



23 March 2016

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**Re. Consultation on Modifications to SONI's Licence to Participate in the Transmission of Electricity**

Dear Jody

I am writing in response to the consultation on licence modifications to Annex 1 of SONI's Licence to Participate in the Transmission of Electricity. Our attached response is in two parts: a general paper outlining substantive points of concern against common themes and a tabular response with specific comments on individual licence provisions.

In our response we have sought where possible to set out alternative text in respect of a number of the points where we believe the modifications fail to achieve the effect referred to in the Notice published on 24 February 2016, that is to bring into effect the Authority's Final Determination for the price control.

The Authority is aware of SONI's concerns regarding the modifications proposed and the Final Determination on the Price Control and the degree to which that proposed represents the appropriate exercise of the Authority's statutory duties in accordance with the Order. SONI reserves its rights to contest any decision to introduce the modifications consulted on in this regard in accordance with Article 14B of the Order.

You will see from SONI's comments that there are several areas where the Authority's proposed licence modifications require significant re-consideration. We would welcome the opportunity to engage with the Authority to assist with this as a next step in this process.

Yours sincerely

A handwritten signature in black ink that reads "Robin McCormick". The signature is written in a cursive style and is underlined with a single horizontal stroke.

**Robin McCormick**  
Director, SONI Ltd.

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# Response to NIAUR Notice of Modifications Proposed to Annex 1 of the SONI Limited Electricity Transmission Licence

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23 March 2016



**Response to NIAUR Notice of Modifications Proposed to Annex 1 of the SONI Limited  
Electricity Transmission Licence**

This paper and the tables in the attached annex (the **Tables**) constitute the response of SONI Limited (**SONI**) to the notice published by the Northern Ireland Authority for Utility Regulation (the **Authority**) under Article 14(2) of the Electricity (Northern Ireland) Order 1992 (as amended) (the **Order**) relating to proposed modifications to Annex 1 of the licence held by SONI to Participate in the Transmission of Electricity granted under Article 10(1)(b) of the Order (respectively, the **Licence** and the **Licence Modifications**), which seek to give effect to the arrangements set out in the Authority's final determination, published on 24 February 2016, for the SONI Transmission System Operator (**TSO**) regulated revenue amount for 1 October 2015 to 30 September 2020 (the **Final Determination**).

The Tables contain SONI's detailed comments on the licence drafting with Table 1 covering points of substance and Table 2 minor drafting points. The comments in Table 1 are largely restricted to the technical method by which the Licence Modifications seek to implement the Final Determination, although we also identify areas where the Licence Modifications fail to implement important aspects of the Final Determination and instances where the Final Determination does not actually provide a basis for the amendment that the relevant modifications purport to make.

SONI appreciates that it is not the purpose of this consultation to debate further the substantive aspects of the price control. We do not therefore in this submission repeat points or arguments that SONI has made previously in relation to the Authority's substantive proposals for the price control. However, the serious concerns communicated previously to the Authority in respect of those proposals remain valid. Accordingly, the comments in the Tables are provided without prejudice to SONI's continuing objections to the Authority's decisions on a number of important elements in the Final Determination and SONI's participation in this process should not be taken to imply acquiescence to any decision the Authority may ultimately take to proceed with the Licence Modifications. SONI reserves its rights to contest such decision in this regard in accordance with Article 14B of the Order.

In addition to the points raised in the Tables and commented on therein, the Authority's approach to the licence modification process itself raises a number of serious and fundamental points of principle, which we set out in this paper – these issues, in and of themselves, mean that the Licence Modifications consulted on are defective and cannot be issued in their current form.

**1. The Licence Modifications fail to give effect to all aspects of the Final Determination**

In the notice issued under Article 14(2) of the Order that accompanied the publication of the Licence Modifications for consultation (the Notice) it is stated that “[t]he effect of the Proposed Modifications is to bring into effect to the Authority’s Final Determination on the SONI TSO amount for 1 October 2015 to 30 September 2020 which was published on 22 February 2016”. However, a review of the detail of the Licence Modifications reveals that, in fact, they fail to achieve this purpose in relation to many aspects of the Final Determination. This is a serious concern for SONI – and should be self-evident as such – given the Licence’s fundamental purpose as the document setting out the rights and obligations of the licensed TSO business to carry out its regulated functions and recover the costs incurred plus a reasonable return in doing so. In particular, the Licence – through Annex 1 – puts into effect the price control determined by the Authority, and it must do so in its entirety and in a manner which SONI is able to engage with to perform its regulated activities during the period of the price control.

In Table 1 SONI has identified several areas where the Licence Modifications fail to achieve their purpose of giving effect to the Final Determination. A particular concern is the treatment of Network Pre-construction Projects – a new function for SONI, which the Licence Modifications do not propose to incorporate into the Licence in any form. Given the fundamental importance of issues such as the framework and recovery of the costs associated with network planning and pre-construction to the overall exercise by SONI of its licensed functions, the failure to codify, and therefore to consult upon, these matters means that neither SONI nor indeed any other interested party is in a position to understand with sufficient certainty how those regulated functions are intended to be fulfilled.

