

# Requirements and Guidance on Transmission Network Pre-construction Projects and on excluded SSS/TUoS costs

A response by SONI Ltd.

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23 January 2018



# Introduction

SONI is the licensed Transmission System Operator (TSO) in Northern Ireland and has been part of the EirGrid Group since 2009. SONI is responsible for planning and operating the transmission system safely and securely to ensure a reliable supply of electricity.

SONI also operates the All-island wholesale electricity market with EirGrid (the TSO in Ireland) through the Single Electricity Market Operator which has been in operation since November 2007.

We welcome the opportunity to respond to the Utility Regulator's 'Requirements and Guidance on Transmission Network Pre-construction Projects and on excluded SSS/TUoS costs' (the 'Consultation Paper'). We have already engaged on the proposed processes through the CMA appeal process, and this response supplements previous correspondence on these proposals.

We would like to reiterate our commitment to working with the Utility Regulator to meet the timelines set out by the CMA in its Order; however it remains equally important that this consultation achieves a functional and appropriate process.

## Parallel Consultation on Licence Modifications

The Utility Regulator is consulting in parallel to modifications to SONI's licence, which will oblige SONI to comply with this "guidance". Therefore our review of these processes and templates has been undertaken on the assumption that they will become mandatory rather than advisory. This means that the final documents need to be suitable for the specific circumstances of the SONI price control that they are intended to address, rather than generic issues applicable to all licensees.

Our comments are based on the draft licence modifications as set out within the separate parallel consultation by the Utility Regulator and are without prejudice to SONI's separate comments in response to that consultation. Moreover, following review of comments by the Utility Regulator to the separate licence consultation, or indeed to the forthcoming consultation on the transfer of Transmission Network Pre-Construction Projects (TNPPs) to NIE Networks under the Transmission Interface Arrangements (TIA), the guidance may need to be amended accordingly.

## Ongoing Work

We are working to complete the submissions for the transmission network pre-construction projects that we have been working on since 1 May 2014, having had to progress these in the absence of regulatory guidance. However, we have done so on the basis that all efficiently incurred costs will be recoverable.

These submissions are being prepared in parallel with the Utility Regulator finalising this guidance and issuing its decision. Where possible, these submissions will be based on the templates that are consulted upon. However, where necessary, our submissions will reflect our comments as set out in this response.

Our comments expressed here are those that are apparent to us at mid-January 2018. As we gain experience using these templates and guidance, other issues may emerge. We will provide any learning to the Utility Regulator at the earliest opportunity and would welcome the inclusion of an option of a review of the process and documentation after a number of months of operation.

## Structure of Response

SONI sets out its response to the Utility Regulator's consultation in four sections. Following this introduction, we summarise the key points that we raise in this response. These are expanded upon in the context of TNPP submissions in the next section, followed by our comments on the Dt submission process.

We complete this response by appending our suggested amendments to the guidance document. We have been reviewing the templates in parallel with preparing this response. As these comments mostly duplicate those on the guidance, we have not attached them at this time. We therefore consider it more efficient if we review the templates with the Utility Regulator as part of any follow-up discussions, however would be happy to share our marked-up versions sooner if required.

While we note that the Utility Regulator has provided a list of questions to assist respondents in structuring their response, we feel that this more detailed response should not only provide the information required by the Utility Regulator, but should also make it more straightforward to assess SONI's proposed changes to the text of the guidance.

# Key Points

The key points in SONI's response can be summarised as follows:

1. The purpose of the guidance is to remedy the errors identified by the CMA, namely to provide clarity and surety to SONI and its investors as to the process whereby it will recover its efficiently incurred costs; SONI would therefore welcome clear confirmation within the guidance that all efficiently incurred costs will be recoverable.
2. The guidance document has been written for a very informed audience, which is natural given that it has been developed by a team of people who have been involved with this process for many years. However, the final guidance document will need to include some information about the determinations that it is implementing to ensure that any future staff are able to interpret it in the context in which it has been drafted.
3. The CMA's Final Determination requires SONI to make these submissions very early in the process and this means that the Utility Regulator's approvals will be processed in parallel with SONI's internal governance processes. While unavoidable, this may mean that SONI might need to revise submissions to take account of the outcome of the internal processes. We would expect to keep the Utility Regulator informed of any emerging issues thorough the monthly meeting cycle.
4. The information requested and the detail expected within the submissions should be appropriate for the early stage in the project process that SONI is required to make its submission. It is essential that these submissions cannot be interpreted by third parties as SONI prejudging the outcome of any other mandatory processes, for example obligations related to public consultation, procurement or safety matters.
5. It will be essential that the guidance document and templates acknowledge and reflect the limitations in the information that is available to SONI at the point of submission. We suggest that the final guidance clearly sets out that references to "information" should be read as meaning that SONI should provide the best and most comprehensive information available to it at that time.
6. The guidance document is unclear around the allocation of asymmetric risk on Dt items and refers to and outlines the term 'cap', including statements concerning the recovery of costs 'up to the cap'. SONI understands and welcomes the fact that the guidance is clear that the 'cap' can be amended/ uplifted at any stage in the progression of a project/ works, but seeks clarity on risk allocation for Dts to ensure that efficiently incurred costs can be recovered.
7. The proposed templates focus on projects that are driven by economic requirements that are within SONI's remit. This will not always be the case. For

example the Regulatory Authorities undertook the CBA for the I-SEM and the Department undertook the CBA for the 40% renewables target. Economics were also considered as part of the development and approval of the Transmission Planning and Security Standards and the LOLE used in the capacity market auctions.

The templates and guidance will need to accommodate projects where SONI is contributing to wider aims and/or compliance with obligations placed upon it. We can provide some suggestions around how this can be accommodated in a mark-up of the templates that can be submitted separately to the Utility Regulator.

8. There are some aspects of the guidance document that are currently ambiguous, unclear or do not appear to us to accurately reflect the CMA determination.

These include:

- The guidance appears to retrospectively cover all work that SONI has undertaken since these responsibilities were transferred on 1 May 2014; however this is not stated explicitly. We would welcome confirmation of this in the final document;
- The level of detail provided in the reasoned decisions by the Utility Regulator to SONI in a situation where it does not approve a submission by SONI is not clearly set out. We would welcome confirmation of this in the final document;
- The document does not appear to contemplate or favour efficient spend by SONI ahead of approval by the Utility Regulator; instead it appears to incentivise SONI to “down-tools” while waiting for the Utility Regulator’s responses. SONI does not believe a “down tools” approach is consistent with the CMA Final Determination (Paragraph 11.38) nor in the interests of Northern Ireland customers. We would welcome confirmation of the Utility Regulator’s intention in the final document;

9. There is a significant difference between SONI providing an initial estimate of the costs that it expects to incur in “typical” circumstances and an initial estimate that encompasses all unknowns. We would welcome discussion around the options open to SONI to ensure that the submissions meet expectations.

# TNPP Process

## Introduction

SONI has reviewed the draft “Requirements and Guidance on the Cost Recovery Process for TNPPs” and the associated templates. We have appended marked-up versions of the guidance to this response.

In this section we set out our main concerns around the TNPP processes proposed in the draft guidance.

## SONI’s Framework for TNPP Development

SONI has been reviewing the framework that it follows when undertaking pre-construction works. A key part of this review has been to ensure that stakeholders are consulted appropriately throughout the process. This has resulted in a three part process, which is summarised in Table 1.

