

**THE NORTHERN IRELAND AUTHORITY FOR UTILITY REGULATION  
DECISION UNDER ARTICLE 14(8) OF THE ELECTRICITY (NORTHERN IRELAND)  
ORDER 1992 (AS AMENDED)**

**MODIFICATIONS TO SONI LIMITED'S ELECTRICITY TRANSMISSION LICENCE**

In accordance with Article 14(2) of the Electricity (Northern Ireland) Order 1992<sup>1</sup> (“the **Order**”) the Northern Ireland Authority for Utility Regulation (“the **Authority**”) published a notice of its intention to modify the conditions of SONI Limited's electricity transmission licence.

In accordance with Article 14(5) of the Order the Authority has considered representations duly made to it.

The Authority has decided to proceed with the making of modifications of the conditions of SONI Limited's electricity transmission licence in exercise of its powers under Article 14(1) of the Order.

In accordance with Article 14(8) of the Order the Authority gives notice as follows: -

- 1) The Authority will modify the electricity transmission licence (the “Licence”) held by SONI Limited (“the Licensee”).
- 2) The modifications to the Licence are set out in the Authority’s decision paper entitled “Decision on the Licence Modifications for the Price Control 2015-2020 of the Electricity System Operator for Northern Ireland (SONI)” and are to Annex 1 of the Licence. The modifications are shown in the new version of Annex 1 as set out in Schedule 1 to this notice.
- 3) The Authority considers that the modifications to the Licence are an appropriate course to alter the total amount of revenue that the Licensee can recover in any relevant year and for the necessary consumer protection for electricity consumers.
- 4) On 24/02/2016, the Authority published a notice<sup>2</sup> stating that it intended to modify the licence and giving the reasons and effect of the modifications. The purpose of this notice was to bring the proposed modifications to the attention of persons likely to be affected by them, and to invite representations or objections in connection thereto. We received one response - from the Licensee. We have taken into account their representations related to these modifications,

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<sup>1</sup> <http://www.legislation.gov.uk/nisi/1992/231/article/14>

<sup>2</sup> <https://www.uregni.gov.uk/publications/article-14-notice-and-soni-price-control-2015-2020-licence-modifications>

made the necessary adjustments where appropriate while explaining the reasons for any changes to our proposals.

5) The modifications (as shown in track change in Schedule 1) will take effect from 09 May 2017.

6) The Authority has, pursuant to Article 14(8) of the Order, published this notice on its website and sent a copy of this notice to the Licensee. In addition, the Authority has provided a copy of this notice to the Department for the Economy and the Consumer Council for Northern Ireland.

7) A copy of the modification can be obtained in hard copy from Jody O'Boyle at: Utility Regulator, Queens House, 14 Queen Street, Belfast, BT1 6ED. Email [jody.oboyle@uregni.gov.uk](mailto:jody.oboyle@uregni.gov.uk)

8) Dated this 13 March 2017

Jenny Pyper

**For and on behalf of the Northern Ireland Authority for Utility Regulation**

cc

June Ingram, Infrastructure and Regulation Group, DfE

Robin McCormick (General Manager), SONI Limited

John French (CEO), Consumer Council for Northern Ireland

**Schedule 1**

**LICENCE TO PARTICIPATE IN THE TRANSMISSION  
OF ELECTRICITY**

**granted to**

**SONI LIMITED**

**The Department ~~of Enterprise, Trade and Investment~~ for the Economy**

**ANNEX 1 Charge Restrictions****1 Definitions****1.1 In this Annex:**

<b>Achieved DBC</b>	means, in respect of any Relevant Year, the actual Dispatch Balancing Costs incurred on an all-island basis in that Relevant Year by the Licensee and the Republic of Ireland System Operator and included in the Annual Out-turn Report.
<b>Annual Out-turn Report</b>	has the meaning given to it in paragraph 1 of Condition 39.
<b>Applicable Exchange Rate</b>	means the annual average exchange rate for the conversion of euro into sterling as published by Thomson Reuters.
<b>Average Specified Rate</b>	means one-year LIBOR (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.
<b>Demonstrably Inefficient or Wasteful Expenditure</b>	means expenditure <u>which the Authority has (giving the reasons for its decision) determined to be that is</u> demonstrably inefficient and/or wasteful, given the information reasonably available to the Licensee at the time that <u>the Licensee# made the relevant decision about</u> <del>incurred</del> 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.
<b>Dispatch Balancing Costs</b>	means costs relating to or incurred in respect of: <ul style="list-style-type: none"> <li>(a) the constraining on or off (as the case may be) generation sets pursuant to the central dispatch and merit order systems and processes established by the Licensee in accordance with Condition 22 or for the purposes;</li> <li>(b) the management of Energy Imbalances;</li> </ul>

