

ANNEX 1: Drafting of modifications to NI electricity generation licences (excluding DSU licences – these are proposed in Annex 3)

NEW Condition 17a: Balancing Market Principles Code of Practice

1. The Licensee shall ensure that, in formulating and submitting Commercial Offer Data to the Single Market Operation Business in the Balancing Market under the Single Electricity Market Trading and Settlement Code (whether by the Licensee itself or by any person acting on its behalf in relation to a generation set for which the Licensee is the licensed generator), it acts so as to secure~~ensure~~ its compliance with the Balancing Market Principles Code of Practice.
 2. The Authority shall publish and subject to paragraph 3 below, ~~following consultation with the holders of Generation Licences and such other persons as the Authority considers appropriate~~, from time to time by direction amend, a document to be known as the Balancing Market Principles Code of Practice, which:
 - (a) shall apply to such categories of Commercial Offer Data submitted into the Balancing Market as may be specified in the Code of Practice from time to time;
 - (b) shall make such provision as appears requisite to the Authority for the purpose of securing that such Commercial Offer Data ~~are cost-reflective~~reasonably reflect the short run marginal cost of operating the generating set to which they relate (and thereby facilitating, by contributing to the mitigation of market power in the Single Electricity Market, the efficient operation of the Balancing Market)
- and the Authority may elect to perform the functions conferred by this paragraph jointly with the Commission for Energy Regulation.
3. The Authority shall, without prejudice to any additional requirements specified in the Code of Practice, consult with all licensees required to comply with the Code

of Practice and such other persons as the Authority considers appropriate before making any direction to amend the Code of Practice.

34. The Authority may issue directions to the Licensee for the purposes of securing that the Licensee, in carrying out the activity to which paragraph 1 refers, complies with this Condition and with the Code of Practice, and the Licensee shall comply with such directions.

54. The Licensee shall retain records of each set of Relevant Commercial Offer Data, and all of its supporting data relevant to the calculation of the components of such Relevant Commercial Offer Data, for a period of at least four years commencing on the date on which the relevant Commercial Offer Data are submitted to the Single Market Operation Business.

65. The Licensee shall, if requested to do so by the Authority, provide the Authority with:

- (a) a reasoned explanation of its calculations in relation to any Relevant Commercial Offer Data; and
- (b) supporting evidence sufficient to establish the consistency of those Relevant Commercial Offer Data with the obligations of the Licensee under this Condition and the Code of Practice.

76. In any case in which Relevant Commercial Offer Data are submitted to the Single Market Operation Business which are not consistent with the Licensee's obligation under paragraph 1 of this Condition, the Licensee shall immediately inform the Authority and provide to the Authority a statement of its reasons for the Relevant Commercial Offer Data submitted.

87. The Licensee shall by 1 June in each year submit to the Authority a certificate, signed by at least one director on behalf of the board of directors of the Licensee, to confirm that during the period of twelve months ending on the preceding 31 March:

- (a) it has acted independently in relation to all submissions of Relevant Commercial Offer Data that have been submitted, by it or on its behalf, under the Single Electricity Market Trading and Settlement Code; and
- (b) no such submissions made by it or on its behalf have been co-ordinated with any other submissions made by or on behalf of another party to the Single Electricity Market Trading and Settlement Code.

98. The provisions of this Condition (other than those of this paragraph and paragraph 109 below which shall come into immediate effect) shall come into effect on such day, and subject to such transitional arrangements, as the Authority may by direction appoint. Different days may be so appointed for different provisions and for different purposes.

109. In this Condition:

Balancing Market has the meaning given to it in the Single Electricity Market Trading and Settlement Code, Part B;

Balancing Market Principles Code of Practice or Code of Practice means the document of that title published by the Authority in accordance with paragraph 2, as it may be amended from time to time in accordance with the provisions of that paragraph;

Commercial Offer Data has the meaning given to it in the Single Electricity Market Trading and Settlement Code as it may be amended from time to time;

Relevant Commercial Offer Data means Commercial Offer Data falling within the category specified in the Code of Practice; and

Single Market Operation Business

has the meaning given to it in Northern Ireland Market Operator Licence.

