

ELECTRICITY (NORTHERN IRELAND) ORDER 1992

MODIFICATION OF LICENCE

In pursuance of its powers under Article 14(1) of the Electricity (Northern Ireland) Order 1992 as amended by the Energy (Northern Ireland) Order 2003, the Northern Ireland Authority for Energy Regulation, having obtained the consent of Northern Ireland Electricity plc, hereby modifies the licence issued to Northern Ireland Electricity plc under Article 10(1)(b) of the Electricity (Northern Ireland) Order 1992 as amended as follows:-

Condition 3A of Part IIB

Condition 3A shall be renamed and shall read Condition 3A: Availability of resources and undertaking of ultimate controller.

1. Paragraphs 1 through to 5 of Condition 3A shall be under the heading of Availability of Resources.
2. Paragraph 1 shall be reworded to read:
 1. The licensee shall at all times act in a manner calculated to secure that it has sufficient resources (including, without limitation, management resources, financial resources and financial facilities) to enable it to:
 - (a) carry on the Separate Businesses; and
 - (b) comply with its obligations under the Order and the Energy Order and this licence.
3. Paragraphs 6 through to 9 of Condition 3A shall be under the heading of Undertaking of ultimate controller.
4. Paragraphs 6 and 7 shall be reworded to read:
 6. The licensee shall procure from each company or other person which the licensee knows or reasonably should know is at any time an ultimate controller of the licensee a legally enforceable undertaking in favour of the licensee in a form specified by the Authority that that ultimate controller will refrain from any action, and will procure that every subsidiary of the holding company (other than the licensee and its subsidiaries) will refrain from any action, which would then be likely to cause the licensee to breach any of its obligations under the Order or the Energy Order or this licence. Such undertaking shall be obtained within 7 days after the date when these modifications become effective, or after the person in question becomes an ultimate controller (as the case may be) and shall remain in force for as long as the licensee remains the holder of this licence and the giver of the undertaking remains an ultimate controller of the licensee.
 7. The licensee shall:

- (a) deliver to the Authority evidence (including a copy of each such undertaking) that the licensee has complied with the obligation to procure undertakings pursuant to paragraph 6;
- (b) inform the Authority immediately in writing if the directors of the licensee become aware that the undertaking has ceased to be legally enforceable or that its terms have been breached; and
- (c) comply with any direction from the Authority to enforce any such undertaking.

5. In Condition 3A of Part IIB, the following new paragraphs 8 and 9 shall be inserted immediately after existing paragraph 7 –

8. The licensee shall not, save with the written consent of the Authority, enter (directly or indirectly) into any agreement or arrangement with an ultimate controller of the licensee or any of its subsidiaries (other than the subsidiaries of the licensee) at a time when:

- (i) an undertaking complying with paragraph 6 is not in place in relation to that ultimate controller; or
- (ii) there is an unremedied breach of such undertaking; or
- (iii) the licensee is in breach of the terms of any direction issued by the Authority under paragraph 7.

9. In this Condition 3A, unless the context otherwise requires, “ultimate controller” means:

- a. any holding company of the Licensee, which is not itself a subsidiary of another company; and/or
- b. any person who (whether alone or with a person or persons connected with him) is in a position to control, or to exercise significant influence over, the policy of the licensee, or any holding company of the licensee, by virtue of:
 - i. rights under contractual arrangements to which he is a party or of which he is a beneficiary;
 - ii. rights of ownership (including rights attached to or deriving from securities or rights under a trust) which are held by him or of which he is a beneficiary,

but shall exclude any director or employee of a corporate body in his capacity as such and any minister, ministry, department, agency, authority, official or statutory person;

and a person shall be considered to be connected with another person if he is party to any arrangement regarding the exercise of any such rights as are described in paragraph (b) above.

Condition 3B of Part IIB

In Part II B, a new Condition, Condition 3B: Restriction on Dividends shall be inserted.

