

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

Consultation on proposed Licence Modifications to effect the CMA Cost order and an amendment to the K Term.

28 March 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 TSO licence held by SONI. The modifications are being proposed in order to provide clarity on SONI's maximum core SSS/TUoS revenue, following the CMA Cost Order and to implement a change to the K-term to ensure continuity between price controls.

There are two modifications which are consequential upon the CMA Cost Order:

1. Exclusion of SONI's costs incurred in relation to the CMA appeal from the 50:50 cost risk share mechanism;
2. An explicit provision for SONI to make a claim to the UR to recover from customers any fees payable by it in Relevant Year t under Condition 8 of the transmission Licence (such fees may include, among other things, UR costs relating the CMA appeal).

It also proposes to modify the licence within Annex 1 paragraph 2.2 to enable the K_{TSO_t} adjustment to bridge between price control periods.

Audience

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

Consumer impact

The consumer impact of these proposed Licence modifications are limited. These modifications will give protection to Northern Ireland consumers by avoiding any over-recovery of SONI's costs relating to the CMA appeal.

Executive Summary

On 14 March 2017 the Utility Regulator (UR) published under and in accordance with Article 14(8) of the Electricity (NI) Order 1992 (the Electricity Order) its decision¹ to modify the conditions of the electricity transmission licence (referred to as the TSO Licence) held by SONI Ltd (SONI), setting SONI's allowed revenue specific to the transmission system operation business for the five-year period from October 2015 to September 2020 (the Price Control Decision).

On 12 April 2017,² SONI applied to the Competition and Markets Authority (CMA) for permission to appeal certain aspects of the Price Control Decision. The CMA granted permission on 11 May 2017 and in accordance with the statutory framework the appeal was to be determined by the CMA by 10 November 2017. On 10 November 2017 the CMA made its Final Determination³ and Order⁴ on the appeal. On the 30 January 2018 the CMA announced its Costs Order⁵ in relation to SONI's appeal and on the 1 February 2018 it published its Cost Determination⁶.

On the 9 March 2018 the UR published under and in accordance with Article 14(8) of the Electricity (NI) Order 1992 (the Electricity Order) its "Licence Modifications Decision implementing the SONI CMA Order".⁷

This further consultation sets out the licence modifications the UR proposes to make to the TSO Licence in order to give protection to Northern Ireland consumers and will avoid any over-recovery from customers of SONI's costs relating to its CMA appeal.

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

² <https://www.gov.uk/cma-cases/energy-licence-modification-appeal-soni>

³ <https://assets.publishing.service.gov.uk/media/5a09a73ce5274a0ee5a1f189/soni-niaur-final-determination.pdf>

⁴ <https://assets.publishing.service.gov.uk/media/5a05b304ed915d0ade60dacb/soni-niaur-cma-order.pdf>

⁵ https://assets.publishing.service.gov.uk/media/5a7088fb40f0b62f97b1ee75/soni_appeal_final_costs_order.pdf

⁶ <https://assets.publishing.service.gov.uk/media/5a733b70ed915d0e8e3986d7/soni-appeal-costs-determination.pdf>

⁷ <https://www.uregni.gov.uk/news-centre/licence-modification-implementing-cma-order>

This paper sets out explicit licence modifications to enable SONI to submit an application to the UR for recovery of any costs incurred by the SONI for fees payable under Condition 8 of its Transmission Licence. These costs are likely to include costs incurred by the UR in relation to a CMA appeal.

An amendment is also proposed to the K term within Annex 1 the Licence which is intended to ensure that there is continuity between price controls. This amendment ensures that any over- or under-recovery at the end of one price control period is accounted for in the next price control period.

