

SONI Ltd Response

To the Utility Regulator's Consultation Proposals on SONI Governance

25 June 2021

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1 Introduction and Executive Summary

- 1.1 This response is made by SONI Ltd. ('SONI'); company number NI 038715, which is the holder of Licences to Participate in the Transmission of Electricity and to act as SEM Operator.
- 1.2 SONI Ltd is the subject of this consultation by the Utility Regulator into the discharge of governance by SONI following the Utility Regulator's "Call for Evidence"¹ published on 9 July 2019 on this issue. The Utility Regulator's subsequent "Consultation Proposals"² set out options which the Utility Regulator deems appropriate in terms of SONI's board and management structures in relation to the discharge by SONI of its functions.
- 1.3 The Utility Regulator has however undertaken a review of the governance of SONI with respect to only a subset of its activities that is under the SONI License to Participate in the Transmission of Electricity ('Transmission Licence')³. It has done so without reference to the other functions SONI performs, or the governance of them, including where SONI performs and discharges its Single Electricity Market ("SEM") functions under its Transmission Licence or under the SONI License to Act as SEM Operator ("Market Operator Licence")⁴.
- 1.4 SONI Ltd. is a single legal entity. Any consideration of its governance must be by reference to the corporate entity as a whole.
- 1.5 We are both disappointed and at the same time concerned at the proposals as consulted upon. The Utility Regulator talks about the importance of a trusted relationship between regulator and Transmission System Operator ("TSO"), a role that SONI holds and for which it was independently certified.
- 1.6 It is clear from this consultation process on SONI Governance and the recently published Consultation Proposals of the Utility Regulator, on which the Utility Regulator did not at any stage, seek discussion with SONI that this trust and trusted relationship has broken down. SONI does not understand why this is the case. At no time had there ever been any suggestion that SONI has not adequately performed its functions and the nature of SONI's position within the regulatory architecture means SONI has extensive and on-going engagement with the Utility Regulator's office at all levels.
- 1.7 This consultation comes after the submission of SONI's extensive and detailed response to the earlier Call for Evidence and in response to the Utility Regulator's further Requests for Information, all of which SONI furnished. In those responses SONI set out both the history of the arrangements and why they benefit Northern Ireland consumers. SONI considers that if the Utility Regulator had engaged with SONI during the development of the Consultation Proposals, SONI could have assisted in the identification and corrections of some of the errors of fact, inaccuracies, false

¹ "Call for Evidence" in this response refers to the "SONI Governance: a Call for Evidence" published by the Utility Regulator on 9 July 2019 and which may be sourced here: <https://www.uregni.gov.uk/news-centre/soni-governance-call-evidence>

² "Consultation Proposals" in this response refers to the "consultation on proposals for governance of the System Operator of Northern Ireland (SONI), published by the Utility Regulator on 2 April, 2021 and which can be sourced: <https://www.uregni.gov.uk/news-centre/soni-tso-governance-consultation-proposals-published>

³ The statutory provision for licencing the transmission of electricity in Northern Ireland is enshrined under Article 10(1)(b) of the Electricity (Northern Ireland) Order 1992 - <https://www.legislation.gov.uk/nisi/1992/231/article/10>

⁴ The statutory provision for licencing the SEM operator in Northern Ireland is enshrined under Article 10(1)(d) of the Electricity (Northern Ireland) Order 1992 - <https://www.legislation.gov.uk/nisi/1992/231/article/10>, in addition to Section 4 of The Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 - <https://www.legislation.gov.uk/nisi/2007/913/article/4>

assertions and poor comparisons included in the Consultation Proposals. SONI has addressed these in this response.

- 1.8 The central premise of the Consultation Proposals seems to be that SONI does not act or will not at some future time act, in the interests of consumers in Northern Ireland. Yet there is absolutely no basis for this. No evidence whatsoever to support this assertion has been set out and the Utility Regulator itself states that it has not identified any “harm or potential harm”. We note that this is something the Utility Regulator recently confirmed to the Northern Ireland Assembly Committee for the Economy⁵.
- 1.9 We see no rationale to support the introduction of the measures proposed to address this unidentified harm.
- 1.10 No evidence has been produced as part of the “Call for Evidence” and yet the Utility Regulator is proceeding or proposing to proceed in the absence of such evidence. In its response to the Call for Evidence, SONI questioned the accuracy of matters relating to the justification for the proposed approach by the Utility Regulator. Nonetheless these matters were not revisited in the Utility Regulator’s Consultation Proposals. In addition, no ‘status quo’ option was identified in the Utility Regulator’s Consultation Proposals.
- 1.11 The existing governance arrangements within SONI continue to benefit customers both on the island and in Northern Ireland specifically, within the all island context. The unique advantages that ownership and the integrated operation with EirGrid bring include many benefits which would not be available under an alternative ownership or independent structure. The cost-sharing arrangements, irrespective of where the costs are actually incurred, to support the existing structure also reflect this reality. Northern Ireland consumers in general pay only 25% of the cost of any all-island initiative undertaken, a cost much less than that which a standalone and independent SONI, or one owned by a party other than EirGrid, would incur.
- 1.12 What is extremely disappointing and concerning is that the harm which would be caused by any of the four Options that the Utility Regulator has now proposed, and in particular the harmful impact to the SEM, is not examined in the Consultation Proposals. This harm will adversely impact customers in both Northern Ireland and the Republic of Ireland and the very SEM itself.
- 1.13 Given this impact on the SEM it is clear these matters are a “SEM Matter”. The requirement that they be addressed by the SEM Committee forms a central tenet of our response. SONI strongly urges the Utility Regulator to share this response with the SEM Committee such that the SEM Committee can give consideration to the matters therein.
- 1.14 A matter is a “SEM Matter” if in the view of the SEM Committee it materially affects the SEM. The matters set out and the approach proposed constitutes a “SEM Matter” by virtue of satisfying this legal test. The impact of the proposed approach, specifically a “jurisdictional approach” to the SEM would have far reaching consequences in terms of the direction of travel of energy policy in Northern Ireland and on the island of Ireland.
- 1.15 Given this SEM impact, and that this matter constitutes a “SEM Matter”, in their current guise the Utility Regulator’s Consultation Proposals are therefore without a legal basis.

⁵ Utility Regulator appearance before the Northern Ireland Assembly for the Economy, 21 April 2021
<https://www.youtube.com/watch?v=WzRv2NqFF1A> [1:28:14 – 1:28:25]

As such the Utility Regulator is acting '*ultra vires*' or beyond its powers to make any of the decisions it is proposing to make in these documents. Any such decisions would constitute an Error of Law. There is no valid basis for the continuation of this current process in its existing form.

- 1.16 The Utility Regulator asserts that the SEMC is aware of the consultation and has determined the matter to be "*jurisdictional in nature and therefore falls under the remit of the Utility Regulator and not SEMC*"⁶. This is not in fact the test and does not form the legal basis for the establishment of the jurisdiction of the SEM Committee. A matter is not determined to be a "SEM Matter" or not a "SEM Matter" by virtue of whether it is "jurisdictional" or all island in nature. A matter is a "SEM Matter" if it materially affects, or is likely materially to affect, the SEM. The matters as set out within the Utility Regulator's consultation under all of the options proposed have such a material effect. We further set this out in our response.
- 1.17 The SEM Committee has itself already considered matters related to the governance of SONI to be a "SEM Matter". The SEM Committee considered that the purchase of SONI and the exercise of certain regulatory functions in connection with the purchase of SONI constituted "SEM Matters" for the purposes of the relevant legislation, i.e. that the exercise by the Utility Regulator and Commission for the Regulation of Utilities (then CER)⁷ of their regulatory functions in this regard were matters which materially affect or are likely to materially affect the SEM.
- 1.18 This was articulated by the SEM Committee on 25 November 2008 when it determined that "*regulatory policy on the potential purchase of SONI by EirGrid, coupled with the potential exercise of regulatory functions (such as Licence Changes) in pursuit of that policy clearly are SEM Matters as defined in the relevant legislation. The performance of System and Market Operation functions in the SEM, the identity of those who own those entities who perform such functions, and potential licence changes to the SO and MO licences held by those engaged in system and market operation are matters which either materially affect or are likely materially to effect the SEM.*"⁸
- 1.19 It was the SEM Committee which proposed and made modifications to the SONI and EirGrid licences at the time of SONI's acquisition by EirGrid. Although the licence modifications resulting from this current process are not yet proposed they would, under all of the options proposed by the Utility Regulator, effectively directly contradict and unwind the modifications made by the SEM Committee at that time – including modifications made by the SEM Committee relating to governance and which removed the need for management independence of SONI from that of EirGrid.
- 1.20 The proposed approach by the Utility Regulator and in particular the proposed "jurisdictional approach" to SONI's TSO functions, such that SONI TSO is a Northern Ireland TSO with regard in the discharge of its functions only to the consumers of Northern Ireland, is directly contrary to the policy position set out in the All Island Energy Market Development Framework – the current extant policy of both the Government of the United Kingdom of Great Britain and Northern Ireland and the

⁶ Consultation Proposals, page 8

⁷ Commission for Energy Regulation as it had been termed at the time, now being entitled "The Commission for Regulation of Utilities."

⁸ SEM-08-176, *The Proposed Acquisition of SONI Limited by EirGrid plc*, Consultation Paper, 18 December 2008, paragraph 17, page 7. - <https://www.semcommittee.com/sites/semcommittee.com/files/media-files/SEM-08-176.PDF>

Government of Ireland⁹ underpinned by the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007¹⁰ (“the 2007 Order”).

- 1.21 In addition to constituting an Error of Law the proposals as set out fail to further the Utility Regulator’s statutory objectives as set out in the 2007 Order. In particular the options as set out would not further or protect the interests of consumers in Northern Ireland and the Republic of Ireland nor indeed those in Northern Ireland alone. In addition, by failing to set out that which would be necessary for SONI to operate on the standalone basis proposed it has also failed to discharge its duty to ensure the licensee can finance its activities.
- 1.22 This governance review process is silent on the existing working arrangements and design of the SEM, the Capacity Market, the Balancing Market, System Services, Delivering a Secure, Sustainable Electricity System (DS3) Procurement and more. It does not and cannot lead to efficiencies or benefits to consumers as claimed. We further set this out in our response.
- 1.23 As we shall set out in this response the Utility Regulator’s Consultation Proposals are based on numerous Errors of Fact. In addition there is an inappropriate reliance on poor comparators and an inaccurate representation of European legislation. We have taken the opportunity to correct these for the record and hope that having addressed them this will further cause the Utility Regulator to re-consider the appropriateness and the basis and foundation of that proposed.
- 1.24 The reality of the SEM is that this has played a crucial role in protecting the interests of customers in Northern Ireland and the Republic of Ireland. In fact the All-Island Energy Market Development Framework which was developed by the Utility Regulator and Department of Enterprise, Trade and Investment (DETI) among others outlined a mechanism for evaluating the benefits of a fully integrated electricity market. It stated “*The test by which the value of a fully integrated All-island Energy Market should be judged is that energy users in both parts of the island are better off than they would be in two smaller markets which are mutually supportive good neighbours, but which trade together opportunistically rather than systematically.*”¹¹ Among the benefits highlighted were: “*larger, single market with competitive energy prices, open and transparent competition at all levels in the market place, greater security of supply, longer term savings through rationalisation of functions in regulation, system operation and transmission asset planning and ownership.*”¹²
- 1.25 These benefits, and more, have been delivered by virtue of the all island arrangements, and which arrangements themselves have been further developed to create the existing framework of the revised SEM arrangements. For example, a 2006 NERA cost-benefit analysis¹³ found a balanced net benefit to Northern Ireland and Irish

⁹ All-Island Energy Market: A Development Framework, DETI, Department of Communications, Marine and Natural Resources, NIAER, CER, November 2004.- <https://www.soni.ltd.uk/media/documents/Projects/Publications/10-All-Island-Energy-Market-Dev-Framework-NOV-04.pdf>

¹⁰ The Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 - https://www.legislation.gov.uk/nisi/2007/913/pdfs/uksi_20070913_en.pdf

¹¹ All-Island Energy Market: A Development Framework, DETI, Department of Communications, Marine and Natural Resources, NIAER, CER, November 2004, page 4 - <https://www.soni.ltd.uk/media/documents/Projects/Publications/10-All-Island-Energy-Market-Dev-Framework-NOV-04.pdf>

¹² All-Island Energy Market: A Development Framework, DETI, Department of Communications, Marine and Natural Resources, NIAER, CER, November 2004, page 5 - <https://www.soni.ltd.uk/media/documents/Projects/Publications/10-All-island-Energy-Market-Dev-Framework-NOV-04.pdf>

¹³ A Cost-Benefit Study of the Single Electricity Market: A Final Report for NIAER and CER, NERA Economic Consulting, December 2006

consumers alike. Similarly, the 2014 SEM Committee impact assessment (IA)¹⁴ found the overall consumer impact of the Integrated Single Electricity Market (I-SEM) arrangements was conclusively positive.

- 1.26 SONI acknowledges and has had sight of the submission of EirGrid plc to the Utility Regulator in this matter.
- 1.27 As part of its governance review of SONI, the Utility Regulator has asked a number of questions in its Consultation Proposals, which SONI has not responded to directly in this submission. Rather the detailed content of SONI's response can leave the Utility Regulator in no doubt as to SONI's perspective on the approach proposed by it. SONI is of the view that the detailed comments provided herewith in this submission merit a consideration in full by the Utility Regulator together with provision of a point-by-point response to SONI. SONI urges the Utility Regulator to formally engage with and pass this matter to the SEM Committee who is the body with *vires* to act in this matter.
- 1.28 In summary, the key concerns that SONI has with the approach taken by the Utility Regulator and which are detailed in our response are as follows:
- The Utility Regulator is acting 'ultra vires' or beyond its powers to make any of the decisions it is proposing to make in these documents. Any such decisions would constitute an Error of Law.
 - The matters set out and the approach proposed constitutes a "SEM Matter" by virtue both of impact and of precedent. Under any of the proposed options, the resulting divergence between SONI and EirGrid TSOs will have a material impact on the SEM.
 - The Utility Regulator has not demonstrated or evidenced any actual harm in the existing arrangements or "potential harm" with respect to increase in costs, misalignment in networks or barriers to competition.
 - The cost benefit analysis conducted by the Utility Regulator is incomplete, unsatisfactory and overly simplistic. While the Utility Regulator acknowledges that additional costs could arise based on their proposals, it does not attempt to quantify these nor does it consider the benefits that customers accrue under the existing arrangements.
 - In addition no assessment was undertaken in terms of the wider and more material impact of market related costs to consumers, which would be considerable.
- 1.29 As is clear from the above, SONI is extremely disappointed with the approach the Utility Regulator has advanced through the Consultation Proposals. Given the gravity of the impact of the proposed options SONI has had to adopt a legalistic approach. This is not, and was not SONI's preferred approach. But we have been left with no choice.

¹⁴

SEM-14-085b *Integrated Single Electricity Market (I-SEM) SEM Committee Decision on High-Level Design Impact Assessment*, SEM Committee, Section 5, 17 September 2014 -
<https://www.semcommittee.com/sites/semcommittee.com/files/media-files/SEM-14-085b%20I-SEM%20SEM%20decision%20on%20HLD%20Impact%20Assessment.pdf>

- 1.30 Ultimately we believe it would be preferable, much more productive, and ultimately much better and less costly for consumers if Utility Regulator and SONI could engage to establish a way forward.
- 1.31 The Utility Regulator talks of the importance of a trusted relationship between the Regulator and the Transmission System Operator. SONI agrees. We would further add the equal importance of this with respect to our SEM Operator licence and discharge of our SEM Operator functions.
- 1.32 SONI, and its Board, wish to see that trusted relationship develop and flourish. There are enormous challenges ahead of us in terms of the Energy Transition. They will only be capable of being solved if both SONI and the Utility Regulator work closely and collaboratively together to solve them. On a small island with a set of Single Electricity Market arrangements and a single synchronous power system they will only be solved if they are approached on an all island, whole of system, basis.
- 1.33 This means SONI must have close and strong relationships with NIE Networks, with Mutual Energy, with the Gas Network Operators but particularly with EirGrid. It must support that with a close engagement with the Department for the Economy, the Department for Infrastructure, the Utility Regulator and the relevant counterparts in the Republic of Ireland.
- 1.34 SONI forms a very modest portion of the final electricity consumer's bill,¹⁵ but has influence significantly beyond its scale. It is vital that as we face the challenges ahead, including the challenges which will result from the new and emerging Northern Ireland energy policy, that the regulatory engagement between SONI and the Utility Regulator, and between EirGrid and the Utility Regulator engage in a manner which unlocks real value for consumers across the island.
- 1.35 We have set out in this paper how EirGrid has continued to invest in the SONI business and how the EirGrid Group presence in Belfast has continued to grow to the benefit of Northern Ireland, and its local economy. SONI is a much stronger organisation today than it was on divestment from Viridian and NIE. There has since SONI was acquired by EirGrid been no concern expressed as to how SONI discharges, or has discharged, its licence functions. However, if there is a concern in this regard we are more than happy to sit down, engage and see how it can be addressed.
- 1.36 We cannot however accept or engage with the basis of the current proposals as set out. SONI remains open to any future engagement with the Utility Regulator, the SEM Committee and the wider stakeholder community in seeking to address the broader issues rose in the Consultation Proposals.

¹⁵ Typically representing 1% to 2% of consumer bills.- *Price Control for Northern Ireland TSO 2020-2025*, Utility Regulator, Section 3.3, <https://www.uregni.gov.uk/files/uregni/media-files/SONI%20TSO%20price%20control%20final%20approach.pdf>

2 Proposed Actions are a “SEM Matter”

Beyond the *vires* of the Utility Regulator acting alone

- 2.1 The SEM Committee¹⁶ of the Utility Regulator (“the SEM Committee”) alone has the *vires* to determine the SONI governance proposals contained in the Consultation Proposals. This is because this issue is a “SEM Matter” as this issue materially affects the SEM. All of the options put forward by the Utility Regulator propose to unpick arrangements that were put in place at the time of acquisition of SONI by EirGrid and which have already been determined to be a “SEM Matter” by the respective SEM Committee of the Utility Regulator and that of the Commission for the Regulation of Utilities¹⁷.
- 2.2 The Utility Regulator has failed to correctly apply the very test of what constitutes a “SEM Matter”. In its Consultation Proposals, the Utility Regulator states that “*Whether something is a SEM Matter is a question for the SEM Committee (SEMC). SEMC is aware of UR’s review into the SONI governance arrangements and has to date decided that the matter is jurisdictional in nature and therefore falls under the remit of UR and not SEMC.*”¹⁸
- 2.3 In this Section, SONI sets out the legal basis for the test of whether a matter constitutes a “SEM Matter”, before responding to points made by the Utility Regulator in its Consultation Proposals as to the nature of SONI Governance and therefore the appropriate decision-making forum for such matters.
- 2.4 The test for whether a matter constitutes a “SEM Matter” is a question of law with a precise test – set out in legislation – that must be applied. The question of law must be determined independently of whether a matter might be subjectively considered jurisdictional or not. In this Section, SONI sets out the legal test for what constitutes a “SEM Matter” and explain the irrationality of the Utility Regulator’s approach as set out in the Consultation Proposals.

¹⁶ The Memorandum of Understanding between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Ireland, December 2006 provided in the context of the all-island market at the outset (pgs.5-6) that “*the legislation will establish special committees of NIAER and CER (“SEM Committees”) to take decisions on their behalf as to the exercise of their respective functions in respect of the SEM. The legislation shall make such other provision as the Authorities consider expedient or necessary in connection with the performance by the SEM Committees of their function. The legislation will provide for the appointment, removal and remuneration, where relevant of SEM Committee members. Each SEM Committee will comprise up to seven persons made up of no more than three members from among the members and staff of NIAER, no more than three from the Commissioners of CER and one member independent of NIAER and CER. The members may be appointed (and may be removed) by the Authorities. The Authorities will have power to appoint a deputy to the Independent Member. The legislation also provide for the quorum and or meetings of the SEM Committees.*”

Schedule 2, Article 6 of the 2007 Order sets out the legislative requirements of the SEM Committee of the Utility Regulator. “(1) *The SEM Committee shall consist of (a) not more than 3 persons (“Authority members”) appointed by the Department after consultation with the Authority; (b) not more than 3 persons appointed by the Department with the approval of the Irish Minister and (c) a person (“the independent member”) appointed by the Department with the approval of the Irish Minister and c) a person (“the Independent member”) appointed by the Department with the approval of the Irish Minister and after consultation with the Authority.*”

¹⁷ As can be seen from footnote 16 above, the SEM Committee is a creature of statute, having a legal basis and a separate legal committee of similar composition both established in the 2007 Order and in the Ireland Electricity Regulation Act 1999 as amended by the SEM Act 2007.

¹⁸ Consultation Proposals, page 8

The “SEM Matter” Legal Test

2.5 The Memorandum of Understanding between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland provided for the establishment of special committees of the Utility Regulator and the Commission for the Regulation of Utilities (“SEM Committees”) of which the SEM Committee of the Utility Regulator is one. Article 6 of the 2007 Order sets out the role of the SEM Committee and the test for a “SEM Matter” – decisions in relation to which **must** be taken on behalf of the Regulatory Authorities by their respective SEM Committees:

- “6(1) *There shall be a committee of the Authority to be known as the Single Electricity Market Committee referred to in this Order as “the SEM Committee”.*
- 6(2) *Any decision as to the exercise of a relevant function of the Authority in relation to a SEM matter must be taken on behalf of the Authority by the SEM Committee.*
- 6(3) *For the purposes of this Order a matter is a SEM matter if the SEM Committee determines that the exercise of a relevant function of the Authority in relation to that matter materially affects, or is likely materially to affect, the SEM.*
- 6(4) *For the purposes of this Order “a relevant function” means: -*
 - a) *A function under Part II of the Electricity Order*
 - b) *A function under the Energy Order which relates to electricity;*
 - c) *A function under Part IV of the Electricity Order 1992 (Amendment) Regulation (Northern Ireland) 2005 (SR (NI) 2005/335);*
 - d) *A function under Article 3 of Schedule 1.”¹⁹*

Materially Affects the SEM or is Likely to Materially Affect the SEM

2.6 The test as to whether a decision as to the exercise of a relevant function relates to a “SEM Matter” is therefore whether this “materially affects, or is likely materially to affect the SEM.” In order to determine whether this test has been satisfied, the SEM Committee of the Utility Regulator has to consider the effect of the proposed action. The test requires there to be a ‘material’ effect on the SEM²⁰; in this instance, the threshold is clearly met, and in addition the impact on the SEM is significant. This is further considered in Section 6 of this response.

The SEM

2.7 Understanding “the SEM” is key in this context. Article 2(2) of the 2007 Order provides:

“the SEM” means the Single Electricity Market, that is to say the arrangements in Northern Ireland and Ireland –

¹⁹ Electricity (Single Wholesale Market) (Northern Ireland) Order 2007, Article 6.

²⁰ This is not necessarily a high threshold: the courts have previously interpreted the expression “materially” as meaning “significantly”, but in the sense of “more than trivially, fancifully or hypothetically”: see for example *R v Chargot Ltd* [2009] 1 WLR 1 per Lord Justice Hope.

- a) *Initially described in the Memorandum of Understanding mentioned in paragraph (3);*
- b) *Designed to promote the establishment and operation of a single competitive wholesale electricity market in Northern Ireland and Ireland;*
- c) *Which allow for the efficient application of the EU rules for cross border trade in electricity contained within or adopted pursuant to the Electricity Market Regulation as supplemented by (i) network codes established under Article 6 of that Regulation and (ii) guidelines adopted under Article 18 of that Regulation;*²¹

- 2.8 This definition is a broader definition than that which was “initially contained within the Memorandum of Understanding” extending the understanding of SEM to include the market changes required to affect the revised SEM arrangements which went live in September 2018. The effect of the changes now contained in Article 2(2) of the 2007 Order was therefore to extend the definition of the SEM and the relevant function of the SEM Committee of the Utility Regulator to cover the revised SEM arrangements including the balancing market operation, a task performed by SONI under its Transmission Licence; the capacity market, again a function assigned to SONI under its Transmission Licence and to include cross border trade and the role of interconnectors. These are SEM functions in the context of SONI’s Transmission Licence; they are not functions of SONI’s SEM Operator Licence. Further detail of the reality of these changes in the context of the TSOs operating the balancing market is provided in Section 3 of this response.
- 2.9 Given the broad, varied and extended understanding of the SEM and therefore the role of the SEM Committee of the Utility Regulator, there is a considerable risk of inconsistent decision-making should decisions relating to the SEM be taken by alternating regulatory bodies. To avoid this risk of inconsistency (which would render the statutory scheme unworkable), it is only logical and rational that the SEM Committee should determine issues concerning all matters that have been determined to be “SEM Matters”, and that matters which have previously been considered to be “SEM Matters” by the SEM Committee of the Utility Regulator would continue to be “SEM Matters”.

The Exclusive Jurisdiction of the SEM Committee

- 2.10 The decision that a matter is a “SEM Matter” is a matter exclusively within the jurisdiction of the SEM Committee of the Utility Regulator and is in itself a matter which “materially impacts” or is “likely to materially impact the SEM.” This exclusive competence of the SEM Committee regarding “SEM Matters” cannot be delegated to the Utility Regulator – there is no scope for this in the legislative framework.
- 2.11 It is clear that Article 6(2) of the 2007 Order, considered above, imposes a positive obligation on the SEM Committee whereby any decision as to the exercise of a relevant function in relation to a “SEM Matter” must be taken by the SEM Committee. There is absolutely no discretion in this regard.
- 2.12 It cannot be and is not sufficient in this regard for these matters merely to be “discussed” with the SEM Committee or that the SEM Committee should be kept “informed” of these matters, but a formal, and binding decision must be taken by the SEM Committee, which is the arbiter in this matter.

²¹ The Electricity (Single Wholesale Market) (Northern Ireland) Order 2007, Section 2 (2)

- 2.13 Both the Utility Regulator in giving effect to decisions of the SEM Committee and the SEM Committee itself in the carrying out of its functions under Article 6(2) of the 2007 Order must “have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.”²²

The Vires of the Utility Regulator

- 2.14 The Utility Regulator, like all regulatory authorities is a creature of statute and must therefore act within the powers afforded to it by the legislature. For this reason the Utility Regulator has the power to make licence modifications in respect of SONI, but not to the extent that any such decision would encroach on the *vires* of the SEM Committee of the Utility Regulator to act.
- 2.15 Any exercise of discretion exercised by the SEM Committee of the Utility Regulator with regard to its functions must be carried out in accordance with Article 6(3) of the 2007 Order specifically whether “*the exercise of a relevant function of the Authority in relation to that matter materially affects, or is likely materially to affect the SEM.*”

The Absence of ‘Jurisdictional’ Test

- 2.16 The Utility Regulator states in the Consultation Proposals that “[w]hether something is a SEM Matter is a question for the SEM Committee (SEMC). SEMC is aware of UR’s review into the SONI governance arrangements and has to date decided that the matter is jurisdictional in nature and therefore falls under the remit of UR and not SEMC.”²³ By its own admission, the Utility Regulator has applied a “jurisdictional” test, in deciding that this matter is not in fact a “SEM Matter”. The approach adopted by the Utility Regulator or its SEM Committee in this instance does not hold up to legal scrutiny.
- 2.17 There is no definition of operating on a “jurisdictional approach” in the relevant legislation. Rather, the 2007 Order contemplates an all-island approach in which all-island functions are delivered for the benefit of all consumers across the island. The Utility Regulator’s approach is fundamentally contradictory – see for example reference in the executive summary of the Consultation Proposals to SONI and EirGrid “delivering SEM all-island TSO functions” as equal partners “**representing their own consumers**”.
- 2.18 In delivering all obligations, be they SEM TSO functions and indeed SEM Market Operator functions, the SEM Committee of the Utility Regulator in overseeing the delivery of these functions must, according to the 2007 Order, “protect the interests of consumers of electricity in **Northern Ireland and Ireland** supplied by authorised persons, wherever appropriate by promoting effective competition between persons engaged in , or in commercial activities connected with the sale or purchase of electricity through the SEM.”²⁴
- 2.19 This “jurisdictional approach” expressly contradicts the shared vision for the all-island energy market contained in the ‘All-Island Energy Market Development Framework’ and which states:

²² 2007 No 913 (N.I. 7) Northern Ireland The Electricity (Single Wholesale Market)(Northern Ireland) Order 2007, Article 9(7)

²³ Consultation Proposals, page 8

²⁴ The Electricity (Single Wholesale Market) (Northern Ireland) Order 2007, Article 9(1)(c)

"Recognising that a cross-border energy market already exists albeit in an embryonic form, there is an accepted need to ensure that:

- Policy developments in both jurisdictions are progressed in ways which advance the goal of improved economic and energy supply benefits for both parts of the island;*
- The energy policy agenda is broadened beyond traditional market development issues to take account of national and international concerns with combating climate change. More specifically, there is a need to pursue renewable energy and energy efficiency opportunities where the benefits can be enhanced by acting on an all-island basis."*
- Market structures are integrated and infrastructure investment is secured, in order to improve island-wide efficiencies in the sector.*
- the activities of the regulatory authorities and transmission system operators are fully co-ordinated. It is envisaged that this would lead ultimately to a unified regulatory and system operator arrangements for the island as a whole and geared to the delivery of measurable benefits.²⁵ [Emphasis added]***

- 2.20 The level of integration referred to in the 'All-island Energy Market Development Framework' is compounded by the increasing integration of the SEM in the wake of the implementation of the revised SEM arrangements which have been captured by the amendment to Article 2(2) of the 2007 Order.²⁶
- 2.21 This point was further emphasised in the Memorandum to the 2007 Order which provided a backdrop to the 2007 Order explaining the intention of the creation of a unified single market in electricity and the steps needed to bring such a market about namely :
- (a) *"removal of physical constraints in the networks linking the electricity networks in Northern Ireland and the Republic of Ireland in order to facilitate cross-border trading in electricity;*
 - (b) ***The establishment of a single transmission system for Northern Ireland and the Republic of Ireland operational by a single system operator; and***
 - (c) *The establishment of single market for the sale by electricity generators in Northern Ireland and the Republic of Ireland and the legacy Power Procurement Business (the PPB) of NIE plc to suppliers of electricity ("wholesale electricity") in Northern Ireland and the Republic of Ireland (the Single Electricity Market" or "SEM"), and measures to ensure effective and coordinated regulation of the market."²⁷ [Emphasis added]*
- 2.22 Quite apart from the lack of vires of the Utility Regulator to act alone on the issues considered in the Consultation Proposals, and the encroaching on the role of the SEM Committee of the Utility Regulator in purporting to amend the SONI governance arrangements and SONI's managerial independence arrangements as discussed above, what is being proposed by the Utility Regulator is a "jurisdictional approach"

²⁵ All-Island Energy Market, A Development Framework, November 2004, page 3 - <https://www.soni.ltd.uk/media/documents/Projects/Publications/10-All-Island-Energy-Market-Dev-Framework-NOV-04.pdf>

²⁶ The Electricity (Single Wholesale Market) (Northern Ireland) Order 2007, Section 2(2)

²⁷ Explanatory Memorandum on Electricity (Single Wholesale Market)(Northern Ireland) Order 2007 S.I. 2007 913, paragraph 10

which undercuts and unpins the foundations of the SEM, agreed by two-governments and established for the benefit of customers in Northern Ireland and the Republic of Ireland. This “jurisdictional approach” is discussed further in the Section below.