Condition 3B: Restriction on Dividends

1. The directors of the licensee shall not declare or recommend a dividend, and the licensee shall not make any other form of distribution within the meaning of Article 271 of the Companies (Northern Ireland) Order 1986, or redeem or repurchase any share capital of the licensee, unless prior to the declaration, recommendation or making of the distribution (as the case may be) the licensee has issued to the Authority a certificate in the following form:

“After making enquiries, the directors of the licensee are satisfied:

- (a) that the licensee is in compliance in all material respects with all the obligations imposed on it by conditions 3A, 4, 6, 8 and 8A of Part II B and condition 20 of Part II G of its licence; and
 - (b) that the making of a distribution of [] on [] will not, either alone or when taken together with other circumstances reasonably foreseeable at the date of this certificate, cause the licensee to be in breach to a material extent of any of those obligations in the future.”
2. The certificate given under paragraph 1 must be signed by a director of the licensee and must have been approved by a resolution of the board of directors of the licensee passed not more than 14 days before the date on which the declaration, recommendation or payment in question will be made.
 3. Where the certificate given under paragraph 1 has been issued in respect of the declaration or recommendation of a dividend, the licensee shall be under no obligation to issue a further certificate prior to payment of that dividend, provided that such payment is made within six months of the issuing of that certificate.

Condition 8 of Part IIB

1. Condition 8: Disposal of relevant assets shall be modified to read:

Condition 8: Disposal of relevant assets and Indebtedness.

2. Paragraphs 1 to 4 of Condition 8 shall be under the heading of Disposal of relevant assets.
3. Paragraphs 5 to 8 of Condition 8 shall be under the heading of Indebtedness.
4. In paragraph 5, part (a) shall be reworded to read:

- a. create or permit to remain in effect any mortgage, charge, pledge, lien or other form of security or encumbrance whatsoever, undertake any indebtedness to any other person or enter into any guarantee of any obligation otherwise than:
 - i. on an arm's length basis;
 - ii. on normal commercial terms;
 - iii. for a Permitted Purpose; and
 - iv. (if the transaction is within the ambit of paragraph 1) in accordance with paragraphs 3 and 4.

5. In paragraph 5, part (b) (iv), (v), (vi), (vii), (viii) and (ix) shall be reworded to read:

- iv. a transfer, lease, licence or loan of any asset, right or benefit on an arm's length basis and on normal commercial terms and made in compliance with the payment requirement referred to in paragraph 6;
- v. repayment of any loan or payment of any interest on a loan not prohibited by sub-paragraph (a);
- vi. payments for group corporation tax relief or for the surrender of Advance Corporation Tax calculated on a basis not exceeding the value of the benefit received;
- vii. a transfer for the purpose of satisfying paragraph 10 of Part II Condition 20;
- viii. an acquisition of shares in conformity with paragraph 9 of Part II Condition 20; or
- ix. a loan to any affiliate or related undertaking of the licensee, which is made for a Permitted Purpose,

provided, however, that paragraph 7 of Condition 8A of Part II B shall prevail where that paragraph applies;

6. The following new sub paragraphs (c) and (d) shall be inserted immediately after existing paragraph 5(b):

- (c) enter into an agreement or incur a commitment incorporating a cross-default obligation; or
- (d) save for the Northern Ireland Power Project Finance Contract made between European Investment Bank and Northern Ireland Electricity plc on 16 December 1999, continue, or permit to remain in effect, any agreement or commitment incorporating a cross-default obligation subsisting at the date this paragraph 5(d) takes effect, save that the licensee may permit any cross-default obligation in existence at that date to remain in effect for a period not exceeding twelve months from that date, provided that the cross-default obligation is solely referable to an instrument relating to the provision of a

loan or other financial facilities granted prior to that date and the terms on which those facilities have been made available as subsisting on that date are not varied or otherwise made more onerous,

provided, however, that the provisions of sub-paragraphs (c) and (d) shall not prevent the licensee from giving any guarantee permitted by and compliant with the requirements of sub-paragraph (a).

7. Paragraph 6 shall be replaced by the following paragraph:

6. The payment requirement referred to in paragraph 5(b)(iv) is that the consideration due in respect of the transfer, lease, licence or loan of the asset, good, right or benefit in question is paid in full prior to such transfer, lease, licence or loan unless:

- (a) the counter-party to the transaction has, and maintains until payment is made in full, an investment grade credit rating; or
- (b) the obligations of the counter-party to the transaction are fully and unconditionally guaranteed throughout the period during which any part of the consideration remains outstanding by a guarantor which has and maintains an investment grade credit rating.

