Kevin O'Neill
SONI Limited
Castlereagh House
12 Manse Road
Belfast
BT6 9RT

Ref: NET/E/PR/1347

05 September 2025

Dear Kevin,

Re: MIL Arbitration – Final Determination of the Dt Approval

On 6 December 2022, 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 the defence of an arbitration claim brought against SONI by Moyle Interconnector Limited (**MIL**).

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 **£1.32m** (April 2022 prices), which included anticipated opex spend across tariff years spanning from 2020-21 until 2022-23.

UR provisionally approved a budget of **£1.15m** (April 2022 prices) on 6 June 2023, setting out in the provisional determination its rationale for the extent to which the amount allowed would fall short of the amount claimed. SONI made representations on the issue to UR on 23 June 2023.

Following receipt of legal advice, we re-issued our provisional decision on 25 August 2023, this time proposing **zero** allowance. SONI provided its views on this new position on 27 September 2023.

In the interim period UR has considered these views carefully. More recently, we have also had the advantage of having been able to see and review the 'Interim Award' made in favour of MIL by the arbitrator on 2 July 2024 and the 'Final Award' of 11 December 2024.

This letter constitutes our final determination of the Dt claim.

Final Determination

Following a review of the reasoned decision of the arbitrator as set out in his Interim Award, a re-assessment of our revised provisional determination, and a consideration of the views submitted by SONI in response to that provisional determination, we have determined not to depart from the revised provisional position of **zero** allowance. For confirmation, the amount finally approved is detailed in the table below.

Tariff Year	SONI Claim (April 2022 prices)	UR Allowance (April 2022 prices)	UR Allowance (April 2019 prices)
2020-21	£31.7k	£0	£0
2021-22	£92.5k	£0	£0
2022-23	£1,196.9k	£0	£0
Total	**£1.32m**	**£0.0m**	**£0.0m**

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 in line with paragraph 3.10 of the UR Requirements and Guidance on Uncertainty Mechanisms document 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 consumer benefit will be derived from the activity that the allowance is intended to fund, and whether that benefit (if there is one) bears a reasonable relationship to the anticipated cost. Any questions of cost efficiency are secondary to these primary issues.

In this case, MIL commenced an arbitration claim and SONI chose to defend it. That was, in essence, a commercial decision. UR was not a party to the claim and expressed no opinion as to the merits of defending it. Indeed, as our revised provisional determination made clear, we were not in a position to assess the merits of that defence.

We now have the benefit of having seen the arbitrator's decision, which clearly accepts the arguments made by MIL in relation to liability and (albeit with 'reservations') quantum. From the interim award and final cost decision, it is clear that the arbitrator has determined in favour of MIL on the most salient points.

In making a Dt claim, the onus is on SONI to demonstrate why the allowance that it seeks, in additional 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, or indeed that it could realistically have done so in the context of a commercial dispute that it chose to defend in an arbitration process, but in circumstances where MIL's arguments prevailed before a highly-qualified and experienced arbitrator on the grounds set out in his carefully reasoned decision.

In these circumstances, we have been unable to identify any ascertainable benefit which has accrued to consumers from the defence of the case, still less one which might be said to bear a reasonable relationship to the considerable costs claimed. 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 than 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.

UR will always judge any claim for a Dt allowance on its own merits, taking into account all of 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 MIL arbitration is not one of these. In that case, the arbitrator found that SONI did not comply with its contractual obligations. 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.

It is therefore an unusual 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,

PDRussell

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

Annex A – Detailed Responses to SONI Feedback

SONI raised a number of issues within its response to the revised provisional determination. We have taken this opportunity to respond to the various points as 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) It would be useful to understand what triggered the need for the legal advice and why this was only progressed after already making a provisional determination.

   UR Response: Legal advice was sought due to our residual concerns with providing allowances to fund commercial disputes in cases where the merits of the dispute and its likely outcome cannot realistically be ascertained by UR given that it is not a party to the dispute or privy to all of the evidence and legal arguments. By definition, a provisional determination is not final and can only reflect the thinking of UR at the time it is shared with any interested parties. Until a final determination is issued, UR must always reserve the right to take further advice, carry out additional analysis, and take into account any new information that comes to its attention.

2) SONI is unclear about the UR comment on whether SONI is 'in the right' in respect of the arbitration. In our view this appears to contradict a statement made in a letter from UR (and CRU) to SONI (and Eirgrid), dated 8 April 2022, where the UR (and CRU) confirmed arbitration/dispute resolution as an option for resolving the dispute.

   UR Response: UR is content that arbitration is a reasonable mechanism for dispute resolution, and indeed we understand that it was a mechanism specified under the Moyle Interconnector Operation and Agency Agreement in circumstances in which a dispute could not be resolved by other means. But to say this implied no view as to the merits of the particular dispute that proceeded to arbitration, as to whether it should have been necessary for MIL to commence that process, or as to whether it was appropriate for SONI to contest it.

