

# SONI: Article 14 (8) Notice and Licence Modification Decision

Decision on Licence  
Modifications to Codify Interim Price  
Control Capex Projects.

03 December 2018



## About the Utility Regulator

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

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

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

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



### Our mission

To protect the short and long-term interests of consumers of electricity, gas and water.



### Our vision

To ensure value and sustainability in energy and water.



### Our values

- Be a best practice regulator: transparent, consistent, proportionate, accountable and targeted.
- Be professional – listening, explaining and acting with integrity.
- Be a collaborative, co-operative and learning team.
- Be motivated and empowered to make a difference.

## Abstract

This paper sets out the Utility Regulator's (UR's) decision on changes to the Transmission System Operator (TSO) licence held by SONI.

The modifications are undertaken in order to provide certainty of revenues to be recovered by the TSO for interim capex projects not provided for as part of the price control. The changes codify how the revenues have been working in practice through tariffs.

## Audience

This document is likely to be of interest to SONI, other regulated companies in the energy industry, government and consumer groups with an interest in the industry.

## Consumer impact

The consumer impact of these proposed licence modifications are limited. The changes are solely for the purposes of providing certainty of revenue recovery to the electricity TSO.

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# 1. Background

- 1.1 The paper sets out the UR decision on an explicit term ( $Z_t$ ) in the revenue formula to enable SONI to recover depreciation and return for approved Special Project costs of a capital nature which are not included in the price control.
- 1.2 SONI is licensed as the Transmission System Operator (TSO) for Northern Ireland and is subject to a regulated price control. The UR's final determination on the SONI price control was published on 24 February 2016. The Article 14(8) decision to make licence modifications<sup>1</sup> was published on 14 March 2017.
- 1.3 On 12 April 2017, SONI made an application to the Competition and Markets Authority (CMA) for permission to bring an appeal against the price control decision. The appeal covered a number of specific areas, most of which related in one way or another to financeability.
- 1.4 Error 4 focused on the  $D_t$  mechanism (a term in the licence) and its suitability for cost recovery of interim price control projects. The CMA did not find the existing approach to be wrong.
- 1.5 UR agrees with the CMA findings and welcomes the flexibility to treat uncertain costs as it considers appropriate. However, the existing wording in the licence with respect to  $D_t$  claims refers to;

*“efficient costs incurred (or likely to be incurred) by the Transmission System Operator Business (in Relevant Year  $t$ )”.*<sup>2</sup>

- 1.6 Cost incurred within year is more akin to operational expenditure (opex). This licence drafting does not provide for typical returns treatment of capital (capex) projects i.e. revenue = depreciation plus a WACC (Weighted Average Cost of Capital) return. As such, there exists a ‘gap’ in the codification.
- 1.7 The CMA did opine on a similar issue with respect to recovery of SONI's pre-construction capex costs (Error 2). UR argued that SONI could earn a rate of return for such costs as part of the  $D_t$  mechanism. This position was however rejected by the CMA who stated;

*“SONI's Licence does not provide any mechanism by which SONI would receive a return on this side-RAB via the SSS tariff.”* [CMA Final Determination, para 6.57, P85]<sup>3</sup>

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<sup>1</sup> <https://www.uregni.gov.uk/news-centre/soni-price-control-2015-2020-licence-modifications-published>.

<sup>2</sup> SONI Licence, Annex 1 Charge Restrictions, para 8.1(a), p186.

<sup>3</sup> CMA [Final Determination](#).

- 1.8 Given the lack of vires to provide a WACC return, the CMA required the UR to remedy the situation. They state;

*“In our view, since SONI is entitled to earn a return on its side-RAB, and this will be reflected in its allowed revenues, it should have been codified in the Licence in a similar manner.”* [CMA FD, para 6.59, p86]

- 1.9 Similar logic applies to the treatment of capex  $D_t$  projects. Given the forthcoming completion of some material capital schemes (i.e. I-SEM [Integrated Single Electricity Market] and DS3 [Delivering a Secure Sustainable Electricity System]), the UR considers it appropriate to resolve this ‘gap’.
- 1.10 This involves codification of a new term ( $Z_t$ ) in order to provide the TSO certainty of capex revenues based on depreciation and WACC return. This is consistent with CMA decisions and legal advice taken on the issue.

## 2. Consultation Engagement

2.1 UR published a consultation paper<sup>4</sup> detailing the new  $Z_t$  licence term on the 10 August 2018. The substance of the changes were as follows:

- Inclusion of a new term ( $Z_t$ ) in the maximum revenue formula.
- Definition of the new term i.e. revenue ( $Z_t$ ) = depreciation plus return.
- Definition of approved *Special Projects* to which the new term applies.
- Creation of a 'side-RAB' (Regulatory Asset Base) for *Special Projects* which earn a return and are subject to depreciation.
- Confirmation that only actual costs up to an approved cap will be ultimately remunerated.

2.2 The consultation closed on 10 September 2018 at 5pm. No formal responses were received.

2.3 However, ongoing engagement with SONI to progress the work stream has highlighted a number of issues, some of which have resulted in changes to the licence drafting. Detail is provided below of SONI issues. A response section is then included for UR rationale.

### Z<sub>t</sub> Mechanism – SONI Issues and UR Responses

2.4 In their engagement SONI raised a number of issues related to the  $Z_t$  licence term. Some of these comments have prompted:

- a) Changes to the licence drafting (whilst not changing the rationale of the initial proposals);
- b) Further review by the UR on appropriate drafting; and
- c) The provision of clarity in this paper to explain why further amendments to the licence are not required.

2.5 These are summarised below with corresponding UR remarks.

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<sup>4</sup> [Z<sub>t</sub> Licence Modification Consultation Paper](#)

**Table 1 – Z<sub>t</sub> Mechanism Issues and Responses**

	SONI Issue	UR Response
1	<p>SONI has argued that proposed text does not deliver depreciation on a straight line basis. They argue that algebra makes the formula asymptotic such that the RAB will never reach zero.</p> <p>The outcome of such a formula would mean that SONI would be incapable of recovering the entire capital cost incurred.</p>	<p>The TSO is correct to raise this issue. The drafting in the consultation paper calculates depreciation using the opening RAB in the <u>current year</u> multiplied by 20% (rate of depreciation unless otherwise stated).</p> <p>Depreciation for an individual project should be based on the approved/actual capital costs, not the opening RAB in each year. Drafting has been amended to correct this.</p>
2	<p>SONI believe the Z<sub>t</sub> formula does not allow for recovery of costs for projects where the monies have already been expended.</p> <p>This conclusion appears to be based on the fact that the opening RAB value shall be zero.</p>	<p>The UR does not consider that the formula precludes recovery of monies already spent. An opening RAB of zero does not discount past spend, merely that these monies must be approved as a <i>special project</i> cost before it can be added to the Z<sub>t</sub> RAB.</p> <p>In the case of I-SEM, this would simply involve the submission of finalised costs in the format required. Sums approved could then be added to this RAB for capex recovery.</p> <p>Such an approach mirrors that set out in the finalised guidance on the D<sub>t</sub> mechanism. Within that guidance<sup>5</sup> the UR specifically provided for retrospective approval of cost already incurred, though this is not typical treatment.</p> <p>Drafting has been specifically included in the licence to provide for costs already incurred [Para 2.6 (b)(ii)(D)].</p>
3	<p>SONI considers that the regulatory regime changes their risk profile. They argue that the proposed arrangements actually significantly alter SONI's risk because the Utility Regulator has unilaterally afforded itself a power to set a maximum level of recovery.</p> <p>As this cap allowance is potentially lower than the level of SONI's efficiently incurred costs, this alters the risk profile.</p> <p>SONI also argue that such an approach is contrary to the Agreed Approach Document (AAD) for I-SEM, which is already subject to the oversight of both Regulatory Authorities.</p>	<p>UR disagrees with this point. The AAD specified costs would be recouped in line with prevailing price controls. As the Z<sub>t</sub> term largely mirrors D<sub>t</sub> structures (only on a capex basis), risk is unchanged.</p> <p>Within this paper there is however a recognition of specific I-SEM arrangements. Approval of the Z<sub>t</sub> cap for I-SEM would only consider actual costs incurred, subject to a DIWE review. The Z<sub>t</sub> process allows for retrospective approval of costs incurred, though this is not typical practice for interim projects.</p> <p>Since approval with a DIWE review is the same process as detailed in the AAD, UR does not consider that this alters the risk profile.</p>

<sup>5</sup> Finalised [Dt Guidance](#) Document.