8. In paragraph 8, the following definitions shall be inserted in alphabetic order:

“cross-default obligation” means a term of any agreement or arrangement whereby the licensee’s liability to pay or repay any debt or other sum arises or is increased or accelerated or could reasonably be expected to be capable of arising, increasing or of being accelerated by reason of a default (howsoever such default may be described or defined) by any person other than the licensee, unless:

- (a) that liability can arise only as a result of a default by a subsidiary of the licensee;
- (b) the licensee holds a majority of the voting rights in that subsidiary and has the right to appoint or remove a majority of its board of directors; and
- (c) that subsidiary carries on business solely for the purposes of a Permitted Purpose (but not a purpose identified in sub-paragraph (f), (g) or (h) of the definition of Permitted Purpose);

“indebtedness” means all liabilities now or hereafter due, owing or incurred, whether actual or contingent, whether solely or jointly with any other person and whether as principal or surety, together with any interest accruing thereon and all costs, charges, penalties and expenses incurred in connection herewith

“investment grade credit rating” has the meaning given to that expression in Condition 8A of Part II B

Condition 8A of Part IIB

A new Condition shall be inserted immediately after Condition 8 of Part IIB, and shall read as:

Condition 8A: Financial gearing and credit rating

1. The licensee shall, within 14 days of this Condition 8A taking effect and thereafter by 30 June of each year, submit to the Authority a certificate, approved by a resolution of the board of directors of the licensee and signed by a director of the licensee pursuant to that resolution, showing the Financial Gearing as at the end of the preceding Financial Year. The licensee shall provide the Authority with such information to support that certificate as the Authority may request.
2. For the purposes of paragraph 1:

“Financial Gearing” means Net Debt as a percentage of the regulatory asset base of the Transmission and Distribution Business such regulatory asset base being equivalent to the value of the term $CRAB_t$ as calculated in accordance with Schedule 4. ;

“Net Debt” means the licensee’s total borrowings (including bank loans, debt securities, finance leases, hire purchase contracts and non-equity shares) less the licensee’s cash and cash equivalents.

3. The following paragraphs of this condition shall only apply where the Authority has issued a direction stating that they are to apply, and shall cease to apply on the expiry of any period specified for such purpose in that direction or on the Authority directing that they are no longer to apply.
4. The licensee shall take all appropriate steps to ensure that the licensee obtains and thereafter maintains an investment grade credit rating.
5. In this condition, an “investment grade credit rating” means:
 - (a) unless sub-paragraph (b) below applies:
 - (i) an issuer rating of not less than BBB- by Standard & Poor’s Ratings Group or any of its subsidiaries;
 - (ii) an issuer rating of not less than Baa3 by Moody’s Investors Service Inc. or any of its subsidiaries;

- (iii) an issuer senior unsecured debt rating of not less than BBB- by Fitch Ratings Ltd or any of its subsidiaries; or
 - (iv) an equivalent rating from any other reputable credit rating agency which, in the opinion of the Authority, notified in writing to the licensee, has comparable standing in both the United Kingdom and the United States of America; or
 - (b) such higher rating as may be specified by those agencies from time to time as the lowest investment grade credit rating.
- 6. Paragraph 7 shall apply if at any time which is not less than 4 months after the Authority has issued the direction referred to in paragraph 3:
 - (a) the licensee does not hold an investment grade credit rating;
 - (b) where the licensee has a rating with more than one of the rating agencies referred to in paragraph 5, one or more of the ratings held is below those referred to in paragraph 5; or
 - (c) the licensee has one of the ratings referred to in paragraph 5 and:
 - (i) is on review for possible downgrade; or
 - (ii) the rating outlook of the licensee as specified by one or more of the credit rating agencies referred to in paragraph 5 has been changed from stable or positive to negative.
- 7. Where paragraph 6 applies, the licensee may not without the prior written consent of the Authority (following disclosure of all material facts) transfer, lease, license or lend any sum or sums, asset, right or benefit to any affiliate or related undertaking of the licensee as described or referred to in paragraph 5(b) of Condition 8 of Part II B, otherwise than by way of:
 - (a) payment properly due for any goods, services or assets in relation to commitments entered into prior to the date on which the circumstances described in paragraph 6 arise, and which are provided on an arm's length basis and on normal commercial terms;
 - (b) a transfer, lease, licence or loan of any sum or sums, asset, right or benefit on an arm's length basis, on normal commercial terms and where the value of the consideration due in respect of the transaction in question is payable wholly in cash and is paid in full when the transaction is entered into;
 - (c) repayment of, or payment of interest on, a loan not prohibited by paragraph 5(a) of Condition 8 of Part II B and which was contracted prior to the date on which the circumstances in paragraph 6 arise, provided that such payment is not made earlier than the original due date for payment in accordance with its terms; and
 - (d) payments for group corporation tax relief or for the surrender of Advance Corporation Tax calculated on a basis not exceeding the value of the benefit

received, provided that the payments are not made before the date on which the amounts of tax thereby relieved would otherwise have been due.