3) SONI considers that based on the materiality of the claims made by MIL it is correct and in the customer interest that these are challenged.

   UR Response: There is no question as to the materiality of the claims. However, it does not follow that all material claims have to be disputed or that it is automatically in the the consumer interest to do so.

4) Cost of arbitration was not included in the SONI Price Control 2020-25 Allowances. Therefore, the vehicle for recovery of these costs is via the uncertainty mechanism.

UR Response: We agree that it was not included in the price control allowances. That is why it is the proper subject of a Dt claim. However, it does not follow that the claim must be granted or that SONI has an entitlement to the recovery of the costs. UR's role is to assess the claim critically, by reference to its statutory duties, as it would have assessed a request for the inclusion of the costs in the 2020-25 price control had it been made while that price control was being determined.

5) UR has stated clearly that if SONI progresses activities ahead of funding approvals, it does so at its own risk (tariff submission final determination 11th August 2023) and that it is our responsibility to provide UM submissions for cost reimbursement in good time to ensure this is not the case.

UR Response: That is correct. However, it does not follow that UR will always be in a position to make ex-ante determinations. Costs associated with legal disputes are not a normal category of costs for the purposes of Dt claims. Unlike most projects which are considered for the grant of Additional Approved Costs – and in relation to which it is possible to assess the need for, or inherent value of, the work before it is commenced – in a dispute of this nature UR is not likely to be in a position to assess at the outset whether a party has acted in a prudent fashion by engaging in the dispute. Disputes therefore constitute an atypical category of case for the purposes of the uncertainty mechanisms.

6) The DIWE process was introduced to address the concerns stated by the UR. If the UR considers after the completion of the process, that SONI was not in the right and did not have a good prospect of success, it may decide at that stage to progress a DIWE investigation.

UR Response: This appears to assume as its starting point that SONI should be entitled to receive an allowance by default, subject only to later disallowances. That is not how the uncertainty mechanism process works. In applying for Additional Approved Costs, it is for SONI to justify why it should be given an extra allowance in addition to those already incorporated in the price control. UR must be satisfied that the grant of the additional allowance is consistent with its statutory duties. There is no default expectation that an allowance will be granted.

7) SONI is seeking cost recovery for an activity that we need to undertake as part of our duties. It is therefore reasonable to assume that these activities are appropriately funded.

UR Response: We do not accept the suggestion that SONI was subject to a duty to contest the dispute in arbitration and, as implied here, had no choice in the matter. SONI's duties as a system operator do not require it to litigate any particular dispute and certainly not the one which is the subject of this Dt claim.

Utility Regulator

8) SONI is concerned with the implications of this statement such that funding would be assessed post the fact. To take this position the UR may be significantly curtailing the proper functioning of SONI and their licence obligations.

UR Response: Again, this implies that the 'proper functioning' of SONI required it to enter into a commercial dispute in relation to this particular subject-matter. Please see our previous response.

9) Can the UR please clarify what they mean by 'own legal failings (if they exist)' and the evidence base for this statement?

UR Response: It would be contrary to general principles of public policy for any company to be held harmless by consumers for its failings. This dilutes incentives to ensure compliance with legal obligations. Taken to the extreme, where the full cost of failings is passed onto consumers, there is no longer any incentive to ensure compliance, because non-compliance has been rendered consequence-free.

10) It is unclear if the UR is applying the same approach to MIL as is proposed for SONI in the provisional determination. SONI would appreciate clarification on this point as it is important that a consistent approach is being applied to all regulated entities, in line with best practice regulation.

UR Response: MIL is a different type of entity, and accordingly is subject to a very different regulatory framework, in comparison with SONI. We treat every regulated organisation with due consideration, having regard to all of the circumstances. We treat like cases alike, but we also respect differences between different situations.

11) SONI has undertaken this legal action for the benefit of consumers because any compensation being paid to MIL as part of this dispute and its resolution will be paid for by said consumers.

UR Response: It is in the interests of consumers that regulated entities comply with the conditions of their licences, since the obligations in those conditions have been set in such a way as is best calculated to further the UR's (or, where appropriate, the SEM Committee's) principal objective. SONI is subject to a licence obligation (Condition 37.5) to comply with its duties under the Moyle Interconnector Operation and Agency Agreement. The arbitrator has determined that this agreement required the payment of compensation in certain circumstances in which SONI instructed MIL not to use its full net transfer capacity. Notwithstanding changes in the regulatory approach of the SEM Committee, these provisions applied at the time to which the arbitration relates, and UR cannot conclude that it was in the interests of consumers for them to be breached.

12) SONI believes this approach of setting allowances at zero is an error and we have concerns that the UR could be persuaded that all future legal related UM projects

should have a zero allowance until the projects are completed and actual costs are analysed.

UR Response: Each case will be treated on its merits. There is no general rule of the type that is anticipated in SONI's comment.