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

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1. Background

1. SONI Ltd (SONI) is licensed as the Transmission System Operator (TSO) for Northern Ireland and is subject to a regulated price control. The SONI price control takes place in the context of increased renewable electricity generation, an evolving legislative subsidy environment and wider changing European legislative developments.
2. The UR's Final Determination⁸ on the SONI price control for the five year period from 1 October 2015 to 30 September 2020 was published on 24 February 2016 and the Article 14(8) decision to make the associated licence modifications⁹ was published on 14 March 2017 ('The Price Control Decision').
3. On 12 April 2017, SONI made an application to the Competition and Markets Authority (CMA), under Article 14B (3) of the Electricity Order, for permission to bring an appeal against the Price Control Decision, under Article 14B (1) of the Electricity Order. It also applied for the Price Control Decision not to have effect pending the determination of the appeal.
4. Following representations to the CMA from both SONI and the UR the CMA granted SONI permission to appeal the Price Control Decision on 11 May 2017 but did not direct that the Price Control Decision was not to have effect. The licence modifications set out in the Price Control Decision came into effect on 9 May 2017.
5. The CMA considered the Notice of Appeal (the NoA) and related documents from SONI, the UR's representations and observations on the NoA (the Defence) and related documents and submissions from the Consumer Council (Northern Ireland) (CCNI) in its capacity as an Interested Third Party (ITP).
6. Formal hearings were held by the CMA in August 2017 which afforded the UR and SONI the opportunity to answer clarifications from the CMA. The CMA issued a provisional determination to the parties on 14 September 2017 and following this submissions from the parties were permitted. Formal Remedies hearings were held in October 2017.
7. The CMA published its Final Determination¹⁰ and Order¹¹ on 10 November 2017 and the Utility Regulator is progressing with an additional workstream to give effect to the CMA's directions in respect of its Final Determination on the appeal (where Licence Modifications are appropriate).

⁸ <https://www.uregni.gov.uk/publications/decision-2015-2020-price-control-soni>

⁹ <https://www.uregni.gov.uk/news-centre/soni-price-control-2015-2020-licence-modifications-published>

¹⁰ <https://assets.publishing.service.gov.uk/media/5a09a73ce5274a0ee5a1f189/soni-niaur-final-determination.pdf>

¹¹ <https://assets.publishing.service.gov.uk/media/5a05b304ed915d0ade60dacb/soni-niaur-cma-order.pdf>

8. On 13 November 2017, the CMA sent a letter to SONI and the UR, explaining the CMA's proposed approach to calculating its costs and inviting representations on the appropriate apportionment of the CMA's costs. The CMA also invited representations on whether it would be appropriate to make an order for *inter partes* costs. The CMA received representations from SONI and the UR on 24 November 2017.
9. Following consideration of these representations, and the analysis of the CMA costs during the appeal process, the CMA notified the parties of its provisional determination on costs on 21 December 2017. Representations were received on 11 January 2018 from SONI, the UR and the Consumer Council (Northern Ireland) (CCNI).
10. On the 30 January 2018 the CMA announced its Costs Order¹² in relation to SONI's appeal and on the 1 February 2018 it published its Cost Determination¹³
11. The CMA Cost order ordered:
 - CMA costs to be split £235,804.53 payable by SONI and £353,706.80 to be paid by the UR.
 - The UR will also pay £325,000 of costs reasonably incurred by SONI in connection with the appeal.
12. The CMA concluded that it was appropriate to make an *inter partes* order and for the UR to contribute to some portion of SONI's costs incurred in the appeal as outlined above. The CMA used its judgment in reaching a decision on the appropriate amount of such a costs order, taking into account all the circumstances of the case.
13. The CMA considered this reflects the specific circumstances of this case. That it conveys the appropriate balance between the outcome of the appeal in terms of relative success for the parties. The CMA considered this also guards against creating expectations that successful appellants would necessarily recover all their costs from the regulator.

¹² https://assets.publishing.service.gov.uk/media/5a7088fb40f0b62f97b1ee75/soni_appeal_final_costs_order.pdf

¹³ <https://assets.publishing.service.gov.uk/media/5a733b70ed915d0e8e3986d7/soni-appeal-costs-determination.pdf>

Exclusion of costs incurred in relation to the CMA appeal from the 50:50 cost risk share mechanism