NEW Condition 19: Capacity Market Code

1. The Licensee shall, in respect of any generation set which is owned or operated by it, either:
 - (a) be a party to and comply with, the Capacity Market Code insofar as applicable to it in its capacity as the holder of a licence under Article 10(1)(a) of the Order; or
 - (b) with the prior consent of the Authority, enter into an agreement to appoint an appropriate person to act as an Intermediary under the Capacity Market Code in respect of any generation set (as owned or operated by the Licensee) specified in the agreement.
2. The Licensee shall ensure that the person appointed as an Intermediary under an agreement entered into in accordance with paragraph 1(b) insofar as applicable to it:
 - (a) becomes a party to the Capacity Market Code; and
 - (b) complies with its obligations, in relation to any generation set which is specified in the agreement, in the capacity of Intermediary under the Capacity Market Code.
3. The provisions of this Condition (other than those of this paragraph and paragraph 4 below which shall come into immediate effect) shall come into effect on such day, and subject to such transitional arrangements, as the Authority may by direction appoint. Different days may be so appointed for different provisions and for different purposes.
4. In this Condition:

Capacity Market Code

has the meaning given to that term in the Transmission System Operator Licence; and

Intermediary

has the meaning given to that term in the Capacity Market Code.

Condition 1: Interpretation and construction

1. Unless the contrary intention appears:
 - (a) words and expressions used in the Conditions or in Schedule 1 shall be construed as if they were in an enactment and the Interpretation Act (Northern Ireland) 1954 applied to them; and
 - (b) references to an enactment shall include subordinate legislation and in both cases any statutory modification or re-enactment thereof after the date when this licence comes into force.
2. Any word or expression defined for the purposes of any provision of Part II of the Order, of the Energy Order or the SEM Order shall, unless the contrary intention appears, have the same meaning when used in the Conditions or in the Schedules.
3. In the Conditions and in the Schedules, unless otherwise specified or the context otherwise requires:

Affiliate	in relation to any person means any holding company of that person, any subsidiary of that person, or any subsidiary of a holding company of that person, in each case within the meaning of section 1159 of the Companies Act 2006.
Auditors	means the Licensee's auditors for the time being holding office in accordance with the requirements of Chapter 2 of Part 16 of the Companies Act 2006.
authorised	in relation to any business or activity means authorised by licence granted under Article 10 or exemption granted under Article 9 of the

	Order.
authorised electricity operator	means any person (other than the Licensee in its capacity as the holder of this licence) who holds a licence granted pursuant to Article 10 of the Order or whose activities are exempt pursuant to Article 9 of the Order, and any person transferring electricity across an interconnector or who has made an application for use of an interconnector which has not been refused;
Authority	means the Northern Ireland Authority for Utility Regulation.
cancel	in relation to the Authority, means the exercise of its cancellation powers.
cancellable generating unit agreement	means a generating unit agreement which may be the subject of a cancellation direction, being the generating unit agreements specified in Annex 4 (as it may be modified from time to time) of the NIE Energy Supply Licence.
cancellation direction	means a direction issued by the Authority to cancel a cancellable generating unit agreement.
cancellation powers	means the powers of the Authority to direct any party to a cancellable generating unit agreement to terminate that agreement upon such date or the happening of such event as shall be specified in the notice containing the

	direction.
Competition and Markets Authority (CMA)	means the body of that name established by section 25 of the Enterprise and Regulatory Reform Act 2013.
Department	means the Department of Enterprise, Trade and Investment.
designated	in relation to any agreement, arrangement, code, notice, proposal therefore or other document, means designated by the Department or the Authority (as the case may be) or on its behalf by means of initialling or descriptive reference whether for the purposes of any Condition of this licence or otherwise, but so that an agreement, arrangement, code, notice, proposal therefore or other document so designated may at the discretion of the Department or the Authority (as the case may be) cease to be designated if amended or modified in any material respect.
Directive Regulations	means the Electricity Order 1992 (Amendment) Regulations (Northern Ireland) 2005 and/or the Electricity Regulations (Northern Ireland) 2007;
Distribution Code	means, where the relevant distributor is authorised to distribute electricity by a licence granted under Article 10(1)(bb) of the Order, the code of that title required to be prepared by the relevant distributor
distribution system	means a system comprising wholly or mainly

