

Proposed Licence Modifications: Licence to Act as SEM Operator granted to SONI Limited

Consultation Paper

23 October 2015



About the Utility Regulator

The Utility Regulator (“UR”) is the independent non-ministerial government department responsible for regulating Northern Ireland’s electricity, gas, water and sewerage industries, to promote the short and long-term interests of consumers.

We are not a policy-making department of government, but we make sure that the energy and water utility industries in Northern Ireland are regulated and developed within ministerial policy as set out in our statutory duties.

We are governed by a Board of Directors and are accountable to the Northern Ireland Assembly through financial and annual reporting obligations.

We are based at Queens House in the centre of Belfast. The Chief Executive leads a management team of directors representing each of the key functional areas in the organisation: Corporate Affairs; Electricity; Gas; Retail and Social; and Water. The staff team includes economists, engineers, accountants, utility specialists, legal advisors and administration professionals.

Our Mission

Value and sustainability in energy and water.

Our Vision

We will make a difference for consumers by listening, innovating and leading.

Our Values

Be a best practice regulator: transparent, consistent, proportional, accountable, and targeted.

Be a united team.

Be collaborative and co-operative.

Be professional.

Listen and explain.

Make a difference.

Act with integrity.

Abstract

This consultation paper relates to proposed changes to Annex 1, “Charging and Revenue Restriction”, of the SONI SEM Operator Licence (SONI MO Licence). The proposed amendments incorporate licence modifications to:

1. Ensure Annex 1 “Charging and Revenue Restriction” of the SONI MO Licence adequately codifies the current SEMO Price Control and provides the UR with the ability to approve annual tariffs.
2. Reflect the UR’s Decision Paper on “Modifications necessary due to the Gas and Electricity Licence Modification and Appeals Regulations (NI) 2015”.

In its current form Annex 1 states that, *‘the revenue of the Market Operation Activity in each relevant year shall not exceed the amount the Licensee determines is reasonable in all the circumstances for that relevant year.’* This Annex needs to be corrected to ensure that the allowable revenue is based on an amount approved by the UR, rather than according power to the licensee to determine such an amount unilaterally.

No changes to the SONI MO Licence where requisite or expedient as a result of the Gas and Electricity Licence Modification and Appeals Regulations (Regulations) and consequently the Licence was omitted from the UR’s wider Decision Paper on the matter. Our proposed amendments to the SONI MO Licence mirror the changes made to the SONI System Operator licence, with tailoring where necessary. The Decision Paper referred to above provides in depth detail on the effect of the Regulations.

Appendix 2 of this consultation paper contains Annex 1, as it currently stands, and the UR’s proposed Annex 1. The proposed Licence modifications would be implemented under Article 14 of the Electricity Order 1992, as amended by the Gas and Electricity Licence Modification and Appeals Regulations (Northern Ireland) 2015.

Audience

The Electricity Market Operator Licence holder, Regulated Companies, Department of Enterprise, Trade and Investment, Consumer Groups, Industry and Statutory Bodies.

Consumer Impact

The proposed updates to Annex 1 of the SONI MO Licence should have a positive effect on consumers. The changes aim to ensure that the UR will have final approval on tariff levels, helping to ensure they are independently verified and in line with the relevant price control for the period.

Updates to incorporate the Regulations will bring the SONI MO Licence into line with other electricity licences and the impact on consumers will be low.

1 CONTENTS

1	Contents	5
2	Introduction.....	7
	2.1 Role of SEMO	7
	2.2 Purpose of Consultation.....	8
	2.3 How to Respond.....	8
3	Background and Proposed Modifications.....	10
	3.1 Current Annex not Fit for Purpose	10
	3.2 Proposed Amendments to ensure Annex is Fit for Purpose.....	10
	3.3 The Regulations	11
4	Future Modifications	13
5	Section 75 of the Northern Ireland Act 1998	14

Appendix 1 – Article 14 Licence Modification Notice

Appendix 2 – Current SONI SEM Operator Licence Annex 1 and Proposed SONI SEM Operator Licence Annex 1

Consultation Questions

Q1 Respondents are asked to comment on the overall approach taken to modifying Annex 1 of the SONI Market Operator Licence to ensure it is fit for purpose.

Q2 Respondents are asked to comment on the overall approach taken to modifying Annex 1 of the SONI Market Operator Licence to reflect the new Regulations.

Q3 Respondents are asked to provide suggestions as to how the SONI Market Operator Licence conditions might be simplified in the future.

Q4 Do the proposals within this paper have an impact on equality of opportunity in relation to the persons listed in section 75 of the Northern Ireland Act? If yes please provide reasons and state whether you believe the impact is positive or negative.

