

SONI: Article 14 (2) Notice and Licence Modification Consultation

Consultation on Proposed Licence Modifications to Codify Interim Price Control Capex Projects.

10 Aug 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 and to promote the short and long-term interests of consumers.

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

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

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

Our Mission

Value and sustainability in energy and water.

Our Vision

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

Our Values

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

Be a united team.

Be collaborative and co-operative.

Be professional.

Listen and explain.

Make a difference.

Act with integrity.

Abstract

This paper sets out the Utility Regulator's (UR's) proposed changes to the Transmission System Operator (TSO) licence held by SONI. The modifications are being recommended in order to provide certainty of revenues to be recovered by the TSO for capex projects. 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 energy 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.

Executive Summary

On 12 April 2017, SONI applied to the Competition and Markets Authority (CMA) for permission to appeal certain aspects of the 2015-20 UR price control. The CMA granted permission for the appeal on 11 May 2017.

On 10 November 2017 the CMA made its final determination¹ and order.² Within the appeal SONI cited the lack of a suitable mechanism for recovering significant project costs as an error. They further stated that the lack of codification and certainty affected SONI's ability to raise finance for large projects.³

Whilst the existing approach was found not to be wrong, the UR considers that further codification will help provide certainty of revenue recovery. This consultation sets out the licence modifications the UR proposes to make to the TSO Licence.

The paper sets out an explicit term (Z_i) 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.

We would welcome comments from stakeholders on these proposed modifications to the TSO Licence.

¹ <https://assets.publishing.service.gov.uk/media/5a09a73ce5274a0ee5a1f189/soni-niaur-final-determination.pdf>

² <https://assets.publishing.service.gov.uk/media/5a05b304ed915d0ade60dacb/soni-niaur-cma-order.pdf>

³ See CMA Final Determination, para 6.120, p98.

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Policy Background

- 1.1 SONI is licensed as the Transmission System Operator (TSO) for Northern Ireland and is subject to a regulated price control. The UR's final determination⁴ on the SONI price control was published on 24 February 2016. The Article 14(8) decision to make the associated licence modifications⁵ was published on 14 March 2017.
- 1.2 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.
- 1.3 Error 4 focused on the D_t mechanism (a term in the licence) and its suitability for cost recovery of interim price control projects. SONI stated that the lack of a suitable mechanism for recovering significant project costs was an error.
- 1.4 SONI argued that the treatment of uncertain costs should be more tailored depending on circumstances. In particular, they stated that:
 - The D_t mechanism is not suitable for significant projects.
 - D_t mechanism does not provide certainty for recovery of efficiently incurred costs.
 - Asymmetric risk under the D_t mechanism makes SONI unable to raise funding for large projects.⁶
- 1.5 Whilst the CMA found some merit in SONI's points, they did not find the UR approach to be wrong. In their final determination they state,

*"We do not consider that Significant Projects are fundamentally different to the other categories of D_t claim."*⁷

*"we do not consider that the UR was wrong to maintain a degree of flexibility in its approach to D_t claims."*⁸
- 1.6 The 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;

⁴ <https://www.uregni.gov.uk/publications/decision-2015-2020-price-control-soni>

⁵ <https://www.uregni.gov.uk/news-centre/soni-price-control-2015-2020-licence-modifications-published>

⁶ See [CMA Final Determination](#), para 6.120, p98.

⁷ See [CMA Final Determination](#), para 6.134, p101.

⁸ See [CMA Final Determination](#), para 6.135, p101.

“efficient costs incurred (or likely to be incurred) by the Transmission System Operator Business (in Relevant Year t)”.⁹

- 1.7 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 would appear to be a ‘gap’ in the codification for capex projects.
- 1.8 Given the forthcoming completion of some material capital projects (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’.
- 1.9 This involves codification of a new term (Z_t) in order to provide the TSO certainty of revenues based on depreciation and WACC return.

⁹ SONI Licence, Annex 1 Charge Restrictions, para 8.1(a), p186.

