

SONI: Article 14(8) Notice and
Licence Modifications Decision

Licence Modifications Decision
implementing the SONI CMA
Order

9 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 is the Utility Regulator's (UR's) Decision and Article 14(8) Notice on the Licence Modifications required to implement the CMA Order Dated 10 November 2017. This Decision follows an Article 14(2) Consultation on these Licence Modifications which published on 20 December 2017.

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 is to give effect to the remedies outlined by the CMA Order Dated 10 November 2017 as explained in the CMA Final Determination on the SONI TSO Price Control 2015-2020. The combined benefit to SONI of these remedies is approximately £5.4 million over the period 2015 – 2020. Of this total, around £1 million could be deferred into future periods. The total increase in tariffs will be approximately £1.1 million per annum which will increase domestic bills by approximately 50 pence per annum.

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. On 10 November 2017 the CMA made its Final Determination³ and Order⁴ on the appeal. Having allowed the appeal in part, the CMA determined remedies and remitted the matter back to the UR for reconsideration and determination in accordance with the directions set out in the Annexes to the CMA Order.

The directions required the UR to modify the conditions of the TSO licence. On 20 December 2017 the UR consulted on licence modifications accordance with Article 14(2) of the Electricity Order setting out the licence modifications to make to the TSO Licence in order to comply with the directions annexed to the CMA's Order.

One response from SONI was received on 23 January 2018, the UR has taken into account their representations related to these modifications and made the necessary adjustments where appropriate. This document explains the reasons for any

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>

changes to our proposals and sets out the new 'Annex 1 Charge Restrictions' of the Licence along with the Article 14(8) notice with an implementation date of 04 May 2018.

Contents

| | |
|--|----|
| Executive Summary..... | 2 |
| 1. Background | 5 |
| 2. Effect of the Modifications..... | 7 |
| 3. Response to the Licence Modifications Consultation..... | 8 |
| 4. Decision | 34 |
| NOTICE UNDER ARTICLE 14(8) | 35 |
| Schedule 1 – ANNEX 1 Charge Restrictions..... | 38 |

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 took 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 Determination⁵ 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 modifications⁶ 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 (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 clarification questions from the CMA. The CMA issued a provisional determination to the parties on 14 September 2017 and following this submissions from parties were permitted. Formal Remedies hearings were held in October 2017.

⁵ <https://www.uregni.gov.uk/publications/decision-2015-2020-price-control-soni>

⁶ <https://www.uregni.gov.uk/news-centre/soni-price-control-2015-2020-licence-modifications-published>

CMA Decision and Proposed Licence Modifications to SONI's Licence

7. The CMA published its Final Determination⁷ and Order⁸ on 10 November 2017. The CMA Final Determination and CMA Order identified remedies for those aspects of SONI's appeal that were allowed by the CMA.
8. The UR published a Licence Modification consultation on 20 December 2017. This outlined our proposed modifications to Annex 1 of the Licence to participate in the transmission of electricity held by SONI Limited which would give formal effect to the CMA Order dated 10 November 2017.
9. The UR received one response to the Licence Modifications Consultation from SONI Ltd on the 23 January 2018, which is published alongside this paper.
10. In Section 2 of this document we identify the effect of the modifications being made to Annex 1 of SONI's Transmission Licence to implement the decisions set out in the CMA Order.
11. In the section 3 we discuss SONI's comments and the UR response.

⁷ <https://assets.publishing.service.gov.uk/media/5a09a73ce5274a0ee5a1f189/soni-niaur-final-determination.pdf>

⁸ <https://assets.publishing.service.gov.uk/media/5a05b304ed915d0ade60dacb/soni-niaur-cma-order.pdf>

2. Effect of the Modifications

12. The effect of the modifications being made to Annex 1 of SONI's Transmission Licence is to implement the directions set out in the CMA Order and includes:
 - A term PCGR_t which is an additional allowance to reflect 1.75% of the prevailing value of the Parent Company Guarantee;
 - A term ARAt which is an additional allowance to reflect the asymmetric risk taken by SONI in respect of Dt and PCNP costs, of £220,000 per annum;
 - A term CARV_t which is an additional allowance in respect of certain revenues collected by the Licensee based on a margin of 0.5% on the following relevant revenues: (1) TUoS charges, (2) ancilliary services within SSS tariff and (3) imperfection charges;
 - An additional allowance mechanism to reflect a 'side-RAB' for SONI, which also specifies the process by which SONI should recover the costs it has incurred on PCNPs since 1 May 2014;
 - Amendment of Table A, Table B and RAB_t table of SONI's licence to be consistent with the revised assumptions listed in Table 13.1 in Chapter 13 of the CMA Final Determination.
13. In addition to these changes, the licence modifications contain number of consequential and incidental modifications arising from the principal modifications noted above.
14. We have also engaged with SON so that it can recover the requisite tariffs over the next two tariff years, in accordance with paragraph 1(f) of the CMA Order.

3. Response to the Licence Modifications Consultation

15. We received one response to the Licence Modifications Consultation published on 20 December 2017 from SONI Ltd. This response is published alongside this paper.
16. SONI provided a written overview response and a tracked change version of our proposed modifications. Within their submission SONI outlined three main concerns regarding Asymmetric Risk, the Parent Company Guarantee and further clarity on expected returns.

Asymmetric Risk

17. SONI considered that a revision was needed to the drafting to avoid/limit SONI's exposure to asymmetric risk faced in respect of Dt costs and Transmission Network Pre-construction Project Costs.
18. We found no basis in the CMA Order for making such a change. We consider that the revision proposed by SONI is not needed to fully implement the remedy in the CMA Order in respect of asymmetric risk.
19. We have included an inflationary adjustment for the asymmetric risk amount of £220k that the CMA awarded. This implements the CMA's remedy in line with the Order.

Parent Company Guarantee

20. SONI commented that they felt the PCG remuneration formula should reference the Market Operator Licence and any remuneration contained within the SEMO price control.
21. We do not consider it appropriate to reference the separate Market Operator Licence appropriate. We have implemented the remedy in Licence as directed by the CMA Order.
22. The Utility Regulator intends to addressing overlaps in the System Operator Licence with the Market Operator Licence as a standalone future project.

Clarity on expected returns

23. SONI had concerns on the codification of the side RAB for transmission pre-construction costs and the interactions with the provisions relating to demonstrably inefficient and wasteful expenditure. SONI also requested an

opening RAB value of c.£7m in respect of expenditure from 1 May 2014.