	<p>(c) any Uninstructed Imbalance;</p> <p>(d) Testing Charges;</p> <p>(e) Other System Charges; and</p> <p>(f) any SO Interconnector Trade.</p>
<b>Energy Imbalances</b>	means the imbalance(s) between (i) the payments made by the Single Market Operator Business to generators for electricity sold from generation sets scheduled to operate in accordance with the Licensee's instructions pursuant to the processes and procedures for central dispatch and merit order, and (ii) the payments received by the Single Market Operator Business from electricity suppliers in respect of the electricity purchased by such electricity suppliers.
<b>Ex-Ante DBC Target</b>	means, in respect of any Relevant Year, the Dispatch Balancing Costs approved by the Authority and the Commission for Energy Regulation for the purpose of their inclusion as a component in the Imperfection Charge proposed to be levied on suppliers by the Single Market Operator Business for that Relevant Year.
<b>Ex-Post DBC Target</b>	means, in respect of any Relevant Year, either the Ex-Ante DBC Target adjusted in accordance with an Ex-Post Adjustment provided that where no adjustment is to be made it shall be the Ex-Ante DBC Target for that Relevant Year.
<b>Ex-Post Adjustment</b>	means the adjustment (if any) to be made to the Ex-Ante DBC Target applicable in respect of any Relevant Year, as determined by the Authority and the Commission for Energy Regulation in accordance with, and taking account of the factors set out in, the SEM Decision Paper.
<b>Imperfection Charge</b>	has the meaning given to it in the Single Electricity Market Trading and Settlement Code.
<b>Legal Requirement</b>	<p><del>means, in relation to the Licensee, any of the following:</del></p> <p><del>(a) any enactment to the extent that it applies to the Licensee;</del></p> <p><del>(b) any regulation made by the Council or the Commission of the European</del></p>

	<p><del>Communities to the extent that it applies to the Licensee and impacts on the Transmission System Operator Business or a decision taken by that Council or Commission which is binding on the Licensee and impacts on the Transmission System Operator Business to the extent that it is so binding;</del></p> <p><del>(c) any interpretation of law, or finding, contained in any judgment given by a court or tribunal of competent jurisdiction in respect of which the period for making an appeal has expired;</del></p> <p><del>(d) any direction of a competent authority other than, insofar as it applies to the Licensee, the Authority (except in the exercise of its powers under paragraph 4 of Condition 16) or the Department.</del></p>
<b>Maximum Regulated SSS/TUoS Revenue</b>	means the revenue calculated in accordance with the formula in paragraph 2 of this Annex.
<b>Moyle Interconnector Collection Agency Agreement</b>	has the meaning given to that expression in Condition 37.
<b>Other System Charges</b>	has the meaning given to it in the Single Electricity Market Trading and Settlement Code.
<b>Permitted One-Year Percentage</b>	means 4 per cent of the Maximum Regulated SSS/TUoS Revenue
<b>Permitted Three-Year Percentage</b>	means 5 per cent of the Maximum Regulated SSS/TUoS Revenue in the second of the Relevant Years
<b>Price Control Decision Paper</b>	means <u>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 10/03/2017 and entitled "Decision on the Licence Modifications for the Price Control 2015-2020 of the Electricity System Operator for Northern Ireland (SONI)" and (iii) as supplemented or amended by any</u>

	<u>further decision paper on the same subject.</u>
<b>Quantity Entering the Total System</b>	means the aggregate quantity of units metered on entry to the total system in Relevant Year t (minus any units consumed by generation sets and imported from the total system).
<b>Regulated SSS/TUoS Revenue</b>	means the revenue (measured on an accruals basis) derived from SSS/TUoS Charges (including any revenue received from any Separate Business) after deduction of value added tax (if any) and any other taxes based directly on the amounts so derived.
<del><b>Relevant Change of Law</b></del>	<del>means the application to the Licensee of any Legal Requirement which did not previously so apply or the change of any Legal Requirement relating to the Licensee (including any such Legal Requirement ceasing to apply, being withdrawn or not being renewed).</del>
<b>Relevant Year</b>	means a financial year commencing on 1 October and concluding 30 September.
<b>Relevant Year t</b>	means that Relevant Year for the purposes of which any calculation falls to be made; " <b>Relevant Year t - 1</b> " means the Relevant Year preceding Relevant Year t and similar expressions shall be construed accordingly.
<b>SEM Decision Paper</b>	means the decision paper issued jointly by the Authority and the Commission for Energy Regulation dated 5 June 2012 and entitled "Incentivisation of All-Island Dispatch Balancing Costs".
<b>SO Interconnector Trade</b>	has the meaning given to it in the Single Electricity Market Trading and Settlement Code.
<b>SSS/TUoS Charge(s)</b>	means the charges for System Support Services and for use of the All-Island Transmission Networks as provided for under Condition 30.
<b>SSS/TUoS Charge Restriction Condition</b>	means this Annex as from time to time modified or replaced in accordance with its own terms or pursuant to any enactment.