14. We consider that the CMA's Costs Order and Cost Determination represents a decision by the CMA on the appropriate allocation of the costs relating to the appeal between customers and SONI's investors.
15. It is not appropriate for the costs incurred by SONI in relation to the CMA appeal to be passed on to customers to any greater extent than provided for in the CMA Costs Order.
16. There is currently a 50:50 cost risk sharing mechanism in SONI's Licence. This adjusts the maximum regulated revenue between the price control and the level of SONI's out-turn costs. Of this difference 50 per cent is passed to consumers through adjustments to SONI's maximum regulated revenue.
17. The purpose of this cost risk sharing mechanism is to provide financial protection to both consumers and SONI against potential inaccuracies in the estimates of SONI's efficient expenditure requirements and against unforeseen future developments that affect SONI's costs. It also maintains clear and strong financial incentives for SONI to operate and invest efficiently.
18. The 50:50 cost risk sharing mechanism, means that, for costs falling under the cost categories in Table A within Annex 1 of SONI's Transmission licence, SONI's maximum regulated revenue increases by 50 pence for each additional £1 it incurs in any of these categories. Similarly, SONI's maximum regulated revenue decreases by 50 pence if its costs reduce by £1 in any of these categories.
19. The costs associated with a CMA referral are a specific type of cost that should fall outside the scope of the 50:50 cost risk-sharing mechanism ('the 50:50 mechanism'). This Licence modification consultation proposes to exclude these costs from the 50:50 mechanism.
20. As a hypothetical example:
 - A regulated company incurs £2 million in relation to an appeal to the CMA. Its price control specifies a 50% cost sharing mechanism on its total gross costs. The CMA reviewed all the costs and decided that £400,000 of these costs should be recoverable from the UR (and therefore ultimately from customers) under an inter partes costs order. It follows that the remaining £1.6 million should be borne by the company's investors.
 - There is a risk that the total amount of money that the regulated company could recover would be £1.4m rather than £400,000. This excessive recovery would comprise of; (i) 50% of the gross costs

incurred and (ii) the £400,000 received from the Regulator.

- There is an obvious over-recovery from customers of the regulated company's costs relating to the CMA appeal in this example.

21. The proposed modifications remove this risk of inadvertent over-recovery. SONI's costs of CMA appeal, which have been clearly determined and allowed in the CMA Costs Order, are separate to normal costs. They include costs that the CMA has not allowed it to recover because they related to grounds of appeal on which SONI was unsuccessful.

22. In the UR's preliminary view, subject to this consultation, it is reasonable and appropriate to exclude the costs relating to the CMA appeal from the scope of costs covered by the cost risk sharing mechanism. The Competition Commission ('CC') had previously made exclusion decisions from cost sharing mechanisms in regards to external referral costs for example in the NIE RP5 referral¹⁴ and in the Bristol Water Determination.

23. The CMA Costs Order decision considered it appropriate to guard against creating expectations that appellants, even to the extent that they have been successful, would necessarily recover all their costs from the Regulator. Moreover, it is self-evident that an appellant would not usually be able to recover its costs in relation to grounds of appeal which it has argued unsuccessfully.

24. Therefore to ensure a fair balance and to safeguard consumers, costs associated with a CMA referral, where they are not included in a costs order made by the CMA, should in our view usually be treated as costs that fall to be met by the regulated company's shareholders and not costs suitable to be recovered from customers under the price control (whether via a cost risk sharing mechanism or otherwise).

25. The proposed modifications ensure that 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)(iv) of SONI's Licence.

26. We consider the licence modification in relation to the 50:50 mechanism to be consequential on the CMA Costs Order and designed to ensure that where the CMA has decided that SONI ought to bear the costs of others (e.g. those of

¹⁴ https://assets.publishing.service.gov.uk/media/535a5768ed915d0fdb000003/NIE_Final_determination.pdf paragraph 19.48 (g) pages 19-10, 19-11 and 20-4.

the CMA) or should bear its own costs (i.e. those not recoverable from the UR) then it is the company itself and not customers on whom those costs should fall.