Proposed Licence Modifications

- 2.1 Proposed changes are somewhat similar to the CMA remedy for the codification of TNPPs (Transmission Network Pre-Construction Projects). This involves the following (as detailed in Annex 1):
- a) Definition of approved *Special Projects* to which the new term applies. This is expected to include capex D_t claims approved by the UR and all-island projects that have been approved by the SEM Committee (such as I-SEM and DS3).
 - b) Inclusion of a new term (Z_t) in the maximum revenue formula.
 - c) Definition of the new term i.e. revenue (Z_t) = depreciation plus return.
 - d) Creation of a 'side-RAB' (Regulatory Asset Base) for approved projects which earn a return and is subject to depreciation reductions over a five year period, unless specified otherwise within the Special Project approval.
 - e) Confirmation that only actual costs up to an approved cap will be ultimately remunerated. Spend above the cap without approval will not earn returns unless retrospective approval is given.
- 2.2 The codification will provide certainty to the TSO and their financiers that SONI will be able to recover efficiently incurred capex costs (depreciation and return) up to the approved cap.
- 2.3 The approach is consistent with the CMA decisions. Returns on actuals up to a cap still results in asymmetric risk on the TSO. This risk is however rewarded via the (ARA_t) term created as a result of the CMA remedy process. The new term (Z_t) will not change the risk allocation as previously defined under the D_t mechanism.
- 2.4 Indeed, the basis of the asymmetric risk revenue allowed by the CMA included a percentage return on the projected spend on projects that fall under the new term i.e. DS3 and I-SEM implementation.
- 2.5 Whilst the new term provides clarity and certainty, it does not include many of the aspects which SONI argued for but were rejected by the CMA. For instance it does not provide for:
- Interim modifications of the price control¹⁰; or
 - Simple pass through of costs outside management control.¹¹

¹⁰ See CMA Final Determination, para 6.114, p97.

Reason and Effect

- 3.1 The UR would envisage that *Special Projects* captured by the new term will include the following:
- Capital D_t projects not included in the price control but approved by the UR in the interim.
 - All-island projects approved by the SEM Committee (such as I-SEM and DS3).
- 3.2 Whilst it was anticipated that I-SEM and DS3 costs was to be remunerated via the D_t process, such treatment preceded CMA decisions. With respect to recovery of the TNPP side-RAB, the CMA final determination stated that,
- a) *“SONI’s Licence does not provide any mechanism by which SONI would receive a return on this side-RAB via the SSS tariff.”¹²*
 - b) *“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.”¹³*
- 3.3 These same principles would apply, in regards to recovery of a side-RAB for the approved capital D_t projects. This is why the new term (Z_t) is being codified within the licence.
- 3.4 Governance for all-island projects may be individually tailored by the SEM Committee¹⁴. However, in normal circumstances, the approved projects are expected to follow the D_t process as set out as part of the UR remedies.
- 3.5 This process should involve:
- Step 1 – Issue identified. Consult with stakeholders as necessary.
 - Step 2 – SONI submit formal request using template.
 - Step 3 – The UR review and approve (or otherwise) a capped amount.
 - Step 4 – Decision published and reporting requirements set.
 - Step 5 – Approved amounts included in tariffs.

¹¹ See CMA Final Determination, para 6.115, p97.

¹² CMA Final Determination, para 6.57

¹³ CMA Final Determination, para 6.59, p86

¹⁴ Design and Implementation of Integrated Single Electricity Market (I-SEM) - <https://www.semcommittee.com/sites/semcommittee.com/files/media-files/SEM-15-004%20Published%20AAD%209%20Jan%202015.pdf>

- Step 6 – SONI undertake work and report actual costs.
 - Step 7 – SONI detail the K-factor in event of underspend.¹⁵
- 3.6 It would also be anticipated that such projects would mirror other D_t provisions. For instance, it would be expected that the projects should be submitted using the same template format.
- 3.7 Special Projects seeking approval will have to provide detail on the following: capital costs, project description, identification of need, outputs, options, risks costs and benefits etc.
- 3.8 The Special Projects RAB can cover a numbers of years, depending on the approval. When the licence modification becomes active the special projects opening RAB will be zero. Each subsequent Relevant Year will factor in the closing RAB from the previous period depending on approved claims.¹⁶
- 3.9 Approvals, timelines and annual reporting should also follow the D_t process. As with opex D_t submissions, all approvals will also be published. This should avoid SONI’s concern that,
- “there was also a lack of visibility for customers and other stakeholders in respect of these material funding decisions, contrary to the UR’s principal objective and the key principle of transparency in regulation.”¹⁷*
- 3.10 Ultimately the reason for the changes is to resolve the issue that the current licence drafting does not appear to cater for capital project depreciation and returns for non-price control projects.
- 3.11 Practically speaking the effect of the licence modifications will not change operation of interim projects. They will follow the established D_t processes, timelines, templates, variations and approvals.
- 3.12 The new term will however create a licensed ‘side-RAB’. This will address SONI concerns about lack of codification and certainty around the recovery of efficient costs for significant capital projects.
- 3.13 The changes will impose no new obligations on the TSO. As such, there should be no extra costs arising from the modifications.