**Table 1: Overview of SONI’s consultation process for TNPPs**

Step	Description	Stakeholder Consultation
1	<p>Firstly we identify the need for a project.</p> <p>Then we consider a number of technical solutions and narrow this to a short list based on their technical viability and cost implications.</p> <p>Following this we consider the short list and the broad study areas where these may be located in more detail.</p> <p>This enables us to narrow our choice to one preferred technology solution and corresponding study area.</p>	<p>We will provide an opportunity for stakeholders to get involved in this process and we will listen to and consider their views before we finalise the preferred technology solution and study area.</p>

Step	Description	Stakeholder Consultation
2	<p>We look at all locations within the study area where we could site the preferred technology solution.</p> <p>We examine the locations based on their technical, cost, environmental and deliverability merits. This enables us to narrow our choice to one preferred location.</p> <p>Following this we prepare the planning application documentation for the proposed development for submission to the planning authority.</p>	<p>We will provide opportunities for stakeholders to get involved in this process and we will listen to, and consider, their views before we finalise the preferred location and again prior to lodging the planning application.</p>
3	<p>The planning application is lodged with the planning authority.</p> <p>The planning authority will make a legally binding decision on the project. They may grant full planning permission, grant permission on the basis that we make changes, or refuse permission.</p> <p>Following receipt of a favourable decision from the planning authority we will hand the project over to NIE Networks for them to construct and energise.</p>	<p>We will continue to engage with local communities and landowners in the vicinity of the project during the planning application determination period and give them updates on the status of the project.</p>

In line with the CMA's Determination and consistent with the opex provided to SONI to undertake the assessment of network needs, SONI will need to make its submission to the Utility Regulator for each TNPP before the end of the first stage of the framework. This means that our submission will need to accommodate any reasonable outcomes from the first stage of stakeholder consultation.

As drafted, the guidance could be interpreted to mean that SONI's submission make assumptions about the preferred solution. We would like to make it clear that SONI will ensure that the consultation is undertaken in a meaningful way and that the submission will not presume any particular outcome or introduce any artificial constraints to that process.

We ask that the guidance is updated to reflect this important opportunity for stakeholders to input into the pre-construction process. We include suggestions for this within our marked-up text.

## Proposed Guidance Text & Template

SONI has reviewed the draft guidance document and has appended a mark-up of this to our consultation response. The main points that we identify in this mark-up are:

- The purpose of the guidance is to remedy the errors identified by the CMA, namely to provide clarity and surety to SONI and its investors as to the process whereby it will recover its efficiently incurred costs; SONI would therefore welcome clear confirmation within the guidance that all efficiently incurred costs will be recoverable. SONI has highlighted text which could be construed as ambiguous in the attached mark-up;
- The guidance document has been written for a very informed audience, which is natural given that it has been developed by a team of people in both the Utility Regulator and SONI who have been involved with this process for many years. However, the final guidance document will need to include some information about the determinations that it is implementing to ensure that any future staff are able to interpret it in the context in which it has been drafted. We have included some suggested text in our mark-up appended to this response.
- The CMA's Final Determination requires SONI to make these submissions very early in the process and this means that the Utility Regulator approvals will be processed in parallel with SONI's internal governance. While unavoidable, this may mean that SONI might need to revise submissions to take account of the outcome of this process. We would expect to keep the Utility Regulator informed of any emerging issues thorough the monthly meeting cycle.
- The information requested and the detail expected within the submissions should be appropriate for the early stage in the project process that SONI is required make its submission. For the reasons described above, it is essential that these submissions cannot be interpreted by third parties as SONI prejudging the outcome of any other mandatory processes, for example obligations related to public consultation, procurement or safety matters. In this context, it is inappropriate to refer to the outcomes of these processes as "risks". "Uncertainties" or "unknowns" would more accurately reflect both their status and SONI's willingness to accept the outcomes of these processes.
- It will be essential that the guidance document and templates acknowledge and reflect the limitations in the information that is available to SONI at the point of submission. We suggest that the final guidance clearly sets out that references to "information" should be read as meaning that SONI should provide the best and most comprehensive information available to it at that time.



- The Utility Regulator proposes to introduce a binding obligation onto SONI to produce the TDPNI in Quarter 1 of each year. This restriction was not introduced when the licence was modified; therefore we are surprised at it being included here. As the TDPNI will need to align with other obligations, we would suggest that the guidance simply introduces an obligation on SONI to agree the timing with the Utility Regulator.
- While SONI is happy to provide the data required for the Utility Regulator’s annual review of each TNPP, we are unsure of the value that can be derived from monitoring against the cost breakdown that is included in the initial submission. Those estimates are, by necessity, not SONI’s view of the most likely outcome from the consultation process. We therefore suggest that annual monitoring is by reference to the previous annual update, which will reflect the fact that the accuracy of the data will increase as the project progresses.
- The proposed templates focus on projects that are driven by economic requirements that are within SONI’s remit. This will not always be the case. For example the Regulatory Authorities undertook the CBA for the I-SEM and the Department undertook the CBA for the 40% renewables target. Economics were also considered as part of the development and approval of the Transmission Planning and Security Standards and the LOLE used in the capacity market auctions.

The templates and guidance will need to accommodate projects where SONI is contributing to wider aims and/or compliance with obligations. We will provide some suggestions around how this can be accommodated in our mark-up of the templates that will be submitted separately to the Utility Regulator.

- While we welcome the fact that the Utility Regulator will provide SONI with an opportunity to redact any commercially confidential information from the Utility Regulator’s published decision, it will also be important that SONI is able to highlight any information that would be prejudicial to the various mandatory processes that SONI is required to engage in.
- The draft guidance does not fully reflect the processes that take place under the TIA between SONI and NIE Networks. For example, NIE Networks will also need to undertake some pre-construction works before making its D5 submission to the Utility Regulator for a project, and SONI does not produce the “detailed construction drawings”. The guidance will need to be reviewed to align with the outcome of the current review of the TIA.
- The cost categories should reflect the activities undertaken by SONI (the proposed list contains activities undertaken solely by NIE Networks or another developer). We propose a more applicable list of Table 2 below:

<b>SONI Cost Reporting Categories</b>	
1	Route / Site / Technology selection & design required for all consents
2	Environmental studies
3	Consultation & stakeholder engagement including Planning application
4	Acquisition of wayleaves, easements, land options, etc (including legal work)

**Table 2: SONI Cost Reporting Categories**

- It would be inappropriate and of little value for SONI to assume a split between internal and external costs as part of the initial submission. In particular this would prejudice the outcome of mandatory procurement exercises and would be without any factual basis if provided at that early stage in the process. We would however be happy to report actual data broken down into these categories as part of the annual reporting.
- There are some aspects of the guidance document that are currently ambiguous, unclear or do not appear to us to accurately reflect the CMA determination. These include:
  - The guidance appears to retrospectively cover all TNPP work that SONI has undertaken since these responsibilities were transferred on 1 May 2014; however this is not stated explicitly. We would welcome confirmation of this in the final document;
  - The level of detail provided in the reasoned decisions by the Utility Regulator to SONI in a situation where it does not approve a submission by SONI is not clearly set out;
  - The document does not appear to contemplate or favour efficient spend by SONI ahead of approval by the Utility Regulator; instead it appears to incentivise SONI to “down-tools” while waiting for Utility Regulator’s responses. SONI does not believe a “down tools” approach is consistent with the CMA Final Determination (Paragraph 11.38) nor in the interests of Northern Ireland customers. We would welcome confirmation of the Utility Regulator’s intention in the final document;

# Dt Process

## Introduction

SONI has reviewed the draft “Requirements and Guidance on the Cost Recovery Process for Dts” and the associated template. We have appended a marked-up version of the guidance to this response.

