

## Annex 1 - PSO Charge Restriction Conditions

### 1. Definitions

#### 1.1. In this Annex:

“Average Specified Rate”	means the arithmetic mean of the daily base rates of Danske Bank Limited (or such other bank as the Authority shall specify from time to time) current from time to time during the period in respect of which the calculation falls to be made.
“Fund”	has the meaning given to that term in paragraph 4.1.a).
“Land Bank Amount”	has the meaning given to that expression in Condition 23.
“Maximum Regulated PSO Amount”	means the maximum Regulated PSO Amount that the Licensee is entitled to recover, or pay, in: <ul style="list-style-type: none"> <li>a) the Regulatory Tariff Year (as calculated in accordance with the formula at paragraph 3.2); or</li> <li>b) the Regulatory Reporting Year (as calculated in accordance with the formula at paragraph 3.4).</li> </ul>
“NIE Energy Supply Amount”	means the amount determined as such in accordance with annex 1 of the NIE Energy Supply Licence.
“NISEP”	has the meaning given to that expression in Condition 43.
“Payment Notice”	has the meaning given to that expression in Condition 43.
“Participating Party”	has the meaning given to that expression in Condition 43.
“Permitted One-Year Percentage”	means 4% of the Maximum Regulated PSO Amount.
“Permitted Three-Year Percentage”	means 5% of the Maximum Regulated PSO Amount in

	the second of the Regulatory Tariff years.
<b>“PPB Amount”</b>	means the amount determined as such in accordance with annex 3 of the NIE Energy Supply Licence.
<b>“Programme Administrator”</b>	has the meaning given to that expression in Condition 43.
<b>“PSO Agreements”</b>	means the agreements of that name established pursuant to Condition 24A.
<b>“PSO Charge Restriction Conditions”</b>	means the paragraphs set out in this Annex 1 as from time to time modified or replaced in accordance with their own terms or pursuant to any enactment.
<b>“PSO Charges”</b>	means the charges set as such in accordance with paragraph 2.1.
<b>“Regulated PSO Amount”</b>	means the monetary inflow or outflow (each measured on an accruals basis) that is derived by the Licensee, or paid to Relevant Persons, under the PSO Agreements after deduction of value added tax (if any) and any other taxes based directly on the amount of the PSO Charges.
<b>“Regulatory Reporting Year”</b>	means a period of twelve months commencing on 1 April in any year and ending on 31 March in the year following its commencement.
<b>“Regulatory Reporting Year t”</b>	means the Regulatory Reporting Year which ends in year t, and is therefore to be read such that: a reference to ‘ <b>Regulatory Reporting year t = 2013</b> ’ is to the Regulatory Reporting Year ending on 31 March 2013; a reference to ‘ <b>Regulatory Reporting Year t-1</b> ’ means the Regulatory Reporting Year immediately preceding Regulatory Reporting Year t; and similar expressions are to be construed accordingly.
<b>“Regulatory Tariff Year”</b>	means a period of twelve months commencing on 1 October in any year and ending on 30 September in

the immediately following year.

**“Regulatory Tariff Year t”**

means the Regulatory Tariff Year which ends in year t, and is therefore to be read such that: a reference to ‘Regulatory Tariff Year t = 2013’ is to the Regulatory Tariff Year ending on 30 September 2013.

**“Related Party”**

means both Affiliates and Related Undertakings of the Licensee as defined in Condition 1 of this licence. An Affiliate or Related Undertaking shall remain as a Related Party for the whole of the price control period even if it is no longer part of the group due to restructuring.

**“Related Party Margin”**

The profit or loss recorded on a transaction with an affiliate being the excess or deficit on actual direct costs and indirect costs (excluding financing costs) fairly attributable to the transaction or the charge and the cost of providing that transaction.

For the avoidance of doubt this does not include exceptional items, tax, fines, penalties or the gain or loss on the disposal of assets or investments (of any sort), i.e. it should be the net operating costs level.