2 INTRODUCTION

The All-Island Single Electricity Market (SEM) commenced operation on 1 November 2007 and is administered by the Single Electricity Market Operator (SEMO), formed through a contractual joint venture between the transmission system operators, Eirgrid in the Republic of Ireland and SONI in Northern Ireland. SEMO operates on a cross jurisdictional basis, with Eirgrid licensed as market operator in ROI and SONI as market operator in Northern Ireland.

SEMO is licensed and regulated co-operatively by the Commission for Energy Regulation (CER), in the Republic of Ireland, and the UR in Northern Ireland. To date, SEMO has been subject to a combined Regulatory Authority (RA) price control, approved by the SEM Committee (SEMC). The SEM is governed by the SEMC, which was set up by the Governments in the Republic of Ireland and Northern Ireland. This Committee has representatives from both RAs, UR in Northern Ireland and CER in the Republic of Ireland, together with an Independent Member.

The Licence modifications proposed in this consultation paper relate solely to the SONI MO Licence and consequently any amendments to the Licence would be implemented under Article 14 of the Electricity Order 1992, as amended by the Gas and Electricity Licence Modification and Appeals Regulations (Northern Ireland) 2015.

2.1 ROLE OF SEMO

SEMO's role in the market is explicitly defined in the SEM Trading and Settlement Code ("TSC")¹, which sets out the rules, procedures and terms and conditions which all parties, including SEMO, must adhere to in order to participate in the SEM. Additionally, EirGrid and SONI must comply with the conditions within both their respective market operator licences.

SEMO's revenue requirement is determined on a combined basis for both market operators. SEMO's operational and capital costs are recovered through market operator tariffs and fees, which are levied on market participants. Tariffs are set on an all-island basis and recovered between Eirgrid and SONI in line with agreed proportions which have regard to comparative levels of energy consumption in ROI and NI. The agreed current apportionment between EirGrid and SONI is 75% and 25% respectively.

¹ <http://www.sem-o.com/MarketDevelopment/MarketRules/TSC.docx>

Both SONI and Eirgrid are party to the Market Operator Agreement² which requires that each market operator works in conjunction with the other to ensure achievement of objectives on an all-island basis.

2.2 PURPOSE OF CONSULTATION

This consultation seeks stakeholder views on the proposed licence modifications contained in Appendix 2 of this paper.

2.3 HOW TO RESPOND

The consultation period will close on 20 November 2015.

Responses to this consultation should be forwarded to reach the UR on or before 5pm on 20 November 2015 to:

Bronagh McKeown
The Utility Regulator
Queens House
14 Queen Street
Belfast
BT1 6ED
Email: Bronagh.McKeown@uregni.gov.uk

Your response to this consultation may be made public by the UR. If you do not wish your response or name made public, please state this clearly by marking the response as confidential. Any confidentiality disclaimer that is automatically produced by an organisation's IT system or is included as a general statement in your fax or coversheet will be taken to apply only to information in your response for which confidentiality has been specifically requested.

Information provided in response to this consultation, including personal information may be subject to publication or disclosure in accordance with the access to information regimes; these are primarily the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 1998 (DPA). If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things with obligations of confidence.

In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of

² SONI Limited and Eirgrid PLC Market Operator Agreement, dated 03 July 2007

the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the UR.

This document is available in accessible formats. Please contact Bronagh McKeown on 028 9031 1575 or Bronagh.McKeown@uregni.gov.uk to request this.

3 BACKGROUND AND PROPOSED MODIFICATIONS

3.1 CURRENT ANNEX NOT FIT FOR PURPOSE

The SEMO Price Control was published on 6 August 2013³ with an effective date of 1 October 2013, running until September 2016. The need to ensure codification of the SEMO Price Control and an appropriate tariff approval mechanism was highlighted in the 2014/15 tariff setting process. The RAs and SEMO disputed the revenue amount needed to cover the Licence requirement to have a Parent Company Guarantee (PCG) in place and the RAs had no appropriate recourse under the Licence as currently drafted.

Annex 1 currently states (see Appendix 2) that, “*the revenue of the Market Operation Activity in each relevant year shall not exceed the amount the Licensee determines is reasonable in all the circumstances for that relevant year.*” The current Annex 1 does not codify the existing SEMO Price Control or give the UR the necessary powers to approve annual tariff amounts.

The UR have had ongoing discussions with external legal and SEMO, in respect of the Licence modifications necessary to ensure that Annex 1 provides for codification of the SEMO Price Control, and an adequate tariff approval process. All parties involved agree that the Annex, as currently drafted, is not fit for purpose.