Schedule 4: Transmission and Distribution charge restrictions conditions

1. In paragraph 1.1 of Schedule 4, the following definitions shall be amended as follows (the changes to the definitions are underlined):

“maximum core revenue” means the revenue calculated in accordance with the formula in paragraph 2.2 or 2.3 as the case may be;

“relevant year” means a financial year commencing on or after 1 April 2002 and ending in each case, on 31 March in the year following its commencement;

“relevant year t” means that relevant year for the purposes of which any calculation falls to be made, such that relevant year 2003 means the relevant year ending on 31 March 2003; “relevant year t-1” means the relevant year preceding relevant year t or, in respect of the period prior to 1 April 2002, the period of 12 calendar months commencing on 1 April 2001; and similar expressions shall be construed accordingly;

“Transmission and distribution charge restriction conditions” means the conditions set out in this Schedule as from time to time modified or replaced in accordance therewith or pursuant to Article 14, 17, 17A or 18 of the Order or under the Energy Order;

2. In paragraph 1.1. of Schedule 4, the following new definitions shall be added in alphabetical order:

“2006 Direction” means the direction issued by the Authority to the licensee dated **[xx Sept 2006]**;

“Directive 2003/54/EC” means Directive 2003/54/EC of the European Parliament and Council of 26 June 2003 concerning common rules for the internal market in electricity;

- “RPI_t”** means the Retail Prices Index (1987=100) published or determined with respect to October in relevant year t;
- “Sustainable Networks Programme”** means the programme of that name to be established by the licensee comprising planning and research activities aimed at identifying the best options for the operation and development of the transmission and distribution system to accommodate the Government’s published sustainability objectives from time to time;
- “Vulnerable Customer Programme”** means the programme of that name to be established by the licensee comprising projects specifically targeted at combating fuel poverty by assisting low income households to identify unclaimed social security benefits and facilitate the making of relevant claims to the Social Security Agency;

3. In paragraph 2 of Schedule 4:

- a. at (A) delete the words “calculated in accordance with the following formula:” and insert the words “in relevant year t (M_{Dt})”;
- b. delete the formula (which is being moved to paragraph 2.2 – see below): “ $M_{Dt} = h F_{Dt} + (1-h) V_{Dt} Q_{Dt} + E_{et} N_{Dt} + Y_t + W_{Dt} + NSI_{Dt} + D_t + K_{Dt}$ ”;
- c. the following sub-paragraphs 2.1 and 2.2 shall be inserted immediately following the words “(B) “CAIR_t”” and the remaining provisions of paragraph 2 shall follow and be comprised in the new paragraph 2.2:
 - 2.1 where “CAIR_t” has the same meaning as it has in the Moyle Interconnector Collection Agency Agreement in respect of relevant year t;
 - 2.2 where in each of the relevant years 2003 to 2007 inclusive M_{Dt} shall be calculated as follows:

$$M_{Dt} = h F_{Dt} + (1-h) V_{Dt} Q_{Dt} + E_{et} N_{Dt} + Y_t + W_{Dt} + NSI_{Dt} + D_t + K_{Dt}$$
- d. delete the words “ M_{Dt} = the maximum core revenue in relevant year t;”.

4. In paragraph 2 of Schedule 4, the following new sub-paragraphs 2.3 and 2.4 shall be inserted immediately after the words “I_t means the average specified rate.” at the end of existing paragraph 2 (now renumbered as sub-paragraph 2.2 – see above)–

“2.3 where in relevant year 2008 and in subsequent relevant years M_{Dt} shall be calculated in accordance with the following formula:

$$M_{Dt} = \min(PC_t, CPA_t) - PPS_t + COL_t + D_t + NSI_t + K_{Dt}$$

where

min (PC_t, CPA_t) means the lower of the values of PC_t and CPA_t.