	<p>of low voltage electric lines owned and operated by an authorised electricity operator (excepting lines forming part of the transmission system or any Interconnector), and any other electric lines which the Authority may specify as forming part of the distribution system of the authorised electricity operator, and includes any electrical plant and meters of the authorised electricity operator which are used in connection with distribution by the authorised electricity operator;</p>
Distribution System Operator	<p>means the person authorised, from time to time, to distribute electricity under the successor distribution licence.</p>
electricity sale contract	<p>shall include (without limitation) any contract or arrangement under which provision is made for the making or receipt of payments by reference to the difference between:</p> <ul style="list-style-type: none"> (a) an amount specified or ascertainable under the terms of such contract or arrangement; and (b) the price at which electricity is sold or purchased under, pursuant to or as required or permitted by the Single Electricity Market Trading and Settlement Code <p>or any component of either of such prices.</p>

emissions	means the discharge of substances into the air.
Energy Order	means the Energy (Northern Ireland) Order 2003.
enforcement matter	means any matter in respect of which any functions of the Authority under Article 42 and Article 45 of the Energy Order are or may be exercisable;
financial year	has the meaning given in paragraph 1 of Condition 2.
General Consumer Council	means the General Consumer Council for Northern Ireland.
generating unit agreement	means a power purchase agreement between a generator and the Power Procurement Business in respect of a generation set or combination of generation sets.
Generation Business	means the authorised business of the Licensee or any affiliate or related undertaking of the Licensee in the generation of electricity or the provision of System Support Services.
generation set	means any plant or apparatus for the production of electricity.
generator	means a person authorised by a licence granted under Article 10(1)(a) of the Order.
Grid Code	means the code of that title required to be prepared by the Transmission System Operator, in its capacity as the operator of the

	transmission system, in accordance with the Transmission System Operator Licence.
holding company	means a holding company within the meaning of section 1159 of the Companies Act 2006.
interconnector	means electric lines and electrical plant and meters used for conveying electricity only directly to or from a substation or converter station on the Island of Ireland into or out of the Island of Ireland, and (for the avoidance of doubt) does not include the North/South Circuits.
Intermediary	has the meaning given in the Single Electricity Market Trading and Settlement Code.
Island of Ireland	means Northern Ireland and the Republic of Ireland.
licensed electricity supplier	means a person authorised to supply electricity by a licence granted under Article 10(1)(c) of the Order.
Licensee	means the person identified as such in the Grant and Terms of this Licence, and (where the context so requires) shall include any business in respect of which the Licensee is a successor company.
modification	includes addition, omission, amendment and substitution; and cognate expressions shall be construed accordingly.
NIE Energy Supply	means the licence granted under Article

Licence	10(1)(c) of the Order to Northern Ireland Electricity plc on 31 March 1992 and transferred to NIE Energy Limited (a body corporate registered in Northern Ireland under company number NI27394) on 1 November 2007 pursuant to a statutory transfer scheme.
North/South Circuits	means the electric lines and electrical plant and meters used for conveying electricity directly to or from a substation or converter station within Northern Ireland directly to or from a substation or converter station within the Republic of Ireland.
Northern Ireland Fuel Security Code	means the document of that title designated as such by the Department as from time to time amended in accordance with its provisions, dealing with the co-operation of licence holders in strategic contingency planning in respect of fuel stocks, the modification of the merit order and certain other systems and procedures under the Grid Code during periods when the Department has given and there is in force one or more directions under Article 37(4) of the Order, the entitlement of the Licensee and other authorised electricity operators to and the collection of certain payments in anticipation of, during and after the expiry of any such periods, and connected matters.
notice	means (unless otherwise specified) notice given either in writing or by electronic data

	transfer.
Northern Ireland Market Operator Licence	means the licence granted, under Article 10(1)(d) of the Order, to SONI Limited (a body corporate registered in Northern Ireland under company number NI038715) on 3 July 2007.
Order	means the Electricity (Northern Ireland) Order 1992;
Power Procurement Business	has the meaning given to it in the NIE Energy Supply Licence.
power purchase agreement	means a contract for the provision to the Licensee or any other authorised electricity operator of the whole or any part of the available capacity and/or the sale or other disposal to the Licensee or any other authorised electricity operator of the whole or any part of the output of a generation set or combination of generation sets.
power station agreement	means: <ul style="list-style-type: none"> (a) in relation to the Licensee, an agreement made with effect from 1 April 1992 between the Licensee and the Power Procurement Business in relation to matters concerning a generating station and designated for the purposes of this licence, as amended from time to time; and (b) in relation to any other generator, an