The Irrationality of a ‘Jurisdictional Approach’

- 2.23 In this response, SONI uses the phrase “jurisdictional approach” to reflect the change in approach to SONI governance, and therefore regulation, which characterises all Options, but in particular and to a greater extent Options B-D of the Utility Regulator in its Consultation Proposals. The effects of the Utility Regulator “jurisdictional approach” which would deliver “SEM all-island TSO functions as equal partners representing their own consumers”²⁸ would be to materially affect the SEM. In this and subsequent sections, SONI indicates how any such approach contradicts the established legal framework and is therefore unsound.
- 2.24 The legislative framework which underpinned the SEM was based on an all-island approach. By way of illustration of this, Article 9 of the 2007 Order provides:

“The SEM Committee in carrying out its functions under Article 6(2) is to protect the interests of consumers in Northern Ireland and Ireland supplied by authorised persons wherever appropriate by promoting effective competition between persons engaged in or in commercial activities connected with the sale or purchase of electricity through the SEM.”²⁹

- 2.25 This regulatory framework was strengthened further by the introduction of the revised SEM arrangements which had the effect of extending the realm of activities constituting the SEM, and which were determined by the SEM Committees. The design of the revised SEM arrangements is such that further integration of the TSO activities was necessary in order to achieve the requirements determined by the SEM Committee. The following sub-section explores the market changes constituting the revised SEM arrangements and therefore the extension of the role of the SEM Committee.
- 2.26 This extension has also been captured in the Northern Ireland legislative provisions which provided legal basis to the revised SEM arrangements and which are contained in the updated Article 2(2) of the 2007 Order provides:

““the SEM” means the Single Electricity Market, that is to say the arrangements in Northern Ireland and Ireland –

- a) *Initially described in the Memorandum of Understanding mentioned in paragraph (3);*
- b) *Designed to promote the establishment and operation of a single competitive wholesale electricity market in Northern Ireland and Ireland;*
- c) *Which allow for the efficient application of the EU rules for cross border trade in electricity contained within or adopted pursuant to the Electricity Market Regulation as supplemented by (i) network codes established under Article 6 of that Regulation and (ii) guidelines adopted under Article 18 of that Regulation;”³⁰*

²⁸ Consultation Proposals, page 8

²⁹ The Electricity (Single Wholesale Market) (Northern Ireland) Order 2007, Section 9(1)

³⁰ The Electricity (Single Wholesale Market) (Northern Ireland) Order 2007, Section 2(2)

- 2.27 The legislative changes brought about by the Revised SEM Arrangements are illustrative of the expanded nature of the SEM which needed to be captured in the SEM legislative framework.
- 2.28 In a similar manner SONI's various roles in the body corporate's licensable activities have become intermingled due to the requirements of the Electricity Market Regulation³¹, and various network codes that required these changes. Chief amongst these changes is the role of SONI as Balancing Market Operator, a scheduling and dispatch function which now forms part of the market arrangements. Further detail illustrating SONI's new integrated roles in the SEM are illustrated in the paragraphs below.
- 2.29 Were the Utility Regulator to be proposing a new "jurisdictional" approach to regulation of SONI, then such an approach would have the inevitable consequence of contradicting existing legislation and the Memorandum of Understanding.
- 2.30 A divergence from this approach is not for the Regulators, in Northern Ireland and the Republic of Ireland, rather it is a matter for policy-makers and legislators, and to reverse the established all-island basis for policy development in the SEM should it be preferred to promote the proposed jurisdictional approach.
- 2.31 The SEM Committee of the Utility Regulator, the Department of Economy, industry, and consumers in Northern Ireland should be concerned by the Utility Regulator's "jurisdictional approach" to regulation on the island of Ireland which would ensure that policies are not "*progressed in ways which advance the goal of improved economic and energy supply benefits for both parts of the island.*"³²
- 2.32 The test identified by both Governments proposed to evaluate the benefits of a fully integrated All-island Energy Market by the way in which "*energy users in both parts of the island are better off than they would be in two smaller markets, which are mutually supportive good neighbours, but which trade together opportunistically rather than systematically*"³³.
- 2.33 Although the Utility Regulator infers possible "benefits to consumers" in the implementation of its proposals; the "jurisdictional approach" of the Utility Regulator is antithetical to the delivery of benefits to customers in Northern Ireland and the Republic of Ireland.

Result of Proposed Approach is to Create Tension

- 2.34 The inevitable consequence of the approach proposed by the Utility Regulator is a departure from the existing policy framework. The proposed approach would undermine existing relationships creating conflict and tension where none currently exists. In its Consultation Proposals, the Utility Regulator juxtaposes SONI's relationship with Northern Ireland consumers to whom it "*acts in the interest of and is*

³¹ The Directive (EU) 2019/944 of the European Parliaments and of the Council of 05 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU

³² 'All-Island Energy Market, A Development Framework', November 2004, page 3 - <https://www.soni.ltd.uk/media/documents/Projects/Publications/10-All-island-Energy-Market-Dev-Framework-NOV-04.pdf>

³³ 'All-Island Energy Market, A Development Framework', November 2004, page 4 - <https://www.soni.ltd.uk/media/documents/Projects/Publications/10-All-island-Energy-Market-Dev-Framework-NOV-04.pdf>

*accountable*³⁴ in contrast to EirGrid Group “*all of which sit in common Irish legal and regulatory context.*”³⁵ This assertion undermines what has been to date the regulatory and legal reality that each of SONI and EirGrid fulfil their functions in the context of the all-island market, the SEM, accountable to customers in Northern Ireland and the Republic of Ireland and supported by an established legal framework which is replicated in both Northern Ireland and the Republic of Ireland.

- 2.35 The Consultation Proposals appear to promote discord and divergence between the TSOs rather than collaboration and agreement in their cooperation as part of the all-island framework. Over time, arrangements such as those proposed are likely only to create additional hurdles and bureaucracy, in hindrance of the operation of the all-island arrangements.
- 2.36 To the extent that any fundamental tension between the interests of consumers in each jurisdiction exists, this should more appropriately be resolved by the regulatory bodies tasked with considering impact on consumers in Northern Ireland and the Republic of Ireland – the SEM Committee.

³⁴ Consultation Proposals, Section 29.

³⁵ Consultation Proposals, page 101, paragraph 29 and following

3 SONI Governance as a “SEM Matter” in the Current Arrangements

- 3.1 In addition to meeting the legal test as to what constitutes a “SEM Matter” as outlined in Section 2 of this response, there is clear evidence of the SEM Committee reflecting SONI’s stated position. In this Section, SONI sets out how the SEM Committee has previously specifically considered SONI Governance to be a “SEM Matter”. This is evidenced by past determinations of the SEM Committee which considered issues pertaining to SONI ownership and corporate structures as “SEM Matters”. Secondly, any assertion of the Utility Regulator that SONI Governance is not a “SEM Matter” is contradicted by the Utility Regulator’s approach to similar issues for example SONI Certification, which looks at issues of SONI ownership and corporate structures and where the Utility Regulator specifically stated that such matters was “SEM Matters”. Thirdly, the Utility Regulator in its Consultation Proposals acknowledges that SONI governance impacts the SEM, making this issue a “SEM Matter”.

Past Determinations of the SEM Committee as a Rational Indication of Existing Position

- 3.2 Ownership of SONI and in particular corporate governance arrangements within SONI were considered by the SEM Committee in consultation paper SEM-08-176 at the time of SONI acquisition when the SEM Committee stated:

“The SEM Committee has determined that the purchase of SONI and the exercise of certain regulatory functions in connection with the matter constitute SEM Matters for the purposes of the relevant legislation i.e. that the exercise by the Utility Regulator and CER of their regulatory functions are matters which materially affect or are likely to materially affect the SEM. The SEM Committee has formed the view that in the event EirGrid purchases SONI, regulatory measures would be required to ensure that (i) the various licences held by SONI and EirGrid take account of the new ownership structure (principally by removal of NIE specific references where appropriate, to be replaced with apt references to EirGrid), (ii) consumers of electricity in Ireland, but particularly in Northern Ireland, continue to be protected and are not in any way disadvantaged by the change of control of SONI and (iii) that the relevant licence conditions would otherwise preclude the acquisition, are removed or suspended as appropriate.”³⁶

- 3.3 The important connection between regulatory policy and matters of SONI and EirGrid corporate governance and any licence changes that would implement such regulatory policy was further identified as a “SEM Matter” by the SEM Committee in 2008.

“On 25 November 2008, the SEM Committee determined that the regulatory policy on the potential purchase of SONI by EirGrid, coupled with the potential exercise of regulatory functions (such as Licence Changes) in pursuit of that policy clearly are SEM Matters as defined in the relevant legislation. The performance of System and Market operation functions in the SEM, the identify of those who own those entities who perform such functions, and potential licence changes to the SO and MO licences held by those engaged in system and market operation are matters which either materially affect or are likely materially to affect the SEM.”³⁷

³⁶ SEM-08-176, 18 December 2008, *The Proposed Acquisition of SONI Limited by EirGrid plc*, Consultation Paper, paragraph 5, pages 3-4 - <https://www.semcommittee.com/sites/semcommittee.com/files/media-files/SEM-08-176.PDF>

³⁷ SEM-08-176, *The Proposed Acquisition of SONI Limited by EirGrid plc*, Consultation Paper, 18 December 2008, paragraph 17, page 7 - <https://www.semcommittee.com/sites/semcommittee.com/files/media-files/SEM-08-176.PDF>

- 3.4 Changes were introduced to ensure that the interests of electricity consumers in Northern Ireland were protected, and included:
- (a) Modification of Conditions 3 (General Functions) and 4 (System Operator Agreement) of the EirGrid TSO licence to introduce a duty to have regard to the need to protect the interests of consumers of electricity in Northern Ireland, and to protect said interest;
 - (b) Change to EirGrid's internal corporate documents (the Directors' Code of Conduct and its memorandum and articles of association) to, *inter alia*, recognise SONI and its system and market operation roles and to extend corporate responsibility to protect the interests of Northern Ireland consumers; and
 - (c) To seek and obtain constitutional change (in conjunction with its Ministerial shareholder) to EirGrid's founding legislation to require that two independent directors of appropriate standing with extensive Northern Ireland backgrounds shall sit on the EirGrid Board.
- 3.5 The SEM Committee supported the public commitments described above as "*building political and regulatory confidence in EirGrid in Northern Ireland - and most importantly of all, that they represent measures aimed in good faith at promoting and protecting consumers in both jurisdictions equally.*"³⁸
- 3.6 At this time, not only did the SEM Committee consider governance arrangements in the round but also specifically considered the issue of the independence of SONI, which again was considered by the SEM Committee to be a "SEM Matter".
- "The SEM Committee is of the opinion that there is already a high degree of comfort around whether the existing licences in Northern Ireland are appropriate in the context of this divestment. This is principally because the existing SO and MO licences of SONI already had to deal with SONI acting independently from NIE. Therefore, most of the changes suggested are modifications of existing licence conditions to deal with the factual change in ownership which EirGrid's ownership would bring about."*³⁹
- 3.7 The SEM Committee was desirous to ensure compliance with prevailing European legislation and in particular to ensure separation of TSOs from generation and supply which was an issue in two regards (i) because the previous owner of SONI, NIE, was involved in generation and supply therefore requiring divestment of SONI from the vertically integrated NIE group and (ii) whether the same European legislation required any intervention on the purchase of SONI by EirGrid owing to the ownership of EirGrid by the Irish State and the ownership of the ESB by the Irish State. The second issue was rejected out of hand by the SEM Committee as not requiring intervention.
- "The SEM Committee is concerned to ensure that prevailing European law and further liberalisation of energy markets, plus the SEM Governmental MOU and the resulting SEM legislation are delivered in spirit and in practice. The SEM Committee is also keen to ensure that there is no vertical integration of electricity*

³⁸ SEM-08-176, 18 December 2008, paragraph 20, page 7 -
<https://www.semcommittee.com/sites/semcommittee.com/files/media-files/SEM-08-176.PDF>

³⁹ SEM-08-176, 18 December 2008, paragraph 17, page 8 -
<https://www.semcommittee.com/sites/semcommittee.com/files/media-files/SEM-08-176.PDF>

operators such as to be contrary to the principles of the IME and in particular so as not to be contrary to the principles of effective competition and open and transparent access to electricity markets. This is articulated in practice by, for example, the structural changes described above that have led to SONI being divested by NIE. Equally the SEM Committee is mindful that implementing the IME Directive should not lead to disproportionate or convoluted rules attempting to cover all possible contingencies related to ownership structures.

The existing SO and MO licences, at conditions 13 and 11 respectively, capture the vertical integration concern in simple drafting. Each condition prohibits SONI being owned by either an entity in either Northern Ireland or Ireland which engages in the truly competitive activities (the prohibited activities) of generation or supply, or any entity which controls another entity engaged in such activities. [...]

When the SEM was designed, the two Governments were not minded to take any action with respect to the State ownership of EirGrid in the context of State ownership of ESB otherwise the Governmental MOU would have ensured a parallel divestment of EirGrid from State commensurate with the divestment of SONI from the vertically integrated NIE group. It did not. This acceptance by the two Governments of State ownership of EirGrid and its role in the Irish electricity industry does not cause concern to the SEM Committee either.⁴⁰

- 3.8 Condition 13, which provides for the prohibition of activities by SONI where such activities would be deemed to be injurious to the interests of consumers, was again strengthened by the Utility Regulator in 2012, directly on foot of proposal by SONI to do so, further cementing and guaranteeing the independence of SONI in the discharge of its activities.⁴¹
- 3.9 Indeed in 2014, the Utility Regulator, further to a decision of the European Commission, certified SONI as the Transmission System Operator⁴² for Northern Ireland in compliance with the independence requirements under European Legislation. In its decision the European Commission noted, “The Commission also recognises that **the links between SONI and EirGrid support regional integration and the effective independence of transmission system operation.**”⁴³ [Emphasis added]
- 3.10 Yet it is the issue of “SONI Independence from EirGrid” that seems to be pursued by the Utility Regulator outside of the *vires* of the SEM Committee through the options contained in the Consultation Proposals, even though this issue of “independence” has been determined by the SEM Committee and would rationally therefore continue to be considered to be a “SEM Matter”.

⁴⁰ SEM-08-176, 18 December 2008, paragraphs 24-26(a), page 8 and 9 - <https://www.semcommittee.com/sites/semcommittee.com/files/media-files/SEM-08-176.PDF>

⁴¹ Letter from SONI to the Utility Regulator dated 22 February 2012 ‘Re. Proposed Amendments to the SONI System Operator Licence’; the SONI proposed changes to Condition 13 reflected in the Utility Regulator’s Consultation, 18 April 2012, Licence modifications to SONI’s transmission system operator licence - <https://www.uregni.gov.uk/consultations/licence-modifications-sonis-transmission-system-operator-licence> and the Utility Regulator’s letter to SONI of 19 April 2012 (in response to SONI’s letter of 22 February 2012), in which the Utility Regulator under the heading “Appropriate arrangements for the ‘Independence of the Transmission System Operator Business’, Condition 12 of the Licence” states that “It was not therefore the intention to prevent existing arrangements from continuing or require the full separation of premises, personnel and other separation of SONI’s System Operator business from SONI’s Market Operator business.”

⁴² SONI Certification, 26 June 2013 - https://www.uregni.gov.uk/files/uregni/media-files/SONI_Certification_26_June.pdf

⁴³ European Commission Decision of 12.04.2013 ,paragraph 63, page 11 - https://ec.europa.eu/energy/sites/ener/files/documents/2013_059_uk_en.pdf

*"Condition 12 of the SO licence (and Condition 10 of the MO licence) was drafted to ensure that SONI was managerially and operationally independent from NIE and its vertically integrated group of companies (with an equivalent Condition 10 of the MO licence). The SEM Committee are of the view that the fulcrum of this original condition can be adapted somewhat, to render the intent of the proposed modifications more fitting with the kind of "separation which is more fitting in the context of EirGrid owning SONI."*⁴⁴

- 3.11 Specifically the SEM Committee stated that "*the licence conditions need to be modified to reflect the fact that there is much less scope for requiring EirGrid and SONI to be completely independent.*"⁴⁵ The SEM Committee then went on:

*"The SEM Committee is content to publicly acknowledge that nothing within the applicable general duty of independence shall act so as to constrain EirGrid and SONI, as separate businesses from harnessing beneficial economies of scale and other synergies (such as cost-saving on shared services) for the betterment of consumers."*⁴⁶

- 3.12 It was in this context that the existing Condition 12 of SONI's Transmission Licence and SONI's Condition 10 of SONI' Market Operator licence was put in place. The changes involved a strike out of "managerial independence" in both instances as shown below.

"Modification to Condition 12 paragraph 1 of the SONI SO Licence:

"The Licensee shall

- (a) unless it has already done so prior to this Condition coming in force, establish: and*
(b) at all times thereafter maintain,
~~*the full managerial and operational independence of the Transmission System Operator Business from any Associated Business.*~~ And

"Modification to Condition 10 paragraph 1 of the SONI MO Licence:

"The Licensee shall

- (a) unless it has already done so prior to this Condition coming in force, establish: and*
(b) at all times thereafter maintain,
~~*the full managerial and operational independence of the Market Operator Activity. from any Associated Business.*~~

- 3.13 Given, that the very issue of "managerial independence" was both specifically considered by the SEM Committee and specific amendment made by the SEM Committee to the SONI licences to not require it, it is now ultra vires for the Utility Regulator acting alone to revisit and to propose to reverse the requirement for "managerial independence". This is clearly and exclusively a matter for the SEM Committee as the options contained in the Utility Regulator's Consultation Proposals purport to directly reverse a previous decision of the SEM Committee. This change of approach has not been justified by the SEM Committee and therefore we can only

⁴⁴ SEM-08-176, 18 December 2008, paragraph 33, page 11 -
<https://www.semcommittee.com/sites/semcommittee.com/files/media-files/SEM-08-176.PDF>

⁴⁵ SEM-08-176, 18 December 2008, paragraph 34, page 11 -
<https://www.semcommittee.com/sites/semcommittee.com/files/media-files/SEM-08-176.PDF>

⁴⁶ SEM-08-176, 18 December 2008, paragraph 34, page 11 -
<https://www.semcommittee.com/sites/semcommittee.com/files/media-files/SEM-08-176.PDF>

assume that this approach is a unilaterally adopted position by the Utility Regulator acting alone and is therefore *ultra vires*.

- 3.14 Condition 10 and condition 12 in the SONI Market Operator Licence and Transmission licence respectively were treated in a similar manner, as the licence Conditions in each licence are analogous. As they were previously treated analogously, therefore any subsequent treatment should be in a similar vein. Conditions 10 and 12 are inextricably linked and it would effectively be nonsensical to consider either condition in isolation. The consideration of Condition 12 of the Transmission licence and Condition 10 of the Market Operator licence, both of which need to be considered in tandem, is therefore a “SEM Matter”.
- 3.15 The SEM Committee viewed the licence changes imposed at the time of acquisition of SONI by EirGrid as an all-island matter, a “SEM Matter” and that the SEM Committee itself has taken note of “*the particular interplay of Ministerial assurance in this matter, as an added source of control or encouragement that all consumers of electricity in both Northern Ireland and Ireland will be appropriately protected.*”⁴⁷ It is the context of this all-island framework that the specific governance changes or licence modifications were considered at the time of acquisition. It is as part of this all-island framework that any of the proposed options contained in the Consultation Proposals should be discussed. As stated previously, it is an error of law for the Utility Regulator acting alone to purport to determine the issues raised in its Consultation Proposals and it is a matter for SONI to consider its position with respect to any such *ultra vires* actions.
- 3.16 Since the issue of SONI governance and independence has, in the past, been a “SEM Matter”, the SEM Committee of the Utility Regulator should provide written and rational reasons for any departure from such an established approach and provide reasons justifying any underpinning decision and its rationale, which would be subject to challenge through the courts.
- 3.17 As an appropriate comparator it is also worth noting that changes to the EirGrid plc. Board composition was also considered by the SEM Committee with a recommendation being made on foot of such consideration. This recommendation was not made by the Commission for the Regulation of Utilities as part of a “jurisdictional” approach to governance but was considered in the whole in SEM-16-041⁴⁸ but rather by the SEM Committee following consideration of this issue. It is clear therefore that the approach proposed by the Utility Regulator continues to be a “SEM Matter”.

⁴⁷ SEM-09-019, *Decision by the SEM Committee with respect to Modifications to be made to the SONI SO and MO Licence and to the EirGrid SO Licence*, 26 February 2009.-
<https://www.semcommittee.com/sites/semcommittee.com/files/media-files/SEM-09-019.pdf>

⁴⁸ SEM-16-041, ‘*Mitigation measures for potential conflicts of interest in the EirGrid Group*’ page 10 -
<https://www.semcommittee.com/sites/semcommittee.com/files/media-files/SEM-16-041%20I-SEM-%20DS3%20Mitigations%20for%20Potential%20Conflicts%20of%20Interest%20in%20EirGrid%20Group.pdf>

UR's Stated Approach Contradicts Approach adopted by the Utility Regulator in Similar Issues

- 3.18 Although Section 1 of the Consultation Proposals dichotomises the role of SONI within its Market Operator licence and that of SONI under its Transmission Licence, the latter of which it considers not to fall subject to the oversight of the SEM Committee; this approach seems to be inconsistent with that followed by Utility Regulator with respect to consideration of Transmission System Operator issues. For example that of SONI Transmission System Operator Certification. In 2011, the SEM Committee stated:

"The SEM Committee considered whether the issue of Transmission System Operator (TSO) Certification was a SEM Matter or not. The Committee discussed the matter, noting the requirement for a decision in respect of TSO certification or Northern Ireland given that the Directive has now been transposed into law in Northern Ireland.

The SEM Committee decided by a majority decision that the issue of TSO certification for Northern Ireland was a SEM Matter. The CER voted against the decision. It was of the view that the certification process allowed relatively little policy discretion to the regulator, and that the decision related to the transmission network was outside the scope of the wholesale market [at that time]. It thus felt that the matter of certification was unlikely to have a material impact on the operation of the SEM and thus should not be a SEM Matter.

*Following full consideration the Committee concluded that, under the legislation in Northern Ireland, the discretion given to the Utility Regulator in respect of TSO certification would constitute exercise of a relevant function as defined in the SEM legislation. It further concluded that, in view of the roles of the TSO and transmission system owner in planning and providing access to the transmission system (and therefore access to the market), the outcome of the decision in respect of ownership and operation proposals which may be presented for certification was **likely materially to affect the SEM**."* [Emphasis added]

- 3.19 To compare the approaches of the Utility Regulator in the Consultation Proposals versus the approach of the SEM Committee with respect to SONI certification, it is clear that although the Utility Regulator states in its Consultation Proposals that "*all of the options are designed to ensure that SONI and EirGrid deliver their all island TSO functions as equal partners representing their own consumers*" the reality is that the distinction seems to be that the SEM Committee of the Utility Regulator has not assumed its function under Article 6(2) of the 2007 Order; whereas the SEM Committee of the Utility Regulator with respect to the SONI certification did assume its function as required under Article 6(2) of the 2007 Order.
- 3.20 The same issues were discussed by the SEM Committee of the Utility Regulator as part of the SONI Certification process as are presented in the Consultation Proposals, namely "*the roles of the TSO and transmission system owner in planning and providing access to the transmission system [and] the outcome of the decision with respect of ownership and operation in proposals which may be presented for certification. These issues including those pertaining to ownership and operation proposals were determined by the SEM Committee of the Utility Regulator as "materially affecting the SEM" or being "likely materially to affect the SEM"*" and therefore constituting a "SEM Matter".
- 3.21 In applying the same rationale and logic, it is likely that the same determination would be reached by the SEM Committee of the Utility Regulator and that this matter would

also be determined as “materially affecting the SEM” or “likely to materially affect the SEM” and therefore be recognised as a “SEM Matter”.

Acceptance by the Utility Regulator that this issue Materially Affects the SEM

- 3.22 The Utility Regulator has not addressed convincingly the *vires* matter raised by SONI for example in SONI’s letter to the Utility Regulator of 27 February 2020, following the Call for Evidence, and which stated:
- 3.23 “*SONI Ltd is further concerned that the Utility Regulator appears to be conducting [this] review by reference to fulfilment of its functions solely in respect of the customers in Northern Ireland when it should in fact be conducting [them] through its SEM Committee in the context of the protection of the interests of customers of both Northern Ireland and the Republic of Ireland.*”⁴⁹”
- 3.24 In one attempt to deal with this dilemma the Utility Regulator has stated at Section 1.29 of its Consultation Proposals that:
- “Matters relating to SEMO are outside the scope of the governance review. Matters relating to SEMO are separately regulated under different licences. To the extent that any responses received as part of the governance review relate to matters that fall within SEMC’s jurisdiction, we propose to pass on any responses pertaining to SEMO gathered, to the SEMC.”*⁵⁰
- 3.25 This statement raises a number of issues, not least an important distinction between SEM and Single Electricity Market Operator (SEMO), and an incorrect interpretation of the issue of competence or jurisdiction of the SEM Committee of the Utility Regulator in respect of this matter. As we have previously stated the competence or jurisdiction of the SEM Committee extends to matters which “materially affect” or are “likely to materially affect the SEM” and which include functions which are included in the SONI Transmission licence which pertain to wholesale electricity. All of the matters set out in this response “fall within the SEMC’s jurisdiction”
- 3.26 Secondly, the Consultation Proposals indicate an acceptance by the Utility Regulator that there is at least a component of SONI governance and SONI independence which may be considered a “SEM Matter”. It is for this reason that the Utility Regulator proposes to forward responses “relevant to the SEM Committee” to its Committee for review. As a matter of law, if even a proportion of this issue materially affects or is likely to materially affect the SEM, that this is sufficient for the proposed approach to be considered a “SEM Matter”. SONI rejects any assertion that this matter can be dealt with in the piece-meal manner suggested by the Utility Regulator while remaining in compliance with legal test set out in Article 6 of the 2007 Order be complied with. SONI firmly supports the position that was adopted by both SEM Committees in the decision of the SEM Committees with respect to the Modifications to be made to the SONI Transmission Licence and Market Operator Licence and to the EirGrid Transmission System Operator Licence in February 2009 when it stated that:
- “The SEM Committee has decided to give legal effect to the licence modifications from 2nd March 2009” and when it determined “that regulatory policy on the potential purchase of SONI by EirGrid, coupled with the potential exercise of*

⁴⁹ Letter SONI to Utility Regulator, 27 February 2020

⁵⁰ Consultation Proposals, Section 1.29, page 16.

regulatory functions (such as Licence Changes) in pursuit of that policy clearly are SEM Matters as defined in relevant legislation. The performance of System and Market operation functions in the SEM, identity of those who own those entities who perform such functions and potential licence changes to the SO and MO licences held by those engaged in system and market operation are matters which either materially affect or are likely materially to effect the SEM.”⁵¹

- 3.27 Finally this proposed approach of carving out what would be “the constituent part of SONI” within SEMO as being distinct from SONI in its capacity as TSO is irrational as a corporate construct. The reality is that the corporate governance arrangements apply to SONI Ltd as a corporate entity across all its licence functions. This means that quite apart from the application of the broad legal construct of what is a “SEM Matter”, the corporate reality is that if “SEMO” is impacted then SONI Ltd is also impacted and if SONI Ltd. is impacted then SEMO is impacted.
- 3.28 The Utility Regulator has stated that the SEM Committee “*has to date decided that the matter is jurisdictional in nature and therefore falls under the remit of UR and not SEMC.*” Such a decision should be formally captured in minutes, with reasons provided for such a decision and which decision is reviewable through the courts. This matter is entirely a “SEM Matter” and as such should be determined by the SEM Committee of the Utility Regulator. In any event and as previously set out, whether a matter is jurisdictional in nature does not constitute the test as to whether it is a “SEM Matter”.

The SEM Committee’s Market Design for the Revised SEM Arrangements affirms the central role of TSOs in the SEM

- 3.29 Moreover, SONI emphasises how the revised SEM arrangements affirm the central role of SONI as a TSO within the SEM, therefore demonstrating the “material affect” to the SEM of a “jurisdictional approach” to SONI governance.
- 3.30 The market design for the revised SEM Arrangements takes account of the physical reality of the transmission system on the island of Ireland whereby one Bidding Zone has been identified which includes both Northern Ireland and the Republic of Ireland and one scheduling area has been identified again including both Northern Ireland and the Republic of Ireland. This physical reality is not accounted for in the options put forward by the Utility Regulator in its Consultation Proposals.
- 3.31 In Section 1 of its Consultation Proposals the Utility Regulator creates a distinction between the role of “SONI as TSO” and the role of “SONI as SEMO”, with “*SONI as TSO responsible for carrying out the functions that are at the core of the NI electricity system and vital to the NI economy as a whole;*”⁵² and “*matters relating to SEMO [by implication those relating to the Market Operator Activity and Nominated Electricity Market Operator Activity and in particular the Single Electricity Market Trading and Settlement Code being] outside of the scope of the governance review*”⁵³. SONI submits that this distinction is a false dichotomy as the matters captured by the Utility Regulator in its Consultation Proposals as sitting within the Transmission System Operator business and including “Operating the balancing market”, “operating the Capacity Market”, “[“maintaining security standards”], also fall within the Revised SEM Arrangements, the design and functioning of these activities having been determined

⁵¹ SEM-08-176, The Proposed Acquisition of SONI Limited by EirGrid plc, 18 December 2008, paragraph 17, page 7 - <https://www.semcommittee.com/sites/semcommittee.com/files/media-files/SEM-08-176.PDF>

⁵² Consultation Proposals, Section 1.21

⁵³ Consultation Proposals, Section 1.29

by the SEM Committee and the operation of which continues to be overseen by the SEM Committee.