SONI notes that in paragraph 314 of the Final Determination the Authority lists financial ratios which it has employed in its overall assessment of financeability. These ratios are derived from the financial model which the Authority has published alongside the Final Determination. The revenues provided for in the model are not however consistent with those now proposed to be codified in the Licence. The financial assessment carried out by the Authority is therefore based on a set of assumptions concerning the future provision of revenues to SONI, even though and in accordance with the provisions as set out in paragraph 8.1 of the Annex to the Licence, these will only be provided *ex post* and once incurred.

SONI therefore asks that the Authority confirm which set of revenue projections are in fact correct. If the Licence Modifications’ projections are correct, SONI expects the Authority to provide a description of how those revenue projections are derived (as opposed to those set out in the Final Determination and the financial model). If the financial projections in the Final Determination are correct, SONI expects the Authority to reflect these appropriately in the proposed Licence Modifications.

SONI also observes that in paragraph 328 of the Final Determination, the Authority states with reference to the WACC that *"the pre-tax WACC calculation amends the above formula [the vanilla WACC] to uplift the cost of equity to allow for corporation tax liabilities."* SONI believes that by applying the taxation uplift to the real cost of equity, the Authority has not provided for a WACC formula which gives effect to this stated intent. As tax is a nominal cash flow, the indexation of depreciation generates an additional tax liability which cannot be offset against the revenue allowance, as the capital allowances used to calculate the revenue allowance for taxation are based on historical-cost asset values. This additional liability should be reflected through a taxation uplift to the nominal cost of equity instead of the real cost of equity in the WACC formula.

SONI also views as unsatisfactory the overall arrangements in respect of  $D_{TSO}$  for matters excluded from this price control. The Authority's approach of requiring SONI to apply under the  $D_{TSO}$  variable to recover certain costs within the price control, rather than making specific provision for such cost recovery in the Licence, amounts to an excessive use of a mechanism that is intended to account for unusual and unpredictable circumstances and is inappropriate. This approach does not accord with the regulatory principle of providing certainty through the Licence, certainty which is required to enable SONI to finance its licensed activities and to protect the interests of customers in Northern Ireland. Moreover, the approach is particularly unreasonable given it covers recovery of costs relating to – in the Authority's words – the "key outputs" of the price control (i.e. I-SEM and DS3). It also has a legal consequence – the fact that such  $D_{TSO}$  amendments are proposed through a mechanism which does not itself trigger or require licence modification denies both SONI, and third parties, any right of appeal to the Competition and Markets Authority concerning the outcome of such process, in denial of natural justice and the intent of the relevant legislation.

The Tables detail various drafting issues concerning proposed amendments to the  $D_{TSO}$  provision in the Licence.

## **2. The Licence Modifications fail to comply with EU law by not enabling the recovery of costs from implementation of the European Commission's certification decision**

One particular cost that has been ignored in the Licence Modifications concerns a requirement of EU law and warrants particular mention. In April 2013 SONI was certified as an Independent Transmission System Operator by the European Commission (the Certification Decision).<sup>1</sup> The Certification Decision was pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10(6) of Directive 2009/72/EC. The proposed modifications do not provide for the revenues or enable the fulfilment of this provision, which is binding under EU law, and do not provide any

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<sup>1</sup> Commission Decision of 12.4.2013 pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10(6) of Directive 2009/72/EC – United Kingdom (Northern Ireland) – SONI / NIE

workable mechanism for the costs which are expected to be recovered by SONI as a result. In particular, they do not cover:

- a. the recovery of the entirety of the legally inherited costs SONI will incur in undertaking the role of independently exercising the network planning function;
- b. the recovery of costs in the event SONI is required to exercise the step in rights afforded to it under the TIA and provided for under paragraph 60 of the Certification Decision; and
- c. the recovery of costs in the event that projects are passed to and constructed by someone other than NIE, as envisaged both in the Certification Decision and in paragraphs 5.271 and 5.272 of the Competition Commission decision concerning NIE.

In order to rectify this, the following paragraph should be inserted under 2.2(a) of the Licence:

*(iv) any costs resulting from the implementation of the Certification Decision, including any legally inherited costs, less any costs provided for under  $B_{TSO}$ ,  $D_{TSO}$  or recovered from NIE in accordance with the arrangements as set out under the Transmission Interface Arrangements (TIA).*

**3. The Licence Modifications purport to amend aspects of the Licence that are not referred to in the Final Determination**

As set out in Table 1, certain amendments within the Licence Modifications purport to fall within the scope of the Notice but clearly do not because they have no basis in the Final Determination.

One particular area of concern in this regard is the proposed amendment to paragraph 8.1(d) of the Licence (and other associated paragraphs), where SONI notes that the Authority is proposing to introduce measures consistent with its position paper of December 2014 entitled "Pension Deficit Recovery – A Utility Regulator Position Paper". In that paper the Authority indicated it would consult on the appropriate treatment for SONI in its Draft Determination for the SONI price control. The Authority did not in fact do this. The Authority has never considered these matters in the context of the particularities of SONI's business or the impact on its overall financeability and did not accord such thought and consideration as part of the SONI price control consultation process. Instead, the Authority has simply referred to its position paper as if that paper, which was never consulted upon, had somehow been accorded legal standing above and beyond the requirements set out in the Order, which require that licence modifications are subject to consultation. As no such due process has been followed, those parts of the Licence Modifications as proposed are invalid, and the existing approach to the treatment of the provision of costs associated with pensions must be reinstated.

