

SONI: Article 14 (8) Notice and Licence Modification Decision

Decision on Licence Modifications to effect the CMA Cost order, Condition 8 and an amendment to the K Term.

05 June 2018



About the UR

The Utility Regulator is the independent non-ministerial government department responsible for regulating Northern Ireland's electricity, gas, water and sewerage industries and to promote the short and long-term interests of consumers.

We are not a policy-making department of government, but we make sure that the energy and water utility industries in Northern Ireland are regulated and developed within ministerial policy as set out in our statutory duties.

We are governed by a Board of Directors and are accountable to the Northern Ireland Assembly through financial and annual reporting obligations.

We are based at Queens House in the centre of Belfast. The Chief Executive leads a management team of directors representing each of the key functional areas in the organisation: Corporate Affairs; Electricity; Gas; Retail and Social; and Water. The staff team includes economists, engineers, accountants, utility specialists, legal advisors and administration professionals.

Our Mission

Value and sustainability in energy and water.

Our Vision

We will make a difference for consumers by listening, innovating and leading.

Our Values

Be a best practice regulator: transparent, consistent, proportional, accountable, and targeted.

Be a united team.

Be collaborative and co-operative.

Be professional.

Listen and explain.

Make a difference.

Act with integrity.

Abstract

This paper sets out the Utility Regulator's (UR's) decision on changes to the TSO licence held by SONI. The modifications provide clarity on SONI's maximum core SSS/TUoS revenue, following the CMA Cost Order of 30 January 2018 and implement a change to the K-term to ensure continuity between price controls.

There are two decisions required to effectively implement the CMA Cost Order:

1. Exclusion of SONI's costs incurred in relation to the CMA appeal from the 50:50 cost risk share mechanism;
2. An explicit provision for SONI to make a claim to the UR to recover from customers any fees payable by it in Relevant Year t under Condition 8 of the transmission Licence (such fees may include, among other things, UR costs relating the CMA appeal).

This decision also modifies the licence within Annex 1 paragraph 2.2 to enable the $K_{TSO,t}$ adjustment to bridge between price control periods.

Audience

This document is likely to be of interest to SONI, NIE Networks, electricity customers, other regulated companies in the energy industry, government and other statutory bodies and consumer groups with an interest in the energy industry.

Consumer impact

These modifications will give protection to Northern Ireland consumers by allocating the costs as specified in the CMA Cost Order as outlined, avoiding any over-recovery of SONI's costs relating to the CMA appeal.

Executive Summary

On 14 March 2017 the Utility Regulator (UR) published under and in accordance with Article 14(8) of the Electricity (NI) Order 1992 (the Electricity Order) its decision¹ to modify the conditions of the electricity transmission licence (referred to as the TSO Licence) held by SONI Ltd (SONI), setting SONI's allowed revenue specific to the transmission system operation business for the five-year period from October 2015 to September 2020 (the Price Control Decision).

On 12 April 2017,² SONI applied to the Competition and Markets Authority (CMA) for permission to appeal certain aspects of the Price Control Decision. The CMA granted permission on 11 May 2017 and in accordance with the statutory framework the appeal was to be determined by the CMA by 10 November 2017. On 10 November 2017 the CMA made its Final Determination³ and Order⁴ on the appeal. On the 30 January 2018 the CMA announced its Costs Order⁵ in relation to SONI's appeal and on the 1 February 2018 it published its Cost Determination⁶.

On the 9 March 2018 the UR published under and in accordance with Article 14(8) of the Electricity (NI) Order 1992 (the Electricity Order) its "Licence Modifications Decision implementing the SONI CMA Order".⁷

On the 28 March 2018 the UR published in accordance with Article 14(2) of the Electricity (NI) Order 1992 (the Electricity Order) a Notice and Licence Modification Consultation setting out the UR's proposed changes to the TSO licence held by

¹ <https://www.uregni.gov.uk/news-centre/soni-price-control-2015-2020-licence-modifications-published>

² <https://www.gov.uk/cma-cases/energy-licence-modification-appeal-soni>

³ <https://assets.publishing.service.gov.uk/media/5a09a73ce5274a0ee5a1f189/soni-niaur-final-determination.pdf>

⁴ <https://assets.publishing.service.gov.uk/media/5a05b304ed915d0ade60dadb/soni-niaur-cma-order.pdf>

⁵ https://assets.publishing.service.gov.uk/media/5a7088fb40f0b62f97b1ee75/soni_appeal_final_costs_order.pdf

⁶ <https://assets.publishing.service.gov.uk/media/5a733b70ed915d0e8e3986d7/soni-appeal-costs-determination.pdf>

⁷ <https://www.uregni.gov.uk/news-centre/licence-modification-implementing-cma-order>

SONI, in order to give protection to Northern Ireland consumers and to avoid any over-recovery from customers of SONI's costs relating to its CMA appeal.