24. We have considered SONI's comments and have revised the formula significantly on the codification of the side RAB, and modified the DIWE elements which we consider will operate effectively in practice.
25. We do not consider an opening RAB value of £7m appropriate. This allowance has not at the time of drafting been submitted, evidenced, reviewed or approved by the Utility Regulator.
26. We are allowing SONI to build up the pre-construction RAB from expenditure May 2014 (when the transfer of planning function commenced) onwards. This; sets the opening RAB value to zero at 1 May 2014 and requires SONI to submit requests for approval, which we deem appropriate.
27. SONI can now earn a return on this 'side RAB' from the 1 Oct 2015 per the CMA Order. Regulatory oversight on the value of this RAB is imperative.

28. In SONI's response of the 23 January 2018 they provided a table of itemised comments to our 20 December 2017 proposed modifications. While we have accepted some of SONI proposed modifications, others we have considered and have identified amendments to Annex 1.

29. We lay these comments out in a similar form below and provide our decision as appropriate.

| SONI Licence reference – Annex 1 | Effect of modification | SONI Response | UR Reasons / Decision |
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| Paragraph 1.1 Definitions | Additional modification proposed by SONI | SONI consider that the CMA Final Determination must be referred to in Annex A of the Licence, as its effect is to amend the Price Control for 2015-2020. It is a relevant document to which both SONI and the Authority must have regard. | The modifications are made under the CMA Order Dated 10 November 2017. All items within the CMA Final Determination that required codification are presented as modifications. We do not consider it necessary to reference the CMA Final Determination. |

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| Paragraph 1.1 Definitions | Imperfection charge changed to imperfections charges throughout. This is a correction of wording terminology. | The definition of 'Demonstrably Inefficient or Wasteful Expenditure' should be amended to reflect the publication of the guidance paper on 27 July 2017 entitled 'Guidance on the interpretation and application of the Demonstrably Inefficient or Wasteful Expenditure (DIWE) Provision'. | SONI suggested revised text 'having regard to such guidance as the Authority shall from time to time issue' We have incorporated a version of these words. |
| Paragraph 1.1 Definitions | Inclusion of 'as modified or replaced from time to time' in definition of Price Control Decision paper for completeness. | It is SONI's view that this amendment goes further than the stated effect of the proposed modifications, as set out in the Notice... ... [there is] no reason that this definition cannot now specifically reference named decision papers, including the Utility Regulator's final decision on pensions and change of law, and the decision | The proposed phrase 'as modified from time to time' has been removed and the specific papers that SONI has suggested have been referenced. We have also corrected the date of the 'decision paper'. |

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| | | <p>paper which ultimately forms the outcome of this consultation process. There is no need to refer to future Price Control modifications and such papers in this period, as the Price Control is now set and finalised.</p> | |
| <p>Paragraph 1.1 Definitions</p> | <p>Definition of ‘Requirements and Guidance on Excluded SSS/TUoS Costs’ added. Definition included to allow for remedy on Dt’s</p> | <p>SONI notes the importance of ensuring that such guidance is effective and implemented in a timely manner, and adequately implements the CMA’s proposed remedies in respect of Ground 2 of SONI’s Notice of Appeal. SONI also expects that the implementation of such remedy provides an enduring framework for cost recovery, and has therefore proposed an amendment to the language reflecting that this guidance may need to evolve over time.</p> | <p>Amended wording ‘as it may be subsequently supplemented or amended following further such consultation’ included and ‘in particular’ deleted. We consider the reference to relevant year ‘t’ to be appropriate.</p> |

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| | | <p>The reference to ‘in particular’ should be deleted – it is not clear what other categories of claim are envisaged at this stage, and the inclusion of this term adds unnecessary complication.</p> <p>The reference to Relevant Year t precludes costs incurred in preceding years as the effect of this reference is to refer to one year only – this should be amended to ‘any Relevant Year’, as demonstrated at (ii).</p> | |
| Paragraph 1.1 Definitions | <p>Definition of ‘Requirements and Guidance on Transmission Network Pre-Construction Projects’ added.</p> <p>Definition included to allow for remedy on TNPP’s</p> | <p>SONI notes the importance of ensuring that such guidance is effective and implemented in a timely manner, and adequately implements the CMA’s proposed remedies in respect of Ground 2 of SONI’s Notice of Appeal.</p> <p>SONI also expects that the</p> | <p>Suggested amendments accepted with the exception of ‘with the Licensee’. Any consultation will be an open consultation to ensure the interests of all stakeholders are considered.</p> |

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| | | <p>implementation of such remedy provides an enduring framework for cost recovery, and has therefore proposed an amendment to the language reflecting that this guidance may need to evolve over time.</p> <p>The reference to ‘in particular’ should be deleted – it is not clear what other categories of claim are envisaged at this stage, and the inclusion of this term adds unnecessary complication.</p> <p>The reference to Relevant Year t precludes costs incurred in preceding years as the effect of this reference is to refer to one year only – this should be amended to ‘any Relevant Year’, as demonstrated at (ii).</p> | |
| Paragraph | Definition of ‘Specified | The Northern Ireland Market Operator Licence is already a defined term in the | We consider it necessary to refer |

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| 1.1 Definitions | Proportions' added. | TSO Licence, and can therefore replace the wording 'the licence granted under Article 10(1)(d) of the Order' as demonstrated. | to the Electricity Order. No further rationale was provided by SONI. The definition of 'Specified Proportions' is included to allow for a margin on imperfections charges as per the CMA remedy. |
| 1.1 Definitions | n/a | n/a | Definition of 'Transmission Network Pre-construction Project' has been amended to reference 9.1 of the Annex. |
| 1.1 Definitions | | | Definition of 'Transmission Network Pre-construction Project Costs' has been added and reference 9.2 of the Annex. |
| Paragraph 1.2 | Amendment to the table in 1.2 to remove relevant year i and define additional | | Proposed relevant year I removed. Relevant Year t / y -1 year 0 now defined to allow for |

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| | <p>Relevant years pre the start of the price control, from 1 May 2014</p> | | <p>calculation of relevant year's pre the start of this price control.</p> <p>This is used to define the pre-construction RAB from 1 May 2014 discussed further in the paragraph 2.4 section below.</p> |
| <p>Paragraph 2.2</p> | <p>Amendment of M_{tsot} term to update A_{TSOt}, remove Q_t and include $N_{TSOt} + PCR_t$.</p> <p>N_{TSOt} is a term to allow remuneration for Parent Company Guarantee and Margin on Revenue Collection as per CMA remedy.</p> <p>PCR_t is a term to allow remuneration on the side</p> | <p>SONI welcomes the removal of the Q_t term. The inclusion of each of these terms in $MTSO_t$ is considered below in respect of the relevant sections of the licence.</p> | <p>n/a</p> |