Amendment to bridge for the K_t allocation between price control periods

27. In reviewing the licence to ensure the CMA licence modifications have the intended effect we considered a further amendment to Annex 1 necessary. The proposed modification will address an issue with the formulae in the current licence and in the drafting of the December 2017 CMA implementation consultation.
28. Within the current drafting of Annex 1, the value of K_{TSO_t} would not be properly defined for Relevant Years $t=1$ and $t=2$, since there is no definition specified in the licence conditions for M_{TSO_t} for Relevant Years 0 and -1.
29. The effect of this modification is to ensure that any over- or under-recovery at the end of the 2010-2015 price control period is carried forward to K factor adjustment in the 2015-2020 price control. There is a two-year lag in the K factor meaning that the over- or under-recovery from the last two years of the 2010-2015 control would feed into the K factor adjustments for the first two years of the 2015-2020 control.
30. The text added ensures that for the purpose of calculating the value of K_{TSO_t} in Relevant Years $t = 1$ and $t = 2$, 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 Annex 1 of SONI's licence under the provisions of this Annex as they were in force on the last day of that Relevant Year $t-2$.
31. The proposed formula would also have consideration for closing K allocations from one price control period to another for future price control periods.
32. The intended effect is to protect both SONI and Northern Ireland consumers by ensuring that the relevant K factor adjustment is bridged between the different price control periods within the licence.

Provision of costs in respect of fees payable under Condition 8 of the Transmission Licence within Annex 1 Paragraph 8

33. SONI may make a claim to the Authority¹⁵, under paragraph 8.1 of Annex 1 that identified costs and revenues of the Licensee (whether a positive or negative amount) shall be treated as excluded SSS/TUoS costs in Relevant Year t.
34. We are proposing to modify Annex 1 of the licence paragraph 8.1 to provide an explicit provision for SONI to make a claim for recovery of costs incurred in Relevant Year t in respect of fees payable under Condition 8¹⁶ of their Transmission Licence in that Relevant Year t.
35. This allows for the recovery of Licence fees and shall be subject to the application of the de minimis threshold within Annex 1.
36. In practice, SONI has always been able to recover its licence fee costs by this mechanism, so this is merely to make explicit what has always been implicit in the scope of these provisions.
37. The intended effect in particular is to make it clear that SONI can recover licence fees even when they contain costs of the UR which relate to the CMA appeal (which may include both the UR's own costs and all or a proportion of the costs that the UR has had to pay to the CMA or SONI in accordance with the CMA's Costs Order). This ensures that SONI is not exposed to any costs that the CMA has ordered to be borne by others.

¹⁵ In accordance with the Requirements and Guidance on Excluded SSS/TUoS Costs

¹⁶ SONI Transmission Licence - Condition 8. Payment of Fees

2. Licence Modifications

38. All of the Licence modifications are limited to Annex 1 of the Licence to participate in the transmission of electricity held by SONI Limited.
39. The first modification provides clarity on SONI's maximum core SSS/TUoS revenue, following the CMA Cost Order decision. It proposes to exclude SONI's costs incurred in relation to the CMA appeal from the 50:50 risk share mechanism by means of modifying paragraph 2.2(c)(i)(B).
40. The second modification proposes to modify the licence within paragraph 2.2 to enable the K adjustment to bridge between price control periods.
41. The third modification proposes to modify the licence within paragraph 8.1 to include 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 t.
42. The proposed modifications are highlighted in red and are in Schedule 1 of this document.
43. The reasons for the proposed modifications are those specified in relation to each of them in Part 1 of this document.

3. Next steps

44. 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 modifications under Article 14 of the Electricity Order.
45. The UR proposes to consult for a period of 28 days from the publication date of this document.
46. 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 27 April 2018. Responses should be sent to:

Jody O'Boyle and Natalie Dowey
Utility Regulator
Queens House
14 Queens Street
Belfast BT1 6ER

Jody.OBoyle@uregni.gov.uk and Natalie.Dowey@uregni.gov.uk

47. The UR's preference would be for responses to be submitted by e-mail.
48. 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.
49. 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.
50. 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.
51. 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.
52. This paper is available in alternative formats such as audio, Braille etc. If an alternative format is required, please contact the office of the Utility Regulator, which will be happy to assist.

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 1992¹⁷ (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 to the Licence will be to exclude SONI's costs incurred in relation to the CMA appeal from the 50:50 risk share mechanism, to include fees payable under Condition 8 of its Transmission licence specifically within its D_t term and to modify the licence to enable the K_t provisions to make a bridge between the previous price control and this one.
4. The reasons why the Authority proposes to make Article 14(2) modifications are set out fully in the accompanying consultation paper¹⁸, and relate to changes which are consequential on the CMA's Final Determination on the SONI TSO amount for 1 October 2015 to 30 September 2020 which was published on 10 November 2017¹⁹ and the CMA Cost Order²⁰ which was published on 30 January 2018.