Further, the Related Party Margin does not include any transparently calculated element of such a charge that provides for a reasonable allowance for depreciation and return on capital in relation to assets to the extent that these are employed by the Related Party in the provision of services to the Licensee, and is not otherwise reflected in the Licensee’s Maximum Regulated PSO Amount, or recoverable through the Licensee’s connection charges.

For Captive Insurance businesses the margin is to be computed based on the captive’s premium income less reinsurance premiums, claims paid out and movements on technical and IBNR reserves attributable to the Licensee’s business only, i.e. usually reported as the profits/loss on the Technical

account. Where a captive insures more than the Licensee, then its profit/loss should be computed pro rata to the premiums paid by the Licensee to total premium income in the captive for the year and the movements on technical and IBNR reserves not attributable to the Licensee's business must first be removed.

**"Relevant Persons"**

has the meaning given to that expression in Condition 24A.

**"RPI<sub>t</sub>"**

means the Retail Prices Index (CHAW: 1987 = 100) published by the Office for National Statistics (or successor body) for the October month in each Regulatory Reporting Year t.

**"Specified Information"**

means information (or a category of information) that is so described or defined at paragraph 6.

**"Supplier"**

means the holder of an electricity supply licence granted pursuant to Article 10(1)(c) of the Electricity (Northern Ireland) Order 1992; or the holder of a gas licence pursuant to Article 8(1)(c) of the Gas (Northern Ireland) Order 1996.

**"Uncollected Revenue"**

means any amount owed to the Licensee under the PSO Agreements, which amount remains unpaid six months after the date it first fell due for payment or which amount the Licensee deems (in accordance with its payment security policy) to be unrecoverable before the expiry of that six-month period; plus the reasonable recovery costs incurred by the Licensee in respect of such amount and the reasonable interest attributed to such amount (calculated, in both cases, in accordance with such payment security policy).

**"Unit"**

means a kilowatt hour.

**"Wheeled Unit"**

means a unit (whether generated inside or outside Northern Ireland) which enters the total system at any point and is delivered to a place outside

Northern Ireland.

**“Wheeling”**

means the transportation of Wheeled Units on any part of the total system.

## 2. Introductory Provisions

- 2.1. Where, for the purposes of complying with its obligation at paragraph 3.1 in relation to the setting of PSO Charges, the Licensee forecasts the Maximum Regulated PSO Amount for any Regulatory Tariff Year  $t$  (or any data relevant to its calculation), it shall:
- a) have regard to any information notified to it by the Authority;
  - b) where directed to do so by the Authority, base its forecast on any such information or make it in accordance with such methodology as the Authority may specify in the direction;
  - c) have regard to any relevant decision from the Authority regarding which units the Maximum Regulated PSO Amount (or certain parts of the Maximum Regulated PSO Amount) will be recovered from ("unit coverage"); and
  - d) draw up the schedule of PSO Charges in accordance with Condition 24A in a manner which is consistent with the decision of the Authority regarding unit coverage.
- 2.2. Unless the contrary is expressly stated:
- a) all monetary figures in this Annex are stated in nominal prices
  - b) all calculations for which provision is made in this Annex are to be carried out in nominal prices.
- 2.3. For the purposes of this Annex, the provisions of paragraph 3 shall be deemed to apply with effect from the 1 April 2012, so that the Maximum Regulated PSO Amount shall be calculated from 1 April 2012 onwards, notwithstanding paragraph 7.
- 2.4. No cost incurred or revenues received by the Licensee shall be included in more than one of the categories referred to in paragraph 3.5, or under both this Annex 1 and Annex 2, and no amounts shall be included in paragraph 3.5 to the extent that such amounts are recovered under the NIE Energy Supply Licence or otherwise under the Licence or any other licence held by any Related Party or to the extent that the amounts relate to a Related Party Margin.