<b>Testing Charges</b>	has the meaning given to it in the Single Electricity Market Trading and Settlement Code.
<b>Transmission Network Pre-construction Project</b>	<p>means a <u>transmission network</u> project</p> <p>(a) <del>identified, whether</del> by the Licensee or <del>by</del> the Transmission Owner <del>(and where required approved by the Authority)</del>, as <u>a project which is necessary for the purposes of developing the transmission system;</u></p> <p>(b) <u>in respect of which the Licensee is, as the Transmission System Operator, responsible for carrying out activities required to progress the project from the conceptual design stage to, but not including, the construction stage; and</u></p> <p><del>(a)(c) approved by the Authority, following a submission by the Licensee for such approval, as a project in respect of which the Licensee may proceed to carry out the activities referred to in paragraph (b) above, and in respect of which project the Licensee is responsible for the activities that are required to progress the project from the conceptual stage to (but not including) its construction.</del></p>
<b>Uncollected SSS/TUoS Revenue</b>	means any amount owed to the Licensee in respect of Regulated SSS/TUoS Revenue, which amount remains unpaid six months after the date it first fell due for payment or which amount the Licensee deems (in accordance with the 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 attributable to such amount (calculated, in both cases, in accordance with the payment security policy).
<b>Uninstructed Imbalance</b>	has the meaning given to it in the Single Electricity Market Trading and Settlement Code.
<b>Unit</b>	means a kilowatt hour.

1.2 Where any table refers to a numbered Relevant Year t the applicable Relevant Year t is as follows:



<b>Relevant Year t</b>	<b>Relevant Year</b>
1	October 2015 - September 2016
2	October 2016 - September 2017
3	October 2017- September 2018
4	October 2018 - September 2019
5	October 2019 - September 2020

## 2 Restriction of SSS/TUoS Charges

2.1 The Licensee shall, in setting the SSS/TUoS Charges, use its best endeavours to ensure that in each Relevant Year the Regulated SSS/TUoS Revenue shall not exceed the Maximum Regulated SSS/TUoS Revenue which shall be the aggregate of:

- (a) the maximum core SSS/TUoS revenue in Relevant Year  $t$  ( $M_{TSOt}$ ), calculated in accordance with paragraph 2.2 of this Annex;

Plus

- (b) the  $CAIR_t$  amount,

where:

$CAIR_t$  has, in respect of each Relevant Year  $t$ , the same meaning as is given to that expression in the Moyle Interconnector Collection Agency Agreement.

2.2 The maximum core SSS/TUoS revenue shall be calculated as follows:

$$M_{TSOt} = A_{TSOt} + B_{TSOt} - BI_t + D_{TSOt} + \underline{Q_t} + K_{TSOt} + INCENT_t$$

where:

- (a)  $A_{TSOt}$  means:

- (i) the costs of System Support Services in Relevant Year  $t$  (including 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  $t$  ~~minus that part (if any) of such costs that the Authority determines to be Demonstrably Inefficient or Wasteful Expenditure;~~

plus

- (ii) amounts payable to the Transmission Owner Business for the provision of transmission services in Relevant Year  $t$ ;

plus

- (iii) amounts levied in Relevant Year  $t$  on the Transmission System Operator Business by the Market Operation Activity in accordance with Annex 1 of the Northern Ireland Market Operator Licence to the extent not recovered under ~~another part~~ any other provision of ~~the~~ this Licence or under the Northern Ireland Market Operator Licence;

- (b)  $B_{TSOt}$  means the allowed SSS/TUoS revenue in Relevant Year  $t$ , which for each Relevant Year  $t$  in the period 1 October 2015 to 30 September 2020 is the aggregate of:

- (i) the amount allowed for each cost category listed in Table A in paragraph 2.2(b)(vi); and

(ii) the rate of return allowance set out in Table B in paragraph 2.2(b)(vii),

which in each case:

(iii) is indexed by  $RPI_t$  in respect of each Relevant Year t with respect to RPI at April 2014 (255.7),

where:

(iv) the rate of return allowance is calculated in accordance with paragraph 2.3 of this Annex;

(v)  $RPI_t$  means the Retail Price Index (1987 = 100) published or determined with respect to April in Relevant Year t (i.e. RPI in the Relevant Year t = 2 means the value of RPI in April falling within the Relevant Year t=2);

(vi) Table A is as follows:

<b>Relevant Year t</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
	<b>£m</b>	<b>£m</b>	<b>£m</b>	<b>£m</b>	<b>£m</b>
Payroll	7.217	7.217	7.217	7.217	7.217
IT & Communications	1.783	1.850	1.924	1.948	1.997
Other OPEX	1.411	1.411	1.411	1.411	1.411
Pension Deficit	0.189	0.189	0.189	0.189	0.189
Depreciation on Non-Building Assets	4.083	1.750	1.344	1.285	1.236
Depreciation on Building Assets	0.116	0.116	0.116	0.116	0.116
Depreciation on CAPEX Overspend for 2010-2015	n/a	n/a	n/a	0.850	0.850
Real Price Effects & Productivity	0.146	0.222	0.299	0.375	0.454

(vii) Table B is as follows:

<b>Relevant Year t</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
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	£m	£m	£m	£m	£m
rate of return allowance	0.440	0.339	0.305	0.364	0.321

- (c)  $BI_t$  means the sum which is designed to share equally, between the Licensee and customers, the value of any outperformance or underperformance of the Licensee against the allowed SSS/TUoS revenue and which shall be calculated as follows:

$$BI_t = (B_{TSOt}) - (C_{TSOt}) * 50\%$$

where:

$C_{TSOt}$  means:

- (i) the aggregate of the actual costs incurred by the Licensee in Relevant Year t in respect of each costs category listed in Table A in paragraph 2.2(b)(vi) of this Annex, minus that part (if any) of such actual costs that the Authority determines to be Demonstrably Inefficient or Wasteful Expenditure;

plus

- (ii) the rate of return allowance for Relevant Year t as set out in Table B in paragraph 2.2(b)(vii) of this Annex;

- (d)  $D_{TSOt}$  means:

- (i) the aggregate of the total amount, allowed by the Authority in accordance with the approval given pursuant to paragraph 8.3(e) of this Annex, in Relevant Year t for excluded SSS/TUoS costs;

plus

- (ii) the total amount, allowed by the Authority in accordance with ~~paragraphs~~ paragraph 6.1 and 6.2 of this Annex, in Relevant Year t for change of law;

- ~~(e)~~  $Q_t$  means an adjustment to be applied to the maximum core SSS/TUoS revenue, which:

- (i) in Relevant Year t ending 30 September 2017 shall be the amount which is determined by the Authority and notified to the Licensee in accordance with principles set out in a document provided to the Licensee and;

- (ii) in each other Relevant Year shall be equal to zero.

- ~~(e)~~ (f)  $K_{TSOt}$  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:

$$K_{TSOt} = (F_{TSOt-2} - R_{TSOt-2}) (1 + I_t)$$

where:

(i)  $F_{TSO_{t-2}}$  means:

(A) the  $M_{TSO_t}$  for Relevant Year t-2;

minus

(B)  $(D_{TSO_{t-2}} - AD_{TSO_{t-2}})$ ;

minus;

(C) that part (if any) of  $AD_{TSO_{t-2}}$  that the Authority determines to be Demonstrably Inefficient or Wasteful Expenditure,

where:

$AD_{TSO_{t-2}}$  means:

1) where actual costs incurred by the licensee in relation to excluded SSS/TUoS costs and change of law in Relevant Year t-2 are less than the costs allowed for  $D_{TSO_t}$  in Relevant Year t-2, the total of such actual costs;

2) where actual costs incurred by the licensee in relation to excluded SSS/TUoS costs and change of law in Relevant Year t-2 are greater than the costs allowed for  $D_{TSO_t}$  in Relevant Year t-2, the total of the costs allowed for  $D_{TSO_t}$  in Relevant Year t-2,

(ii)  $R_{TSO_{t-2}}$  means:

(A) the Regulated SSS/TUoS Revenue in Relevant Year t-2;

minus

(B) the  $CAIR_t$  amount in Relevant Year t-2;

(iii)  $I_t$  means:

(A) where the amount derived from the calculations undertaken pursuant to paragraphs 2.2(e)(i) and (ii) is a positive figure, the Average Specified Rate for Relevant Year t-2 plus 2% of that rate (as expressed in decimal figures); and

(B) where the amount derived from the calculations undertaken pursuant to paragraphs 2.2(e)(i) and (ii) is a minus figure, the Average Specified Rate for Relevant Year t-2 plus 1% of that rate (as expressed in decimal figures).

~~(f)~~(g)  $INCENT_t$  means:

- (i) where the Achieved DBC for Relevant Year t-2 is below the Ex-Post DBC Target for that year, the amount (converted into pounds sterling at the Applicable Exchange Rate for Relevant Year t-2) that is equal to 25% of the DBC Success Amount (represented as a positive figure) for that Relevant Year;
- (ii) where the Achieved DBC for Relevant Year t-2 is above the Ex-Post DBC Target for that year, the amount (converted into pounds sterling at the Applicable Exchange Rate for Relevant Year t-2) that is equal to 25% of the DBC Failure Amount (represented as a negative figure) for that Relevant Year,

where:

- (iii) DBC Success Amount means the amount that is equal to 10% of every whole 2.5% by which the Achieved DBC is below the Ex-Post DBC Target provided that:
  - (A) where the Achieved DBC is less than 10% below the Ex-Post DBC Target, the amount shall be calculated as zero;
  - (B) where the Achieved DBC is more than 20% below the Ex-Post DBC Target, the amount shall be calculated on the basis that Achieved DBC is 20% below the Ex-Post DBC Target.
- (iv) DBC Failure Amount means the amount that is equal to 5% of every whole 2.5% by which the Achieved DBC is above the Ex-Post DBC Target, provided that:
  - (A) where the Achieved DBC is less than 10% above the Ex-Post DBC Target, the amount shall be calculated as zero;
  - (B) where the Achieved DBC is more than 20% above the Ex-Post DBC Target, the amount shall be calculated on the basis that the Achieved DBC is 20% above the Ex-Post DBC Target.