In this section we set out our main concerns around the Dt processes proposed in the draft guidance.

## Guidance

We have the following main concerns about the guidance document that the Utility Regulator has issued for consultation:

- The guidance document has been written for a very informed audience, which is natural given that it has been developed by a team of people in both the Utility Regulator and SONI who have been involved with this process for many years. However, the final guidance document will need to include some information about the determinations that it is implementing to ensure that any future staff are able to interpret it in the context in which it has been drafted. We have included some suggested text in our mark-up appended to this response.
- The CMA’s Final Determination requires SONI to make these submissions very early in the process and this means that the Utility Regulator’s approvals will be processed in parallel with SONI’s internal governance. While unavoidable, this may mean that SONI might need to revise submissions to take account of the outcome of this process. We would expect to keep the Utility Regulator informed of any emerging issues through the monthly meeting cycle.
- The information requested and the detail expected within the submissions should be appropriate for the early stage in the project process that SONI is required to make its submission. For the reasons described above, it is essential that these submissions cannot be interpreted by third parties as SONI prejudging the outcome of any other mandatory processes, in particular obligations related to procurement. Any approval by the Utility Regulator should also be cognisant of these restrictions.
- It will be essential that the guidance document and templates acknowledge and reflect the limitations in the information that is available to SONI at the point of submission. We suggest that the final guidance clearly sets out that references to “information” should be read as meaning that SONI should provide the best and most comprehensive information available to it at that time.
- We would welcome an opportunity to discuss cost categories that are to be used for the reporting of each Dt submission, to ensure that the required data can easily be extracted from SONI’s systems. In addition, it would be inappropriate

and of little value for SONI to assume a split between internal and external costs as part of the initial submission. In particular this would prejudice the outcome of mandatory procurement exercises and would be without any factual basis if provided at that early stage in the process. We would however be happy to report actual data broken down into these categories as part of the annual reporting

- The guidance document is unclear around the allocation of asymmetric risk on Dt items and refers to and outlines the term ‘cap’, including statements concerning the recovery of costs ‘up to the cap’. SONI understands and welcomes the fact that the guidance is clear that the ‘cap’ can be amended/ uplifted at any stage in the progression of a project/ works, but seeks clarity on risk allocation for Dts to ensure that efficiently incurred costs can be recovered.
- There are some aspects of the guidance document that are currently ambiguous, unclear or do not appear to us to accurately reflect the CMA determination. These include:
  - The processes set out in the guidance document should aim to remedy the errors identified by the CMA in its Final Determination;
  - The level of detail provided in the reasoned decisions by the Utility Regulator to SONI in a situation where it does not approve a submission by SONI is not clearly set out;
  - The document does not appear to contemplate or favour efficient spend by SONI ahead of approval by the Utility Regulator; instead it appears to incentivise SONI to “down-tools” while waiting for the Utility Regulator’s responses.

## Template

We note that the Dt template that has been circulated for consultation differs significantly from that previously shared with SONI by the Utility Regulator. The previous version was broad enough to cover the full range of cost types that are recovered by SONI under the Dt term in its licence. The new template is focused on projects that are driven only by economics. For example the Regulatory Authorities undertook the CBA for the I-SEM and the Department undertook the CBA for the 40% renewables target.

The proposed template is therefore of limited relevance to most of the Dt submissions that will be made by SONI, as these tend to be driven by obligations or public policy. This will not always be the case

The templates and guidance will need to be updated to accommodate projects or other Dt cost categories where SONI is contributing to wider aims and/or compliance with obligations. We have been reviewing the templates in parallel with preparing this response. As these comments mostly duplicate those on the guidance, we have not attached them at this time. We therefore consider it more efficient if we review the

templates with the Utility Regulator as part of any follow-up discussions, however would be happy to share our marked-up versions sooner if required

# Conclusion

We welcome the publication of this draft guidance and templates, and the step towards codification and certainty of recovery of efficient costs that this presents. We note however that there are important matters that remain ambiguous or which do not align with the wider statutory framework.

We would be happy to meet with the Utility Regulator to discuss our concerns and to agree the amendments to the guidance that are necessary to accurately implement the CMA's final determination.

## 2. Requirements and Guidance on the Cost Recovery Process for TNPPs

2.1 The following requirements and guidance apply to applications by SONI for the approval of costs in relation to Transmission Network Pre-Construction Projects (TNPPs). **The purpose of this document is to codify the processes by which SONI can recover its costs for TNPPs, in order to provide certainty to SONI where no upfront allowance has been provided<sup>1</sup>. It also provides guidance on how we will apply these processes and on what information SONI should provide to us. In this regard, we recognise that the work involved in delivering TNPPs is inherently uncertain and evolves over time. In such circumstances, we expect SONI to use its best endeavours to provide us with information that is reasonably available at the point in time of each submission to us. We further recognise that these submissions will also need to be consistent with other statutory requirements<sup>2</sup> that SONI is obliged to comply with and recognise these place constraints on SONI.**

**Comment [A1]:** Given the long process that has led to the creation of this document it will be important that the background is set out and the decisions that it is implementing are detailed. This will be particularly important for future staff of both SONI and the UR who have not been through this process.

2.2 A TNPP is defined in paragraph 1.1 of Annex 1 to SONI's electricity transmission licence<sup>3</sup> as follows:

*'a transmission network project:*

*(a) identified, by the Licensee or the Transmission Owner, as a project which is necessary for the purposes of developing the transmission system;*

*(b) in respect of which the Licensee is, as the Transmission System Operator, responsible for carrying out activities required to progress the project from the conceptual design stage to, but not including, the construction stage; and*

*(c) which has been approved by the Authority, following a claim by the Licensee for such approval in accordance with paragraph 9.1 of this Annex.'*

2.3 Under paragraph 9.1 of Annex 1, SONI may apply to the UR, in accordance with these requirements and guidance, for the approval of activities which:

a) it has or will carry out in respect of a project which is necessary for the purposes of developing the transmission system, and

b) were or are required to progress the project from the conceptual design stage to, but not including, the construction stage.

2.4 Under paragraph 9.2 of Annex 1, SONI may make a claim to the UR, in accordance with these requirements, for the approval of an amount of costs incurred, or to be incurred, by it in undertaking those activities.

<sup>1</sup> In accordance with the Final Determination and Order from the Competition and Markets Authority dated 10 November 2017 which resulted from SONI's appeal against our Licence Modification Decision of March 2017.

<sup>2</sup> These include The Planning (Northern Ireland) Act 2011, The Aarhus Convention, Health and Safety legislation and Procurement legislation.

<sup>3</sup> Note: the text presented in this section (and references to licence conditions) is based on the licence modifications currently being consulted on.

2.5 Paragraph 10.2(b) of Annex 1 requires SONI to provide to the UR all information specified in this document.

2.6 This document sets out the information that must be provided by SONI in an application for approval of each TNPP and the estimated costs associated with it, and the process which the UR will follow in deciding on that application. **Recognising that under other aspects of the legal framework applicable to SONI, SONI is required to keep an open mind about the eventual outcomes of some of the processes it will follow to deliver the pre-construction activities, SONI is only obliged to provide information where it is available with an appropriate degree of certainty at the time of submission.**

**Comment [A2]:** We are required under other legislation to keep an open mind around the eventual solution until public consultations are complete. The same applies to procurement exercises. The information that we submit will have to be consistent with these obligations. It will be helpful if these external requirements are referenced here also to ensure that this debate is not repeated each time a new member of staff is involved in the process.