- 3.32 The ISEM Roles and Responsibilities SEM Committee Consultation Paper and subsequent SEM Committee Decision Paper highlight the new creation that is the balancing market when it states:

*"The Balancing Market is a new concept in the ISEM but is closely related in its purpose to the scheduling and dispatch mechanism that is currently undertaken by TSOs in the SEM. The Balancing Market is the set of operational, commercial and institutional arrangements operated by the TSOs to ensure a feasible dispatch of all plant that delivers a safe and secure system including having sufficient reserve available to deal with contingencies. As with the scheduling and dispatch of plant in the SEM the operation of the balancing market in the ISEM is a core TSO function."*⁵⁴

and

*"the nature of system operation will change from SEM to ISEM given the introduction of ex ante contractual positions at the day ahead and intraday timeframes and the resulting need to take both energy actions to balancing supply and demand and non-energy actions to ensure all constraints on the system are respected."*⁵⁵

- 3.33 The SEM Committee Energy Trading Arrangements Markets Decision Paper illustrates that the role of the TSO changed in the Revised SEM Arrangements from what had been in place in the previous SEM arrangements, and that the TSO activity was now integrated as a key component of the Balancing Market and indeed that the TSO as provided for in the SEM Committee ISEM Roles and Responsibilities Decision Paper was to be the Balancing Market Operator with settlement functions being assigned to SEMO.⁵⁶ This is further evidence that the purported exclusion of functions relating to SEMO and of matters pertaining to the SEM Committee is unhelpful as the activities identified by the Utility Regulator as being "*at the core of the NI electricity system and vital to the NI Economy as a whole*"⁵⁷ such as for example "*Operating the balancing market*", fall within the competence of the SEM Committee.
- 3.34 The Utility Regulator also identified "*operating, and coordinating and directing the flow of electricity onto and over, the transmission system*" as a function that is "*at the core of the NI electricity system and vital to the NI economy as a whole.*" This function although a core TSO function is also a balancing market function as it is a scheduling and dispatch role which now sits with the TSOs, SONI and EirGrid. The Balancing Market Principles Statement emphasises this point when it states:

"The scheduling and dispatch process is built around the SEM Balancing Market. Utilisation of the balancing market offer and bids provided by Participants in the main mechanism by which we dispatch units to manage operational constraints

⁵⁴ SEM-15-016, SEM Committee Roles and Responsibilities, Consultation Paper, 6 March 2015 - <https://www.semcommittee.com/publication/sem-15-016-i-sem-roles-and-responsibilities-consultation-paper>

⁵⁵ SEM-15-065 SEM Committee ISEM Energy Trading Arrangements Markets, Decision Paper, 11 September 2015 - <https://www.semcommittee.com/publication/sem-15-065-i-sem-eta-markets-decision-paper>

⁵⁶ SEM Committee ISEM Roles and Responsibilities Decision Paper SEM-15-077, 7 October 2015, page 27, Section 3, Table 5 - <https://www.semcommittee.com/publication/sem-15-077-i-sem-roles-and-responsibilities-decision>

⁵⁷ Consultation Proposals, Section 1.21

*including the provision of system services, maximise priority dispatch generation and efficiently operate the balancing market.*⁵⁸

- 3.35 This means that the TSOs must always take account of bids and offers provided by Participants i.e. the price and that therefore the scheduling and dispatch of the SEM in the revised SEM Arrangements, is a TSO function, and a Balancing Market function. The specific market design by the SEM Committee is such that the principle of balance responsibility is central to the market approach and the creation of ex-ante market liquidity. Marginal pricing, meaning the marginal cost of meeting the next increment of demand (up or down), therefore accurately reflects the actual costs incurred or potentially incurred by the TSOs in balancing the system. This then provides the signal to market participants to exhaust all opportunities to achieve an extra unit of balance where the cost of doing so is less than that of the TSO.
- 3.36 The SEM Committee approved the Balancing Market Principles Statement as well as having consulted on its Terms of Reference.⁵⁹
- 3.37 Furthermore the Capacity Market, a TSO function under licence, is also a core component of the market design for the Revised SEM Arrangements comprising three separate SEM Committee consultation papers and three subsequent decision papers, again decided upon by the SEM Committee.⁶⁰ The Capacity Market Rules were consulted upon and ultimately determined and approved by the SEM Committee.⁶¹ The operation of the Capacity Market is reliant on the SEM Committee as decision maker in key aspects of its functioning for example the qualification decisions for all auctions are final and binding only when approved by the SEM Committee. To date SONI and EirGrid have received a letter approving each set of qualification and final auction results from the SEM Committee since the commencement of the revised SEM Arrangements. This is a further example of how carrying out “*functions that are at the core of the NI electricity system and vital to the NI economy as a whole*”⁶² are governed by the SEM Committee.
- 3.38 Moreover the establishment of the security standard was also a SEM Committee Decision. In SEM Committee Capacity Remuneration Decision Paper 1, the SEM Committee confirmed the retention of the previously existing 8 hour Loss of Load Expectation (“LOLE”). The SEM Committee stated:

“Having considered the TSOs’ analysis, the SEM Committee is not minded to change the security standard from its current level of 8 Hours LOLE. The move to a 3 hour LOLE would increase the requirement for nameplate capacity by 220MW at a cost to consumers of between £12.9⁶³million/year and £17.1 million/year, depending on which value of the BNE price is used.”⁶⁴

- 3.39 It is noteworthy in this instance that, with respect to the design of the Capacity Market for the revised SEM Arrangements, the SEM Committee is considering the security

⁵⁸ Balancing Market Principles Statement, Version 4.0, 14 October 2020, page 11 - <https://www.semcommittee.com/news-centre/publication-balancing-market-principles-statement>

⁵⁹ Balancing Market Principles Statement, Version 4.0, 14 October 2020 - <https://www.semcommittee.com/news-centre/publication-balancing-market-principles-statement>

⁶⁰ Consultation Papers SEM 15-044, SEM 15-104 and SEM 16-010. Decision Papers SEM 15-103, SEM 16-022 and SEM 16-039

⁶¹ Capacity Market Code Consultation Paper SEM-17-004 and Decision Paper SEM-17-033

⁶² Consultation Proposals, Section 1.21

⁶³ An exchange rate of GBP/EUR of 1.12 has been applied throughout this document

⁶⁴ SEM Committee ISEM Capacity Remuneration Mechanisms Decision Paper, SEM-15-103 - https://www.semcommittee.com/sites/semcommittee.com/files/media-files/SEM-15-103%20CRM%20Decision%201_0.pdf

standard that might apply, in keeping with its statutory remit, had regard to the impact on consumers on the island of Ireland i.e. in both Northern Ireland and the Republic of Ireland.

- 3.40 DS3 is another example of a core TSO function the policy of which has been determined by the SEM Committee and the implementation of which continues to be overseen by the SEM Committee. The DS3 System Services Decision Paper and the DS3 Procurement Design are decisions consulted upon and which have been determined by the SEM Committee.⁶⁵ In 2018 the SEM Committee published the DS3 Market Ruleset governing the rules used for settlement with respect to a unit's market position for the provision of DS3 System Services. DS3 is a matter the policy for which has been determined by and implemented under the oversight of the SEM Committee. DS3 is also impacted by the balancing market. For example, the providers of DS3 services are held whole for actions of the TSO which result in a change to the available volume of service that would have resulted in a higher payment relative to the DS3 service providers' market position. For these reasons, it could not be held that DS3 is limited to a "*function that is at the core of the NI electricity system and vital to the NI economy as a whole*"⁶⁶ but rather has broader implications being is a "SEM Matter".
- 3.41 In this Section, SONI has demonstrated how the reality of the existing arrangements, past decisions of the SEM Committee, the SEM Committee's treatment of similar issues and the existing market arrangements; all demonstrate that the SEM Committee could only come to the conclusion that SONI governance, in the discharge of SONI TSO functions, in the manner proposed by the Utility Regulator "*materially affects or is likely to materially affect the SEM.*"

⁶⁵ SEM Committee DS3 System Services Decision Paper, SEM-14-108 - <https://www.semcommittee.com/sites/semcommittee.com/files/media-files/SEM-14-108%20DS3%20System%20Services%20Decision%20Paper.pdf> and

SEM Committee DS3 System Services Procurement Design, SEM-14-109 - <https://www.semcommittee.com/sites/semcommittee.com/files/media-files/SEM-14-109%20DS3%20System%20Services%20Procurement%20Design%20-%20Summary%20of%20Responses.pdf>

⁶⁶ Consultation Proposals, Section 1.21

4 Proposed Actions are Disproportionate and Risk Causing Serious Consumer Harm

4.1 The general principles, on which good regulatory practice should be based, require regulatory interventions to target clear harm or to result in demonstrable benefits, and that such interventions should be consistent, proportionate and targeted. This concept is recognised in Article 6(2) of the 2007 Order which states that the Authority should “have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, and consistent and targeted only at cases in which action is needed.”⁶⁷

4.2 This approach was also identified by the Utility Regulator in its appearance before the Northern Ireland Assembly Committee for the Economy on 21 April 2021, when it stated:

“But it is a public consultation process and we are really keen to hear back from stakeholders, anybody in terms of whether they think we’ve got it right, do you think we’re missing anything, and to try and make sure that there is a balance when we come to final determination – that it’s as balanced as it possibly can be.”⁶⁸ [Emphasis added]

4.3 The Utility Regulator does not however identify a criterion which focuses on the principal objective of the Utility Regulator, to protect consumers⁶⁹. The Utility Regulator is not proposing to take action to protect consumers, as (i) there is no identified consumer harm, and (ii) the proposals themselves risk serious consumer harm. Therefore the Utility Regulator is acting contrary to this principal objective, to protect consumers.

4.4 Even if the Utility Regulator had the *vires* to act as proposed any such action must take place in a proportionate manner, and regulatory activities should be “targeted only at cases in which action is needed.” As SONI has demonstrated through the body of this response, the Utility Regulator has not demonstrated that action is needed or appropriate with regard to the proposed approach in this particular instance as there is no legal *vires* to act; no harm has been identified and no benefits to consumers have been evidenced. Rather, the proposed actions by the Utility Regulator have been supported by a process lacking in transparency underpinned by evidence of ‘potential harm’. SONI is not convinced that it has been demonstrated that the regulatory activities proposed are “transparent, proportionate, consistent and targeted only at cases in which action is needed.”

⁶⁷ 2007 No 913 (N.I. 7) Northern Ireland The Electricity (Single Wholesale Market)(Northern Ireland) Order 2007, Article 9(7)

⁶⁸ Utility Regulator at Northern Ireland Assembly Committee for the Economy on 21 April 2021, re SONI Governance. *The Energy (Northern Ireland) Order 2003: <https://www.legislation.gov.uk/nisi/2003/419/data.pdf> - Article 12*

Failure to Demonstrate Harm

- 4.5 In Section 4 of its Consultation Proposals, the Utility Regulator sets out “*the extent to which the evidence ... indicates actual or potential harm to electricity consumers in NI arising from the current SONI TSO governance arrangements*”.⁷⁰ The Utility Regulator did not identify any instances of actual harm but identifies three potential areas of harm, namely: inappropriately higher prices; network development misaligned with NI policy and user requirements; and barriers to competition. In the some five pages dedicated to considering this issue, no evidence of *actual* harm is demonstrated.⁷¹
- 4.6 Rather, the Consultation Proposals proceed primarily on the basis of assertions made in (largely unidentified) third party consultation responses, without objective consideration of their merit or adequate interrogation of other relevant evidence.
- 4.7 Nor does the Utility Regulator produce evidence that asserted harms will, or are likely to, arise in future. . The Utility Regulator re-confirmed no actual harm was identified to the Northern Ireland Assembly Committee for the Economy on 21 April 2021.⁷²
- 4.8 The Utility Regulator seeks to deflect this response pointing to its principal objective – being to protect both current and future consumers in Northern Ireland, and consequently to protect both the short – and long-term interests of Northern Ireland consumers – and from this inferring that it does not need to identify a source of existing harm before it can act. But reference to this duty does not displace the obligations under public law which exist to restrain an authority from unfettered exercise of its power. An authority is not able to refer merely to its general duties as a basis for action. Three principles are relevant here, which apply to any intervention a regulator would propose to make namely:
- (a) Regulation must be proportionate: regulators should only intervene when necessary, and remedies should be appropriate to the risk posed, and costs identified and minimised.⁷³
 - (b) When considering the long-term effects of a regulatory intervention, a careful balancing of inter-generational effects is required – a regulator cannot simply assume that long-term structural changes are in the consumer interest.⁷⁴
 - (c) Any intervention must be robustly supported by evidence: as the Competition and Markets Authority (CMA) has previously articulated, “*...robust, evidence-based decision-making, taking into account the potential limits of evidence on issues where there is significant uncertainty, is itself central to protecting the interests of consumers*”.⁷⁵
- 4.9 The Consultation Proposals fall short, far short, of the principles set out above. The Utility Regulator does not set out evidence of either current harm, or a realistic

⁷⁰ Consultation Proposals, Section 4.2.

⁷¹ Consultation Proposals, Section 4.2.

⁷² Utility Regulator appearance before the Northern Ireland Assembly for the Economy, 21 April 2021

<https://www.youtube.com/watch?v=WzRv2NqFF1A> [1:28:14 – 1:28:25]

⁷³ Better Regulation Task Force, Principles of Good Regulation, page 4.-

<https://www.rqia.org.uk/RQIA/media/RQIA/Resources/Better-Regulation-Task-Force-Principles-of-Good-Regulation.pdf>

⁷⁴ The Green Book: appraisal and evaluation in Central Government, Annex A6 -

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/938046/The_Green_Book_2020.pdf

⁷⁵ CMA, *Northern Powergrid v GEMA: Final Determination*, paragraph 4.59 -

https://assets.publishing.service.gov.uk/media/5609534de5274a036c000012/NPg_final_determination.pdf

explanation of future harm. As such, on that basis alone, it does not provide a safe basis to conclude that intervention is necessary or would further the interests of Northern Ireland consumers.

- 4.10 The Consultation Proposals proceed to set out the “nature of remedies required”. A short but incomplete “cost / benefit analysis” is provided which does not stand up to scrutiny and specifically : (i) does not take into account significant costs which are likely to arise, (ii) does not quantify any clear consumer benefit or consider (never mind carefully balance) the short and long term interests of consumers, and, as a result, (iii) does not reach a sufficiently informed view of whether the intervention proposed is necessary, proportionate, or sufficiently balances the short- and long-term interests of consumers.
- 4.11 In this Section, SONI addresses each of the three “potential harms” in turn, showing that the “harms” considered are un-evidenced and speculative at best.

Inappropriately higher prices

- 4.12 The first “potential area of harm” that the Utility Regulator considers is that electricity prices may be higher than they should be. But the Utility Regulator simply asserts this – no evidence is presented in this Section to support a conclusion that electricity prices are in fact higher than they should be, or that this potential harm is likely to occur in future.
- 4.13 A lot of this concern appears to be on the basis of the application of recharges and the allocation of costs to SONI’s business. Even before engaging with this concern, as we do below, it is self-evident it is without basis and that this is not the case.
- 4.14 The nature of the costs of TSO operation is that there are significant fixed costs and in many instances costs are largely invariant to scale. As we set out elsewhere the attribution of costs within the EirGrid Group to SONI is generally 25% of any all island initiative. It would seem implausible, or at the very least improbable, that across the board that SONI would face lower costs operating on a standalone basis than it does today on an integrated basis as part of the EirGrid Group.
- 4.15 The Utility Regulator’s concern is based on three theories. Each is addressed in turn below.

Transparency

- 4.16 The Utility Regulator is concerned that there is a lack of transparency in how costs reported by SONI relate to the actual costs incurred in delivering the SONI TSO license.⁷⁶
- 4.17 All regulators face information asymmetries; however regulators, including the Utility Regulator, have introduced tools to address that information asymmetry, and which require “greater levels of detail”⁷⁷ from the companies that they regulate. This has two immediate consequences. Firstly, regardless of SONI’s governance structure, there would be a degree of information asymmetry and information asymmetry would not and cannot be solved by changing a governance structure. Second, the Utility Regulator has the tools to address information asymmetry. Indeed, it uses those tools

⁷⁶ Consultation Proposals, Section 4.10.

⁷⁷ Consultation Proposals, Section 2.5.

already. The SONI Transmission Licence and Market Operator Licence contain broad information-gathering powers –for example, under SONI’s Transmission Licence, Condition 2 (which directs SONI to prepare audited accounts, and to deliver to the Utility Regulator a copy of the auditor’s report and accounting statements), Condition 7 (“Provision of Information to the Authority”), Condition 41 (“Regulatory Instructions and Guidance”), and paragraph 11.1 of Annex 1 (which requires SONI to provide to the Utility Regulator all information requested in association with its price control, in such format and by such time as the Utility Regulator directs).

- 4.18 Most recently, SONI has worked with the Utility Regulator throughout the Price Control 2020 - 2025 process providing c. 1,400 pages of information as part of SONI’s 5 year business plan. In addition SONI robustly responded to the 178 queries raised by the Utility Regulator throughout this process providing further clarification and details of the costs included in the business plan.
- 4.19 The Utility Regulator states that sales made between SONI and EirGrid have increased year on year since 2011, and notes that “*The growing number of and materiality of such re-charges has significantly reduced transparency over whether these costs are genuinely and efficiently incurred in the delivery of the SONI TSO licence*”.⁷⁸ These re-charges are, as the Utility Regulator notes, disclosed in addenda to the Regulatory Accounts prepared by SONI and delivered to the Utility Regulator on an annual basis. The Utility Regulator makes specific reference to a net recharge of £17 million for 2018 in support of this assertion⁷⁹. What the Utility Regulator specifically fails to note is that this figure was reported to the Utility Regulator over two years ago; it was not questioned. Of this £17m, £8.7 million, or over half, of these net recharges represented SONI’s 25% share of IT capital costs, largely SONI’s regulator-approved share of I-SEM capital costs in that year. Over £5.7 million of net recharges in 2018 were related to the rebalancing of generator charges for use of the transmission network in accordance with regulator-approved cost-sharing proportions and methodology.
- 4.20 The Utility Regulator has full sight of the Cost Allocation and Recharge Policy. SONI responded to 19 queries from the Utility Regulator on the policy as part of the price control process. The Utility Regulator included allowances for recharged costs within the final determination for the SONI Price Control⁸⁰. These recharges were based on the Cost Allocation and Recharge Policy provided to the Utility Regulator by SONI. There were no concerns raised in the final determination in relation to the Cost Allocation and Recharge Policy.
- 4.21 The furnishing of information on the sharing of costs by SONI is and should be completely independent of any proposed consideration of SONI’s governance structure as the matters are unrelated. Reporting obligations are set forth in SONI’s Transmission licence which ensures that SONI continues to provide the detail required by the Utility Regulator with respect to the nature of any re-charges.
- 4.22 The issue of re-charging is also revisited by the Utility Regulator in its Consultation Proposals when it references “*some [unidentified] responses*” suggesting that the nature and growth of recharging **may have** “*led to an increase in the costs of SONI TSO over time*”.⁸¹ This point, raised anonymously, is unsubstantiated and SONI

⁷⁸ Consultation Proposals, Section 4.10.

⁷⁹ Consultation Proposals, Section 4.10

⁸⁰ SONI Price Control 2020-2025, Utility Regulator.- <https://www.soni.ltd.uk/media/documents/SONI-Response-UR-DD-Consultation-Price-Control-2020-25.pdf>

⁸¹ Consultation Proposals, Section 4.10, page 40

presumes that any concerns which the Utility Regulator may have with respect to recharging irregularities should they exist, would be investigated as part of its licence compliance review process.

- 4.23 The Utility Regulator also appears to criticise the established 25:75 cost allocation between the two TSOs as “broad brush”. The reality of the 25% cost allocation to SONI is that this figure has been agreed with the Regulatory Authorities with respect to the attribution of costs incurred on all island related activities, across the Market Operator Licences, System Operator and NEMOs, and has been applied by the Utility Regulator to matters such as DS3 System Services costs, ISEM Implementation Costs, and DS3 Project Costs. The allocation was set having regard to comparative levels of all island system demand consumption in Northern Ireland and the Republic of Ireland. It is simply not the case that this figure is without a firm basis and in fact costs are allocated in this manner irrespective of whether a larger amount of implementation or operational costs accrue in Northern Ireland or in the discharge by SONI of its functions. If the Utility Regulator’s intention is to adjust this apportionment, then the issue would need to be revisited by the SEM Committee given the obvious knock-on impact for the all-island arrangements (meaning that this issue must be considered to be a “SEM Matter”).
- 4.24 Moreover, the allocation of costs to SONI on the 25:75 basis does not reflect the true nature of cost apportionment – currently market participants in Northern Ireland receive approximately 40% of the payments of all island balancing costs/ actions, while Northern Ireland consumers pay less than 25% of the costs. This follows from the fact that the nature of the Northern Ireland system and plant portfolio is overall more expensive to operate resulting in higher out of market costs, but that under the current SEM arrangements Northern Ireland customers face the same wholesale cost of electricity as customers in the Republic of Ireland. The net benefit to Northern Ireland participants within the Single Electricity Market from this issue alone relative to that paid by Northern Ireland consumers is c. £35.7m per annum.

Cost challenge

- 4.25 The Utility Regulator also refers to a concern regarding limited incentives for SONI to challenge costs within the governance structure. The primary concern appears to be that SONI, or individuals within SONI, lack sufficient oversight or power to review and challenge the incurring of costs where those costs are incurred at a group level. In considering this, the Utility Regulator does not identify any areas where costs incurred have in fact been excessive. It also does not consider the efficiencies that are undoubtedly created by group-wide procurement, and the fact that it is in EirGrid’s interest (as it is SONI’s) to keep costs down in any event. The benefits of group wide procurement are discussed in Section 7 of this response.

- 4.26 The section on cost challenge, therefore, does not raise any identifiable concerns over and above those in other sections of the Consultation Proposals. Nor does the Utility Regulator consider these costs in their context – that is to say, the benefits delivered to consumers that any costs incurred by SONI and EirGrid were associated with. Harm cannot follow from simply incurring costs.

Procurement

- 4.27 The Utility Regulator refers to a perceived risk that “*things are procured that fit the need of the Republic of Ireland system better than the requirements of NI specifically*”.

- ⁸² It is unclear what evidence the Utility Regulator relies upon to support this assertion – the Utility Regulator sets out only abstract examples on instances that *might* occur, but does not suggest that these are likely or probable or state any basis for such a belief.
- 4.28 It is clear that this is a purely theoretical “risk”, which does not provide a basis for any proposal to intervene. The Utility Regulator does not identify any examples where this risk has crystallised or would realistically arise in practice.
- 4.29 The risk, on the Utility Regulator’s analysis, is that group-wide procurement would lead to goods or services being procured that are better suited to the Republic of Ireland than Northern Ireland , and / or which need to be retro-fitted to work in a Northern Ireland context. Firstly, there is no evidence that where a service has been required in relation to the requirements of Northern Ireland that it has not been procured and procured appropriately. Any such concerns are appropriately considered and accounted for by the Utility Regulator in its conduct of the price control – there is no basis for suggesting that a governance review is required to address such theoretical concerns.
- 4.30 Secondly, the key result of group wide procurement is that both EirGrid and SONI benefit from the increased purchasing power of the wider group. A number of these benefits are specifically set out in Section 7 of this response, which examines the benefits of the current arrangements.
- 4.31 Thirdly, where there are differences in the requirements in Ireland and Northern Ireland, these are specifically addressed where it is commercially and technically advantageous to do so. For example the Infrastructure Projects Team in Northern Ireland has separate framework agreements for legal services, planning consultants, land valuation specialists and engineering consultants taking into account jurisdictional differences in legislation etc.
- 4.32 The primary area for which such risk is purported to exist pertains to the procurement of System Services. The Utility Regulator throughout the Consultation Proposals makes a number of assertions in this regard that are unfounded. **All Island System Services** have been deemed to be a “SEM Matter” (SEM-10-013)⁸³ and, as such, are procured by SONI in line with the regulatory approved frameworks as set out by Utility Regulator and the Commission for Regulation of Utilities via the SEM Committee. In fact, the procurement of All-island System Services arrangements is heavily regulated by the Utility Regulator and the Commission for Regulation of Utilities via the SEM Committee. This extends beyond the determination of the high level design framework for the procurement of the services to the explicit approval of⁸⁴;
- a. the procurement arrangements;
 - b. the methodology determining the volume of services to be procured;
 - c. this procurement strategy has produced demonstrably positive outcomes;

⁸² Consultation Proposals, Section 4.10., page 32

⁸³ SEM-08-013 *Harmonised All-Island Ancillary Services Policy*, Decision Paper, 27 February 2008.-
<https://www.semcommittee.com/sites/semcommittee.com/files/media-files/SEM-08-013%20-%20SEM%20Ancillary%20Services%20Decision%20Paper%2028.02.2008%20-%20DIN35974.pdf>

⁸⁴ Further details on the procurement of system services and the Utility Regulator’s role in same is set out in Section 7.24 and following.

- d. the tariffs and charges payable to providers; and
 - e. the contractual arrangements.
- 4.33 It is thus unclear how the Utility Regulator's concerns regarding 'gold plating'⁸⁵ and 'retro-fitting'⁸⁶ could arise in this context or indeed in any wider context.
- 4.34 Many of the systems procured must be so procured on an all-island basis to reflect the SEM Committee approved market design, as a result of licence conditions which require collaboration between both TSOs and to ensure that all systems procurement fulfil the needs of the TSOs. Due to the integrated nature of the TSOs' obligations, it is also vital that the systems used by both TSOs are fit for purpose. To introduce separate procurement for the same system would cause delay and [REDACTED]
[REDACTED].
- 4.35 The Utility Regulator has not considered the broader effects of joint procurement, and has not considered the way in which procurement does address the requirements of both Northern Ireland and the Republic of Ireland, and the processes and regulatory frameworks which are already in place to safeguard consumers. In particular procurement processes have a built in focus on efficiency, cost-saving and transparency and are always tailored to ensure the successful service provider is the most competitive and suitable relative to the services being sought.
- 4.36 Finally, the Utility Regulator expressly notes that it has not seen evidence which suggests "*harm or potential harm that arises from the ultimate ownership of SONI by the Government of Ireland*".⁸⁷ In coming to this conclusion, it considers and rejects the suggestion that SONI and/or EirGrid would act to favour the economy of the Republic of Ireland over that of Northern Ireland. On its face, this is incompatible with the Utility Regulator's suggestion that group wide procurement *would favour* the requirements of the Republic of Ireland over those of Northern Ireland.
- 4.37 The purported 'evidence' of potential harm is clearly nothing of the kind but rather is based on unsupported assertions and unsubstantiated analysis. Impacts on costs could stretch to include an increase in imbalance electricity pricing to procurement processes which are in themselves subject to strict procurement rules. The Utility Regulator has not demonstrated that either of these concerns is anything more than speculative. None of the issues raised could reasonably be used to justify the proposed approach to SONI governance arrangements.

"Misalignment in network development"

- 4.38 The second "potential harm" considered is misalignment in network development. The Utility Regulator notes that "*NI electricity consumers would be harmed if the state of SONI TSO's management of the NI network means its network diverges from NI users' and policymakers' requirements*" where that led to reliability drops or connection issues.⁸⁸

⁸⁵ Consultation Proposals, Section 4.10.

⁸⁶ Consultation Proposals, Section 4.10.

⁸⁷ Consultation Proposals, Section 4.24.

⁸⁸ Consultation Proposals, Section 4.11.

- 4.39 The critical issue in this section is that only half a page is devoted to any reason why the Utility Regulator might expect this to happen. It should be noted that the electricity system in Northern Ireland is heavily constrained, and demand has remained flat for a number of years. SONI and EirGrid TSOs take considerable steps to ensure stability and adequacy of the generation system. These steps are taken in line with SONI's statutory obligations, including to contribute to security of supply for Northern Ireland consumers through adequate capacity and reliability, and Condition 20 of its TSO Licence. These obligations – and the consequences which would flow from failing to adhere to them – bind SONI regardless of its governance structure. Again, the Utility Regulator can state only a hypothetical concern, which is unsupported by evidence – SONI cannot properly engage with and understand the case against it when it consists of assertions that are made in the abstract.
- 4.40 In this regard, it is important to recall that neither EirGrid nor SONI determine these matters. Rather, both ensure system security and continued electricity supply according to rules and procedures approved by the relevant regulatory authority. In this way, where the Utility Regulator requires SONI acting as TSO to take a specific action or achieve a specific goal, it is not open to SONI to take any contrary action.
- 4.41 The Utility Regulator considers that the “denial of differences” between Northern Irish and Irish requirements could lead to divergence. However, again the Utility Regulator fails to adduce any evidence that SONI or EirGrid *denies* that there are differences between those requirements. Indeed the limited differences that exist or those issues that impact SONI more particularly are addressed. For example, Northern Ireland Connection policy is developed separately and implemented by SONI as required. Separate Grid Codes exist and a separate Grid Code modification process applies with respect to each of the SONI and EirGrid Grid Codes. SONI continues to engage on a regular basis with the Department for the Economy (DfE) and the Department for Business, Energy & Industrial Strategy (BEIS) on Government policy including on *Brexit* and the Northern Ireland Energy Strategy as examples. However, for the most part, power system issues (such as balancing, capacity market, non-synchronous penetration, grid code standards etc.) require an integrated and holistic solution, as they are – by their nature – integrated based both on market design and TSO operation within that market design and based on the all-island framework for wholesale electricity which is in place on the island.
- 4.42 This is best exhibited by the number of areas required to be conducted “in conjunction with” or “in consultation with” EirGrid.
- 4.43 SONI and EirGrid continue to face similar issues and require similar resources and know-how to fulfil their licence obligations as both licences were conceived with a view to achieving the common objective of the SEM. Both TSOs operate on a relatively small market, constrained in a similar way to other regulated bodies by a small resource base. This sits behind the rationale for EirGrid’s acquisition of SONI, and leads directly to the efficiencies created by the group structure. One such commonality is the importance of achieving shared climate change objectives – the Utility Regulator itself highlights that “*an effective and timely energy transition will help ensure that NI can minimise risks and costs associated with climate change...the Government of Ireland’s Climate Action Plan 2019 identifies business opportunities in a number of areas and there is no reason to consider that NI would be any different*”.⁸⁹ [Emphasis added]

⁸⁹ Consultation Proposals, Section 6.95.