#### Rate of Return

- 2.3 The rate of return allowance set out in Table B, in paragraph 2.2(b)(vii) of this Annex, for each Relevant Year t is calculated as follows:

$$RAB_t \times WACC_t$$

where:

- (a)  $RAB_t$  means the average Regulated Asset Base amount for each Relevant Year t set out in the table below:

Relevant Year t	1	2	3	4	5
	£m	£m	£m	£m	£m
Average Non-Building RAB	5.072	3.470	3.056	2.907	3.142

Average Building RAB	2.385	2.268	2.152	2.036	1.919
Average CAPEX Overspend 2010-2015 RAB	n/a	n/a	n/a	1.275	0.425
<b>Average RAB Total</b>	<b>7.457</b>	<b>5.738</b>	<b>5.208</b>	<b>6.218</b>	<b>5.486</b>

(b) WACC<sub>t</sub> means:

(i) the Weighted Average Cost of Capital for Relevant Year t set out in the table below:

Relevant Year t	1	2	3	4	5
WACC	5.9%	5.9%	5.85%	5.85%	5.85%

and:

(ii) is calculated in accordance with the following formula –

$$\text{WACC} = ((r_e/(1-t_x)) \times (1 - g)) + (r_d \times g)$$

where:

(iii)  $r_e$  = cost of equity

(iv)  $r_d$  = cost of debt

(v)  $t_x$  = taxation

(vi)  $g$  = gearing

where:

(A) the value of (v) shall be the main rate of corporation tax, applicable to Northern Ireland, in existence at the commencement of the Relevant Year t.

### 3 **Restriction of SSS/TUoS Charges: Adjustments**

3.1 If, in respect of any Relevant Year, the Regulated SSS/TUoS Revenue exceeds the Maximum Regulated SSS/TUoS Revenue by more than the Permitted One-Year Percentage, the Licensee shall furnish an explanation to the Authority and in the next following Relevant Year the Licensee shall not effect any increase in the SSS/TUoS Charges unless it has demonstrated to the reasonable satisfaction of the Authority that the Regulated SSS/TUoS Revenue would not be likely to exceed the Maximum Regulated SSS/TUoS Revenue in that next following Relevant Year.

3.2 If, in respect of any three successive Relevant Years, the sum of the amounts by which the Regulated SSS/TUoS Revenue has exceeded the Maximum Regulated SSS/TUoS Revenue is more than the Permitted Three-Year Percentage, then in the next following Relevant Year the Licensee shall, if required by the Authority, adjust the SSS/TUoS Charges such that the Regulated SSS/TUoS Revenue would not be likely, in the judgment of the Authority, to exceed the Maximum Regulated SSS/TUoS Revenue in that next following Relevant Year.

#### 4 **Information to be provided to the Authority**

4.1 Where any change is intended to be made in the SSS/TUoS Charges regulated under paragraph 2 of this Annex, the Licensee shall not later than the time referred to in paragraph 4.2 provide the Authority with:

- (a) a written forecast of the Maximum Regulated SSS/TUoS Revenue, together with its components, in respect of the Relevant Year  $t$  in which such change is to take effect;
- (b) a written estimate of the Maximum Regulated SSS/TUoS Revenue, together with its components, in respect of the Relevant Year  $t-1$  immediately preceding the Relevant Year in which the change is to take effect, unless a statement complying with paragraphs 4.5 and 4.6 in respect of Relevant Year  $t-1$  has been furnished by the Licensee to the Authority before the time referred to in paragraph 4.2.

4.2 The relevant time referred to in paragraph 4.1 shall be ~~4 months (unless otherwise approved by the Authority)~~ 1 month prior to the ~~date that the change in the SSS/TUoS Charges is intended to take effect~~ of publication by the Licensee of such charges.

4.3 The Authority may issue directions providing that any forecast or estimate provided in accordance with paragraph 4.1 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 and the Licensee shall comply with any such directions.

4.4 Not later than 6 weeks after the commencement of each Relevant Year  $t$ , the Licensee shall send to the Authority a statement as to:

- (a) whether or not the provisions of paragraph 3 of this Annex are likely to be applicable in consequence of the Regulated SSS/TUoS Revenue in the preceding Relevant Year  $t-1$  or the 3 preceding Relevant Years  $t-1$ ,  $t-2$  and  $t-3$ ; and
- (b) its best estimate (calculated to the extent possible on the basis of the formula set out in paragraph 2.2(e) of this Annex) as to the relevant correction factor  $K_{TSOt}$  in respect of Relevant Year  $t-1$ .

4.5 Not later than 3 months after the end of each Relevant Year the Licensee shall send to the Authority a statement, in respect of that Relevant Year, which includes:

- (a) the Maximum Regulated SSS/TUoS Revenue for that Relevant Year  $t$ ; and
- (b) the specified items referred to in paragraph 4.7.

4.6 The statement referred to in paragraph 4.5 shall be:

- (a) accompanied by a report from the Auditors that in their opinion:



- (i) such statement fairly presents each of the specified items referred to in paragraph 4.7 in accordance with the requirements of the SSS/TUoS Charge Restriction Condition; and
  - (ii) the amounts shown in respect of each of those specified items are in accordance with the Licensee's accounting records which have been maintained in respect of each of the relevant Separate Businesses in accordance with Condition 2; and
- (b) certified by a director of the Licensee on behalf of the Licensee that to the best of his knowledge, information and belief having made all reasonable enquiries:
- (i) there is no amount included in its calculations under paragraph 2 which represents other than an amount permitted under the SSS/TUoS Charge Restriction Condition to be so included;
  - (ii) all amounts which should properly be taken into account for the purposes of the SSS/TUoS Charge Restriction Condition have been taken into account.

