

23 January 2018

Norton Rose Fulbright LLP  
3 More London Riverside  
London SE1 2AQ  
United Kingdom

Tel +44 20 7283 6000  
Fax +44 20 7283 6500  
DX 85 London  
nortonrosefulbright.com

**Direct line**  
+44 20 7444 5742

**Email**  
mark.simpson@nortonrosefulbright.com

**Your reference**

**Our reference**

MSIM/1000048578

**By email (jody.oboyle@uregni.gov.uk and  
natalie.dowey@uregni.gov.uk)**

Utility Regulator  
Queens House  
14 Queens Street  
Belfast BT1 6ER

**Attention: Jody O'Boyle and Natalie Dowey**

Dear Jody and Natalie

**Consultation on proposed Licence Modifications to give effect to the CMA's Final Determination on the SONI TSO Price Control 2015-2020: SONI Response**

Please find enclosed on behalf of SONI Ltd its response to the Utility Regulator's consultation paper dated 20 December 2017 on proposed Licence Modifications to give effect to the CMA's Final Determination on the SONI TSO Price Control 2015-2020. This response includes three annexes as follows:

- Annex A: Utility Regulator consultation on proposed licence modifications to give effect to the CMA's Final Determination – SONI's itemised response
- Annex B: SONI proposals regarding codification of NTSOT
- Annex C: SONI proposals regarding codification of the side RAB

SONI would welcome further engagement with the Utility Regulator on the next iteration of the proposals.

We should be grateful if you could acknowledge receipt.

Yours sincerely

*Norton Rose Fulbright LLP*

Norton Rose Fulbright LLP

**Encl.**

CEC-#27633486-v1

Norton Rose Fulbright LLP is a limited liability partnership registered in England and Wales with number OC328697, and is authorised and regulated by the Solicitors Regulation Authority. A list of its members and of the other partners is available at its registered office, 3 More London Riverside, London SE1 2AQ; reference to a partner is to a member or to an employee or consultant with equivalent standing and qualification employed or engaged by Norton Rose Fulbright LLP or any of its affiliates.

Norton Rose Fulbright LLP, Norton Rose Fulbright Australia, Norton Rose Fulbright Canada LLP, Norton Rose Fulbright South Africa Inc and Norton Rose Fulbright US LLP are separate legal entities and all of them are members of Norton Rose Fulbright Verein, a Swiss verein. Norton Rose Fulbright Verein helps coordinate the activities of the members but does not itself provide legal services to clients. Details of each entity, with certain regulatory information, are available at nortonrosefulbright.com.

# UTILITY REGULATOR CONSULTATION ON PROPOSED LICENCE MODIFICATIONS TO GIVE EFFECT TO THE CMA'S FINAL DETERMINATION ON THE SONI TSO PRICE CONTROL 2015 – 2020

## SONI RESPONSE

### 1 Introduction

- 1.1 SONI welcomes the Utility Regulator's consultation on proposed Licence Modifications to give effect to the CMA's Final Determination and Order<sup>1</sup> on the SONI TSO Price Control 2015 – 2020, as published on 20 December 2017.
- 1.2 On 14 March 2017 the Utility Regulator published its final decision to modify the conditions of SONI's TSO licence, implementing the SONI TSO price control for the five year period from 1 October 2015 to 30 September 2020. These licence modifications took effect on 9 May 2017.
- 1.3 On 12 April 2017, SONI appealed several aspects of the Utility Regulator's TSO Price Control decision. The CMA granted permission to appeal on 11 May 2017. On 10 November 2017, the CMA made its Final Determination and Order, finding in SONI's favour on a number of its grounds of appeal and directing that the Utility Regulator implement specific remedies by way of licence modification and publication of appropriate guidance.<sup>2</sup>
- 1.4 This consultation response should be read in conjunction with SONI's response to the Utility Regulator's parallel consultation on Requirements and Guidance on Transmission Network Pre-construction Projects and on excluded SSS/TUoS costs, also published on 20 December 2017 pursuant to Direction 2 of the CMA Order.
- 1.5 The CMA directed that several of the remedies are to be implemented within a timeframe of four months of the date of the Order, i.e. by 10 March 2018.<sup>3</sup> SONI notes that the Utility Regulator states that it will publish its decision on the licence modifications which are subject of this consultation by 31 March 2018. It is vital that the Utility Regulator works to implement licence modifications which remedy the deficiencies of the 2015-2020 TSO Price Control within the stated deadline and SONI will work constructively with the Utility Regulator to support this.

### 2 Overarching concerns

- 2.1 SONI welcomes the publication of these consultations, which are necessary to the CMA's remedies. However, it notes that the Utility Regulator's proposals are defective in a number of important aspects, in particular where they fail to adequately remedy the errors identified by the CMA including by not providing SONI's shareholders and lenders with the ability to rely on the TSO Licence for clarity over SONI's returns. SONI therefore expects that the Utility Regulator will conduct a second round of consultation on its revised proposals, and/or provide SONI with an opportunity for detailed review and discussion of the next iteration of proposals.
- 2.2 SONI's itemised response to the proposed modifications is set out in Annex A to this response. As **summarised** in section 3 of this paper, SONI's key concerns are as follows:
- (a) **Addressing asymmetric risk:** In advancing the licence modifications, the Utility Regulator must ensure that the proposals adequately remedy Errors 2 and 6 as pleaded in SONI's Notice of Appeal. In fact, the CMA states in the CMA Final Determination that it has assumed that remedies in respect of Ground 2 "*will be implemented and will be effective in reducing the asymmetric risk faced by SONI*".<sup>4</sup> Specifically, it is incorrect to assume that the additional allowance within NTSOt provided to remunerate SONI for

---

<sup>1</sup> Available at <https://www.gov.uk/cma-cases/energy-licence-modification-appeal-soni>

<sup>2</sup> Directions, Annex A of the CMA Order (available at <https://assets.publishing.service.gov.uk/media/5a05b304ed915d0ade60dacb/soni-niaur-cma-order.pdf>)

<sup>3</sup> Direction 4, Annex A of the CMA Order.

<sup>4</sup> Paragraph 12.76 of the CMA Final Determination.

asymmetric risk faced in respect of Dt costs and Transmission Network Pre-construction Project Costs (**ARAt**) will fully address the asymmetric risk faced by SONI. SONI's concerns about the treatment of asymmetric risk in the Utility Regulator's proposals are summarised in section 3.

- (b) **PCG – relationship to SEMO licence:** SONI is disappointed that the Utility Regulator has not engaged with nor appears to have taken on board the suggested text which SONI advanced on 7 December 2017 in respect of the remuneration of Parent Company Guarantee (**PCG**), including the interaction with the SONI SEMO licence. Should the Utility Regulator implement its proposal, it will leave itself open to having to re-consider these matters and consult again in respect of further modifications in advance of I-SEM go-live (23 May 2018). SONI's proposed amendments to the codification of PCGt in paragraph 2.2(g) are set out in Annex B of this response and the rationale and effect of such proposals is summarised in section 3.
- (c) **Clarity on expected returns:** In order to appropriately remedy Grounds 1 and 2 of SONI's Notice of Appeal and ensure SONI's financeability, it is vital that SONI and its investors have clarity around SONI's expected returns. The CMA notes for instance that “[c]odifying [provisions concerning return on the side RAB] clearly would have provided assurance to SONI and its external funders that although SONI will carry the costs of PCNPs until each project is ready to be transferred to NIE or cancelled, it will be assured of earning a return on its capital invested in the meantime”.<sup>5</sup> The TSO Licence is the key document of record in this respect. Regarding the codification of the side RAB in paragraph 2.4, the complexity of the adjustments, convoluted drafting, and multiplicity of terms introduced to implement DIWE do not currently achieve this aim. The proposals also fail to set out a process by which efficiently incurred costs in respect of TNPPs since 1 May 2014 (i.e. the date of transfer of the network planning function) can be recovered (as specifically required by the CMA Order<sup>6</sup>). Section 3 of this response explains SONI's concerns in further detail. SONI's proposed amendments to the codification of the side RAB are set out in Annex C of this response.