PC_t means the **price capped regulated revenue entitlement** in relevant year t in pounds sterling calculated in accordance with the following formula:

$$PC_t = (0.0181 * FQ_t * (RPI_t / RPI_{2005})) + PCA_t$$

where:

FQ_t means the **number of forecast units transmitted and distributed** in each of the relevant years 2008 to 2012 inclusive as specified in the table immediately below:

FQ _t	kWh
FQ ₂₀₀₈	8,490,000,000
FQ ₂₀₀₉	8,620,000,000
FQ ₂₀₁₀	8,750,000,000
FQ ₂₀₁₁	8,881,000,000
FQ ₂₀₁₂	9,014,000,000

PCA_t means an **adjustment** (whether a positive or negative amount) within the price capped revenue entitlement in relevant year t calculated in accordance with the following formula:

$$PCA_t = UO_t - FUO_t$$

where:

UO_t means the **level of uncontrollable operating costs** in relevant year t calculated as the aggregate of the following amounts in pounds sterling:

- (i) amounts paid by the licensee in respect of rates levied on transmission and distribution assets in accordance with the Valuation (Electricity) Order (Northern Ireland) 2003 or its successor legislation whether under such successor legislation such payments are still characterised as rates or not;
- (ii) amounts incurred by the licensee in respect of wayleaves;

(iii) amounts apportioned or allocated to the Transmission and Distribution Business in respect of the fees paid by the licensee under Condition 7 Part IIB of this Licence Document.

FUO_t means the **forecast level of uncontrollable operating costs** in relevant year t as set out in the table immediately below:

FUO _t	Pounds sterling
FUO ₂₀₀₈	£15.917m
FUO ₂₀₀₉	£17.042m
FUO ₂₀₁₀	£17.879m
FUO ₂₀₁₁	£18.730m
FUO ₂₀₁₂	£19.619m

CPA_t means the **composite proposal allowance** in relevant year t in pounds sterling calculated in accordance with the following formula

$$CPA_t = CO_t + P_t + UO_t + Ret_t - TA_t + Dep_t + Tax_t + RRF_t$$

where:

CO_t means the **allowance for controllable operating costs** in relevant year t calculated in accordance with the following formula

$$CO_t = ACO_{t-5} * (RPI_t / RPI_{t-5})$$

where:

ACO_{t-5} means the level of **actual controllable operating costs** in relevant year t-5 and in relation to relevant years 2008, 2009 and 2010, ACO_{t-5} shall have the values specified in the table immediately below:

Relevant year _t	ACO _{t-5} Pounds sterling
2008	£41.5m
2009	£37.9m
2010	£38.3m

In relation to relevant years 2011 and 2012, ACO_{t-5} shall be calculated in accordance with the method specified in the 2006 Direction, such method being the same as the calculation that produces the values for ACO_{t-5} in the table immediately above.

P_t means the **allowance for pension costs** in relevant year t calculated according to the following formula

$$P_t = P_{t-5} * (RPI_t / RPI_{t-5})$$

and in relation to relevant years 2008, 2009 and 2010, P_{t-5} shall be set equal to the value specified in the table immediately below:

Relevant year _t	P_{t-5} Pounds sterling
2008	£0
2009	£4.7m
2010	£4.4m

In relation to relevant year $t = 2011$, P_{t-5} shall be set equal to the actual cash contributions paid into the relevant pension scheme in relevant year 2006 less an amount equal to $(£225,000 * RPI_{2006} / RPI_{2005})$.

In relation to relevant year $t = 2012$, P_{t-5} shall be set equal to the actual cash contributions paid into the relevant pension scheme in relevant year 2007 less an amount equal to $(£225,000 * RPI_{2007} / RPI_{2005})$.

UO_t means the level of **uncontrollable operating costs** in relevant year t calculated as defined above.

Ret_t means the **allowed return** in relevant year t calculated in accordance with the following formula:

$$Ret_t = RAB_t * VWACC_t$$

where:

RAB_t means the average value of the transmission and distribution **regulatory asset base** in year t in pounds sterling calculated in accordance with the following formula:

$$RAB_t = 0.5 * (CRAB_{t-1} * RPI_t / RPI_{t-1} + CRAB_t)$$

CRAB_t means the **closing regulatory asset base** in relevant year t and shall be calculated in accordance with the methodology for rolling forward the regulatory asset base set out in the 2006 Direction.

VWACC_t means the **vanilla weighted average cost of capital** in relevant year t and in relevant years 2008, 2009 and 2010, $VWACC_t$ shall be set equal to 0.05545.