	<p>agreement made with effect from 1 April 1992 between that generator and the Power Procurement Business in relation to matters concerning a generating station and designated for the purposes of this licence, as amended from time to time.</p>
related undertaking	<p>in relation to any person means any undertaking in which that person has a participating interest within the meaning of section 421A of the Financial Services and Markets Act 2000.</p>
relevant distributor	<p>means the owner and operator of the distribution system to which any generation set of the Licensee is, or is to be, connected.</p>
relevant exempt self-supplier	<p>means a relevant exempt self supplier within the meaning of the Electricity (Class Exemptions from the Requirement for a Licence) Order (Northern Ireland) 2013.</p>
relevant supplier	<p>means a licensed electricity supplier or a relevant exempt self supplier.</p>
representation	<p>includes any objection or any other proposal made in writing.</p>
SEM Go-Live	<p>means the time and date designated as such by the Authority (with the consent of the Department) for the purpose of licences granted under the Order, being the</p>

	commencement date for a number of matters including the Single Electricity Market.
SEM Order	means the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007.
Separate Business	means each of the Generation Business and the Supply Business (if any) each taken separately from one another and from any other business of the Licensee or any affiliate or related undertaking of the Licensee, but so that where all or any part of such business is carried on by an affiliate or related undertaking of the Licensee such part of the business as is carried on by that affiliate or related undertaking shall be consolidated with any other such business of the Licensee (and of any other affiliate or related undertaking of the Licensee) so as to form a single Separate Business.
Single Electricity Market	means the single wholesale electricity market for the Island of Ireland, implemented in Northern Ireland pursuant to Section 23 of the Northern Ireland (Miscellaneous Provisions) Act 2006;
Single Electricity Market Trading and Settlement Code	has the meaning given to that term in the Northern Ireland Market Operator Licence.
subsidiary	means a subsidiary within the meaning of section 1159 of the Companies Act 2006.

successor company	bears the meaning ascribed to it for the purposes of Part III of the Order.
successor distribution licence	means the licence, held by Northern Ireland Electricity Limited, which has effect under Article 10(1)(bb) of the Order (to distribute electricity) pursuant to Regulation 90(1)(b) of the Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 [SR2011/155].
successor transmission licence	means the licence which has effect as a licence under Article 10(1)(b) of the Order pursuant to Regulation 90(1)(b) of the Internal Markets Regulations and is held by Northern Ireland Electricity Limited (a body corporate registered in Northern Ireland under company number NI026041).
Supply Business	means the authorised business (if any) of the Licensee or any affiliate or related undertaking of the Licensee as a licensed electricity supplier.
System Support Services	means: <ul style="list-style-type: none"> (a) spinning reserve, fast start, black start, reactive power, frequency control and such other services as the Licensee may be required to have available as system support services in association with any generation set pursuant to the Grid Code or the Distribution Code,

	<p>including outage planning incentive arrangements;</p> <p>(b) any services relating to a reduction of demand or other demand side measures that can be taken by a final consumer (or any person acting on behalf and with the authority of a final consumer);</p> <p>(c) any services that the Licensee may have agreed to have available as being system support services in association with any generation set pursuant to an agreement made with the Transmission System Operator or the Distribution System Operator,</p> <p>and which may be required by or offered (whether by way of sale or otherwise) to the Transmission System Operator or, as the case may be, the Distribution System Operator for the purpose of securing stability of operation on the transmission system or the distribution system and/or on any other system linked to the transmission system or a distribution system by an interconnector.</p>
total system	<p>means the transmission system, and the distribution system owned and operated by the holder of the successor distribution licence, taken together.</p>