In addition, there are several modifications proposed that have material effect on the financial position of SONI and on its ability to deliver its regulated activities but which are not referenced within the Final Determination and cannot be considered permissible as "incidental or expedient" modifications under Article 14A(3) of the Order. This includes, for example, amendments to:

- a. the incentive arrangements in respect of Dispatch Balancing Costs, proposed in paragraph 2.2(f) of Annex 1;
- b. the time period by which information must be provided to the Authority, proposed in paragraph 4.1 of Annex 1;
- c. the requirement that  $D_{TSO_t}$  claims must be made by no later than 31 March preceding the start of the Relevant Year  $t$ , proposed in paragraph 4.9 of Annex 1; and
- d. the deletion of existing paragraph 6.3 which sets out the right for SONI to challenge any determination made by the Authority connected to a Change of Law.

Such proposed modifications do not come within the scope of the Notice as they do not give effect to the Final Determination, and there is no legal basis on which the Licence can be modified in this regard under the current consultation.

#### **4. The Licence Modifications cannot have the purported retrospective effect**

SONI notes that the Licence Modifications as set out are proposed to apply retrospectively and to take effect from October 2015. As well as being contrary to the general legal principle of *lex prospicit non respicit* (the law should look forward and not back) it is not clear how this can comply with the express requirement under Article 14(10) of the Order, that modifications to a licence cannot take effect less than 56 days from the publication of the decision to proceed with the making of modifications.

The Licence Modifications must therefore be amended such that they apply only prospectively and only following the lapsing of at least the minimum 56 day period which is required for them to come into effect.

#### **5. The consultation process for the Licence Modifications is inadequate**

Quite apart from questioning how the Licence Modifications as proposed can give appropriate effect to the Final Determination or otherwise have legal basis, SONI has significant concerns regarding the validity of the process by which the Authority has sought to give notice of its proposals to modify the Licence.

The Authority's notice purported to comply with Article 14(2) of the Order but does little more than announce its intention to make amendments. It fails to comply with the requirement that it should set out the effects of the proposed modifications, other than to state that is intended to bring into effect the Final Determination. There is no explanation as to how the Licence Modifications achieve the price control set out in the Final Determination. This is highly unsatisfactory. SONI expected that the Authority would publish a companion table identifying and detailing (on a line-by-line basis) each of the proposed modifications and commenting on the effects for each. We note that this is the approach adopted by Ofgem to licence modifications. The failure to do this means the Notice is seriously defective and not consistent with regulatory good practice.

The proposed Annex 1 published on the Authority's website with the Notice was not made available with a tracked changes version. SONI has therefore had to undertake a detailed exercise mapping the individual paragraphs of the current Licence (which was published as recently as 18 January 2016) against the proposed amended Annex 1 to identify what substantive changes the Authority actually proposes. As a matter of good regulatory practice, as well as an explanation as to what substantive changes it proposes to make to the Licence, SONI expected the Authority to provide a tracked changes version of the Licence to assist consideration of the Licence Modifications it is consulting on.

The upshot has been that SONI has faced significant challenges in analysing the Licence Modifications and their effects. At the same time and given these circumstances, there has been no explanation as to why the Authority has afforded SONI and any other interested parties only the minimum time permitted under the Order for consultation (28 days, Article 14(3) of the Order) and has not taken into account public holidays falling within the period.

**Conclusion: SONI's willingness to engage in further consultation on licence modifications**

In this response SONI has drawn attention to a number of areas where the position taken by the Authority in the Licence Modifications does not correctly give effect to the Final Determination or proposes to make amendments that are outside of the scope of the Final Determination and cannot be said to be incidental or consequential to the price control decisions therein and are therefore without valid legal basis.

SONI has in a number of instances suggested amendments in Table 1 which it believes would seek to rectify the omissions or inappropriateness of the actions of the Authority in this regard. At a minimum these modifications must be made, in addition to the more technical corrections identified in Table 2.

As observed above, the comments in this response and the Tables are provided without prejudice to SONI's continuing objections to the Authority's decisions on a number of important



elements in the Final Determination and SONI's participation in this process should not be taken to imply acquiescence to any decision the Authority may ultimately take to proceed with the Licence Modifications. SONI reserves its rights to contest such decision in this regard in accordance with Article 14B of the Order.

As explained above, SONI has significant concerns surrounding the validity of the licence modification process itself. These concerns can be addressed through further consultation and open dialogue with the Authority.

Accordingly, SONI would welcome the opportunity to discuss this response with the Authority, and its professional advisors, at its earliest convenience.