- 4.44 These benefits can be seen already in the all-island DS3 system services reaching 70% SNSP recently⁹⁰. The reality is that SONI and EirGrid operate in an all-island electricity market, in which divergences of approach in Northern Ireland and the Republic of Ireland could jeopardise the efficient running of the SEM and the operability of the all-island market, and in turn negatively impact on consumers and market participants in both Northern Ireland and the Republic of Ireland.
- 4.45 The Utility Regulator suggests “*unconscious bias*” may lead to the needs of “*NI consumers being seen as lower priority*”⁹¹. The Utility Regulator refers to no evidence to support this assertion. As above, the obligations in EirGrid’s TSO licence ensure that the interests of Northern Ireland consumers are paramount, as do EirGrid’s own Board level undertakings and licence obligations, discussed at paragraph 7.50 of this response.
- 4.46 In any event, at paragraph 5.8 of the Consultation Proposals, the Utility Regulator concludes that it has “*sufficient powers under the Licence to both set out and monitor the state of the network within NI*”. This would suggest that any harm that the Utility Regulator was considering is not related to the current governance of SONI. Despite this, network misalignment still features in the concerns to be addressed in paragraph 4.38.

“Barriers to competition”

- 4.47 The third and final area addressed is barriers to competition. The Utility Regulator notes that while SONI is a regulated monopoly, it has a role to play in facilitating competition elsewhere in the energy market.
- 4.48 The Utility Regulator concludes that SONI does so in respect of the dispatch of generation, and does not identify any ‘harm’ in this area.
- 4.49 The Utility Regulator considers that there may be “barriers to competition” in respect of Systems Services procurement by EirGrid/SONI should there be: (i) bias to purchasing services provided in specific geographical areas where that is not justified; and (ii) configuring procurement processes to favour suppliers based on where suppliers are located.
- 4.50 Again, this section is absent of evidence to suggest that procurement of system services does or might operate in that way. In terms of the two specific factors considered by the Utility Regulator to “increase the risk of barriers to competition arising”⁹²:
- (a) The Utility Regulator refers to the group’s procurement being governed by EU procurement legislation, which requires “*demonstrably objective selection of winners*”⁹³. This is incompatible with the implied allegation that the group favours suppliers based in Ireland rather than those based in Northern Ireland.
 - (b) The Utility Regulator again refers to the “*denial of difference*” in the systems in Northern Ireland and Ireland as potentially leading to bias: but provides no evidence of that denial.

⁹⁰ Please see Section 7 for further information on the benefits experienced by the all-island framework.

⁹¹ Consultation Proposals, Section 4.12.

⁹² Consultation Proposals, Section 4.14.

⁹³ Consultation Proposals, Section 4.14.

- 4.51 As noted above, the Utility Regulator expressly notes that it has not seen evidence which suggests “*harm or potential harm that arises from the ultimate ownership of SONI by the Government of Ireland*”⁹⁴. In coming to this conclusion, it considers and rejects the suggestion that SONI and/or EirGrid would act to favour the economy of Ireland over that of Northern Ireland. On its face, this is incompatible with the Utility Regulator’s suggestion that group wide procurement would favour *suppliers* in Ireland over those based in Northern Ireland.
- 4.52 As the Utility Regulator produces no evidence as to how SONI procurement leads to barriers to competition, it is equally unable to point to any actual or potential harm resulting from it. It is worth noting that no concerns of this nature have ever been raised with SONI.
- 4.53 Finally, in this section the Utility Regulator notes that “*it is essential that policy makers and regulators are able to rely on the analysis of System Operators*”, and that “*an institutional denial of differences between the NI and Republic of Ireland systems indicates a risk that SONI and EirGrid’s joint analysis may not fully recognise*” areas of difference.⁹⁵
- 4.54 Firstly, the Utility Regulator has not identified any denial of difference.
- 4.55 Secondly, the Utility Regulator has not identified any instance where SONI’s analysis has been unreliable – as the Utility Regulator notes at paragraph 5.9, SONI is required to plan and operate the network through a number of Licence Conditions, and the minimum standards to which the network is managed are also prescribed and agreed. A failure to meet these requirements would be a breach of SONI’s TSO Licence, from which consequences would flow.
- 4.56 Thirdly, this appears to have little to do with creating barriers to competition, and any link is not explained.
- 4.57 In any event, at paragraph 5.10, the Utility Regulator concludes that it “***the Licence as drafted has sufficient obligations which govern the behaviours of SONI...to protect the interests of consumers by promoting effective competition in generation and supply***” [Emphasis added]. This reflects the obligation that applies to the Utility Regulator itself. This would suggest that any harm that the Utility Regulator was considering is not related to the current governance of SONI and that the Utility Regulator has sufficient means at its disposal to safeguard against any risk of or arising from network misalignment. Despite the fact that the Utility Regulator identifies that the licence has sufficient obligations in this regard, barriers to competition still feature in concerns raised by the Utility Regulator to be addressed as is set out in paragraph 4.13 of the Consultation Proposals.
- 4.58 In summary, the Utility Regulator has not demonstrated actual harm consisting in the existing arrangements and the “potential harm” alluded to by the Utility Regulator has not been substantiated with respect to increase in costs, misalignment in networks or barriers to competition.

“Potential for conflict between aims of shareholders and consumers”

⁹⁴ Consultation Proposals, Section 4.24.

⁹⁵ Ibid.

- 4.59 This is another area in which the Utility Regulator cannot identify an evidential basis for its concerns. Elsewhere, the Utility Regulator appears to raise further or adjacent concerns in respect of SONI's governance. For completeness, SONI addresses these below. However, in SONI's view, should these other concerns be central to the Utility Regulator's rationale for intervention, they should be set out in a way that shows (i) the issue and (ii) the harm arising. Otherwise, the rationale is unclear and SONI, and other stakeholders, are limited in their ability to comment meaningfully.
- 4.60 In paragraphs 4.15 – 4.20 of the Consultation Proposals the Utility Regulator reflects on the potential for a conflict between the aims of shareholders and of consumers. As the Utility Regulator had noted in Section 2 of its Consultation Proposals that, the regulatory structure within which SONI operates serves to ensure that consumer interest is protected. The Utility Regulator identifies aspects of the governance of SONI which "*increase or potentially increase conflict between the aims of shareholders and consumers*". These are the scope of decision making within SONI, how costs and benefits are allocated across the group, and the possibility that the SONI/EirGrid prioritises the economy of the Republic of Ireland. The last of these is ruled out. The Utility Regulator also explains that the cost/benefit allocation is discussed in the context of pricing, which SONI has addressed above. It therefore appears that the only additional concern is the scope of decision-making.
- 4.61 However, this section of the Consultation Proposals simply sets out some features of the current governance framework, without identifying any actual or potential harm, and refers back to the three areas of potential harm described above. The Utility Regulator does not in fact set out features of SONI governance that show any particular conflict of interest. No conflict of interest has been identified and SONI is at a loss as to understand what potential conflicts of interest the Utility Regulator refers.
- 4.62 It is clear that TSO "independence" is an issue which has been addressed by the European Commission through the European Certification process with respect to all TSOs and therefore having been certified in this context, SONI's "independence" has been affirmed and determined by the European Commission. This is discussed in further detail in Section 5 of this response. Furthermore, a governance review process has taken place with respect to perceived conflicts of interest as a result of the alignment of roles and responsibilities⁹⁶ as part of the ISEM roll out. Mitigation measures have been put in place to deal with any perceived conflicts, including the appointment of a compliance office and the requirement for a compliance report to the Regulatory Authorities. Given this history and the fact that no actual harm has been identified⁹⁷ by the Utility Regulator, the justification for the Consultation Proposals does not stand up to scrutiny.
- 4.63 Similarly, there are some concerns referred to in the Consultation Proposals, but not explained, that appear to refer to the conduct of SONI. For example, the Utility Regulator refers to "*a need for a regulatory relationship between UR and SONI TSO which is both trusted and drives confidence*",⁹⁸ and that "*SONI TSO should be taking a more whole system, collaborative and coordinated approach to working with various*

⁹⁶ SEM-15-077, "Next Steps on Synergies and Conflicts of Interest", Decision Paper, Section 1.5. - <https://www.semcommittee.com/sites/semcommittee.com/files/media-files/SEM-15-077%20I-SEM%20Roles%20and%20Responsibilities%20Decision.pdf>

⁹⁷ Utility Regulator appearance before the Northern Ireland Assembly for the Economy, 21 April 2021
⁹⁸ Consultation Proposals, Section 1.2.

stakeholders, including NIE Networks.”⁹⁹ Indeed, the Utility Regulator states that “Our vision for good governance is based on achieving a trusted relationship with SONI.”¹⁰⁰

- 4.64 SONI agrees that a trusted relationship between Utility Regulator and SONI is a good thing for electricity customers in Northern Ireland. Of course, there may be areas of disagreement between the Utility Regulator and SONI. Each has different duties to discharge and such tension or disagreement may itself serve as evidence that each is discharging them.
- 4.65 Further, to the extent that the rationale for changes to the SONI governance structure is predicated on a lack of *trust* in SONI by the Utility Regulator, the Utility Regulator would have to show (i) reasons why the Utility Regulator did not trust SONI, (ii) the harm arising and (iii) how its proposals would create trust.
- 4.66 SONI has regular meetings with the Utility Regulator at a working level, management and director level as well as board to board engagement when required. SONI considers that all these scheduled meetings and regular dialogue are key to building trust. Outside of these regular meetings SONI provides the Utility Regulator with updates on both operational and strategic matters – for instance immediate dialogue in the event of system alerts and how SONI is managing same, briefings on transmission reinforcement projects, etc. SONI is keen to have a trusted relationship and considers this is achievable through regular dialogue and engagement rather than via the proposed governance arrangements.
- 4.67 SONI is of the view that any potential harm purported to be identified by the Utility Regulator has not been substantiated through the course of the Consultation Proposals including with respect to increasing costs of electricity, misalignment in network development and barriers to competition. No actual harm present or future has been identified let alone quantified. It is for these reasons that the actions proposed by the Utility Regulator are disproportionate and not targeted to achieve the purpose sought. It is therefore an unsafe basis for proposing a regulatory change.

The Utility Regulator’s proposals risk leading to a serious consumer harm

- 4.68 Chapter 6 of the Consultation Proposals contains a high level cost / benefit analysis of Options A to D. This analysis is simplistic, and does not account for significant additional costs to consumers that are likely to arise on implementation of the Consultation Proposals.
- 4.69 Moreover, it is clear that: (i) the Utility Regulator cannot point to any clear or quantifiable benefit to justify its intervention, and (ii) the costs associated with such intervention have been significantly understated. This risks creating serious consumer harm.
- 4.70 This is an unsatisfactory approach to decision-making, that falls well short of the “*robust, evidence-based decision-making*” which the CMA considered to be “*central to protecting the interests of consumers*”.¹⁰¹

⁹⁹ Consultation Proposals, Section 3.2.

¹⁰⁰ Consultation Proposals, page 5. See also paragraph 1.6: “We then consider how these issues may best be remedied to get closer to SONI TSO being able to fulfil the trusted advisor role necessary for the optimal transition to a Low Carbon economy and better protect the interests of NI consumers.”

¹⁰¹ CMA, *Northern Powergrid v GEMA: Final Determination*, paragraph 4.59. Available at:

https://assets.publishing.service.gov.uk/media/5609534de5274a036c000012/NPg_final_determination.pdf

The cost / benefit analysis significantly understates relevant costs

- 4.71 The Utility Regulator accepts that “*there will be some costs associated with the SONI Governance changes*”¹⁰² and that these are not currently provided for in SONI’s 2020-2025 price control determination. However, the Utility Regulator limits its consideration to costs associated with “*changes to the constituents of the Board*”¹⁰³ and the “*additional dedicated resource to adequately support it*”¹⁰⁴, and factors into its cost / benefit analysis solely:
- (a) salary costs based on an assumed number of Non-Executive Directors (NED), Managers, and analysts; and
 - (b) “one-off implementation costs”, including to recruit new staff and Board members.
- 4.72 This cost benefit analysis is unsatisfactory. The Utility Regulator takes an overly simplistic view of the additional costs associated with its proposals, and proceeds on inaccurate assumptions about what these are likely to constitute. The analysis focuses solely on headcount, and indeed only on a small component of the likely headcount that would be required, and does not make any attempt to quantify costs in relation to the inevitable loss of synergies, or even of affecting some of the changes required. In addition, there is a complete absence of any attempt to consider or quantify potential market impact. Furthermore, the costs and the consequences of the “jurisdictional approach” as outlined in the Consultation Proposals of the Utility Regulator were not considered by the Utility Regulator at all. The inevitable consequences of the Utility Regulator’s proposed approach are outlined by SONI in Section 6 of this response.
- 4.73 These are serious factual omissions which should have been considered and interrogated by the Utility Regulator. The failure to do so means that the cost-benefit analysis presented by the Utility Regulator falls well short of the robust, evidence-based decision-making envisaged by the CMA, and the conclusions drawn from it are therefore unsafe.
- 4.74 First, the costs described in the analysis are inaccurate for the following reasons:
- (a) The “jurisdictional” approach to regulation put forward by the Utility Regulator – one more concerned with “who” undertakes the functions and “where” they are undertaken, even though as we have set out above such considerations are without basis would seem to suggest a greater duplication of resources than has been allowed for in the Utility Regulator’s analysis of costs. SONI’s view is that this approach would inevitably lead to greater cost implications than the Utility Regulator has envisaged.
 - (b) The Utility Regulator concludes that much of the one-off implementation costs can be reduced (for example, because recruitment costs are already provided under existing allowances). The amount provided by the Utility Regulator for such one-off implementation costs in each scenario is therefore *de minimis*. Given the far-reaching implications of the proposed changes, this figure appears to bear little relation to reality.

¹⁰² Consultation Proposals, Section 6.80

¹⁰³ Consultation Proposals, Section 6.71.

¹⁰⁴ Ibid

Under both Options C and D, SONI would no longer have ready access to a pool of staff with relevant expertise via the group shared resource model. But the cost / benefit analysis contains no consideration of the additional cost of accessing such specialist expertise – which will likely need to be procured through expensive consultancy arrangements. In the alternative, given that staff with these skills do not tend to be available at short notice through consultants or agencies, SONI would need to recruit and retain sufficient people to cover all of Northern Ireland's needs. In light of SONI's size, some of the technical resource may not be fully utilized; meaning SONI would be operating a less efficient operation than the pooled resource approach, with extensive duplication of resource.

- (d) Substantive review of the staffing levels would be required. The Utility Regulator has misrepresented the basis of the Price Control by inferring that only minor staffing changes are required or taken into account. In setting the SONI Price Control the Utility Regulator is advised of the cost allocation arrangements pertaining to sharing costs relating to IT systems, IT services, and other operational services including staffing. At no time has the Utility Regulator sought SONI to provide costs on a standalone basis and has proceeded to set the Price Control allowances on the basis of shared allocation of costs. SONI considers that any of the options proposed in the Consultation Proposals would result in a full price control reopeners and the high level and crude approach presented significantly understates the costs.
- (e) The Utility Regulator must have regard to "*the need to ensure that licence holders are able to finance the activities.*" The Utility Regulator has not considered the impact on the financeability of SONI's licenced activities, for example the proposed approach will prevent efficiencies being achieved through Group synergies and mean SONI will not be financeable.
- (f) In terms of **I-SEM Operation alone**, SONI clearly set out in its Dt submission¹⁰⁵¹⁰⁶ SONI TSO I-SEM Revenue requirements to the Utility Regulator in July 2017 that the cost forecasts had "*been prepared on the basis of no restriction on the integrated economic operation of the system across EirGrid and SONI or between licences. Therefore in general SONI is accorded 25% of the costs consistent with all customers across the island who benefit equally from the services provided paying equally for those services*¹⁰⁷*.*" Under this approach in terms of resources alone the costs borne by SONI and Northern Ireland Customers related to only c. █ FTEs where the total requirement was c. █ FTEs. As there was no change stipulated by the Utility Regulator in this regard since, this underlying premise continues to be reflected in the SONI TSO revenue requirements submitted and provided for in the SONI 2020-

¹⁰⁵ A Dt submission is made by SONI to the Utility Regulator in accordance with the licence arrangements in order to seek approval and recovery of expenditure which has not been accorded a value in the Price Control and associated licence modifications. Costs approved under a Dt are included for recovery in the D_{TSO} term of the SONI revenue formula as set out in Annex 1, Section 2.2 of the SONI Licence to Participate in the Transmission of Electricity.

¹⁰⁶ SONI TSO I-SEM Revenue Requirements, Paper and Letter from SONI to the Utility Regulator, dated 7 July 2017
¹⁰⁷ Ibid

2025 Price Control. As advised in the Dt submission to a first order should SONI be required to forecast ISEM Operation costs on a standalone basis “such a submission would approximate to 3-4 times that set out (i.e. would tend to equate to close to the totality of the forecast costs across the island)”¹⁰⁸ on the basis that “A standalone submission for SONI operation would continue to be based on SONI operation of integrated I-SEM systems”¹⁰⁹. Should the IT systems be required to be separately provided the costs would be multiple times more. As the Consultation Proposals would inevitably lead to restrictions on the integrated economic operation of the SEM by SONI, in its capacity as TSO, with EirGrid, SONI would need to be funded such that it could fulfil the full range of its operational functions on a standalone basis. This therefore is a crucial issue which has not been considered by the Utility Regulator in any cost benefit analysis with respect to the Consultation Proposals.

4.75 Secondly, the cost / benefit analysis is missing significant additional costs that are likely to arise on Options A-D:

- (a) The Utility Regulator states that its cost benefit analysis is caveated “*by the fact that the evidence for synergies and efficiencies provided by SONI arising from joint arrangements with EirGrid is limited*”.¹¹⁰ But the fact that these synergies are difficult to quantify does not mean that they do not exist. Rather than estimating such synergies or providing a range, the Utility Regulator leaves this information blank, “*as to use the limited information we have could give a misleading picture*”¹¹¹. But to omit any consideration of the potential loss of synergies is equally misleading – the Utility Regulator itself goes on to recognise that additional costs could arise in Options C or D due to the loss of synergies or economies of scale within EirGrid, but does not set out any indication of what these costs might be.
- (b) The Utility Regulator proposes that a series of other governance changes should be implemented on all four Options. These obligations are not considered in the cost / benefit analysis, but cannot reasonably be considered as cost-free. Yet no costs for their implementation or ongoing operation are identified.

4.76 Most importantly, however the cost benefit analysis is absent consideration of the market impact that would be expected to arise on any disruption to the operation of the all-island arrangements. Any divergence or disruption in the all-island arrangements will lead to the following losses of outcomes:

- (a) Less efficiency in scheduling and dispatch, resulting in higher costs in the wholesale market: Depending on the ‘flagging and tagging’ process these might increase the imbalance price or the cost of constraints; and
- (b) Slower delivery: Limited resources will delay the delivery of the items funded through the price control, starting with a pause while new

¹⁰⁸ Ibid

¹⁰⁹ Ibid

¹¹⁰ Consultation Proposals, Section 6.73.

¹¹¹ Consultation Proposals, Section 6.79.

arrangements are put into place, the price control is reopened and staff recruited.

4.77 This is further dealt with in Section 6 of this response.

The Utility Regulator cannot quantify any benefit of its proposals

- 4.78 At the end of Section 6, the Utility Regulator sets out its view of the potential benefits of its proposals and states that “*every 1% reduction in costs incurred by SONI TSO would save consumers circa £550k p.a.*”¹¹². This is the only attempt made by the Utility Regulator in the Consultation Proposals to quantify the estimated benefits – the remainder of this section merely speculates as to what the potential benefits might look like, and offers little by way of evidence or quantitative or qualitative analysis. This is a deficient basis for concluding that “*the benefits of a more independent and effective SONI TSO outweigh this additional cost [of the proposals]*”,¹¹³ particularly given that – as explained above – these costs will be significant.
- 4.79 On the estimated saving of £550k per 1% reduction in costs, the Utility Regulator speculates that such a saving could arise from “*the challenge of costs being allocated to or imposed on SONI TSO by EirGrid, or the imposition of costs through a one size fits all approach*”¹¹⁴, or by granting SONI the ability to “*develop and articulate its own service needs distinct from EirGrid plc*”¹¹⁵. But this lacks evidence, or any clear articulation as to how any of the Utility Regulator’s proposals would drive cost savings for consumers. If a 1% reduction in costs can save consumers circa £550k, the opposite must also be true – but no consideration is given to this counterfactual scenario where the changes drive an increase in costs. This would mean that any hypothetical saving is illusory.
- 4.80 The remaining benefits in this section are not quantified, and the connection between the purported benefit and changes to SONI TSO governance is not clear:

- (a) The Utility Regulator states that the new governance structures may generate savings “*by allowing SONI the ability to develop and articulate its own service needs distinct from EirGrid plc...At present SONI does not have sufficient decision making autonomy to reject a group service if it is unsuitable for SONI*”¹¹⁶. In the context of the all-island arrangements, it is unclear how SONI’s service needs are likely to be ‘distinct’ from EirGrid’s, and – in the event that any such distinction arises – why the existing framework is unable to accommodate differing service requirements between the two TSOs. It is also difficult to envisage how SONI Limited could decide to reject critical group services such as Treasury Management and Internal Audit. In this context, the Utility Regulator does not provide examples of SONI’s separate and distinct service needs, and it is unclear how any group service would be unsuitable for SONI’s requirements will have been central to the decision-making process.
- (b) The Utility Regulator states that “*the way SONI TSO designs and procures system services affects providers’ ability to compete and the*

¹¹² Consultation Proposals, Section 6.89.

¹¹³ Consultation Proposals, Section 6.89.

¹¹⁴ Ibid

¹¹⁵ Consultation Proposals, Section 6.90.

¹¹⁶ Ibid

level of revenue available",¹¹⁷ and that – while the SONI TSO price control is designed to incentivise these outcomes - "*the outcomes of the governance review have a key role to play in ensuring that SONI TSO properly takes accounts of the needs of NI customers and is accountable and transparent*".¹¹⁸ Again, the connection between procurement and design of system services and SONI TSO governance is unclear – as is the rationale for the Utility Regulator's conclusion that the suite of outcomes envisaged in the price control cannot be obtained through the price control alone (see also paragraph 6.94 of the Consultation Proposals).

- (c) The Utility Regulator states that "the benefits which could be captured for Northern Ireland electricity market participants cannot be quantified but are likely to be "substantial", and that a small percentage reduction in System Services costs could realise a "*substantial saving*"¹¹⁹ – but does not explain or quantify these benefits. The Utility Regulator does not explain why it is appropriate to consider unquantified benefits in this context, when to account for unquantified synergies in its cost-benefit analysis was potentially 'misleading'. The Utility Regulator also fails to explain how the proposed governance changes will positively affect the roll out of System Services, or how the procurement processes laid down by the SEM Committee would differ under a revised SONI TSO governance structure. Similarly, there is no consideration of the counterfactual – that an increase in System Services costs (for example, through inefficiencies realised by running separate procurement processes, insufficient access to related expertise within the EirGrid Group or most importantly a changed approach by virtue of a changed governance structure and licence mandate (see further Section 6 of this response)) could realise a substantial increase in costs to consumers.
- (d) The Utility Regulator explains that "*clear NI benefits articulated by SONI TSO will help new energy transition developments in the future get planning permission*"¹²⁰. Again, the connection between revised SONI governance arrangements and articulation of Northern Ireland benefit to planning authorities is unexplained. Similarly, there is no explanation of why the Utility Regulator thinks that SONI's existing staff is presently unable to do this.
- (e) The Utility Regulator explains that "*[a]n effective and timely energy transition will help ensure that NI can minimise risks and costs associated with climate change*"¹²¹, but goes on to state that Northern Ireland is unlikely to differ from Ireland in terms of business opportunities associated with climate change. It is unclear how the revised governance arrangements – which will serve to increase separation and divergence between the two TSOs rather than reduce it – would assist in this endeavour.
- (f) The Utility Regulator states that there "*will be other qualitative benefits arising from governance that cannot be quantified such as increased*

¹¹⁷ Consultation Proposals, Section 6.91.

¹¹⁸ Ibid

¹¹⁹ Consultation Proposals, Section 6.92.

¹²⁰ Consultation Proposals, Section 6.93.

¹²¹ Consultation Proposals, Section 6.95.

trust and confidence in SONI TSO arising from transparency accountability measures and better management of any conflict of interest if any emerge.”¹²² The implications from this statement are extensive. Firstly, SONI does not understand why there would be an issue of ‘trust and confidence in SONI’ by the Utility Regulator where SONI continues to fulfil its roles in the SEM pursuant to its licences. Secondly, it has not been demonstrated how the proposed approach to SONI governance would bring about ‘increased transparency and accountability measures’ and any such justification for the proposed approach has not been by the Utility Regulator. Thirdly no issue with SONI management has been identified such that a “better management” might be proposed; nor has any conflict of interest been identified by the Utility Regulator outside of a mere speculation that a conflict could possibly arise at some future date. The “qualitative benefits” as described by the Utility Regulator are no such thing.

- 4.81 In the absence of any evidence of a tangible benefit to consumers – either now or in the future – there can be no assurance that the Utility Regulator’s proposals will actually drive a good outcome for consumers.
- 4.82 On balance, it is clear that the proposals would not drive a consumer benefit, but – perversely – are likely instead to lead to serious harm:
- (a) The cost benefit analysis conducted by the Utility Regulator is incomplete, unsatisfactory and overly simplistic. While the Utility Regulator acknowledges that additional costs could arise, including through loss of synergies and access to group resources, it does not attempt to quantify these or meaningfully factor them into the analysis.
 - (b) In addition, the proposed Options could ultimately disrupt or undermine the optimal operation of the market, leading to a loss of positive market outcomes and an associated cost (which could be significant). This has not been considered or factored into the Utility Regulator’s analysis.
- 4.83 The Utility Regulator makes only one attempt to quantify the potential benefit of its proposals, but for the most part speculates as to what the potential benefits might look like, and offers little by way of evidence or quantitative or qualitative analysis to substantiate these claims.

¹²² Consultation Proposals, Section 6.96.

5 The Consultation Proposals are founded on material errors and omissions

- 5.1 The Consultation Proposals are supported by numerous inaccuracies, errors of fact, assertions and misrepresentations. SONI notes at no time prior to the publication of the Consultation Proposals were these ‘facts’ put to it, nor was it given an opportunity to respond to or correct them.

Roles and Functions of the Utility Regulator

- 5.2 The Utility Regulator states in paragraph 1.9 and 1.10 of the Consultation Proposals that their role is as follows:

1.9 The role of UR is determined under legislation and its statutory principal objective in relation to electricity matters is:

1.10 “To protect the interests of electricity consumers in Northern Ireland, wherever appropriate by promoting effective competition between persons engaged in or in commercial activities connected with the generation, transmission or supply of electricity.”

This is outwith of the fact that this is not the objective which applies when the matter is, as in this instance, a “SEM Matter”.

- 5.3 The Electricity (Northern Ireland) Order 1992¹²³ prescribes under Article 50 General functions that

50.—(1) It shall be the duty of the Director¹²⁴ [], so far as it appears to him practicable to do so—

- a) *to keep under review the carrying on both in Northern Ireland and elsewhere of activities to which this paragraph applies; and*
- b) *[]*

and this paragraph applies to any activities connected with the generation, transmission, distribution and supply of electricity, [].

- 5.4 It is therefore clear that it is the obligation of the Director, now the Authority, to consider and review the discharge of activities not only within Northern Ireland for Northern Ireland, but specifically provides that such activities may be carried on elsewhere.

- 5.5 It is also clear from the legislation above that there is specific provision for the carrying out of functions both in Northern Ireland and elsewhere.

- 5.6 However the Utility Regulator’s statements and the Options set out in the Consultation Proposals appear to focus on *whom* specifically is discharging the SONI TSO functions on SONI’s behalf and indeed *where* those specific individuals are situate¹²⁵.

¹²³ The Electricity (Northern Ireland) Order 1992, available at: <https://www.legislation.gov.uk/nisi/1992/231/data.pdf>

¹²⁴ The function of the Director General of Gas for Northern Ireland and Director General of Electricity Supply for Northern Ireland transferred to the Northern Ireland Authority for Energy Regulation (the Utility Regulator) as set out in Section 3(1) of the Energy (Northern Ireland) Order 2003. <https://www.legislation.gov.uk/nisi/2003/419>

- 5.7 Furthermore in the Energy (Northern Ireland) Order 2003¹²⁶, in regard to the Objectives of Regulation of Electricity and Gas prescribes that the principal objective and general duties of the Department and the Authority in relation to electricity

12. —(1) *The principal objective of the Department and the Authority in carrying out their respective electricity functions is to protect the interests of consumers of electricity supplied by authorised suppliers, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the generation, transmission, distribution or supply of electricity.*

(1A) []

(2) *The Department and the Authority shall carry out those functions in the manner which it considers is best calculated to further the principal objective, having regard to—*

- (a) *the need to secure that all reasonable demands in Northern Ireland or Ireland for electricity are met; and*
- (b) *the need to secure that licence holders are able to finance the activities which are the subject of obligations imposed by or under Part II of the Electricity Order or this Order.*

- 5.8 The Utility Regulator has in setting out its proposals failed to take into account its own duties to consider the impact of its actions on the Republic of Ireland or elsewhere and indeed has sought to artificially draw a distinction between that proposed for SONI and the functions of SONI as TSO in the operation of the SEM. See Section 3 of this response.