Transmission Owner	means the person authorised, from time to time, under the successor transmission licence in its capacity as the holder of that licence.
transmission system	means the system of electric lines owned by the Transmission Owner and comprising high voltage lines and electrical plant and meters used for conveying electricity from a generating station to a substation, from one generating station to another, and from one substation to another within the Transmission Owner's authorised transmission area (including such part of the North/South Circuits as is owned by the Transmission Owner) (except any such lines which the Authority may approve as being part of a distribution system) and any other electric lines which the Authority may specify as forming part of the transmission system but shall not include any interconnector.
Transmission System Operator	means the person authorised, from time to time, to participate in the transmission of electricity under the Transmission System Operator Licence, in its capacity as the holder of that licence.
Transmission System Operator Licence	means the licence granted under Article 10(1)(b) of the Order, to SONI Limited (a body corporate registered in Northern Ireland under company number NI038715) on 3 July 2007.
undertaking	bears the meaning ascribed to it by section 1161 of the Companies Act 2006.

4. Unless otherwise specified:

- (a) any reference to a numbered Condition or to a numbered Schedule is respectively a reference to the Condition or the Schedule bearing that number in this licence;
- (b) any reference to a numbered paragraph is a reference to the paragraph bearing that number in the Condition or Schedule in which the reference occurs; and
- (c) (without prejudice to any provision which restricts such variation, supplement or replacement) any reference to any agreement, licence (other than this licence), code or other instrument shall include a reference to such agreement, licence, code or other instrument as varied, supplemented or replaced from time to time.

5. The heading or title of any Part, Condition, Schedule or paragraph shall not affect the construction thereof.

6. Where any obligation of the Licensee is expressed to require performance within a specified time limit that obligation shall continue to be binding and enforceable after that time limit if the Licensee fails to perform that obligation within that time limit (but without prejudice to all rights and remedies available against the Licensee by reason of the Licensee's failure to perform within the time limit).

7. The provisions of section 24 of the Interpretation Act (Northern Ireland) 1954 shall apply for the purposes of the delivery or service of any document, direction or notice to be delivered or served pursuant to this licence and directions issued by the Authority pursuant to any Condition shall be delivered or served as aforesaid.

Condition 14: Single Electricity Market Trading and Settlement Code

- 1 The Licensee shall, in respect of any generation set which is owned or operated by it, either:
 - (a) be a party to and, in so far as applicable to it in its capacity as the holder of a licence under Article 10(1)(a) of the Order, comply with the Single Electricity Market Trading and Settlement Code; or
 - (b) with the prior consent of the Authority, enter into an agreement to appoint an appropriate person to act as an Intermediary under the Single Electricity Market Trading and Settlement Code in respect of any generation set (as owned or operated by the Licensee) specified in the agreement.
- 2 The Licensee shall ensure that the person appointed as an Intermediary under an agreement entered into in accordance with paragraph 1(b):
 - (a) becomes a party to the Single Electricity Market Trading and Settlement Code; and
 - (b) complies with its obligations, in relation to any generation set which is specified in the agreement, in the capacity of Intermediary under the Single Electricity Market Trading and Settlement Code.

3. In this Condition:

Intermediary	has the meaning given in the Single Electricity Market Trading and Settlement Code.
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Condition 17: Cost-Reflective Bidding in the Single Electricity Market

1. The Licensee shall ensure that the price components of all Commercial Offer Data submitted to the Single Market Operation Business under the Single Electricity Market Trading and Settlement Code, whether by the Licensee itself or by any person acting on its behalf in relation to a generation set for which the Licensee is the licensed generator, are cost-reflective.
2. For the purposes of this Condition, the price component of any Commercial Offer Data shall be treated as cost-reflective only if, in relation to each relevant generation set, the Schedule Production Cost related to that generation set in respect of the Trading Day to which the Commercial Offer Data submitted by or on behalf of the Licensee apply is equal to the Short Run Marginal Cost related to that generation set in respect of that Trading Day.
3. For the purposes of paragraph 2, the Short Run Marginal Cost related to a generation set in respect of a Trading Day is to be calculated as:
 - (a) the total costs that would be attributable to the ownership, operation and maintenance of that generation set during that Trading Day if the generation set were operating to generate electricity during that day;minus
 - (b) the total costs that would be attributable to the ownership, operation and maintenance of that generation set during that Trading Day if the generation set was not operating to generate electricity during that day,the result of which calculation may be either a negative or a positive number.
4. For the purposes of paragraph 3, the costs attributable to the ownership, operation or maintenance of a generation set shall be deemed, in respect of each relevant cost-item, to be the Opportunity Cost of that cost-item in relation to the relevant Trading Day.