¹⁵ See [Exhibit 2 – Dt Finalised Guidance](#), para 1.7, p4.

¹⁶ The UR would envisage this would also include DS3 control room tools that were approved under the Dt mechanism but have yet to be claimed.

¹⁷ See CMA Final Determination, para 6.113, p97-p98.

Next steps

- 4.1 This consultation seeks to gather stakeholder views on whether the licence modifications specified below are appropriate, accurate and complete. The UR proposes to make the licence changes under Article 14 of the Electricity Order.
- 4.2 The UR proposes to consult for a period of 1 month from the publication date of this document. Any responses, representations or objections to this consultation will be considered by the UR, prior to any decision. Responses to this consultation should be submitted by 5pm on 10 September 2018. Responses should be sent to:

Jody O'Boyle
Utility Regulator
Queens House
14 Queens Street
Belfast BT1 6ER
Jody.OBoyle@uregni.gov.uk

- 4.3 The UR's preference would be for responses to be submitted by e-mail. Individual respondents may ask for their responses (in whole or in part) not to be published, or that their identity should be withheld from public disclosure. Where either of these is the case, the Utility Regulator will also ask respondents to supply the redacted version of the response that can be published.
- 4.4 As a public body and non-ministerial government department, the Utility Regulator is required to comply with the Freedom of Information Act (FOIA). The effect of FOIA may be that certain recorded information contained in consultation responses is required to be put into the public domain.
- 4.5 Note it is now possible that all responses made to consultations will be discoverable under FOIA, even if respondents ask us to treat responses as confidential.
- 4.6 It is therefore important that respondents take account of this and in particular, if asking the Utility Regulator to treat responses as confidential, respondents should specify why they consider the information in question should be treated as such.
- 4.7 The Utility Regulator has also published a privacy notice for consumers and stakeholders which set out the approach to data retention in respect of consultations. This can be found at <https://www.uregni.gov.uk/privacy-notice> or, alternatively, a copy can be obtained by calling 028 9031 1575 or by email at info@uregni.gov.uk.

THE NORTHERN IRELAND AUTHORITY FOR UTILITY REGULATION

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

MODIFICATIONS PROPOSED TO SONI LIMITED ELECTRICITY TRANSMISSION LICENCE

The Northern Ireland Authority for Utility Regulation (“the **Authority**”) proposes to modify the conditions of a licence in exercise of its powers under Article 14(1) of the Electricity (Northern Ireland) Order 1992¹⁸ (the “**Order**”),

In accordance with Article 14(2) of the Order the Authority gives notice as follows:

1. The Authority proposes to make modifications to Annex 1 of the electricity transmission licence (the “**Licence**”) held by SONI Limited (the “**Licensee**”). That Annex sets out the price control regulated revenue amount for 2015 – 2020 for the Licensee.
2. The proposed modifications are set out at Schedule 1 and are highlighted in red.
3. The effect of the proposed modifications will be to provide for a separate Z_t term to facilitate depreciation and return revenue recovery for interim special projects of a capital nature.
4. The reasons why the Authority proposes to make Article 14(2) modifications are set out fully in the accompanying consultation paper.
5. Representations with respect to the proposed modifications may be made **on or before 5pm on 10 September 2018** by writing to or by emailing:

Jody O’Boyle
Utility Regulator
Queens House

¹⁸ Article 14 of the Electricity (Northern Ireland) Order 1992 was amended by regulation 4 of the Gas and Electricity Licence Modifications and Appeals Regulations (Northern Ireland) 2015 See here: <http://www.legislation.gov.uk/nisr/2015/1/regulation/4/made>

14 Queen Street
Belfast
BT1 6ED
E-mail: Jody.OBoyle@uregni.gov.uk

6. The Authority has, in accordance with Article 14(4) of the Order, sent a copy of this notice to the Licensee, the Department for Economy (DfE) and also to the General Consumer Council.
7. Dated this 10th day of August 2018.



