

Kevin O'Neill
SONI Limited
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Ref: NET/E/PR/1348

05 September 2025

Dear Kevin,

Re: Connection Dispute Legal Costs – Final Dt Approval

On 3 July 2020, SONI made an application for an allowance for 'Additional Approved Costs' under the price control set out at Annex 1 of the SONI TSO Licence (the **Licence**). The application related to legal costs associated with various connection disputes with windfarms.

Since it was clear that the correct mechanism for granting the allowance sought (if at all) was under the *Dt* term of the price control (paragraph 8.8 of Annex 1 of the Licence), in this letter the application is referred to as the **Dt claim**.

Procedure to Date

The *Dt* claim was for an allowance in the sum of **£7.74m** (April 2020 prices), which included anticipated opex spend across tariff years spanning from 2017-18 until 2020-21.

UR provisionally approved a budget of **£11k** (April 2020 prices) on 29 January 2025, setting out in the provisional determination its rationale for the extent to which the amount it proposed to allow would fall short of the amount claimed. SONI made representations on the issue to UR on 27 February 2025.

In the interim period UR has considered these representations carefully in the light of all of information and evidence available to it. This letter constitutes our final determination of the *Dt* claim.

Final Determination

Following consideration of the views submitted by SONI in response to the provisional determination, we have determined not to depart from the revised provisional position of **£11k** allowance. For confirmation, the amount finally approved is detailed in the table below.

Tariff Year	SONI Claim (April 2020 prices)	UR Allowance (April 2020 prices)	UR Allowance (April 2019 prices)
2017-18	£42k	£21k	£21k
2018-19	£61k	£31k	£31k
2019-20	£255k	£3k	£3k
2020-21	£7,381k	-£44k	-£43k
Total	£7.74m	£0.011m	£0.011m

UR has assessed the Dt claim, as it assesses all applications for Additional Approved Costs, on the basis of its principal objective and statutory duties set out at Article 12 of the Energy (Northern Ireland) Order 2003. This is consistent with paragraph 3.10 of the [UR Requirements and Guidance on Uncertainty Mechanisms](#) which states that this is the basis on which all such applications will be assessed.

UR has considered all aspects of these duties, but necessarily gives particular weight to its principal objective of protecting the interests of consumers.

In the context of an additional price control allowance being sought by a company, the first questions that UR must consider – taking into account the fact that consumers will ultimately bear the costs of any such allowance – are whether (and to what extent) any consumer benefit will be derived from the activity that the allowance is intended to fund, and whether that benefit (if there is one) has a reasonable relationship to the anticipated cost. Any questions of cost efficiency are secondary to these primary issues.

In this case, the main point of contention is the Dooish wind farm (**DWFL**) connection dispute. In reaching their final determination of the dispute the decision makers concluded that: *“The facts of this case support the proposition that SONI, either alone or together with NIE Networks, did not manage to get the basics right in respect of various matters and processes”*.¹

In spite of the fact that SONI had failed to get these basics right, a fact that ought to have been apparent to it and its advisers when reviewing the case that DWFL brought against it, SONI actively contested the case throughout the process.

In making a Dt claim, the onus is on SONI to demonstrate why the allowance that it seeks, in addition to all of the allowances already provided for under the price control, is one that UR should grant. We do not consider that SONI has discharged that burden in this case.

We further note that part of the costs which SONI is attempting to recover is the cost which SONI was required to pay to UR (in respect of UR's legal costs relating to the

¹ See DWFL Dispute Final [Determination](#), p44, para 10.6.

dispute) under a Costs Order forming part of UR's determination of the DWFL dispute on 5 October 2020. We do not consider it appropriate for SONI to recover such costs from consumers as recovery of these costs would effectively nullify the Cost Order.

In these circumstances, we have been unable to identify any ascertainable benefit which has accrued to consumers from the defence of the case. We are therefore unable to reach the view that it is appropriate for consumers in Northern Ireland to underwrite the legal costs incurred by SONI. Neither do we consider that any such costs should be partially recovered via the cost-sharing mechanism.

We note that these circumstances are quite distinct from those associated with allowances previously granted under the various uncertainty mechanisms of the price control, where it has been possible clearly to identify in what way the system operator activities being funded by consumers are likely to accrue to their short or long-term benefit.

While we have considered very carefully the representations made by SONI on 27 February 2025, the overall burden of those representations appears to be that SONI should always be able to recover all of its costs associated with defending its position in a dispute, regardless of merit or outcome, and that it is always in the interests of consumers for SONI to contest any case brought against it. UR simply cannot agree with these extremely broad propositions.