In relevant years $t = 2011$ and 2012 , $VWACC_t$ shall be set equal to the lower of:

(i) 0.05545; and

(ii) $VWACC_{2010}$,

where $VWACC_{2010}$, means the weighted average cost of capital (stated as a decimal number) calculated on the basis of the values for the pre tax return on debt and the post tax return on equity used in determining the regulated revenue entitlement for the Distribution Network Operators (DNOs) in Great Britain for the distribution price control commencing on 1 April 2010. If more than one value is determined for different DNOs, the highest value determined shall be used as the basis for the calculation. VWACC shall be calculated using the same method as that applied in Ofgem's final proposals (November 2004) for the DNO price control which commenced on 1 April 2005. This assumed a pre tax cost of debt of 4.1%, a post tax cost of equity of 7.5% and gearing of 57.5% ($VWACC = (4.1\% * 57.5\%) + (7.5\% * 42.5\%) = 5.545\%$, or 0.05545 stated as a decimal number).

TA_t means an **adjustment** in respect of the allowed return on transmission assets calculated in accordance with the following formula

$$TA_t = RAB_t * 0.18 * TAF_t$$

where:

TAF_t means the **transmission adjustment factor**, which for relevant years $t = 2008, 2009$ and 2010 shall be equal to 0.005.

For relevant years $t = 2011$ and 2012 , TAF_t shall be calculated according to the following formula

$$TAF_t = PTWACC_t - 0.064$$

where PTWACC means the pre-tax weighted average cost of capital stated as a decimal number calculated on the basis of the values for the pre tax return on debt and pre tax return on equity used in determining the regulated revenue entitlement for the DNOs in Great Britain for the distribution price control commencing on 1 April 2010. PTWACC shall be calculated using the same method as that referred to in Ofgem's final proposals (November 2004) for the DNO price control which commenced on 1 April 2005. This assumed a pre tax cost of debt of 4.1%, a post tax cost of equity of 7.5% (10.7% pre tax) and gearing of 57.5% ($PTWACC = (4.1\% * 57.5\%) + (10.7\% * 42.5\%) = 6.9\%$ or 0.069 stated as a decimal number).

Dep_t means the **allowance for depreciation** of the regulatory asset base in year t and calculated according to the following formula

$$\text{Dep}_t = \text{Fdep}_t + \text{Vdep}_t$$

where:

Fdep_t means **fixed depreciation** and represents depreciation in year t on pre-vesting assets calculated in accordance with the profile determined by the Monopolies and Mergers Commission and recorded in its March 1997 report entitled “Northern Ireland Electricity plc – A report on a reference under Article 15 of the Electricity (Northern Ireland) Order 1992”, together with depreciation on network assets acquired pre 2006 and depreciation on non-operational capital expenditure incurred in the period 1994 to 1997, as further specified in the 2006 Direction.

Vdep_t means **variable depreciation** and represents depreciation on network assets acquired post 2005, and shall be calculated in accordance with the method specified in the 2006 Direction.

Tax_t means an amount in respect of the **allowance for tax costs** in relevant year t calculated in accordance with the following formula

$$\text{Tax}_t = 0.3/0.7 (\text{Ret}_t + \text{NNC}_t + \text{Dep}_t - \text{Int}_t - \text{CA}_t)$$

where

NNC_t means an amount in respect of **non network capital expenditure** in relevant year t calculated in accordance with the following formula

$$\text{NNC}_t = \text{ANNC}_{t-5} * (\text{RPI}_t / \text{RPI}_{t-5})$$

where

ANNC_{t-5} means **capital expenditure on non-network assets** undertaken by the Transmission and Distribution Business in relevant year t-5 and in relation to relevant years 2008, 2009 and 2010, ANNC_{t-5} shall be set equal to the value specified in the table immediately below:

Relevant year _t	ANNC _{t-5} Pounds sterling
2008	£1.0m
2009	£1.8m
2010	£1.6m

Capital expenditure on non-network assets includes: (a) non-operational IT: IT equipment that is either located separately from the network assets or that does not directly relate to the control of network assets (this includes infrastructure and IT applications but excludes

operational IT assets); (b) non-operational new assets and replacement of non-operational assets: plant and machinery, tools and equipment, office equipment, land & buildings used for administrative purposes; and (c) non-operational premises: premises used by persons (e.g. stores, depots and offices) and excluding assets (such as substations) which are used for the control of network assets.