4.7 The specified items to be contained in the statement referred to in paragraph 4.5 shall be the actual amounts in respect to:

- (a) the Regulated SSS/TUoS Revenue;
- (b) the actual costs of  $A_{TSO_t}$  (which are to be calculated to the extent possible in accordance with paragraph 2.2(a) of this Annex) and showing separately each component thereof;
- (c) the actual SSS/TUoS revenue (being  $C_{TSO_t}$  and calculated to the extent possible in accordance with paragraph 2.2(c) of this Annex);
- (d) the actual costs incurred in respect of each category of expenditure for which the Authority determined an allowance with regard to excluded SSS/TUoS and change of law costs; and
- (e) such other items as shall be specified in directions issued by the Authority from time to time for the purposes of this Annex.

~~4.8 The Licensee shall, furnish the Authority with relevant information regarding any pension deficits, splitting accordingly the historic deficit (assuming a cut-off date of 31 March 2015) and incremental deficit, such that the information provided is in line with the information submitted by the Great Britain transmission/distribution network operators. Any tri-annual actuarial valuation or funding updates submitted to the Authority should reflect this split between historic deficit and incremental deficit together with the assumptions applied.~~

~~4.94.8 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, ~~the~~

- (a) ~~the amount of~~  $D_{TSO_t}$  costs:
  - (i) that the Licensee considers to have previously been allowed by the Authority for that Relevant Year t; ~~and~~

- (ii) ~~in respect of which~~that the Licensee is, or will be, requesting a determination in accordance with paragraph 6 or is, or will be, making a claim in accordance with paragraph 8 (but excluding any costs relating to Transmission Network Pre-Construction Project  $D_{TSO_t}$  and PCI  $D_{TSO_t}$ ) for that Relevant Year  $t$ , and
- (b) its calculations in respect of the applicable  $K_{TSO_t}$ , together with its individual components, for the Relevant Year  $t-2$ ,

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  $D_{TSO_t}$  and  $K_{TSO_t}$  as reasonably determined by the Authority to be appropriate in the circumstances).

## 5 Duration of SSS/TUoS Charge Restriction Condition

- 5.1 The restrictions on SSS/TUoS Charges outlined in paragraph 2 of this Annex do not apply to tariff years from 1 October 2020 onwards. However, if no modifications to apply any different restrictions with effect from that date are made then, until any such modifications are made, the licensee shall not increase (in nominal terms) any of the tariffs or charges contributing to its Regulated SSS/TUoS Revenue above the levels applicable on 1 October 2019, except where:
- (a) the increase is approved by the Authority and the approval is given in advance of the tariff year in which the increase is to apply;
  - (b) the increase is required to ensure that the Licensee is able to collect the Collection Agency Income Requirement required by it to discharge its duties under the Moyle Interconnector Collection Agency Agreement in accordance with Condition 37 of this licence;
  - (c) the increase is required to enable the Licensee to collect the TUoS revenue that the Authority has determined is payable to the Transmission Owner Business for the provision of transmission services; or
  - (d) the increase is required to enable the Licensee to collect System Support Services, Ancillary Services, Other System Charges and TUoS revenue in respect of generation, as determined by the SEM Committee.

### Disapplication

- 5.2 This Annex shall apply so long as the Licence continues in force but 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 5.4 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 5.5 and not withdrawn.
- 5.3 Save where the Authority otherwise agrees, no disapplication following delivery of a Disapplication Request pursuant to paragraph 5.4 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 2020.

5.4 A Disapplication Request pursuant to this paragraph 5.4 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 this paragraph 5); and
- (c) state the date from which the Licensee wishes the Authority to agree that this Annex or the specified part of it shall cease to have effect.

5.5 A Disapplication Notice pursuant to this paragraph 5.5:

- (a) may be given in the circumstances described in either paragraph 5.6 or paragraph 5.7;
- (b) may be withdrawn by the Licensee 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; and
  - (iii) state the date from which the Licensee wishes the notice to take effect, which shall not be earlier than the Disapplication Date.

5.6 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) this paragraph 5, so as to remove the right of the Licensee to give to the Authority a Disapplication Notice in respect of the relevant Disapplication Request.

5.7 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 5.6;
- (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; and
  - (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

- (iii) no more than 30 days has elapsed since the date on which the CMA quashed the decision of the Authority.

## 6 Change of Law

~~6.1 The Authority may, including following a request made~~Where it appears to it by the Licensee ~~asking it to do so, determine~~ that there has been, or is likely to be, a **Relevant Change**~~relevant change~~ of **Law**~~law~~ which has had, or is likely to have, a material effect on the financial position and performance of the Transmission System Operation Business;

~~6.2 Where the Authority makes a determination pursuant to paragraph 6.1, it may, for the purposes of ensuring, the Licensee may require the Authority to determine whether the relevant change of law has had or is likely to have such an effect, and if so what amounts, if any, should be treated as allowed change of law revenues in calculating  $D_{TSO,t}$  for relevant year t and each succeeding relevant year in accordance with paragraph 2 to ensure~~ that the financial position and performance of the Licensee is likely, so far as reasonably practicable, to be the same as if the **Relevant Change**~~relevant change~~ of **Law**~~law~~ had not taken place, ~~give effect to that determination by determining an amount (whether a positive or negative figure) that is to be treated as an allowed change of law revenue for the purposes of calculating  $D_{TSO,t}$  for Relevant Year t in which the determination is made, and, where applicable, for each succeeding Relevant Year t, in accordance with paragraph 2.2(d) of this Annex.~~