4	<p>SONI has asked for clarity concerning:</p> <ul style="list-style-type: none"> <li>a) The issue that the term 'approval' needs to clarify that this includes SEM Committee approvals.</li> <li>b) Confirmation that <math>Z_t</math> can include costs already incurred on an NPV neutral basis as per the Agree Approach Document for I-SEM.</li> <li>c) The definition of a <i>Special Project</i>.</li> </ul>	<p>UR addresses these points as follows:</p> <ul style="list-style-type: none"> <li>a) Recognition of SEM Committee decisions is explicitly provided for within this paper. However no change is needed in the licence. If the SEMC decides to grant an approval under paragraph 9.2, that is effective as if the UR had done it. Furthermore, nowhere else in the licences does the UR refer to decisions being made by the SEMC.</li> <li>b) The licence term can provide for costs already incurred on the basis as set out in the AAD i.e. NPV neutral at the prevailing WACC. However, this treatment is specific to the I-SEM project. It is not typical practice for interim capex proposals.</li> </ul> <p>The UR expectation is that the requirement for NPV neutral adjustments should be limited. This is due to the fact that, going forward, approvals should be prospective rather than retrospective.</p> <p>For the avoidance of doubt, provision of such adjustments will be at the regulator's discretion. SONI would need to evidence good reason why prior approval was not sought and that the loss is material before NPV adjustments would be considered.</p> <ul style="list-style-type: none"> <li>c) UR does not think that further refinement of the special project definition is required. Categorisation is deliberately left as a matter for UR discretion.</li> </ul> <p>No changes in the licence have been made to address these issues.</p>
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## Other Issues

2.6 SONI highlighted a couple of further issues. For instance, they have referenced the contradictory position of the UR in approving capex revenue under the  $D_t$  term after the CMA determination. They have also cited  $D_t$  guidance facilitating arrangements for I-SEM and other SEMC decisions.

2.7 The TSO is correct to identify the contradictory position. The application of  $D_t$  approval for special projects [e.g. DS3 Control Centre Tools] will be revoked and considered under the  $Z_t$  licence term.

- 2.8 The guidance inconsistency can be found in the D<sub>t</sub> consultation document.<sup>6</sup> It is however worthwhile noting that this reference was only provided for in the consultation, not the final decision paper or guidance. No change is therefore needed to the D<sub>t</sub> guidance.<sup>7</sup>
- 2.9 On review, UR also considers that some further licence drafting is required to properly facilitate different depreciation rates. This makes the licence drafting more complicated, but does not change the basis of the decision.
- 2.10 Provision has also been made for inflating depreciation values. This was missing from the consultation document.

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<sup>6</sup> [Dt Guidance](#) Consultation Document.

<sup>7</sup> Finalised [Dt Guidance](#) Document.

### 3. UR Decisions

- 3.1 The conclusion of the UR is that the  $Z_t$  changes are both necessary and desirable in terms of providing certainty of cost recovery.
- 3.2 Based on SONI engagement and UR review, a number of changes from the consultation paper are required. These include the following:
- a) Amendment to the depreciation formula as set out in paragraph 2.5 of the licence. This is revised from the opening RAB to the approved / actual capital cost value.
  - b) Change to the depreciation formula to provide for different depreciation rates depending on the nature of the project. Default position will be 5 years unless otherwise specified.
  - c) Revision of drafting around depreciation cost recovery timing to ensure SONI do not incur an NPV loss.
  - d) Inclusion of RPI inflation for depreciation amounts.
  - e) Revision of drafting in paragraph 2.6(b)(ii)(D) to clarify the scope of application of the new term i.e. to both prospective and retrospective costs incurred.
  - f) Clarification provided in paragraph 9.2(d) that the UR can vary depreciation terms and make provision for costs already incurred.

#### Depreciation Recovery

- 3.3 The most substantive change from the consultation relates to the depreciation formula. The intention is to provide straight line depreciation depending on the lifespan of an asset.
- 3.4 For instance, a £10m capital project for an IT system lasting 5 years should provide for depreciation of £2m per annum in real terms (i.e.  $£10m \times 20\%$ ). As drafted, the consultation formula did not achieve this.
- 3.5 In the previous version, depreciation is recalculated each year based on an opening RAB which is falling (assuming no new projects). This would only provide for the correct level of depreciation in the first year. As SONI state, this would not allow for full recovery of capital costs.
- 3.6 The formula in paragraph 2.5 has therefore been changed to replace opening RAB with the approved actual capital cost value of a special project. In the current drafting special projects are summed for the relevant year in question.

This should correct the deficiency in the formula.

#### Depreciation Term and Inflation

- 3.7 UR has further amended the depreciation formula in order to provide for different depreciation rates. The rate will be dependent on the nature of the project. For instance, IT projects are typically depreciated over 5 years whereas a building project will likely have a much longer term.
- 3.8 Some minor drafting was changed to start recovery within the year of spend, so as to avoid NPV loss. A specific provision has also been included to uplift depreciation by inflation. The relevant formula can be found at paragraph 2.5(b) of Annex 1.

#### Retrospective Costs

- 3.9 Paragraph 2.6(b)(ii)(D) in the revised drafting makes provision for costs that have already been incurred. This should provide SONI some assurance that these costs can be recovered subject to UR approval.
- 3.10 This assurance is also repeated in paragraph 9.2(d)(ii) of the licence drafting. It should however be stated that retrospective approval is atypical in nature and reflects specific arrangements for the I-SEM and DS3 projects.
- 3.11 Otherwise the UR has retained the original drafting as proposed in the consultation paper unless specifically stated.
- 3.12 Subject to no challenge being received, the licence modifications will become effective on the 01 February 2019.

# THE NORTHERN IRELAND AUTHORITY FOR UTILITY REGULATION

## NOTICE UNDER ARTICLE 14(8) OF THE ELECTRICITY (NORTHERN IRELAND) ORDER 1992 (AS AMENDED)

### MODIFICATIONS TO THE ELECTRICITY TRANSMISSION LICENCE HELD BY SONI LIMITED

In accordance with Article 14(2) of the Electricity (Northern Ireland) Order 1992 ("the **Order**") the Northern Ireland Authority for Utility Regulation ("the **Authority**") publishes (on 10 August 2018) a notice of its intention to modify the conditions of the electricity transmission licence ("the **Licence**") held by SONI Limited ("the **Licensee**").

In accordance with Article 14(5) of the Order the Authority has considered representations duly made to it and has decided to proceed with the making of certain modifications to the conditions of SONI's electricity transmission licence in exercise of its powers under Article 14(1) of the Order.

In accordance with Article 14(8) of the Order the Authority gives notice as follows–

1. The Authority has decided to proceed with the modifications to Annex 1 of the electricity transmission licence (the "**Licence**") held by SONI (the "**Licensee**")
2. On 10 August 2018 the Authority published a notice and an accompanying consultation paper (together the "**Consultation Notice**") stating that it intended to modify the Licence, and stating the reasons for and effect of the modifications.
3. The purpose of the Consultation Notice was to bring the proposed modifications to the attention of the Licensee and other persons likely to be affected by them, and to invite representations or objections in connection thereto.
4. No formal response was submitted. The Authority has taken into account further engagement with the licensee, and made amendments to the proposed modifications where it considers appropriate.
5. The Authority has summarised the representations received, set out how it has taken account of them and (if appropriate) its response to them. Authority has described the changes made to the modifications proposed in the notice of 10 August 2018 in its paper entitled "*Decision on Proposed Licence Modifications to Codify Interim Price Control Capex Projects*" published on 30 November 2018 together with this notice (the "**Decision Paper**").
6. The effect of the decision will be to include a new term in the licence ( $Z_t$ ). This term will facilitate capex remuneration for certain projects not included in the price control.
7. The reasons why the Authority proposed to make Article 14(8) modifications were set out fully in the Consultation Notice.
8. The changes made to the proposed modifications, together with the reasons for those changes, are described in the Decision Paper. The Authority's reasons for

making the modifications are otherwise the same as those which were set out in the Consultation Notice, as supplemented by the Decision Paper.

9. The modifications are shown in the new version of 'Annex 1 Charge Restrictions' of the Licence and are set out (and shown in mark-up form) in the Schedule to this notice.
10. The modifications will take effect from 01 February 2019.
11. The Authority has, pursuant to Article 14(8) of the Order, published this notice on its website and sent a copy of this notice to the licensee. In addition, a copy of this notice has been provided to the Department for the Economy and the Consumer Council for Northern Ireland.
12. A copy of the modifications can be obtained in hard copy from Jody O'Boyle at: Utility Regulator, Queens House, 14 Queen Street, Belfast, BT1 6ED. Email [jody.oboyle@uregni.gov.uk](mailto:jody.oboyle@uregni.gov.uk)
13. Dated this 03 day of December 2018.