Int_t means an amount equal to the **interest** on the value of the regulatory asset base in relevant year t calculated in accordance with the following formula

$$\text{Int}_t = \text{RAB}_t * 0.575 * 0.067025$$

CA_t means an amount in pounds sterling equal to the level of **capital allowances** agreed with HM Revenue & Customs in respect of relevant year t calculated in accordance with the Capital Allowances Act 2001 (or successor legislation) and relevant industry agreements or rules.

RRF_t means an amount in relevant year t in respect of the **recovery of revenue foregone** in prior years as a result of the price cap. RRF_t shall be set in accordance with the following rule:

If CPA_{t-1} is greater than PC_{t-1} then

$$\text{RRF}_t = (\text{CPA}_{t-1} - \text{PC}_{t-1}),$$

otherwise

$$\text{RRF}_t = 0$$

For the avoidance of doubt, in relevant year $t = 2008$, $\text{RRF}_t = 0$.

PPS_t means the adjustment in relevant year t in respect of the **NIE Powerteam Limited profit sharing scheme** calculated as follows:

If P_t / R_t is greater than 0.1	then	$\text{PPS}_t = (P_t - 0.05 * R_t)$
If P_t / R_t is less than or equal to 0.1	then	$\text{PPS}_t = 0.5P_t$
But if P_t is less than 0	then	$\text{PPS}_t = 0$

Where P_t and R_t mean the operating profit and revenue respectively of NIE Powerteam Limited in relevant year t as stated in the statutory accounts of NIE Powerteam Limited for that year.

The licensee shall submit to the Authority a copy of the statutory accounts for NIE Powerteam Limited not less than 10 months after the end of each relevant year.

COL_t means the allowance in relevant year t for **change of law costs** calculated in accordance with paragraph 8 below.

D_t means an allowance in relevant year t for **excluded transmission and distribution costs** calculated by adding together (whether a positive or negative amount) the following amounts, where not recovered by the licensee under another element of the transmission and distribution charge restriction conditions or under any other charge restriction conditions:

- (i) an amount up to £727,000 (07/08 prices) which represents expenditure under NIE's SMART 1 programme (Sustainable Management of Assets and Renewables Technology);
- (ii) any reasonable costs incurred by the licensee in complying with the requirements of Condition 27, Part III of the Licence Document in respect of the renewable output factor arrangements;
- (iii) amounts arising under the arrangements approved by the Authority which are designed to incentivise investment in Demand Side Management schemes;
- (iv) amounts arising under the arrangements approved by the Authority which are designed to incentivise efficiency in network capital investments, and which shall be calculated in accordance with the 2006 Direction;
- (v) any reasonable costs incurred by the Transmission and Distribution Business in complying with the requirements imposed on the licensee under legislation and other legal requirements through which Directive 2003/54/EC is implemented;
- (vi) any reasonable costs incurred by the Transmission and Distribution Business in establishing and operating the arrangements to support 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 in Dublin) including in providing those services provided by the Transmission and Distribution Business in its role as common services provider;
- (vii) an amount not less than zero calculated in accordance with a method notified to the licensee by the Authority (after consultation with the licensee and such other persons as the Authority shall consider appropriate), representing amounts which the Authority is satisfied are likely to be equal to the licensee's costs of wheeling in respect of the relevant year in question; and
- (viii) any other costs which the Authority shall determine, upon an application to it by the licensee shall be included as excluded transmission and distribution costs.

NSI_t means the licensee’s regulated revenue entitlement associated with any **interconnectors** with the Republic of Ireland for each relevant year t, as specified in the table immediately below:-

Relevant Year t	NSI _t (£ sterling)
2008	£138,000 * RPI ₂₀₀₈ /RPI ₂₀₀₆
2009	£132,000 * RPI ₂₀₀₉ /RPI ₂₀₀₆
2010	£126,000 * RPI ₂₀₁₀ /RPI ₂₀₀₆
2011	£120,000 * RPI ₂₀₁₁ /RPI ₂₀₀₆
2012	£114,000 * RPI ₂₀₁₂ /RPI ₂₀₀₆

K_{Dt} means the correction factor (whether a positive or negative value) to be applied to the maximum core revenue in relevant year t which is derived from the following formula:

$$K_{Dt} = (M_{Dt-1} - R_{Dt-1})(1 + I_t/100)$$

where:

M_{Dt-1} means the **maximum core revenue** in relevant year t - 1;

R_{Dt-1} means the regulated transmission and distribution revenue (other than the revenue which is attributable to the financing and other costs associated with the **Moyle Interconnector**, as referred to in the definition of the term CAIR_t above) in relevant year t-1; and

I_t means the average specified rate.