2.3 SONI also explains in section 4 some further drafting issues and explains its proposed amendments, as set out in Annex A.

2.4 Finally, SONI notes that the Utility Regulator has advanced a number of consequential amendments which are outside the scope of the CMA's remedies, seemingly on the basis that these are relatively minor. SONI has proposed some further minor amendments, which are necessary to the operation of Annex 1 and which SONI expects to be non-controversial. These are listed in Annex A.

### 3 Comments on the proposed licence modifications

3.1 In this section SONI sets out its main comments on the consultation. These comments should be read in conjunction with the further detail in Annexes A to C of this response.

#### (a) Treatment of asymmetric risk

3.2 The treatment of asymmetric risk in the Utility Regulator's proposals read in conjunction with its consultation on the Requirements and Guidance documentation associated with Transmission Network Pre-construction Projects and Excluded SSS/TUoS costs do not currently reflect the CMA's Final Determination and Order.

3.3 It is incorrect to assume that the additional allowance within NTSOt provided to remunerate SONI for asymmetric risk faced in respect of Dt costs and Transmission Network Pre-construction Project Costs (**ARAt**) can sufficiently address the asymmetric risk faced by SONI. The CMA is clear in its Final Determination that approval of costs should be independent of

---

<sup>5</sup> Paragraph 6.58 of the CMA Final Determination.

<sup>6</sup> Direction 1(d), Annex A of the CMA Order.

NTSOt. Approval should not be withheld if costs are efficient or can otherwise be justified by the company. The CMA notes for instance that “[f]or the financial framework to work as intended, SONI should have a reasonable expectation that, assuming it acts in an efficient manner, it would be able to earn at least its return on capital”<sup>7</sup> and that “...if SONI is efficient, it will earn a small premium to its cost of capital, and if it is inefficient, it will earn below its cost of capital. This ensures financeability, and these outcomes are consistent with normal regulatory practice”.<sup>8</sup>

- 3.4 SONI would be concerned if the Utility Regulator had misunderstood the CMA’s reasoning for ordering the provision of an allowance for risk premium. The premium for asymmetric risk is designed to compensate for the fact that SONI’s allowed cash flows are not its mean-expected cash flows. There is a risk that as part of an *ex post* review the Utility Regulator will disallow expenditure such that SONI earns below its cost of capital.
- 3.5 The premium for asymmetric risk within the NTSOt term is set to reflect the risk of an *ex post* disallowance – it is not set with reference to the uncertainty and potential variation in costs relative to the initial budget cap on any particular cost submission. It is also not calibrated to reflect the level of contingency assumed for each project. The decision on whether to approve DTSOt submissions therefore cannot have regard to or be justified with reference to the NTSOt term.
- 3.6 Further submissions in this respect are set out in SONI’s response to the Utility Regulator’s consultation on the Requirements and Guidance documentation associated with Transmission Network Pre-construction Projects and Excluded SSS/TUoS costs. These considerations are also relevant to SONI’s proposals in respect of the ADTSOt term, as set out in Annex A and summarised in section 4 of this response.

**(b) Parent Company Guarantee**

- 3.7 Direction 1(a) of the CMA Order requires the Utility Regulator to amend the TSO Licence to include an additional allowance to reflect 1.75% of the prevailing value of the Parent Company Guarantee. As explained in SONI’s letter to the Utility Regulator of 7 December 2017, the CMA came to this value following consideration of a number of elements.<sup>9</sup> This included consideration of the value of the TSO Parent Company Guarantee and the SEMO Parent Company Guarantee, taking into account the proportion of the contingent capital risk premium that would need to be adjusted to reflect the market value of one pool of capital applied to the two separate guarantees.
- 3.8 The CMA’s primary calculation valued the two guarantees together at 4.25%. In doing so, the CMA took into account an allowance for the PCG within the SEMO price control of 2.5% per year assuming that the SEMO guarantee was priced on a standalone basis and that the liquidity premium for the provision of this level of contingent equity support was dealt with under the SEMO licence. In arriving at its calculation for the TSO Parent Company Guarantee, the 1.75% therefore represented the CMA’s assessment of the incremental cost of the application of the same pool of capital to the second set of licensed activities.<sup>10</sup> However the CMA also noted that with the introduction of I-SEM this may need to be revisited.<sup>11</sup> This reflected the CMA’s acknowledgement of the risk that the 2.5% figure for the SEMO Parent Company Guarantee relied upon in its calculations could be subsequently adjusted under a future SEMO price control.
- 3.9 SONI has therefore set out in Annex B its proposal that the algebraic expression of the allowance for provision of a Parent Company Guarantee to SONI TSO should be derived by reference to any such change as may separately be made to the SONI MO valuation. SONI believes that this would provide assurances regarding the concerns raised by the CMA around

---

<sup>7</sup> Paragraph 12.80 of the CMA Final Determination.  
<sup>8</sup> Paragraph 12.110 of the CMA Final Determination.  
<sup>9</sup> Paragraph 12.72 of the CMA Final Determination.  
<sup>10</sup> Paragraph 12.73 of the CMA Final Determination.  
<sup>11</sup> Paragraph 12.74 of the CMA Final Determination.

the effect that any potential changes to the value of the return allowed under the SEMO Price Control would have on the combined value of the return to the Parent Company Guarantee.

- 3.10 SONI has also set out a number of minor drafting changes required in respect of ARAt and CARVt, including in relation to the treatment of nominalisation for ARAt.

**(c) Codification of the side RAB (“PCRt”)**

- 3.11 Paragraph 2.4 of the TSO Licence does not adequately implement Direction 1(d) of the CMA Order, and as drafted provides insufficient clarity over recovery of the side RAB. SONI has provided in Annex C some proposed amendments to the text, and identified items in relation to which it would welcome further clarity from the Utility Regulator:

- (a) **ORAB\_Pc<sub>t</sub>**: SONI notes that the Utility Regulator has defined the opening side RAB as equal to zero in Relevant Year *t* ending 30 September 2015. However, network planning transferred to SONI on 1 May 2014, and as such the expenditure incurred by SONI to date should be reflected in the codification of the side RAB. The returns due on the side RAB from 1 May 2014 to 30 September 2017 will need to be trued up in accordance with Direction 1(d) of the Order.<sup>12</sup> SONI therefore proposes that paragraph 2.4(a)(i)(A) be amended to reflect the fact that the opening value of the side RAB as at 30 September 2017 shall equal £7.035 million. Alternatively, any “zero” value in the Licence must be stated as at the date on which SONI assumed the network planning function, i.e. 1 May 2014.
- (b) **DIWE**: The complexity and lack of clarity around the various adjustments introduced to implement DIWE could affect investors’ ability to rely on the TSO Licence. SONI requests that the adjustments to the side RAB for DIWE be simplified and explained in more detail, to provide the greater clarity required by the CMA’s findings, in particular in relation to the following:
- (i) There is potential for double count in respect of the calculation of **CRAB\_Pc<sub>t</sub>**, which includes a deduction for **DIWE\_PCD<sub>t</sub>** for any amounts determined to be DIWE. However, all additions to and deductions from side-RAB are also explicitly net of DIWE. It is unclear how the standalone DIWE adjustment **DIWE\_PCD<sub>t</sub>** would interact with adjustments for DIWE within **AD\_Pc<sub>t</sub>**, **AB\_Pc<sub>t</sub>** and **TN\_Pc<sub>t</sub>**.
- (ii) It is also unclear how **DIWE\_PCD<sub>t</sub>** would be allocated in year *t* or subsequent years to the **AD\_Pc<sub>t</sub>**, **AB\_Pc<sub>t</sub>** and **TN\_Pc<sub>t</sub>** adjustments to ensure that each is net of DIWE.
- (iii) There is a risk inherent in the Utility Regulator’s proposals that other adjustments for DIWE are double counted (for example a negative DIWE adjustment could be included within both to **AD\_Pc<sub>t</sub>** and **DIWE\_PCD<sub>t</sub>**).
- (c) **AD\_Pc<sub>t</sub>** refers only to TNPP costs incurred in Relevant Year *t* – it therefore operates to exclude costs **incurred prior to** Relevant Year *t* which are **submitted for approval** in that year. This operates to exclude costs incurred since 1 May 2014 which are submitted for approval in a subsequent Relevant Year.
- (d) **AB\_Pc<sub>t</sub>**: SONI notes that this term is intended to refer to circumstances in which the Authority may determine that a TNPP will not proceed to construction – SONI seeks clarity about the circumstances in which this might be the case. SONI also notes that the second textual reference to **AB\_Pc<sub>t</sub>** in paragraph 2.4(a)(ii)(C) should instead be to **ABAD\_Pc<sub>y,t</sub>**, as otherwise **AB\_Pc<sub>t</sub>** is defined twice.

---

<sup>12</sup> Direction 1(d) states that the Utility Regulator must “specify within [PCRt] the process by which SONI should recover the costs it has incurred on PCNPs since 1 May 2014 under this mechanism”.

## 4 Additional drafting issues and SONI proposals

- 4.1 The remainder of SONI's proposals are listed in Annex A. SONI has identified some further consequential amendments which should be non-controversial. SONI's more substantive proposals are as follows:
- (a) **Amendments required to reflect issuance of papers:** Several of SONI's proposals relate to the incorporation of reference to papers which have been published since the Utility Regulator's original licence modification decision paper of 14 March 2017. These include the Utility Regulator's 27 July 2017 guidance paper on the application of DIWE, the Utility Regulator's decision paper of 19 October 2017 on the treatment of pensions and change of law, the CMA Final Determination, and the decision paper which will be the outcome of this consultation. SONI has also incorporated amendments to reflect the fact that it may be necessary to amend or supplement guidance documents from time to time (subject to consultation), including the Requirements and Guidance documentation associated with Transmission Network Pre-construction Projects and Excluded SSS/TUoS costs. These amendments are set out in Annex A.
  - (b) **ATSOT (paragraph 2.2(a)(v)):** SONI proposes the deletion of the reference in paragraph 2.2(a)(v) to "*any amount....required to protect consumers*" – it is unworkably vague and would add significant confusion and uncertainty. Provisions in the Licence should explain how the Utility Regulator will exercise its duties, not merely incorporate oblique references to a duty and unspecified action. It is also unnecessary in light of the concept of Demonstrably Inefficient and Wasteful Expenditure, which encapsulates the concept of consumer protection. SONI also notes that paragraph 2.2(a)(v)(B) lacks precision and should cross refer to the rate of return as calculated in accordance with paragraphs 2.4. These amendments are set out in Annex A.
  - (c) **ADTSOT-2 (paragraph 2.2(e)):** As explained in section 3(a) of this paper, the CMA has stated that "*for the financial framework to work as intended, SONI should have a reasonable expectation that, assuming it acts in an efficient manner, it would be able to earn at least its return on capital*".<sup>13</sup> SONI must therefore have sufficient surety of recovery of efficiently incurred costs, including those efficiently incurred above the initial cap set by the Utility Regulator. In light of this, ADTSOT-2 becomes definitionally the same as DTSOT-2 and is therefore redundant – DTSOT-2 already incorporating a deduction for DIWE (i.e. for any inefficient spend). To retain ADTSOT-2 is to suggest that SONI is fully exposed to overspend above the cap – even in respect of efficiently incurred expenditure. This term should therefore be deleted, as demonstrated in Annex A.
  - (d) **DTSOT (new paragraph 8.1(h)(ii)):** SONI notes, that the reference to costs which "*cannot reasonably be controlled*" in this paragraph should now be struck out in light of the Utility Regulator's clarificatory statement made during the CMA process that additional IS capex submissions can be made within this "catch-all" category within the Dt mechanism. Such costs may to an extent be within SONI's control, and so this language should not operate to restrict this "catch-all provision" in this way. This amendment is set out in Annex A.
  - (e) **CMA Final Determination (paragraph 8.2):** SONI proposes that reference to the CMA Final Determination be incorporated into paragraph 8.2 as a document which SONI (and the Utility Regulator) must take account of and give regard to when making (and by the Utility Regulator in considering) any claim for Excluded SSS/TUoS costs pursuant to paragraph 8.1, in addition to the relevant guidance paper and the Price Control Decision Paper. This amendment is set out in Annex A.
  - (f) **Pre-construction activities (paragraph 9.1):** SONI notes that there may be a need during the construction of the project for SONI to respond to requests from NIE for support in delivering the project for the benefit of consumers. SONI has therefore

---

<sup>13</sup> Paragraph 12.80 of the CMA Final Determination.

23 January 2018

proposed a minor amendment to paragraph 9.1(b) to include these particular activities, as demonstrated in Annex A.

## ANNEX A

UTILITY REGULATOR CONSULTATION ON PROPOSED LICENCE MODIFICATIONS  
TO GIVE EFFECT TO THE CMA'S FINAL DETERMINATION

## SONI'S ITEMISED RESPONSE

SONI Licence Reference – Annex 1	UR description of modification	CMA Final Determination and CMA Order reference	SONI Response	Extract from UR proposals – SONI amendments to proposed licence text
Paragraph 1.1 – Definitions	<i>SONI proposal – consequential amendment</i>	n/a	The CMA Final Determination must be referred to in Annex A of the Licence, as its effect is to amend the Price Control for 2015-2020. It is a relevant document to which both SONI and the Authority must have regard.	<b>CMA Final Determination</b> means the decision paper published by the Competition and Markets Authority on 10 November 2017 entitled “SONI Limited v Northern Ireland Authority for Regulation: Final Determination”.
Paragraph 1.1 – Definitions	<i>SONI proposal – consequential amendment</i>	n/a	The definition of “Demonstrably Inefficient or Wasteful Expenditure” should be amended to reflect the publication of the guidance paper on 27 July 2017 entitled “Guidance on the interpretation and application of the Demonstrably Inefficient or Wasteful Expenditure (DIWE) Provision”.	<b>Demonstrably Inefficient or Wasteful Expenditure</b> means expenditure which the Authority has (giving the reasons for its decision) determined, <a href="#"><u>having regard to such guidance as the Authority shall from time to time issue</u></a> , to be demonstrably inefficient and/or wasteful, given the information reasonably available to the Licensee at the time that the Licensee made the relevant decision about that expenditure. For the avoidance of doubt, no expenditure is demonstrably inefficient or wasteful expenditure simply by virtue of a statistical or quantitative analysis that compares aggregated measures of the Licensee’s costs with the costs of other companies.