## Annex

**Comments on NIAUR Modifications Proposed to Annex 1 of the SONI Limited Electricity  
Transmission Licence**

Table 1: Substantive comments

Reference	Comment
1. Definitions	
Definition of Transmission Network Pre-construction Project	<p>SONI observes that the definition includes the words “and where required approved by the Authority” in parenthesis. SONI questions whether the Authority intends that this applies only in circumstances where the project has been identified by the Transmission Owner?</p> <p>If so, SONI proposes that this definition be revised to remove this ambiguity as follows:</p> <p>“Transmission Network Pre-construction Project means a project identified, whether by the Licensee or by the Transmission Owner (and, in respect of the latter, where required approved by the Authority), as necessary for the purposes of developing the transmission system and in respect of which project the Licensee is responsible for the activities that are required to progress the project from the conceptual stage to (but not including) its construction.”</p> <p>If not, and the Authority intends that the reference to the requirement for approval should apply in respect of both the Licensee and the Transmission Owner, SONI submits that “<i>and where required by the Authority</i>” should be deleted as the Authority does not – in SONI’s view – have the right to approve work by SONI on such pre-construction projects. SONI has previously sought clarification from the Authority concerning this point, as for example in SONI’s correspondence on 15<sup>th</sup> December 2015. SONI once again seeks confirmation concerning the Authority’s position.</p>
2. Restriction of SSS/TUoS Charges	
Paragraph 2.2(a) A <sub>TSO</sub>	<p>SONI observes that the Authority proposes to modify this term by introducing a provision enabling it to deduct such costs that it determines to be “Demonstrably Inefficient or Wasteful Expenditure (DIWE)”.</p> <p>SONI objects to the inclusion of a DIWE provision in the A<sub>TSO</sub> term since these are pass-through costs. This is confirmed by the definition of A<sub>TSO</sub> in the Final Determination: “A<sub>TSO</sub> includes the total cost estimate relating to Ancillary Services (System Support Services). These costs <u>are treated as pass-through and are considered to be outside of SONI’s price control</u>” (Section 1.2 Regulatory Framework, at paragraph 11, emphasis added). Accordingly, as costs outside of SONI’s control, it cannot be appropriate for pass-through costs to be subject to a DIWE test or exclusion on that basis.</p>

Reference	Comment
	<p>SONI notes the statement at paragraph 463 of the Final Determination which reads (with reference to the DIWE clause): <i>"This clause originated for the Competition Commission's final determination on NIE and will be applied to SONI TSO in respect of System Support Services (A<sub>TSO</sub>), price control actual costs, excluded (D<sub>TSO</sub>) actual costs and Change of Law actual costs"</i>. SONI assumes that the inclusion by the Authority of the reference to A<sub>TSO</sub> in this paragraph is erroneous and requests that it should be deleted. At no point did the Authority consult on specifically including the DIWE provision under A<sub>TSO</sub> costs. In the Draft Determination published on 2 April 2015 the corresponding paragraph to paragraph 463 read simply "349. This clause will apply across all areas of SONI's expenditure and is also in line with the Competition Commission's final determination on NIE." Given that Section 11 of the Draft Determination dealt only with the D<sub>i</sub> and K factors and that the definition of A<sub>TSO</sub> clearly stated that this covered pass-through costs outside of SONI's control, SONI could not have anticipated that the Authority intended to apply the DIWE provision to costs falling within the A<sub>TSO</sub> term. It is entirely inappropriate for the Authority now to seek to apply the DIWE provision to costs falling within the A<sub>TSO</sub> term given these are pass-through costs.</p> <p>SONI proposes that the definition of A<sub>TSO</sub> be amended to remove the words <i>"minus that part (if any) of such costs that the Authority determines to be Demonstrably Inefficient or Wasteful Expenditure"</i>.</p> <p>In addition, SONI observes that the proposed modifications fail to give effect to EU law by not providing for a mechanism or enabling the recovery of costs from implementation of the European Commission's Certification Decision in April 2013 (the Commission Decision of 12.4.2013 pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10(6) of Directive 2009/72/EC – United Kingdom (Northern Ireland) – SONI / NIE).</p> <p>In particular, the modifications do not cover the recovery of:</p> <p>(a) the entirety of the legally inherited costs SONI will incur in undertaking the role of independently exercising the network planning function;</p> <p>(b) costs in the event SONI is required to exercise the Step-in rights afforded to it under the Transmission Interface Arrangements and provided for under paragraph 60 of the Certification Decision; and</p> <p>(c) costs in the event that projects are passed to and constructed by someone other than NIE, as envisaged both in the Certification Decision and in paragraphs 5.271 and 5.272 of the Competition Commission's decision on NIE dated 15 April 2014.</p> <p>SONI proposes that this be rectified by including the following sub-paragraph (iv) in paragraph 2.2(a) as follows:</p> <p><i>"(iv) any costs resulting from the implementation of the Certification Decision, including any legally inherited costs, less any costs provided for under B<sub>TSO</sub> D<sub>TSO</sub> or recovered from NIE in accordance with the arrangements as set out</i></p>