The consultation paper⁸ set out explicit licence modifications to:

- Exclude SONI's costs incurred in relation to the CMA appeal from the 50:50 cost risk share mechanism;
- Enable SONI to submit an application to the UR for recovery of any costs incurred by SONI for fees payable under Condition 8 of its Transmission Licence; and
- An amendment was also proposed to the K term within Annex 1 the Licence which is intended to ensure that there is continuity between price controls.

The consultation on licence modifications concluded on the 27 April 2018. We received three responses which were made and not withdrawn. These were from SONI, CCNI and the Institute of Directors. The respective responses may be accessed on the UR website. We have carefully considered the consultation response and other relevant factors in this Decision paper and have set out our consideration of the consultation responses in the respective sections of this document along with our decision on relevant aspects.

⁸ <https://www.uregni.gov.uk/consultations/consultation-cma-costs-and-k-term-amendment>

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1. Background

1. SONI Ltd (SONI) is licensed as the Transmission System Operator (TSO) for Northern Ireland and is subject to a regulated price control. The SONI price control takes place in the context of increased renewable electricity generation, an evolving legislative subsidy environment and wider changing European legislative developments.
2. The UR's Final Determination⁹ on the SONI price control for the five year period from 1 October 2015 to 30 September 2020 was published on 24 February 2016 and the Article 14(8) decision to make the associated licence modifications¹⁰ was published on 14 March 2017 ('The Price Control Decision').
3. On 12 April 2017, SONI made an application to the Competition and Markets Authority (CMA), under Article 14B (3) of the Electricity Order, for permission to bring an appeal against the Price Control Decision, under Article 14B (1) of the Electricity Order. It also applied for the Price Control Decision not to have effect pending the determination of the appeal.
4. Following representations to the CMA from both SONI and the UR the CMA granted SONI permission to appeal the Price Control Decision on 11 May 2017 but did not direct that the Price Control Decision was not to have effect. The licence modifications set out in the Price Control Decision came into effect on 9 May 2017.
5. The CMA published its Final Determination¹¹ and Order¹² on 10 November 2017 and the UR is progressing with an additional work stream to give effect to the CMA's directions in respect of its Final Determination on the appeal (where Licence Modifications are appropriate). The CMA further invited representations on whether it would be appropriate to make an order for *inter partes* costs. The CMA received representations from SONI and the UR on 24 November 2017.
6. Following consideration of these representations, and the analysis of the CMA costs during the appeal process, the CMA notified the parties of its provisional determination on costs on 21 December 2017. Representations were received on 11 January 2018 from SONI, the UR and the Consumer Council (Northern Ireland) (CCNI).

⁹ <https://www.uregni.gov.uk/publications/decision-2015-2020-price-control-soni>

¹⁰ <https://www.uregni.gov.uk/news-centre/soni-price-control-2015-2020-licence-modifications-published>

¹¹ <https://assets.publishing.service.gov.uk/media/5a09a73ce5274a0ee5a1f189/soni-niaur-final-determination.pdf>

¹² <https://assets.publishing.service.gov.uk/media/5a05b304ed915d0ade60dacb/soni-niaur-cma-order.pdf>