SONI Licence Reference – Annex 1	UR description of modification	CMA Final Determination and CMA Order reference	SONI Response	Extract from UR proposals – SONI amendments to proposed licence text
Paragraph 1.1 – Definitions	Inclusion of ‘as modified or replaced from time to time’ in definition of Price Control Decision paper for completeness.	n/a	<p>This amendment goes further than the stated effect of the proposed modifications, as set out in the Notice.</p> <p>However, SONI welcomes the Utility Regulator’s acknowledgement during the CMA appeal process that the effect of paragraph 8.2 is that SONI is only required to take account of and give regard to the Price Control Decision Papers in making Dt applications – SONI is not obliged to adhere to such decision papers in its application, nor do they bind the Utility Regulator.<sup>14</sup></p> <p>There is now no reason that this definition cannot now specifically reference named decision papers, including the Utility Regulator’s final decision on pensions and change of law, and the decision paper which ultimately forms the outcome of this consultation process. There is no need to refer to future Price Control modifications and such papers in this period, as the Price Control is now set and finalised.</p>	<p><i>means each of (i) the decision paper issued by the Authority on 19/02/2016 and entitled "Final Determination to the Price Control 2015-2020 for the Electricity System Operator for Northern Ireland (SONI)" (ii) the decision paper issued by the Authority on 14/03/2017 and entitled "Decision on the Licence Modifications for the Price Control 2015-2020 of the Electricity System Operator for Northern Ireland (SONI)", <del>and</del> (iii) <a href="#">the decision paper issued by the Authority on 19 October 2017 and entitled "Conclusions on Pensions Allowances and Decision on Change of Law provisions"</a>, (iv) <a href="#">the decision paper issued by the Authority on [xx] March 2018 and entitled "[xxx]",<sup>15</sup></a> and (v) as supplemented or amended by any further decision paper on the same subject <del>(as modified or replaced from time to time)</del>.</i></p>
Paragraph 1.1 – Definitions	Definition of ‘Requirements and Guidance on Excluded	CMA Final Determination Chapter 11:	SONI notes the importance of ensuring that such guidance is effective and implemented in a timely manner, and	<b>Requirements and Guidance on Excluded SSS/TUoS Costs</b> means a document issued by the Authority following consultation with the

<sup>14</sup> Paragraph 6.124 of the CMA Final Determination.

<sup>15</sup> Title and date to be inserted following the outcome of this consultation process.

SONI Licence Reference – Annex 1	UR description of modification	CMA Final Determination and CMA Order reference	SONI Response	Extract from UR proposals – SONI amendments to proposed licence text
	<p>SSS/TUoS Costs' added. Definition included to allow for remedy on Dt's</p>	<p>Remedies – Ground 2 CMA Order Annex A paragraph 3</p>	<p>adequately implements the CMA's proposed remedies in respect of Ground 2 of SONI's Notice of Appeal.</p> <p>SONI also expects that the implementation of such remedy provides an enduring framework for cost recovery, and has therefore proposed an amendment to the language reflecting that this guidance may need to evolve over time.</p> <p>The reference to “<i>in particular</i>” should be deleted – it is not clear what other categories of claim are envisaged at this stage, and the inclusion of this term adds unnecessary complication.</p> <p>The reference to Relevant Year t precludes costs incurred in preceding years as the effect of this reference is to refer to one year only – this should be amended to “<i>any Relevant Year</i>”, as demonstrated at (ii).</p>	<p><i>Licensee, <a href="#">as may be subsequently supplemented or amended following further consultation with the Licensee</a>, and setting out the requirements and guidance applicable to:</i></p> <p><i>(a) the process by which claims may be made by the Licensee to the Authority for approval under paragraph 8.1 of this Annex, including <del>in particular</del> claims for:</i></p> <p><i>(i) an approval in respect of costs that are yet to be incurred;</i></p> <p><i>(ii) an approval in respect of costs that were incurred in any Relevant Year <del>+</del> falling prior to that in which the claim is made;</i></p> <p><i>(iii) the variation of any previous approval;</i></p> <p><i>(b) the information and evidence to be provided by the Licensee on the submission of such claims;</i></p> <p><i>(c) the process by which such claims will be reviewed and, if appropriate, approved by the Authority; and</i></p> <p><i>(d) any information or evidence that must be provided by the Licensee to the Authority following any such approval.</i></p>
Paragraph 1.1 – Definitions	Definition of 'Requirements and Guidance on Transmission Network Pre- Construction Projects' added.	CMA Final Determination Chapter 11: Remedies – Ground 2 CMA Order	SONI notes the importance of ensuring that such guidance is effective and implemented in a timely manner, and adequately implements the CMA's proposed remedies in respect of Ground 2 of SONI's Notice of Appeal.	<b>Requirements and Guidance on Transmission Network Pre-construction Projects</b> means a document issued by the Authority following consultation with the Licensee, <a href="#">as may be subsequently supplemented or amended following further consultation with the Licensee</a> , and setting

SONI Licence Reference – Annex 1	UR description of modification	CMA Final Determination and CMA Order reference	SONI Response	Extract from UR proposals – SONI amendments to proposed licence text
	Definition included to allow for remedy on TNPP's.	Annex A paragraph 3	<p>SONI also expects that the implementation of such remedy provides an enduring framework for cost recovery, and has therefore proposed an amendment to the language reflecting that this guidance may need to evolve over time.</p> <p>The reference to “<i>in particular</i>” should be deleted – it is not clear what other categories of claim are envisaged at this stage, and the inclusion of this term adds unnecessary complication.</p> <p>The reference to Relevant Year t precludes costs incurred in preceding years as the effect of this reference is to refer to one year only – this should be amended to “<i>any Relevant Year</i>”, as demonstrated at (ii).</p>	<p><i>out the requirements and guidance applicable to:</i></p> <p><i>(a) the process by which claims may be made by the Licensee to the Authority for approval under paragraphs 9.1 of this Annex, including <del>in particular</del> claims for:</i></p> <p><i>(i) an approval in respect of costs that are yet to be incurred;</i></p> <p><i>(ii) an approval in respect of costs that were incurred in any Relevant Year <del>falling</del> prior to that in which the claim is made;</i></p> <p><i>(iii) the variation of any previous approval;</i></p> <p><i>(b) the information and evidence to be provided by the Licensee on the submission of such claims;</i></p> <p><i>(c) the process by which such claims will be reviewed and, if appropriate, approved by the Authority; and</i></p> <p><i>(d) any information or evidence that must be provided by the Licensee to the Authority following any such approval.</i></p>
Paragraph 1.1 – Definitions	<p>Definition of ‘Specified Proportions’ added.</p> <p>Definition inserted to allow for margin on imperfections charges per CMA remedy.</p>	<p>CMA Final Determination Chapter 12: Remedies - Ground 1 Revenue collection risk</p> <p>CMA Order Annex A</p>	<p>The Northern Ireland Market Operator Licence is already a defined term in the TSO Licence, and can therefore replace the wording “<i>the licence granted under Article 10(1)(d) of the Order</i>” as demonstrated.</p>	<p><b>Specified Proportions</b> means the proportions as defined and set out in the Market Operator Agreement entered into under and for the purposes of Condition 14 of the <a href="#">Northern Ireland Market Operator Licence</a> <del>licence granted under Article 10(1)(d) of the Order</del>.</p>