**Jenny Pyper**

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

CC June Ingram, Infrastructure and Regulation Group, DfE  
Robin McCormick (General Manager), SONI Limited  
John French (CEO), Consumer Council for Northern Ireland

## **Schedule 1 - SONI TSO Licence - ANNEX 1 Charge Restrictions**

### **1 Definitions**

#### **1.1 In this Annex:**

<b>Achieved DBC</b>	means, in respect of any Relevant Year, the actual Dispatch Balancing Costs incurred on an all-island basis in that Relevant Year by the Licensee and the Republic of Ireland System Operator and included in the Annual Out-turn Report.
<b>Annual Out-turn Report</b>	has the meaning given to it in paragraph 1 of Condition 39.
<b>Applicable Exchange Rate</b>	means the annual average exchange rate for the conversion of euro into sterling as published by Thomson Reuters.
<b>Average Specified Rate</b>	means one-year LIBOR (or such other bank as the Authority shall specify from time to time) current from time to time during the period in respect of which the calculation falls to be made.
<b>Demonstrably Inefficient or Wasteful Expenditure</b>	means expenditure which the Authority has (giving the reasons for its decision) determined having regard to such guidance as the Authority may from time to time issue, to be demonstrably inefficient and/or wasteful, given the information reasonably available to the Licensee at the time that the Licensee made the relevant decision about that expenditure. For the avoidance of doubt, no expenditure is demonstrably inefficient or wasteful expenditure simply by virtue of a statistical or quantitative analysis that compares aggregated measures of the Licensee's costs with the costs of other companies.
<b>Dispatch Balancing Costs</b>	means costs relating to or incurred in respect of: <ul style="list-style-type: none"> <li>(a) the constraining on or off (as the case may be) generation sets pursuant to the central dispatch and merit order systems and processes established by the Licensee in accordance with Condition 22 or for the purposes;</li> <li>(b) the management of Energy Imbalances;</li> <li>(c) any Uninstructed Imbalance;</li> <li>(d) Testing Charges;</li> </ul>

	<p>(e) Other System Charges; and</p> <p>(f) any SO Interconnector Trade.</p>
<b>Energy Imbalances</b>	means the imbalance(s) between (i) the payments made by the Single Market Operator Business to generators for electricity sold from generation sets scheduled to operate in accordance with the Licensee's instructions pursuant to the processes and procedures for central dispatch and merit order, and (ii) the payments received by the Single Market Operator Business from electricity suppliers in respect of the electricity purchased by such electricity suppliers.
<b>Ex-Ante DBC Target</b>	means, in respect of any Relevant Year, the Dispatch Balancing Costs approved by the Authority and the Commission for Energy Regulation for the purpose of their inclusion as a component in the Imperfections Charge proposed to be levied on suppliers by the Single Market Operator Business for that Relevant Year.
<b>Ex-Post DBC Target</b>	means, in respect of any Relevant Year, either the Ex-Ante DBC Target adjusted in accordance with an Ex-Post Adjustment provided that where no adjustment is to be made it shall be the Ex-Ante DBC Target for that Relevant Year.
<b>Ex-Post Adjustment</b>	means the adjustment (if any) to be made to the Ex-Ante DBC Target applicable in respect of any Relevant Year, as determined by the Authority and the Commission for Energy Regulation in accordance with, and taking account of the factors set out in, the SEM Decision Paper.
<b>Imperfections Charge</b>	has the meaning given to it in the Single Electricity Market Trading and Settlement Code.
<b>Legal Requirement</b>	<p>means, in relation to the Licensee, any of the following:</p> <p>(a) any enactment to the extent that it applies to the Licensee;</p> <p>(b) any regulation made by the Council or the Commission of the European Communities to the extent that it applies to the Licensee and impacts on the Transmission System Operator Business or a decision taken by that Council or Commission which is binding on the Licensee and impacts on the Transmission System Operator Business to the extent that it is so</p>



	<p>binding;</p> <p>(c) any interpretation of law, or finding, contained in any judgment given by a court or tribunal of competent jurisdiction in respect of which the period for making an appeal has expired;</p> <p>(d) any direction of a competent authority other than, insofar as it applies to the Licensee, the Authority (except in the exercise of its powers under paragraph 4 of Condition 16) or the Department.</p>
<b>Maximum Regulated SSS/TUoS Revenue</b>	means the revenue calculated in accordance with the formula in paragraph 2 of this Annex.
<b>Moyle Interconnector Collection Agency Agreement</b>	has the meaning given to that expression in Condition 37.
<b>Other System Charges</b>	has the meaning given to it in the Single Electricity Market Trading and Settlement Code.
<b>Permitted One-Year Percentage</b>	means 4 per cent of the Maximum Regulated SSS/TUoS Revenue.
<b>Permitted Three-Year Percentage</b>	means 5 per cent of the Maximum Regulated SSS/TUoS Revenue in the second of the Relevant Years.
<b>Price Control Decision Paper</b>	means each of: (i) the decision paper issued by the Authority on 19/02/2016 and entitled "Final Determination to the Price Control 2015-2020 for the Electricity System Operator for Northern Ireland (SONI)" (ii) the decision paper issued by the Authority on 14/03/2017 and entitled "Decision on the Licence Modifications for the Price Control 2015-2020 of the Electricity System Operator for Northern Ireland (SONI)"; (iii) the decision paper issued by the Authority on 19 October 2017 and entitled "Conclusions on Pensions Allowances and Decision on Change of Law provisions", and (iv) the decision paper issued by the Authority on 09 March 2018 and entitled "Licence Modifications Decision implementing the SONI CMA Order" as they may be supplemented or amended by any further decision paper on the same subject.
<b>Quantity Entering the Total System</b>	means the aggregate quantity of units metered on entry to the total system in Relevant Year t (minus any units consumed by generation sets and imported from

	the total system).
<b>Regulated SSS/TUoS Revenue</b>	means the revenue (measured on an accruals basis) derived from SSS/TUoS Charges (including any revenue received from any Separate Business) after deduction of value added tax (if any) and any other taxes based directly on the amounts so derived.
<b>Relevant Change of Law</b>	means the application to the Licensee of any Legal Requirement which did not previously so apply or the change of any Legal Requirement relating to the Licensee (including any such Legal Requirement ceasing to apply, being withdrawn or not being renewed).
<b>Relevant Year</b>	means a financial year commencing on 1 October and concluding 30 September.
<b>Relevant Year t</b>	means that Relevant Year for the purposes of which any calculation falls to be made; " <b>Relevant Year t - 1</b> " means the Relevant Year preceding Relevant Year t and similar expressions shall be construed accordingly.
<b>Requirements and Guidance on Excluded SSS/TUoS Costs</b>	<p>means a document issued by the Authority following consultation with the Licensee, as it may be subsequently supplemented or amended following further such consultation, and setting out the requirements and guidance applicable to:</p> <ul style="list-style-type: none"> <li>(a) the process by which claims may be made by the Licensee to the Authority for approval under paragraph 8.1 of this Annex, including claims for: <ul style="list-style-type: none"> <li>(i) an approval in respect of costs that are yet to be incurred;</li> <li>(ii) an approval in respect of costs that were incurred in any Relevant Year t falling prior to that in which the claim is made;</li> <li>(iii) the variation of any previous approval;</li> </ul> </li> <li>(b) the information and evidence to be provided by the Licensee on the submission of such claims;</li> <li>(c) the process by which such claims will be</li> </ul>

	<p>reviewed and, if appropriate, approved by the Authority;</p> <p><del>(e)</del>(d) <u>the process by which such claims may, instead of being approved as excluded SSS/TUoS costs, be determined by the Authority to be treated as Special Project Costs under paragraph 9.1 of this Annex subject to an approved maximum amount under paragraph 9.2 of this Annex; and</u></p> <p><del>(d)</del>(e) <u>any information or evidence that must be provided by the Licensee to the Authority following any <del>such determination or</del> approval of the type referred to in paragraphs (c) and (d).</u></p>
<b>Requirements and Guidance on Transmission Network Pre-construction Projects</b>	<p>means a document issued by the Authority following consultation with the Licensee, as it may be subsequently supplemented or amended following further such consultation, and setting out the requirements and guidance applicable to:</p> <ul style="list-style-type: none"> <li>(a) the process by which claims may be made by the Licensee to the Authority for approval under paragraphs <u>109.1</u> and <u>109.2</u> of this Annex, including- claims for: <ul style="list-style-type: none"> <li>(i) an approval in respect of costs that are yet to be incurred;</li> <li>(ii) an approval in respect of costs that were incurred in any Relevant Year t falling prior to that in which the claim is made;</li> <li>(iii) the variation of any previous approval;</li> </ul> </li> <li>(b) the information and evidence to be provided by the Licensee on the submission of such claims;</li> <li>(c) the process by which such claims will be reviewed and, if appropriate, approved by the Authority; and</li> <li>(d) any information or evidence that must be provided by the Licensee to the Authority following any such approval of the type referred to in paragraphs (c) and (d).</li> </ul>
<b>SEM Decision Paper</b>	<p>means the decision paper issued jointly by the Authority and the Commission for Energy Regulation dated 5 June 2012 and entitled "Incentivisation of All-</p>

