otherwise supply electricity; or
 - (v) control of any body corporate which, directly or indirectly, has the benefit of any such licence or right.
2. The licensee shall implement such measures and procedures and take all such other steps as shall be specified in directions issued by the Authority from time to time for the purposes of this Condition to be in its opinion reasonably necessary for the purpose of securing compliance by the licensee with its obligations under paragraph 1.
3. The licensee shall:
 - (a) procure and furnish to the Authority, in such manner and at such times as the Authority may require, such information and reports as the Authority may consider necessary concerning the performance by the licensee of its obligations under paragraphs 1 and 2 and the effectiveness of the measures, procedures and steps specified in the directions referred to in paragraph 2 to secure compliance by the licensee with its obligations under paragraph 1;

- (b) procure that access to any premises of the licensee shall be given at any time and from time to time to any nominated person(s) for the purpose of investigating whether the licensee has performed its obligations under paragraphs 1 and 2 and the effectiveness of the measures, procedures and steps specified in the directions referred to in paragraph 2 to secure compliance by the licensee with its obligations under paragraph 1 and that the licensee and its employees shall co-operate in any such investigation to the extent requested by the nominated person(s); and
 - (c) procure that nominated person(s) shall be entitled to inspect and/or take copies of such records and data of the licensee as they shall consider to be reasonably necessary for the purpose referred to in sub-paragraph (b) above.
4. Where the licensee or any affiliate or related undertaking of the licensee receives protected information, the licensee shall (and shall procure that such affiliate or related undertaking shall) secure that protected information is not:
- (a) divulged by business personnel to any person unless that person is an authorised recipient;
 - (b) used by business personnel for the purposes of obtaining for the licensee or any affiliate or related undertaking of the licensee or for any other person:
 - (i) any licence under Article 10 of the Order; or
 - (ii) any right to purchase or otherwise acquire, or to distribute, electricity (including rights under any electricity purchase contract); or
 - (iii) any contract or arrangement for the sale or supply of electricity to any person; or
 - (iv) any contract for the use of any electric lines or electrical plant belonging to or under the control of a relevant supplier; or

- (v) control of any body corporate which, whether directly or indirectly, has the benefit of any such licence, contract or arrangement; or
- (c) used by business personnel for the purpose of carrying on any activities other than permitted activities;

except with the prior consent in writing of the relevant person to whose affairs such protected information relates.

5. Paragraph 4 shall not apply to:

- (a) any protected information which, before it is furnished to business personnel, is in the public domain; or
- (b) any protected information which, after it is furnished to business personnel:
 - (i) is acquired by the licensee or any affiliate or related undertaking of the licensee in circumstances in which this Condition does not apply; or
 - (ii) is acquired by the licensee or any affiliate or related undertaking of the licensee in circumstances in which this Condition does apply and thereafter ceases to be subject to the restrictions imposed by this Condition; or
 - (iii) enters the public domain;

and in any such case otherwise than as a result of (i) a breach by the licensee or any affiliate or related undertaking of the licensee of its obligations under this Condition or (ii) a breach by the person who disclosed that protected information of that person's confidentiality obligation and the licensee or any of its affiliates or related undertakings is aware of such breach; or

- (c) the disclosure of any protected information to any person if the licensee or any affiliate or related undertaking of the licensee is required or expressly

permitted to make such disclosure to such person or it is necessary for it to do so:

- (i) in compliance with the duties of the licensee or any affiliate or related undertaking of the licensee under the Order, the Energy (Northern Ireland) Order 2003, the SEM Order, the Directive Regulations or any other requirement of a Competent Authority; or
 - (ii) in compliance with the conditions of this licence or any document referred to in this Licence Document with which the licensee or any affiliate or related undertaking of the licensee is required by virtue of the Order or the Energy (Northern Ireland) Order 2003 or the SEM Order or the Directive Regulations or this licence to comply; or
 - (iii) in compliance with any other requirement of law; or
 - (iv) in response to a requirement of any stock exchange or regulatory authority or the Panel on Take-overs and Mergers; or
 - (v) pursuant to the arbitration rules for the Electricity Arbitration Association or pursuant to any judicial or other arbitral process or tribunal of competent jurisdiction; or
- (d) any protected information to the extent that the licensee or any of its affiliates or related undertakings is expressly permitted or required to disclose that information under the terms of any agreement or arrangement (including the Grid Code, the Single Electricity Market Trading and Settlement Code and the Northern Ireland Fuel Security Code) with the relevant person to whose affairs such protected information relates.
6. The licensee and each of its affiliates and related undertakings may use all and any information or data supplied to or acquired by it from or in relation to any relevant person in performing permitted activities, including for the operation and planning of the Moyle Interconnector.