SONI Licence Reference – Annex 1	UR description of modification	CMA Final Determination and CMA Order reference	SONI Response	Extract from UR proposals – SONI amendments to proposed licence text
		paragraph 1(c)		
Paragraph 2.2	<p>Amendment of Mtsot term to update ATSOt, remove Qt and include NTSOt + PCRt.</p> <p>NTSOt is a term to allow remuneration for Parent Company Guarantee and Margin on Revenue Collection as per CMA remedy.</p> <p>PCRt is a term to allow remuneration on the side RAB for TNPP’s as per CMA remedy.</p>	<p>CMA Final Determination Chapter 11: Remedies - Ground 1 (NTSOt)</p> <p>and</p> <p>Chapter 11: Remedies - Ground 2 (PCRt.)</p> <p>CMA Order Annex A paragraph 1 (c) and (d)</p>	<p>SONI welcomes the removal of the Qt term. The inclusion of each of these terms in MTSOt is considered below in respect of the relevant sections of the licence.</p>	n/a
Paragraph 2.2 (a) (iv), (v) (A) and (v) (B)	<p>ATSOt has an additional text to include AB_PCt costs and expenditure (and return on earned on that expenditure) associated with TNPP’s.</p>	<p>CMA Final Determination Chapter 11: Remedies – Ground 2</p>	<p>The reference in paragraph 2.2(a)(v) to “any amount....required to protect consumers” should be deleted – it is unworkably vague and would add significant confusion and uncertainty. Provisions in the Licence should explain how the Utility Regulator will exercise its duties, not merely incorporate oblique references to a duty and unspecified action. It is also unnecessary in light of the concept of Demonstrably Inefficient and Wasteful Expenditure, which encapsulates the concept of consumer</p>	<p>...any amount determined by the Authority to be the adjustment to the maximum core SSS/TUoS revenue in Relevant Year t required <del>to protect customers</del>-in respect of:</p> <p>(A) any expenditure which:</p> <ol style="list-style-type: none"> <li>1) was incurred by the Licensee in any previous Relevant Year in respect of Transmission Network Pre-construction Project Costs;</li> <li>2) formed part of the term AB_PCt in any previous Relevant Year; and</li> <li>3) the Authority determined in Relevant Year t to be Demonstrably Inefficient and Wasteful</li> </ol>

SONI Licence Reference – Annex 1	UR description of modification	CMA Final Determination and CMA Order reference	SONI Response	Extract from UR proposals – SONI amendments to proposed licence text
			<p>protection.</p> <p>Paragraph 2.2(a)(v)(B) lacks precision – this should cross refer to the rate of return as calculated in accordance with paragraphs 2.4.</p>	<p><i>Expenditure; and</i></p> <p><i>(B) any return previously earned by the Licensee on <del>that</del> the expenditure described in (A) above in respect of the rate of return allowance calculated in accordance with paragraph 2.4 of this Annex.</i></p>
Paragraph 2.2 (e)	<p>Removal of the Qt term</p> <p>The CMA determination is for the retrospective period 2015 and up to 2020; therefore following the CMA decision the Qt term is not required. Any differences between the allowed revenues and actual revenues can be dealt with through the use of the Kt term so as to have the same effect/impact as if the licence modifications were in force from the start of the price control.</p>	n/a	<p>SONI welcomes the removal of the Qt term.</p> <p>The Utility Regulator will need to adequately implement the CMA’s requirement in paragraph 13.7 of the FD and paragraph 1(f) of Annex A of the Order that the UR calculate the tariff adjustment for years 2018/19 and 2019/20 so that SONI recovers additional allowances over these two years – this should be an NPV-neutral adjustment with equal values for the last two years.</p>	n/a
Paragraph 2.2(d)	<p><i>SONI proposal – consequential amendment</i></p>	n/a	<p>The reference to “<i>in Relevant Year t</i>” to “<i>relating to Relevant Year t</i>” should be amended, recognising that approvals may be granted in one Relevant Year, relating to costs incurred in another.</p>	<p><i>DTSOt means:</i></p> <p><i>(i) the aggregate of the total amount, allowed by the Authority in accordance with any approvals given pursuant to paragraph 8.3(e) of this Annex, relating to <del>in</del> Relevant Year t for excluded SSS/TUoS costs;</i></p> <p><i>Plus</i></p>

SONI Licence Reference – Annex 1	UR description of modification	CMA Final Determination and CMA Order reference	SONI Response	Extract from UR proposals – SONI amendments to proposed licence text
				<i>(ii) the total amount, allowed by the Authority in accordance with paragraph 6.1 of this Annex, <del>in</del> relating to Relevant Year t for change of law.</i>
Paragraph 2.2 (e)	Within ADTSOt-2 capitilise the Licensee wording. This is a correction of wording terminology.	n/a	<p>SONI maintains its objection to the retention of ADTSOt-2, which fails to rectify Error 6 as pleaded by continuing to expose SONI to fully asymmetric risk. This term should therefore be deleted in its entirety.</p> <p>In order to remedy Error 6 of SONI’s Notice of Appeal, SONI must have sufficient surety of recovery of <u>efficiently incurred costs</u>, including those <u>efficiently incurred</u> above the initial cap set by the Utility Regulator. In light of this, ADTSOt-2 is definitionally the same as Dt and therefore becomes redundant – Dt already incorporating a deduction for DIWE. To retain ADTSOt is to suggest that SONI is fully exposed to overspend above the cap – even in respect of efficiently incurred expenditure.</p> <p>In any event, the reference to “costs allowed” in limbs (1) and (2) of ADTSOt-2 is erroneous – SONI is not in receipt of allowed <u>costs</u>, but in receipt of allowed <u>revenues</u>.</p>	<p><i>KTSOt means the correction factor (whether a positive or negative number) to be applied to the maximum core SSS/TUoS revenue in Relevant Year t derived using the following formula:</i></p> $KTSOt = (FTSOt-2 - RTSOt-2) (1 + It)$ <p><i>where:</i></p> <p><i>(i) FTSOt-2 means:</i></p> <p><i>(A) the MTSOt for Relevant Year t-2;</i></p> <p><i>minus</i></p> <p><i>(B) <del>(DTSOt-2—ADTSOt-2);</del></i></p> <p><i>minus</i></p> <p><i>(C) that part (if any) of <del>ADTSOt-2</del> that the Authority determines to be Demonstrably Inefficient or Wasteful Expenditure,</i></p> <p><i>where:</i></p> <p><i>ADTSOt-2 means:</i></p> <p><i>1) where actual costs incurred by the licenseeLicensee in relation to excluded SSS/TUoS costs and change of law in Relevant Year t-2 are less than the costs allowed for DTSOt, in Relevant Year t-2, the total of such actual costs;</i></p> <p><i>2) where actual costs incurred by the Licensee in relation to excluded SSS/TUoS costs and change</i></p>