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| | RAB for TNPP's as per CMA remedy. | | |
| Paragraph 2.2 (a) (iv), (v) (A) and (v) (B) | A _{TSoT} has an additional text to include AB_PC _t costs and expenditure (and return on earned on that expenditure) associated with TNPP's. | <p>The reference in paragraph 2.2(a)(v) to 'any amount....required to protect consumers' should be deleted – it is unworkably vague and would add significant confusion and uncertainty. Provisions in the Licence should explain how the Utility Regulator will exercise its duties, not merely incorporate oblique references to a duty and unspecified action. It is also unnecessary in light of the concept of Demonstrably Inefficient and Wasteful Expenditure, which encapsulates the concept of consumer protection.</p> <p>Paragraph 2.2(a)(v)(B) lacks precision – this should cross refer to the rate of return as calculated in accordance with</p> | <p>Paragraph 2.2 has been redrafted. The maximum core SSS/TUoS revenue, from Relevant Year t=1 onwards has been included and in particular AB_PC_t has been moved from para 2.2(a)(iv) for clarity.</p> <p>The proposed clause 2.2(a)(v) has been deleted as it is no longer necessary as a consequence of revised drafting of the provisions for the pre-construction RAB following SONI's comments on the operation of the pre-construction RAB</p> <p>Table A and Table B have been</p> |

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| | | paragraphs 2.4. | update to reflect the CMA Decisions. |
| Paragraph 2.2 (d) | Additional modification proposed by SONI | The reference to ‘in Relevant Year t’ to ‘relating to Relevant Year t’ should be amended, recognising that approvals may be granted in one Relevant Year, relating to costs incurred in another. | Wording suggested by SONI included. |
| Paragraph 2.2 (e) | Removal of the Q_t term The CMA determination is for the retrospective period 2015 and up to 2020; therefore following the CMA decision the Q_t term is not required. Any differences between the allowed revenues and actual revenues can be dealt with through the use of the K_t term so as to have the | SONI welcomes the removal of the Q_t term. The Utility Regulator will need to adequately implement the CMA’s requirement in paragraph 13.7 of the FD and paragraph 1(f) of Annex A of the Order that the UR calculate the tariff adjustment for years 2018/19 and 2019/20 so that SONI recovers additional allowances over these two years – this | n/a |

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| | same effect/impact as if the licence modifications were in force from the start of the price control. | should be an NPV-neutral adjustment with equal values for the last two years. | |
| Paragraph 2.2 (e) | Within ADTSOt-2 capitilise the Licensee wording. This is a correction of wording terminology. | <p>SONI maintains its objection to the retention of ADTSOt-2, which fails to rectify Error 6 as pleaded by continuing to expose SONI to fully asymmetric risk. This term should therefore be deleted in its entirety.</p> <p>In order to remedy Error 6 of SONI's Notice of Appeal, SONI must have sufficient surety of recovery of efficiently incurred costs, including those efficiently incurred above the initial cap set by the Utility Regulator. In light of this, ADTSOt-2 is definitional the same as Dt and therefore becomes redundant – Dt already incorporating a deduction for</p> | <p>The UR considers that the AD_{TSOt-2} term should remain as proposed.</p> <p>SONI's position in their consultation response was that a revision was needed to the ADTSOt-2 term to avoid/limit SONI's exposure to asymmetric risk.</p> <p>We found no basis in the CMA Order for making such a change.</p> <p>We consider that the revision proposed by SONI is not needed to fully implement the remedy in</p> |

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| | | <p>DIWE. To retain ADTSOt is to suggest that SONI is fully exposed to overspend above the cap – even in respect of efficiently incurred expenditure.</p> <p>In any event, the reference to ‘costs allowed’ in limbs (1) and (2) of ADTSOt- 2 is erroneous – SONI is not in receipt of allowed costs, but in receipt of allowed revenues.</p> | <p>the CMA Order in respect of asymmetric risk</p> <p>Any approval made under Paragraph 8 of Annex 1 is</p> <p>‘A maximum allowance of £Y in respect of activity X’ i.e. a capped allowance.</p> <p>The Dt amount is not for costs incurred.</p> <p>AD_{TSOt-2} is the function by which this allowance gets adjusted for actuals and therefore must remain.</p> <p>The definition of the AD_{TSOt-2} term has also been amended in relation to the potential exclusion for demonstrably inefficient and wasteful expenditure (DIWE) at</p> |
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| | | | <p>any time.</p> <p>This is in line with the revised treatment of DIWE in pre-construction RAB. It also addressed the potential complexities if the approved cap were to be exceeded as a result of expenditure subsequently found to be DIWE.</p> |
| Paragraph 2.2 (g) | <p>Implementation of a new term N_{TSO_t} to put into effect the CMA's decisions on the allowances in respect of</p> <ul style="list-style-type: none"> • Parent Company Guarantee • Uncertain costs in respect of TTNP's and Dt's • Certain revenues | <ul style="list-style-type: none"> • PCGt: The PCGt as formulated in the UR's proposals fails to recognise the interplay between the CMA's proposed remedy and the treatment of the PCG under the SEMO licence, and will therefore be likely to require further amendment and reconsideration in advance of I- SEM go-live on 23 May 2018. As proposed in SONI's letter of 7 December 2017, the algebraic expression | <p>PCGt: The UR consider the remedy is implemented in Licence as directed by the CMA Order</p> <p>SONI's suggestions to wed the Market Operator (MO) licence to the TSO Licence in this respect not appropriate at this time as may impact on the future structure of either the TSO or MO price controls in the future.</p> |

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| | <p>collected by the Licensee</p> | <p>of the allowance for provision of a Parent Company Guarantee to SONI TSO should be derived by reference to any such change as may separately be made to the SEMO valuation. SONI has set out in Annex B of this response its proposed formulation of this term and welcomes further engagement with the Utility Regulator on these proposals.</p> <ul style="list-style-type: none"> • ARAt: The treatment of nominalisation must be corrected, as set out in Annex B of this response. Additional language is required to explain the purpose of this additional allowance for the sake of transparency. • CARVt: There is repetition in the definition of TUoSt: 'the provision of transmission services in transmission services in Relevant Year t'. Additional | <p>The Utility Regulator intends to address overlaps in the System Operator Licence with the Market Operator Licence as a standalone future project</p> <p>The ARAt term has been modified to reflect the Indexation of the £220k which is now included.</p> <p>CARVt: Repetition removed</p> |
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| | | language is required to explain the purpose of this additional allowance for the sake of transparency. Please refer to Annex B in respect of these proposed amendments. | |
| Paragraph 2.2 (h) | PCR _t means the rate of return allowance for Transmission Network Pre-construction Projects and is calculated in accordance with paragraph 2.4 of this Annex. | SONI's comments on the codification of the 'side-RAB' are set out in further detail below in respect of paragraph 2.4 of Annex 1. | All decisions on codification of the side-RAB are discussed in Paragraph 2.4 of this table. |
| Paragraph 2.2 (i) | Addition of AB_PC _t within 2.2 means the inflation-adjusted value of any Transmission Network Pre-construction Projects which either the Licensee or the Authority has determined in | | This term has been added for clarity and consistency with inclusion of AB_PC _t term. The revisions take account of SONI's comments on this paragraph and on pre- |