	Island Dispatch Balancing Costs".
<b>SO Interconnector Trade</b>	has the meaning given to it in the Single Electricity Market Trading and Settlement Code.
<b><u>Special Project Costs</u></b>	<p><u>means the costs incurred by the Licensee in relation to any project in respect of which:</u></p> <p>(a) <u>the Licensee has made a claim in accordance with paragraph 8.1 of this Annex;</u></p> <p>(b) <u>the Authority has, pursuant to paragraph 9.1 of this Annex, determined that the costs of the project are to be treated as Special Project Costs; and</u></p> <p><u>the Authority has, pursuant to paragraph 9.2 of this Annex, approved a maximum amount of costs that may be recovered by the Licensee in respect of the project.</u></p>
<b>Specified Proportions</b>	means the proportions as defined and set out in the Market Operator Agreement entered into under and for the purposes of Condition 14 of the licence granted under Article 10(1)(d) of the Order.
<b>SSS/TUoS Charge(s)</b>	means the charges for System Support Services and for use of the All-Island Transmission Networks as provided for under Condition 30.
<b>SSS/TUoS Charge Restriction Condition</b>	means this Annex as from time to time modified or replaced in accordance with its own terms or pursuant to any enactment.
<b>Testing Charges</b>	has the meaning given to it in the Single Electricity Market Trading and Settlement Code.
<b>Transmission Network Pre-construction Project</b>	<p>means a transmission network project:</p> <p>(a) identified, by the Licensee or the Transmission Owner, as a project which is necessary for the purposes of developing the transmission system;</p> <p>(b) in respect of which the Licensee is, as the Transmission System Operator, responsible for carrying out activities required to progress the project from the conceptual design stage to, but not including, the construction stage; and</p> <p>(c) which has been approved by the Authority,</p>

	following a claim by the Licensee for such approval in accordance with paragraph <a href="#">109.1</a> of this Annex.
<b>Transmission Network Pre-construction Project Costs</b>	means costs incurred by the Licensee in relation to a Transmission Network Pre-construction Project, where the Authority has approved the incurring of costs in relation to that project following a claim by the Licensee for such approval in accordance with paragraph <a href="#">109.2</a> of this Annex.
<b>Uncollected SSS/TUoS Revenue</b>	means any amount owed to the Licensee in respect of Regulated SSS/TUoS Revenue, which amount remains unpaid six months after the date it first fell due for payment or which amount the Licensee deems (in accordance with the payment security policy) to be unrecoverable before the expiry of that six month period; plus the reasonable recovery costs incurred by the Licensee in respect of such amount and the reasonable interest attributable to such amount (calculated, in both cases, in accordance with the payment security policy).
<b>Uninstructed Imbalance</b>	has the meaning given to it in the Single Electricity Market Trading and Settlement Code.
<b>Unit</b>	means a kilowatt hour.

- 1.2 Where any table or calculation refers to a numbered Relevant Year t (or similarly Relevant Year y) the applicable Relevant Year is as follows:

Relevant Year t / y	Relevant Year
-1	May 2014 – September 2014
0	October 2014 - September 2015
1	October 2015 - September 2016
2	October 2016 - September 2017
3	October 2017- September 2018
4	October 2018 - September 2019
5	October 2019 - September 2020

## 2 Restriction of SSS/TUoS Charges

- 2.1 The Licensee shall, in setting the SSS/TUoS Charges, use its best endeavours to ensure that in each Relevant Year the Regulated SSS/TUoS Revenue shall not exceed the Maximum Regulated SSS/TUoS Revenue which shall be the aggregate of:

- (a) the maximum core SSS/TUoS revenue in Relevant Year t ( $M_{TSOt}$ ), calculated in accordance with paragraph 2.2 of this Annex;

Plus

- (b) the  $CAIR_t$  amount,

where:

$CAIR_t$  has, in respect of each Relevant Year t, the same meaning as is given to that expression in the Moyle Interconnector Collection Agency Agreement.

- 2.2 The maximum core SSS/TUoS revenue, from Relevant Year t=1 onwards, shall be calculated as follows:

$$M_{TSOt} = A_{TSOt} + B_{TSOt} - BI_t + D_{TSOt} + K_{TSOt} + INCENT_t + N_{TSOt} + PCR_t + AB\_PC_t + Z_t$$

where:

- (a)  $A_{TSOt}$  means:
- (i) the costs of System Support Services in Relevant Year t (including amounts payable by the Licensee to any person for the provision or use of any System Support Services provided over any interconnector in Relevant Year t);

plus

- (ii) amounts payable to the Transmission Owner Business for the provision of transmission services in Relevant Year t;

plus

- (iii) amounts levied in Relevant Year t on the Transmission System Operator Business by the Market Operation Activity in accordance with Annex 1 of the Northern Ireland Market Operator Licence to the extent not recovered under any other provision of this Licence or under the Northern Ireland Market Operator Licence.

- (b)  $B_{TSO_t}$  means the allowed SSS/TUoS revenue in Relevant Year t, which for each Relevant Year t in the period 1 October 2015 to 30 September 2020 is the aggregate of:

- (i) the amount allowed for each cost category listed in Table A in paragraph 2.2(b)(vi); and
- (ii) the rate of return allowance set out in Table B in paragraph 2.2(b)(vii),

which in each case:

- (iii) is indexed by  $RPI_t$  in respect of each Relevant Year t with respect to RPI at April 2014 (255.7),

where:

- (iv) the rate of return allowance is calculated in accordance with paragraph 2.3 of this Annex;
- (v)  $RPI_t$  means the Retail Price Index (1987 = 100) published or determined with respect to April in Relevant Year t (i.e. RPI in the Relevant Year t = 2 means the value of RPI in April falling within the Relevant Year t=2);
- (vi) Table A is as follows:

Relevant Year t	1	2	3	4	5
	£m	£m	£m	£m	£m
Payroll	7.659	7.580	7.482	7.391	7.363
IT & Communications	1.783	1.850	1.924	1.948	1.997
Other OPEX	1.303	1.303	1.303	1.303	1.303
Pension Deficit	0.262	0.071	0.071	0.071	0.071

Depreciation on Non-Building Assets	3.999	1.763	1.364	1.313	1.273
Depreciation on Building Assets	0.116	0.116	0.116	0.116	0.116
Depreciation on CAPEX Overspend for 2010-2015	n/a	n/a	n/a	0.850	0.850
Real Price Effects & Productivity	0.146	0.222	0.299	0.375	0.454

(vii) Table B is as follows:

Relevant Year t	1	2	3	4	5
	£m	£m	£m	£m	£m
rate of return allowance	0.444	0.347	0.314	0.374	0.332

- (c)  $Bl_t$  means the sum which is designed to share equally, between the Licensee and customers, the value of any outperformance or underperformance of the Licensee against the allowed SSS/TUoS revenue and which shall be calculated as follows:

$$Bl_t = (B_{TSO_t}) - (C_{TSO_t}) * 50\%$$

where:

$C_{TSO_t}$  means:

- (i) the aggregate of the actual costs incurred by the Licensee in Relevant Year t in respect of each costs category listed in Table A in paragraph 2.2(b)(vi) of this Annex, but subject to the following-
- (A) that part (if any) of such costs that the Authority determines at any time to be Demonstrably Inefficient or Wasteful Expenditure, shall be deducted;
  - (B) any costs incurred by the Licensee in Relevant Year t in connection with preparing for, bringing, or participating in its appeal to the Competition and Markets Authority by virtue of a notice of appeal dated 11 April 2017 and made under Article 14B of the Electricity Order (including any costs of the Competition and Markets Authority required to be borne by the Licensee in accordance with an order made under paragraph 12 of Schedule 5B to the Electricity Order) shall not be treated as costs incurred in respect of any costs category listed in Table A in paragraph 2.2(b)(vi) of this Annex.

plus



- (ii) the rate of return allowance for Relevant Year t as set out in Table B in paragraph 2.2(b)(vii) of this Annex;
- (d)  $D_{TSOt}$  means:
  - (i) the aggregate of the total amount, allowed by the Authority in accordance with any approvals given pursuant to paragraph 8.3(e) of this Annex, for excluded SSS/TUoS costs in Relevant Year t;
  - plus
  - (ii) the total amount, allowed by the Authority in accordance with paragraph 6.1 of this Annex, for Relevant Year t for change of law;
- (e)  $K_{TSOt}$  means the correction factor (whether a positive or negative number) to be applied from year t=2 onwards to the maximum core SSS/TUoS revenue in Relevant Year t, so that in year t=1,  $K_{TSOt}$  shall be equal to zero, and in year t=2 and all subsequent Relevant Years  $K_{TSOt}$  shall be derived using the following formula:

$$K_{TSOt} = (F_{TSOt-2} - R_{TSOt-2}) (1 + I_t)$$

where:

- (i)  $F_{TSOt-2}$  means:
  - (A) the  $M_{TSOt}$  for Relevant Year t-2;
  - (subject, in Relevant Year t = 3 and subsequent Relevant Years only,  
to the deductions specified in (B) and (C) below)
  - minus
  - (B)  $(D_{TSOt-2} - AD_{TSOt-2})$ ;
  - minus
  - (C) that part (if any) of  $AD_{TSOt-2}$  that the Authority determines to be Demonstrably Inefficient or Wasteful Expenditure,

where:

$AD_{TSOt-2}$  means:

- 1) where actual costs (excluding any such costs that are determined by the Authority at any time to be Demonstrably Inefficient or Wasteful Expenditure) incurred by the Licensee in relation to excluded SSS/TUoS costs and change of law in Relevant Year t-2 are less than the costs allowed for  $D_{TSOt}$  in Relevant Year t-2, the total of such actual costs;
- 2) where actual costs (excluding any such costs that are determined by the Authority at any time to be Demonstrably Inefficient or Wasteful Expenditure) incurred by the Licensee in relation to excluded

SSS/TUoS costs and change of law in Relevant Year t-2 are greater than the costs allowed for  $D_{TSO_t}$  in Relevant Year t-2, the total of the costs allowed for  $D_{TSO_t}$  in Relevant Year t-2,

(ii)  $R_{TSO_{t-2}}$  means:

(A) the Regulated SSS/TUoS Revenue in Relevant Year t-2;

minus

(B) the  $CAIR_t$  amount in Relevant Year t-2;

(iii)  $I_t$  means:

(A) where the amount derived from the calculations undertaken pursuant to paragraphs 2.2(e)(i) and (ii) is a positive figure, the Average Specified Rate for Relevant Year t-2 plus 2% of that rate (as expressed in decimal figures); and

(B) where the amount derived from the calculations undertaken pursuant to paragraphs 2.2(e)(i) and (ii) is a minus figure, the Average Specified Rate for Relevant Year t-2 plus 1% of that rate (as expressed in decimal figures).

and for the purpose of calculating the value of  $K_{TSO_t}$  in Relevant Year t= 2, any reference in this paragraph to a term having a value in Relevant Year t-2 shall be treated as a reference to the value that was attributable to the corresponding term in this Annex under the provisions of this Annex as they were in force on the last day of that Relevant Year t-2.