Reference	Comment
	<p><i>under the Transmission Interface Arrangements (TIA)."</i></p> <p>SONI proposes that following this change a new definition for the Certification Decision should be inserted in Paragraph 1 as follows:</p> <p><i>The Certification Decision means the Commission Decision of 12.4.2013 pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10(6) of Directive 2009/72/EC – United Kingdom (Northern Ireland) – SONI / NIE</i></p>
<p>Paragraph 2.2(b) B<sub>TSOT</sub></p>	<p>SONI observes that the Authority has modified Table A so that rather than referring to "ongoing pensions" it refers to "pension deficit". In accordance with SONI's comments in relation to current paragraph 4.8 and the deletion of existing paragraph 8.1(d), SONI objects to this modification.</p> <p>The Authority has failed to consult on this modification or to explain why it is necessary contrary to Article 14(2)(c) of the Order which requires it to state "the reasons why it proposes to make the modifications". This modification has no basis in the Final Determination and at no stage during the price control process did the Authority notify SONI of its intentions to modify this paragraph. There is therefore no legal basis entitling the Authority to make this modification.</p> <p>SONI requests that the reference to "ongoing pensions" be reinstated.</p>
<p>Paragraph 2.2(e) K<sub>TSOT</sub></p>	<p>SONI observes that the Authority is seeking to modify certain aspects of K<sub>TSOT</sub> including by introducing a new provision AD<sub>TSOT-2</sub>.</p> <p>SONI objects to the introduction of this new provision which appears to seek to distinguish between the approvals accorded by the Authority in respect of D<sub>TSOT</sub> and the actual costs incurred, given that, in accordance with paragraph 8.1 of the Annex, D<sub>TSOT</sub> costs are determined on an 'as incurred' basis. This paragraph appears to call into question the understanding elsewhere provided in the Licence that the incurred costs are recoverable.</p> <p>The Authority has failed to consult on this modification or to explain why it is necessary contrary to Article 14(2)(c) of the Order which requires it to state "the reasons why it proposes to make the modifications". This modification has no basis in the Final Determination and at no stage during the price control process did the Authority notify SONI of its intentions to modify K<sub>TSOT</sub> in this manner. There is therefore no legal basis entitling the Authority to make this modification.</p> <p>SONI requests that the Authority amend K<sub>TSOT</sub> as follows: "K<sub>TSOT</sub> = (M<sub>TSOT-2</sub> - R<sub>TSOT-2</sub>)(1+i<sub>t</sub>)" and delete paragraph (e)(i).</p>
<p>Paragraph 2.2(f) INCENTt</p>	<p>SONI observes that the Authority is seeking to modify certain of the percentages referred to in paragraph 2.2(f)(iii)(A) and (iv)(A) and to insert the word "whole".</p> <p>SONI objects to this modification. The Authority has failed to consult on this modification or to explain why it is necessary contrary to Article 14(2)(c) of</p>

Reference	Comment
	<p>the Order which requires it to state <i>"the reasons why it proposes to make the modifications"</i>. This modification has no basis in the Final Determination and at no stage during the price control process did the Authority notify SONI of its intentions to modify this paragraph. There is therefore no legal basis entitling the Authority to make this modification. The modification is also inconsistent with the SEM Committee decision on DBC Incentivisation in June 2012 - Incentivisation of All Island Dispatch Balancing Costs, SEM-12-033.</p> <p>SONI requests that the Authority reinstates the existing text of this provision.</p>
Paragraph 2.3	<p>SONI observes that in paragraph 328 of the Final Determination, the Authority states with reference to the WACC that <i>"the pre-tax WACC calculation amends the above formula [the vanilla WACC] to uplift the cost of equity to allow for corporation tax liabilities."</i> SONI believes that by applying the taxation uplift to the real cost of equity, the Authority has not provided for a WACC formula which gives effect to this stated intent. As tax is a nominal cash flow, the indexation of depreciation generates an additional tax liability which cannot be offset against the revenue allowance, as the capital allowances used to calculate the revenue allowance for taxation are based on historical-cost asset values. This additional liability should be reflected through a taxation uplift to the nominal cost of equity instead of the real cost of equity in the WACC formula.</p> <p>SONI requests that the Authority rectifies these errors by making the necessary modifications to the Licence and consulting SONI further on same.</p>
4. Information to be provided to the Authority	
Paragraph 4.2	<p>SONI observes that the Authority is seeking to modify the time period by which information must be provided to the Authority under paragraph 4.1 by requiring it at a much earlier stage in the process.</p> <p>This modification places a significant and unjustified burden upon SONI, not least because in certain circumstances it is reliant on third parties (such as NIE) to provide information to it. SONI is not aware of there being any corresponding obligations on such third parties to ensure SONI receives the information on a timely basis.</p> <p>The Authority has failed to consult on this modification or to explain why it is necessary contrary to Article 14(2)(c) of the Order which requires it to state <i>"the reasons why it proposes to make the modifications"</i>. This modification has no basis in the Final Determination and at no stage during the price control process did the Authority notify SONI of its intentions to modify this paragraph. There is therefore no legal basis entitling the Authority to make this modification.</p> <p>SONI objects to this modification and proposes that the current timeframe of "14 days prior to the date of publication of such charges" be reinstated.</p>