SONI Ltd - A Body Corporate

- 5.9 SONI is a wholly-owned subsidiary of UK-registered holding company, EirGrid UK Holdings Limited, which itself is a wholly owned subsidiary of EirGrid plc. SONI holds the Transmission System Operator and Market Operator licences in Northern Ireland and is regulated by the Utility Regulator.
- 5.10 SONI Ltd is incorporated in Northern Ireland. SONI TSO is not an entity but rather a licensed activity of SONI Limited.
- 5.11 SONI holds two licences; a licence to participate in the transmission of electricity granted to it under Article 10 of the Electricity (Northern Ireland) Order 1992 ("the TSO licence") and a licence to operate as SEM Operator granted to it under Section 4 of "the SEM Operator licence" (the Market Operator licence).
- 5.12 The Consultation Proposals seeks to consult on corporate governance structures with respect to only one of the licences within a corporate. The SONI Board has no different duties in respect of SONI's TSO licensed business than it has in respect of SONI's SEM Operator licensed business. The role of the SONI Board must be thought of and considered in the context of both licensees.
- 5.13 As the proposed changes to the SONI Board would have a direct impact on the arrangements in place for the other licences and activities of SONI Ltd including the

¹²⁶ The Energy (Northern Ireland) Order 2003: <https://www.legislation.gov.uk/nisi/2003/419/data.pdf>

SONI MO licences, the approach taken by the Utility Regulator is an error as it does not conduct a proper consideration of all impacted licences.

- 5.14 As a body corporate SONI is entitled to engage in activities pursuant to its purpose as indicated in SONI's Memorandum and Articles save where prohibited in doing so by licence; in all instances based on a single unified and coherent governance structure.
- 5.15 The Utility Regulator asserts that "*We also note a lack of transparency about SONI's constitutional documents. These do not appear to be in the public domain and so were requested by UR in the Information Request dated 31 January 2020. They were not provided by SONI.*"¹²⁷ SONI's constitutional documents are, and always have been, publicly available on the Companies House website and thus freely available to the Utility Regulator¹²⁸.

Cost Allocation and Recharges

- 5.16 In Section 3.2.1 of the Consultation Proposals the Utility Regulator states that "***We have seen no evidence of a performance management or approval process in place to ensure that SONI is provided with appropriate costs and service to allow it to judge whether EirGrid is acting in a manner which protects the interests of NI consumers.***" [Emphasis added]
- 5.17 As set out in the SONI response to the Call for Evidence¹²⁹ the Cost Allocation and Recharge Policy was developed jointly by the finance teams in SONI and EirGrid and is reviewed on an annual basis. The overarching purpose of the policy is to ensure a fair and supportable basis for costs to be attributed to business units / licensees across the Group.
- 5.18 The policy must satisfy the requirement that costs are fairly allocated and that there is no cross-subsidisation across licences and businesses. It must also ensure compliance with the relevant revenue authority's transfer pricing regulations in the UK or Ireland as applicable. This second obligation is a broader test, whereby SONI ensures compliance with tax regulations as overseen by the revenue authorities. Any oversight by the tax authorities is strictly a legal matter of compliance and the Utility Regulator does not have remit in this area.
- 5.19 The current policy is a pure cost recharge / allocation policy and no cost mark-up is applied by the charging entity.¹³⁰ The policy has previously been shared with the regulators in both Northern Ireland and the Republic of Ireland and no concerns have been raised by either Regulatory Authority with respect to this policy.
- 5.20 The SONI Compliance and Assurance Officer reports to the Utility Regulator on an annual basis regarding compliance with Condition 5 of the SONI TSO Licence – Prohibition of Cross Subsidies. Separately the policy has also been reviewed by Internal Audit and as part of the annual statutory audit process for all Group companies.

¹²⁷ Consultation Proposals, Annex 2 (7)

¹²⁸ <https://find-and-update.company-information.service.gov.uk/company/NI038715>

¹²⁹ SONI Response to the CfE – Section 3.5. Available at: <https://www.uregni.gov.uk/files/uregni/media-files/SONI%20Ltd..pdf>

¹³⁰ Save for any uplift as may be required to comply with the taxation authorities' requirements.

- 5.21 SONI engaged with the Utility Regulator prior to the Utility Regulator's finalisation of the SONI Price Control 2020-2025 Final Determination¹³¹ on 21 December 2020. An updated version of the Cost Allocation and Recharge Policy was shared with the Utility Regulator on 1 November 2019 as part of SONI's Business Plan Submission for 2020-2025¹³² and SONI responded to the Utility Regulator's queries on the policy and its application in practice as the Utility Regulator's queries arose.
- 5.22 The Utility Regulator based the recharge costs detailed in their Final Determination on the Cost Allocation and Recharge Policy. There is no reference to or expression of concern regarding the Cost Allocation and Recharge Policy in the Utility Regulator's Final Determination. In its Draft Determination, the Utility Regulator "...proposed a package of enhanced cost transparency and cost reporting requirements on SONI in relation to its SONI activities..."¹³³ including "Full reporting of methodologies for cost allocation within SONI and for calculation of intra-group recharges." Per the Final Determination, the Utility Regulator intended to "...produce guidance for consultation in due course" regarding the "enhanced cost transparency measures". No such consultation has yet taken place. SONI would welcome further engagement with the Utility Regulator on this matter.
- 5.23 The Utility Regulator commented on one specific element of the cost allocation policy in the Consultation Proposals stating "*The allocation of costs to SONI TSO is either made on a "broad brush" basis (e.g. SONI TSO takes 25% of overall costs) or is based on a management assessment. Ideally, this should be more objectively linked to the actual cost of resources deployed to, or needed by, SONI TSO.*"¹³⁴
- 5.24 This allocation is not "broad brush" or outside of the Utility Regulator's oversight. The 25:75 allocation of costs reflects the specified proportions for the attribution of costs incurred on all island related activities, across the Market Operator Licences, System Operator and NEMOs, and has been applied by the Utility Regulator to matters such as DS3 System Services costs, ISEM Implementation Costs, DS3 Project Costs. The allocation was set having regard to comparative levels of all island system demand consumption in Northern Ireland and the Republic of Ireland.
- 5.25 In Table 1 Analysis of SONI Regulatory Accounts and the Utility Regulator's narrative on same in the Consultation Proposals, the Utility Regulator correlates trends in the Operating Profit as a % of Total Revenue with sales, purchase and net recharges from 2011-2018 and later states that "*Analysis...shows the overall scale of recharges between SONI TSO and EirGrid for both sales and purchases has doubled year on year since 2015, whilst operating margin had diminished.*" Trends in Operating Profits as a % of Total Revenue vary year on year as a result of multiple variables and Net recharges are comparatively immaterial when compared with SONI's total cost base. For example, with reference to the Regulatory Accounts for 2016-2020, net recharges were less than █% of total costs on average.
- 5.26 Additionally, the Utility Regulator states that the trend "[...] may reflect the centralisation of services and resources at an EirGrid Group level or changes in cost model within the Group and highlights the importance of a robust cost allocation policy." The majority of recharges are administered in accordance with specific

¹³¹ SONI price control 2020-2025 Final Determination, Utility Regulator, 21 December 2020. Available at: <https://www.uregni.gov.uk/files/uregni/media-files/Final%20determination%20main%20body.docx.pdf>

¹³² Transform the Power System for Future Generations: SONI TSO Business Plan 2020-25. Available at: [https://www.soni.ltd.uk/about/strategy-2025/SONI-Strategy-2020-25-\(DOWNLOAD\).pdf](https://www.soni.ltd.uk/about/strategy-2025/SONI-Strategy-2020-25-(DOWNLOAD).pdf)

¹³³ Technical annex: Cost remuneration and managing uncertainty, Utility Regulator, paragraph 3.5

¹³⁴ Consultation Proposals, Section 6.89.

regulatory decisions. Indeed, between 2016 and 2020, in excess of 75% of SONI's sales recharges and in excess of 70% of SONI's purchase recharges were administered in accordance with specific regulatory decisions (as directed by the Utility Regulator either on its own or in partnership with the Commission for Regulation of Utilities via the SEMC). All remaining sales and purchase recharges were administered as per the Cost Allocation and Recharge Policy. The Utility Regulator's analysis of and narrative with respect to SONI's Regulatory Accounts is silent on these material points.

- 5.27 Sales and purchase recharges include both capital and operating expenditure elements. As a result, operating profit is calculated after accounting for some, not all, recharges. Capital expenditure recharges are depreciated over the useful life of the related fixed assets. Therefore, it is not appropriate to compare operating margin with net recharges (calculated as total sales less total purchase recharges) from 2011-2018 as set out in Utility Regulator's Consultation Proposals.

Network Reliability Concerns

- 5.28 In Paragraph 4.11 of the Consultation Proposals it states "*NI electricity consumers would be harmed if the state of SONI TSO's management of the NI network means its network diverges from NI users' and policymakers' requirements to the extent that Reliability drops & Connection issues arise.*"
- 5.29 SONI works very closely both with EirGrid and NIE Networks to ensure that Northern Ireland network reliability is never compromised and with NIE Networks to facilitate connections to the network in Northern Ireland. There has been no evidence that the arrangements currently in place have caused any such issues.
- 5.30 The Utility Regulator will be aware from our submissions that in 2019/20 NIE Networks and SONI carried out a joint review of the application of the Transmission Interface Arrangements (TIA) particularly during the preconstruction phase of a grid projects. The amendment report issued by NIE Networks notes "*The findings were that while the TIA processes are operating efficiently further development of the TIA could improve the understanding and the transparency of the pre-construction roles and responsibilities.*" As a result the parties agreed TIA amendments to "*to promote additional co-operation and co-ordination between the Parties in the planning and development of the Transmission System, leading to enhanced efficiencies and customer benefits.*"
- 5.31 In terms of the development of the transmission system in Northern Ireland, SONI has clear corporate governance procedures in place to oversee capital investment proposals for network projects. Projects in Northern Ireland are scrutinised by the Transmission Investment Committee (TIC), a committee of Group Executives which is attended by the relevant project managers. In line with the frameworks in place in Northern Ireland the funding for transmission network pre-construction projects (TNPPs) require approval by the Utility Regulator. In light of this, the approval by TIC for Northern Ireland projects ensures compliance with Group governance procedures and confirms that the investment proposal is sufficiently robust for submission to the Utility Regulator. Through these structures the SONI Board is fully apprised of network project development on an ongoing basis.
- 5.32 Moreover, the core documents that underpin and frame SONI's operation, planning and system analysis including under Condition 16 - Grid Code; Condition 21 – Operational Security Standards, Condition 20 - Transmission System Security and Planning Standards, are all subject to the approval of the Utility Regulator, and are

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specific to the Northern Ireland network requirements. SONI also relies on a suite of NIE Networks policies and practices in determining Transmission network development.

Incorrect interpretation of European Legislation

- 5.33 The Utility Regulator has misrepresented the requirement of the EU Regulations and Directive in Annex 3 of the Consultation Proposals:
- "In the context of NI, NIE is the transmission system owner with SONI acting as the Independent System Operator (ISO)"*
- 5.34 This is not correct. SONI is not an Independent System Operator (ISO) as defined under the Directive (EU) 2019/944 which replaced the previous Directive 2009/72/EC. As the body which confirmed the Certification of SONI under Article 43(8), formerly Article 9(9) of Directive 2009/72/EC, the Utility Regulator should be aware of this.
- 5.35 The Third Energy Package requires that TSOs are unbundled from production, generation and supply interests. Directive (EU) 2019/944 provides for three primary models of unbundling. These are:
- Full ownership unbundling (FOU); under which the transmission system is owned and operated by an independent entity for any undertaking with production or supply interests; or¹³⁵
 - Independent System Operator (ISO) - under which an undertaking with production or supply interests may continue to own the transmission system, but appoints an independent entity to carry out all the functions of the transmission system operator; or¹³⁶
 - Independent Transmission Operator (ITO) - under which an undertaking with production or supply interests may continue to own the transmission system, but with stringent ring fencing provisions based on a pillar of organisational measures and a pillar of measures related to investment.¹³⁷
- 5.36 The Directive also provides (Article 43(8)) that whereas at 3 September 2009 there are arrangements in place which guarantee at least as effective independence of the TSO than the provisions of Chapter V (the ITO Model) they may be certified. A decision relating to certification under this provision is reserved to the European Commission.
- 5.37 SONI does not fall within the construct of an ISO as defined as it is a wholly and separate legal entity to NIE Networks the transmission system owner in Northern Ireland and not an independent entity appointed by NIE Networks. SONI has been certified as a TSO by the Utility Regulator and the European Commission under Article 43(8) of Directive (EU) 2019/944 (which replaced Article 9(9) of the previous Directive 2009/72/EC) as having at least as effective independence – i.e. a greater level of independence – than an ITO.
- 5.38 This distinction is important as the Utility Regulator goes on to infer obligations on SONI as if it were an ISO, or indeed ITO, as defined in the Directive, when in fact it is not. This is particularly relevant by reference to the Utility Regulator's comments in Annex 3(8) that “SONI, as a TSO does need to have its own Supervisory Board (Art 49) and a Compliance Officer (Art. 50)”. However, both these statements are factually incorrect.

¹³⁵ Directive (EU) 2019/944 (76)

¹³⁶ Directive (EU) 2019/944, Section 2 Articles 44-45

¹³⁷ Directive (EU) 2019/944 Section 3 Articles 46-51

5.39 Chapter VI of the Directive 2019/944 pertains to Unbundling of Transmission System Operators

- Section 1 Article 43 - Ownership unbundling of transmission systems and transmission system operators¹³⁸
- Section 2 Article 44/45 - Independent system operator (ISO)¹³⁹
- Section 3 Article 46/47/48/49/50/51 - Independent transmission operators (ITO)¹⁴⁰

5.40 **The Articles must thus be read in the context of which they are written.** Article 49 (formally Article 20 Directive 2009/72/EC) is written in the context of an ITO as defined as it specifically provides under Article 49(2) that the Supervisory Body as required under Article 49(1) shall compose members representing the vertically integrated undertaking.

*Article 49(1) - The transmission system operator shall have a **Supervisory Body** which shall be in charge of taking decisions which may have a significant impact on the value of the assets of the shareholders within the transmission system operator, in particular decisions regarding the approval of the annual and longer-term financial plans, the level of indebtedness of the transmission system operator and the amount of dividends distributed to shareholders. The decisions falling under the remit of the Supervisory Body shall exclude those that are related to the day-to-day activities of the transmission system operator and management of the network, and to activities necessary for the preparation of the ten-year network development plan developed pursuant to Article 51. [Emphasis added]*

Article 49(2) - The Supervisory Body shall be composed of members representing the vertically integrated undertaking, members representing third-party shareholders and, where the relevant national law so provides, members representing other interested parties such as employees of the transmission system operator. [Emphasis added]

5.41 Article 50 (formally Article 21 Directive 2009/72/EC) is also written in the context of an ITO - this is clear by reference to Article 50(2) which provides that the Supervisory Body should appoint the compliance officer who is responsible for reporting on the compliance of the independent transmission operator with its obligations. Indeed in regard to the arrangements in Northern Ireland between NIE Networks and SONI, it is specifically noted in the European Commission Decision on the Certification of SONI which noted "*In relation to the realisation of planned investments, the role of the compliance manager in the independent transmission operator model is effectively replaced by the independent role of SONI.*"¹⁴¹ [Emphasis added] and "**The Commission also recognises that the links between SONI and EirGrid support regional integration and the effective independence of transmission system operation.**"¹⁴² [Emphasis added]

¹³⁸ Ibid

¹³⁹ Ibid

¹⁴⁰ Ibid

¹⁴¹ European Commission Decision of 12.04.2013, paragraph 53, page 11. Available at: https://ec.europa.eu/energy/sites/ener/files/documents/2013_059_uk_en.pdf

¹⁴² European Commission Decision of 12.04.2013, paragraph 63, page 11. Available at: https://ec.europa.eu/energy/sites/ener/files/documents/2013_059_uk_en.pdf

- 5.42 SONI as a certified TSO under Article 43(8) thus contrary to what the Utility Regulator states in its Consultation Proposals does not require a Supervisory Body¹⁴³ (*Art 49*) and does not require a Compliance Officer (*Art. 50*).

Compliance Plan – Condition 12

- 5.43 The Utility Regulator asserts that the “*lack of a current ‘Condition 12’ compliance plan on the independence of the TSO, which diminishes the transparency and accountability of SONI*”¹⁴⁴.
- 5.44 However, the requirements for a compliance plan and compliance officer as envisaged under the current condition 12 is a holdover from when SONI was part of the VIU owned by the Viridian Group and “independence” in this context is by reference to the European Directives for independence of System Operators from production, generation and supply activities.
- 5.45 Indeed the Utility Regulator specifically recognised this in 2010 stating itself with respect to Condition 12 that “*While the submission of a compliance plan and the role of compliance manager were essential while SONI was owned by the Viridian Group, under the ownership of EirGrid these items will not add significantly to the protection of customers or the promotion of competition in generation, but add a significant cost to the business, which is ultimately borne by customers.*”¹⁴⁵ [Emphasis added]
- 5.46 The Utility Regulator has never since to SONI’s knowledge stated a position to the contrary, and SONI therefore assumes this remains the Utility Regulator’s position.
- 5.47 The Utility Regulator further proposed to formally amend the SONI TSO Licence Condition 12 such that “*paragraphs 3 to 13 (inclusive) (and any relevant definitions) would be suspended and have no effect for as long as the state owned constitutional status of EirGrid plc remains unchanged and EirGrid plc are the legal and beneficial owners of the entire issued share capital of the Licensee*”¹⁴⁶.

System Services Procurement Risks

- 5.48 The Utility Regulator throughout the Consultation Proposals makes a number of assertions in regard to the potential perceived barriers to competition which are unfounded and indeed inaccurate and lacking in evidence. In particular, there are a number of inaccurate assertions in regard to System Service procurement.
- 5.49 The Utility Regulator states:

“The effectiveness of competition to provide these [system] services in protecting the interests of NI electricity consumers depends on there being no unreasonable barriers to participation in that competition. Such barriers could arise

¹⁴³ For completeness it is also noted that under the Directive a Supervisory Body is not the same as the supervisory board (the latter not a capitalized term). This is evident in the context of Article 43(1) which provides complete separation between those involved in the TSO activities and those involved in generation or supply (which would include the vertically integrated undertaking)

¹⁴⁴ Consultation Proposals, Executive Summary, page 6

¹⁴⁵ Consultation on SONI Licence Modifications, Utility Regulator, January 2010, paragraph 3.3. Available at: https://www.uregni.gov.uk/files/uregni/consultations/SONI_Licence_Consultation_29-01-10_FINAL.pdf

¹⁴⁶ Ibid

- *From a bias to buy services provided in specific geographical areas, where that bias is not justified in terms of the underlying physics of the power system; or*
- *By configuring the competition in a way that places some potential suppliers at an unreasonable disadvantage – for example based on where their company is registered, or their offices are based.”¹⁴⁷*

5.50 Moreover, the Utility Regulator states that:

“The evidence suggests that a number of factors may increase the risk of barriers to competition arising in each of these areas.

Centralised, group-wide, procurement: Centralised purchasing of services by EirGrid Group is covered by EU Procurement legislation, with requirements published in the Official Journal of the European Union, and demonstrably objective selection of winners.

Denial of differences in the systems of NI and Ireland: This could lead to requirements and contracts for System Services being drafted in a way that limits the effective participation of service providers in NI.”¹⁴⁸

5.51 In fact, the current arrangements ensure that procurement takes account of Northern Ireland interests. As regards the procurement of system services, there are two categories of services that may be procured.

- **Jurisdictionally specific services:** This would include, for example, local security of supply arrangements that may arise from time to time or synchronous compensation service. These are procured by SONI. Costs and, where relevant, frameworks, are subject to the approval of the Utility Regulator under the D_{TSO} term of SONI's TSO licence. One such example is the approval of the System Support Services Costs pertaining to Kilroot Power Station.
- **All Island System Services:** These have been deemed to be a “SEM Matter” (SEM-10-013)¹⁴⁹ and, as such, are procured by SONI in line with the regulatory approved frameworks as set out by Utility Regulator and the Commission for Regulation of Utilities via the SEM Committee. As matters which are for the benefit of consumers in Northern Ireland and the Republic of Ireland, the costs are apportioned between SONITSO and EirGrid TSO on the agreed and approved 25:75 basis. The TSOs then recover their share of the apportioned costs within the tariffs for their respective jurisdictions. Such costs are approved by the Utility Regulator as part of the SONI annual revenue and tariffing process.

5.52 In fact, the procurement of All-island System Services arrangements is heavily regulated by the Utility Regulator and the Commission for Regulation of Utilities via the SEM Committee¹⁵⁰. This extends beyond the determination of the high level design framework for the procurement of the services (SEM-14-108)¹⁵¹ to the explicit approval of:

¹⁴⁷ Consultation Proposals, Section 4.14

¹⁴⁸ Consultation Proposals, page 35

¹⁴⁹ SEM-08-013, *Harmonised All-Island Ancillary Services Policy*, Decision Paper, <https://www.semcommittee.com/sites/semcommittee.com/files/media-files/SEM-08-013%20-%20SEM%20Ancillary%20Services%20Decision%20Paper%2028.02.2008%20-%20DIN35974.pdf>

¹⁵⁰ Technically the two SEM Committees, that of the Utility Regulator and that of the Commission for Regulation of Utilities. Determined by the SEM Committee in its Decision Paper on DS3 System Services Procurement Design and Emerging Thinking (SEM-14-108).

- (a) the procurement arrangements:
- (i) At a fundamental level, the System Services procurement process is carried out in accordance with European Procurement rules, which are built on the principles of transparency, equal treatment, open competition, and sound procedural management. The SEM's procurement arrangements for system services are subject to the approval of the SEM Committee.
 - (ii) For example, the TSOs held a public consultation and submitted a recommendations paper to the Regulatory Authorities, setting out their proposed approach to procurement of a sub-set of services with specific availability requirements on fixed six-year term contracts (the **System Services Fixed Contracts**). The SEM Committee subsequently published its decision on the approach to the DS3 System Services Fixed Contract Procurement (**SEM-18-049**).¹⁵² This Decision approved the majority of the TSOs' Recommendations, subject to certain exceptions concerning maximum contracted volumes.
 - (iii) The TSOs issued an all-island competitive tender framed by reference to the decision set out in SEM-18-049¹⁵³.
- (b) the methodology determining the volume of services to be procured:
- (i) Services are split into a number of lots for each of the TSOs at the outset of the procurement. The volumes procured in each "gate" are set in accordance with the Volume Calculation Methodology and Portfolio Scenarios approach as approved by the SEM Committee¹⁵⁴.
 - (ii) To be eligible to provide services, a prospective providing unit must be connected to either transmission system network, or the distribution system network in the Republic of Ireland or Northern Ireland. In the case of an aggregator, an interface agreement – DSUSOIA¹⁵⁵ or GASOA¹⁵⁶ – applies.
 - (iii) Details of the contracted volumes, under each procurement process, and the total contracted volumes per services, for the Republic of Ireland and Northern Ireland, are published by SONI (and EirGrid).¹⁵⁷
- (c) This procurement strategy has produced demonstrably positive outcomes. The SEM Committee noted in its report on the Systems Services Fixed Contracts procurement (**SEM-19-062**)¹⁵⁸ that:

¹⁵² Determined by the SEM Committee in its Decision Paper on DS3 System Services Fixed Contracts Procurement Arrangements (**SEM-18-049**).

¹⁵³ Ibid

¹⁵⁴ <http://www.eirgridgroup.com/site-files/library/EirGrid/DS3-System-Services-Decision-Paper-on-Volume-Calculation-Methodology-and-Portfolio-Scenarios-FINAL.pdf>

¹⁵⁵ "DSUSOIA" means an agreement between the Service Provider and the Company which provides the right for the Providing Unit to be and remain connected to the Transmission System or the Distribution System to the extent that the Providing Unit is a Demand Side Unit

¹⁵⁶ "GASOA" means an agreement between the Service Provider and the Company which provides a right for the Providing Unit to be and remain connected to the Transmission System or Distribution System to the extent that the Providing Unit is an Aggregated Generating Unit;

¹⁵⁷ <https://www.soni.ltd.uk/how-the-grid-works/ds3-programme/ds3-consultations-and-pub/>

¹⁵⁸ SEM-19-062, *System Services Fixed Contracts Procurement Outcomes*, Information Paper, 13 November 2019 - <https://www.semcommittee.com/sites/semc/files/media-files/SEM-19-062%20-%20System%20Services%20Fixed%20Contracts%20Procurement%20Outcomes%20-%20Information%20note.pdf>

- (i) Following publication of SEM-19-005¹⁵⁹, the TSOs proceeded with issuing an all-island competitive tender framed by reference to the decisions set out in SEM-18-049¹⁶⁰ and SEM-19-005;
 - (ii) The tendering process was competitive, attracting bids for 18 service providers;
 - (iii) Overall the procurement outcomes represent significant value for consumers – both in terms of value relative to contracting the same services under the regulated arrangements (in place until 2023), and in terms of learnings from running a competitive procurement for system services while introducing new technology types onto the system.
- (d) the tariffs and charges payable to providers:
- (i) The SEM Committee Decision on Tariffs and Scalars (**SEM-17-080**) outlined that a competitive procurement process was to be undertaken in respect of the System Services Fixed Contracts.¹⁶¹
 - (ii) More generally, SONI updates and published the DS3 System Services Statement of Payments on an annual basis. The Statement is prepared by SONI in accordance with Condition 30 of the TSO Licence and is subject to the approval of the Utility Regulator.
- (e) the contractual arrangements:
- (i) After the SEM Committee's publication of SEM-18-049, the TSOs carried out a further public consultation on the Contractual Arrangements for the Fixed Contracts¹⁶² and subsequently submitted a Recommendations Paper to the Regulatory Authorities. Following receipt of the TSOs' consultation paper, the responses received and the TSOs' Recommendations Paper, the SEM Committee published a decision paper which set out its Decision on the contractual principles to be reflected in the TSOs' System Services Fixed Contracts (**SEM-19-005**).¹⁶³ The TSOs issued an all-island tender on the basis of these principles and the Decision in SEM-18-049.
 - (ii) In each procurement process, EirGrid acts on behalf of both EirGrid and SONI as the separate contracting entities. However, for each procurement round it is clear that separate DS3 System Services Agreements for services in the Republic of Ireland and in Northern Ireland will be entered into with EirGrid and SONI, respectively. There are separate DS3 Services

¹⁵⁹ SEM-19-005, *DS3 System Services Fixed Contracts Contractual Arrangements*, Decision Paper, 8 February 2019 - <https://www.semcommittee.com/sites/semc/files/media-files/SEM-19-005%20DS3%20Fixed%20Contracts%20Contractual%20Arrangements%20Decision%20Paper.pdf>

¹⁶⁰ SEM-18-049, *DS3 System Services Fixed Contracts Procurement Arrangements*, Decision Paper, 7 September 2018 - <https://www.semcommittee.com/sites/semc/files/media-files/SEM-18-049%20DS3%20System%20Services%20Fixed%20Contracts%20Procurement%20Arrangements.pdf>

¹⁶¹ SEM-17-080, *DS3 System Services Tariffs and Scalars SEM Committee Decision*, 24 October 2017 - <https://www.semcommittee.com/sites/semcommittee.com/files/media-files/SEM-17-080%20DS3%20SS%20SEMC%20Decision%20Paper%20Regulated%20Arrangements%20Tariffs%20and%20Scalars%20Final%20version.pdf>

¹⁶² *Consultation on DS3 System Services Volume Capped Fixed Contracts DS3 System Services Implementation Project*, EirGrid and SONI, October 25th 2018 - <http://www.eirgridgroup.com/site-files/library/EirGrid/DS3-System-Services-Fixed-Contracts-consultation.pdf>

¹⁶³ SEM-19-005, *DS3 System Services Fixed Contracts Contractual Arrangements*, Decision Paper, 8 February 2019- <https://www.semcommittee.com/sites/semc/files/media-files/SEM-19-005%20DS3%20Fixed%20Contracts%20Contractual%20Arrangements%20Decision%20Paper.pdf>

Agreement templates for EirGrid and its providers and those between SONI and its providers. These templates are endorsed, and all variations are subject to approval, by the relevant Regulatory Authority.

- (iii) The DS3 Services Agreement should be considered in the context of the DS3 System Services Protocol¹⁶⁴ and the DS3 System Services Statement of Payments¹⁶⁵, which contain material information, approved by the Regulatory Authorities, relating to the obligations of the service providers and the rates to be paid for the provision of the services.

- 5.53 The proposals are predicated by the Utility Regulator by reference to its concern in terms of the all-island procurement of system service. The SEM Committee has determined that the harmonised all-island policy options for system services and related payments/charges is a SEM Committee matter within the meaning of the legislation and has made decisions on the future treatment of harmonised ancillary services and related charges across the island in the SEM. If the Utility Regulator has a genuine concern with the all island approach to System Services this is clearly a matter for the SEMC.