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| | Relevant Year t will not proceed to construction and is calculated in accordance with paragraph 2.4 of this Annex | | construction. |
| Paragraph 2.3 (a) | n/a | n/a | The RAB table has been update to reflect CMA decisions. |
| Paragraph 2.3 (b)(ii) | Additional modification proposed by SONI | This provision of the Licence is inoperative and proposes that the Utility Regulator take the opportunity to remove it in its entirety. | SONI's suggested deletion accepted in the interests of improving clarity of the licence drafting. |
| Paragraph 2.4 | Formula for the calculation of the rate of return allowance for Transmission Network Pre-construction Projects and codification of the RAB relating to | <ul style="list-style-type: none"> ORAB_PCt: The Utility Regulator proposes to define the opening side RAB as equal to zero in Relevant Year t ending 30 September 2015. However, network planning transferred to SONI on 1 May 2014, and as such the expenditure incurred by SONI to date should be | The licence drafting has been revised on the codification of the pre-construction RAB. This improves clarity of the operation of the RAB and addresses specific concerns raised by SONI were relevant |

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| | <p>transmission network pre-construction projects.</p> <p>It also considers the TNPP costs that will not proceed to construction and the costs associated with the asset base.</p> <p>It also has the effect of providing for the rate of return earned on any amount that is later found to be DIWE to be clawed back.</p> | <p>reflected in the codification of the side RAB. The returns due on the side RAB from 1 May 2014 to 30 September 2017, calculated in accordance with PCRt, will need to be trued up in accordance with Direction 1(d) of the Order – which states that the UR must ‘specify within [PCRt] the process by which SONI should recover the costs it has incurred on PCNPs since 1 May 2014 under this mechanism’.</p> <p>Paragraph 2.4(a)(i)(A) should therefore be amended to reflect the fact that the opening value of the side RAB as at 30 September 2017 shall equal £7.035 million. Alternatively, any ‘zero’ value in the Licence must be stated as at the date on which SONI assumed the network planning function, i.e. 1 May 2014.</p> <ul style="list-style-type: none"> • DIWE: The complexity and lack of clarity around the various adjustments introduced to implement DIWE could affect investors’ ability to rely on the TSO Licence. Further clarity is required about the adjustments to the side RAB for DIWE, in particular in relation to the | <p>An opening RAB value of £7m is not appropriate as this allowance has not been submitted, evidenced, reviewed or approved by the Authority</p> <p>The revised licence modifications allow SONI to build up the pre-construction RAB in respect of expenditure incurred from May 2014 when the transfer of planning function commenced;</p> <p>This sets the opening RAB value at 1 May 2014 to zero.</p> <p>SONI are required to submit all pre-construction costs for approval, in line with the arrangements for pre-construction costs from 1 October 2015.</p> <p>SONI now earn a return on this ‘side RAB’ in respect of the</p> |
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| | | <p>following:</p> <ul style="list-style-type: none"> o There is potential for double count in the calculation of CRAB_PCt, which includes a deduction for DIWE_PCDt for any amounts determined to be DIWE. However, all additions to and deductions from side- RAB are also explicitly net of DIWE. It is unclear how the standalone DIWE adjustment DIWE_PCDt would interact with adjustments for DIWE within AD_PCt, AB_PCt and TN_PCt. o It is also unclear how DIWE_PCDt would be allocated in year t or subsequent years to the AD_PCt, AB_PCt and TN_PCt adjustments to ensure that each is net of DIWE. o There is a risk that other adjustments for DIWE are double counted (for example a negative DIWE adjustment could be included within both to AD_PCt and DIWE_PCDt). <ul style="list-style-type: none"> • AD_PCt refers only to TNPP costs incurred in Relevant Year t – it therefore operates to exclude costs incurred prior to Relevant Year t which are submitted for approval in that year. This issue is | <p>period from 1 Oct 2015 per the CMA Order, therefore regulatory oversight on the value of this RAB is imperative.</p> <p>The pre-construction RAB is defined to exist and be calculated from 1 May 2014, with the same rules/process for RAB additions in the period to 30 Sept 2015 as from 1 Oct 2015.</p> <p>A revision to the AD_PCt term, was made so that costs incurred in year t that are found to be DIWE (by decision of the Authority in year t or a subsequent year) are to be excluded from the costs added to pre-construction RAB in respect of year t. This allows for substantial simplification of the calculations for pre-construction RAB.</p> <p>The new approach avoids the</p> |
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| | | <p>avoided if the issues with ORAB_PCt identified above are addressed appropriately.</p> <ul style="list-style-type: none"> • AB_PCt: This term refers to circumstances in which the Authority may determine that a TNPP will not proceed to construction – SONI seeks clarity about the circumstances in which this might be the case. The second textual reference to AB_PCt in paragraph 2.4(a)(ii)(C) should instead be to ABAD_PCy,t, as otherwise AB_PCt is defined twice. | <p>need for complex adjustments to reverse the effect of allowances in previous years (as were included in the December 2017 consultation), by excluding DIWE from RAB additions.</p> <p>The revised approach to DIWE is consistent with that used in the NIE RP5 licence modifications, which were approved by the CMA.</p> |
| Paragraph 2.4(c) | Costs incurred by the licensee in respect to TNPP projects that either the licensee or the Authority determined in relevant year t not to proceed to construction | SONI commented on the ability of the Authority to determine a project that does not to proceed to construction | <p>The inclusion of the ability of the Authority to determine that a project will not proceed under AB_PCt is for two reasons:</p> <ol style="list-style-type: none"> 1. While the project is included in the side RAB SONI earns a return. There may therefore a perverse incentive on the Licencee to delay labelling a project as ‘abandoned’ for RAB purposed even though all work has |

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| | | | <p>ceased. It is appropriate that the Authority can determine a project will not proceed in this instance.</p> <p>2. There may be exceptional circumstance were the licensee does not want to declare a project as abandoned e.g. a project of significant public interest. In this case it may be more appropriate for the Authority to do so.</p> |
| Paragraph 4.8 | | <p>The mechanics of paragraph 4.8 currently do not adequately reflect the ex ante nature of the Dt process (as specified by the Utility Regulator). SONI suggests some minor consequential amendments.</p> <p>TNPP costs are not recoverable within DTSO_t, and PCI DTSO_t is not a defined term in the SONI TSO Licence. SONI has therefore made deletions as appropriate.</p> | <p>The drafting of 4.8 has been revised to ensure the wording makes sense and the undefined PCI D_TSO_t .term has been reviewed.</p> <p>The nature of paragraph 6 and paragraph 8 are, by definition, forecasts (hence the AD_TSO_{t-2}) so we do not consider the inclusion</p> |