2.7 It also sets out the information that SONI is required to provide during the life of a TNPP and the process for applying for variation to the cost cap approved for each TNPP. Finally, this document provides guidance on the UR's approach to reviewing the costs of approved TNPPs.

### Overview of cost recovery process for TNPPs

2.8 An overview of the process for SONI's recovery of its TNPP costs is shown in Figure 1. This identifies the key steps in the process. Further details and additional steps within the process are described in this document further below.

**Figure 1: Overview of TNPP cost recovery process**

**Comment [A3]:** Not included, for presentation purposes.

**Comment [A4]:** The timelines for the TDPNI are still to be finalised and will need to align with the process for developing scenarios, the SEA and the timetable for the Europe wide TYNDP. This guidance document binding on SONI and is not an appropriate place to introduce an obligation around the timing of the TDPNI that could impact on other processes.

We are of course happy to agree the timelines as part of the TDPNI process.

## Ex-ante approval of pre-construction projects

### SONI's application for pre-approval

2.9 SONI will identify the need for the development of the transmission network through the Transmission Development Plan Northern Ireland (TDPNI) – as required under Condition 40 of SONI's Transmission Licence. This requirement for SONI to develop, consult on and publish annually a ten-year TDPNI came into effect on 30 November 2017.

**Comment [A5]:** This is not consistent with the CMA FD

2.10 The TDPNI should identify efficient measures to guarantee the adequacy of the transmission system and security of supply, within the context of SONI's licensed activities. SONI is expected to publish a draft of the plan for consultation **in early Q1 of each year** and a final version, following approval by the UR, **in early Q2 of each year in line with a timetable agreed with the UR.**

SONI will provide an outline of the project(s) it expects to move into the pre-construction phase in the following year as part of its annual report, but a full submission one year out would not contain any useful information.

2.11 Where SONI has identified the nature of a project(s) to address a need, and expects to start incurring pre-construction costs **in the next year/near future**, it should apply to the UR for pre-approval. That application must take the form of the submission to the UR of the pro-forma for TNPPs appended to this document, and discussed further below.

Please note, this is also contradicted below.

2.12 The **internal** costs of SONI's initial activities in developing and completing the proforma for TNPPs are covered by its ex-ante opex **allowance**. Following approval by the UR, TNPP costs (not including the costs of its application for approval) are remunerated through a return on and return of a side-RAB for TNPPs as set out in SONI's licence.

**Comment [A6]:** The price control only includes internal staff costs, no allowance for specialist studies was provided. In some cases these will be required to establish the short list of viable solutions (for example, the voltage compensation projects).



## Timing of application

2.13 SONI can submit these pro-forma(s) at any time but should use its best endeavours to submit completed pro-forma templates:

- a) at least six months in advance of project initiation; and
- b) by 1 April in each year if they are to be included in tariffs from the following October.

2.14 For applications submitted after 1 April and which do not have required approvals in place for the next tariff year, the UR may exercise discretion as to what can be recovered from tariffs in that year. Any difference between this and the UR's subsequent approval will be subject to the correction factor.

## Format of application

2.15 The TNPP pro-forma that SONI must complete is contained in Annex A. Information provided by SONI in the pro-forma will inform the UR's assessment of the TNPP and our decisions as to whether to ~~pre-~~approve ~~the SONI's pre-construction~~ project (under paragraph 9.1 of Annex 1 of SONI's transmission licence) and associated forecast expenditure (under paragraph 9.2 of Annex 1).

**Comment [A7]:** To avoid unnecessary delays, SONI will be undertaking some activities in parallel with the UR approval process.

2.16 For the avoidance of doubt, SONI need only submit a single application in respect of our approvals under paragraphs 9.1 and 9.2 of Annex 1.

**Comment [A8]:** To make it clear that it is only SONI's pre-construction works that are being approved at this time. The construction project is approved through a different process.

2.17 ~~The information will also provide the baseline against which progress can be monitored.~~ We would expect this information to be available to SONI, in any case, as part of good corporate governance in the planning for and management of projects.

**Comment [A9]:** As described above, the level of detail available at the time of submissions, and the need for SONI to keep an open mind ahead of consultations and procurement processes will limit the usefulness of this baseline data.

2.18 There are two main parts to the pro-forma for SONI to complete:

a) About the Transmission Project. The purpose of this section is for SONI to provide the evidence to justify the need for a project and why the preferred solution is the most appropriate. Within this part, information is required on the following (with further details provided in the pro-forma):

- ~~Need and investment trigger~~
- Project background
- Objectives and constraints
- Identify and shortlist options
- Identification of preferred ~~option,~~ if applicable.

**Comment [A10]:** In some cases, SONI will not be responsible for undertaking the economic assessment, for example the Department undertook the economic assessments that underpinned the SEF and the 40% target. The template currently focuses only on projects where SONI is responsible for the economic appraisal. SONI does not have the resources to undertake these wider policy assessments.

b) TNPP Details. The purpose of this section is for SONI to provide available details as to the timing, estimated costs and risks of the proposed project to inform the UR's approval decision. Within this part, information is required on the following (again, with further details provided in the pro-forma):

- Project Plan
- Risks and opportunities
- ~~Budget- range-~~

**Comment [A11]:** SONI will be limited in what it is able to produce at the point when it applies to the UR, as no external consultation will have been undertaken prior to submission to the UR.

2.19 The pro-forma is a general template covering the minimum requirements. SONI should complete all sections, ~~where the information is available to it with a reasonable degree of certainty and where these sections are relevant.~~ SONI ~~but~~ may modify or enlarge the tables and

**Comment [A12]:** Ranges may be more useful at this early stage? SONI will need to be careful not to constrain the outcome of the public consultation exercises.

sections, as required, to provide ~~all necessary~~ the information available to justify the pre-construction activities necessary to develop the project to the point of handover for construction, ~~and including~~ the forecast expenditure.

**Comment [A13]:** Not all of the information will be available at this point in the process.

2.20 This pro-forma should be used for all TNPPs, regardless of scale or complexity. However, we would expect SONI to be able to justify the need for expenditure on smaller and less complex TNPPs more briefly than for larger and more complicated TNPPs.

**Comment [A14]:** SONI is not justifying the project itself, it is only able to justify further investigation and pre-construction activities. Indicative information about the potential construction elements of the project will be included to support the justification for pre-construction work.

2.21 Ahead of SONI initiating the pre-construction activities, we recognise that ~~there will be uncertainty around~~ some of the information it is required to provide ~~will be unknown or uncertain~~, particularly in relation to the details of the TNPP. Within its application SONI can address uncertainty in several ways:

a) SONI is required to provide an initial assessment of the ~~risks and unknown factors associated with~~ ~~of~~ the pre-construction activities, along with the likelihood of the risk and the impact if it is realised, ~~that can be used to inform~~ing the extent of uncertainty (for example, on costs or timelines).

**Comment [A15]:** SONI is uncomfortable with describing the legitimate outcome of public consultation as a risk. This is more “uncertainty” or “unknown factors”. Risk implies that we have a preferred solution.

b) In relation to its initial cost forecasts, SONI can include contingency. Allowances for contingency should be explained and justified by reference to the ~~risks~~.