SOA and MOA

- 5.54 The Utility Regulator asserts on a number of occasions in the Consultation Proposals that the lack of a System Operator Agreement (SOA)¹⁶⁶ to transparently govern collaboration between the two TSOs poses the risk of potential harm, again noting that no harm as actually been identified. This is set against a view that such arrangements are required to manage the natural tensions between the TSOs.
- 5.55 Such a position, and a number of the later references to the SOA in the Consultation Proposals, demonstrates a clear misunderstanding of both the frameworks in place, most notable that the SOA is not a bilateral agreement between the TSOs rather a tri-party agreement between EirGrid TSO, SONI TSO, and SONI and EirGrid acting as Market Operator.
- 5.56 Moreover, that set out by the Utility Regulator fails to recognise the underlying premise of the SOA, which, as set out by the SEM Committee is to ensure that in working together under the SOA “they [the System Operators] protect the interests of the consumers of electricity in both Ireland and Northern Ireland”¹⁶⁷.
- 5.57 It is not intended that the System Operators under the SOA approach any collaboration or working together with a jurisdictional approach. In fact Condition 24 of the SONI licence which deals with the System Operator Agreement explicitly states (Condition 24 1(e)(a) that the SOA is designed so as to “at all times protect the interests of consumers of electricity in Northern Ireland and Ireland”
- 5.58 For the avoidance of doubt the System Operator Agreement is in existence and indeed published on the SONI website.¹⁶⁸

¹⁶⁴ <https://www.soni.ltd.uk/media/documents/DS3-System-Services-Protocol-Recommendations-Paper-with-responses.pdf>

¹⁶⁵ <https://www.soni.ltd.uk/media/documents/DS3-SS-Statement-of-Payments-2019-20.pdf>

¹⁶⁶ See, as examples, Consultation Proposals, Sections 3.21. 5.8 and 5.11

¹⁶⁷ SEM-08-176, *The Proposed Acquisition of SONI Limited by EirGrid plc, Consultation Paper*, December 2008, paragraph 32, page 11. - <https://www.semcommittee.com/sites/semcommittee.com/files/media-files/SEM-08-176.PDF>

¹⁶⁸ <https://www.soni.ltd.uk/media/System-Operator-Agreement.pdf>

- 5.59 For the further avoidance of doubt the SOA is not designed to enable SONI and EirGrid to each represent and protect a jurisdictional interest, but rather “*to protect the interests of consumers of electricity in both Ireland and Northern Ireland.*”¹⁶⁹ Were SONI to do otherwise, as the Utility Regulator appears to suggest, it would be specifically operating contrary to and outside of its licence.
- 5.60 Furthermore SONI notes that it specifically wrote to the Utility Regulator concerning this matter on 28 June 2013 whereby SONI noted:
- “Reporting on the operation of the SOA under Condition 24, whilst noting that the bringing together of SONI Ltd with the Republic of Ireland System Operator under a single governance structure has effectively internalised the requirement to enable each other to fulfil the other’s functions and therefore overcomes many of the obstacles that could potentially be present under separate governance.”*¹⁷⁰
- 5.61 SONI did not receive a reply to this letter.
- 5.62 The Utility Regulator seeks to support its factually inaccurate position by misrepresenting the arrangements in place. One such assertion being that the construct and governance of the SOA, in particular the existence of a formal dispute resolution process (refer to section 1.23 of the Consultation Proposals) means that the TSOs should act as independent entities at either side of the interfaces. However, contrary to that implied, both the MOA and SOA contain formal dispute procedures as would be expected of an Agreement between two corporate entities.
- 5.63 Moreover, it is clear from SEM-08-176¹⁷¹ that following the acquisition of SONI licence changes were made to both the SONI and EirGrid licences requiring it be made clear that the SOA was specifically designed, and to be specifically designed for the fulfilment of the all island arrangements and the protection of consumers in both Northern Ireland and the Republic of Ireland, as captured in Condition 24 1(e)(a) of the SONI TSO Licence.
- 5.64 The Utility Regulator in its Consultation Proposals specifically notes that the SOA is a SEMC requirement, and therefore by extension a “SEM Matter”. All the issues set out within the SOA – connections, network planning, scheduling and dispatch etc...., and which require SONI under its Transmission licence to act in co-operation or in conjunction with the Republic of Ireland TSO are therefore also “SEM Matters”.

¹⁶⁹ SEM-08-176, *The Proposed Acquisition of SONI Limited by EirGrid plc, Consultation Paper*, December 2008, paragraph 32, page 11. - <https://www.semcommittee.com/sites/semcommittee.com/files/media-files/SEM-08-176.PDF>

¹⁷⁰ Letter SONI to Utility Regulator on 28 June 2013 re “*Compliance Report for SONI Ltd’s licence to Participate in the Transmission of Electricity.*”

¹⁷¹ SEM-08-176, *The Proposed Acquisition of SONI Limited by EirGrid plc, Consultation Paper*, December 2008, paragraph 32, page 11. - <https://www.semcommittee.com/sites/semcommittee.com/files/media-files/SEM-08-176.PDF>

Inappropriate Comparators

- 5.65 The Utility Regulator seeks to support its narrative on the proposed Governance requirements by reference to a number of other regulated utilities and asserts that “*The changes we propose are based upon best practice initiatives employed elsewhere by regulators to remedy similar concerns.*”¹⁷²[Emphasis added]. However on review of the purported analogues precedents it is clear that they are without basis and are not comparable to, or *similar* to SONI. They do not therefore serve as an appropriate comparator and indeed highlight that that where changes have been proposed they are clearly set out to addressed clear identified harm or any and perceived conflicts of interest. A number of these comparators are addressed below.
- 5.66 **Electricity System Operator (ESO) in GB:** In regard to the treatment of the ESO, it is clear that Ofgem in setting out the arrangements is seeking to manage any actual or perceived conflicts of interest between the ESO and other National Grid plc companies including the Transmission Owner and National Grid Gas Transmission (NGGT), the Gas System Operator.
- 5.67 In terms of the Transmission Owner – the requirements, including those referred to by the Utility Regulator, whereby those NEDs appointed to the ESO Board cannot also sit on the main board, are in the context of the ESO as an ISO within the Directive (EU) 2019/944. As such the ESO is subject to the requirements as set out in the Directive pertaining to same.
- 5.68 Under Article 44(2) of the Directive an ISO may be designated provided that “*the candidate operator has demonstrated that it complies with the requirements laid down in points (b), (c) and (d) of Article 43(1)*”, which are
- (b) *the same person or persons are not entitled either:*
- (i) *directly or indirectly to exercise control over an undertaking performing any of the functions of generation or supply, and directly or indirectly to exercise control or exercise any right over a transmission system operator or over a transmission system; or*
- (ii) *directly or indirectly to exercise control over a transmission system operator or over a transmission system, and directly or indirectly to exercise control or exercise any right over an undertaking performing any of the functions of generation or supply;*
- (c) *the same person or persons are not entitled to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking, of a transmission system operator or a transmission system, and directly or indirectly to exercise control or exercise any right over an undertaking performing any of the functions of generation or supply; and*
- (d) *the same person is not entitled to be a member of the supervisory board, the administrative board or bodies legally representing the undertaking, of both an undertaking performing any of the functions of generation or supply and a transmission system operator or a transmission system.”*
- 5.69 SONI is not an ISO and as such, it is not subject to the same requirements. This is further addressed in paragraphs 5.33 - 5.38 of this response.

¹⁷² Consultation Proposals, Executive Summary, page 8

- 5.70 In regard to the Ofgem report cited by the Utility Regulator in Annex 3 paragraph 13 of its Consultation Proposals; this is taken out of its intended context. The report studies ‘*System changes required delivering net zero*¹⁷³. Section 5 of this report in particular deals with Ofgem’s view of the ownership and governance structure of National Grid Electricity System Operator (NGESO), with a specific focus on the need to separate its operation from National Grid Electricity Transmission (NGET) and other National Grid plc companies, including NGGT. Of note, it outlines concerns in relation to National Grid’s GSO function interacting with the ESO, as they both operate under a single controlling party, National Grid plc (a publicly-listed company with ordinary shareholders), and conflicts of interest therein. There is no such potential conflict between SONI and EirGrid.
- 5.71 **Ofwat’s Board Leadership, Transparency and Principles:** The Utility Regulator seeks to draw comparison with the arrangement put in place by Ofwat for the water utilities. The Utility Regulator goes on to state at page 61 of its Consultation Proposals that: “*Consistent with the approach taken by other utility regulators facing similar issues. Most notably OFWAT have amended the licences of England and Wales water companies to require Directors to consider the interests of consumers alongside those on shareholders.*” [Emphasis added].
- 5.72 However, the Utility Regulator itself notes in the Consultation Proposals that “*OFWAT required changes to the governance of GB water companies following damaged trust in the sector after the corporate behaviour of some companies and significant service failures.*”¹⁷⁴ No issue of non-compliance or poor corporate behaviour has been identified with respect to SONI’s various functions since acquisition by EirGrid plc. There has been no untoward corporate behaviour, quite the contrary, and no service failures, significant or otherwise.
- 5.73 In the words of the Utility Regulator “no harm” has been identified. No evidence has been produced as part of the “Call for Evidence”. The Utility Regulator re-confirmed this to the Northern Ireland Assembly Committee for the Economy on 21 April 2021¹⁷⁵ where the Utility Regulator stated that its report identified “*no actual evidence of harm.*”¹⁷⁶
- 5.74 To assert that the Utility Regulatory is facing similar issues in its regulation of SONI as that seen and addressed by Ofwat is grossly inaccurate and without basis as supported by the Utility Regulator’s own admission.
- 5.75 **NIE Networks:** The Utility Regulator fails to set out that the arrangements for NIE Networks exist primarily as a result, as part of the Certification arrangements and in its licences it was deemed appropriate that a level of business separation and ring fencing was retained between NIE Networks and ESB, including independence in both management and board governance as ESB was and continues to be a Vertically Integrated Undertaking. This was specifically examined by the SEM Committee in its governance review of NIE Networks¹⁷⁷.

¹⁷³ Review of GB energy system operation, Ofgem, 25 January 2021 - https://www.ofgem.gov.uk/system/files/docs/2021/01/ofgem_-_review_of_gb_energy_system_operation_0.pdf

¹⁷⁴ Consultation Proposals, Section 2.5

¹⁷⁵ <https://www.youtube.com/watch?v=WzRv2NqFF1A> [1:28:14 – 1:28:25]

¹⁷⁶ Utility Regulator at Northern Ireland Assembly Committee for the Economy on 21 April 2021

¹⁷⁷ SEM-12-003, Acquisition of NIE plc, NIE Powerteam and allied businesses by ESBNI Ltd, Decision Paper, 19 January 2011

- 5.76 This is not the case for SONI; in fact precisely the opposite. For SONI that independence is already guaranteed and is further enhanced through its closer co-operation and integration with EirGrid¹⁷⁸.
- 5.77 **Elia in Belgium:** The Utility Regulator omits to set out why the division of power pertains to Elia that is, due to the company's complex structural arrangements, which are a mixture of both private and state interests.
- 5.78 Elia is a publicly-owned enterprise listed on Euronext Brussels stock exchange (EN: ELI), and Elia's controlling interest extends to other private companies (EuroGrid; 50 Hertz) , and the state-owned German investment bank, KfW.
- 5.79 Electricity law in Belgium is bound by a combination of Flemish, Walloon and Brussels legislation.
- 5.80 The restrictions on the Elia Board are largely necessitated due to arrangements set out above and are not relevant to SONI in the context of EirGrid Group ownership.
- 5.81 The Utility Regulator's selective use of examples of regulatory arrangements, including situations which bear no resemblance to SONI's, is clear in the inclusion by the Utility Regulator of the statement in Annex 3 paragraph 37 where it specifically notes and refers to the linguistic balance requirement of the Elia Board. This point is completely irrelevant to SONI Governance.
- 5.82 In this section, SONI has identified significant errors of fact, facts which are used to support the Utility Regulator's proposals and the use of false comparators which are inappropriately used as a foundation to justify the Utility Regulator's proposed approach.
- 5.83 As the Utility Regulator's proposed approach is grounded on these errors of fact, then any decision also grounded on premises arising from these errors of fact are false premises which undermine any rationale justification for such an approach. We have taken the opportunity to correct these for the record and hope that having addressed them this will further cause the Utility Regulator to re-consider the appropriateness and the basis and foundation of that which is proposed.

¹⁷⁸ See European Commission Decision of 12.04.2013, paragraph 15, page 4. Available at:
https://ec.europa.eu/energy/sites/ener/files/documents/2013_059_uk_en.pdf

6 Proposed Actions do Materially Impact SEM

- 6.1 In this section, SONI emphasises the material impact of the Utility Regulator's "jurisdictional approach" to TSO regulation on the island of Ireland. In considering this issue, SONI consulted with EirGrid to assess potential impacts of the Utility Regulator's proposed approach, on the SEM. SONI is of the view that the inevitable result of the Options proposed by the Utility Regulator in its Consultation Proposals would be such as to "materially affect" the SEM with significant negative and harmful consequences and moreover to alter the current modus operandi of SONI and EirGrid.
- 6.2 The Utility Regulator's Options would precipitate a significant departure from the current principles that support the effective operation of the SEM. This is – first and foremost – because it would require, and is based upon a "jurisdictional approach" whereby each TSO has regard first and foremost to "its own consumers". This would be a deviation from the current principles of SEM operation, which sees SONI and its counterpart EirGrid collectively working together as TSOs to deliver system operation in a way that balances efficiency and system security throughout the all-island network. The inevitable consequences of this "jurisdictional approach" would create near-term challenges in terms of amending existing operational tools and practises. It would also create long-term challenges relating to the industry frameworks and generation mix that would lead to substantial increases costs.
- 6.3 At a fundamental level, operation of a given transmission system is based on the ability to balance a network's frequency, voltage, inertia, reserve and restoration requirements. Different types of generation can address these requirements in different ways; it is the role of the system operator to draw on the capabilities of generators and, ultimately, balance the system's requirements in an economic way.
- 6.4 At present, an all-island view of the SEM generators' capabilities is considered by the TSOs during day-to-day operations. In contrast a move towards jurisdiction-specific decisions in relation to system operation would require each TSO to make an independent system assessment and to assume that the neighbouring TSO would be doing the same. This would mean that across the island of Ireland access to the capabilities of generation plant in the other TSO's jurisdiction could not be guaranteed.
- 6.5 A "jurisdictional approach" to TSO operation on the island of Ireland would require the necessary redesign of control centre tools, and their underpinning algorithms that determine a TSO's cause of actions. Furthermore each TSO would have to ensure that it could unilaterally adhere to its own operational standards without drawing on the capability of the other TSO (i.e. assuming reduced, or no, interconnection between the Northern Ireland and the Republic of Ireland systems). For both SONI and EirGrid, these operational standards would need to balance frequency, voltage, inertia, reserve and restoration requirements for each of Northern Ireland and the Republic of Ireland respectively; any exchange of capability in each of these areas would be conditional and would only occur in the event of excess being available in either jurisdiction (which, in turn, would be directly linked to the outage planning in each jurisdiction).
- 6.6 The fallout of this "jurisdictional approach" would be to require immediate investment in infrastructure and plant to address the tight margins that would occur in Northern Ireland. Significantly, however, addressing the short-term adequacy issue could have a material impact on Northern Ireland's decarbonisation aspirations. It is estimated that, across the SEM, an additional 500MW would be required to address the inevitable capacity issues in the respective jurisdictions, while there could also be a 10% increase

in reserve requirements (and therefore a minimum 10% increase in reserve costs). 500MW of additional capacity would, based on the outcomes of recent capacity auctions be expected to cost consumers of the order of £25m per annum.¹⁷⁹

- 6.7 The arrangements relating to the conditional exchange of support services between the TSOs would need to be agreed as part of this transition. Not only would this include a cap on post-incident rescue flows, which would seek to ensure that either TSO would not be endangering its own network in its support of the neighbouring system, but the costs associated with this activity would need to be analysed and agreed between both parties.
- 6.8 At present, under the all-island system operation model, costs are apportioned between each of the Transmission System Operators on a 25:75 ratio between SONI and EirGrid; this would need to be revised to better-reflect the value of the service being provided to the jurisdiction whose system requires the support in question.
- 6.9 The “jurisdictional approach”, would require the revisiting of the agreed approach to TSO cost allocation in the SEM. At present, opportunities for inter-TSO synergies are reflected in an agreed cost sharing ratio between the system operators; the Utility Regulator’s proposals would result in a changed approach leading to increased consumer costs in both jurisdictions.
- 6.10 This section of SONI’s response addresses the specific impacts of the proposed actions on the areas of Real-Time Dispatch, the SEM Capacity Market, System Services, Interconnector Management and the practicalities of Inter-TSO Cooperation. SONI also considers the impact of a changed approach with respect to these issues and for the broader regulatory frameworks and overarching development of energy policy in Northern Ireland.

Real-Time Dispatch

Current Practice

- 6.11 At present, the roles associated with system operation in the SEM (i.e. (i) scheduling and (ii) planning and managing system needs’ in real time) are allocated to either one of the TSOs, which then performs this role on an all-island basis. This approach sees one TSO overseeing forward looking schedules, based on all-island wind forecasts, load forecasts, generator availability being produced in one of the TSOs’ Control Centre; while the other TSO plans, and manages the system needs in real-time (including the associated dispatch and redispatch of generators). SONI and EirGrid alternate these roles on a regular (within week) basis.
- 6.12 The two TSOs work to a set of harmonised operational practices, training and decision support tools have been put in place which result in an all-island optimisation of unit commitment and system dispatch. The list of tools range from an all-island [REDACTED], which gives both control centres a single view of the real-time voltage and power-flow information; to system support tools which analyse system stability with high levels of asynchronous generation. Other all-island tools include the Wind Stability Analysis Tool (WSAT), the Electronic Dispatch Instruction Log (EDIL), the Market Management System (MMS) and the Control Centre Logbook.

¹⁷⁹ Assuming a future average price per MW of £50,000, having considered the average price per MW for the 2023/24 and 2024/25 T-4 Capacity Auction Results - https://www.sem-o.com/documents/general-publications/T-4-2023-2024-Capacity-Market-Auction-Overview_Final.pdf and <https://www.sem-o.com/documents/general-publications/T-4-2024-2025-Final-Capacity-Auction-Results-Report.pdf>

- 6.13 The significant investment made in common procedures, training and systems (the costs of which have been approved by the Utility Regulator), ensure that both TSOs have full visibility and understanding of all the relevant information required to optimise commitment and dispatch decisions to preserve system security and operate the balancing market in the most efficient manner possible. The full set of energy balancing and non-energy balancing actions available are intrinsically shared and activated through a single all-island process. This provides a level of seamless resilience should one control centre become temporarily unavailable (such as in the event that either control centre needs to be evacuated).

Impact: Divergent Operating Strategies

- 6.14 Under a “jurisdictional approach”, each TSO would be required to undertake its forecasting, planning and operation activities so as to demonstrably prioritise local requirements, rather than optimising the pool of resources available to the SEM community as a whole. This would mirror the approach of the other TSO interconnected to the SEM. NGESO in Great Britain has designed its arrangements with neighbouring jurisdictions (which currently include France, Belgium and the Netherlands) so as to ensure it adheres to its domestic obligations relating to security of supply and economic and efficient operating of its system. Ultimately, a “jurisdictional approach” would lead to a different set of units being committed and dispatched, than would be the case under an all-island optimisation.
- 6.15 By way of illustration, one TSO may adopt an operational strategy that requires it to retain additional local units in reserve where there is less confidence that inter-jurisdictional support will be fully available if called upon. As TSOs, SONI and EirGrid designate certain units as ‘Reliability Must Run’ (RMR). Any out of merit costs are socialised and ultimately borne by end consumers. Assessment of the requirement for RMR units is presently performed on an all-island basis, with current plans to move to seven (7) RMR units. If each TSO must separately assess and procure RMR units for its region, the number would likely revert to nine (9) – three (3) units in Northern Ireland and six (6) units in the Republic of Ireland.
- 6.16 Other examples of the change in TSO actions which would result from a “jurisdictional approach” being adopted would be the tendency to increase local peak load forecasts under low wind conditions and reduce the valley load forecasts under high wind conditions in order to maintain a higher level of local security. It is also likely that once market participants appreciate that there is a greater appetite for local, rather than all-island balancing actions, that there would be changes in their bidding behaviour to reflect this element of increased market power. In the medium to longer term it is likely that each control centre would develop separate decision support tools, which would be based on different input data, models and objective functions. As a result, these tools would recommend divergent outcomes, which at best would be inefficient and at worst mutually incompatible.
- 6.17 Furthermore, the divergence of TSO operational policy may cause the all-island balancing market to split into two separate balancing arrangements. Under the pan-European arrangements, the operation of the balancing market is a TSO function. The separation of SONI and EirGrid into jurisdictionally-focussed TSOs would therefore result in separate balancing markets for Northern Ireland and the Republic of Ireland, with these markets independently setting balancing prices. This is of course contrary to the SEM Committee’s established market design and existing single Bidding Zone on the island.

Impact: Real-Time System Security

- 6.18 Though it might be assumed that a focus on “jurisdictional” actions would be synonymous with an increase to the levels of local security, this may not occur in reality.
- 6.19 Local security would reduce as visibility and access to cross-border support reduces over time. Support levels would no longer be determined by use of the most up-to-date information, models and an acceptance that all measures will be fully entered into by both TSOs to preserve security even if the issue is one geographical area. Instead where a “jurisdictional approach” is adopted support levels would be contractually agreed and would undoubtedly be more conservative in both their planning and deployment, given any requirement for each TSO to focus on local responsibilities.
- 6.20 Local security policies will drive greater run hours and operation of local plant. This will add to the maintenance requirement in each jurisdiction and reduce the number of run hours available on older plant. This will ultimately reduce operating margins and increase the risk of supply shortages.
- 6.21 An unavoidable, more conservative view of local security issues would inevitably reduce the utilisation of renewable asynchronous plant and conversely increase reliance on older and less reliable conventional plant. Therefore, in addition to creating near-term investment costs, this “jurisdictional approach” would create challenges in relation to the achievement of Department for the Economy’s decarbonisation objectives.

Impact: Balancing Market

- 6.22 The cost of operating a single balancing market will increase with a “jurisdictional approach”. If only one extra low merit order unit (e.g. open cycle gas turbine or coal/HFO unit) was to be committed as a result of giving precedent to local considerations (i.e. as a result of more conservative jurisdictional decisions) this could result in a potential additional cost of around £ [REDACTED] /MWhr based on simple bids submitted in May 2021. If such a unit provides on average [REDACTED] MWhrs for [REDACTED] days per year, the annual premium to be paid would be in the order of £[REDACTED]-£[REDACTED]/year.
- 6.23 If, as a result of the proposals, two separate balancing arrangements were to ensue, there would be an increase in capital expenditure (e.g. settlement and market management systems) and operational costs (e.g. increased industry resources to govern, and monitor compliance with, the ensuing codes and associated rules). Such a separation in balancing arrangements would also require a separation of collateral requirements and would have broader implications such as the removal of the netting of Republic of Ireland and Northern Ireland positions and a requirement to establish, and manage, jurisdictional collateral.

SEM Capacity Market

Current practice

- 6.24 Currently the Capacity Requirement for each Capacity Auction is based on an assessment of the all-island requirement. This is supplemented by taking Locational Capacity Constraints (LCC) into account, which ensures that a minimum Required Quantity is cleared in the LCC Area. The current LCC Areas are the Republic of Ireland

and Northern Ireland (with a further LCC Area in the Republic of Ireland for the Greater Dublin area).

- 6.25 The Demand Curve, which is used to clear the Capacity Auction and set the Auction Clearing Price, is based on an unconstrained all-island adequacy assessment so as to fully utilise the all-island generator portfolio, the smaller size of the largest single infeed relative to system size and the capacity gains from a more distributed forced and scheduled outage probability curve.
- 6.26 SONI's initial review suggests that this all-island Capacity Requirement is at least 500 MW lower than that calculated by the sum of each jurisdiction's requirements. Hence, the Auction Clearing Price is based on an efficient all-island solution without accounting for the two local transmission constraints. However, because there are north-south transmission capacity constraints between the systems (binding from either or both directions), a separate calculation of Locational Capacity Constraints is carried out, which identifies how much capacity is required in each area (i.e. the Republic of Ireland and Northern Ireland) with a limited capacity requirement being placed on the other area.
- 6.27 Where capacity is required beyond that which would clear under the unconstrained all-island Demand Curve, this capacity is cleared at its Offer Price, which would be higher than the Auction Clearing Price and this is effectively 'paid as bid'. For example, if the all-island unconstrained requirement was determined to be 6,000 MW, with a jurisdiction requirement of 4,300 MW in the Republic of Ireland (after netting off 200 MW capacity reliance on Northern Ireland) and 2,200 MW in Northern Ireland (after netting off 100 MW capacity reliance on the Republic of Ireland), then the auction would set a clearing price against 6,000 MW. The auction would then ensure that the LCC Required Quantities have been satisfied, which depending on the location of the capacity in the unconstrained auction, would require clearing additional pay as bid capacity in the relevant LCC Area. All 500 MW above the all island requirement would be paid as bid. The cost of the full 6,500 MW pot would be split roughly 25:75 between the jurisdictions based on daytime demand.
- 6.28 As the SEM Committee itself has noted (SEM-15-103), maintaining the same adequacy standard on a smaller system is likely to come at a higher cost; SEM-15-103 states that a "*small System requires larger margin for the same standard...increasing the cost to consumers for an equivalent security standard*"¹⁸⁰. As such, the current arrangements whereby the cost of capacity includes that which is pay-as-bid above the Auction Clearing Price is shared pro-rata based on demand. This ensures that the cost of maintaining adequacy in Northern Ireland is shared on an all-island basis.
- 6.29 The Capacity Market in the SEM is operated under a single Capacity Market Code, with both TSOs having full access to all the data necessary to determine the all island and LCC requirements and the qualification decision making process. This includes access to forecasts, supporting logic and the ability to question requirements and qualification decisions in an open and cooperative environment.

Impact: Jurisdiction-specific capacity assessments

¹⁸⁰ SEM 15-103, *Capacity Remuneration Mechanism Detailed Design*, 16 December 2015, page 27 - https://www.semcommittee.com/sites/semcommittee.com/files/media-files/SEM-15-103%20CRM%20Decision%201_0.pdf

- 6.30 In a scenario where the two SEM TSOs have to consider the risks associated with security of supply independently (and, hence, based on SONI and EirGrid's respective risk appetites and the agreements relating to load loss sharing in the event of a system event in one area), a more conservative process will emerge. Under a "jurisdictional approach" each TSO would inevitably be more cautious in its approach, reflecting the revised assumptions that would be made relating to cross-jurisdiction support. This would result in higher jurisdictional demand forecasts, pessimistic forecasts of generator outage performance and later forecast commissioning dates for new plant.
- 6.31 In turn, the fallout of such an approach would be a greater all-island requirement being used to set the Auction Clearing Price and increased LCC requirements, thus driving a significant increase in the costs for running the all-island Capacity Market and a need to review the jurisdictional allocation of those costs (including any potential associated inter-TSO liabilities).
- 6.32 By way of illustration, if one jurisdiction is unwilling to move a generation or transmission outage given its net financial impact on the consumers of that specific jurisdiction, the overall cost and security could be very materially impacted. For example if each jurisdiction was to reduce its capacity reliance on the other by 100 MW and with an average capacity market reliability options costing £50k per MW per year¹⁸¹, this would equate to an annual premium of £10m.

System Services and SNSP

DS3: The current all-island programme

- 6.33 Significant progress was made via the DS3 programme to support the 2020 renewable electricity target. As part of this programme, SONI, working in conjunction with EirGrid, has been able to support increased levels of instantaneous, non-synchronous renewable generation on the all-island system, measured in the percentage of System Non-Synchronous Penetration (SNSP); a high level of SNSP reflects that the TSOs are operating the power system with high penetrations of non-synchronous sources (such as wind generation and interconnector imports).
- 6.34 As highlighted by the changes to the Northern Ireland generation mix, the DS3 framework has created an attractive investment platform for investors in renewable generation. The technical requirements of the DS3-qualifying plant have been designed so provide long-term procurement optionality to SONI. This has created a platform on which to build and in order to meet Northern Ireland's 2030 and 2050 ambitions as we move towards a Net Zero system.
- 6.35 The two SEM TSOs have developed a joint operating model in relation to system services on the all-island network. Since adopting this approach, the SEM has seen SNSP increases from 50% to 75% and Rate of Change of Frequency (RoCoF) changes from 0.5 Hz/s to 1 Hz/s. A reduction in inertia of 20,000MW/s is also expected in near future.
- 6.36 Furthermore, the DS3 programme has delivered a system ability to facilitate in excess of 3 TWh of renewable energy; thus, the policy objective of 40% annual RES-E from circa 5000 MW of installed wind with a curtailment kept below 6% was met. This has all

¹⁸¹ This is based on the average price per MW for the 2023/24 and 2024/25 T-4 Capacity Auction Results - https://www.sem-o.com/documents/general-publications/T-4-2023-2024-Capacity-Market-Auction-Overview_Final.pdf and <https://www.sem-o.com/documents/general-publications/T-4-2024-2025-Final-Capacity-Auction-Results-Report.pdf>

happened at a cost benefit to the consumer in Northern Ireland, by keeping the system marginal price more stable and avoiding the additional cost of carbon, while also reducing the dependence on imported fossil fuels.

- 6.37 The development of system services, which is predicated on an all-island approach, is intrinsically-linked with cost reductions associated with other key system operator activities. Dispatch Balancing Costs are reduced and capacity payments will also be more economical as a result of the availability of system-critical services procured through the all-island DS3 framework. When taken together with capacity payments the investment in System Services, which has incentivised more flexibility in the portfolio, has ultimately resulted in lower costs. Furthermore, greater investment in renewables is possible because levels of curtailment are ultimately lower.
- 6.38 Jurisdictional approaches from the two TSOs would have at best delayed the formulation of the correct system wide policy, but at worse prevented these ambitious policy objectives in each jurisdiction from being achieved in a timely and cost-effective manner. Challenges such as the resolution of RoCoF, which is a fundamental consideration for the TSOs in the integration of renewable units, could only be resolved with a collective all-island approach.
- 6.39 Practically, an approach to system services that placed the emphasis on jurisdiction-specific requirements would yield an increase in the amount of services procured within the SEM. For example, each jurisdiction might require that the current all island minimum number of sets to be at least maintained and quite possibly increased. While this “jurisdictional approach” would maintain a secure power system, it would not facilitate the higher RES levels that are seen today, as nine sets would be online all the time.

Impact: Current Costs of System Services

- 6.40 The current DS3 System Services have been valued against a regulated budget of £210 million per annum to include the regulated arrangements, Volume Capped competition and the Qualifying Trial Process. As a price regulated mechanism, there is no increase *per se* in the monies paid out if more volume of service is required to meet the needs of the power system for their 2020 policy ambition although with lower remuneration for each unit of service provided one may see less investment as a result. A jurisdictional approach would drive a material change to the allocation of the costs.
- 6.41 In the current approach to DS3 System Services the overall costs are shared jurisdictional at a ratio of 25:75; however, the payment of DS3 System Services is approximately 40:60 Northern Ireland: the Republic of Ireland. This means that Northern Ireland providing units receive around £83.9m a year in DS3 System Services payments with Northern Ireland customers paying around £50-£55 million per year in respect of such services. In the interests of consumer protection, it should follow that any increase in the relative amount of money would result in a review of the TSO cost-sharing arrangements.