SONI Licence Reference – Annex 1	UR description of modification	CMA Final Determination and CMA Order reference	SONI Response	Extract from UR proposals – SONI amendments to proposed licence text
				<i>of law in Relevant Year t-2 are greater than the costs allowed for DTSOt in Relevant Year t-2, the total of the costs allowed for DTSOt in Relevant Year t-2</i>
Paragraph 2.2 (g)	<p>Implementation of a new term NTSOt to put into effect the CMA’s decisions on the allowances in respect of</p> <ul style="list-style-type: none"> <li>• Parent Company Guarantee</li> <li>• Uncertain costs in respect of TTNP’s and Dt’s</li> <li>• Certain revenues collected by the Licensee</li> </ul>	<p>CMA Final Determination Chapter 11: Remedies - Ground 1</p> <p>CMA Order Annex A paragraph 1 (a) (b) and (c)</p>	<ul style="list-style-type: none"> <li>• <b>PCGt:</b> The PCGt as formulated in the UR’s proposals fails to recognise the interplay between the CMA’s proposed remedy and the treatment of the PCG under the SEMO licence, and will therefore be likely to require further amendment and reconsideration in advance of I-SEM go-live on 23 May 2018. As proposed in SONI’s letter of 7 December 2017, the algebraic expression of the allowance for provision of a Parent Company Guarantee to SONI TSO should be derived by reference to any such change as may separately be made to the SEMO valuation. SONI has set out in Annex B of this response its proposed formulation of this term and welcomes further engagement with the Utility Regulator on these proposals.</li> <li>• <b>ARAt:</b> The treatment of nominalisation must be corrected, as set out in Annex B of this response. Additional language is</li> </ul>	<p>For SONI’s proposed amendments to the codification of NTSOt in paragraph 2.2(g), please refer to Annex B of this response.</p>

SONI Licence Reference – Annex 1	UR description of modification	CMA Final Determination and CMA Order reference	SONI Response	Extract from UR proposals – SONI amendments to proposed licence text
			<p>required to explain the purpose of this additional allowance for the sake of transparency.</p> <ul style="list-style-type: none"> <li>• <b>CARVt:</b> There is repetition in the definition of TUoSt: “<i>the provision of transmission services in transmission services in Relevant Year t</i>”. Additional language is required to explain the purpose of this additional allowance for the sake of transparency. Please refer to Annex B in respect of these proposed amendments.</li> </ul>	
Paragraph 2.2 (h)	PCRT means the rate of return allowance for Transmission Network Pre- construction Projects and is calculated in accordance with paragraph 2.4 of this Annex.	CMA Final Determination Chapter 11: Remedies – Ground 2	SONI’s comments on the codification of the “side-RAB” are set out in further detail below in respect of paragraph 2.4 of Annex 1.	For SONI’s proposed amendments to the codification of the side RAB in paragraph 2.4, please refer to Annex C of this response.
Paragraph 2.3(b)(ii)	<i>SONI proposal – consequential amendment</i>	n/a	This provision of the Licence is inoperative and proposes that the Utility Regulator take the opportunity to remove it in its entirety.	Deletion of paragraph 2.3(b)(ii) in its entirety.
Paragraph 2.4	Formula for the calculation of the rate of return allowance for Transmission Network Pre-construction Projects	CMA Final Determination Chapter 11: Remedies –	<ul style="list-style-type: none"> <li>• <b>ORAB_PCT:</b> The Utility Regulator proposes to define the opening side RAB as equal to zero in Relevant Year t ending 30 September 2015. However,</li> </ul>	For SONI’s proposed amendments to the codification of the side RAB in paragraph 2.4, please refer to Annex C of this response.



SONI Licence Reference – Annex 1	UR description of modification	CMA Final Determination and CMA Order reference	SONI Response	Extract from UR proposals – SONI amendments to proposed licence text
	<p>and codification of the RAB relating to transmission network pre-construction projects.</p> <p>It also considers the TNPP costs that will not proceed to construction and the costs associated with the asset base.</p> <p>It also has the effect of providing for the rate of return earned on any amount that is later found to be DIWE to be clawed back.</p>	<p>Ground 2</p> <p>CMA Order Annex A paragraph 1 (d) and Annex A paragraph 3</p>	<p>network planning transferred to SONI on 1 May 2014, and as such the expenditure incurred by SONI to date should be reflected in the codification of the side RAB. The returns due on the side RAB from 1 May 2014 to 30 September 2017, calculated in accordance with PCRt, will need to be trued up in accordance with Direction 1(d) of the Order – which states that the UR must “<i>specify within [PCRt] the process by which SONI should recover the costs it has incurred on PCNPs since 1 May 2014 under this mechanism</i>”.</p> <p>Paragraph 2.4(a)(i)(A) should therefore be amended to reflect the fact that the opening value of the side RAB as at 30 September 2017 shall equal £7.035 million. Alternatively, any “zero” value in the Licence must be stated as at the date on which SONI assumed the network planning function, i.e. 1 May 2014.</p> <ul style="list-style-type: none"> <li>• <b>DIWE:</b> The complexity and lack of clarity around the various adjustments introduced to implement DIWE could affect investors’ ability to rely on the TSO Licence. Further clarity is required about the adjustments to the side</li> </ul>	

SONI Licence Reference – Annex 1	UR description of modification	CMA Final Determination and CMA Order reference	SONI Response	Extract from UR proposals – SONI amendments to proposed licence text
			<p>RAB for DIWE, in particular in relation to the following:</p> <ul style="list-style-type: none"> <li>○ There is potential for double count in the calculation of <b>CRAB_Pc<sub>t</sub></b>, which includes a deduction for <b>DIWE_PCD<sub>t</sub></b> for any amounts determined to be DIWE. However, all additions to and deductions from side-RAB are also explicitly net of DIWE. It is unclear how the standalone DIWE adjustment <b>DIWE_PCD<sub>t</sub></b> would interact with adjustments for DIWE within <b>AD_Pc<sub>t</sub></b>, <b>AB_Pc<sub>t</sub></b> and <b>TN_Pc<sub>t</sub></b>.</li> <li>○ It is also unclear how <b>DIWE_PCD<sub>t</sub></b> would be allocated in year t or subsequent years to the <b>AD_Pc<sub>t</sub></b>, <b>AB_Pc<sub>t</sub></b> and <b>TN_Pc<sub>t</sub></b> adjustments to ensure that each is net of DIWE.</li> <li>○ There is a risk that other adjustments for DIWE are double counted (for example a negative DIWE adjustment could be included within both to <b>AD_Pc<sub>t</sub></b> and <b>DIWE_PCD<sub>t</sub></b>).</li> </ul> <ul style="list-style-type: none"> <li>● <b>AD_Pc<sub>t</sub></b> refers only to TNPP costs <u>incurred in Relevant Year t</u> – it therefore operates to exclude costs incurred prior to Relevant Year t which are submitted for approval in that year. This issue is</li> </ul>	