**Comment [A16]:** At the point of submission SONI will not have confirmed the preferred solution, therefore the “contingency” will need to be broad enough to ensure legitimate public consultation.

c) Once a TNPP has been pre-approved, if there are changes in the scope and/or costs of the project such that SONI considers it might exceed the initial budget cap we have set for the project, SONI can apply for a project variation. This part of the process is separately considered further below.

### The UR's assessment and response

2.22 Through the TDPNI and other engagement with SONI, the UR would expect to be aware of the need for, and have some knowledge of, any proposed TNPPs ahead of SONI's application.

2.23 The UR will assess SONI's application in line with its duties. If the TNPP is considered a matter for the SEM Committee, ~~the UR will forward the application to the SEM Committee for decision, and the process described herein will~~may not apply.

**Comment [A17]:** Our understanding of the relevant regulations is that the risk allocations and price control arrangements defined under NI price controls would normally apply to the NI element of cross border projects. For example jurisdictional processes currently apply to the works being undertaken on the North-South Interconnector.

2.24 At an early stage, the UR will review the ~~completeness of the information provided by SONI~~. If required information is missing, ~~and could reasonably be expected to be available to SONI this early in the pre-construction stage of the project~~, the UR will request SONI to ~~resubmit~~provide additional information ~~the application~~. Where appropriate, the UR will publicly consult on the TNPP in SONI's application. During the course of the assessment, and ahead of any decision, the UR may engage with SONI, NIE Networks and other relevant stakeholders, ~~while being mindful of the obligations placed on SONI to consult with stakeholders as part of the pre-construction process~~.

We suggest that the SEM committee should be able to follow this process for NI if it chooses to.

2.25 The UR will request clarification on, or expansion of, any information that is unclear or, potentially, inadequate, ~~provided that this information could reasonably be available to SONI at the point of application~~. The UR will raise any potential concerns over the application (e.g. as to the choice of the preferred option or the forecast of costs) or objections with SONI during the assessment, ~~noting the obligations placed on SONI to consult with stakeholders around the choice of solution~~. The UR may decide to use external advisers to support assessment of SONI's applications. ~~In such situations, the UR will ensure that there is no exchange of commercially sensitive information relating to SONI's contracts with its service providers~~.

**Comment [A18]:** As set out elsewhere, SONI should only be expected to provide information that is available to it at this stage in the process.

**Comment [A19]:** It could be awkward if the UR is consulting publicly on a project before SONI has approached any stakeholders that are potentially impacted by the solutions that are being considered.

**Comment [A20]:** It will help SONI's procurement processes if this is set out clearly here.

2.26 The UR will confirm in writing to SONI the outcome of its assessment of the TNPP application within four months of receiving the required information. If circumstances allow, the UR will complete the assessment in less than four months. Circumstances which could facilitate a quicker assessment may include:

- a) Initial submission of the relevant information required to enable the UR to make a complete assessment.
- b) Lower value projects (which could potentially be approved by the CEO, rather than the Board)
- c) Less complex projects (which are more straightforward to justify and assess)
- d) Projects which SONI have previously engaged with the UR on (in general, the UR would not expect TNPP applications or their broad content to come as a **surprise**).

**Comment [A21]:** SONI concurs with this statement.

2.27 For each approved TNPP, the UR will set a maximum amount of approved expenditure that can be ~~recovered through tariffs~~ **added to the side RAB for that project**. During the life of a TNPP, such expenditure will be remunerated through a return on **the side-RAB** in line with paragraph 2.4 of Annex 1 to SONI's licence.

**Comment [A22]:** Tariff revenue is the outworking of an addition to the Side RAB. We would expect the approval to refer to the Side RAB addition, as set out in the licence, rather than the tariff provision.

2.28 In the event that the UR is minded to not approve the project, the UR will confirm this in writing to SONI along with its objections and, if appropriate **and following the necessary consultations**, issue a **derogation** under Condition 20(6) of SONI's licence<sup>4</sup>.

**Comment [A23]:** This is subject to consultation with stakeholders

2.29 The UR will publish the outcome of its assessments (both approvals and rejections) of SONI's TNPP applications. Ahead of publication, these will be shared with SONI, providing them the opportunity to identify any factual errors, ~~or~~ matters of commercial **confidentiality or wider legal compliance**.

**Comment [A24]:** This will need to be more than commercial confidentiality, it should ensure that the published information is consistent with the wider legal framework.

2.30 In the case of project approvals, the UR would expect to include the maximum amount of expenditure that can be recovered through tariffs, but not detailed breakdowns of **expenditure**.

**Comment [A25]:** SONI welcomes this clarification.

2.31 SONI can proceed with pre-construction activities ahead of our ~~pre~~-approval, but will do so at risk. In practice, as a result of the TDPNI process and SONI's other engagement opportunities with the UR, this risk ought to be minimal. **The UR recognises that this incentivises SONI to apply for approval at a very early stage in the process, which limits the information available to both SONI and the UR as part of the submission and approval process.**

2.32 However, for the avoidance of doubt, if SONI has conducted work and incurred efficient costs ahead of our decision, then such costs can be recovered, subject to the cap we set, if we approve the TNPP. Conversely, if SONI has conducted work ahead of our decision and we do not approve SONI's TNPP application, then these costs cannot be recovered through tariffs.

#### Reporting on approved TNPPs

2.33 SONI is required to report to the UR separately on each of its approved TNPPs. The reporting will take place annually (through written submissions) and bi-monthly (through oral updates).

<sup>4</sup> Under Condition 20(6), the UR may relieve SONI of any obligations it has under the Transmission System Security and Planning Standards, the Distribution System Security and Planning Standards, the Grid Code or the Transmission Interface Arrangements (TIA)

## Annual reporting

2.34 SONI must report to the UR annually on the progress of ongoing TNPPs, through completion of the pro-forma at Annex B to this document. The completed pro-forma will provide an overview of the progress in the past year and a comparison to the original baseline. SONI needs to provide in this pro-forma:

- a) Commentary on the progress and status of the project, including review of the cost benefit analysis of the project, **if applicable**.
- b) An up to date project plan, including commentary on changes.
- c) An up to date risk/**uncertainty** log, including commentary on changes.
- d) Costs incurred in the year and reasons for any divergences from **the previous forecasts**.

2.35 In approving the original TNPP we may identify additional reporting requirements if we consider this appropriate **to add value to oversight**. This may be the case, for example, with large projects, or those of particular significance.

2.36 SONI should provide this annual report for each of its approved TNPPs by 1 April of each year.

2.37 The UR will review SONI's annual reports. Any costs assessed at that point to be demonstrably inefficient or wasteful (DIWE) will not be included in the side-RAB for TNPPs. This review will be conducted in line with the guidance and procedures published by the UR on DIWE.<sup>5</sup>

2.38 Consideration may be given to further information requests being made to the TSO. The UR may also employ a third party to conduct an audit of the relevant detail.

2.39 Should we have concerns around **the potential for costs to be assessed to be** DIWE, these will be raised with SONI who will be given opportunity to respond. This response will be considered prior to any decision being made.

2.40 In the event that reductions are sought **to adjust for DIWE** we will write to SONI and advise of the rationale and **materiality/quantum** of said adjustment. The intention is that this decision will generally be published.

2.41 The UR will also review staff costs to ensure that a boundary is maintained between network planning staff funded through ex-ante opex allowances and those funded under the TNPP uncertainty mechanism.

## Bi-Monthly oral updates

2.42 SONI should provide oral updates every two months on progress with TNPPs, highlighting any emerging risks or issues. On the basis of these updates the UR may request further information from SONI; for example, where projects are delayed, costs are escalating (and the pre-approved level of spend is close to being breached) or risks increasing, **or where a project variation is likely to be submitted**.