Future Challenges

- 6.42 The development of a new set of System Services to meet the policy and resilience requirements for the all island system is under review. The needs for the system to meet over 70% RES-E annually by 2030 are significantly different from those of today. This has been outlined by the TSOs in the Shaping Our Electricity Future publication and has been acknowledged by the SEM Committee in its recent considerations of the Future Arrangements for SEM System Services.
- 6.43 In a scenario that considers jurisdiction-specific requirements, rather than those of the SEM as a whole, the volume of necessary services will also be greater. This, in conjunction with the aforementioned use of a volume regulation approach, will lead to increased costs of these services to the consumers of both jurisdictions; given the scale of the value of the services this cost could be material.

Interconnector Management

Current practice: Interconnector Ramping and Loss Factors

- 6.44 Currently the ramping capability of the full all-island generation portfolio is used to set an overall limit on the rate at which power flows can change across the East-West and Moyle interconnectors. The present value is 10MW/min and this capability is split evenly between the two links by default, with each having 5MW/min, although this parameter is changed in the event that either interconnector is on an outage. The ramp rate is an important parameter which impacts on the SEM's ability to export wind generation, import power when generation margins are tight and react in a timely manner to changes in the SEM-GB price spread; hence the immediate reallocation of the rate in the event that either interconnector is unavailable.
- 6.45 In addition, the loss factor utilised for Moyle in the ex-ante markets is different (lower) than that of the East-West Interconnector. This results in Moyle being the first interconnector to import or export as a lower SEM-GB price spread more readily exceeds the loss factor multiplied by energy price. This can result in North-South transmission constraints or local constraints being exacerbated. For example, if wind generation is high in the South West of the Republic of Ireland, this large volume of low variable cost generation will result in low SEM ex-ante prices compared to GB. Export trades will be scheduled from the all island market as a result, but these exports will predominately occur across the Moyle interconnector from the North East of Northern Ireland. The additional internal transmission system losses and inability to export the power from the Republic of Ireland to Northern Ireland are not taken into account. This has led to wind generation in the south having to be constrained down for transmission reasons, while expensive thermal plant has been dispatched in Northern Ireland to physically fulfil the wind-based market export decision.

Jurisdiction-specific Ramp Rates

- 6.46 Under a jurisdictional approach each area would determine its own ramping capability to reflect the import and export capabilities of each jurisdiction. The ramping capability of the Republic of Ireland plant would be used to support the ramp rate on interconnection to Great Britain from the Republic of Ireland while the capability of Northern Ireland units would be used to support the ramp rate on interconnection to Great Britain from Northern Ireland.

- 6.47 To supplement this, an agreement would have to be reached on the rate of change of power flow which could apply across the North-South tie lines. This North-South ramp rate would need to be monitored and corrective action taken to limit the impact of any divergence from contractual values. The application of this would also need to be accounted for in any considerations relating to inter-TSO exchanges between SONI and EirGrid; this, in turn, would be considered in the ramping rates for current, and future, interconnectors.
- 6.48 The end result would be a more conservative approach to interconnector ramp rates in both jurisdictions; this would mean that the revenues of current, and planned, SEM-GB interconnectors would need further supplementing by the consumers in either jurisdiction and, in turn, significantly impact the cost-benefit analysis of these links.
- 6.49 The calculation of ramp rates using a “jurisdictional approach” may result in a lower value for the island overall. Each TSO faced with a smaller pool of resources to draw from will consider the impact of a portion of its most responsive plant not being available or being utilised to meet local demand increases or fluctuations in the output of renewable generation. Lower source diversity and a smaller generation portfolio are likely to reduce the ramp rate to which the separate TSOs can commit. Furthermore, jurisdictional setting of ramp rates is likely to change the current 50:50 split to an unbalanced ratio, which could drive inefficient ex-ante trading decisions. Analysis of exports and imports to SEM have shown that one of the biggest factors driving inefficient market trades (flows against price difference) is the interconnectors’ ramp rate as the interconnectors cannot physically keep up with reversals of the SEM-GB price spread. This reduction in efficiency would reduce wind exports (and therefore increase wind curtailment), increase security of supply issues when margins are tight and increase ex-ante and balancing market prices for the all-island customer.

Emergency Assistance, Interface Operating Protocols and Outage Co-ordination

Current practice

- 6.50 The support between the SONI and EirGrid control centres is premised on efficient and effective operation of the all-island network. This sees the respective TSOs acting in accordance with their respective jurisdictional licence requirements, while also balancing those obligations with consideration, and management, of the SEM system as a whole.
- 6.51 Hence, the two SEM TSOs effectively operate so as to provide mutual support in the event of system stress on either network. For the avoidance of doubt, this surpasses the principles of inter-TSO support detailed in EU legislation, such as the System Operation Guideline and the Emergency Restoration Network Code.
- 6.52 This results in more coherent, and therefore economical, planning and operation of the systems under all circumstances, on a jurisdictional and all -Island basis, ensuring all customers in Northern Ireland and the Republic of Ireland have a secure supply of electricity at the most efficient cost. When considered against the principles of the EU legislation on this subject, the SEM TSOs’ approach delivers the additional benefits of unconditional MW assistance in times of jurisdictional stress, generous voltage and reactive support near and at the interfaces between the two systems and a truly harmonised approach to outage management.

Inter-TSO Cooperation Agreement

- 6.53 In response to the proposed actions, and an increased focus on jurisdiction-specific actions being undertaken by both TSOs, a new operational practice on interface flows management would have to be agreed. It is likely that, in accordance with the heightened focus on the local requirements of either TSO, there would be a reduced emphasis on the support for the neighbouring jurisdiction.
- 6.54 This new operational practice on interface flows management would need to be incorporated into an Inter-TSO Cooperation Agreement, which would formally detail the specific approaches to be followed by the two TSOs during the course of operation. This would set defined operational limits on the assistance provided by either TSO in extreme cases, the operational parameters that voltages and power flows will have to be maintained and specific agreements on coordinating relevant generator and network outages. Such an arrangement would not be unlike similar arrangements in place between the SEM TSOs and GB NGESO.
- 6.55 Operating under such governance would inherently move the TSOs away from the pragmatic, consumer-focussed approach that exists presently. In the case of emergency flows, at best, the support from the other jurisdictional will be conditional on not harming the sending system. This condition dramatically undermines the reliance one can place on those rescue flows. Furthermore, for outage planning there will be restricted outage windows and less ability to utilise an all island capability, particularly around the outages of generation units.
- 6.56 In response, additional investment would be required, predicated on operating practices with revised constraints and heightened security of supply considerations. For MW resources this will require increased investment in spare capacity in Northern Ireland and the Republic of Ireland. For voltage control new network infrastructure and reactive support will be required.

Overall Impact on Policy Development & Regulatory Frameworks

- 6.57 The SEM is currently undergoing a key period of evolution, with both system operators entering new revenue periods at a time when renewable generation across the island is penetrating the network at unprecedented levels. The TSOs' ability to facilitate this revolution is predicated on the existing regulatory framework and clear energy policy architecture to support this framework.
- 6.58 All design and study exercises that have been undertaken by the TSOs, including those that have fed in to the development of SEM Committee decisions and revenue requirements, have included core assumptions relating to system operation. These include the fundamental principle that the TSOs will work together in jointly operating the all-island network and that the costs associated with this operation will be apportioned in line with relevant sharing keys.
- 6.59 A divergence in policy objectives between Northern Ireland and the Republic of Ireland could be a direct consequence of the reopening of these design and study exercises, as the cost-benefit analysis for each independent jurisdiction would draw different conclusions to an all-island equivalent. Such divergence would have unavoidable negative consequences for both Northern Ireland and the Republic of Ireland, both in terms of their respective decarbonisation aspirations and the inevitable increase in costs of core system operation activities.

- 6.60 The UK has set (in law) a Net Zero target for carbon emissions by 2050. The Department for the Economy is now developing policy to set targets for Northern Ireland; as an interim goal, the Northern Ireland Economy Minister has indicated an ambition of achieving no less than 70% of its renewable electricity by 2030¹⁸². Based on an assumption of an all-island SEM arrangement, as opposed to a “jurisdictional approach”, SONI has forecast that Northern Ireland will need at least an additional 1,300MW of electricity from renewable sources to deliver this ambition¹⁸³; a significant increase in that which is on the network at present. The underpinning assessments to facilitate the achievement of the legislative target, including the forecasting of costs to the end consumer, would require revision under the proposals put forward by the Utility Regulator.
- 6.61 Such costs will not only result in direct capital outlay by SONI, but will also result in additional jurisdiction-specific operational costs, such as the operation of the Capacity Market, as well as procurement and delivery of System Services. As detailed throughout this response, the “jurisdictional approach”, which would require refocussing the efforts of the TSOs to ensure that each is truly independent of inter-jurisdictional support in real time. This would necessitate an unavoidable increase in costs and would therefore materially impact consumers and the SEM.
- 6.62 The increase in operational costs would require a comprehensive reform of revenue streams available to the Northern Ireland wholesale electricity market participants, encompassing power traders, providers of conventional generation and also new types of capacity (such as batteries, demand side units, and flexible generators).
- 6.63 In the context of this significant proposed change in the SEM operating environment, a complete review of the SEM's regulatory framework would be required to ensure that it reflects SONI's amended role under the proposals.
- 6.64 The scope of the review would need to include any regulatory framework in the SEM that includes an assumption relating to inter-TSO sharing of costs and resources. Such frameworks would need to be amended so as to reflect any repositioning of SONI, as part of the Utility Regulator's proposals. Examples of underpinning frameworks that would require immediate review would include not only the Utility Regulator's determination of the forthcoming SONI Price Control¹⁸⁴ which was premised on no restrictions in operation and full cost sharing between SONI in its capacity as TSO and other Group entities, but also EirGrid's TSO Price Review 5 determination by the Commission for Regulation of Utilities, as EirGrid's revenue request included a number of initiatives to be delivered jointly with SONI, so as to yield substantial savings to Irish and Northern Ireland customers, and the allocation of costs relating to the development of the North-South Interconnector.

Summary

¹⁸² Minister highlights plan for ambitious new renewable electricity target, Department for the Economy - <https://www.economy-ni.gov.uk/news/minister-highlights-plan-ambitious-new-renewable-electricity-target>

¹⁸³ SONI 'Shaping Our Electricity Future' report, available at <https://consult.soni.ltd.uk/consultation/industry-consultation-shaping-our-electricity-future>

¹⁸⁴ SONI notes that this determination has not yet been codified and the inconsistency between that now proposed and the Price Control assumptions, including Utility Regulator's treatment of same. SONI's business plan submission included an explicit assumption that there shall be no changes resulting from the Utility Regulator's Call for Evidence in respect of SONI governance which either directly increases costs to SONI or which restrict or diminish SONI's ability to operate efficiently and effectively as part of the wider EirGrid Group. In particular, both the baseline costs and business cases as set out in this submission are to a significant extent based on an allocation of costs for Group wide solutions.

- 6.65 The actions taken by each TSO to ensure the stable and optimal running of the transmission system would have to be altered significantly so that each TSO could demonstrate that it adheres to its domestic obligations relating to security of supply and economic and efficient operating of its independent system. The current levels of operational resilience, based on the joint SONI and EirGrid approach to real-time operation, will be significantly reduced as a result.
- 6.66 A transition towards independent system operation within the SEM would drive significant increases in operational costs as a direct result of each TSO conducting separate planning and dispatch activities, assessed against its own system conditions, in advance of any inter-TSO engagement. These additional costs would be associated with both the initial capital outlay (associated with the development of new systems, processes and contracts) and SONI's enduring operational costs.
- 6.67 The TSOs' ability to maximise opportunities for future benefits associated with synergies and economies of scale could also be adversely impacted by the proposals, contrary to the statements of the SEM Committee in its paper SEM-08-176¹⁸⁵ and the letter SONI itself received from the Utility Regulator in April 2012¹⁸⁶, meaning that the SEM community will miss opportunities to maximise the collective benefits to consumers "from harnessing beneficial economies of scale and other synergies" for example when change initiatives are delivered by either TSO. It may be that the impact extends beyond a negative financial consequence to also include failure to deliver on government-driven decarbonisation objectives.
- 6.68 A full review of the regulatory architecture that currently facilitate activities in the SEM would need to be undertaken; this is currently premised on system operation on an all-island basis and the obligations, and underlying assumptions, thereof would need to be considered in light of change in focus of the TSOs. This includes the TSO revenue frameworks in both jurisdictions.
- 6.69 A "jurisdictional approach" would inevitably result in a change in outcome of cost-benefit analysis assessments of system operation. This in turn could ultimately reduce investor confidence and therefore create a barrier for developers of key renewable technology, including interconnectors, in both Northern Ireland and the Republic of Ireland.
- 6.70 While inter-TSO cooperation would still be possible between SONI and EirGrid, the relationship would be more akin to that of the TSOs' current working practices with the Great Britain TSO, National Grid ESO. This would see the introduction of a definitive operating contract, which would frame relevant inter-TSO operating protocols and serve as an unambiguous agreement on the limits of support that could be provided in the event of system stress in either jurisdiction.
- 6.71 In short a "jurisdictional approach" to TSO operation on the island of Ireland would lead to three categories of implications for SONI and the SEM and they may be broadly characterised as follows:
- a. Impacts through organisational 'separation' which would cause 'local' consideration leading to greater overall costs across the island, for example

¹⁸⁵ SEM-08-176, page 11: "The SEM Committee is content to publicly acknowledge that nothing within the applicable general duty of independence shall act so as to constrain EirGrid, and SONI, as separate businesses, from harnessing beneficial economies of scale and other synergies (such as cost-saving on shared services) for the betterment of consumers." - <https://www.semcommittee.com/sites/semcommittee.com/files/media-files/SEM-08-176.PDF>

¹⁸⁶ Letter Utility Regulator, to SONI on 19 April 2012 re "SONI TSO Licence proposed Modifications."

local assessment of capacity requirements giving rise to 500MW more capacity being procured across the island at an estimated cost of £25m per annum¹⁸⁷ additional reserve and increased Dispatch Balancing Costs by virtue of being required to operate a minimum number of conventional generation sets;

- b. Impacts where there would not necessarily be increased requirements across the island but where the framework of an independent and jurisdictionally focused TSO would render the current all island cost sharing arrangements untenable (for example the reatribution of Dispatch Balancing Costs – an increased cost to Northern Ireland c. £35m per annum, and the attribution and allocation of costs on the North South interconnector on a different basis).
- c. Fractures to the SEM in terms of potential actions which would give rise to a risk of separation in the balancing markets, which cannot be ruled out. This is based on assumptions that with a jurisdictional focus that the tensions created where none previously existed is likely to mean fracturing of the current working arrangements is inevitable.

Even if only a proportion of these implications were fully crystallised the result would still amount to a material impact on the SEM. It is in fact more likely that a great proportion of the implications detailed in this response would materialise should the Utility Regulator continue to pursue a “jurisdictional approach”, and specifically charge and require SONI to do likewise with a level of separation and “independence” from EirGrid as is set out in all Options proposed, and in particular in Options B-D. The inevitable consequences of such an approach can only lead to a material impact on the SEM and therefore this issue is and continues to be a “SEM Matter” with broader implications for the all-island market.

- 6.72 In this section SONI has highlighted the extensive impact of a “jurisdictional approach” to TSO operation within the SEM. The impacts stretch to aspects of operational resilience, increased costs, potential failure to deliver on government driven decarbonisation objectives, and substantial revisits to TSO revenue frameworks in both jurisdictions, reducing the relationship between SONI and EirGrid to that of the working practices with other TSOs such National Grid ESO.

¹⁸⁷ Assuming an average price per MW of £50,000, noting the average price per MW for the 2023/24 and 2024/25 T-4 Capacity Auction Results - https://www.sem-o.com/documents/general-publications/T-4-2023-2024-Capacity-Market-Auction-Overview_Final.pdf and <https://www.sem-o.com/documents/general-publications/T-4-2024-2025-Final-Capacity-Auction-Results-Report.pdf>

7 Existing Arrangements have resulted in benefits to Consumers

The existing arrangements deliver for Northern Ireland consumers

- 7.1 The importance of TSO cooperation on the island of Ireland cannot be overstated as it ensures generation adequacy and therefore the protection of the interests of consumers, vulnerable customers and businesses in Northern Ireland. The existing arrangements have delivered and continue to deliver for Northern Ireland consumers.
- 7.2 The close alignment that the integrated group management structure permits, greatly enhances the benefits of cooperation, and facilitates the smooth operation of the all-island arrangements. An intervention to increase separation and drive divergence between the two TSOs risks disturbing this arrangement and leading to a loss in synergies and /or a risk of negative market outcomes.
- 7.3 In this section, SONI outlines how the current model both safeguards the interests of, and delivers significant benefits to, Northern Ireland consumers. SONI's strong view is that the interests of Northern Ireland consumers are best served by maintaining this integrated operating model which continues to deliver the benefits of increased integration of the SEM.
- 7.4 SONI contrasts these benefits with the incomplete and somewhat simplistic cost benefit as set out by the Utility Regulator, further discussed in Section 4 of this response.

The existing arrangements explicitly safeguard Northern Ireland interests

- 7.5 Firstly, it is important to note that the existing regulatory framework already explicitly safeguards the interests of Northern Ireland consumers. EirGrid is not simply the shareholder of SONI Ltd – it is itself a licensed entity subject to regulatory oversight in the conduct of its licensed functions, and is similarly bound by its licence obligations to protect the consumer interest (both in Northern Ireland and the Republic of Ireland)¹⁸⁸.
- 7.6 EirGrid has a long-term commitment to the resilience and viability of the SONI business. Since SONI was acquired by EirGrid for £32 million in 2009, it has facilitated the investment of in excess of £45 million in the SONI business, and maintains – and will continue to maintain – a strong Belfast presence (with the number of SONI Limited employees growing from 75 (at the time of acquisition) to 123 (as of March 2021)). EirGrid has never taken a dividend from SONI but rather invested all equity returns back into the business.
- 7.7 As highlighted in Section 2 of this response, changes were introduced to EirGrid's TSO licence to ensure that the interests of electricity consumers in Northern Ireland were specifically protected.
- 7.8 Many of SONI's TSO licence contains parallel licence obligations that require specific levels of cooperation to take place – for example, Condition 22 (Central Dispatch and Merit Order), Condition 22A (Scheduling and Dispatch arrangements), Condition 23A (Capacity Market Requirements), and Condition 22B (Balancing Market Principles). SONI carries out these functions in accordance with its TSO licence obligations, and the relevant regulatory frameworks (as approved by the Utility Regulator).

¹⁸⁸ Condition 3, EirGrid Transmission System Operator Licence

- 7.9 Close collaboration between SONI and EirGrid TSOs therefore takes place in the context of a prescribed regulatory framework, and binding requirements on EirGrid to safeguard the interests of Northern Ireland consumers.
- 7.10 Significantly, while the Utility Regulator notes that “*most of [the above measures] do not fall within the vires of the Utility Regulator, which has no scope in respect of the EirGrid Licence or the composition of the EirGrid plc board*”,¹⁸⁹ there is no suggestion that EirGrid TSO is failing to satisfy these obligations, or that the Utility Regulator, the Commission for Regulation of Utilities or SEM Committee have ever raised any concerns in this regard.
- 7.11 In the Utility Regulator’s Consultation Proposals, there is no consideration of how the current arrangements protect Northern Ireland consumers. The fact that the Utility Regulator lacks the *vires* to, for example, unilaterally change the terms of the EirGrid licence is irrelevant. The fact is that these protections exist. The Utility Regulator should take account of that relevant fact.

Delivering the benefits of increased integration of the SEM

- 7.12 As highlighted in section 4, TSO co-operation is key to ensuring security of supply and (via the SEM) driving competitive markets to deliver lower electricity costs to consumers. This is all the more important given a number of unique challenges specific to the Northern Ireland electricity market.
- 7.13 The close alignment permitted by the integrated group management structure is of significant value to these all-island arrangements. For example, group integration enables SONI to access a much larger pool of in-house expertise and resource, knowledge-sharing, and economies of scale.
[REDACTED]
- 7.14 The Utility Regulator in the Consultation Proposals states that for SONI to fulfil its role as TSO, SONI is expected to:
- “seek to operate and develop the network in a way that best balances short term costs and longer-term needs for the benefit of NI consumers and users;*
- support users to make informed decisions through seeking and embracing their requirements with openness and transparency;*
- maintain efficient operations that benefit NI consumers in the short and long term;*
- operate and develop the network so as to meet reliability and capacity requirements in the short and longer term, meeting the needs of NI users; and*
- collaborate with parties across the whole of the network to improve competition, deliver innovation and minimise short and long term costs to the NI consumer.”¹⁹⁰*
- 7.15 SONI already engages widely with Northern Ireland stakeholders. It has been able to do this comprehensively by availing of the wider knowledge and expertise that exists in

¹⁸⁹ Consultation Proposals, Section 6.35.

¹⁹⁰ Consultation Proposals, Section 3.2.

the EirGrid group. SONI leverages the learnings and experience within EirGrid Group to develop Northern Ireland appropriate, best practice engagement. This is a direct benefit to Northern Ireland consumers as the expertise is retained in house rather than employing external consultants to support these initiatives. In addition, this serves as an efficiency, as research, analysis, methods and processes are developed within EirGrid Group before being reviewed, amended as needed and implemented by SONI. Examples of recent engagements led by SONI and supported by the current integrated model are summarised below. The support of the wider EirGrid group has ensured that these engagements have been delivered in a timely and cost efficient manner with the knowledge gained from these initiatives being retained for the future benefit of customers.

- 7.16 **SONI Strategy** (published September 2019) – SONI proactively examined its own objectives and structure to ensure it would be ready to support the drive for decarbonisation in Northern Ireland. This early action means that we have been in a strong position to work with DfE and other stakeholders in the development of the Northern Ireland Energy strategy. Our previous structure and objectives would have been less effective. The stakeholder engagement that we undertook to develop our strategy¹⁹¹ also informed the initiatives that we brought forward in our business plan 2020 to 2025¹⁹².
- 7.17 **Shaping our Electricity Future Consultation** – SONI undertook a ‘whole system approach’ when considering the challenges to be addressed in order to achieve the Northern Ireland Government decarbonisation ambitions for 2030. We undertook detailed modelling and scenario assessments across networks, operations and markets in order to develop a consultation paper that allows stakeholders to consider all options in terms of the development of the electricity transmission system. Based on the SEM design, the operational and markets aspects were considered on an all island basis whereas the specific needs of Northern Ireland were considered in the networks section. A similar approach was also developed specifically for the network in the Republic of Ireland. A detailed stakeholder engagement plan for Northern Ireland was developed and a digital SONI portal established to allow for all stakeholders to respond easily. The stakeholder engagement plan covered all aspects of Northern Ireland society including:
- **Business and Industry** – Industry Webinars and workshops including specific engagement with energy industry and business representative organisations e.g. Renewables Northern Ireland, Northern Ireland Chamber
 - **Consumers, Agriculture and Civic Society** – Webinars and workshops across a spectrum of consumer representative bodies, farming and agriculture bodies, NGOs, academics and youth representatives; including bespoke facilitated sessions during our Civic Society Forum.
 - **Policy and Government** – webinars, engagement, workshops and meetings across Stormont Departments, including with Ministers for the Economy and Environment and Agriculture, Committee for Climate Change, NILGA¹⁹³, elected representatives and Local Councils

¹⁹¹ SONI Strategy 2025 - <https://www.soni.ltd.uk/about/strategy-2025/>

¹⁹² Transform the Power System for Future Generations: SONI TSO Business Plan 2020-2025
<https://www.soni.ltd.uk/media/documents/Soni-Business-Plan-2020-2025.pdf>

¹⁹³ The Northern Ireland Local Government Association (NILGA) is the council led representative body for local authorities in Northern Ireland.

- 7.18 **Engaging with other Industry Parties** – SONI, as part of the Joint Working Group with NIE Networks, has been working with DfE to support them in the development of the NI Energy Strategy. This involved detailed scenario modelling and workshops with DfE to assist them in the preparation of their consultation papers. This approach included lead resources from SONI with support from the technical expertise within the EirGrid Group to assist in the modelling related work. SONI also works closely with industry through the SONI Grid Code Review Panel.
- 7.19 **Third Party Stakeholder Engagement** - SONI reviewed its approach to engaging with stakeholders in relation to network projects in 2017, this has resulted in earlier engagement with political representatives, communities, landowners and other relevant bodies, improving openness and building early understanding of the need for projects. This includes regular meetings with generators and other market participants, ensuring any emerging issues are raised and resolved in a timely manner. For example, for the most recent TDPNI, we reached out to local councils to make sure they were aware of the process and to increase their participation. SONI also worked proactively with Moyle to facilitate the return of congestion rents to Northern Ireland customers in a way that allowed Moyle to manage the commercial risk that this introduced to their business.
- 7.20 The value of such alignment is very difficult to quantify, but it is nonetheless clear that the group approach avoids unnecessary duplication of resources, in turn giving rise to significant cost savings and efficiencies for the benefit of electricity consumers in Northern Ireland. Examples of these cost savings and efficiencies – in terms of both: (i) synergies driven by the integrated group management structure, and (ii) economies of scale are considered below.

Synergies of integrated group structure

- 7.21 As SONI explained in its response to the Utility Regulator's Call for Evidence, a number of synergies have been delivered by SONI in cooperation with EirGrid in recent years. Two such examples are as follows:
- (a) **Dispatch Balancing Costs (DBC)**: Within the period 2012-2018, the TSOs have been incentivised to reduce imperfection costs. The incentive mechanism took into account the structure of industry and the degree of control which the TSOs have on the imperfection costs drivers. The TSOs have implemented measures in the operation of the transmission system that have resulted in cumulative imperfections savings for participants totalling £99.11 million. The Northern Ireland participants have benefitted significantly from the dispatch balancing costs. As mentioned previously, SONI TSO in general pays 25% of costs. Since the introduction in ISEM, Northern Ireland customers received approximately 40% of the payments under DBC. In 2019/20, the total all-island imperfection costs were £227.7 million. Northern Ireland participants were paid £91.1 million; the contribution from Northern Ireland was approximately £35 million less than this. Should SONI be managed separately, it is not clear that these savings would remain. Indeed, as set out in paragraph 6.71 of this response a jurisdictional attribution of Dispatch Balancing Costs to Northern Ireland consumers would result in significantly increased costs of over £35m per annum.
- (b) **DS3 System Services**: SONI and EirGrid have implemented the world leading DS3 programme. This has covered a wide range of workstreams including the introduction of new system services to support the changing

generation portfolio and the development of new control centre tools. The DS3 Programme has enabled the SEM TSOs to collectively increase levels of instantaneous **SNSP** in the SEM from 50% to 65% on an all-island basis. In 2021 this increased to 70%¹⁹⁴. The SEM's capability to accommodate intermittent renewable generation is amongst the highest in the world; other markets' approaches to the decarbonisation agenda is often supported by some form of synchronous renewable generation, such as biomass or hydro. These are expanded on below.

7.22 Between 2015 and 2019, SONI and EirGrid jointly undertook a number of key activities to deliver increased volumes of renewable generation while also operating to approved system security standards. An underlying objective of these activities was to harmonise the approach of the Northern Ireland TSO and its counterpart, under the governance of the SEM Committee, so as to deliver consumer value. These included:

- (i) The RoCoF programme, which changes setting of all types of generation across the Republic of Ireland and Northern Ireland, including testing by SONI of large scale generators;
- (ii) The amendments to control room operating policies, based on the outcome of successful joint TSO trials;
- (iii) Analysis, modelling and technical studies to support the continued secure operation of the system with increasing levels of renewables;
- (iv) Ongoing delivery of Control Room tools to ensure that the increased volumes of non-synchronous generation can be dispatched safely and securely;
- (v) Integration of battery storage at Kilroot (at the time, the largest deployed in the UK).

7.23 The following benefits have been achieved through the DS3 programme:

- (i) Understanding and certainty as to how the system and the users connected to the power system are performing
- (ii) Facilitating the appropriate regulation and incentivisation of Generator Performance Incentives and System Services products to ensure that the necessary aggregate portfolio performance is delivered.
- (iii) Publication of Annual Renewable Reports, All Island Annual Renewable Dispatch Down Reports and High Wind Speed Shutdown Reports
- (iv) All-Island Wind Security Assessment Tool has been developed and installed in the Dublin and Belfast Control Centres. The tool assists us in maximising the utilisation of wind energy whilst continuing secure, reliable and economic operation of the all island power system.

¹⁹⁴ SONI hits 70% variable renewable electricity instantaneous target - <https://www.soni.ltd.uk/newsroom/press-releases/70-snsp-trial/index.xml>

- (v) The TSOs now have a singular accurate dynamic model of the All-Island system with a process in place for the ongoing validation of the model against real system events.
- (vi) Wind and solar generation accounted for over 40% of Northern Ireland demand, which meant that Northern Ireland has achieved its target in advance of the 2020 deadline¹⁹⁵.
- (vii) Ultimately, the collective approach of the DS3 Programme has generated significant efficiencies in imperfections costs in Northern Ireland, with a decrease from £ [REDACTED] million in 2018/19 down to £ [REDACTED] million in 2020/21.

Cost Benefits from System Procurement on an All-Island Basis

7.24 SONI benefits from procurement on a Group-wide basis where EirGrid Group has increased strength in the market and significant savings on hardware (IT Infrastructure), and software costs are achieved. The savings to SONI are through lower initial costs in buying the product or service and also through lower ongoing support and maintenance based on the economies of scale.

7.25 [REDACTED]

The costs of the [REDACTED] are apportioned on a 50:50 basis between EirGrid and SONI. The Utility Regulator itself noted in this context that "The cost of all shared projects should result in an overall reduction for SONI when compared with an equivalent standalone project."¹⁹⁶ Benefits include:

- (i) Improved security of supply, [REDACTED]
- (ii) It provides a more cost efficient and flexible platform to manage the increasing complexity of the transmission power system on the island.
- (iii) It can be managed more efficiently than [REDACTED] (e.g. providing IT support, licensing of software, optimising hardware infrastructure).