### 3. The Maximum Regulated PSO Amount

- 3.1. Without prejudice to paragraph 7, the Licensee shall with effect from 1 October 2014 use its best endeavours to set its PSO Charges so as to ensure that, in each Regulatory Tariff Year  $t$ , the Regulated PSO Amount shall be equal to the Maximum Regulated PSO Amount for that Regulatory Tariff Year calculated in accordance with paragraph 3.2.
- 3.2. The Maximum Regulated PSO Amount for the Regulatory Tariff Year -  $MPSOT_t$
- 3.3. For the purposes of setting tariffs as referred to in paragraph 3.1, the following calculation shall be performed:

$$MPSOT_t = (MPSOR_t + MPSOR_{t+1}) * 0.5$$

Where:

- " $MPSOT_t$ " means the Maximum Regulated PSO Amount for the Regulatory Tariff Year  $t$ ;
- " $MPSOR_t$ " means the Maximum Regulated PSO Amount for the Regulatory Reporting Year  $t$ , calculated in accordance with paragraph 3.4.

- 3.4. **The Maximum Regulated PSO Amount for the Regulatory Reporting Year -  $MPSOR_t$**
- 3.5. For the purposes of paragraph 3.3 and for the purposes of paragraph 5.1.b), the Maximum Regulated PSO Amount for the Regulatory Reporting Year t shall be calculated as follows:

$$MPSOR_t = PPB_t + Supply_t + LB_t + D_t + K_t$$

Where:

- $PPB_t$**  means the PPB Amount (whether a positive or negative number) in Regulatory Reporting Year t;
- $Supply_t$**  means the NIE Energy Supply Amount (whether a positive or negative number) in Regulatory Reporting Year t;
- $LB_t$**  means the Land Bank Amount (whether a positive or negative number) in Regulatory Reporting Year t;
- $D_t$**  means the excluded PSO amount in Regulatory Reporting Year t, calculated in accordance with paragraph 4; and
- $K_t$**  means the correction factor amount (whether a positive or negative number) calculated in accordance with paragraph 5.



#### 4. The excluded PSO amount - $D_t$

4.1. For the purposes of this Annex, in each Regulatory Reporting Year  $t$ ,  $D_t$  means the excluded PSO amount, and shall be calculated as follows:

$$D_t = \text{NISEPC}_t + \text{NISEPP}_t + \text{LC}_t + \text{BD}_t + \text{O}_t$$

##### Where:

- “NISEPC<sub>*t*</sub>” means the reasonable and necessary costs of the energy efficiency programme, in Regulatory Reporting Year  $t$ , incurred by the Licensee in;
- a) establishing the arrangements to implement any fund which the Licensee must establish and maintain in accordance with Condition 43 (the “Fund”) for the purpose of subsidising the operation and delivery of improvement measures in accordance with an energy efficiency programme to be known as the NISEP (including, without limitation, the maintenance of all appropriate records of monies held and paid out); and
  - b) the making of payments from the Fund to any Participating Party or Programme Administrator as provided for in any Payment Notice, in accordance with operating procedures which it must also establish and maintain in order to facilitate the prompt payment from the Fund to a Participating Party or Programme Administrator;
- “NISEPP<sub>*t*</sub>” means the energy efficiency programme payments, for the Regulatory Reporting Year  $t$ , being equal to the sum of all amounts paid by the Licensee pursuant to Payment Notices for the Regulatory Reporting Year  $t$
- “LC<sub>*t*</sub>” means the reasonable costs incurred by the Licensee, for the Regulatory Reporting Year  $t$ , in complying with the requirements imposed on the Licensee under legislation and other legal requirements through which the Directive (or Directive 2003/54/EC) is implemented to the extent such costs are approved by the Authority (whether such approval is given prior to or after the coming into effect of this Annex);
- “BD<sub>*t*</sub>” means any amount that comes to be treated as Uncollected Revenue, in the Regulatory Reporting Year  $t$ , less any amount that is paid to the Licensee in that Regulatory Reporting Year  $t$  in respect of an amount that was previously treated as Uncollected Revenue; and
- “O<sub>*t*</sub>” means any other amounts, in respect of the Regulatory Reporting Year  $t$ , requested by the Licensee and approved by the Authority (whether such approval is given prior to or after the coming into effect of this Annex).