5. The Authority may publish and, following consultation with generators and such other persons as it considers appropriate, from time to time by direction amend, a document to be known as the Bidding Code of Practice, which shall have the purposes of:
 - (a) defining the term Opportunity Cost;
 - (b) making provision, in respect of the calculation by the Licensee and other generators of the Opportunity Cost of specified cost-items, for the treatment of:
 - (i) the costs of fuel used by generators in the generation of electricity;
 - (ii) the value to be attributed to credits issued under the Emissions Trading Scheme established by the European Commission;
 - (iii) variable operational and maintenance costs;
 - (iv) start-up and no load costs; and
 - (v) any other costs attributable to the generation of electricity; and
 - (c) setting out such other principles of good market behaviour as, in the opinion of the Authority, should be observed by the Licensee and other generators in carrying out the activity to which paragraph 1 refers.
6. The Licensee shall, in carrying out the activity to which paragraph 1 refers, act so as to ensure its compliance with the requirements of the Bidding Code of Practice.
7. The Authority may issue directions to the Licensee for the purpose of securing that the Licensee, in carrying out the activity to which paragraph 1 refers, complies with the requirements of this Condition and of the Bidding Code of Practice, and the Licensee shall comply with any such directions.
8. The Licensee shall retain each set of Commercial Offer Data, and all of its supporting data relevant to the calculation of the price component of that

Commercial Offer Data, for a period of at least four years commencing on the date on which the Commercial Offer Data is submitted to the Single Market Operation Business.

9. The Licensee shall, if requested to do so by the Authority, provide the Authority with:
 - (a) a reasoned explanation of its calculations in relation to any Commercial Offer Data; and
 - (b) supporting evidence sufficient to establish the consistency of that data with the obligations of the Licensee under this Condition.
10. In any case in which Commercial Offer Data are submitted to the Single Market Operation Business which are not consistent with the Licensee's obligation under paragraph 1 of this Condition, the Licensee shall immediately inform the Authority and provide to the Authority a statement of its reasons for the Commercial Offer Data submitted.
11. The Licensee shall by 1 June in each year submit to the Authority a certificate, signed by at least one director on behalf of the board of directors of the Licensee, to confirm that during the period of twelve months ending on the preceding 31 March:
 - (a) it has acted independently in relation to all submissions of Commercial Offer Data that have been made, by it or on its behalf, under the Single Electricity Market Trading and Settlement Code; and
 - (b) no such submissions made by it or on its behalf have been co-ordinated with any other submissions made by or on behalf of any other party to the Code.
12. This Condition shall cease to have any effect from the date determined by the Authority subject to any transitional arrangements which the Authority may direct and without prejudice to the continuing enforceability of any rights or obligations which may have accrued or otherwise fallen due for performance

prior to that date (including any requirement to comply with the direction of the Authority issued prior to that date).

13. In this Condition:

Bidding Code of Practice	means the document of that title published by the Authority in accordance with paragraph 5, as it may be amended from time to time.
Commercial Offer Data	has the meaning given to it in the Single Electricity Market Trading and Settlement Code, as it may be amended from time to time.
Opportunity Cost	shall have the meaning set out in, and the value calculated in accordance with, the terms of the Bidding Code of Practice.
Schedule Production Cost	has the meaning given to it in the Single Electricity Market Trading and Settlement Code, as it may be amended from time to time.
Short Run Marginal Cost	means certain costs attributable to the ownership, operation and maintenance of a generation set, as calculated in accordance with paragraph 3 of this Condition.
Single Market Operation Business	has the meaning given to it in the market operator licence for Northern Ireland.
Trading Day	has the meaning given to it in the Single Electricity Market Trading and Settlement Code, as it may be amended from time to time.]