Jenny Pyper

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

Cc
June Ingram, DfE
Robin McCormick, 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:

Achieved DBC	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.
Annual Out-turn Report	has the meaning given to it in paragraph 1 of Condition 39.
Applicable Exchange Rate	means the annual average exchange rate for the conversion of euro into sterling as published by Thomson Reuters.
Average Specified Rate	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.
Demonstrably Inefficient or Wasteful Expenditure	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.
Dispatch Balancing Costs	means costs relating to or incurred in respect of: (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;

	<ul style="list-style-type: none"> (b) the management of Energy Imbalances; (c) any Uninstructed Imbalance; (d) Testing Charges; (e) Other System Charges; and (f) any SO Interconnector Trade.
Energy Imbalances	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.
Ex-Ante DBC Target	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.
Ex-Post DBC Target	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.
Ex-Post Adjustment	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.
Imperfections Charge	has the meaning given to it in the Single Electricity Market Trading and Settlement Code.
Legal Requirement	means, in relation to the Licensee, any of the following: <ul style="list-style-type: none"> (a) any enactment to the extent that it applies to the Licensee; (b) any regulation made by the Council or the

	<p>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 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>
Maximum Regulated SSS/TUoS Revenue	means the revenue calculated in accordance with the formula in paragraph 2 of this Annex.
Moyle Interconnector Collection Agency Agreement	has the meaning given to that expression in Condition 37.
Other System Charges	has the meaning given to it in the Single Electricity Market Trading and Settlement Code.
Permitted One-Year Percentage	means 4 per cent of the Maximum Regulated SSS/TUoS Revenue.
Permitted Three-Year Percentage	means 5 per cent of the Maximum Regulated SSS/TUoS Revenue in the second of the Relevant Years.
Price Control Decision Paper	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.
Quantity Entering the Total System	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).
Regulated SSS/TUoS Revenue	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.
Relevant Change of Law	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).
Relevant Year	means a financial year commencing on 1 October and concluding 30 September.
Relevant Year t	means that Relevant Year for the purposes of which any calculation falls to be made; " Relevant Year t - 1 " means the Relevant Year preceding Relevant Year t and similar expressions shall be construed accordingly.
Requirements and Guidance on Excluded SSS/TUoS Costs	<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"> (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"> (i) an approval in respect of costs that are yet to be incurred; (ii) an approval in respect of costs that were incurred in any Relevant Year t falling prior to that in which the claim is

	<p>made;</p> <p>(iii) the variation of any previous approval;</p> <p>(b) the information and evidence to be provided by the Licensee on the submission of such claims;</p> <p>(c) the process by which such claims will be reviewed and, if appropriate, approved by the Authority;</p> <p>(e)(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;</u> and</p> <p>(e)(e) any information or evidence that must be provided by the Licensee to the Authority following any such determination or <u>approval of the type referred to in paragraphs (c) and (d).</u></p>
<p>Requirements and Guidance on Transmission Network Pre-construction Projects</p>	<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> <p>(a) the process by which claims may be made by the Licensee to the Authority for approval under paragraphs 109.1 and 109.2 of this Annex, including- claims for:</p> <p>(i) an approval in respect of costs that are yet to be incurred;</p> <p>(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;</p> <p>(iii) the variation of any previous approval;</p> <p>(b) the information and evidence to be provided by the Licensee on the submission of such claims;</p> <p>(c) the process by which such claims will be reviewed and, if appropriate, approved by</p>