Reference	Comment
Paragraph 4.8	<p>SONI objects to the Authority's proposals concerning pension deficit recovery. At no point has the Authority engaged in a fair and proper consultation with SONI on its approach to pension deficit recovery. It is inappropriate for the Authority to modify its approach to pension deficit recovery for SONI absent such consultation.</p> <p>In respect of the specific modification proposed, SONI objects to the proposed requirement that it shall provide the Authority will relevant information "<i>such that the information provided is in line with the information submitted by the Great Britain transmission/distribution network operators</i>". It is entirely inappropriate for the Authority to seek to include this wording, which refers to the practice of network operators in another jurisdiction as regulated by a different regulator and with no specific reference to any defined obligations, guidelines or even documents. SONI can only infer that the Authority means the Pension RIGS requirements as outlined on Ofgem's website: <a href="#">Ofgem Pensions RIGS Table</a>. Should the Authority require SONI to submit information in a similar format, the Authority should produce a similar table which has been modified appropriately to ensure it is fit for purpose for SONI and should consult SONI on the same (as Ofgem did prior to requiring the network operators to provide this information). In the absence of clear directions SONI cannot be expected to comply with this obligation.</p> <p>SONI proposes that the paragraph be reworded as follows:</p> <p><i>"The Licensee shall furnish the Authority with information regarding any pension contributions and/or deficits in such form as the Authority may reasonably require. Any such request from the Authority to provide such information shall only follow consultation with the Licensee and shall be in a form which is not disproportionately burdensome and shall be consistent with general actuarial principles for the compilation of such information."</i></p>
Paragraph 4.9	<p>SONI objects to the inclusion of this paragraph and the requirement that submissions must be made to the Authority "<i>by no later than 31 March preceding the start of that Relevant Year t</i>" for <math>D_{TSO_t}</math> costs in respect of which the Licensee will be making a claim in accordance with paragraph 8 (see paragraph 4.9(a)(ii)).</p> <p>The Authority has failed to consult on this modification or to explain why it is necessary contrary to Article 14(2)(c) of the Order which requires it to state "<i>the reasons why it proposes to make the modifications</i>". This modification has no basis in the Final Determination which – at paragraph 442 - merely encourages SONI to submit claims by this point in time, but does not require it to do so. At no stage during the price control process did the Authority notify SONI of its intentions to modify this paragraph. There is therefore no legal basis entitling the Authority to make this modification.</p> <p>This modification is inappropriate, particularly under a regulatory framework where a significant proportion of cost lines are not provided for <i>ex ante</i> by the Authority but are considered as Dt claims on an 'as incurred' basis.</p>

Reference	Comment
	<p>In addition, given that the costs in paragraph 8.1 refer to costs <u>incurred</u> by SONI it is in fact not capable of being complied with.</p> <p>SONI requests that this paragraph be deleted.</p>
6. Change of Law	
Paragraph 6.1	<p>SONI observes that the Authority seeks to reserve for itself a new power to determine unilaterally that there has been, or is likely to be, a Relevant Change of Law.</p> <p>SONI objects to this modification. There is no legal basis for this modification. It was not consulted upon and it does not have any basis in the Final Determination. It is inappropriate for the Authority to introduce a provision which allows it to determine changes without consultation.</p> <p>SONI proposes that the paragraph be revised as follows: <i>"The Licensee may request that the Authority 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"</i>.</p>
Paragraph 6.3	<p>SONI observes that in paragraph 6.3(a) the Authority is required to have regard to <i>"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"</i>.</p> <p>SONI repeats its objections previously made to the Authority concerning the inclusion of a reference to the NIE Energy Supply Licence within Annex 1. The NIE Energy Supply Licence bears no relevance whatsoever to SONI. To the extent the Authority intends to replicate the arrangements from the NIE Energy Supply Licence in the SONI licence it needs to consult SONI upon these arrangements, including the relevance licence provisions. It is inappropriate for the Authority not to set out in full in SONI's licence what the obligations are insofar as they apply to SONI.</p> <p>SONI proposes that the Authority provides a new draft paragraph within Annex 1 for consultation which omits the reference to condition 60 of the NIE Energy Supply Licence and instead sets out the relevant arrangements as they are proposed to apply to SONI.</p>
Deletion of current paragraph 6.3	<p>SONI observes that the Authority proposes to delete the existing paragraph 6.3 which states: <i>"This Annex shall be modified to give effect to any determination made by the Authority under this paragraph 6. Such modification shall have effect from the later of the date of the determination and the date upon which the relevant change of law comes into force."</i></p> <p>SONI objects to this modification. There is no legal basis for it. It was not consulted upon and it does not have any basis in the Final Determination. The deletion of this provision removes the right for SONI to challenge any determination made by the Authority connected to a Change of Law. It is</p>