UR will always judge any claim for a Dt allowance on its own merits, taking into account the circumstances of the case. There may be disputes that SONI has contested and lost where it can nonetheless demonstrate that the contest was necessary or appropriate and that consumers should bear all or part of the costs associated with it. However, the DWFL case is not one of these. In that case, UR found that SONI did not follow the regulatory rules which are, ultimately, designed to protect consumers. Neither SONI's conduct nor its defence of that conduct delivered any consumer benefit. Applying normal price control principles consistent with UR's statutory principal objective and general duties, no case has been made for an allowance.

This is therefore a case which turns on its facts. However, the purpose and intention of the uncertainty mechanisms in the price control is precisely to allow UR to consider each case on its merits, and so to distinguish cases on the basis of all their circumstances and in the light of UR's statutory duties.

Yours sincerely,



Peter Russell
Executive Director - Price Control, Networks, and Energy Futures

Annex A – Detailed Responses to SONI Representations

SONI raised a number of issues within its response to the provisional determination. We have taken this opportunity to respond to the various points both for the purposes of explaining our current decision, and so that there may be learnings from this case that can be applied to other legal uncertainty mechanism requests in future.

The SONI issue and UR response (in blue) is detailed below.

- 1) To explicitly tie cost recovery to the ultimate outcome of a dispute essentially creates a system of retrospective regulation.

UR Response: It is not retrospective for UR to wait until it is in the possession of all relevant facts and information before it determines a request for an additional price control allowance.

- 2) It creates a significant disincentive for SONI to respond to future disputes, or could undermine SONI's ability to finance our activities where SONI is compelled to submit evidence to a dispute.

UR Response: SONI is under no obligation to contest disputes brought by third parties. It should be subject to similar disciplines as any other commercial organisations when deciding whether to do so. Specifically, it should be expected to do so only where it has reason to believe that its case has good merits, and where it is proportionate to contest the dispute given the issues at stake. It is appropriate that SONI has no automatic incentive to contest cases brought against it where its position lack merit and where the complaint correctly alleges that SONI has not complied with regulatory rules.

- 3) UR requires SONI to respond to the disputes so that it can make a fully considered decision that will protect consumers.

UR Response: Again, SONI is under no obligation to contest a dispute if its position has no merit. If it chooses to do so, then it will be expected to make out its case in detail so that UR can understand its position and have all the information necessary to adjudicate the case. If SONI's position lacks merit it can decline to contest the case and avoid the costs associated with participating actively in the dispute resolution procedure.

- 4) SONI does not receive any commercial benefit from its participation in these processes, only the reputational benefit associated with the decision makers confirming that we have interpreted statutory documents appropriately.

UR Response: SONI is entitled to argue in defence of its own reputation if it wishes. But since this alone does not benefit consumers, there is no reason why consumers

rather than shareholders must fund that defence. Where SONI has correctly interpreted and applied the statutory rules, then it can expect to succeed in its defence and to be allowed to recover the costs of doing so. But where, as in the DWFL case, SONI is found not to have applied those rules correctly, then neither its original conduct nor its defence of that conduct served the interests of consumers. In these circumstances, absent unusual factors which do not appear to exist in this case, we would not expect to grant SONI an allowance for its costs of this failure at the expense of consumers.

- 5) Setting a precedent that SONI may not be able to recover its costs from responding to disputes based on the ultimate outcome of the dispute means that SONI may be disincentivised from responding to or indeed raising **any** disputes in future, including spurious or obviously incorrect disputes where the other party is clearly seeking commercial advantage.

UR Response: It is surprising that SONI seeks to describe this position as a 'precedent'. It is widely understood – based on rules commonly applied by the courts, tribunals and other dispute resolution bodies – that, where a party has contested a dispute and been unsuccessful, it should be expected to bear the cost of its actions. This general approach is deliberately designed to disincentivise parties from contesting disputes unnecessarily and without careful appraisal of the merits of doing so.

If SONI was automatically entitled to recover its costs from consumers even where it contested and lost a dispute, it would be deprived of all usual commercial incentives not to contest disputes when its position has little or no merit. UR's time would be taken up in determining unnecessary disputes. And consumers would receive no compensating benefit. On usual price control principles, this does not create a basis for an allowance to be given, and there should be no surprise in UR having reached that conclusion.

However, there is no reason for SONI to feel disincentivised from contesting a dispute where it has good reason to be confident that its own position is correct and that the case brought against it is 'spurious or obviously incorrect'. In such circumstances it can confidently expect to succeed in the dispute and the default position will then be that it should recover its costs.

Moreover, since UR will consider all of the circumstances before determining any Dt claim, it may be that there are cases where SONI has been unsuccessful but in which it can still justify the contest of the dispute as necessary or appropriate, and so receive an allowance for all or part of its costs.

However, to the extent that SONI is disincentivised from contesting disputes where its position has little or no merit and the contest therefore has no benefit to consumers, that is what should be expected and reflects a correct application of the Dt regime.