2.4 The 2006 Direction shall not be capable of being revoked or modified (either by revocation or modification of the 2006 Direction or by the issue of another direction) without the prior written consent of the licensee.”

4. In paragraph 7 of Schedule 4, sub-paragraph 7.3 (b) shall be modified to read:

(b) in respect of the charge restriction conditions applied pursuant to paragraph 2.2 of this Schedule, 31 March 2007, and in respect of the charge restriction conditions applied pursuant to paragraph 2.3 of this Schedule, 31 March 2012.

5. The following new paragraphs shall be added to Schedule 4 immediately after the existing paragraph 7.

8. Change of Law

8.1. In relation to the period comprising the five relevant years 2008 – 2012 inclusive, where it appears to the licensee 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 and Distribution Business, the licensee may require the Authority to determine whether the relevant change of law has had or is likely to have such an effect, and if so what amounts, if any, should be treated as allowed change of law revenues in calculating COL_t for relevant year t and each succeeding relevant year in accordance with paragraph 2.3 to ensure 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. In determining the matters provided for in the paragraph above, the Authority shall have regard, where relevant, to:

- (a) the period over which the licensee shall incur costs by reason of the relevant change of law;
- (b) 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
- (c) the other circumstances of the case.

8.2. A notice given to the Authority by the licensee pursuant to paragraph 8.1 shall contain or be accompanied by all relevant details of the relevant change of law and such other information as the Authority shall require and, unless the Authority shall otherwise consent, shall be given not later than the first day of October immediately preceding the first of the relevant years in respect of which the transmission system operator wishes any change in such elements to take effect.

8.4. In this paragraph:

"legal requirement" means, in relation to the licensee, any of the following:

- (a) any enactment to the extent that it applies to the Transmission and Distribution Business;
- (b) any regulation made by the Council or the Commission of the European Communities to the extent that it applies to the licensee and impacts on its Transmission and Distribution Business or a decision taken by the said Commission which is binding on the licensee and impacts on the Transmission and Distribution Business to the extent that it is so binding;
- (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 which requires any legal requirement falling within (a) or (b) above to have effect in a way different to that in which it previously had effect;
- (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 18 of Part II) or the Department; and

"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).

9. Vulnerable customer programme

Over the period comprising the four relevant years 2007, 2008, 2009 and 2010 the licensee shall make available funding of no less than £1 million in total to cover the costs of establishing, implementing and running the Vulnerable Customer Programme in those years. By 30 September 2006 the licensee shall develop and submit to the Authority for its approval, a proposal for the implementation and subsequent evaluation of a number of pilot schemes with the aim of identifying a more comprehensive programme that will make effective use of the available funding. Not less than 3 months after the end of each of the four relevant years the licensee shall submit to the Authority an annual report in a form to be approved by the Authority on the performance of the programme during the relevant year under report and its proposals for the remainder of the programme.

10. Sustainable Networks Programme

Over the period comprising the five relevant years 2008 to 2012 inclusive the licensee shall make available funding of no less than £1 million in total to cover the costs of establishing implementing and running the Sustainable Networks Programme. By 31 December 2006 the licensee shall develop and submit to the Authority for its approval, a proposal for a programme that will make effective use of the available funding. Not less than 3 months after the end of each of the five relevant years the licensee shall submit to the Authority an annual report in a form to be approved by the Authority on the performance of the programme during the year under report and its proposals for the remainder of the programme.

11. Annual capex reporting

Not less than 4 months after the end of each relevant year the licensee shall submit to the Authority an annual report in a form to be approved by the Authority setting out the main elements comprising the network capital expenditure undertaken by the Transmission and Distribution Business in the year under review. Each report shall set out the current five-year plan for the relevant regulatory period, identify the material variations to the plan from the previous year, explain the initiatives that have assisted in optimising the investment decision-making process, the value of $CRAB_t$ (the closing RAB in the year under report) and identify the notified capex efficiency gains calculated in accordance with the method set out in the 2006 Direction.

12. Tax report

Not less than 12 months after the end of each relevant year the licensee shall submit to the Authority an annual report in a form to be approved by the Authority setting out the licensee's calculation of the tax capital allowances and the tax computation used in the calculation of Tax_t for such relevant year together with any retrospective adjustments in respect of previous years.

Iain Osborne

For and on behalf of

The Northern Ireland Authority for Energy Regulation