3.2 PROPOSED AMENDMENTS TO ENSURE ANNEX IS FIT FOR PURPOSE

The proposed Annex 1 (see Appendix 2) aims to codify the SEMO Price Control, within the SONI MO Licence, through direct reference to it. As each new price control is instated this will be deemed to be a modification of the Licence, providing the licensee with recourse under the new Regulations. The updated Annex accords the UR with clear responsibility for approval of annual tariffs, as is necessary within an effective regulatory framework.

In terms of modifying the SONI MO Licence, complexity arises as SEMO’s revenue entitlement is determined on an all-island, cross jurisdictional basis. In order to ensure each market operator licence is operating within its jurisdictional vires, the total revenue entitlement, contained within the Price Control, must be split into an NI and an ROI portion. In order to overcome this problem, the proposed Annex incorporates the agreed

³ Single Electricity Market Operator Revenue Requirement, Price control commencing 1 October 2013 Decision Paper, dated 6 August 2013, SEM-13-054

current apportionment between Eirgrid and SONI and splits the total revenue entitlement, within the current Price Control, on this basis. The agreed current apportionment is based on comparative levels of energy consumption in ROI and Northern Ireland and currently total revenue is split on a 75 (Eirgrid)/25 (SONI) basis. This 75/25 split reflects how revenue is recovered between both jurisdictions and is used throughout the SEMO Price Control, e.g. in relation to the WACC calculation where a blended WACC is derived from blending the WACCs applicable for Eirgrid and SONI in line with specified proportions. The UR has carried out analysis confirming that this demand apportionment still reflects reality in terms of comparative levels of energy consumption on the island. This 75/25 break down is regularly used by both Eirgrid and SONI and is in line with the defined proportions in the Market Operator Agreement.

The UR concedes that not all elements of the SEMO Price Control are split on a 75/25 basis, with a couple of minor costs being applicable solely to Eirgrid or solely to SONI. The UR has conducted analysis and concluded that the net effect of adjusting for these components is immaterial to tariffs.

In order to reflect the all-island SEMO Price Control within two separate licences held in two different jurisdictions, some kind of apportionment is required. The UR is keen to avoid the requirement for a dual tariff setting process within the SEM. Paragraph 13 of the proposed Annex accords the licensee with the power to challenge this 75/25 apportionment if they feel the split is no longer appropriate.

Q1 Respondents are asked to comment on the overall approach taken to modifying Annex 1 of the SONI Market Operator Licence to ensure it is fit for purpose.

3.3 THE REGULATIONS

On 6 February 2015, The Gas and Electricity Licence Modification and Appeals Regulations (Northern Ireland) 2015⁴ (Regulations) came into effect. The Regulations change the legislative procedure by which the UR can modify gas and electricity licences. The UR issued a Decision Paper on the “Modifications necessary due to the

⁴ The Gas and Electricity Licence Modification and Appeals Regulations (Northern Ireland) 2015

Gas and Electricity Licence Modification and Appeals Regulations (NI) 2015⁵ on 4th August 2015.

The Regulations amend the procedures in the Gas and Electricity Orders so as to enable the UR to modify licence conditions without the requirement for consent from individual licensees or classes of licensees, but with a right for affected licence holders and other specified bodies, including the Consumer Council for Northern Ireland (CCNI), to appeal licence modifications to the Competition and Markets Authority (CMA).

As licence holders and the CCNI are permitted, under the new Regulations, to appeal directly to the CMA, it is no longer possible for the UR to refer matters to the CMA when licence holders do not agree with a UR decision. Prior to the UR's Decision Paper on the matter, the majority of electricity licences relied upon the ability of the UR to refer matters to the CMA. As this is no longer possible, under the Regulations, the licence conditions no longer worked in practice and modifications were necessary.

The UR decided to omit the SONI MO Licence from this consultation and decision process as there were no requisite or expedient modifications necessary to the Licence as a result of the Regulations coming into effect. However, given that it is being proposed to extensively modify Annex 1, the UR believes that the right of disapplication should be inserted within the existing SONI MO Licence in order to bring it into line with the SONI System Operator Licence, with minor adjustments where necessary. Further information on this Disapplication process can be found within the UR's Decision Paper referenced above.

Q2 Respondents are asked to comment on the overall approach taken to modifying Annex 1 of the SONI Market Operator Licence to reflect the new Regulations.

Q3 Respondents are asked to provide suggestions as to how the SONI Market Operator Licence conditions might be simplified in the future.