- 6) If the UR places a duty on SONI to respond to some disputes, then tying the ability to receive appropriate cost recovery to the end outcome of the case would seem somewhat circular and could potentially undermine UR's position as a neutral arbiter.

UR Response: UR never requires SONI actively to contest a dispute. If a third party raises a dispute against SONI, SONI is entitled to concede the case or to seek to settle it with the third party at any time, in which case there need be no costs to recover. The provisions quoted by SONI apply only in cases in which SONI has chosen actively to defend its position. In those cases, it is inevitable that it will be asked to explain its case and therefore incur the costs of doing so. But that explanation and those costs are avoidable at SONI's own election to resolve the dispute by concession or settlement.

- 7) It could also undermine SONI's ability to finance our activities if we are forced to incur legal costs without guarantee of cost recovery.

UR Response: Again, SONI is never 'forced' to incur any costs, and therefore there can be no basis for a 'guarantee' of their recovery. If SONI's position lacks merit then it can, and indeed should be incentivised to, either concede the dispute or settle it, just as any normal commercial entity would be expected to do where it cannot automatically pass on all its costs to its customers.

There is no question of SONI being obliged by UR's Policy on the Resolution of Complaints, Disputes and Appeals to participate actively in a case that it does not wish to defend. It is only required to act in accordance with the Policy where, of its own choice, it is contesting the claim brought against it.

- 8) The interests of the UR and consumers are not served by the provisional determination and the implications that it carries for SONI in terms of deciding whether to respond to disputes and provide the information required by the UR's case team when preparing their statement of case.

UR Response: This appears to be a repetition of points already responded to above. UR is satisfied that the provisional determination reflects a proper application of the consumer interest test, and that it is appropriate that SONI should carefully consider, before choosing to defend a challenge brought against it, whether it has in fact failed to apply the regulatory rules correctly and therefore should not contest the case. If SONI chooses reflexively to defend all disputes, without consideration of merit, it must inevitably take some risk of being unable to recover its costs if it is unsuccessful.

- 9) We strongly oppose the idea of cost recovery of legal fees being in any way dependent on the outcome of the particular case.

UR Response: If the ability to recover legal fees were not 'in any way dependent' on the outcome of the case, it would follow that SONI was entitled to recover those fees from consumers even where: (i) the decision-maker found that it had failed to apply the regulatory rules correctly; (ii) it follows that SONI had defended a position with little or no merit; (iii) the actions giving rise to the case, the decision to contest it, and the costs which flowed from it were therefore avoidable; (iv) consumers derived no benefit from SONI's actions; (v) SONI had no incentive not to repeat the same conduct in future.

It is difficult to interpret SONI's submission as amounting to anything other than a claim that it should be allowed a blank cheque to contest disputes regardless of the conduct which led to them, and so regardless of their merits or outcome.

UR does not consider this to be a defensible approach by reference to our duties or to the way in which they have been historically applied to shape allowances. Legal spending is not immune from the general principles which should apply to price control allowances of all types, which is that they should be granted only where they represent efficient spend that delivers a benefit to consumers.

We reiterate that UR has sufficient discretion on a Dt application to make an appropriate allowance, even where a case has been contested and lost, so long as SONI can justify why it was appropriate to have contested the case and how consumers can be said to have benefited from that contest in spite of its outcome.

However, where SONI wishes to make such a case, as with all Dt claims, the onus is on it to do so. The argument which SONI appears to be advancing here is an argument of a different character, namely that it should in all circumstances be entitled to claim its legal costs as of right. This is not an argument that UR could accept in the light of its principal objective and general duties.

- 10) SONI itself receives no commercial benefits from successfully defending a dispute. As such, the principle of general fairness would dictate that the costs of defending disputes should be underpinned by consumers, as it is they who would benefit from a successful defence.

UR Response: The assumption underpinning this statement is that SONI's interests and consumers' interests are always aligned, so that if SONI successfully defends a dispute it follows that this result benefits consumers.

UR considers that assumption to be unwarranted. The interests of consumers are best served by all parties (including SONI) complying with the regulatory rules that are applicable to them. Those rules are established under the statutory and licence framework for the benefit of consumers. If, as in the DWFL case, SONI is found to have incorrectly applied the rules, then the consumer interest has been served neither by SONI's conduct nor defence of its position, but rather in spite of them.

UR understands that SONI, like any company, may make mistakes from time to time. However, where that happens, neither those mistakes nor the defence of them is in the consumer interest. The proper incentive for SONI should be to concede those cases in which it has acted in error, put the error right, and take steps to avoid making it again. None of those actions is facilitated by the defence of a case that it not properly defensible, and if SONI chooses to defend its position in such circumstances it must understand that it does so at its own discretion and is not entitled to be immunised against the costs of its actions.