## Project variation

**Comment [A26]:** This will be an iterative process, it will be important to recognise that the cost estimates will become more robust as the investigation and consenting processes progress.

**Comment [A27]:** Quantum is more appropriate in this context.

**Comment [A28]:** We are unsure why the UR would request further information if SONI has already highlighted that it is in the process of preparing a submission.

<sup>5</sup> 12 DIWE guidance.

2.43 The UR recognises that **cost of** pre-construction activities ~~costs~~ can be uncertain **and that many aspects of the project, including the scope of the works required, are unknown at the time SONI makes the initial submission**. Accordingly, in the event that SONI considers that the approved **initial** cost cap set for a TNPP will be breached, it may submit an application to increase the cap. SONI can make such project variation requests at any time, but should endeavour to do so in advance of the cap being **exceeded**.

**Comment [A29]:** SONI is not clear why this is the case given that the UR is clear that SONI may apply for a variation at any time, and that to do so is consistent with the proposed licence text in Paragraph 9.2 of Annex 1.

2.44 To apply for a project variation, SONI should resubmit the TNPP pro-forma in Annex A to this document, along with an explanation, supported by evidence, as to why additional spend is both efficient and necessary. The TNPP pro-forma should cover the full costs of the project (not just the additional costs subject to the project variation application). Although SONI should resubmit the whole pro-forma, the following are the key sections that SONI will need to revisit:

a) Part B, Section 5: Cost and Benefits Analysis & Identification of Preferred Option. SONI should review the Cost Benefit Analysis (CBA) for the project and confirm that it remains the preferred option, **if a CBA is applicable for the project and SONI is responsible for it**.

b) Part C, Section 6: Pre-Construction Project Plan. SONI should provide an updated project plan, alongside a commentary on the changes from the plan in the original submission and why these are needed. For example, these changes may relate to additional activities or extension of existing activities to address changes in scope.

c) Part C, Section 8: Pre-Construction Project Budget. SONI should provide an updated cost forecast, noting the changes from the original forecast and why these are needed. For example, these changes may relate to additional activities required to address changes in scope, or to increases in costs outside of SONI's control. This commentary can be provided by putting comments against individual cost items in the spreadsheet accompanying this section of the pro-forma, and / or in the comments section in the pro-forma itself. To the extent that actual costs have been incurred, these should be included in the cost spreadsheet.

2.45 Our assessment of the project variation will follow that for initial TNPP applications. That is, we will review the completeness of the submission, engage with SONI (if necessary) for any clarifications, review the cost forecasts (reserving the right to call on external support), and confirm the outcome of our assessment (including a revised budget cap) in writing to SONI. We will publish our decision on each project variation application, as with each new TNPP application.

2.46 As with the initial TNPP application, we will assess SONI's TNPP project variation applications within four months of the receipt of the required information, but sooner if circumstances allow.

2.47 There may be some circumstances in which SONI is required to incur costs beyond its approved cap on an urgent **basis**. Where SONI cannot make an application to increase its cost cap in advance of incurring costs, it may make an application for variation on a retrospective basis.

**Comment [A30]:** This is not limited to urgent cases and may include tolerance bands concerning minor variations (CMA FD paragraph 11.38) or other circumstances

2.48 Where it does so, we will expect SONI to make an application for variation as soon as possible, and, as part of that application, to justify why costs needed to be incurred **urgently**.

**Comment [A31]:** This paragraph appears to be contradictory to paragraph 2.43

2.49 We would not however ordinarily expect to receive such a retrospective application where a degree of contingency has been included in the initial cost **cap**.

**Comment [A32]:** There is a balance to be struck between providing an accurate estimate and covering all eventualities. We would welcome discussion around this.

## Ex-post process for review of approved TNPPs

2.50 The outcome of each TNPP will be a preferred construction option with a completion report detailing the:

- a) Project plan and timelines
- b) ~~Detailed Relevant Outline construction designs~~ information
- c) ~~Detailed~~ Capital cost ~~assessment~~ ~~Estimates~~
- d) Relevant technical assessments
- e) ~~Information related~~ ~~Completed~~ ~~site~~ activities such as:
  - Planning ~~compliance~~ ~~consents~~
  - Environmental constraints
  - Permits
  - Wayleaves/easements
- f) Full detail of the pre-construction ~~cost~~ phase ~~costs~~.

**Comment [A33]:** Amended to ensure consistency with SONI's responsibilities under the TIA

**Comment [A34]:** These detailed costs are only known when NIE has completed its work and may not be available to SONI at this point in the process.

**Comment [A35]:** Amended to reflect SONI's activities.

2.51 Following completion of the ~~TNPP~~, SONI should submit to the UR its completion report, and a breakdown of costs incurred (as a minimum, the breakdown of costs should be as in Section 4 of the ongoing reporting proforma in Annex B).

**Comment [A36]:** There may need to be a route for NIE Networks to re-engage with SONI in the context of ongoing landowner engagement or changes to planning permission. It would be helpful if this could be reflected in the guidance.

2.52 SONI should provide sufficient information for the UR to adequately perform its review. The UR will engage with SONI if it considers the information provided is unclear or, potentially, inadequate.

2.53 To the extent that the information is contained in the Transmission Project Instruction, that SONI is required to provide to NIE Networks under the TIA, or the Transmission Project Agreement, agreed under the TIA, then SONI may submit this to the UR.

2.54 The UR will review the costs with a view to determining the final preconstruction RAB associated with the project. In conducting the review, the UR will confirm that the amounts are ~~no greater than~~ ~~below~~ the approved cap (including any variations) and that none of the expenditure is demonstrably inefficient or wasteful. The UR may decide to use external advisers to support its review.

2.55 Any transfer of monies between SONI and NIE Networks ~~related to the TNPP work covered by this process~~ must comply with the requirements set out in the TIA.

2.56 Where SONI decides to cancel a previously approved TNPP it must submit to the UR a report detailing the reason for the cancellation, the work undertaken, and a breakdown of the costs incurred (as a minimum, the breakdown of costs should be as provided for in Section 4 of the ongoing reporting pro-forma in Annex B).

2.57 ~~SONI should provide sufficient information to enable the UR to review whether any expenditure was demonstrably inefficient or wasteful. In~~ ~~undertaking~~ its assessment that any spend is DIWE, ~~t~~he UR will engage with SONI if it considers ~~any~~ ~~the~~ information ~~that SONI has~~ provided is unclear or, potentially, inadequate.

**Comment [A37]:** SONI should not be obliged to second guess the level of information that UR considers appropriate for any particular project. The risk that would be allocated to SONI under the proposed text is inconsistent with the CMA FD.

2.58 The UR will review these costs and determine the amount that SONI may recover through the SSS tariff under paragraph 2.2(a)(iv) of Annex 1 to its licence. The UR may decide to use external advisers to support its review.

#### Regularising past TNPPs

2.59 SONI has been undertaking work on TNPPs. In order to recover costs in respect of these currently ongoing projects, SONI must submit TNPP applications using the pro-forma in Annex A to this document for each of its ongoing TNPPs. This may include actual and forecast spends, but should be completed in a consistent price base.

2.60 In addition, SONI should submit for each of its ongoing TNPPs a breakdown of actual spend in each year to date. As a minimum, the breakdown of costs should be as in the cost spreadsheet in Section 4 of the ongoing reporting pro-forma in Annex B.