(f)  $INCENT_t$  means:

(i) where the Achieved DBC for Relevant Year t-2 is below the Ex-Post DBC Target for that year, the amount (converted into pounds sterling at the Applicable Exchange Rate for Relevant Year t-2) that is equal to 25% of the DBC Success Amount (represented as a positive figure) for that Relevant Year;

(ii) where the Achieved DBC for Relevant Year t-2 is above the Ex-Post DBC Target for that year, the amount (converted into pounds sterling at the Applicable Exchange Rate for Relevant Year t-2) that is equal to 25% of the DBC Failure Amount (represented as a negative figure) for that Relevant Year,

where:

(iii) DBC Success Amount means the amount that is equal to 10% of every whole 2.5% by which the Achieved DBC is below the Ex-Post DBC Target provided that:

(A) where the Achieved DBC is less than 10% below the Ex-Post DBC Target, the amount shall be calculated as zero;

- (B) where the Achieved DBC is more than 20% below the Ex-Post DBC Target, the amount shall be calculated on the basis that Achieved DBC is 20% below the Ex-Post DBC Target.
- (iv) DBC Failure Amount means the amount that is equal to 5% of every whole 2.5% by which the Achieved DBC is above the Ex-Post DBC Target, provided that:
- (A) where the Achieved DBC is less than 10% above the Ex-Post DBC Target, the amount shall be calculated as zero;
- (B) where the Achieved DBC is more than 20% above the Ex-Post DBC Target, the amount shall be calculated on the basis that the Achieved DBC is 20% above the Ex-Post DBC Target.
- (g)  $N_{TSO_t}$  is calculated as follows:

$$N_{TSO_t} = PCGR_t + ARA_t + CARV_t$$

where:

- (i)  $PCGR_t$  is an allowance in respect of the value of the parent company undertaking given by EirGrid plc in accordance with Condition 3A, and shall be calculated as follows:

$$PCGR_t = PCG_t \times 0.0175$$

where:

$PCG_t$  is an amount which is equal to the financial value in Relevant Year  $t$  of the guarantee which forms part of the undertaking given by EirGrid for the purposes of meeting the Licensee's obligation under Condition 3A (and if no such undertaking is given, or none is required, in accordance with Condition 3A in that Relevant Year  $t$ ,  $PCG_t$  shall be equal to zero);

- (ii)  $ARA_t$  is an allowance in respect of Transmission Network Pre-construction Project Costs and excluded SSS/TUoS costs in Relevant Year  $t$ , and shall be calculated as follows:

$$ARA_t = £220,000 \times \frac{RPI_t}{RPI_{2014}}$$

- (iii)  $CARV_t$  is an additional allowance in respect of certain revenues collected by the Licensee, and shall be calculated as follows:

$$CARV_t = (TUoS_t + AS_t + IMP_t) \times 0.005$$

where:

- (A)  $TUoS_t$  means the amounts payable to the Transmission Owner Business for the provision of transmission services in Relevant Year  $t$ ;
  - (B)  $AS_t$  means the costs of System Support Services in Relevant Year  $t$  (including in respect of amounts payable by the Licensee to any person for the provision or use of any System Support Services provided over any interconnector in Relevant Year  $t$ ); and
  - (C)  $IMP_t$  means the revenues collected by the Licensee in Relevant Year  $t$  in respect of the amount of the Imperfections Charge allocated to the Licensee in accordance with the Specified Proportions.
- (h)  $PCR_t$  means the rate of return allowance for Transmission Network Pre-construction Projects and is calculated in accordance with paragraph 2.4 of this Annex.
- (i)  $AB_{PC_t}$  means the inflation-adjusted value of any Transmission Network Pre-construction Projects:
- (A) which the Licensee has determined in Relevant Year  $t$  will not proceed to construction; or
  - (B) which the Authority is satisfied (having first consulted with the Licensee) will not proceed to construction, and in respect of which the Authority has given written notice to the Licensee in Relevant Year  $t$  that it has reached that conclusion,

and in either case is calculated in accordance with paragraph 2.4 of this Annex.

- (j)  $Z_t$  is an amount relating to approved Special Project Costs and is calculated as follows:

$$Z_t = DEP_t + RET_t$$

Where:

- (i)  $DEP_t$  means the depreciation amount for Special Project Costs as calculated in accordance with paragraph 2.5 of this Annex;
- (ii)  $RET_t$  means the rate of return allowance for Special Project Costs as calculated in accordance with paragraph 2.6 of this Annex.

#### Rate of Return

- 2.3 The rate of return allowance set out in Table B, in paragraph 2.2(b)(vii) of this Annex, for each Relevant Year  $t$  is calculated as follows:

$$RAB_t \times WACC_t$$

where:

- (a)  $RAB_t$  means the average Regulated Asset Base amount for each Relevant Year  $t$  set out in the table below:

Relevant Year $t$	1	2	3	4	5
	£m	£m	£m	£m	£m
Average Non-Building RAB	5.135	3.611	3.217	3.081	3.332
Average Building RAB	2.385	2.268	2.152	2.036	1.919
Average CAPEX Overspend 2010-2015 RAB	n/a	n/a	n/a	1.275	0.425
<b>Average RAB Total</b>	<b>7.520</b>	<b>5.879</b>	<b>5.369</b>	<b>6.392</b>	<b>5.676</b>

- (b)  $WACC_t$  means:

- (i) the Weighted Average Cost of Capital for Relevant Year  $t$  set out in the table below:

Relevant Year $t$	1	2	3	4	5
WACC	5.9%	5.9%	5.85%	5.85%	5.85%

- 2.4 The rate of return allowance for Transmission Network Pre-construction Projects is calculated as follows:

$$PCR_t = (RAB\_PC_t \times WACC_t)$$

Where:

- (a)  $RAB\_PC_t$  means the value of the regulated asset base relating to Transmission Network Pre-construction Project Costs in Relevant Year  $t$ , and is calculated in accordance with the following formula:

$$RAB\_PC_t = (ORAB\_PC_t + CRAB\_PC_t) \times 0.5$$

where:

- (i)  $ORAB\_PC_t$  means the opening value of the regulated asset base relating to Transmission Network Pre-construction Project Costs in Relevant Year  $t$ , and is calculated as follows:
- (A) in Relevant Year  $t = -1$  (minus one),  $ORAB\_PC_t$  shall be zero;
- (B) in each subsequent Relevant Year  $t$ ,  $ORAB\_PC_t$  shall be calculated as follows:

$$ORAB\_PC_t = CRAB\_PC_{t-1} \times \frac{RPI_t}{RPI_{t-1}}$$

- (ii) CRAB\_PC<sub>t</sub> means the closing value of the regulated asset base relating to Transmission Network Pre-construction Project Costs in Relevant Year t, calculated in accordance with the following formula:

$$CRAB\_PC_t = ORAB\_PC_t + AD\_PC_t - AB\_PC_t - TN\_PC_t$$

where:

- (A) ORAB\_PC<sub>t</sub> has the meaning given in sub-paragraph (i) above;
- (B) AD\_PC<sub>t</sub> means the aggregate amount of Transmission Network Pre-construction Project Costs incurred by the Licensee in respect of all Transmission Network Pre-construction Projects in Relevant Year t (excluding any such costs that are determined by the Authority at any time to be Demonstrably Inefficient ~~and-or~~ Wasteful Expenditure), except that, if the sum of the costs incurred in relation to any such project in the period of time from 1 May 2014 up to and including Relevant Year t (excluding any such costs determined by the Authority at any time to be Demonstrably Inefficient ~~and-or~~ Wasteful Expenditure) exceeds the total costs approved by the Authority in respect of that project, then the amount to be taken into account in respect of that project in Relevant Year t shall be the maximum of:
- (aa) the total costs approved by the Authority in respect of the project minus the sum of the costs incurred in relation to the project in the period preceding Relevant Year t (excluding any such costs determined by the Authority at any time to be Demonstrably Inefficient ~~and-or~~ Wasteful Expenditure); and
- (bb) zero;
- (C) AB\_PC<sub>t</sub> has the meaning given in paragraph 2.2(i) above and is calculated according to the following formula:

$$AB\_PC_t = \sum_{y=-1}^t \left( ABAD\_PC_{y,t} \times \frac{RPI_t}{RPI_y} \right)$$

where ABAD\_PC<sub>y,t</sub> means the Transmission Network Pre-construction Project Costs (or parts thereof) which:

- (aa) form part of AD\_PC<sub>y</sub>; and
- (bb) were incurred by the Licensee in respect of any Transmission Network Pre-construction Project which either the Licensee or the Authority determined in Relevant Year t will not proceed to construction;
- (D) TN\_PC<sub>t</sub> means the amount received by the Licensee in Relevant Year t from the Transmission Owner (by virtue of a payment approved

by the Authority and made in accordance with the Transmission Interface Arrangements) in respect of Transmission Network Pre-construction Project Costs added to the regulated asset base in Relevant Year t or in any previous Relevant Year y;

- (b)  $WACC_t$  has the meaning given to it in paragraph 2.3(b) of this Annex.