⁵ [http://www.uregni.gov.uk/uploads/news/150803_LMA_Decision_paper_\(final\).pdf](http://www.uregni.gov.uk/uploads/news/150803_LMA_Decision_paper_(final).pdf)

4 FUTURE MODIFICATIONS

The UR is currently engaging with legal advisors on further possible modifications to the SONI MO Licence. Modifications are required to Condition 10 of the Licence on the “Independence of the Market Operation Activity” and Condition 2 on the “Preparation of Accounts”. This consultation paper relates solely to proposed modifications to Annex 1 of the SONI MO Licence. Annex 1 is clearly divisible from the other modifications being considered and capable of being modified on a standalone basis.

Due to a different legislative framework in ROI, Eirgrid’s Market Operator licence is not affected by the same issues as the SONI MO Licence and is therefore not included in this consultation paper. The UR and CER are working to align both market operator licences where possible.

5 SECTION 75 OF THE NORTHERN IRELAND ACT 1998

As a public authority, the Utility Regulator has a number of obligations arising from section 75 of the Northern Ireland Act 1998. These obligations concern the promotion of equality of opportunity between:

- (a) persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
- (b) men and women generally;
- (c) persons with disability and persons without; and
- (d) persons with dependants and persons without.

The Utility Regulator must also have regard to the promotion of good relations between persons of different religious belief, political opinion or racial groups.

In the development of its policies the Utility Regulator also has a statutory duty to have due regard to the needs of vulnerable customers i.e. individuals who are disabled or chronically sick, individuals of pensionable age, individuals with low incomes and individuals residing in rural areas. Some of the above equality categories will therefore overlap with these vulnerable groupings.

In order to assist with equality screening of the proposals contained within this consultation paper, the Utility Regulator requests that respondents provide any information or evidence in relation to the needs, experiences, issues and priorities for different groups which they feel is relevant to the implementation of any of the proposals. Furthermore, the Utility Regulator welcomes any comments which respondents might have in relation to the overall equality impact of the proposals.

Q4 Do the proposals within this paper have an impact on equality of opportunity in relation to the persons listed in section 75 of the Northern Ireland Act? If yes please provide reasons and state whether you believe the impact is positive or negative.

Appendix 1 – Article 14 Licence Modification Notice

THE NORTHERN IRELAND AUTHORITY FOR UTILITY REGULATION NOTICE UNDER ARTICLE 14(2) OF THE ELECTRICITY (NORTHERN IRELAND) ORDER 1992 (AS AMENDED)

MODIFICATIONS PROPOSED TO SONI LIMITED'S SEM OPERATOR LICENCE

In pursuance of its powers under Article 14(1) of the Electricity (Northern Ireland) Order 1992 (as amended) (the “**Order**”), the Northern Ireland Authority for Utility Regulation (the “**Authority**”) hereby gives notice under Article 14(2) of the Order as follows:

1. We propose to make modifications to the market operator licence (the “**Licence**”) held by SONI Limited (the “**Licensee**”).
2. The effect of the proposed modifications will be:
 - (a) to amend Annex 1 of the Licence to codify the current price control and enable Authority approval of tariffs; and
 - (b) to insert equivalent disapplication provisions into the Licence from the SONI System Operator licence (which were inserted as a result of the coming into operation of The Gas and Electricity Licence Modification and Appeals Regulations (Northern Ireland) 2015).
3. The reasons for the proposed modifications are:
 - (a) to ensure codification of the SEMO Price Control (SEM-13-054) within the Licence while allowing for Authority approval of tariffs; and
 - (b) to ensure consistency with the SONI System Operator's licence with regard to its disapplication provisions (as detailed in the Authority's decision paper on 'Modifications necessary due to the Gas and Electricity Licence Modification and Appeals Regulations (NI) 2015', published on the Authority's website on 4th August 2015).
4. The proposed modifications to the Licence are set out in the Annex to this notice.

5. Representations with respect to the proposed modifications may be made on or before 5pm on Friday 20 November 2015 by writing to or by emailing:

Bronagh McKeown
Utility Regulation
Queens House
14 Queen Street
Belfast BT1 6ED
Tel: 02890311575
[Email: Bronagh.McKeown@uregni.gov.uk](mailto:Bronagh.McKeown@uregni.gov.uk)

6. The Authority has, pursuant to Article 14(4) of the Order, sent a copy of this notice to the Licensee, the Department of Enterprise, Trade and Investment and also to the General Consumer Council.

7. Dated this 23 day of October 2015

Jenny Pyper

For and on behalf of the Northern Ireland Authority for Utility Regulation

cc

Laura McCoy (Personal Secretary), DETI

Robin McCormick, SONI Limited

John French (CEO), Consumer Council for Northern Ireland