2.61 For these purposes, SONI may complete the spreadsheet in Section 4 of Annex B, but SONI does not need to complete the rest of the ongoing reporting pro-forma. For the avoidance of doubt, SONI will have to comply with ongoing reporting for these projects in subsequent years.

2.62 The UR will review the submissions for ongoing TNPPs, following the process described above, issuing approvals as appropriate. Once approved, the costs incurred on ongoing TNPPs will be added to the side-RAB (effective from the date on which they were incurred) and SONI will earn a return on those costs.

**Comment [A38]:** See our comments on this pro-forma. These need to relate to SONI's activities and be meaningful for SONI's governance of its cost base.

**Comment [A39]:** This is important to ensure that the RAB reflects the profile of expenditure.

#### Review of and amendments to these Requirements and Guidance

2.63 This document applies to the process for SONI's applications for TNPPs in the current price control period, which ends in 2020. The first year in which tariff approvals will be informed by revenues related to actual TNPPs, applied for under this document, will be 2018/19.

2.64 The UR may update this document, in consultation with SONI, in the light of experience. The UR will also decide, subject to consultation, whether the same overall process for TNPPs should be applied in the next price control, which is due to take effect from 1 October 2020.

2.65 This document does not cover any future process for the recovery of costs associated with TNPPs that a party other than NIE Networks takes on construction. To the extent that the current process for TNPPs changes to accommodate SONI exercising step in rights under the TIA (or an additional process is introduced following approval from the UR), or a third party taking on construction, the UR may amend this document accordingly.

**Comment [A40]:** This is of concern to SONI given that Step In rights are already part of the industry architecture approved by UR.

#### SONI's remuneration of approved TNPPs

2.66 Under paragraph 2.4 of Annex 1 to its licence, SONI may recover a return on the efficient costs that it actually incurs on each TNPP up to the cost cap approved by the UR.

2.67 Where a TNPP proceeds to construction, SONI will be able to recover the value of its efficiently incurred costs up to the approved cap from NIE Networks under the TIA. The value of those costs will be removed from the TNPP side-RAB and SONI will not earn a future return on them.

2.68 ~~NIE Networks will be entitled to depreciation of and a return on the value of the RAB that is transferred to it, which can be collected through the TUoS tariff, subject to approval of NIE Networks' related D5 construction submission.~~ The processes that will be followed for NIE

**Comment [A41]:** This introduces more questions than it answers and further clarification is required.

It might be sensible to leave this for the parallel TIA or NIE specific process.



Networks will be set out in its licence and related documents. NIE Networks will pay SONI upon project transfer in accordance with the arrangements set out in the TIA.

2.69 Where a TNPP is cancelled either by SONI or by the UR, SONI will be able to recover the value of its efficiently incurred costs up to the approved cap through the SSS tariffs. Again the side-RAB will reduce by a corresponding amount.

**Comment [A42]:** It is crucial that the guidance provides clarity that SONI will be paid upon project transfer.



## 4. Requirements and Guidance on the Cost Recovery for Dt Applications

### Overview of cost recovery process for Dt submissions

The following requirements and guidance apply to applications by SONI for the approval of Dt submissions. The purpose of this document is to codify the processes by which SONI can recover its costs in respect of Dt submissions, in order to provide certainty to SONI where no upfront allowance has been provided<sup>6</sup>.

This document also provides guidance on how we will apply these processes and on what information SONI should provide to us. We recognise that Dt submissions will concern costs which are by their nature uncertain. In such circumstances we expect SONI to use its best endeavours to provide us with information that is reasonably available at the point in time of each submission to us.

4.1 SONI must make a Dt application under paragraph 8.1 of Annex 1 to its licence. In all circumstances, we expect SONI to be able to recover its efficiently incurred costs. We note that some Dt applications largely fall outside of SONI's control, for example, because they relate to statutory obligations or are needed to satisfy public policy perspectives. These costs are treated more akin to a managed pass through and are therefore subject to less scrutiny than say, larger projects, which fall directly within SONI's control.

Where relevant, the template should be completed for every Dt project. However, it is recognised that large projects (over £1m) may require more in-depth justification and supporting documentation. This should be submitted alongside the template for the UR's consideration.

4.2 The basic process is similar to that proposed by SONI for small projects. This is set out as follows:

#### Figure 2: Overview of Dt cost recovery process

4.3 In summary this can be defined as follows:

- Step 1 – Issue identified. Consult with stakeholders as necessary.
- Step 2 – SONI submit formal Dt request using template.
- Step 3 – The UR review and approve (or otherwise) a capped amount.
- Step 4 – Decision published and reporting requirements set.
- Step 5 – Approved amounts included in tariffs.
- Step 6 – SONI undertake work and report actual costs.
- Step 7 – SONI detail the K-factor in event of underspend.

**Comment [A43]:** This section should set out the context around SONI Dt applications, including the fact that these are mostly outside of SONI's control. Many of these are statutory obligations or are being incurred to fulfil public policy objectives. Therefore the economic assessment will have been undertaken by the originators of the obligations, the Department or the UR/SEM committee

**Comment [A44]:** The template differs from that previously circulated. The information requested on the consultation will not be relevant for all Dt requests.

We have been reviewing the templates in parallel with preparing this response. As these comments mostly duplicate those on the guidance, we have not attached them at this time. We therefore consider it more efficient if we review the templates with the Utility Regulator as part of any follow-up discussions, however would be happy to share our marked-up versions sooner if required.

<sup>6</sup> In accordance with the Final Determination and Order from the Competition and Markets Authority dated 10 November 2017 which resulted from SONI's appeal against our Licence Modification Decision of March 2017.

4.4 Given the differences between projects and spends, it is likely that bespoke reporting arrangements will be required. We intend to notify SONI of our expectations around reporting at the time of decision publication.

**Comment [A45]:** We would welcome an opportunity to discuss this ahead of each decision to ensure that the data requested can be compiled and extracted from SONI's systems.

#### Ex-ante approval of Dt spends

4.5 As identified above, SONI must apply to the UR for approval for each Dt by submitting required information (e.g. on need, estimated costs, timelines and risks) as defined in the template.

4.6 Within four months of the UR receiving the submission, we will either approve the application (and set an initial budget cap for the project) or reject it (setting out the reasons).

4.7 If the submission does not contain the required detail, and this detail is reasonably available to SONI at the point of submission, the UR will request this from SONI within two weeks. In certain exceptional circumstances the UR may request a resubmission in which case a decision will be taken on the updated application within the allotted timeframe.

**Comment [A46]:** We would assume that the discussions leading up to the submission would mean that this should be the exception rather than the rule.

4.8 For smaller projects it is anticipated that the approval time could be reduced to two months, though the formal four month timeframe will apply. Circumstances which could facilitate a quicker assessment may include:

a) Lower value projects (which could potentially be approved by the CEO or Director, rather than the Board).

b) Less complex projects (which are easier to justify and assess) or where SONI has little control over the outturn;

c) Projects which SONI have previously engaged with the UR on (i.e. the UR would not expect applications or their content to come as a surprise).

#### Timing of application

4.9 Ideally submissions should be made six months ahead of project initiation. Submissions can be received at any time throughout the year. However any proposal received after the 1 April in any year may not have the required approvals in place for the next tariff year.

**Comment [A47]:** Note – as SONI submits its revenue requirement in June, assumptions will still need to be made.

4.10 In these circumstances the UR may exercise discretion as to what is allowed through tariffs in the following year. This may in any event be different from the approved cap and would be subject to K-factor adjustment accordingly.