Reference	Comment
	<p>inappropriate for the Authority to limit SONI's established rights of appeal without clear justification and without fair and proper consultation.</p> <p>SONI requests that existing paragraph above be reinstated as a new paragraph 6.5.</p>
Paragraph 6.4	<p>SONI observes the new provision in paragraph 6.4(b) requiring it to ensure that where it requests that the Authority make a determination pursuant to paragraph 6.1 such requests must <i>"be accompanied by all relevant details (including a breakdown of internal and external incremental costs incurred)"</i>.</p> <p>SONI observes that paragraph 442 of the Final Determination suggests that any Dt cost submissions <i>"must be accompanied by all relevant details of the costs claimed, differentiating between internal and external costs and revenues, to enable the Utility Regulator to determine whether such costs are in the public interest of the consumer..."</i>.</p> <p>SONI does not consider that the proposed modification gives effect to the Final Determination. It is not clear to SONI what the Authority means by "incremental" costs – nor why this term has been introduced given it has no basis in the Final Determination.</p> <p>SONI requests that the Authority delete the word "incremental" from paragraph 6.4(b) and explain what it means by a breakdown of "internal and external costs" and the relevance or requirement for such a split.</p>
8. Excluded SSS/TUoS Costs	
Paragraph 8	<p>SONI observes that there are repeated references in paragraph 8 to the Transmission Owner Licence including under paragraph 8.1(a), paragraph 8.1(b) and paragraph 8.3(c).</p> <p>SONI repeats its objections to the Authority including a reference to another regulated entity's licence within Annex 1. The Transmission Owner Licence bears no relevance whatsoever to SONI.</p> <p>SONI requests that all references to the Transmission Owner Licence should be deleted.</p>
Deletion of existing paragraph 8.1(d)	<p>SONI observes that the Authority proposes to delete the existing paragraph 8.1(d) which states that <i>"the pensions costs (in relevant year t) of the Transmission System Operator Business to the extent reasonably approved by the Authority"</i>.</p> <p>SONI objects to this deletion. The Authority acknowledges in paragraph 440 of the Final Determination that <i>"within the coming years the Utility Regulator is aware of number of likely Dt claims by SONI"</i>. For the reasons set out in response to paragraph 4.8 above that the Authority has not properly consulted in respect of any changes to the regulatory treatment of pensions for SONI as well as for the reason that pension costs are included within the list, the consideration of such costs should remain a specific and separate</p>



Reference	Comment
	<p>category and should not be swept into the new catch-all "other" category in proposed paragraph (h).</p> <p>SONI proposes that the existing paragraph 8.1(d) be reinstated as a new paragraph before the proposed paragraph (h) which captures the "other" category (with any associated paragraphs re-numbered accordingly).</p>
Deletion of existing paragraph 8.1(f)	<p>SONI observes that the Authority proposes to delete the existing paragraph 8.1(f) which states <i>"Costs incurred in relevant year t to finance the difference in the estimated CAIR<sub>t</sub> used in the preparation and approval of the tariffs prior to the relevant year t and the CAIR<sub>t</sub> amount approved by NIAUR prior to the end of March during the relevant year t. The financing costs are to be charged at [base rate plus 2%]"</i>.</p> <p>SONI objects to this deletion. The Authority acknowledges in paragraph 440 of the Final Determination that <i>"within the coming years the Utility Regulator is aware of number of likely D<sub>t</sub> claims by SONI"</i>. Moyle Interconnector Administrator Costs fall within this list and should therefore be re-instated. The consideration of such costs should remain a specific and separate category and should not be swept into the new catch-all "other" category in proposed paragraph (h).</p> <p>SONI proposes that this paragraph be reinstated as a new paragraph before the proposed paragraph (h) which captures the "other" category (with any associated paragraphs re-numbered accordingly) as follows: <i>"Costs incurred in Relevant Year t to finance the difference in the estimated CAIR<sub>t</sub> used in the preparation and approval of the tariffs prior to the Relevant Year t and the CAIR<sub>t</sub> amount approved by NIAUR prior to the end of March during the Relevant Year t. The financing costs are to be charged at the Average Specified Rate plus 2%"</i></p>
Paragraph 8.1(b)(ii)	<p>SONI observes that the Authority proposes to modify the current paragraph 8.1(b) in the Licence by splitting this paragraph into two sub-paragraphs to introduce a reference to implementing the Integrated Single Electricity Market.</p> <p>SONI objects to the approach taken by the Authority to achieve such modification. There is no justification for limiting the scope of paragraph 8.1(b)(ii) by the addition of the words <i>"pursuant to any changes made to such arrangements for the purposes of implementing"</i> the I-SEM. Instead, the Authority should adopt the approach under paragraph 8.1(b)(i) which reads <i>"under the arrangements for"</i> the Single Electricity Market (i.e. capturing pre- and post-implementation).</p> <p>SONI requests that paragraph 8.1(b)(ii) be reworded as follows:</p> <p><i>"under the arrangements for the Integrated Single Electricity Market (I-SEM) (a 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</i></p>

Reference	Comment
	<p><i>electricity market)</i>".</p> <p>This change is required to give effect to the Authority's stated intent in the Final Determination of providing for recovery of any additional costs SONI may incur in operating under the I-SEM arrangements.</p>
Paragraph 8.2	<p>SONI observes the reference to the "Price Control Decision Paper" (meaning the Final Determination) in paragraph 8.2(a).</p> <p>SONI objects to this modification as a matter of principle. SONI's rights and obligations are set out in the Licence which incorporates Annex 1 – indeed, this is the purpose of the Licence. It is not appropriate for the licence to direct the licensee to fish for unclear rights or obligations by reference to a reading of the Final Determination. In addition to being contrary to good regulatory practice, it is particularly inappropriate given the inconsistencies between the Final Determination and the Licence and there is no reason why the Authority cannot propose wording to transpose the parts of the Final Determination into the Licence.</p> <p>In addition, the provision as drafted is ambiguous. It is not clear what obligation the Authority is seeking to impose by the wording: "<i>the Licensee shall ensure that: (a) it takes account of, and gives regard to, the Price Control Decision Paper</i>".</p> <p>SONI proposes that this provision be deleted given that it is inappropriate to include such a provision and that the provision is in any event ambiguous.</p>
Paragraph 8.3	<p>SONI objects to the requirement in paragraph 8.3(a) that submissions must be made to the Authority by "<i>no later than the first day in April immediately preceding the Relevant Year t in respect of which the Licensee wishes the claim to take effect</i>".</p> <p>As explained in relation to paragraph 4.9 above, there is no legal basis upon which the Authority can impose this requirement. This modification was not consulted upon and it does not have any basis in the Final Determination, which merely encourages SONI to submit claims by this point in time: it does not require it. Paragraph 442 states: "<i>in general, SONI is encouraged to submit a claim for costs by 1 April immediately preceding the tariff year for which SONI wish the Dt claim to take effect</i>".</p> <p>In addition paragraph 8.3(a) is inconsistent with the obligations imposed under paragraph 8.1 in respect of the recovery of costs incurred. How can SONI, for example, claim Uncollected revenue amounts in a Relevant year 6 months prior to the commencement of the Relevant year itself? SONI therefore requests that this provision is deleted.</p> <p>SONI further notes that for a considerable proportion of the costs subject to paragraph 8.1 it would need to have in place a financing framework that allows for such a mismatch in the timing between the costs arising and the Authority's approval, and which provides certainty for financiers and is</p>

