

IN THE MATTER OF AN APPEAL UNDER ARTICLE 14B OF THE ELECTRICITY
(NORTHERN IRELAND) ORDER 1992

SONI LIMITED

Appellant

AND

NORTHERN IRELAND AUTHORITY FOR UTILITY REGULATION

Respondent

ORDER

UPON the application dated 12 April 2017 for permission to appeal ('Notice of Appeal') the Northern Ireland Authority for Utility Regulation ('UR') decision of 14 March 2017 ('Decision') brought by Soni Limited ('SONI')

AND UPON the CMA granting permission to appeal on 11 May 2017

AND UPON considering the submissions made, and hearing the appeal, in the above proceedings, the CMA having made a determination in accordance with article 14D of the Electricity (Northern Ireland) Order 1992 (the Electricity Order) for the reasons set out in the CMA's Final Determination dated 10 November 2017 ('Final Determination')

IT IS HEREBY ORDERED THAT

1. Ground 1 of the appeal is allowed in accordance with article 14D(4)(a) and (c) of the Electricity Order and paragraph 7.387 of the Final Determination.

2. Claimed errors 2 and 6 of Ground 2 of the appeal are allowed in accordance with article 14D(4)(a) of the Electricity Order and paragraph 6.300 of the Final Determination.
3. Claimed errors 10 and 11(b) of Ground 3 of the Appeal are allowed in accordance with article 14D(a) and (c) of the Electricity Order and paragraphs 5.92, 5.93 and 5.145 of the Final Determination.
4. The decision of the UR to apply in the Price Control Decision a cut-off date of 31 March 2015 for pension deficit contributions is quashed in accordance with paragraph 5.93 of the Final Determination.
5. Subject to paragraph 4, the Price Control Decision is remitted to the UR for reconsideration and determination in accordance with the directions set out in the Annexes to this Order.
6. The Price Control Decision is confirmed to the extent that the CMA has not allowed this appeal.

Martin Cave
CMA Group Chairman

Made: 10 November 2017

ANNEX A

DIRECTIONS

- 1 The UR shall:
- (a) Include in the price control within SONI's licence an additional allowance to reflect 1.75% of the prevailing value of the Parent Company Guarantee, either within B_t or within a separate term N_t ;
 - (b) Include in the price control within SONI's licence an additional allowance to reflect the asymmetric risk taken by SONI in respect of D_t and PCNP costs, of £220,000 per annum recoverable through the price control under these mechanisms, either within B_t or within a separate term N_t ; and
 - (c) Include in the price control within SONI's licence an additional allowance to reflect the risk taken by SONI in respect of managing revenues, where the relevant revenues are (1) TUoS charges, (2) ancilliary services within SSS tariff and (3) imperfection charges, being SONI Ltd's share of the SEMO JV imperfections charges revenues, to be based on a margin of 0.5% on the relevant revenues, either within B_t or within a separate term N_t . This allowance shall be in place of the facility fee of £108,000 per annum currently included in the B_t term.
 - (d) Include in the price control within SONI's licence, either within B_t or within a separate term PCR_t , an additional allowance to reflect a 'side-RAB' for SONI, following consultation with SONI, and specify within this term the process by which SONI should recover the costs it has incurred on PCNPs since 1 May 2014 under this mechanism;
 - (e) Amend Table A, Table B and the table describing RAB_t of SONI's licence to be consistent with the revised assumptions listed in Table 13.1 in Chapter 13 of the Final Determination; and
 - (f) Calculate the changes to tariffs required in the Tariff Years 2018/19 and 2019/20, in order that SONI can recover the total changes in tariffs over those two years, following the methodology in Chapter 13 of the Final Determination. As part of the Licence Modification process, the UR is required to specify the mechanism by which the tariff adjustment in these two years should be calculated by SONI, whether using the K-factor or otherwise;

- (g) Make these changes to SONI's licence, together with any consequential changes to SONI's Licence as required as a direct result of (a) to (f) above, as soon as reasonably practicable.
- 2 The UR shall, in accordance with Annex B and Chapter 11 of the Final Determination, use its best endeavours to prepare, following consultation with SONI, procedural Guidance for obtaining approval for, varying, and recovering the costs of PCNPs and projects subject to the D_t mechanism.
 - 3 The UR shall include a condition in SONI's licence requiring SONI to comply with the matters described in the procedural Guidance for the purposes of the price control.
 - 4 The UR shall use best endeavours to complete the licence modification, rules and guidance required in 2 and 3 above within four months of the date of this Order, save in respect of paragraphs 13 and 14 of Annex B, where the UR shall use best endeavours to complete the processes in a reasonable time.
 - 5 SONI and the UR shall each submit a report to the CMA on progress with compliance with 2 and 3 above, on 10 December 2017, and monthly thereafter, until such time as the CMA directs.

Further Annexes

Annex B: List of elements to be included in codification of of cost recovery for PCNPs and costs under the D_t mechanism

ANNEX B

CODIFICATION OF COST RECOVERY FOR PCNPs AND COSTS UNDER THE D_t MECHANISM

The codification required by the remedy for Ground 2 shall, at a minimum, include the following:

Timelines

1. In order to recover costs through tariffs in the current price control period, SONI should submit applications for PCNPs and the recovery of D_t costs at least six months ahead of project initiation.
2. The UR should approve or reject SONI's application within four months of receiving the required information, setting out any objections to SONI's application.
3. SONI and the UR should consider whether there is scope for reducing these timelines when there is a lack of materiality, lack of complexity, or for projects with lower level of approval required (eg those that do not require sign-off from the UR Board).

Project specification

4. SONI and the UR should work together to agree and codify a detailed process for pre-approval, including templates to be completed by SONI as part of project initiation.
5. The UR should pre-approve PCNP and D_t projects, including setting an initial budget cap for each project.

Ongoing reporting

6. SONI should report to the UR at least annually with its progress on PCNP and D_t projects, under a template to be proposed by the UR following consultation with SONI.

Project Variation

7. In order to recover costs above the initial pre-approved budget through tariffs in the current price control period, SONI should submit applications for Project Variation, including evidence as to why additional costs are required and reflect changes in the efficient costs of the project.

8. The UR should approve or reject SONI's application within a pre-specified period of receiving the required information, setting out any objections to SONI's application. This period should be specified in codification, should be consistent with the needs of different projects (including complexity) and in any case should be no longer than the four months required for initial project approval.
9. As with pre-approval, SONI and the UR should work together to agree the details of the information SONI should provide as part of its applications for approval of variations to project specification.
10. Whilst pre-approval will remain the case for the majority of Project Variations, there should be a process for allowing SONI to act efficiently without penalty when it faces urgent increases in budget relating to changes in project scope.

Transfer of investments into the capital base and tariffs

11. The Licence should include codification of the side-RAB that applies to SONI's efficiently incurred costs in respect of PCNPs, in such a way that SONI has certainty that it will be able to recover PCNP costs it incurs that the UR has approved. This process should also be applied to the efficiently incurred costs in respect of PCNPs since May 2014.
12. The Licence should also codify the return SONI receives (equal to the WACC) on the side-RAB, and how SONI recovers this during the period before the PCNP proceeds to construction, or is not pursued.
13. The UR should consult on and agree a mechanism for the transfer of PCNPs to NIE under the TIA.
14. The UR should consult on and agree a process for the other methods by which SONI recovers the costs of PCNPs, including through SONI exercising its step-in rights and when a third party takes on construction.