2.5 The depreciation amount for Special Project Costs is recoverable on a straight line basis starting with the Relevant Year in which the Licensee incurred the Special Project Costs and is calculated as follows:

$$DEP_t = \sum_{All\_X} DP\_X_t$$

where:

- (a)  $DEP_t$  means the depreciation amount for Special Project Costs in Relevant Year t; and
- (b)  $DP\_X_t$  means the depreciation amount for each Special Project X in Relevant Year t, and is calculated as follows:

$$DP\_X_t = \sum_{All\_m} \left[ \left( SP\_X_m \cdot \frac{1}{n} \right) \times \frac{RPI_t}{RPI_m} \right]$$

where:

- (c)  $SP\_X_m$  has the same meaning, in respect of Relevant Year m, as is given to  $SP\_X_t$  in sub-paragraph 2.6(b)(ii)(D) of this Annex;
- (d) Relevant Year m is any Relevant Year which falls within the range of Relevant Years t-1 to t-n;
- (e) n is a number representing the straight line depreciation period relevant to the Special Project Costs in respect of Special Project X, and shall be equal to 5 unless the Authority (in approving Special Project Costs in respect of that Special Project X in accordance with paragraph 9.2 of this Annex) has specified a different number, in which case it shall be equal to the number so specified; and
- (f) Special Project X refers to any project in respect of which the Authority has:
1. determined in accordance with paragraph 9.1 of this Annex that the costs shall be treated as Special Project Costs; and
  2. approved in accordance with paragraph 9.2 of this Annex a maximum amount of Special Project Costs that may be recovered.

2.6 The rate of return allowance for Special Project Costs is calculated as follows:

$$RET_t = RAB\_Z_t \times WACC_t$$

where:

- (a) RET<sub>t</sub> means the rate of return allowance for Special Project Costs in Relevant Year t;
- (b) RAB<sub>Z<sub>t</sub></sub> means the value of the regulated asset base relating to Special Project Costs in Relevant Year t and is calculated in accordance with the following formula:

$$RAB_{Z_t} = (ORAB_{Z_t} + CRAB_{Z_t}) \times 0.5$$

where:

- (i) ORAB<sub>Z<sub>t</sub></sub> means the opening value of the regulated asset base relating to Special Project Costs in Relevant Year t, and is calculated as follows:

(A) in Relevant Year t = -1 (minus one), ORAB<sub>Z<sub>t</sub></sub> shall be zero;

(B) in each subsequent Relevant Year t, ORAB<sub>Z<sub>t</sub></sub> shall be calculated as follows:

$$ORAB_{Z_t} = CRAB_{Z_{t-1}} \times \frac{RPI_t}{RPI_{t-1}}$$

- (ii) CRAB<sub>Z<sub>t</sub></sub> means the closing value of the regulated asset base relating to Special Project Costs in Relevant Year t, and is calculated in accordance with the following formula:

$$CRAB_{Z_t} = ORAB_{Z_t} + AP_t - DEP_t$$

where:

(A) ORAB<sub>Z<sub>t</sub></sub> has the meaning given in sub-paragraph (i) above;

(B) DEP<sub>t</sub> has the meaning given to it in paragraph 2.5 of this Annex; and

(C) AP<sub>t</sub> means the aggregate amount of Special Project Costs incurred by the Licensee in Relevant Year t in respect of all Special Projects X, and is calculated in accordance with the following formula:

$$AP_t = \sum_{All\ X} SP_{X_t}$$

where:

(D) SP<sub>X<sub>t</sub></sub> means an amount of Special Project Costs in respect of a Special Project X in Relevant Year t (but excluding any such costs that are determined by the Authority at any time to be Demonstrably Inefficient or Wasteful Expenditure), where that amount either:

1) has been incurred by the Licensee prior to Relevant Year t but is specified by the Authority, in approving Special Project Costs in respect of that Special Project X in accordance with paragraph 9.2 of this Annex, as to be included in the calculation of CRAB<sub>Z<sub>t</sub></sub> in Relevant Year t; or

2) to the extent that sub-paragraph 1) does not apply, has been



incurred by the Licensee in Relevant Year t, except that if the sum of the costs incurred by the Licensee in respect of that Special Project X in the period of time from 1 May 2014 up to and including Relevant Year t (excluding any such costs determined by the Authority at any time to be Demonstrably Inefficient or Wasteful Expenditure) exceeds the total costs approved by the Authority in respect of that project, then the amount to be taken into account in respect of that project in Relevant Year t shall be the maximum of:

a) the total costs approved by the Authority in respect of that project minus the sum of the costs incurred in relation to the project in the period preceding Relevant Year t (excluding any such costs determined by the Authority at any time to be Demonstrably Inefficient or Wasteful Expenditure); and

b) zero; and

(E) Special Project X has the meaning given to it in paragraph 2.5(f) of this Annex; and

(c) WACC<sub>t</sub> has the meaning given to it in paragraph 2.3(b) of this Annex.

## **23 Restriction of SSS/TUoS Charges: Adjustments**

3.1 If, in respect of any Relevant Year, the Regulated SSS/TUoS Revenue exceeds the Maximum Regulated SSS/TUoS Revenue by more than the Permitted One-Year Percentage, the Licensee shall furnish an explanation to the Authority and in the next following Relevant Year the Licensee shall not effect any increase in the SSS/TUoS Charges unless it has demonstrated to the reasonable satisfaction of the Authority that the Regulated SSS/TUoS Revenue would not be likely to exceed the Maximum Regulated SSS/TUoS Revenue in that next following Relevant Year.

3.2 If, in respect of any three successive Relevant Years, the sum of the amounts by which the Regulated SSS/TUoS Revenue has exceeded the Maximum Regulated SSS/TUoS Revenue is more than the Permitted Three-Year Percentage, then in the next following Relevant Year the Licensee shall, if required by the Authority, adjust the SSS/TUoS Charges such that the Regulated SSS/TUoS Revenue would not be likely, in the judgment of the Authority, to exceed the Maximum Regulated SSS/TUoS Revenue in that next following Relevant Year.

## **4 Information to be provided to the Authority**

4.1 Where any change is intended to be made in the SSS/TUoS Charges regulated under paragraph 2 of this Annex, the Licensee shall not later than the time referred to in paragraph 4.2 provide the Authority with:

(b) a written forecast of the Maximum Regulated SSS/TUoS Revenue, together with its components, in respect of the Relevant Year t in which such change is to take effect;

(c) a written estimate of the Maximum Regulated SSS/TUoS Revenue, together with its components, in respect of the Relevant Year t-1 immediately preceding the Relevant Year in which the change is to take effect, unless a statement complying with paragraphs 4.5 and 4.6 in respect of Relevant Year t-1 has been furnished by the Licensee to the Authority before the time referred to in paragraph 4.2.

The relevant time referred to in paragraph 4.1 shall be 1 month prior to the publication by the Licensee of such charges.