7.26 Although the Utility Regulator has not specifically proposed that SONI contract its own systems the Utility Regulator has made some hypotheses as to potential cost-savings for consumers with respect to procurement. Therefore the only logical way to assess the validity of these assertions is to consider procurement of systems on a standalone basis. By way of illustration, if SONI were to contract a standalone [REDACTED], it is forecast to cost an additional £1.5m - £2m (in 2019 monies)¹⁹⁷. This does not include infrastructure or associated licencing costs or project delivery costs. There would also be significant complexity and additional costs driven for both customers in Northern Ireland and the Republic of Ireland as there would be a resultant impact on the SEM operations driven by the need to interface with two separate control systems. Some of these costs and impacts were described in the last section.

¹⁹⁵ Department for the Economy announcement September 2019
<https://www.economy-ni.gov.uk/news/40-electricity-consumption-renewable-sources-by-2020-achieved-ahead-schedule>

¹⁹⁶ https://www.uregni.gov.uk/sites/uregni/files/consultations/SONI_Price_Control_2015_-2020_Consultation_Paper.pdf

¹⁹⁷ SONI IT Strategy Review and Related Costs, Gmserv, Section 5.3 - https://www.uregni.gov.uk/files/uregni/media-files/Gemservs_report_on_SONI_IT_costs_ver_1_1_final.pdf

- 7.27 **I-SEM Operation:** SONI clearly set out in this response paragraph 4.74 and in its Dt submission¹⁹⁸ *SONI TSO I-SEM Revenue requirements* to the Utility Regulator in July 2017 that the cost forecasts for I-SEM Operation had “*been prepared on the basis of no restriction on the integrated economic operation of the system across EirGrid and SONI or between licences. Therefore in general SONI is accorded 25% of the costs consistent with all customers across the island who benefit equally from the services provided paying equally for those services.*”

Under this approach in terms of resources alone the costs borne by SONI and the Northern Ireland Customers related to only a small proportion of the total on a standalone basis. As there was no change stipulated by the Utility Regulator in this regard since, this underlying premise continues to be reflected in the SONI TSO revenue requirements submitted and provided for in the SONI 2020-2025 Price Control.

As advised in the Dt submission to a first order should SONI be required to forecast ISEM Operation costs on a standalone basis “*such a submission would approximate to 3-4 times that set out (i.e. would tend to equate to close to the totality of the forecast costs across the island)*” on the basis that “*A standalone submission for SONI operation would continue to be based on SONI operation of integrated I-SEM systems*”. Should the IT systems be required to be separately provided the costs would be multiple times more.

- 7.28 Further, significant economies of scale are realised through the integrated group structure, and are translated into considerable savings for consumers, for example

- (a) Licensing – SONI achieves significant savings under the EirGrid Group. For example, in relation to ██████████ licencing the cost would be c. █% greater outside the current group arrangements. This single example is illustrative of a more general effect.
- (b) As set out in SONI’s Call for Evidence response, the ability to pool resources across the EirGrid Group allows for significant cost savings. This avoids duplication of systems and resources, and, as SONI does not have sufficient scale to hire on a full-time basis the necessary range of specialist expertise, obviates a potential dependency on expensive external advisors and consultants who may not be available at short notice. This would also increase the procurement overhead thus resulting in additional costs to consumers.
- (c) **Servers and Storage:** As set out in SONI’s TSO Price Control submission, SONI currently achieves an average █% saving on the purchase cost of both servers and storage under the Group procurement compared to what it would be able to achieve if purchased on a standalone basis¹⁹⁹.

- 7.29 **Data:** The SEM and TSO systems are integrated together and all-island data fed into the SEM stems from a Group data pool. Should TSO systems be separated this would require significant rework of the market data integration points. Our operational data is

¹⁹⁸ A Dt submission is made by SONI to the Utility Regulator in accordance with the licence arrangements in order to seek approval and recovery of expenditure which has not been accorded a value in the Price Control and associated licence modifications. Costs approved under a Dt are included for recovery in the D_{TSO} term of the SONI revenue formula as set out in Annex 1, Section 2.2 of the SONI Licence to Participate in the Transmission of Electricity.

¹⁹⁹ SONI TSO Business Plan 2020-25 - Table 10.1

stored and managed on a Group basis allowing easy access in the Republic of Ireland and Northern Ireland. Separating this into two siloed data platforms would be less efficient, more costly and more difficult to access both internally and externally.

- 7.30 SONI queries whether the Utility Regulator has sought any IT expertise to consider the impact of the operational complexities that their proposed options would introduce.
- 7.31 As noted above although the Utility Regulator has not specifically proposed that SONI contract its own systems the Utility Regulator has made some hypotheses as to potential cost-savings for consumers with respect to procurement. The outworking of same being procurement of systems on a standalone basis. This lack of consideration given to relevant factors is another example of the underestimation of the harm that the proposed options would generate for the all-island system not only by direct impact to SONI and in turn Northern Ireland Consumers but also industry participants, particularly those engaged in the SEM who would have to interface with multiple systems across the two TSOs.

Delivering on SONI's licence obligations and service expectations

- 7.32 In Section 3 of the Consultation Proposals, the Utility Regulator explains that, as part of the 2020-2025 price control process, it set out service expectations for SONI TSO. These outlined its position on "*what a good TSO would do and/or achieve in each service area*". The Utility Regulator explains that "*good governance will support the delivery of [the Utility Regulator's] service expectations*", in turn grounded in SONI's statutory obligations, by "*helping SONI to drive appropriate behaviours for a regulated company remunerated by consumers*"²⁰⁰.
- 7.33 Again, the Utility Regulator appears to harbour concerns – referenced elsewhere in the documents – about whether it can 'trust' SONI to deliver good outcomes for consumers. But once again, the Consultation Proposals do not set out: (i) any reasons why the Utility Regulator does not trust SONI, (ii) the harm arising and (iii) how its proposals would create trust. Nor do the Consultation Proposals introduce any evidence that SONI is failing to meet the Utility Regulator's service expectations. It is unclear how, if at all, there is any connection between the proposed changes to SONI's governance and enhanced delivery of SONI's functions.
- 7.34 As outlined above, SONI actively engages with our key stakeholders to ensure both the short term costs and longer-term needs of the Northern Ireland consumers are catered for. Our business plan for the next 5 years allows us to accurately provide immediate services to customers at an efficient cost. Whereas our "Shaping our Electricity Future" consultation, along with our continuous engagement with DfE on the Northern Ireland Energy Strategy (in partnership with NIE Networks) has SONI being a key player in the longer-terms development of the Northern Ireland electricity system.
- 7.35 The Utility Regulator explains that, where SONI is delivering for Northern Ireland consumers, its governance should encourage and enable it to:
- (a) Play a proactive role in the implementation of Northern Ireland government policy, e.g. energy transition;

²⁰⁰ Paragraph 3.3 of Utility Regulator's SONI TSO Governance Consultation Proposals

- (b) Provide clear, accurate, and timely information for the regulator and other stakeholders as appropriate; and
 - (c) Ensure compliance with licence conditions and other legal obligations.
- 7.36 Again, it is clear that SONI is delivering on and achieving these objectives. In particular:
- (a) SONI has been engaging with the DfE on Northern Ireland's Energy transition, benefits of which can be experienced already including achieving 70% SNSP as part of the all-island framework.
 - (b) SONI, working with the Utility Regulatory on a regular basis, has always provided responses to, and facilitated requests from the regulator when required. SONI regularly published reports and information for the user, including the Generation Capacity Statement (GCS), Ten Year Transmission Forecast Statement (TYTFS) and the TDPNI.
 - (c) SONI ensures fulfilment of its licence obligations and regularly submits regulatory licence compliance reports to the Utility Regulator both for its TSO and MO licences.²⁰¹
- 7.37 The Utility Regulator also discusses SONI's role in discharging certain defined all-island matters with EirGrid, and explains that – in its view – SONI's governance should enable "*both TSOs to work together collaboratively but as equal partners representing their own consumers*", "*collaboration on the basis of a formal agreement with clear rules*", "*mechanisms to resolve disputes between the TSOs*", and "*decision making which records how the balance between the interests of the two different sets of customers had been struck, in particular where these are not aligned*".
- 7.38 In terms of TSO collaboration, it is important to note that, where SONI jointly develops and/or operates the system with EirGrid – for example, under (among others) Condition 22 (Central Dispatch and Merit Order), Condition 22A (Scheduling and Dispatch arrangements), Condition 23A (Capacity Market Requirements), and Condition 22B (Balancing Market Principles) – it does so in accordance with its TSO licence obligations and the relevant regulatory frameworks (as approved by the Utility Regulator). As explained in paragraphs 7.5 - 7.11 above, in carrying out these parallel obligations, EirGrid is required to act in the interests of customers in Northern Ireland and the Republic of Ireland.
- 7.39 Given that delivery of these all-island matters is already tightly prescribed by the Regulatory Authorities via these licence obligations and regulatory frameworks, it is unclear how changes to SONI's governance – for example, to introduce a further formal framework for such collaboration to take place – would enhance delivery of such matters. The Utility Regulator fails to specify any link between governance and the functions described above. This is therefore a failure of the Utility Regulator to demonstrate that the proposed action is necessary at all.
- 7.40 Further, given the 'all-island' nature of these matters, it is unclear what 'disputes', divergence, or misalignment between consumers are likely to arise between the TSOs in this context, and why it is necessary to resolve such disputes by means of formal process – whether via a 'formal agreement with clear rules', or a formal dispute-

²⁰¹ The most recent such submission being in April 2021

resolution procedure. Scheduling and Dispatch take place as part of the day-to-day TSO activity and as provided for in the *Balancing Market Principles Statement* and which process has been described in more detail in Section 3 of this response. As the existing process clearly sets out the role of the TSOs in this regard and as constraints are all published in advance and notified to the market, any likely divergence would rather come as a result of a “jurisdictional approach” i.e. than as part of the existing arrangements.

- 7.41 It is clear that the current model works well and drives positive outcomes for consumers. The integrated group management structure grants SONI access to a pool of resource and relevant expertise, and drives considerable consumer savings. Moreover, SONI meets and continues to deliver on its TSO service expectations.
- 7.42 In the absence of any evidence of a clear actual or likely harm, it is therefore unclear what the changes are intended to remedy. In the circumstances, the Utility Regulator does not have any justification for intervention.

Discharge of SONI TSO's Responsibilities: Certification of Resources

- 7.43 In this subsection of our response, SONI sets out the specific licence requirements with respect to ensuring adequacy of resources to fulfil licence functions. This issue has been raised by the Utility Regulator in the context of value for money and driving benefit to consumers. It is therefore necessary for SONI in return to consider any evidence put forward by the Utility Regulator on this point together with any consumer benefit which the proposed changes would bring about in this context.
- 7.44 The Utility Regulator states in the Executive Summary, that “*We conclude that the management and oversight of SONI TSO licence responsibilities are effectively discharged by EirGrid plc., and not by SONI Ltd.*”
- 7.45 However, it is clear that SONI Ltd discharges SONI TSO's licence functions, at all times in accordance with its licence obligations and in furtherance of the interests of consumers. SONI is required under its TSO licence Condition 3 *Availability of Resources and Undertaking of Ultimate Controller* to “*act in a manner calculated to secure that it has sufficient resources (including management resources, financial resources and financial facilities) to enable it to:*
- (a) *carry on the Transmission System Operator Business;*
- (b) *comply with its obligations under the Order, the Energy Order, the SEM Order, the CACM Regulation, Network Codes and the Licence.”*
- 7.46 SONI is further required under this Condition to “*submit a certificate addressed to the Authority, approved by a resolution of the board of the Licensee and signed by a director of the Licensee pursuant to that resolution.*” SONI Directors pursuant to this requirement submit such certificates on an annual basis certifying that SONI has sufficient financial resources and financial facilities to enable SONI to carry out its obligations for a period of twelve months. Any such resources may include resources from EirGrid which are recharged pursuant to the EirGrid Group Cost Allocation and Recharge Arrangements.

- 7.47 The Utility Regulator has not indicated in what manner SONI has not effectively discharged its oversight of SONI's licence responsibilities or when such an alleged failure to discharge this duty has taken place, which would be crucial as part of any discussion on demonstrating the consumer benefit to merit the change in approach. If the Utility Regulator is concerned as to whether SONI has Adequate Resources available to it, then SONI is happy to discuss this with the Utility Regulator. SONI would note however, that its ability to procure such resources is largely premised on the regulatory recovery provisions it can ultimately recover from customers as set out in the Charging Restrictions of Annex 1 of its Licence. We are at the time of this submission still awaiting licence modifications proposals to be put to us for a price control that was due to commence in October 2020; in relation to our SEM Operator licence no formal licence proposals have ever been put to us since that licence was granted to us in 2007.
- 7.48 This provides the regulatory oversight, and ultimately regulatory recourse by the Utility Regulator for the protection of consumers. SONI would see little benefit, or enhanced consumer protection from entering in to specific Service Level Agreement or SLAs with its service providers in this regard. No evidence of any benefit, or proposed benefit, was set out in the Consultation Proposals. Ultimately consumers are charged not on the basis of the costs which SONI incurs, whether internally or through external service provision but on that which the Regulator deems reasonable and provides for through the Price Control framework as codified in licence.

SONI Directors and Corporate Governance

- 7.49 As set out in SONI's response to the Call for Evidence²⁰², it is recognised that there is a balance to be struck between the oversight exercised by the parent company and the autonomy that is required for the subsidiary to operate as an independent legal entity. SONI also notes the parallel response of EirGrid plc in this regard which further deals with parent company and subsidiary company governance. The Call for Evidence places much greater emphasis on the latter than the former and is largely silent regarding the requirement of parent company oversight. The UK Corporate Governance Code (the UK Code) outlines that a holding company board not only needs to be in control of the holding company but needs adequate co-operation within the group to enable it to discharge its governance responsibilities.
- 7.50 Both the SONI Board and the EirGrid Board continue to effectively discharge their respective fiduciary duties as subsidiary and parent. Furthermore, the role of the SONI Board has been further strengthened since the publication of the Call for Evidence such that three additional Non-Executive Directors have been appointed to the SONI Board, two of whom have significant standing and experience in Northern Ireland, one of whom acts as the SONI Chair.
- 7.51 In accordance with good corporate practice there is a requirement for SONI to comply with certain EirGrid Group policies with regard to treasury and risk management, capital expenditure approval and Group accounting policies. This is consistent with good practice in a group situation. Meetings of the SONI Board are held on a frequent basis. At these meetings management report on operational matters, SONI specific risks financial performance and significant contracts are approved. The SONI Board also deals with statutory requirements such as the approval of financial statements,

²⁰² SONI Response to the CfE – Section 3.2

Letters of Representation addressed to the auditors and approval of regulatory accounts and directors' certificates required by licence. At other times there is also consideration of significant matters such as the actuarial valuation of the SONI defined benefit pension scheme, regulatory decision papers and in the recent past the legal and financial arrangements underpinning the transfer of planning staff from NIE to SONI and the establishing of Local Reserve Agreements with Northern Ireland generators.

- 7.52 Any suggestion, implied or otherwise, that SONI Directors are not fulfilling their fiduciary duties is entirely without basis.
- 7.53 In Section 3.13 of the Consultation the Utility Regulator states “[] the fact that these [SONI Board] appointees are also members of the EirGrid Board, is a circumstance which the UKCGC states is likely to impair or could appear to impair, their independence. For the same reason the revised Board's ability to manage any conflict of interest between the needs of NI and Irish consumers could also be impaired or could appear to be impaired.”
- 7.54 This statement is incorrect and is contrary to Utility Regulator's own advisors' position. Contrary to the above we note that CEPA in the report they carried out on behalf of the Utility Regulator, in the context of the SEM Committee, in 2011 regarding the NIE Governance stated that:

“Parent companies have a legitimate interest in the business strategy, performance, financing and governance of their subsidiaries. As such, it is relatively common practice for senior managers/ group board directors from the parent company to sit on the subsidiary board, alongside independent directors and perhaps the Managing Director and Finance Director of the subsidiary.”²⁰³

- 7.55 Furthermore SONI notes that in regard to the recent governance review of the governance of Mutual Energy Ltd, the Utility Regulator states²⁰⁴:

“We conducted a governance review of Mutual Energy Limited (MEL) gas companies. We were pleased to find high levels of compliance with the UK Corporate Governance Code and Financial Conduct Authority Rules”²⁰⁵

- 7.56 The above notwithstanding that the Board of Directors of Mutual Energy Limited, Moyle Interconnector Limited and Premier Transmission Limited, among others, all have identical board composition. If this is somehow deemed satisfactory by the Utility Regulator following its review of Mutual Energy's governance and no restriction is required nor licence changes proposed to prevent this from being the case why then does the Utility Regulator believe it to be appropriate to consider any restrictions in the case of SONI²⁰⁶.

- 7.57 Whilst SONI acknowledges that as a Company Limited by Guarantee (CLG) MEL does not have shareholding interests as the EirGrid Group does, this does not separate it

²⁰³ Northern Ireland Authority for Utility Regulation Assessment of ESB Corporate Governance for SEM Committee, CEPA Report, November 2011, Section 6.1

²⁰⁴ <https://www.uregni.gov.uk/files/uregni/media-files/Utility%20Regulator%20Annual%20Report%202018-2019.pdf>

²⁰⁵ Utility Regulator Annual Report 2018 - 2019 Annual Report, page 19

²⁰⁶ Each of Mutual Energy Limited's (MEL's) 15 subsidiaries comprises solely directors who are also directors of MEL whilst , Moyle Interconnector Limited, West Transmission Limited, Premier Transmission Limited and Belfast Gas Transmission Limited have identical board composition to that of their ultimate parent company, MEL. A complete listing of Mutual Energy Limited's companies and their respective board compositions are available online - <http://www.mutual-energy.com/about-us/governance/company-structure/> and <https://find-and-update.company-information.service.gov.uk/>

from the fact that MEL operates its sixteen boards (the licensees of which comprise several gas companies and the Moyle interconnector businesses) without any functional board independence from one another.

- 7.58 The treatment given to MEL and its licensees during its governance review is visibly incongruous to that of the approach and views adopted by the Utility Regulator in the Consultation Proposals. No significant amendments or additions were made to MEL's suite of gas licences, under which it acts as "*Ultimate Holding Company*".
- 7.59 Two examples of this incongruity are evidenced in the MEL gas companies governance review as a benchmark against claims in the Consultation Proposals:
- i) MEL companies have no licence condition concerning director independence (as Condition 12 2(e) of the SONI Licence, *Independence of the Transmission System Operator Business*, does); however the Utility Regulator claims that SONI's has "[a] lack of independence in Board Membership".²⁰⁷ Evidently, no such issue was evidenced in the Utility Regulator in the MEL gas companies governance review.
 - ii) None of the MEL companies' licences make reference to Northern Irish consumers specifically (as Condition 24 1(e)(a) of the SONI TSO Licence, *System Operator Agreement*, does). The Utility Regulator states however SONI's need for "[a] new licence obligation strengthening the interests for NI consumers".²⁰⁸ Evidently, no such issue was evidenced in the Utility Regulator in the MEL gas companies governance review.

- 7.60 Above all, this demonstrates either a significant inconsistency or a singling-out of SONI from other licence-holders during the respective governance reviews. The Utility Regulator's Enforcement Approach and Procedure states that "*enforcement related decisions are designed to be rigorous, thorough, evidence-based and fair*",²⁰⁹ These principles are, however not evidenced here.

Management and Decision Making

- 7.61 In the Executive Summary, it is stated that "*management and decision making in respect of TSO activities are increasingly performed on a shared management basis, potentially to the detriment of NI consumers*"
- 7.62 SONI as TSO is required under licence to carry the majority of its obligations "in co-operation with", and "in conjunction with" EirGrid TSO. There are 24 (48%) conditions in the SONI TSO licence²¹⁰, and similarly 14 (38%) in the EirGrid TSO licence that require both parties to work together to be of benefit to consumers in Northern Ireland and the Republic of Ireland. The Utility Regulator's assertion is unsupported by evidence and there is no evidence that SONI and EirGrid do not fulfil their licence obligations.

²⁰⁷ Consultation Proposals, Section 4.17.

²⁰⁸ Consultation Proposals, Section 6.6.

²⁰⁹ *Our Enforcement Policy Approach and Procedure*, Utility Regulator, paragraph 2.5.-

https://www.uregni.gov.uk/files/uregni/media-files/Enforcement_Procedure_2016.pdf

²¹⁰ This figure is inclusive of Conditions with letter notation, e.g. Condition 10A and 10B in the SONI Licence

8 Conclusion

- 8.1 SONI Ltd. is one single corporate entity, a legal entity, which is the holder of licences to Participate in the Transmission of Electricity and to act as SEM Operator. As a body corporate it is entitled to engage in activities pursuant to its purpose as indicated in SONI's Memorandum and Articles save where prohibited in doing so by licence; in all instances based on a single unified and coherent governance structure.
- 8.2 The Utility Regulator has proposed four options to impose governance structural changes upon SONI, by way of modifications to just one of SONI's licences, its Transmission licence, to which SONI has responded to in this submission. SONI cannot, and does not, support any of the four options.
- 8.3 As is clear from our response SONI is extremely disappointed with the approach the Utility Regulator has felt necessary to advance through the Consultation Proposals. Given the gravity of the impact of the proposed options SONI has had to adopt a legalistic approach. This is not, and was not SONI's preferred approach. It was simply left with no choice.
- 8.4 In this conclusion SONI sets out in summary why it believes the Utility Regulator's proposals if implemented, to be unsafe and subject to legal challenge. We do this simply so there is no doubt as to our position. However we also set out our view as to why it would be preferable, much more productive, and ultimately much better for consumers if Utility Regulator would engage with SONI to establish a way forward.
- 8.5 For the reasons we have set out the proposed approach by the Utility Regulator is unlawful on the basis that it is *ultra vires*, based on material errors of fact and is in breach of the Utility Regulator's duties, including its duty to act in the interests of consumers. This issue should instead be considered by the SEM Committee of the Utility Regulator (the SEM Committee) who has *vires* to act in this matter, both as a matter of precedent whereby the SEM Committee has previously been the body who considered governance matters in respect of SONI, which would be unwound and directly contradicted by that now proposed, and because the proposed approach materially affects the SEM, and thereby satisfies the legal test of the Utility Regulator's SEM Committee's function set out in the 2007 Order.
- 8.6 SONI strongly urges the Utility Regulator to share this response with the SEM Committee.
- 8.7 In light of the above, any of the proposals brought forward by the Utility Regulator would be wrong on one or more grounds which are more particularly outlined below:
- 8.8 The decision on the proposals is unsound as it would create a conflict with existing legislation. The inevitable consequences of a "jurisdictional approach" to SONI regulation where SONI is answerable to "its customers" alone, would be to contradict the 2007 Order, the SONI licences, the Memorandum of Understanding between the United Kingdom of Great Britain and Northern Ireland and the Republic of Ireland, the 2004 Developmental Framework and the approach to all island decision-making which has been agreed and implemented since 2007. Given that an all-island approach has been enshrined in legislation, were an alternative policy to be adopted, one that contradicts the existing framework, then any such policy needs to be reflected in legislation by those empowered to make such decisions.

- 8.9 The “Call for Evidence” did not result in the identification of any harm, potential harm, future harm or even any unrealised additional benefit. The very purpose of a Call for Evidence is to receive and obtain evidence on which to act, in order to adopt decisions on an evidential basis. This is not what has happened here. The Utility Regulator has insufficiently considered the evidence before it.
- 8.10 The fundamental basis of any “Call for Evidence” which does not produce any “evidence” and relies on the anonymous, unpublished representations is questionable in any regulatory or democratic process as it denies fairness, transparency and justice.
- 8.11 The proposed approach by the Utility Regulator fails to meet standards of regulatory best practice whereby any regulatory action must take place in a proportionate manner, and regulatory activities should be “targeted only at cases in which action is needed.” This represents best regulatory practice; they are also the values the Utility Regulator itself espouses. As SONI has demonstrated through the body of this response, the Utility Regulator has not demonstrated that action is needed or appropriate with regard to the proposed approach in this particular instance as there is no legal *vires* to act; no harm has been identified and no benefits to consumers have been evidenced.
- 8.12 The Utility Regulator has also failed to have due regard to the duty to protect the interest of consumers in Northern Ireland. The Utility Regulator’s conclusion that the changes will protect the interest of consumers in Northern Ireland is misplaced and is not supported by the evidence, which actually suggests the contrary. Even if a policy objective had been justified the measures adopted are disproportionate to any perceived benefit.
- 8.13 The rationale supporting the Utility Regulator’s proposed approach is based on numerous errors of fact. These assertions are many and varied and cannot form a rational basis to support a decision based on any of the options proposed by the Utility Regulator.
- 8.14 Central amongst the assertions of the Utility Regulator is that the treatment of SONI Ltd not as a corporate entity and holder of two licences with extensive obligations to co-operate to perform market and system functions in an increasingly integrated market; but as a two separate licensed entities, removed from each other. This treatment of SONI does not conform to company law which recognises corporate entities as legal persons and not as individual parts.
- 8.15 The Utility Regulator has used a misrepresentation of the purpose of EU legislations to justify the insertion of “managerial control” as a requirement within SONI licences. This, however, does not read European law in the context in which it was written, namely to ensure unbundling from production, generation and supply interests. This approach by the Utility Regulator promotes the language of unbundling including a requirement of “managerial control”, even though the concept of “managerial control” was not required in ensuring compliance with European legislation and any requirement for management independence was, in fact, specifically deleted from both SONI licences at that time.
- 8.16 The Consultation Proposals appear to promote discord and divergence between the TSOs rather than cooperation and agreement in their cooperation as part of the all-island framework. Over time, arrangements such as those proposed will create additional hurdles and bureaucracy, in hindrance to the operation of the all-island arrangements.

- 8.17 The all-island framework which forms the regulatory basis for decision-making in wholesale electricity on the island of Ireland has since 2007 provided stability and security of supply and ensured competition in wholesale electricity putting downward pressure on prices. SONI continues to support this all-island framework in the fulfilment of our licence functions.
- 8.18 Within that all island context, and recognising the benefits to customers in both Northern Ireland and the Republic of Ireland, but particularly in Northern Ireland, which flow from SONI's continued ownership and integration within the EirGrid Group, SONI is open to engagement concerning its continued governance and to ensure this meets the Regulator's and other stakeholders requirements.
- 8.19 The Utility Regulator talks of the importance of a trusted relationship between the Regulator and the Transmission System Operator. SONI agrees. We would further add the equal importance of this with respect to our SEM Operator licence and discharge of our SEM Operator functions.
- 8.20 SONI, and its Board wish to see that trusted relationship develop and flourish. There are enormous challenges ahead of us in terms of the Energy Transition. They will only be capable of being solved if both SONI and the Regulator work closely and collaboratively together to solve them. On a small island with a set of Single Electricity Market arrangements and a single synchronous power system they will only be solved if they are approached on an all island, whole of system, basis.
- 8.21 This means SONI must have close and strong relationships with NIE Networks, with Mutual Energy, with Gas Network Operators but in the context of the Single Electricity Market and a single synchronous power system particularly with EirGrid. It must support that with a close engagement with the Department for the Economy, the Department for Infrastructure, the Utility Regulator and the relevant counterparts in the Republic of Ireland.
- 8.22 SONI forms a very modest portion of the final electricity consumer's bill but has influence significantly beyond its scale. It is vital as we face the challenges ahead, including the challenges which will result from the new and emerging Northern Ireland energy policy, that the regulatory engagement between SONI and Utility Regulator, and between EirGrid and the Utility Regulator, embrace a new framework – a framework that is about unlocking real value for consumers across the island.
- 8.23 We have set out in this paper how since our acquisition by EirGrid, EirGrid has continued to invest in the SONI business and how the EirGrid Group presence in Belfast has continued to grow to the benefit of Northern Ireland, and its local economy. SONI is a much stronger organisation today than it was on divestment from Viridian and NIE. There has been no concern expressed as to how SONI discharges, or has discharged, its licence functions. However, if there is a concern in this regard we are more than happy to sit down, engage and see how it can be addressed.
- 8.24 SONI remains open to any future engagement with the Utility Regulator, the SEM Committee and wider stakeholders in seeking to address the broader issues raised in the Consultation Proposals.

Annex 1 - Acronyms

BEIS	Department for Business, Energy & Industrial Strategy
CACM	Capacity Allocation & Congestion Management
CfE	Call for Evidence
CMA	Competition and Markets Authority
CRU	Commission for Regulation of Utilities
DBC	Dispatch Balancing Costs
DETI	Department of Enterprise, Trade and Investment
DfE	Department for the Economy
DS3	Delivering a Secure, Sustainable Electricity System
EDIL	Electronic Dispatch Instruction Log
[REDACTED]	[REDACTED]
ESO	Electricity System Operator
EU	European Union
FOU	Full ownership unbundling
FTE	Full Time Equivalent
GB	Great Britain
GCS	Generation Capacity Statement
IA	Impact Assessment
IME	Internal Market in Electricity
ISEM	Integrated Single Electricity Market
ISO	Independent System Operator
IT	Information Technology
ITO	Independent Transmission Operator
LCC	Locational Capacity Constraints
LOLE	Loss of Load Expectation
MEL	Mutual Energy Limited
MMS	Market Management System
MO	Market Operator
MOA	Market Operator Agreement
MOU	Memorandum of Understanding
MW	Mega Watt
NED	Non-Executive Director
NEMO	Nominated Electricity Market Operator
NGET	National Grid Electricity Transmission
NGGT	National Grid Gas Transmission
NGESO	National Grid Electricity System Operator
NILGA	Northern Ireland Local Government Association
Ofgem	Office of Gas and Electricity Markets
OFWAT	Water Services Regulation Authority
RES-E	Renewable energy source – electricity
RMR	Reliability Must Run
RoCoF	Rate of Change of Frequency
SEM	Single Electricity Market

SEMC	Single Electricity Market Committee
SEMO	Single Electricity Market Operator
SNSP	System Non-synchronous Penetration
SOA	System Operator Agreement
TDPNI	Transmission Development Plan for Northern Ireland
TIA	Transmission Interface Arrangements
TIC	Transmission Investment Committee
TNPPs	transmission network pre construction projects
TSO	Transmission System Operator
TYTFS	Ten Year Transmission Forecast Statement
UK	United Kingdom
UKCGC	UK Corporate Governance Code
UR	Utility Regulator
WSAT	Wind Stability Analysis Tool

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