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| | | | of additional wording as proposed by SONI necessary. |
| Paragraph 8.1 | n/a | n/a | Reference made to the Requirements and Guidance on Excluded SSS/TUoS Costs in line with the CMA Order. |
| Paragraph 8.1 (h) | n/a | n/a | Paragraph 8.1 (h) removed. TNPPs can now be claimed under paragraph 9 |
| Paragraph 8.1 (h) (i) | Additional modification proposed by SONI | Deletion of reference '(ii) cannot reasonably be controlled by the Licensee' | UR accepts SONI's comments and have decided to remove 'cannot reasonably be controlled by the Licensee' |
| Paragraph 8.2 (a) | Additional modification proposed by SONI | A reference to the CMA Final Determination should be included in this licence provision as a document which SONI (and the Utility Regulator) must take account of and give regard to when | These modifications are made under the CMA Order Dated 10 November 2017. All items within the CMA Final Determination that required |

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| | | making (and by the Utility Regulator in considering) any Dt claim pursuant to paragraph 8.1. | codification are presented as modifications. We do not consider it necessary to reference the CMA Final Determination. |
| Paragraph 8.2 (b) | In making any claim pursuant to paragraph 8.1, the Licensee shall ensure that it makes such claims in accordance with the Requirements and Guidance on Excluded SSS/TUoS Cost. | SONI has no objection to incorporating this requirement in the Licence, insofar as the guidance documents ultimately produced by the Utility Regulator are clear, effective and workable, and adequately implement the CMA's proposed remedies in respect of Ground 2. | Text included as required under the CMA Order. |
| Paragraph 9.1 and 9.2 | Codification of the ability to make, claim for approval of Transmission Network Pre-construction Projects and Costs in accordance with the Requirements and | SONI notes that there may be a need during the construction of the project for SONI to respond to requests from NIE for support in delivering the project for the benefit of consumers. SONI therefore proposes a minor amendment to | Paragraph 9.1 and 9.2 added in line with the CMA Order. SONI wish to modify the licence to extend the scope of costs qualifying as Transmission |

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| | <p>Guidance for TNPP's.</p> | <p>paragraph 9.1(b) to include these particular activities, as demonstrated.</p> <p>SONI maintains its position that visibility over the four paths to recovery of TNPP costs, including where SONI exercises its step-in rights and where a third party proceeds to construct the project, is critical to SONI's financeability and should be coded in the licence. It is therefore of significant concern to SONI that the UR has failed to reflect these paths for recovery in its proposals, contrary to the requirements of paragraph 14 of Annex B of the Order</p> | <p>Network Pre-construction Costs and falling within scope of the pre-construction side RAB.</p> <p>We do not consider SONI's suggestion to be a minor amendment as it would allow for the extension of the pre-construction RAB to include costs incurred during the construction phase. We found no basis for such a change in the CMA Order of 10 November 2017.</p> <p>If there is a possibility of such construction costs being incurred by SONI it is the licensee's responsibility to ensure the TIA provides for this.</p> <p>As is required within Condition 18 of this licence we would expect</p> |
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| | | | <p>SONI at all times to have in force and implement the 'Transmission Interface Arrangements' in common with the Transmission Owner. Therefore this additional suggested text within 9.1 (b) is not required.</p> <p>Outside of the TIA the Dt provisions at paragraph 8 of the licence can provide for this eventuality.</p> |
| Paragraph 10.1 | <p>Within reporting section the Licensee shall include all such information as may be specified in the Requirements and Guidance on Excluded SSS/TUoS Costs; and the Requirements and</p> | <p>SONI has no objection to incorporating this information requirement in the Licence, insofar as the guidance documents ultimately produced by the Utility Regulator are clear, effective and workable.</p> | <p>Reference to the 'Requirements and Guidance' has been included in line with the CMA Order.</p> |

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| | Guidance on Transmission Network Pre-construction Projects. | | |
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4. Decision

30. The Utility Regulator has decided to proceed with the making of the modifications set out in Schedule 1 (shown in mark-up form) to the revised Annex 1 of SONI's Transmission licence.
31. The following Article 14 (8) notice will enable the effective date of the revised licence including Annex 1 to be Friday 4 May 2018.
32. These licence modifications set SONI's allowed revenue specific to the SONI transmission system operation business for the five year period 1 October 2015 to 30 September 2020 (the Price Control Period).

**THE NORTHERN IRELAND AUTHORITY FOR UTILITY
REGULATION NOTICE UNDER ARTICLE 14(8) OF THE
ELECTRICITY (NORTHERN IRELAND) ORDER 1992 (AS
AMENDED)**

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

In accordance with Article 14(2) of the Electricity (Northern Ireland) Order 1992 ("the **Order**") the Northern Ireland Authority for Utility Regulation ("the **Authority**") published (on 20 December 2017) a notice of its intention to modify the conditions of the electricity transmission licence ("the **Licence**") held by SONI Limited ("the **Licensee**").

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

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

1. The Authority has decided to proceed with the making of modifications to Annex 1 of the electricity transmission licence (the "**Licence**") held by SONI Limited (the "**Licensee**")
2. On 20 December 2017 the Authority published a notice⁹ stating that it intended to modify the Licence, stating the reasons for and effect of the modifications.
3. The purpose of that notice was to bring the proposed modifications to the attention of the Licensee and other persons likely to be affected by them, and to invite representations or objections in connection thereto.
4. The Authority received one response, from the Licensee. The Authority has taken into account the representations made therein, and made amendments to the proposed modifications where it considers it appropriate to do so.

⁹ <https://www.uregni.gov.uk/sites/uregni/files/media-files/Consultation%20paper%20on%20SONI%20CMA%20Licence%20Mods.pdf>

5. The Authority has summarised the representation received, described the changes made to the modifications proposed in the notice of 20 December 2017, and stated the reasons for those changes, in its paper entitled "Licence Modifications Decision implementing the SONI CMA Order" published on 9 March 2018 together with this notice.
6. The modifications are shown in the new version of 'Annex 1 Charge Restrictions' of the Licence and are set out (and shown in mark-up form) in the Schedule to this notice.
7. The reason why the Authority proposed to make the Article 14(2) modifications to the Licence was to comply with and implement the directions given to the UR by the CMA in the CMA Order dated 10 November 2017 (the "**CMA Order**"¹⁰) for the further reasons set out in the CMA's Final Determination¹¹ on SONI's appeal on certain aspects of the UR's Price Control Decision dated 14 March 2017¹².
8. The effect of the modifications is to comply with and implement the directions in the CMA Order, and also to make minor changes which are consequential or incidental to the modifications made for that purpose.
9. The Authority considers that the modifications to the Licence are necessary and appropriate to give effect to the CMA Order and to adjust the limit which is placed, for the protection of electricity consumers, on the total amount of revenue that the Licensee can recover in any relevant year.
10. The modifications (as shown in track change in the Schedule to this notice) will take effect from 04 May 2018.
11. The Authority has, pursuant to Article 14(8) of the Order, published this notice on its website and sent a copy of this notice to the Licensee. In addition, the Authority has provided a copy of this notice to the Department for the Economy, the Consumer Council for Northern Ireland and the CMA.