¹⁷ 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>

¹⁸ <https://www.uregni.gov.uk/consultations>

¹⁹ <https://www.gov.uk/cma-cases/energy-licence-modification-appeal-soni>

²⁰ https://assets.publishing.service.gov.uk/media/5a7088fb40f0b62f97b1ee75/soni_appeal_final_costs_order.pdf

5. Representations with respect to the proposed modifications may be made **on or before 5pm on 27 April 2018** by writing to or by emailing:

Jody O'Boyle and Natalie Dowey
Utility Regulator
Queens House
14 Queen Street
Belfast
BT1 6ED

E-mail: Jody.OBoyle@uregni.gov.uk and Natalie.Dowey@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 28th day of March 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 Transmission Licence - ANNEX 1 Charge Restrictions

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 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: <ul style="list-style-type: none"> (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;

	<p>(b) the management of Energy Imbalances;</p> <p>(c) any Uninstructed Imbalance;</p> <p>(d) Testing Charges;</p> <p>(e) Other System Charges; and</p> <p>(f) any SO Interconnector Trade.</p>
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 Imperfection 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.
Imperfection Charge	has the meaning given to it in the Single Electricity Market Trading and Settlement Code.
Legal Requirement	<p>means, in relation to the Licensee, any of the following:</p> <p>(a) any enactment to the extent that it applies to the Licensee;</p> <p>(b) any regulation made by the Council or the Commission of the European Communities to the extent that it applies to the Licensee and impacts on the Transmission System</p>

	<p>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 10/03/2017 and entitled "Decision on the Licence Modifications for the Price Control 2015-2020 of the Electricity System Operator for Northern Ireland (SONI)" and (iii) as 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.
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.
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-construction Project	<p>means a transmission network project</p> <p>(a) identified, by the Licensee or the Transmission Owner, as a project which is necessary for the purposes of developing the transmission system;</p> <p>(b) in respect of which the Licensee is, as the Transmission System Operator, responsible for carrying out activities required to progress the project from the conceptual design stage to, but not including, the construction stage; and</p> <p>(c) approved by the Authority, following a</p>

	submission by the Licensee for such approval, as a project in respect of which the Licensee may proceed to carry out the activities referred to in paragraph (b) above.
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 refers to a numbered Relevant Year t the applicable Relevant Year t is as follows:

Relevant Year t	Relevant Year
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 shall be calculated as follows:

$$M_{TSO_t} = A_{TSO_t} + B_{TSO_t} - BI_t + D_{TSO_t} + Q_t + K_{TSO_t} + INCENT_t$$

where:

(a) A_{TSO_t} means:

(i) the costs of System Support Services in Relevant Year t (including amounts payable by the Licensee to any person for the provision or use of any System Support Services provided over any interconnector) in Relevant Year t;

plus

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

plus

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

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

(i) the amount allowed for each cost category listed in Table A in paragraph 2.2(b)(vi); and

(ii) the rate of return allowance set out in Table B in paragraph 2.2(b)(vii),

which in each case:

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

where:

(iv) the rate of return allowance is calculated in accordance with paragraph 2.3 of this Annex;

(v) RPI_t means the Retail Price Index (1987 = 100) published or determined with respect to April in Relevant Year t (i.e. RPI in the Relevant Year t = 2 means the value of RPI in April falling within the Relevant Year t=2);

(vi) Table A is as follows:

Relevant Year t	1	2	3	4	5
	£m	£m	£m	£m	£m
Payroll	7.217	7.217	7.217	7.217	7.217
IT & Communications	1.783	1.850	1.924	1.948	1.997
Other OPEX	1.411	1.411	1.783	1.629	1.664

Pension Deficit	0.189	0.189	0.57	0.57	0.57
Depreciation on Non-Building Assets	4.083	1.750	1.344	1.285	1.236
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	0.440	0.339	0.305	0.364	0.321

(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:

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

where:

C_{TSO_t} means:

(i) the aggregate of the actual costs incurred by the Licensee in Relevant Year t in respect of each costs category listed in Table A in paragraph 2.2(b)(vi) of this Annex, **but subject to the following –**

(A) ~~minus~~ that part (if any) of such actual costs that the Authority determines to be Demonstrably Inefficient or Wasteful Expenditure **shall be deducted;**

(A)(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)(iv) 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 the approval given pursuant to paragraph 8.3(e) of this Annex, in Relevant Year t for excluded SSS/TUoS costs;

- plus
- (ii) the total amount, allowed by the Authority in accordance with paragraph 6.1 of this Annex, in Relevant Year t for change of law;
- (e) Q_t means an adjustment to be applied to the maximum core SSS/TUoS revenue, which:
- (i) in Relevant Year t ending 30 September 2017 shall be the amount which is determined by the Authority and notified to the Licensee in accordance with principles set out in a document provided to the Licensee; and
- (ii) in each other Relevant Year shall be equal to zero.
- (f) K_{TSO_t} means the correction factor (whether a positive or negative number) to be applied to the maximum core SSS/TUoS revenue in Relevant Year t 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;
- minus (in Relevant Year t = 3, and subsequent Relevant Years, only)
- (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 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_{TSO_t} in Relevant Year t-2, the total of such actual costs;
 - 2) where actual costs incurred by the licensee in relation to excluded SSS/TUoS costs and change of law in Relevant Year t-2 are greater than the costs allowed for D_{TSO_t} in Relevant Year t-2, the total of the costs allowed for D_{TSO_t} in Relevant Year t-2,
- (ii) $R_{TSO_{t-2}}$ means:
- (A) the Regulated SSS/TUoS Revenue in Relevant Year t-2;
- minus
- (B) the $CAIR_t$ amount in Relevant Year t-2;
- (iii) I_t means:
- (A) where the amount derived from the calculations undertaken pursuant to paragraphs 2.2(e)(i) and (ii) is a positive figure, the Average

Specified Rate for Relevant Year t-2 plus 2% of that rate (as expressed in decimal figures); and

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

and for the purpose of calculating the value of K_{TSO_t} in Relevant Years $t = 1$ and $t = 2$, 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.

(g) $INCENT_t$ 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.

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	5.072	3.470	3.056	2.907	3.142
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	7.457	5.738	5.208	6.218	5.486

- (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%

and:

- (ii) is calculated in accordance with the following formula –

$$WACC = ((r_e/(1-t_x)) \times (1 - g)) + (r_d \times g)$$

where:

- (iii) r_e = cost of equity

- (iv) r_d = cost of debt

- (v) t_x = taxation

- (vi) g = gearing

where:

- (A) the value of (v) shall be the main rate of corporation tax, applicable to Northern Ireland, in existence at the commencement of the Relevant Year t.

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, submit to the Authority, its best endeavours to by no later than 31 March preceding the start of that Relevant Year t ,

- (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) that the Licensee is, or will be, requesting a determination in accordance with paragraph 6 or is, or will be, making a claim in accordance with paragraph 8 (but excluding any costs relating to Transmission Network Pre-Construction Project D_{TSO_t} and PCI D_{TSO_t}) 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_{TSO_t} in accordance with paragraph 2.2(d) of this Annex, for each Relevant Year t specified in the Authority's notification.

6.3 In determining the matters provided for in paragraphs 6.1 and 6.2, the Authority shall have regard, where relevant, to:

- (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) that the following costs and revenues of the Licensee (whether a positive or negative amount) shall be treated as excluded TUoS/SSS 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 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.

(h) any costs incurred by the Licensee in Relevant Year t in respect of fees payable under Condition 8 of this Licence in that Relevant Year;

~~(h)~~(i) any reasonable and efficient costs incurred in Relevant Year t in undertaking electricity transmission network planning activities associated with a Transmission Network Pre-Construction Project; and

~~(h)~~(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} or B_{TSO_t} ;
- (ii) cannot reasonably be controlled by the Licensee; and
- (iii) the Authority determines, upon an application to it by the Licensee, shall be included for the purposes of this paragraph.

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

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

9.1 The Licensee shall, provide to the Authority all information requested in association with this Annex in such format and by such time as may be reasonably directed by the Authority.