- 4.2 The Authority may issue directions providing that any forecast or estimate provided in accordance with paragraph 4.1 shall be accompanied by such information as regards the assumptions underlying the forecast or estimate as may be necessary to enable the Authority to be satisfied that the forecast or estimate has been properly prepared on a consistent basis and the Licensee shall comply with any such directions.
- 4.3 Not later than 6 weeks after the commencement of each Relevant Year  $t$ , the Licensee shall send to the Authority a statement as to:
- (b) whether or not the provisions of paragraph 3 of this Annex are likely to be applicable in consequence of the Regulated SSS/TUoS Revenue in the preceding Relevant Year  $t-1$  or the 3 preceding Relevant Years  $t-1$ ,  $t-2$  and  $t-3$ ; and
  - (c) its best estimate (calculated to the extent possible on the basis of the formula set out in paragraph 2.2(e) of this Annex) as to the relevant correction factor  $K_{TSOI}$  in respect of Relevant Year  $t-1$ .
- 4.4 Not later than 3 months after the end of each Relevant Year the Licensee shall send to the Authority a statement, in respect of that Relevant Year, which includes:
- (b) the Maximum Regulated SSS/TUoS Revenue for that Relevant Year  $t$ ; and
  - (c) the specified items referred to in paragraph 4.7.
- 4.5 The statement referred to in paragraph 4.5 shall be:
- (b) accompanied by a report from the Auditors that in their opinion:
    - (ii) such statement fairly presents each of the specified items referred to in paragraph 4.7 in accordance with the requirements of the SSS/TUoS Charge Restriction Condition; and
    - (iii) the amounts shown in respect of each of those specified items are in accordance with the Licensee's accounting records which have been maintained in respect of each of the relevant Separate Businesses in accordance with Condition 2; and
  - (c) certified by a director of the Licensee on behalf of the Licensee that to the best of his knowledge, information and belief having made all reasonable enquiries:
    - (ii) there is no amount included in its calculations under paragraph 2 which represents other than an amount permitted under the SSS/TUoS Charge Restriction Condition to be so included;
    - (iii) all amounts which should properly be taken into account for the purposes of the SSS/TUoS Charge Restriction Condition have been taken into account.
- 4.6 The specified items to be contained in the statement referred to in paragraph 4.5 shall be the actual amounts in respect to:
- (b) the Regulated SSS/TUoS Revenue;

- (c) the actual costs of  $A_{TSO,t}$ , (which are to be calculated to the extent possible in accordance with paragraph 2.2(a) of this Annex) and showing separately each component thereof;
- (d) the actual SSS/TUoS revenue (being  $C_{TSO,t}$ , and calculated to the extent possible in accordance with paragraph 2.2(c) of this Annex);
- (e) the actual costs incurred in respect of each category of expenditure for which the Authority determined an allowance with regard to excluded SSS/TUoS and change of law costs; and
- (f) such other items as shall be specified in directions issued by the Authority from time to time for the purposes of this Annex.

4.7 The Licensee shall, for each Relevant Year  $t$  commencing 1 October, use its best endeavours to submit to the Authority by no later than 31 March preceding the start of that Relevant Year  $t$  a statement setting out:

- (b) the amount of  $D_{TSO,t}$  costs:
  - (ii) that the Licensee considers to have previously been allowed by the Authority for that Relevant Year  $t$ ;
  - (iii) in respect of which the Licensee is, (or expects to be) requesting a determination in accordance with paragraph 6 or is (or expects to be) making a claim in accordance with paragraph 8, for that Relevant Year  $t$ ; and
- (c) its calculations in respect of the applicable  $K_{TSO,t}$ , together with its individual components, for the Relevant Year  $t-2$ ,

and requesting approval from the Authority for such costs to be factored into the Licensee's SSS/TUoS Charges for that Relevant Year  $t$  (which approval may be given with such adjustments to the Licensee's proposed  $D_{TSO,t}$  and  $K_{TSO,t}$  as reasonably determined by the Authority to be appropriate in the circumstances).

## 5 **Duration of SSS/TUoS Charge Restriction Condition**

5.1 The restrictions on SSS/TUoS Charges outlined in paragraph 2 of this Annex do not apply to tariff years from 1 October 2020 onwards. However, if no modifications to apply any different restrictions with effect from that date are made then, until any such modifications are made, the licensee shall not increase (in nominal terms) any of the tariffs or charges contributing to its Regulated SSS/TUoS Revenue above the levels applicable on 1 October 2019, except where:

- (b) the increase is approved by the Authority and the approval is given in advance of the tariff year in which the increase is to apply;
- (c) the increase is required to ensure that the Licensee is able to collect the Collection Agency Income Requirement required by it to discharge its duties under the Moyle Interconnector Collection Agency Agreement in accordance with Condition 37 of this licence;
- (d) the increase is required to enable the Licensee to collect the TUoS revenue that the Authority has determined is payable to the Transmission Owner Business for the provision of transmission services; or

- (e) the increase is required to enable the Licensee to collect System Support Services, Ancillary Services, Other System Charges and TUoS revenue in respect of generation, as determined by the SEM Committee.

#### Disapplication

- 5.2 This Annex shall apply so long as the Licence continues in force but shall cease to have effect (in whole or in part, as the case may be) if the Licensee delivers to the Authority a request (a "Disapplication Request") made in accordance with paragraph 5.4 and:
- (b) the Authority agrees in writing to the request; or
  - (c) the application of this Annex (or any part of it) is terminated by a notice (a "Disapplication Notice") given by the Licensee in accordance with paragraph 5.5 and not withdrawn.
- 5.3 Save where the Authority otherwise agrees, no disapplication following delivery of a Disapplication Request pursuant to paragraph 5.4 shall have effect earlier than the date (the "Disapplication Date") which is the later of:
- (b) the date occurring 18 months after delivery of the Disapplication Request; and
  - (c) 30 September 2020.
- 5.4 A Disapplication Request pursuant to this paragraph 5.4 shall:
- (b) be in writing addressed to the Authority;
  - (c) specify this Annex or any part of it to which the request relates (excluding in either case this paragraph 5); and
  - (d) state the date from which the Licensee wishes the Authority to agree that this Annex or the specified part of it shall cease to have effect.
- 5.5 A Disapplication Notice pursuant to this paragraph 5.5:
- (b) may be given in the circumstances described in either paragraph 5.6 or paragraph 5.7;
  - (c) may be withdrawn by the Licensee at any time prior to the Disapplication Date; and
  - (d) where it is given, shall:
    - (ii) be in writing addressed to the Authority;
    - (iii) specify this Annex, or any part of it (which shall comprise only such part as was specified in the Disapplication Request) to which the notice relates; and
    - (iv) state the date from which the Licensee wishes the notice to take effect, which shall not be earlier than the Disapplication Date.
- 5.6 The circumstances described in this paragraph are that, by the beginning of the period of six months which will end with the Disapplication Date, the Authority has not in response to the Disapplication Request published a decision under Article 14(8) of the Order to modify:

- (b) this Annex, or any part of it to which the request relates; or
- (c) this paragraph 5, so as to remove the right of the Licensee to give to the Authority a Disapplication Notice in respect of the relevant Disapplication Request.

5.7 The circumstances described in this paragraph are that:

- (b) by no later than the beginning of the period of six months which will end with the Disapplication Date, the Authority has in response to the Disapplication Request published a decision of a type referred to in paragraph 5.6;
- (c) the Licensee has exercised its right to appeal to the CMA against that decision in accordance with Article 14B of the Order;
- (d) the CMA has, in respect of the provisions to which the Disapplication Request relates:
  - (ii) quashed the decision of the Authority under Article 14E(2)(a) of the Order; and
  - (iii) neither remitted the matter back to the Authority under Article 14E(2)(b) of the Order nor substituted its own decision for that of the Authority under Article 14E(2)(c) of the Order; and
  - (iv) no more than 30 days has elapsed since the date on which the CMA quashed the decision of the Authority.

## 6 **Change of Law**

- 6.1 The Authority may, including following a request made to it by the Licensee asking it to do so, determine that there has been, or is likely to be, a Relevant Change of Law which has had, or is likely to have, a material effect on the financial position and performance of the Transmission System Operation Business.
- 6.2 Where the Authority makes a determination pursuant to paragraph 6.1, it may, for the purposes of ensuring that the financial position and performance of the Licensee is likely, so far as reasonably practicable, to be the same as if the Relevant Change of Law had not taken place, give effect to that determination by also determining, and notifying the Licensee of, an amount (whether a positive or negative figure) that is an allowed amount for change of law, for the purposes of calculating  $D_{TSO,t}$  in accordance with paragraph 2.2(d) of this Annex, for each Relevant Year  $t$  specified in the Authority's notification.
- 6.3 In determining the matters provided for in paragraphs 6.1 and 6.2, the Authority shall have regard, where relevant, to:
  - (b) its intentions in relation to the development and implementation of the "requisite arrangements", as provided for in condition 60 of the NIE Energy Supply Licence;
  - (c) the period over which the Licensee shall incur costs by reason of the Relevant Change of Law;
  - (d) the incremental costs (including financing costs) which the Licensee has been or will be required to incur as a consequence of the Relevant Change of Law; and
  - (e) any other circumstances relevant to the case.

- 6.4 Where the Licensee requests the Authority to make a determination pursuant to paragraph 6.1, the request shall:
- (b) unless the Authority otherwise consents, be made no later than the first day in the April immediately preceding the first Relevant Year in respect of which the Licensee would (if the Authority were to make a determination pursuant to paragraph 6.1) want the Authority to determine an allowed amount for change of law under paragraph 6.2; and
  - (c) be accompanied by all relevant details (including a breakdown of internal and external incremental costs incurred) of the Relevant Change of Law and such other information as the Authority may request and require to be provided by the Licensee for the purposes of its consideration of the request.