#### Format of application

4.11 Formal submission should be made using the attached template. Supporting detail may also be required for more complex projects or where different options are considered. This detail should be submitted at the same time as the formal template, though the UR may request clarifying material. Except in exceptional circumstances, this clarifying material does not constitute a resubmission for the purposes of calculating the timelines for approval.

**Comment [A48]:** As above, the information expectations should be clear before submission.

4.12 Additional detail might include:

- NPV analysis (if costs are non-mandatory and being incurred over a number of years);
- Cost Benefit Analysis (CBA) (this would not be expected where costs are mandatory or where SONI has no flexibility over the choice of solution);
- Supporting justification / calculations;

**Comment [A49]:** As stated elsewhere, this will not always be SONI's responsibility (e.g. I-SEM, ENTSO-E costs)

- Cost profile (if being incurred over a number of years); or
- Option / Risk analysis.

### The UR's assessment and response

- 4.13 The UR will assess SONI's application in line with its duties. At an early stage (normally within two weeks), we will review the completeness of the information provided by SONI.
- 4.14 If required detail is missing, and can reasonably be expected to be available to SONI at the point of submission, the UR will request SONI resubmit the application or provide further data. Where further data is requested and is available to SONI, we would anticipate that SONI should be able to facilitate any requests within ten working days in order to aid timely approval of submissions.
- 4.15 Where appropriate, the UR and/or SONI will publicly consult on the Dt application, though this is unlikely to be required in most circumstances.
- 4.16 During the course of the assessment, and ahead of any decision, the UR may engage with SONI regarding the application. For example, to request clarification on, or expansion of, any information that is unclear or, potentially, inadequate.
- 4.17 The UR will raise any potential concerns over the application (e.g. as to the choice of the preferred option or the forecast of costs) or objections with SONI during the assessment. We may also decide to use external advisers to support assessment of SONI's applications. In such situations, the UR will ensure that there is no exchange of commercially sensitive information relating to SONI's contracts with its service providers.
- 4.18 Confirmation will be provided in writing to SONI as to the outcome of the assessment. For each approved application, we will set an initial maximum amount of expenditure that can be recovered through tariffs.
- 4.19 Approved expenditure is recoverable in the first instance through tariffs. Subsequent adjustments are then made using the K-factor for actual expenditure that is properly and necessarily incurred (up to the capped maximum). The Dt approval letter will also be published on the UR's website.
- 4.20 In the event that the UR is minded to not approve the project, this will be confirmed in writing to SONI along with supporting rationale. Decisions will be published on the UR website, subject to SONI views on redactions. Ahead of publication, these will be shared with SONI, providing them the opportunity to identify any factual errors, matters of commercial confidentiality or any opinions stated by the UR that would be prejudicial to SONI's ability to comply with other legal obligations.

**Comment [A50]:** In these circumstances the clock should not stop and this should be part of the standard four month process.

**Comment [A51]:** We presume any consultation by SONI would be before submission.

**Comment [A52]:** It will help SONI's procurement processes if this is set out clearly here.

**Comment [A53]:** This will need to protect more than commercial confidentiality, it should ensure that the published information is consistent with the wider legal framework.

### Reporting on approved costs

- 4.21 SONI must provide reports to the UR in such a format, and by such times as specified by the UR as part of its approval decision. This will be appropriate for the costs being incurred and will only be requested where it adds value to UR's oversight.
- 4.22 It is our intention to advise and agree reporting requirements with SONI on approval of any costs.

### Annual reporting

4.23 ~~Proposals for ongoing reporting largely reflect those detailed by SONI in their remedy paper.~~  
~~This will include:~~

**Comment [A54]:** Please note – this is not in the public domain and is not a relevant reference.

1) The April Submission (before 1 April each year) consisting of:

- Information relating to current Dt projects and those expected in the next 18 months.
- Completed formal Dt requests for the upcoming year.
- A summary of outturn for the previous year.
- Latest best estimate of current Dt project spends.

2) The Three Month Statement (before 31 December each year) consisting of:

- Actual cost data for any Dt items in the completed year.
- K-factor adjustments for the previous tariff year.
- Auditor's Report.

4.24 The UR will review actual spend and consider whether the amounts are below the cap and that none of the expenditure is demonstrably inefficient or wasteful (DIWE).

### Project variation

4.25 The UR recognises that some Dt costs can be uncertain ~~or outside SONI's control~~. In the event that the approved cost cap will be breached, SONI may submit an application to increase the cap. SONI can make such ~~project~~ variation requests at any time, but should endeavour to do so in advance of the ~~initial~~ cap being exceeded.

**Comment [A55]:** These are not all project related costs, for example ENTSO-E costs and I-SEM operational costs.

4.26 To apply for a ~~project~~ variation, SONI should resubmit the pro-forma in Annex (c) to this document identifying that it is a variation on an existing cap. This should be provided alongside an explanation, supported by evidence, as to why additional spend is both efficient and necessary ~~{or is mandatory}~~.

4.27 The pro-forma should cover the full costs of the project (not just the additional costs subject to the variation application). The UR will evaluate and approve (or reject) in line with the process detailed above.

4.28 The TSO is also free to submit further requests above the £40k threshold at any time during the year using the template.

**Comment [A56]:** Some variances are unpredictable and outside of SONI's control. e.g. ITC costs fluctuate significantly and SONI may not know 6 months in advance that these are about to increase dramatically.

4.29 ~~Where costs are within SONI's control and are predictable, Overspend without approval will not be allowed in tariffs. The risk of overspend of uncertain allowances is recognised. However this has been separately remunerated and accounted for by the CMA and the UR in the revised licence Nt term.~~

**Comment [A57]:** This does not concur with our understanding of the CMA FD.

The CMA states in paragraph 12.76 of the FD that it assumes that remedies in respect of Ground 2 "will be implemented and will be effective in reducing the asymmetric risk faced by SONI" i.e. it is not the case that the changes to the Nt term that arise as a result of the remedy for Ground 1 are sufficient to address the asymmetric risk faced by SONI. Further measures are required to remedy Ground 2.

### Ex-post process for review of approved Dt costs

4.30 The UR will review actual spend as reported in the Three-Month Statement. In conducting the review, the UR will consider whether the amounts are ~~below not greater than~~ the ~~cap~~ and that none of the expenditure is demonstrably inefficient or wasteful (DIWE). This review will be conducted in line with the guidance and procedures published by the UR on DIWE.<sup>7</sup>

**Comment [A58]:** SONI seeks clarity on the term 'cap' and the associated risk profile to SONI should expenditure exceed the cap, and the assurance to SONI that it will ultimately recover its efficiently incurred costs.

<sup>7</sup> 14 DIWE guidance.

4.31 Consideration may be given to further information requests being made to the TSO. The UR may also employ a third party to conduct an audit of the relevant detail.

4.32 Should we have concerns around **the potential for costs to be assessed to be** DIWE, these will be raised with SONI who will be given opportunity to respond. This response will be considered prior to any decision being made.

4.33 In the event that reductions are sought we will write to SONI and advise of the rationale and **materiality-quantum** of said adjustment. The intention is that this decision will generally be published and changes factored into the K-factor calculation for future tariffs.

#### **Review of and amendments to this Guidance**

4.34 These requirements and guidance apply to the process for SONI's applications for Dt items in the current price control period, which ends **on 30 September** 2020.

4.35 The UR may update this document, in consultation with SONI, in the light of experience. The UR will also decide, subject to consultation, whether the same overall process should be applied in the next price control, which is due to take effect from 1 October 2020.