7. The licensee shall not (and shall procure that its affiliates and related undertakings shall not), having regard to the activities in which any business person is engaged and the nature and effective life of the protected information divulged to it by virtue of such activities, unreasonably continue (taking into account any industrial relations concerns reasonably held by it) to divulge protected information or permit protected information to be divulged by any affiliate or related undertaking of the licensee to any business person who has notified the licensee or the relevant affiliate or related undertaking of its intention to become engaged as an employee or agent of any other person (other than of the licensee or any affiliate or related undertaking thereof) who is:
- (a) authorised by licence or exemption to generate, participate in the transmission of, or supply electricity; or
 - (b) an electricity broker or who is known to be engaged in the writing of electricity purchase contracts; or
 - (c) known to be retained as a consultant to any such person who is referred to in paragraph (a) or (b) above;

save where the licensee or such affiliate or related undertaking could not, in all the circumstances, reasonably be expected to refrain from divulging to such business person protected information which is required for the proper performance of his duties.

8. Without prejudice to the other provisions of this Condition, the licensee shall procure that any additional copies made of the protected information, whether in hard copy or computerised form, will clearly identify the protected information as protected.
9. The licensee shall take all reasonable steps to ensure that every authorised adviser to whom the licensee or any affiliate or related undertaking of the licensee discloses protected information does not use that protected information for any purpose other than that for which it was provided and does not disclose that protected information otherwise than in accordance with the provisions of this Condition.

10. This Condition is without prejudice to the duties at law of the licensee towards relevant persons.

11. In this Condition:

“authorised adviser” means such professional advisers of the licensee, engaged and acting in that capacity, as require to have access to any protected information;

“authorised recipient” means, in relation to any protected information, any business person who, before the protected information had been divulged to him by the licensee, had been informed of the nature and effect of this Condition and who requires access to such protected information for the proper performance of his duties as a business person in the course of permitted activities;

“business person” means any person who is

- (a) a director of the licensee;
- (b) an employee of the licensee;
- (c) engaged as an agent of or an adviser to or performs work in relation to or services for the Interconnector Business; or
- (d) an authorised adviser;

“data” has the same meaning as in the Data Protection Act 1984;

“dealings”	includes dealings entered into otherwise than for purposes connected with the transmission of electricity;
“Electricity Arbitration Association”	means the unincorporated members' club of that name formed inter alia to promote the efficient and economic operation of the procedure for the resolution of disputes within the electricity supply industry by means of arbitration or otherwise in accordance with its arbitration rules;
“nominated person(s)”	means the person(s) from time to time nominated by the Authority for the purposes of this Condition by notice to the licensee;
“permitted activities”	means activities carried on for the purposes of the Interconnector Business;
“protected information”	means: <ul style="list-style-type: none">(i) information relating to the affairs of a relevant person which has been furnished to or otherwise acquired by the licensee under or pursuant to, or in the course of any dealings with the relevant person under this licence, the Grid Code, the Northern Ireland Fuel Security Code, the Single Electricity Market Trading and Settlement Code any agreement for use of or connection to or modification of a connection to the Moyle Interconnector or any agreement for use of the Moyle Interconnector or in the course of any

negotiations with (including any application made by) the relevant person for such; and

- (ii) any other information in the possession of the licensee which would not reasonably be expected to be in the possession of the licensee if the licensee were not the holder of this licence;

other than (in each case):

- (aa) any such information which, or any such information of a description which, is specified in directions issued by the Authority from time to time for the purposes of this Condition to be information, or (as the case may be) information of a description, which is not protected information for the purposes of this Condition; and
- (bb) any such information which is in or enters into the public domain otherwise than as a consequence of unauthorised disclosure by the licensee or any affiliate or related undertaking of the licensee (or by any person to whom the same is disclosed or suffered to be disclosed by the licensee or such affiliate or related undertaking) and for this purpose the disclosure of information

by its inclusion in a statement of system capacity of the licensee shall be deemed to be an authorised disclosure of that information if the Authority shall so specify in directions issued from time to time for the purposes of this Condition;

“relevant person”

means any person who is not an affiliate or related undertaking of the licensee;

Schedule 1: Authorised Transmission Area

The authorised transmission area shall comprise the electrical interconnector between Scotland and Northern Ireland which is owned by the licensee and which comprises the converter stations at Ballycronan More, Co. Antrim, Northern Ireland and Auchencrosh, Ayrshire, Scotland and the undersea and underground electric lines which interconnect such converter stations, together with its connections to the transmission system in Northern Ireland and the transmission system in Scotland and the land (including the foreshore and seabed) on which it is situated, to the extent located within Northern Ireland.