SONI Licence Reference – Annex 1	UR description of modification	CMA Final Determination and CMA Order reference	SONI Response	Extract from UR proposals – SONI amendments to proposed licence text
			<p>avoided if the issues with ORAB_PcT identified above are addressed appropriately.</p> <ul style="list-style-type: none"> <li>• <b>AB_PcT:</b> This term refers to circumstances in which the Authority may determine that a TNPP will not proceed to construction – SONI seeks clarity about the circumstances in which this might be the case. The second textual reference to AB_PcT in paragraph 2.4(a)(ii)(C) should instead be to ABAD_PCy,t, as otherwise AB_PcT is defined twice.</li> </ul>	
Paragraph 4.8	<i>SONI proposal – consequential amendment</i>	n/a	<p>The mechanics of paragraph 4.8 currently do not adequately reflect the ex ante nature of the Dt process (as specified by the Utility Regulator). SONI suggests some minor consequential amendments.</p> <p>TNPP costs are not recoverable within DTSOt, and PCI DTSOt is not a defined term in the SONI TSO Licence. SONI has therefore made deletions as appropriate.</p>	<p><i>The Licensee shall, for each Relevant Year t commencing 1 October, submit to the Authority, its best endeavours to by no later than 31 March preceding the start of that Relevant Year t,</i></p> <p><i>(a) the amount of DTSOt costs:</i></p> <p><i>(i) that the Licensee considers to have previously been allowed by the Authority for that Relevant Year t;</i></p> <p><i>(ii) that the Licensee forecasts that it <del>is, or</del> will be, requesting a determination in accordance with paragraph 6 or <del>is, or</del> forecasts that it will be making a claim in accordance with paragraph 8 (but excluding any costs relating to Transmission Network Pre-Construction Project DTSOt and PCI DTSOt) for that Relevant Year t, and</i></p>

SONI Licence Reference – Annex 1	UR description of modification	CMA Final Determination and CMA Order reference	SONI Response	Extract from UR proposals – SONI amendments to proposed licence text
				<p><i>(b) its calculations in respect of the applicable KTSOt, together with its individual components, for the Relevant Year t-2,</i></p> <p><i>and requesting approval from the Authority for such costs to be factored into the Licensee's SSS/TUoS Charges for that Relevant Year t (which approval may be given with such adjustments to the Licensee's proposed DTSOt and KTSOt as reasonably determined by the Authority to be appropriate in the circumstances).</i></p>
New paragraph 8.1 (h)(ii)	<i>SONI proposal – consequential amendment</i>	CMA Final Determination Chapter 6: Ground 2, paragraph 6.92.	In respect of new paragraph 8.1(h)(ii), the reference to costs which “cannot reasonably be controlled” should now be struck out in light of the Utility Regulator’s clarificatory statement made during the CMA process that additional IS capex submissions can be made within this “catch-all” category within the Dt mechanism. Such costs may to an extent be within SONI’s control, and so this language should not operate to restrict this “catch-all provision” in this way.	<p><i>(h) any other reasonable and efficient costs incurred (or likely to be incurred) by the Transmission System Operator Business which:</i></p> <p><i>(i) are not taken into account in the setting of ATSOt or, BTOt, NTSOt or PCRT;</i></p> <p><del><i>(ii) cannot reasonably be controlled by the Licensee; and</i></del></p> <p><i>(iii) the Authority determines, upon an application to it by the Licensee, shall be included for the purposes of this paragraph.</i></p>
Paragraph 8.2 (a)	<i>SONI proposal – consequential amendment</i>	n/a	A reference to the CMA Final Determination should be included in this licence provision as a document which SONI (and the Utility Regulator) must take account of and give regard to when making (and by the Utility Regulator in considering) any Dt claim pursuant to	<i>In making any claim pursuant to paragraph 8.1, the Licensee shall ensure that...it takes account of, and gives regard to, the Price Control Decision Paper <u>and the CMA Final Determination.</u></i>

SONI Licence Reference – Annex 1	UR description of modification	CMA Final Determination and CMA Order reference	SONI Response	Extract from UR proposals – SONI amendments to proposed licence text
			paragraph 8.1.	
Paragraph 8.2 (b)	In making any claim pursuant to paragraph 8.1, the Licensee shall ensure that it makes such claims in accordance with the Requirements and Guidance on Excluded SSS/TUoS Cost.	CMA Order Annex A paragraph 3	SONI has no objection to incorporating this requirement in the Licence, insofar as the guidance documents ultimately produced by the Utility Regulator are clear, effective and workable, and adequately implement the CMA's proposed remedies in respect of Ground 2.	n/a
Paragraph 9.1 and 9.2	Codification of the ability to make, claim for approval of Transmission Network Pre-construction Projects and Costs in accordance with the Requirements and Guidance for TNPP's.	CMA Final Determination Chapter 11: Remedies – Ground 2 CMA Order Annex A paragraph 3	SONI notes that there may be a need during the construction of the project for SONI to respond to requests from NIE for support in delivering the project for the benefit of consumers. SONI therefore proposes a minor amendment to paragraph 9.1(b) to include these particular activities, as demonstrated.  SONI maintains its position that visibility over the four paths to recovery of TNPP costs, including where SONI exercises its step-in rights and where a third party proceeds to construct the project, is critical to SONI's financeability and should be coded in the licence. It is therefore of significant concern to SONI that the UR has failed to reflect these paths for recovery in its proposals, contrary to the requirements of paragraph 14 of Annex B of the Order.	<i>9.1 The Licensee may make a claim to the Authority, in accordance with the Requirements and Guidance on Transmission Network Pre-construction Projects, for the approval of activities which:</i>  <i>(a) have been or are to be carried out by the Licensee in respect of a project which is necessary for the purposes of developing the transmission system; and</i>  <i>(b) were or are required to progress the project from the conceptual design stage to, but not including, the construction stage, <u>or are required to support construction works in a manner consistent with the Transmission Interface Arrangements.</u></i>

SONI Licence Reference – Annex 1	UR description of modification	CMA Final Determination and CMA Order reference	SONI Response	Extract from UR proposals – SONI amendments to proposed licence text
Paragraph 10.1	Within reporting section the Licensee shall include all such information as may be specified in the Requirements and Guidance on Excluded SSS/TUoS Costs; and the Requirements and Guidance on Transmission Network Pre-construction Projects.	CMA Final Determination Chapter 11: Remedies – Ground 2  CMA Order Annex A paragraph 3	SONI has no objection to incorporating this information requirement in the Licence, insofar as the guidance documents ultimately produced by the Utility Regulator are clear, effective and workable.	n/a

## ANNEX B

### SONI PROPOSALS REGARDING CODIFICATION OF NTSOt

- (g) NTSOt is calculated as follows:

$$NTSOt = PCGRt + ARAt + CARVt$$

where:

- (i) PCGRt is an allowance in respect of the value of the parent company undertaking given by EirGrid plc in accordance with Condition 3A, and incorporating any such change as may separately be made to the value of the parent company undertaking given by EirGrid plc in accordance with Condition 3A of the Northern Ireland Market Operator Licence, and shall be calculated as follows:

$$PCGRt = PCGt \times 0.0175(RPCGt - RPCGMot)$$

where:

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

(B) RPCGt is the combined value of the return allowed in respect of the guarantee which forms part of the undertaking given by EirGrid for the purposes of meeting the Licensee's obligation under Condition 3A and of the return allowed in respect of the guarantee which forms part of the parent company undertaking given by EirGrid plc in accordance with Condition 3A of the Northern Ireland Market Operator Licence, and is set to equal 4.25% consistent with the CMA Final Determination; and

(C) RPCGMot is the value of the return allowed for the Northern Ireland Market Operator in respect of the parent company undertaking given by EirGrid plc in accordance with Condition 3A of the Northern Ireland Market Operator Licence.