7. On the 30 January 2018 the CMA announced its Costs Order¹³ in relation to SONI's appeal and on the 1 February 2018 it published its Cost Determination¹⁴
8. The CMA concluded that it was appropriate to make an *inter partes* order and for the UR to contribute to some portion of SONI's costs incurred in the appeal as outlined above. The CMA used its judgment in reaching a decision on the appropriate amount of such a costs order, taking into account all the circumstances of the case. The CMA's determination is also designed to guard against creating expectations that successful appellants would necessarily recover all their costs from the regulator i.e. the consumer.
9. We issued our consultation paper on 28 March 2018 which set out explicit licence modifications to:
 - Exclude SONI's costs incurred in relation to the CMA appeal from the 50:50 cost risk share mechanism.
 - Enable SONI to submit an application to the UR for recovery of any costs incurred by the SONI for fees payable under Condition 8 of its Transmission Licence.
 - An amendment was also proposed to the K term within Annex 1 of the Licence to ensure that there is continuity between price controls.
10. We received three responses to the consultation. These were from SONI, Consumer Council for Northern Ireland (CCNI) and the Institute of Directors (IOD). These responses are published alongside this paper.
11. SONI's response was in 3 parts; 1) a letter in response to paragraph 5 of the Notice under Article 14(2) of the Electricity (NI) Order 1992, 2) a letter to the UR chairman which also contained 3) SONI's response paper to the 50:50 mechanism exclusion. For the purposes of publication we have amalgamated SONI's three responses into one.
12. SONI interpreted that the amendment to Kt to bridge between price control periods could apply to different years [within price control]. Further clarity was requested on the provision of costs in respect of fees payable under Condition 8 of the licence. SONI also objected to the exclusions to the 50:50 and commented that the proposal had been advanced without a clear policy rationale.
13. SONI's response on the 50:50 exclusions can be summarized as follows:
 - (a) The UR's proposal is unjustified, disproportionate and irrational;
 - (b) SONI had a legitimate expectation that it could recover its efficiently

¹³https://assets.publishing.service.gov.uk/media/5a7088fb40f0b62f97b1ee75/soni_appeal_final_costs_order.pdf

¹⁴<https://assets.publishing.service.gov.uk/media/5a733b70ed915d0e8e3986d7/soni-appeal-costs-determination.pdf>

incurred legal costs and costs of regulatory engagement through the 50:50 risk-sharing mechanism;

- (c) The UR's proposals fail to afford equal treatment to SONI;
- (d) The proposals create a perception of bias and improper motive.

14. The Consumer Council for Northern Ireland (CCNI) in its response welcomed the UR consultation document as it aims to protect NI consumers by avoiding an over-recovery of costs by SONI relating to the CMA appeal. They also wished for further clarity on SONI's actual costs in the event that consumers may be asked to pay.

15. The Institute of Directors (IOD) commented that it is unfortunate that consumers must bear costs associated with such appeals and also regrettable that such a number of appeals have been brought against the UR to the CMA in recent years. In the interest of maintaining an environment of best practice regulation and reducing the level of regulatory risk which organisations like SONI have to bear, the IOD is of the view that the UR should review the position outlined in its consultation regarding SONI's recovery of costs for the price control appeal.

16. In preparing this decision paper, we have considered the comments we have received from SONI and others on the licence modifications and considered whether any amendment to the proposals made in our consultation paper was required.

2. Exclusion of costs incurred in relation to the CMA appeal from the 50:50 cost risk share mechanism

17. The CMA's Costs Order and Cost Determination is a decision by the CMA on the appropriate allocation of the costs relating to the appeal between the UR and SONI.

18. In reaching this decision, the CMA did not allow SONI to recover all of the costs that it had incurred in relation to the appeal. The reasons for this are clearly set out in the Costs Determination, but the key reasons in brief are as follows:

- SONI was unsuccessful on a number of grounds of appeal.
- Even on some of the grounds on which it was successful, the CMA did not accept all of the arguments put forward by SONI.
- A significant element of the costs that were incurred by SONI related to commissioning expert reports that were not particularly helpful in the context of the appeal.
- SONI's costs were significantly higher than those of the UR, and it is important that appellants spend prudently and in a proportionate manner.

19. In short, the CMA did not allow SONI to recover its costs where it had not been successful or where those costs were excessive and/or wasted. It is clear from the terms of the Costs Determination that the CMA understood that where costs have to be borne by the UR they ultimately fall to be met by consumers, and by implication that where they have to be borne by SONI they will not fall to be met by consumers (i.e. they will be met instead by the shareholders of the company).

20. In reaching its decision on costs, the CMA therefore considered which costs to be met by NI customers and which costs are to be met by the company. Our proposal was simply reflective of this CMA Decision and ensures that the costs determined as being appropriate to be borne by SONI in relation to the CMA appeal should not be passed on to NI customers. Had the CMA intended consumers to pay a higher proportion of these costs it would have allocated them to the UR.

21. In our consultation we indicated that the costs associated with a CMA referral are a specific type of cost that should fall outside the scope of the 50:50 cost risk-sharing mechanism ('the 50:50 mechanism') and the licence modification consultation proposed to exclude these costs from the 50:50 mechanism.