Schedule 2: Revocation

1. The Authority may at any time revoke this licence by not less than 30 days' notice in writing to the licensee:
 - (a) if the licensee agrees in writing with the Authority that such licence should be revoked;
 - (b) if any amount payable under Condition 8 of Part II is unpaid 30 days after it has become due and remains unpaid for a period of 14 days after the Authority has given the licensee notice that the payment is overdue provided that no such notice shall be given earlier than the sixteenth day after the day on which the amount payable became due;
 - (c) if the licensee fails to comply with a final order (within the meaning of Article 42 of the Energy Order) or with a provisional order (within the meaning of Article 42 of the Energy Order) which has been confirmed under Article 42 of the Energy Order and which (in either case) has been made in respect of a contravention or apprehended contravention of a Condition to which such licence is subject or of a relevant requirement as defined in Article 41(2)(a) of the Energy Order imposed on the licensee in its capacity as holder of such licence and (in either case) such failure is not rectified to the satisfaction of the Authority within three months after the Authority has given notice of such failure to the licensee, provided that no such notice shall be given by the Authority before the expiration of the period within which an application under Article 44 of the Energy Order could be made questioning the validity of the final or provisional order or before the proceedings relating to any such application are finally determined;
 - (d) if the licensee fails to comply with any order made by the Secretary of State under Section 56, 73, 74 or 89 of the Fair Trading Act 1973 or by the court under Section 34 of the Competition Act 1998 or any direction under Sections 32 or 33 of the Competition Act 1998 or any proposals accepted by the Secretary of State under Section 6A of the Fair Trading Act 1973;

- (e) if the licensee:
 - (i) is unable to pay its debts (within the meaning of Article 103(1) or (2) of the Insolvency (Northern Ireland) Order 1989, but subject to paragraph 3 of this Schedule) or if any voluntary arrangement is proposed in relation to it under Article 14 of that Order, or if it enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Authority); or
 - (ii) has a receiver (which expression shall include an administrative receiver within the meaning of Article 5(1) of the Insolvency (Northern Ireland) Order 1989) of the whole or any material part of its assets or undertaking appointed; or
 - (iii) has an administration order under Article 21 of the Insolvency (Northern Ireland) Order 1989 made in relation to it; or
 - (iv) passes any resolution for winding-up other than a resolution previously approved in writing by the Authority; or
 - (v) becomes subject to an order for winding-up by a court of competent jurisdiction; or
- (f) if the licensee is convicted of having committed an offence under Article 63 of the Order or under Article 46 of the Gas (Northern Ireland) Order 1996;
- (g) if the licensee fails to pay any financial penalty (within the meaning of Article 45 of the Energy Order) imposed in respect of a contravention or apprehended contravention of a condition to which such licence is subject or of a “relevant requirement” as defined in Article 41(2)(a) of the Energy Order by the due date for such payment and such payment is not made to the Authority within three months after the Authority has given notice in writing of such failure to the licensee, provided that no such notice shall be given by the Authority before the expiration of the period within which an

application under Article 49 of the Energy Order could be made questioning the validity or effect of the financial penalty or before the proceedings relating to any such application are finally determined.

2. The Authority may at any time by not less than 30 days' notice in writing to the licensee revoke this licence if the licensee ceases to carry on its Interconnector Business other than with the consent of the Authority.
3.
 - (a) For the purposes of paragraph 1(e)(i) of this Schedule Article 103(1)(a) of the Insolvency (Northern Ireland) Order 1989 shall have effect as if for "£750" there was substituted "£250,000" or such higher figure as the Authority may from time to time determine by notice in writing to the Authority and the licensee.
 - (b) The licensee shall not be deemed to be unable to pay its debts for the purposes of paragraph 1(e)(i) of this Schedule if any such demand as is mentioned in Article 103(1)(a) of the Insolvency (Northern Ireland) Order 1989 is being contested in good faith by the licensee with recourse to all appropriate measures and procedures or if any such demand is satisfied before the expiration of such period as may be stated in any notice given by the Authority under paragraph 1 of this Schedule.