~~6.36.1~~ . In determining the matters provided for in the paragraph ~~6.1 and 6.2~~above, the Authority shall have regard, where relevant, to:

- (a) its intentions in relation to the development and implementation of the “requisite arrangements”, as provided for in condition 60 of the NIE Energy Supply Licence;
- (b) the period over which the Licensee shall incur costs by reason of the **Relevant Change**~~relevant change~~ of **Law**~~law~~;
- (c) the incremental costs (including financing costs) which the Licensee has been or will be required to incur as a consequence of the **Relevant Change**~~relevant change~~ of **Law**~~law~~; and
- (d) the other circumstances of the case.

~~6.4 Where the Licensee requests~~ A notice given to the Authority ~~to make a determination by the Licensee~~ pursuant to paragraph 6.1, ~~the request~~ shall:

~~6.56.2~~ contain or be accompanied by all relevant details of the relevant change of law and such other information as the Authority shall require and, unless the Authority shall otherwise ~~consents, consent, shall be made no given not~~ later than the first day ~~in of~~ April immediately preceding the **Relevant Year**~~first of the relevant years~~ in respect of which the Licensee ~~would (if the Authority were wishes any change in such elements to make a determination pursuant to paragraph 6.1) wish the Authority to make a determination under paragraph 6.2; and take effect.~~

~~(a) be accompanied by all relevant details (including a breakdown of internal and external incremental costs incurred) of the Relevant Change of Law and such other information as the Authority shall require.~~

~~6.3 This Annex shall be modified to give effect to any determination made by the Authority under this paragraph 6. Such modification shall have effect from the later of the date of the determination and the date upon which the relevant change of law comes into force.~~

~~6.4 In this paragraph:~~

~~**"legal requirement"**~~

~~means, in relation to the Licensee, any of the following:~~

- ~~(a) any enactment to the extent that it applies to the Licensee;~~
- ~~(b) any regulation made by the Council or the Commission of the European Communities to the extent that it applies to the Licensee or a decision taken by the said Commission which is binding on the Licensee to the extent that it is so binding;~~
- ~~(c) any interpretation of law, or finding, contained in any judgment given by a court or tribunal of competent jurisdiction in respect of which the period for making an appeal has expired which requires any legal requirement falling within (a) or (b) above to have effect in a way different to that in which it previously had effect;~~
- ~~(d) any direction of a competent authority other than, insofar as it applies to the Licensee, the Authority (except in the exercise of its powers under paragraph 4 of Condition 16) or the Department;~~

~~**"relevant change of law"**~~

~~means any of the following:~~

- ~~(a) the application to the Licensee of any legal requirement which did not previously so apply or the change of any legal requirement relating to the Licensee (including any such legal requirement ceasing to apply, being withdrawn or not being renewed);~~
- ~~(b) a change of the United Kingdom Plan, as it applies to Northern Ireland, for the reduction of emissions, made by the Secretary of State on 20 December 1990 pursuant to section 3(5) of the Environmental Protection Act 1990 (as it shall have been amended, supplemented or replaced from time to time).~~

## 7 Unit Coverage

- 7.1 The component of Maximum Regulated SSS/TUoS Revenue relating to System Support Services (or certain parts of that component) can potentially be recovered from the Quantity Entering the Total System in the authorised transmission area.
- 7.2 The final decision regarding which Units in particular the component of Maximum Regulated SSS/TUoS Revenue relating to System Support Services (or certain parts of that component) will be recovered from in Relevant Year t (“unit coverage”) rests with the Authority.
- 7.3 In each Relevant Year t on the decision of the Authority regarding unit coverage of the System Support Services charge, the Licensee will then draw up for the Relevant Year t the schedule of System Support Services charges in accordance with Condition 30 in a manner which is consistent with the decision of the Authority regarding unit coverage. If the Licensee draws up for Relevant Year t the schedule of System Support Services charges in accordance with Condition 30 in a manner which is not consistent with the decision of the Authority regarding unit coverage then the Authority’s approval under Condition 30 paragraph 6 for the form of this schedule will not be granted.

## 8 Excluded SSS/TUoS Costs

- 8.1 The Licensee may, subject to paragraphs 8.2 and 8.3, make a claim (to the Authority) that the following costs and revenues of the Licensee (whether a positive or negative amount) shall be treated as excluded TUoS/SSS costs in Relevant Year t:
- (a) any reasonable and efficient costs incurred (or likely to be incurred) by the Transmission System Operator Business (in Relevant Year t) in complying with the requirements imposed on the Licensee under legislation and other legal requirements through which Directive 2009/72/EC is implemented, whether before or after the coming into effect of this Annex, and to the extent not recovered under ~~another part~~ any other provision of ~~the~~ this Licence or under the Northern Ireland Market Operator Licence or under the Transmission Owner Licence;
  - (b) any reasonable and efficient costs incurred (or likely to be incurred) by the Transmission System Operator Business (in Relevant Year t) in complying with the requirements imposed on the Licensee:
    - (i) under the arrangements for the Single Electricity Market (being the project described in the Memorandum of Understanding dated 23 August 2004 and made between the Authority and the Commission for Energy Regulation); and
    - (ii) ~~pursuant to any changes made to such under the~~ arrangements for the ~~purposes of~~ implementing the Integrated Single Electricity Market (I-SEM) (a joint project developed jointly between the Authority and the Commission for Energy Regulation for the all island electricity market to be compliant with the EU Target Model of the European Commission to facilitate a pan-European electricity market),