- (ii) ARAt is an allowance to reflect asymmetric risk faced by the Licensee in respect of Transmission Network Pre-construction Project Costs and excluded SSS/TUoS costs in Relevant Year t, and shall be ~~equal to~~ calculated as follows:

$$ARAt = £220,000 \times \frac{RPIt}{RPI_{2014}}$$

- (iii) CARVt is an additional allowance provided to reflect the risk taken by the Licensee in ~~respect of~~ managing certain revenues collected by the Licensee, and shall be calculated as follows:

$$CARVt = (TUoSt + ASt + IMPt) \times 0.005$$

where:

- (A) TUoSt means the amounts payable to the Transmission Owner Business for the provision of transmission services ~~in transmission services~~ in Relevant Year t;
- (B) ASt means the costs of System Support Services in Relevant Year t (including in respect of amounts payable by the Licensee to any person for the provision or use of any System Support Services provided over any interconnector in Relevant Year t); and

23 January 2018

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



## ANNEX C

## SONI PROPOSALS REGARDING CODIFICATION OF THE SIDE RAB

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

where:

- (a) RAB\_PC<sub>t</sub> means the value of the regulated asset base relating to Transmission Network Pre-construction Project Costs in Relevant Year t, and is calculated in accordance with the following formula:

$$RAB\_PC_t = (ORAB\_PC_t + CRAB\_PC_t) \times 0.5$$

where:

- (i) ORAB\_PC<sub>t</sub> means the opening value of the regulated asset base relating to Transmission Network Pre-construction Project Costs in Relevant Year t, which:

(A) ~~in Relevant Year t = 1 shall be equal to zero~~ shall at 30 September 2017 equal £7.035 million / [as at 1 May 2014 shall be equal to zero]; and

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

$$ORAB\_PC_t = CRAB\_PC_t \times \frac{RPI_t}{RPI_{t-1}}$$

- (ii) CRAB\_PC<sub>t</sub> means the closing value of the regulated asset base relating to Transmission Network Pre-construction Project Costs in Relevant Year t, calculated in accordance with the following formula: SONI seeks clarity about the adjustments to the side RAB for DIWE

$$CRAB\_PC_t = ORAB\_PC_t + AD\_PC_t - AB\_PC_t - TN\_PC_t - DIWE\_PCD_t$$

where:

- (A) ORAB\_PC<sub>t</sub> has the meaning given in sub-paragraph (i) above;
- (B) AD\_PC<sub>t</sub> means the aggregate amount of Transmission Network Pre-construction Project Costs incurred by the Licensee in respect of all Transmission Network Pre-construction Projects in Relevant Year t and shall include Transmission Network Pre-construction Project Costs incurred by the Licensee in previous Relevant Years where approval for such costs is granted by the Authority in Relevant Year t (excluding any such costs ~~incurred in Relevant Year t and~~ determined by the Authority in Relevant Year t to be Demonstrably Inefficient and Wasteful Expenditure), except that, if the sum of the costs incurred in relation to any such project in Relevant Year t and all previous Relevant Years (but excluding any costs determined by the Authority in Relevant Year t or a previous Relevant Year to be Demonstrably Inefficient and Wasteful Expenditure) exceeds the total costs approved by the Authority in respect of that project, then the amount to be taken into account in respect of that project in Relevant Year t shall be:
- (aa) where the total costs incurred in all previous Relevant Years (excluding any costs determined by the Authority in a previous Relevant Year to be Demonstrably Inefficient and Wasteful Expenditure) were less than those approved by the Authority, the amount which represents the difference between those previous costs and the total costs approved;

(bb) in all other cases, zero;

- (C) AB\_PC<sub>t</sub> means the deduction in respect of any Transmission Network Pre-construction Projects which either the Licensee or the Authority [SONI seeks clarity about the meaning of this highlighted provision] has determined in Relevant Year t will not proceed to construction and is calculated according to the following formula:

$$AB\_PC_t = \sum_{y=1}^t (ABAD\_PC_{y,t} \times \frac{RPI_t}{RPI_y})$$

where AB\_PC<sub>t</sub>ABAD\_PC<sub>y,t</sub> means the Transmission Network Pre-construction Project Costs (or parts thereof) which:

- (aa) were added to the regulated asset base relating to Transmission Network Pre-construction Project Costs in Relevant Year y;
  - (bb) were incurred by the Licensee in respect of any Transmission Network Pre-construction Projects which either the Licensee or the Authority has determined in Relevant Year t will not proceed to construction; and
  - (cc) exclude any amounts determined as Demonstrably Inefficient and Wasteful Expenditure as part of a determination by the Authority in Relevant Year t or any preceding Relevant Year.
- (D) TN\_PC<sub>t</sub> means the amount received by the Licensee in Relevant Year t from the Transmission Owner (by virtue of a payment approved by the Authority and made in accordance with the Transmission Interface Arrangements) in respect of Transmission Network Pre-construction Project Costs added to the regulated asset base in Relevant Year t or in any previous Relevant Year y.
- (E) DIWE\_PCD<sub>t</sub> means the deduction (if any) made in Relevant Year t from the regulated asset base relating to Transmission Network Pre-construction Project Costs, on account of any determination by the Authority in Relevant Year t in relation to Demonstrably Inefficient and Wasteful Expenditure incurred by the Licensee in respect of Transmission Network Pre-construction Project Costs during Relevant Year 1 to Relevant Year t, and is calculated in accordance with the following formula:

$$DIWE\_PCD_t = \sum_{y=1}^{t-1} (DIWE\_PCZ_{y,t} \times \frac{RPI_t}{RPI_y})$$

where DIWE\_PCZ<sub>y,t</sub> means an amount determined by the Authority in Relevant Year t to have been Demonstrably Inefficient and Wasteful Expenditure incurred by the Licensee and which forms or formed part of the amount AD\_PC<sub>t</sub> in Relevant Year t = y (and if no such determination is made in Relevant Year t in respect of Relevant Year y, DIWE\_PCZ<sub>y,t</sub> shall be equal to zero).

- (b) WACC<sub>t</sub> has the meaning given to it in paragraph 2.3(b) of this Annex;

- (c)  $DIWE\_PCR_t$  means an adjustment (if any) to the rate of return allowance in Relevant Year  $t$  in relation to the determination by the Authority in Relevant Year  $t$  of Demonstrably Inefficient and Wasteful Expenditure incurred by the Licensee in respect of Transmission Network Pre-construction Project Costs in one or more Relevant Years preceding Relevant Year  $t$ , calculated in accordance with the following formula:

$$DIWE\_PCR_t = \sum_{y=1}^{t-1} (DIWE_{PCRZ_{y,t}})$$

where  $DIWE\_PCRZ_{y,t}$  is the adjustment made to the rate of return allowance in Relevant Year  $t$  on account of any Demonstrably Inefficient and Wasteful Expenditure incurred by the Licensee in respect of Transmission Network Pre-construction Project Costs in a previous Relevant Year  $y$ , calculated in accordance with the following formula:

$$\begin{aligned} DIWE\_PCRZ_{y,t} &= \left[ (DIWE_{PCZ_{y,t}} \times WACC_y \times 0.5) \times (1 + I_y)^{t-y} \right] \\ &+ \sum_{i=y+1}^{t-1} \left[ \left( DIWE_{PCZ_{y,t}} \times \frac{RPI_t}{RPI_y} \right) \times WACC_i \times (1 + I_i)^{t-i} \right] \end{aligned}$$

where  $I_i$  means the Average Specified Rate for Relevant Year  $i$  plus 1% (100 basis points) and where  $I_y$  means the Average Specified Rate for Relevant Year  $y$  plus 1% (100 basis points).