	<p>the Authority; and</p> <p>(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).</p>
SEM Decision Paper	means the decision paper issued jointly by the Authority and the Commission for Energy Regulation dated 5 June 2012 and entitled "Incentivisation of All-Island Dispatch Balancing Costs".
SO Interconnector Trade	has the meaning given to it in the Single Electricity Market Trading and Settlement Code.
<u>Special Project Costs</u>	<p><u>means the costs incurred by the Licensee in relation to any project in respect of which:</u></p> <p><u>(a) the Licensee has made a claim in accordance with paragraph 8.1 of this Annex;</u></p> <p><u>(b) 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>
Specified Proportions	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.
SSS/TUoS Charge(s)	means the charges for System Support Services and for use of the All-Island Transmission Networks as provided for under Condition 30.
SSS/TUoS Charge Restriction Condition	means this Annex as from time to time modified or replaced in accordance with its own terms or pursuant to any enactment.
Testing Charges	has the meaning given to it in the Single Electricity Market Trading and Settlement Code.
Transmission Network Pre-	means a transmission network project:

construction Project	<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, following a claim by the Licensee for such approval in accordance with paragraph 109.1 of this Annex.</p>
Transmission Network Pre-construction Project Costs	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 109.2 of this Annex.
Uncollected SSS/TUoS Revenue	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).
Uninstructed Imbalance	has the meaning given to it in the Single Electricity Market Trading and Settlement Code.
Unit	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_{TSOT} 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) BI_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:

$$BI_t = (B_{TSOt}) - (C_{TSOt}) * 50\%$$

where:

C_{TSOt} 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_{TSO_t} 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_{TSO_t} 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_{TSO_t} shall be equal to zero, and in year t=2 and all subsequent Relevant Years K_{TSO_t} shall be derived using the following formula:

$$K_{TSO_t} = (F_{TSO_{t-2}} - R_{TSO_{t-2}}) (1 + I_t)$$

where:

(i) $F_{TSO_{t-2}}$ means:

(A) the M_{TSO_t} 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) $(D_{TSO_{t-2}} - AD_{TSO_{t-2}})$;

minus

(C) that part (if any) of $AD_{TSO_{t-2}}$ that the Authority determines to be Demonstrably Inefficient or Wasteful Expenditure,

where:

$AD_{TSO_{t-2}}$ 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_{TSOt} in Relevant Year t-2, the total of the costs allowed for D_{TSOt} in Relevant Year t-2,
- (ii) R_{TSOt-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_{TSOt} 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_{TSOt} is calculated as follows:

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

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:

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

- (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
Average RAB Total	7.520	5.879	5.369	6.392	5.676

- (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) $CRAB_PC_t$ 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) $ORAB_PC_t$ has the meaning given in sub-paragraph (i) above;
- (B) AD_PC_t 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_t 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 $ABAD_PC_{y,t}$ means the Transmission Network Pre-construction Project Costs (or parts thereof) which:

- (aa) form part of AD_PC_y ; 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_t 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 over five Relevant Years starting with the Relevant Year after that in which the Licensee incurred the Special Project Costs and is calculated as follows:

$$DEP_t = ORAB_{Z_t} * Rate_t$$

Where:

(a) DEP_t means the depreciation amount for Special Project costs in Relevant Year t; and

(b) $ORAB_{Z_t}$ has the meaning given to it in sub-paragraph 2.6(a)(i) of this Annex.

(c) $RATE_t$ means rate of depreciation which will be set at 20% unless specified otherwise within the Special Project approval.

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) RAB_{Z_t} 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) $ORAB_{Z_t}$ means the opening value of the regulated asset base relating to Special Project Costs in Relevant Year t, and is calculated as follows:

(A) $ORAB_{Z_t}$ shall be zero;

(B) in each subsequent Relevant Year t, $ORAB_{Z_t}$ shall be calculated as follows:

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

(ii) $CRAB_{Z_t}$ 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_{Z_t} has the meaning given in sub-paragraph (i) above;

(B) AP_t means the aggregate amount of Special Project Costs incurred by the Licensee in Relevant Year t in respect of all projects for which the Authority has approved an amount to be treated as Special Project Costs (excluding any such costs that are determined by the Authority at any time to be Demonstrably Inefficient or Wasteful Expenditure), except that if the sum of the costs incurred by the Licensee in respect of any such project in all relevant years 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:

1) 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

2) zero; and

(C) DEP_t has the meaning given to it in paragraph 2.5(a) of this Annex; and

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

3 **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:
- (a) 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;
 - (b) 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.
- 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.
- 4.3 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.
- 4.4 Not later than 6 weeks after the commencement of each Relevant Year t , the Licensee shall send to the Authority a statement as to:
- (a) 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
 - (b) 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_{TSO_t} in respect of Relevant Year $t-1$.
- 4.5 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:

- (a) the Maximum Regulated SSS/TUoS Revenue for that Relevant Year t; and
- (b) the specified items referred to in paragraph 4.7.