¹⁰ <https://assets.publishing.service.gov.uk/media/5a05b304ed915d0ade60dacb/soni-niaur-cma-order.pdf>

¹¹ <https://assets.publishing.service.gov.uk/media/5a09a73ce5274a0ee5a1f189/soni-niaur-final-determination.pdf>

¹² <https://www.uregni.gov.uk/news-centre/soni-price-control-2015-2020-licence-modifications-published>

12. A copy of the modifications can be obtained in hard copy from Jody O'Boyle at:
Utility Regulator, Queens House, 14 Queen Street, Belfast, BT1 6ED. Email
jody.oboyle@uregni.gov.uk

13. Dated this 9th day of March 2018.



Jenny Pyper

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

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

Schedule 1

LICENCE TO PARTICIPATE IN THE TRANSMISSION
OF ELECTRICITY

granted to

SONI LIMITED

The Department for the Economy

ANNEX 1 Charge Restrictions

1 Definitions

1.1 In this Annex:

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| 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 <u>having regard to such guidance as the Authority may from time to time issue</u> , to be demonstrably inefficient and/or wasteful, given the information reasonably available to the Licensee at the time that the Licensee made the relevant decision about that expenditure. For the avoidance of doubt, no expenditure is demonstrably inefficient or wasteful expenditure simply by virtue of a statistical or quantitative analysis that compares aggregated measures of the Licensee's costs with the costs of other companies. |
| Dispatch Balancing Costs | means costs relating to or incurred in respect of: (a) the constraining on or off (as the case may be) generation sets pursuant to the central dispatch and merit order systems and processes established by the Licensee in accordance with Condition 22 or for the purposes; (b) the management of Energy Imbalances; (c) any Uninstructed Imbalance; |

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| | <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 <u>Imperfections</u> 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<u>Imperfections</u> 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</p> |

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| | <p>impacts on the Transmission System Operator Business or a decision taken by that Council or Commission which is binding on the Licensee and impacts on the Transmission System Operator Business to the extent that it is so binding;</p> <p>(c) any interpretation of law, or finding, contained in any judgment given by a court or tribunal of competent jurisdiction in respect of which the period for making an appeal has expired;</p> <p>(d) any direction of a competent authority other than, insofar as it applies to the Licensee, the Authority (except in the exercise of its powers under paragraph 4 of Condition 16) or the Department.</p> |
| Maximum Regulated SSS/TUoS Revenue | means the revenue calculated in accordance with the formula in paragraph 2 of this Annex. |
| Moyle Interconnector Collection Agency Agreement | has the meaning given to that expression in Condition 37. |
| Other System Charges | has the meaning given to it in the Single Electricity Market Trading and Settlement Code. |
| Permitted One-Year Percentage | means 4 per cent of the Maximum Regulated SSS/TUoS Revenue. |
| Permitted Three-Year Percentage | means 5 per cent of the Maximum Regulated SSS/TUoS Revenue in the second of the Relevant Years. |
| Price Control Decision Paper | means each of: (i) the decision paper issued by the Authority on 19/02/2016 and entitled "Final Determination to the Price Control 2015-2020 for the Electricity System Operator for Northern Ireland (SONI)" (ii) the decision paper issued by the Authority on 14 03/2017 and entitled "Decision on the Licence Modifications for the Price Control 2015-2020 of the Electricity System Operator for Northern Ireland (SONI)"; (iii) <u>the decision paper issued by the Authority on 19 October 2017 and entitled "Conclusions on Pensions Allowances and Decision on Change of Law provisions"</u> , and (iv) <u>the decision paper issued by the Authority on 09 March 2018 and entitled "Licence</u> |

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| | <u>Modifications Decision implementing the SONI CMA Order</u> ” and as they may be supplemented or amended by any further decision paper on the same subject. |
| Quantity Entering the Total System | means the aggregate quantity of units metered on entry to the total system in Relevant Year t (minus any units consumed by generation sets and imported from the total system). |
| Regulated SSS/TUoS Revenue | means the revenue (measured on an accruals basis) derived from SSS/TUoS Charges (including any revenue received from any Separate Business) after deduction of value added tax (if any) and any other taxes based directly on the amounts so derived. |
| Relevant Change of Law | means the application to the Licensee of any Legal Requirement which did not previously so apply or the change of any Legal Requirement relating to the Licensee (including any such Legal Requirement ceasing to apply, being withdrawn or not being renewed). |
| Relevant Year | means a financial year commencing on 1 October and concluding 30 September. |
| Relevant Year t | means that Relevant Year for the purposes of which any calculation falls to be made; " Relevant Year t - 1 " means the Relevant Year preceding Relevant Year t and similar expressions shall be construed accordingly. |
| <u>Requirements and Guidance on Excluded SSS/TUoS Costs</u> | <p><u>means a document issued by the Authority following consultation with the Licensee, as it may be subsequently supplemented or amended following further such consultation, and setting out the requirements and guidance applicable to:</u></p> <p><u>(a) the process by which claims may be made by the Licensee to the Authority for approval under paragraph 8.1 of this Annex, including claims for:</u></p> <p><u>(i) an approval in respect of costs that are yet to be incurred;</u></p> <p><u>(ii) an approval in respect of costs that were incurred in any Relevant Year t falling prior to that in which the claim is made;</u></p> |

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| | <p>(iii) <u>the variation of any previous approval;</u></p> <p>(b) <u>the information and evidence to be provided by the Licensee on the submission of such claims;</u></p> <p>(c) <u>the process by which such claims will be reviewed and, if appropriate, approved by the Authority; and</u></p> <p>(d) <u>any information or evidence that must be provided by the Licensee to the Authority following any such approval.</u></p> |
| <p><u>Requirements and Guidance on Transmission Network Pre-construction Projects</u></p> | <p><u>means a document issued by the Authority following consultation with the Licensee, as it may be subsequently supplemented or amended following further such consultation, and setting out the requirements and guidance applicable to:</u></p> <p>(a) <u>the process by which claims may be made by the Licensee to the Authority for approval under paragraphs 9.1 and 9.2 of this Annex, including- claims for:</u></p> <p>(i) <u>an approval in respect of costs that are yet to be incurred;</u></p> <p>(ii) <u>an approval in respect of costs that were incurred in any Relevant Year t falling prior to that in which the claim is made;</u></p> <p>(iii) <u>the variation of any previous approval;</u></p> <p>(b) <u>the information and evidence to be provided by the Licensee on the submission of such claims;</u></p> <p>(c) <u>the process by which such claims will be reviewed and, if appropriate, approved by the Authority; and</u></p> <p>(d) <u>any information or evidence that must be provided by the Licensee to the Authority following any such approval.</u></p> |
| <p>SEM Decision Paper</p> | <p>means the decision paper issued jointly by the Authority and the Commission for Energy Regulation dated 5 June 2012 and entitled "Incentivisation of All-Island Dispatch Balancing Costs".</p> |