22. SONI submitted a separate paper on the 50:50 proposal highlighting 4 main issues that it had with the licence modifications:

- Issue 1- The UR's proposal is unjustified, disproportionate and irrational;
- Issue 2- SONI had a legitimate expectation that it could recover its efficiently incurred legal costs and costs of regulatory engagement through the 50:50 risk-sharing mechanism;
- Issue 3- The UR's proposals fail to afford equal treatment to SONI;
- Issue 4- The proposals create a perception of bias and improper motive.

23. Below we summarise each issue and UR's response in turn.

SONI Issue 1 – Unjustified, disproportionate and irrational

24. SONI stated that this proposal has been advanced without a clear policy rationale and has emerged without notice or any prior indication. It commented on three specific areas, as follows:

25. Costs incurred prior to publication of the Final Determination on the TSO Price Control - These are generally precluded from recovery under the CMA cost assessment regime. The CMA considered the costs associated with expert reports and included a portion of these in the inter partes award made in SONI's favour, but SONI did not submit for assessment any other costs incurred prior to the date of publication. Therefore there is no risk of over-recovery of costs, and no logical basis for precluding such costs from recovery under the 50:50 risk-sharing arrangements.

26. Costs incurred during the CMA appeal process which would have been incurred under "business as usual" conditions - These include costs related to the various decisions and guidance papers the UR published during the course of the appeal process, these costs were outside of SONI's control and were not solely related to the appeal process meaning there can be no risk of over-recovery of such costs.

27. Costs incurred after the CMA's Final Determination in the appeal arising from continuing engagement with the UR on the CMA's remedies - These include costs incurred by SONI after publication of the CMA's Final Determination and Order in engaging with the UR's implementation of the remedies. The CMA explicitly excluded such costs from its assessment on the basis that they should not be regarded as being incurred in relation to the appeal, and so there is no risk of over-recovery.

28. SONI also comment that it is unclear what could be categorised as a cost associated with "preparing for, bringing, or participating in" an appeal.

UR Response on Issue 1

29. In our consultation, the proposed modifications were to be made to ensure that

any costs incurred by the Licensee in Relevant Year t in connection with preparing for, bringing, or participating in its appeal to the Competition and Markets Authority by virtue of a notice of appeal dated 11 April 2017 and made under Article 14B of the Electricity Order (including any costs of the Competition and Markets Authority required to be borne by the Licensee in accordance with an order made under paragraph 12 of Schedule 5B to the Electricity Order) shall not be treated as costs incurred in respect of any costs category listed in Table A in paragraph 2.2(b)(vi) of SONI's Licence.

30. We do not accept that this lacks a clear policy rationale. On the contrary, the reasons why we proposed the change were (and are) very clear. Its purpose is to prevent NI customers having to bear any proportion of the costs of SONI in relation to grounds of appeal that were unsuccessful before the CMA, or any proportion of the costs that the CMA considered represented unnecessary, inefficient or disproportionate expenditure on the appeal.
31. By choosing not to award these costs to SONI, the CMA understood that they would not be borne by consumers but would instead be the responsibility of the company's shareholder. To allow SONI to pass any of these costs on to NI customers would be inconsistent with the reasoning, purpose and intent of the Costs Order.
32. Nor do we accept that the policy arose without notice or prior indication. SONI was aware of the proposal for some time before it went out to consultation; it was an issue that arose in discussions on the modifications made to give effect to the CMA's Final Order, and SONI saw an early draft of the proposal. The purpose of publishing the proposal for consultation was precisely to provide SONI with formal notice of the proposal and give it the opportunity to comment on our policy while it remained in a formative stage. We have very carefully considered the responses that were provided to us by SONI as well as those of other respondents.
33. We note that in focusing on three areas of cost that SONI says it would not be allowed to recover by virtue of our proposals, SONI does not draw attention to the fact that, if the proposals were not implemented, it would be able to recover from consumers costs in relation to grounds on which it lost the appeal or costs that the CMA thought were unnecessary or excessive. Instead it seeks to draw attention to other matters.
34. With regard to these three areas (as highlighted above):
 - Costs incurred prior to publication of the Final Determination on the TSO Price Control – Costs that were incurred prior to the publication of the UR's Final Determination ought not to be costs of '*preparing for, bringing or participating in*' the appeal, unless SONI was already making preparations for an appeal before the UR had even reached any of the conclusions that were subsequently appealed.