4.6 The statement referred to in paragraph 4.5 shall be:

- (a) accompanied by a report from the Auditors that in their opinion:
 - (i) 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
 - (ii) 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
- (b) 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:
 - (i) 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;
 - (ii) all amounts which should properly be taken into account for the purposes of the SSS/TUoS Charge Restriction Condition have been taken into account.

4.7 The specified items to be contained in the statement referred to in paragraph 4.5 shall be the actual amounts in respect to:

- (a) the Regulated SSS/TUoS Revenue;
- (b) 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;
- (c) 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);
- (d) 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
- (e) such other items as shall be specified in directions issued by the Authority from time to time for the purposes of this Annex.

4.8 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:

- (a) the amount of D_{TSO_t} costs:
 - (i) that the Licensee considers to have previously been allowed by the Authority for that Relevant Year t;

- (ii) 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
- (b) 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:

- (a) 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;
- (b) 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;
- (c) 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
- (d) 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:

- (a) the Authority agrees in writing to the request; or
- (b) 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:

- (a) the date occurring 18 months after delivery of the Disapplication Request; and

(b) 30 September 2020.

5.4 A Disapplication Request pursuant to this paragraph 5.4 shall:

- (a) be in writing addressed to the Authority;
- (b) specify this Annex or any part of it to which the request relates (excluding in either case this paragraph 5); and
- (c) 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:

- (a) may be given in the circumstances described in either paragraph 5.6 or paragraph 5.7;
- (b) may be withdrawn by the Licensee at any time prior to the Disapplication Date; and
- (c) where it is given, shall:
 - (i) be in writing addressed to the Authority;
 - (ii) 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
 - (iii) 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:

- (a) this Annex, or any part of it to which the request relates; or
- (b) 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:

- (a) 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;
- (b) the Licensee has exercised its right to appeal to the CMA against that decision in accordance with Article 14B of the Order;
- (c) the CMA has, in respect of the provisions to which the Disapplication Request relates:
 - (i) quashed the decision of the Authority under Article 14E(2)(a) of the Order; and
 - (ii) 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

- (iii) 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_{TSOt} 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:
 - (a) 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;
 - (b) the period over which the Licensee shall incur costs by reason of the Relevant Change of Law;
 - (c) 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
 - (d) 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:
 - (a) 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
 - (b) 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:

- (a) 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;
- (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:
 - (i) 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
 - (ii) 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;

- (c) 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;
- (d) 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;
- (e) 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;

- (f) 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%;
- (g) 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;
- (h) any reasonable and efficient costs incurred (or likely to be incurred) in Relevant Year t in relation to:
 - (i) the Licensee's membership of the European Network of Transmission System Operators for Electricity (ENTSO-E);
 - (ii) payments made, or required to be made, by the Licensee under and in accordance with the ENTSO-E Inter TSO Compensation Agreement;
 - (iii) the Licensee participating on a mandatory basis in Regional Security Coordination Initiatives (RSCIs) as a member of ENTSO-E;
- (i) any other reasonable and efficient costs incurred (or likely to be incurred) by the Transmission System Operator Business which:
 - (i) are not taken into account in the setting of A_{TSO_t} , B_{TSO_t} , N_{TSO_t} or PCR_t ; and
 - (ii) 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:

- (a) it takes account of, and gives regard to, the Price Control Decision Paper;
- (b) it makes such claims in accordance with the Requirements and Guidance on Excluded SSS/TUoS Costs; and
- (c) the costs or revenues in respect of which the claim is made are not included:
 - (i) in more than one category listed in sub-paragraphs (a) to (i) of paragraph 8.1; and
 - (ii) 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:

- (a) 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;
- (b) differentiate between internal and external costs and revenues;

- (c) 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;
- (d) 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
- (e) 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; and
- (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.

910 Approval of Transmission Network Pre-construction Projects and Costs

9.110.1 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:

- (a) 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
- (b) were or are required to progress the project from the conceptual design stage to, but not including, the construction stage.

9.210.2 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

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

- (a) the Requirements and Guidance on Excluded SSS/TUoS Costs; and
- (b) 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.