Reference	Comment
	consistent with the risk profile of SONI's business. SONI seeks clarity as to how this has been considered and incorporated in these proposed licence modifications.
9. Demonstrably Inefficient to apply to OPEX, CAPEX and pass through	
Paragraph 9.1	<p>SONI observes the reference by the Authority in this paragraph to the issuance of guidance to explain the meaning of "Demonstrably Inefficient or Wasteful Expenditure".</p> <p>SONI objects to a modification which makes reference to unsighted and underdeveloped guidance. It is not clear whether the Authority has even begun to consider the content of such guidance, much less when it proposes to advance it. It is inappropriate for the Authority to seek to rely on guidance that it has neither drafted, nor consulted upon and has not provided any indication when it will do so. This approach is inconsistent with good regulatory practice and is unacceptable.</p> <p>SONI proposes that paragraph 9.1(a) be revised as follows: <i>"For the purposes of the provisions of this Annex in which the term Demonstrably Inefficient or Wasteful Expenditure is used: (a) the Authority shall, following fair and proper consultation on the same, issue (and from time to time update) guidance as to the manner in which the term is to be interpreted and applied, with the first version of such guidance being published no later than the date of publication of this Annex 1 giving effect to the Price Control Decision Paper;"</i></p> <p>In addition, SONI refers to its comments in relation to the definition of A<sub>TSO</sub> above concerning the reason why the "demonstrably inefficient" provisions should not be applied to pass-through costs. SONI requests that the heading of this paragraph should be amended as follows: "9. Demonstrably Inefficient or Wasteful Expenditure"</p>
10. Reporting	
Paragraph 10.1	<p>SONI observes the Authority's proposal to require SONI to provide <i>"all information requested in association with this Annex in such format and by such time as may be directed by the Authority"</i>.</p> <p>SONI objects to this modification. It is inappropriate for the Authority to seek to impose such an onerous requirement on SONI absent fair and proper consultation. SONI refers to the suggested reporting requirements in Chapter 15 of the Final Determination. This provision as currently worded goes far beyond what is required to implement this.</p> <p>In addition SONI objects to the requirement to complete Appendix B of the Final Determination in accordance with specific timescales. Under the proposals SONI is required for the first reporting year to have collected data since 1 October 2015 ready to report in March 2017. Given the Authority is still consulting on these requirements, including the reporting template, it is inappropriate for it to seek to apply them retrospectively to SONI.</p>

Reference	Comment
	<p>For the avoidance of doubt SONI does not accept the reporting template as set out in Appendix B as being either reasonable or proportionate and as provided it is not capable of being completed by SONI and requires information to be collected by SONI which it does not currently collect and for which no consideration or revenue provision has been provided for.</p> <p>SONI proposes that this paragraph be revised as follows:</p> <p><i>“The Licensee shall provide to the Authority information requested in this Annex in a format as may be requested by the Authority. The Authority will consult with the Licensee regarding the format and requirements of any such request. Any such request shall be proportionate and the requirement to provide the information requested shall apply prospectively only.”</i></p>

**Table 2: Additional minor drafting comments**

Reference	Comment
<b>1. Definitions</b>	
Definition of Ex-Post DBC Target	SONI observes that the word “either” has no place in this definition (there being no corresponding “or”) and requests this word is deleted.
Definition of Price Control Decision Paper	<p>SONI suggests the date of publication referred to is in error and suggests that the definition refers to the date of actual publication i.e. 24 February 2016 to avoid ambiguity. SONI is not aware of any decision paper having been issued on 19/02/16.</p> <p>SONI proposes the following definition:</p> <p><i>“Price Control Decision Paper means the decision paper published by the Authority on 24/02/16 and entitled “Final Determination to the Price Control 2015-2020 for the Electricity System Operator for Northern Ireland (SONI)”.</i></p>
<b>5. Duration of SSS/TUoS Charge Restriction Conditions</b>	
Paragraph 5.7	SONI observes that paragraph 5.7(c)(iii) ought actually to be paragraph 5.7(d) – consistent with the approach adopted in the current licence – as this is a standalone sub-paragraph.