in each case whether before or after the coming into effect of this Annex and to the extent not recovered under ~~another part~~ any other provision of ~~the~~ this Licence or under the Northern Ireland Market Operator Licence or under the Transmission Owner Licence;

- (c) any reasonable and efficient costs incurred (or likely to be incurred) in Relevant Year t associated with any future divestment of the Transmission System Operator Business;
- (d) the pension costs (in Relevant Year t) of the Transmission System Operator Business to the extent not recovered under any other provision of this Licence;
- ~~(d)~~(e) amounts that become Uncollected SSS/TUoS Revenue in Relevant Year t less any amount or part of an amount treated as Uncollected SSS/TUoS Revenue in respect of a preceding Relevant Year that has been paid to the Licensee in Relevant Year t;
- ~~(e)~~(f) any reasonable and efficient costs incurred (or likely to be incurred) in Relevant Year t to finance the working capital requirements of SEMO and to the extent not recovered under ~~another part~~any provision of ~~the~~this Licence or under the Northern Ireland Market Operator Licence. The financing costs are to be charged at Average Specified Rate plus 2%.
- ~~(f)~~(g) any reasonable and efficient costs incurred (or likely to be incurred) in Relevant Year t in relation to:
- (i) the Licensee's membership of the European Network of Transmission System Operators for Electricity (ENTSO-E);
  - (ii) payments made, or required to be made, by the Licensee under and in accordance with the ENTSO-E Inter TSO Compensation Agreement;
  - (iii) the Licensee participating on a mandatory basis in Regional Security Coordination Initiatives (RSCIs) as a member of ENTSO-E.
- ~~(g)~~(h) any reasonable and efficient costs incurred in Relevant Year t in ~~respect of the~~undertaking electricity transmission network planning activities associated with a Transmission Network Pre-Construction Project; and
- ~~(h)~~(i) any other reasonable and efficient costs incurred (or likely to be incurred) by the Transmission System Operator Business which:-
- (i) are not taken into account in the setting of  $A_{TSOt}$  or  $B_{TSOt}$ ;
  - (ii) cannot reasonably be controlled by the Licensee; and
  - (iii) the Authority determines, upon an application to it by the Licensee, shall be included for the purposes of this paragraph.

8.2 In making any claim pursuant to paragraph 8.1, the Licensee shall ensure that:

- (a) it takes account of, and gives regard to, the Price Control Decision Paper; and
- (b) the costs or revenues in respect of which the claim is made are not included:
  - (i) in more than one category listed in sub-paragraphs (a) to (hi) of paragraph 8.1; and
  - (ii) in more than one claim made pursuant to paragraph 8.1.

8.3 Any claim made by the Licensee pursuant to paragraph 8.1 shall:

- (a) ~~be made~~ be submitted by the Licensee, using its best endeavours, by no later than the first day in April immediately preceding the Relevant Year in respect of which the Licensee wishes the claim to take effect;
- (b) differentiate between internal and external costs and revenues;
- (c) relate only to those costs not recovered (or recoverable) under ~~another part~~ any other provision of ~~the~~ this Licence or under the Northern Ireland Market Operator Licence or under the Transmission Owner Licence;
- (d) contain or be accompanied by all relevant details of the costs claimed and such other information as the Authority shall require in order to determine whether such costs can be recovered by the Licensee; and
- (e) require to be approved by the Authority as allowed costs for Relevant Year t and shall not become effective as such allowed costs until approved by the Authority.

8.4 Any claim for costs made by the Licensee pursuant to paragraph 8.1 received by the Authority after this paragraph 8.4 takes effect, shall be subject to the application of a de minimis threshold, by the Authority, of £40,000 (in nominal terms) in each Relevant Year for each category of costs referred to in paragraphs 8.1(a) to (ih) or such other categories of costs as determined by the Authority.

## ~~9 — Demonstrably Inefficient to apply to OPEX, CAPEX, and pass through~~

~~9.1 — For the purposes of the provisions of this Annex in which the term Demonstrably Inefficient or Wasteful Expenditure is used:~~

- ~~(a) — the Authority may issue (and from time to time update) guidance as to the manner in which the term is to be interpreted and applied;~~
- ~~(b) — the term shall be interpreted and applied in accordance with any such guidance; and~~
- ~~(c) — any determination made by the Authority entailing the interpretation and application of the term shall be accompanied by a statement of its reasons.~~

## **409 Reporting**



10.19.1 The Licensee shall, provide to the Authority all information requested in association with this Annex in such format and by such time as may be reasonably directed by the Authority.