## 5. The correction factor amount - $K_t$

5.1. For the purposes of paragraph 3.5, the correction factor amount ( $K_t$ ) shall be calculated as follows:

a) in Regulatory Reporting Year  $t = 2013$ :

$$K_t = \text{Kopening}$$

Where:

**Kopening** means the closing K factor at 31<sup>st</sup> March 2012 and has the value of £4.466 million.

b) in all other Regulatory Reporting Years  $K_t$  shall be calculated as follows:

$$K_t = ( \text{MPSOR}_{t-1} - \text{APSOR}_{t-1} ) * ( 1 + I_t )$$

Where:

**MPSOR<sub>t-1</sub>** means the Maximum Regulated PSO Amount, in Regulatory Reporting Year  $t-1$  calculated in accordance with paragraph 3.5;

**APSOR<sub>t-1</sub>** means the actual Regulated PSO Amount recovered through PSO Charges in Regulatory Reporting Year  $t-1$ , save that for each Regulatory Reporting Year  $t=2013$  &  $t=2014$  actual Regulated PSO Amount will be decreased by £12 million; and

**$I_t$**  means the Average Specified Rate.

## 6. Information to be provided to the Authority in connection with the PSO Charge Restriction Conditions

### 6.1. Introduction

6.2. In addition to, and without prejudice to, the provisions of Condition 8 of the Licence, the Licensee shall, in relation to the PSO Charge Restriction Conditions, furnish the Authority with Specified Information as set out in this paragraph 6.

### 6.3. Specified Information

6.4. The Licensee shall, subject to other provisions set out in the Licence and in this paragraph 6, provide to the Authority the following Specified Information:

- a) forecasts and/or estimates in accordance with paragraph 6.6, with regards to the setting of PSO Charges;
- b) any explanation and/or statement as to whether or not the provisions at paragraph 6.11 are likely to be applicable, with regards to the restriction of PSO Charges;
- c) information which provides a reconciliation of the values published in the accounting statements (referred to at Condition 2 of the Licence) to the outturn values which take the place of the of the formula at 3.5;
- d) information on historical inflows and outflows, including all data used in the calculation of the Licensee's Maximum Regulated PSO Amount, in accordance with paragraph 6.15; and
- e) the statutory accounts of any Related Party, in accordance with paragraph 6.18.

6.5. Unless otherwise specified in this Annex or the Licence, the Specified Information listed at paragraph 6.4 shall be submitted:

- a) for the time period as the Authority may reasonably require and as may be specified in directions issued by the Authority;
- b) by a date as the Authority may reasonably require and as may be specified in directions issued by the Authority;
- c) in a format as the Authority may reasonably require and as may be specified in directions issued by the Authority; and
- d) to the relevant employees of the Authority and to the [electricity\\_network\\_reporting@uregni.gov.uk](mailto:electricity_network_reporting@uregni.gov.uk) mailbox or subsequent equivalent mailbox.

### 6.6. Forecasts / estimates with regards to setting PSO Charges

6.7. Where any change is intended to be made in PSO Charges regulated under paragraph 3, the Licensee shall not later than 14 days prior to the time of publication of such change, provide the Authority with:

- a) a written forecast of the Maximum Regulated PSO Amount, together with its components, in respect of each Regulatory Reporting Year  $t$  upon which the intended change would affect;
  - b) a written estimate of the Maximum Regulated PSO Amount, together with its components, in respect of each Regulatory Reporting Year prior to the first Regulatory Reporting Year  $t$  upon which the intended change would affect; and
  - c) a written forecast of the over- or under-recovery in all future Regulatory Tariff Years for which the Licensee forecasts an over- or under- recovery.
- 6.8. If within 3 months of the commencement of any Regulatory Tariff Year  $t$  the Licensee has not made any such change in charges as is referred to in paragraph 6.7, the Licensee shall provide the Authority with:
- a) a written forecast of the Maximum Regulated PSO Amount, together with its components, in respect of each Regulatory Reporting Year upon which Regulatory Tariff Year  $t$  has an effect; and
  - b) a written forecast of the over- or under-recovery in all future Regulatory Tariff Years for which the Licensee forecasts an over- or under- recovery.
- 6.9. Any forecast or estimate provided in accordance with paragraph 6.7 or 6.8 shall be accompanied by such information as regards the assumptions underlying the forecast or estimate as may be necessary to enable the Authority to be satisfied that the forecast or estimate has been properly prepared on a consistent basis.
- 6.10. In addition, any forecast or estimate provided in accordance with paragraph 6.7 or 6.8 shall be published by the Licensee on the Licensee's website.
- 6.11. **Restriction of PSO Charges**
- 6.12. If, in respect of any Regulatory Tariff Year, the Regulated PSO Amount exceeds the Maximum Regulated PSO Amount by more than the Permitted One-Year Percentage, the Licensee shall furnish an explanation to the Authority, and in the next following Regulatory Tariff Year, the Licensee shall not effect any increase in PSO Charges unless it has demonstrated to the reasonable satisfaction of the Authority that the Regulated PSO Amount would not be likely to exceed the Maximum Regulated PSO Amount in that following Regulatory Tariff Year.
- 6.13. If, in respect of any three successive Regulatory Tariff Years, the sum of the amounts by which the Regulated PSO Amount has exceeded the Maximum Regulated PSO Amount, is more than the Permitted Three-Year Percentage, then in the next following Regulatory Tariff Year the Licensee shall, if required by the Authority, adjust its PSO Charges such that the Regulated PSO Amount would not be likely, in the judgement of the Authority, to exceed the Maximum Regulated PSO Amount in that next following Regulatory Tariff Year.

- 6.14. Not later than six weeks after the commencement of each Regulatory Tariff Year, the Licensee shall send to the Authority a statement as to:
- a) whether or not the provisions of:
    - i. paragraph 6.12 are likely to be applicable in consequence of the Regulated PSO Amount in the preceding Regulatory Tariff Year; and/ or
    - ii. paragraph 6.13 are likely to be applicable in consequence of the Regulated PSO Amount in the preceding 3 Regulatory Tariff Years; and
  - b) the Licensee's best estimate as to the cumulative over- or under- recovery at the last day of the most recently ended Regulatory Tariff Year.
- 6.15. **Historical data used in the calculation of the Licensee's Maximum Regulated PSO Amount**
- 6.16. The Licensee shall, furnish the Authority with all historical data used to calculate the Maximum Regulated PSO Amount as set out in the formulas in this Annex.
- 6.17. The Licensee shall, for the period from 1 April 2012, publish, on the Licensee's website and in the Licensee's accounting statements referred to in Condition 2 of the Licence, the data referred to at 6.16.
- 6.18. **The statutory accounts of any Related Party**
- 6.19. The Licensee shall, no later than 10 months after the end of each Regulatory Reporting Year, prepare and submit to the Authority the financial statements of any Related Party, for the Regulatory Reporting Year, with whom the Licensee has had a transaction in that Regulatory Reporting Year.

## 7. Duration of the charge restriction conditions

- 7.1. Subject to the following paragraphs of this Annex, the PSO Charge Restriction Conditions shall apply so long as the Licence continues in force.
- 7.2. **Disapplication**
- 7.3. The PSO Charge Restriction Conditions shall cease to have effect (in whole or in part, as the case may be) if the Licensee delivers to the Authority a request (a "Disapplication Request") made in accordance with paragraph 7.5 and:
- a) the Authority agrees in writing to the request; or
  - b) the application of this Annex (or any part of it) is terminated by a notice (a "Disapplication Notice") given by the Licensee in accordance with paragraph 7.5.c) and not withdrawn.
- 7.4. Save where the Authority agrees otherwise, no disapplication following delivery of a Disapplication Request pursuant to paragraphs 7.3 to 7.9 shall have effect earlier than the date (the "Disapplication Date") which is the later of:
- a) the date occurring 18 months after delivery of the Disapplication Request; and
  - b) 30 September 2017.
- 7.5. A Disapplication Request pursuant to this paragraphs 7.3 to 7.9 shall:
- a) be in writing addressed to the Authority;
  - b) specify this Annex or any part of it to which the request relates (excluding in either case paragraphs 7.3 to 7.9); and
  - c) state the date from which the Licensee wishes the Authority to agree that the Annex or the specified part of it shall cease to have effect.
- 7.6. A Disapplication Notice pursuant to paragraphs 7.3 to 7.9:
- a) may be given in the circumstances described in either paragraph 7.7 or 7.8;
  - b) may be withdrawn at any time prior to the Disapplication Date; and
  - c) where it is given, shall:
    - i. be in writing addressed to the Authority;
    - ii. specify this Annex or any part of it (which shall comprise only such part as was specified in the Disapplication Request) to which the notice relates;
    - iii. state the date from which the Licensee wishes the notice to take effect, which shall not be earlier than the Disapplication Date.
- 7.7. The circumstances described in this paragraph are that, by the beginning of the period of six months which will end with the Disapplication Date, the Authority has not in response to the Disapplication Request published a decision under Article 14(8) of the Order to modify:

- a) this Annex (or any part of it) to which the request relates; or
- b) paragraphs 7.3 to 7.9, so as to remove the right of the Licensee to give to the Authority a Disapplication Notice in respect of the relevant Disapplication Request.

7.8. The circumstances described in this paragraph are that:

- a) by no later than the beginning of the period of six months which will end with the Disapplication Date, the Authority has in response to the Disapplication Request published a decision of a type referred to in paragraph 7.7 above;
- b) the Licensee has exercised its right to appeal to the CMA against that decision in accordance with Article 14B of the Order;
- c) the CMA has, in respect of the provisions to which the Disapplication Request relates:
  - i. quashed the decision of the Authority under Article 14E(2)(a) of the Order;
  - ii. neither remitted the matter back to the Authority under Article 14E(2)(b) of the Order nor substituted its own decision for that of the Authority under Article 14E(2)(c) of the Order; and
- d) no more than 30 days has elapsed since the date on which the CMA quashed the decision of the Authority.

7.9. A Disapplication Request or Disapplication Notice served under this paragraphs 7.3 to 7.9 may be served in respect of a specified geographic area.

**Appendix to Annex 1**

Form of Payment Notice

To: Northern Ireland Electricity plc  
NISEP Fund Administrator  
Fortwilliam House  
Edgewater Office Park  
Edgewater Road  
Belfast  
BT3 9JQ

For the attention of [                    ]

[Date]

Dear Sir/Madam

Payment Notice in respect of the Northern Ireland Sustainable Energy Programme ("NISEP")

1 This Payment Notice is given by the Authority pursuant to Condition 43 of the licence to participate in transmission granted to Northern Ireland Electricity plc ("NIE"). Accordingly, a number of defined terms from that Condition are taken to have the same meaning as they have in that Condition for the purpose of this Payment Notice.

2 In this Payment Notice:

"Adjustment" means any change to a previous payment notice including instructions to increase or reduce amounts paid or in respect of refunds made by participating parties to the programme

"Applicable Year" means the year ending [INSERT]

"NISEP Projects" means projects approved by the Authority and designed to promote energy efficiency measures and/or the use of renewable technologies pursuant to NISEP



3 The Authority hereby gives notice to NIE to pay [insert name] as [a Participating Party]/[Programme Administrator]\* [a sum] / [an Adjustment]\* in the amount of £[insert amount] for the purpose of NISEP Projects in the Applicable Year (such amount shall relate to project/scheme costs/incentive payments/programme administrator costs/.

4 Payment to the [Participating Party]/[Programme Administrator] identified in paragraph 3 of this Payment Notice shall be made [in advance] / [in arrears]\* by [single lump sum payment]/[by way of separate instalments to be paid in accordance with the following payment schedule]:

Month/Date	£
[ ]	[ ]
[ ]	[ ]
[ ]	[ ]
[ ]	[ ]

5 NIE is hereby authorised to treat the payments made pursuant to this Payment Notice as excluded PSO costs for the purposes of Annex 1 of its licence.

.....  
 [Regulatory Manager/Director /CEO of NIAUR....insert name]  
 The Northern Ireland Authority for Utility Regulation

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\* Delete as applicable