## **7 Unit Coverage**

- 7.1 The component of Maximum Regulated SSS/TUoS Revenue relating to System Support Services (or certain parts of that component) can potentially be recovered from the Quantity Entering the Total System in the authorised transmission area.
- 7.2 The final decision regarding which Units in particular the component of Maximum Regulated SSS/TUoS Revenue relating to System Support Services (or certain parts of that component) will be recovered from in Relevant Year t ("unit coverage") rests with the Authority.
- 7.3 In each Relevant Year t on the decision of the Authority regarding unit coverage of the System Support Services charge, the Licensee will then draw up for the Relevant Year t the schedule of System Support Services charges in accordance with Condition 30 in a manner which is consistent with the decision of the Authority regarding unit coverage. If the Licensee draws up for Relevant Year t the schedule of System Support Services charges in accordance with Condition 30 in a manner which is not consistent with the decision of the Authority regarding unit coverage then the Authority's approval under Condition 30 paragraph 6 for the form of this schedule will not be granted.

## **8 Excluded SSS/TUoS Costs**

- 8.1 The Licensee may, subject to paragraphs 8.2 and 8.3, make a claim to the Authority, in accordance with the Requirements and Guidance on Excluded SSS/TUoS Costs, that the following costs and revenues of the Licensee (whether a positive or negative amount) shall be treated as excluded SSS/TUoS costs in Relevant Year t:
- (b) any reasonable and efficient costs incurred (or likely to be incurred) by the Transmission System Operator Business (in Relevant Year t) in complying with the requirements imposed on the Licensee under legislation and other legal requirements through which Directive 2009/72/EC is implemented, whether before or after the coming into effect of this Annex, and to the extent not recovered under any other provision of this Licence or under the Northern Ireland Market Operator Licence or under the Transmission Owner Licence;
  - (c) any reasonable and efficient costs incurred (or likely to be incurred) by the Transmission System Operator Business (in Relevant Year t) in complying with the requirements imposed on the Licensee:
    - (ii) under the arrangements for the Single Electricity Market (being the project described in the Memorandum of Understanding dated 23 August 2004 and made between the Authority and the Commission for Energy Regulation); and

- (iii) under the arrangements implementing the Integrated Single Electricity Market (I-SEM) (a joint project developed jointly between the Authority and the Commission for Energy Regulation for the all island electricity market to be compliant with the EU Target Model of the European Commission to facilitate a pan-European electricity market),

in each case whether before or after the coming into effect of this Annex and to the extent not recovered under any other provision of this Licence or under the Northern Ireland Market Operator Licence or under the Transmission Owner Licence;

- (d) any reasonable and efficient costs incurred (or likely to be incurred) in Relevant Year t associated with any future divestment of the Transmission System Operator Business;
- (e) the pension costs (in Relevant Year t) of the Transmission System Operator Business to the extent not recovered under any other provision of this Licence;
- (f) amounts that become Uncollected SSS/TUoS Revenue in Relevant Year t less any amount or part of an amount treated as Uncollected SSS/TUoS Revenue in respect of a preceding Relevant Year that has been paid to the Licensee in Relevant Year t;
- (g) any reasonable and efficient costs incurred (or likely to be incurred) in Relevant Year t to finance the working capital requirements of SEMO and to the extent not recovered under any provision of this Licence or under the Northern Ireland Market Operator Licence. The financing costs are to be charged at Average Specified Rate plus 2%;
- (h) any costs incurred by the Licensee in Relevant Year t in respect of fees payable under Condition 8 of this Licence in that Relevant Year;
- (i) any reasonable and efficient costs incurred (or likely to be incurred) in Relevant Year t in relation to:
  - (ii) the Licensee's membership of the European Network of Transmission System Operators for Electricity (ENTSO-E);
  - (iii) payments made, or required to be made, by the Licensee under and in accordance with the ENTSO-E Inter TSO Compensation Agreement;
  - (iv) the Licensee participating on a mandatory basis in Regional Security Coordination Initiatives (RSCIs) as a member of ENTSO-E;
- (j) any other reasonable and efficient costs incurred (or likely to be incurred) by the Transmission System Operator Business which:
  - (ii) are not taken into account in the setting of  $A_{TSOt}$ ,  $B_{TSOt}$ ,  $N_{TSOt}$  or  $PCR_t$ ; and
  - (iii) the Authority determines, upon an application to it by the Licensee, shall be included for the purposes of this paragraph.

8.2 In making any claim pursuant to paragraph 8.1, the Licensee shall ensure that:

- (b) it takes account of, and gives regard to, the Price Control Decision Paper;

- (c) it makes such claims in accordance with the Requirements and Guidance on Excluded SSS/TUoS Costs; and
- (d) the costs or revenues in respect of which the claim is made are not included:
  - (ii) in more than one category listed in sub-paragraphs (a) to (i) of paragraph 8.1; and
  - (iii) in more than one claim made pursuant to paragraph 8.1.

8.3 Any claim made by the Licensee pursuant to paragraph 8.1 shall:

- (b) be submitted by the Licensee, using its best endeavours, by no later than the first day in April immediately preceding the Relevant Year in respect of which the Licensee wishes the claim to take effect;
- (c) differentiate between internal and external costs and revenues;
- (d) [subject to paragraphs 9.1 and 9.2 of this Annex](#), relate only to those costs not recovered (or recoverable) under any other provision of this Licence or under the Northern Ireland Market Operator Licence or under the Transmission Owner Licence;
- (e) contain or be accompanied by all relevant details of the costs claimed and such other information as the Authority shall require in order to determine whether such costs can be recovered by the Licensee; and
- (f) [subject to paragraphs 9.1 and 9.2 of this Annex](#), require to be approved by the Authority as allowed costs for Relevant Year t and shall not become effective as such allowed costs until approved by the Authority.

8.4 Any claim for costs made by the Licensee pursuant to paragraph 8.1 received by the Authority after this paragraph 8.4 takes effect, shall be subject to the application of a de minimis threshold, by the Authority, of £40,000 (in nominal terms) in each Relevant Year for each category of costs referred to in paragraphs 8.1(a) to (i) or such other categories of costs as determined by the Authority.

## **[9 Special Project Costs](#)**

[9.1 Where a claim has been made by Licensee pursuant to paragraph 8.1 \(and in accordance with paragraphs 8.2 and 8.3\) of this Annex, the Authority may, whether at the request of the Licensee or otherwise, determine that the claim relates to a project in respect of which the costs shall, instead of being treated as excluded SSS/TUoS costs, be treated as Special Project Costs.](#)

[9.2 Where the Authority determines that a claim made by the Licensee pursuant to paragraph 8.1 of this Annex relates to a project in respect of which the costs shall be treated as Special Project Costs:](#)

- [\(a\) the maximum amount of costs that may be recovered by the Licensee in respect of the project shall require to be approved by the Authority, and costs in respect of that project shall not become Special Project Costs until such a maximum amount has been approved by the Authority;](#)



- (b) the costs incurred by the Licensee in respect of the project shall be recovered under and in accordance with paragraph 2.2(j) of this Annex;
- (c) the costs incurred by the Licensee in respect of the project shall not be recovered as excluded SSS/TUoS costs under and in accordance with paragraph 2.2(d) of this Annex; and
- (d) the Authority may at the same time:
  - (ii) specify a number (n) which represents a straight line depreciation period for the purposes of paragraph 2.5(e) of this Annex; and
  - (iii) specify an amount of costs already incurred by the Licensee in respect of the project which are to be included in the calculation of CRAB  $Z_t$  in a Relevant Year t for the purposes of paragraph 2.6(b)(ii)(D)1) of this Annex.

## **910 Approval of Transmission Network Pre-construction Projects and Costs**

~~9.4~~10.1 The Licensee may make a claim to the Authority, in accordance with the Requirements and Guidance on Transmission Network Pre-construction Projects, for the approval of activities which:

- (b) have been or are to be carried out by the Licensee in respect of a project which is necessary for the purposes of developing the transmission system; and
- (c) were or are required to progress the project from the conceptual design stage to, but not including, the construction stage.

~~9.2~~10.2 The Licensee may make a claim to the Authority, in accordance with the Requirements and Guidance on Transmission Network Pre-construction Projects, for the approval of an amount of costs incurred, or to be incurred, by it in undertaking a Transmission Network Pre-construction Project.

## **1011 Reporting**

~~10.4~~11.1 The Licensee shall, provide to the Authority all information requested in association with this Annex, including all such information as may be specified in:

- (b) the Requirements and Guidance on Excluded SSS/TUoS Costs; and
- (c) the Requirements and Guidance on Transmission Network Pre-construction Projects,

in such format and by such time as may be reasonably directed by the Authority.

<b><u>Modifications included in this consolidated version</u></b>	<b><u>Effective date</u></b>
Modification to paragraph 5 of Condition 25 and addition of Condition 40	30 November 2017
CIL Modifications to Annex 1	14 December 2017
Modifications to Annex 1 implementing the CMA Order	04 May 2018
Modifications to Annex 1 to effect the CMA Cost order, Condition 8 and an amendment to the K Term.	01 Aug 2018
Modifications to Annex 1 to effect the Z Term.	01 February 2019