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| SO Interconnector Trade | has the meaning given to it in the Single Electricity Market Trading and Settlement Code. |
| <u>Specified Proportions</u> | <u>means the proportions as defined and set out in the Market Operator Agreement entered into under and for the purposes of Condition 14 of the licence granted under Article 10(1)(d) of the Order.</u> |
| 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> <ul style="list-style-type: none"> (a) identified, by the Licensee or the Transmission Owner, as a project which is necessary for the purposes of developing the transmission system; (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 (c) <u>which has been approved by the Authority, following a submission claim 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 accordance with paragraph (b) above.9.1 of this Annex.</u> |
| <u>Transmission Network Pre-construction Project Costs</u> | <u>means costs incurred by the Licensee in relation to a Transmission Network Pre-construction Project, where the Authority has approved the incurring of costs in relation to that project following a claim by the Licensee for such approval in accordance with paragraph 9.2 of this Annex.</u> |
| Uncollected SSS/TUoS Revenue | means any amount owed to the Licensee in respect of Regulated SSS/TUoS Revenue, which amount |

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| | remains unpaid six months after the date it first fell due for payment or which amount the Licensee deems (in accordance with the payment security policy) to be unrecoverable before the expiry of that six month period; plus the reasonable recovery costs incurred by the Licensee in respect of such amount and the reasonable interest attributable to such amount (calculated, in both cases, in accordance with the payment security policy). |
| Uninstructed Imbalance | has the meaning given to it in the Single Electricity Market Trading and Settlement Code. |
| Unit | means a kilowatt hour. |

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

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

2 Restriction of SSS/TUoS Charges

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

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

Plus

- (b) the $CAIR_t$ amount,

where:

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

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

$$M_{TSOt} = A_{TSOt} + B_{TSOt} - BI_t + D_{TSOt} + Q_t + K_{TSOt} + INCENT_t + N_{TSOt} + PCR_t + AB_PC_t$$

where:

- (a) A_{TSOt} means:

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

plus

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

plus

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

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

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

which in each case:

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

where:

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

| Relevant Year t | 1 | 2 | 3 | 4 | 5 |
|---------------------|--------------|--------------|--------------|--------------|--------------|
| | £m | £m | £m | £m | £m |
| Payroll | 7.21765 9 | 7.2175 80 | 7.21748 2 | 7.2173 91 | 7.21736 3 |
| IT & Communications | 1.783 | 1.850 | 1.924 | 1.948 | 1.997 |

| | | | | | |
|---|----------------|--------------|--------------|--------------|--------------|
| Other OPEX | 1.41130 3 | 1.4113 03 | 1.78330 3 | 1.6293 03 | 1.66430 3 |
| Pension Deficit | 0.18926 2 | 0.1890 71 | 0.5707 1 | 0.5707 1 | 0.57071 |
| Depreciation on Non-Building Assets | 4.0833. 999 | 1.7507 63 | 1.34436 4 | 1.2853 13 | 1.23627 3 |
| 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 | 0.44044 4 | 0.3393 47 | 0.30531 4 | 0.3643 74 | 0.32133 2 |

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

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

where:

C_{TSOt} means:

(i) the aggregate of the actual costs incurred by the Licensee in Relevant Year t in respect of each costs category listed in Table A in paragraph 2.2(b)(vi) of this Annex, minus that part (if any) of such ~~actual~~ costs that the Authority determines at any time to be Demonstrably Inefficient or Wasteful Expenditure;

plus

(ii) the rate of return allowance for Relevant Year t as set out in Table B in paragraph 2.2(b)(vii) of this Annex;

(d) D_{TSOt} means:

(i) the aggregate of the total amount, allowed by the Authority in accordance with ~~the~~ any approvals given pursuant to paragraph 8.3(e) of this Annex, ~~in~~ Relevant Year t for excluded SSS/TUoS costs in Relevant Year t;

plus

(ii) the total amount, allowed by the Authority in accordance with paragraph 6.1 of this Annex, ~~in~~ for 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)~~ (e) K_{TSOt} 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:

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

where:

(i) F_{TSOt-2} means:

(A) the M_{TSOt} for Relevant Year t-2;

minus

(B) $(D_{TSOt-2} - AD_{TSOt-2})$;

minus

where:

AD_{TSOt-2} means:

~~(C) where actual costs (excluding any such costs that part (if any) of AD_{TSOt-2} that are determined by the Authority determines at any time to be Demonstrably Inefficient or Wasteful Expenditure.~~

~~where:~~

~~AD_{TSOt-2} means:~~

- 1) ~~where actual costs~~ incurred by the ~~licensee~~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 (excluding any such costs that are determined by the Authority at any time to be Demonstrably Inefficient or Wasteful Expenditure) incurred by the ~~licensee~~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).

~~(g)(f)~~ INCENT_t means:

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

where:

- (iii) DBC Success Amount means the amount that is equal to 10% of every whole 2.5% by which the Achieved DBC is below the Ex-Post DBC Target provided that:
 - (A) where the Achieved DBC is less than 10% below the Ex-Post DBC Target, the amount shall be calculated as zero;

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

(g) N_{TSO_t} is calculated as follows:

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

where:

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

$$PCGR_t = PCG_t \times 0.0175$$

where:

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

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

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

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

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

where:

(A) $TUoS_t$ means the amounts payable to the Transmission Owner Business for the provision of transmission services in Relevant Year t;

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

(C) IMP_t means the revenues collected by the Licensee in Relevant Year t in respect of the amount of the Imperfections Charge allocated to the Licensee in accordance with the Specified Proportions.

(h) PCR_t means the rate of return allowance for Transmission Network Pre-construction Projects and is calculated in accordance with paragraph 2.4 of this Annex.

(i) AB_{PC_t} means the inflation-adjusted value of any Transmission Network Pre-construction Projects:

(A) which the Licensee has determined in Relevant Year t will not proceed to construction; or

(B) which the Authority is satisfied (having first consulted with the Licensee) will not proceed to construction, and in respect of which the Authority has given written notice to the Licensee in Relevant Year t that it has reached that conclusion.

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

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 | 5.0721 35 | 3.47061 1 | 3.05621 7 | 2.9073.0 81 | 3.14233 2 |
| 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 | 7.4575 <u>20</u> | 5.73887 <u>9</u> | 5.20836 <u>9</u> | 6.21839 <u>2</u> | 5.48667 <u>6</u> |

(b) WACC_t means:

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

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

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

$$PCR_t = (RAB_PC_t \times WACC_t)$$

Where:

RAB_PC_t means the value of the regulated asset base relating to Transmission Network Pre-construction Project Costs in Relevant Year t, and:

(e)(a) is calculated in accordance with the following formula—:

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

~~$$RAB_PC_t = (ORAB_PC_t + CRAB_PC_t) \times 0.5$$~~

_____ where:

~~(i) r_e = cost of equity~~

~~(ii) r_d = cost of debt~~

~~(iii) tx = taxation~~

~~(iv) g = gearing~~

~~where:~~

~~(v)(i) ORAB_PC_t means the opening value of (v) shall be the main rate of corporation tax, applicable regulated asset base relating to Northern Ireland, Transmission Network Pre-construction Project Costs in existence at the commencement of the Relevant Year t, and is calculated as follows:~~

~~(A) in Relevant Year t = -1 (minus one), ORAB_PC_t shall be zero:~~

(B) in each subsequent Relevant Year t, ORAB_PC_t shall be calculated as follows:

$$ORAB_PC_t = CRAB_PC_{t-1} \times \frac{RPI_t}{RPI_{t-1}}$$

(ii) CRAB_PC_t means the closing value of the regulated asset base relating to Transmission Network Pre-construction Project Costs in Relevant Year t, calculated in accordance with the following formula:

$$CRAB_PC_t = ORAB_PC_t + AD_PC_t - AB_PC_t - TN_PC_t$$

where:

(A) ORAB_PC_t has the meaning given in sub-paragraph (i) above:

(B) AD_PC_t means the aggregate amount of Transmission Network Pre-construction Project Costs incurred by the Licensee in respect of all Transmission Network Pre-construction Projects in Relevant Year t (excluding any such costs that are determined by the Authority at any time to be Demonstrably Inefficient and Wasteful Expenditure), except that, if the sum of the costs incurred in relation to any such project in the period of time from 1 May 2014 up to and including Relevant Year t (excluding any such costs determined by the Authority at any time to be Demonstrably Inefficient and Wasteful Expenditure) exceeds the total costs approved by the Authority in respect of that project, then the amount to be taken into account in respect of that project in Relevant Year t shall be the maximum of:

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

(bb) zero;

(C) AB_PC_t has the meaning given in paragraph 2.2(i) above and is calculated according to the following formula:

$$AB_PC_t = \sum_{y=-1}^t \left(ABAD_PC_{y,t} \times \frac{RPI_t}{RPI_y} \right)$$

where ABAD_PC_{y,t} means the Transmission Network Pre-construction Project Costs (or parts thereof) which:

(aa) form part of AD_PC_y; and

(bb) were incurred by the Licensee in respect of any Transmission Network Pre-construction Project which either the Licensee or the Authority determined in Relevant Year t will not proceed to construction;

(D) TN_PC_t means the amount received by the Licensee in Relevant Year t from the Transmission Owner (by virtue of a payment approved by the Authority and made in accordance with the Transmission Interface Arrangements) in respect of Transmission Network Pre-construction Project Costs added to the regulated asset base in Relevant Year t or in any previous Relevant Year y;

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

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, use~~ its best endeavours to submit to the Authority by no later than 31 March preceding the start of that Relevant Year t; a statement setting out:

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

(ii) ~~that in respect of which~~ the Licensee is, ~~(or will expect to be)~~, requesting a determination in accordance with paragraph 6 or is, ~~(or will expect to 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_{TSOt} in accordance with paragraph 2.2(d) of this Annex, for each Relevant Year t specified in the Authority's notification.

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

- (a) its intentions in relation to the development and implementation of the “requisite arrangements”, as provided for in condition 60 of the NIE Energy Supply Licence;
- (b) the period over which the Licensee shall incur costs by reason of the Relevant Change of Law;
- (c) the incremental costs (including financing costs) which the Licensee has been or will be required to incur as a consequence of the Relevant Change of Law; and
- (d) any other circumstances relevant to the case.

6.4 Where the Licensee requests the Authority to make a determination pursuant to paragraph 6.1, the request shall:

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

7 Unit Coverage

7.1 The component of Maximum Regulated SSS/TUoS Revenue relating to System Support Services (or certain parts of that component) can potentially be recovered from the Quantity Entering the Total System in the authorised transmission area.

7.2 The final decision regarding which Units in particular the component of Maximum Regulated SSS/TUoS Revenue relating to System Support Services (or certain parts of that component will be recovered from in Relevant Year t (“unit coverage”) rests with the Authority.

7.3 In each Relevant Year t on the decision of the Authority regarding unit coverage of the System Support Services charge, the Licensee will then draw up for the Relevant Year t the schedule of System Support Services charges in accordance with Condition 30 in a manner which is consistent with the decision of the Authority regarding unit coverage. If the Licensee draws up for Relevant Year t the schedule of System Support Services charges in accordance with Condition 30 in a manner which is not consistent with the decision of the Authority regarding unit coverage then the Authority’s approval under Condition 30 paragraph 6 for the form of this schedule will not be granted.

8 Excluded SSS/TUoS Costs

8.1 The Licensee may, subject to paragraphs 8.2 and 8.3, make a claim ~~(to the Authority)~~, in accordance with the Requirements and Guidance on Excluded SSS/TUoS Costs, that the following costs and revenues of the Licensee (whether a positive or negative amount) shall be treated as excluded SSS/TUoS/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%~~ 0%;
- (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 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~~
- ~~(i)(h)~~ (h) any other reasonable and efficient costs incurred (or likely to be incurred) by the Transmission System Operator Business which:
 - (i) are not taken into account in the setting of $A_{TSO,t}$, $B_{TSO,t}$, $N_{TSO,t}$ or PCR_t ; and
 - ~~(ii) cannot reasonably be controlled by the Licensee; and~~
 - ~~(iii)(ii)~~ (ii) the Authority determines, upon an application to it by the Licensee, shall be included for the purposes of this paragraph.

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

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

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

- (a) be submitted by the Licensee, using its best endeavours, by no later than the first day in April immediately preceding the Relevant Year in respect of which the Licensee wishes the claim to take effect;
- (b) differentiate between internal and external costs and revenues;
- (c) 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 Approval of Transmission Network Pre-construction Projects and Costs

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

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

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

910 Reporting

9.410.1 The Licensee shall, provide to the Authority all information requested in association with this Annex-in, including all such format and by such time information as may be reasonably directed by the Authority-specified in:

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

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