To the extent that SONI was already making such preparations at that time, those costs would not be recoverable from consumers under our

proposal, and in our considered view should not be so recoverable. It was unnecessary for any such costs to be incurred at that stage, before any decision had been made.

We note that, contrary to SONI's submission, the CMA does not apply any general rule that costs incurred before a certain point in time cannot be recovered. It made this clear in the Costs Determination. We also note that SONI did not claim any costs incurred prior to the publication of the Final Determination as being part of its appeal costs. This must mean either that any costs incurred at that stage were not concerned with preparing for the appeal (as we would expect) or alternatively that SONI understood they were so unlikely to be allowed by the CMA that it did not claim them.

In either case, we consider that costs which do relate to the preparation for the appeal but which were neither claimed from nor allowed by the CMA should properly be disallowed from recovery under the SONI price control.

- Costs incurred during the CMA appeal process which would have been incurred under "business as usual" conditions – Costs which fall into this category are not costs of '*preparing for, bringing or participating in*' the appeal, but merely costs which happen to be coincident in time with the ongoing appeal process. We do not consider that costs which would in any event have been incurred regardless of the appeal are excluded by the words of the proposed licence modification.
- Costs incurred after the CMA's Final Determination in the appeal arising from continuing engagement with the UR on the CMA's remedies – Again, costs which fall into this category are not costs of '*preparing for, bringing or participating in*' the appeal, since by definition they arise only after the appeal was concluded. We do not consider that these costs are excluded by the words of the proposed licence modification.

35. In summary, SONI has not drawn attention to the main categories of cost that are to be excluded from recovery under the proposed licence modification. Of the three categories that it has identified, two do not fall within the scope of the licence wording, and therefore would not be excluded.

36. Only one of those three categories would be excluded, and it relates to costs that the UR would not expect to have been incurred, and as to which the UR has no evidence that such costs were incurred since they were not the subject of any claim made to the CMA. To the extent that costs in preparation for the appeal were incurred at such an early stage as SONI now suggests, the UR considers that they properly fall within the scope of the exclusion that would be created by the proposed licence modifications.

SONI Issue 2 – Legitimate expectation

37. SONI stated that it had a legitimate expectation that it could recover its efficiently incurred legal costs and costs of regulatory engagement through the 50:50 risk-sharing mechanism and that it only became aware of the UR's intent to amend paragraph 2.2(c)(i) when the UR shared with SONI a draft of its licence modification decision seeking to implement the CMA Order.
38. It also stated that to introduce retrospectivity to the licence and TSO Price Control by excluding categories of costs incurred from the 50:50 risk-sharing arrangements risks undermining the incentive properties of the 50:50 risk-share.
39. SONI stated that its expectation was that the mechanism would operate for the duration of the price control. This expectation was unbroken and relied upon in the engagement with the UR concerning the price control. SONI's expectation would be breached if the proposal was to take effect.

UR Response on Issue 2

40. Legitimate expectation is a legal concept which is based on an assurance that has been given and should be honoured. While SONI says that it took legal advice on its consultation response, there is nothing in that response to explain why it considers that a legitimate expectation has arisen.
41. The UR is satisfied that there is no legitimate expectation. No assurance was ever given to SONI that it would be able to recover all or part of its costs of the appeal beyond any that were awarded to it by the CMA.
42. It is correct that there is a cost-sharing mechanism for general categories of opex that operates in the price control. However, it makes no explicit reference to the costs associated with a CMA appeal, and such costs were plainly not within the scope of those that were intended to form part of that mechanism. This is clearly implicit in the UR's Final Determination in respect of the cost allowance provided for legal and professional fees.
43. On the contrary, any company that engages in litigation, including by way of an appeal to the CMA, understands that its legal and professional costs of such an action are at its own risk. If it is successful, it can expect to recover most of its costs, though usually not all. If it is unsuccessful it cannot expect to recover its costs.
44. These are well-accepted principles, and it is generally understood that a costs award which determines the outcomes in an individual case will be made by the relevant court or tribunal (in this case the CMA) at the end of the process. In the absence of an explicit cost order in its favour a company will have to bear its own costs of the legal challenge.
45. So far as relevant to this case, there are statutory provisions which empower the CMA to make costs determinations at the end of an appeal process. SONI

made its representations to the CMA, as did the UR, and the CMA reached a considered determination which was published on its website. We do not consider that SONI had any expectation – whether expressed as a legitimate expectation in law, or otherwise – that its appeal costs would be recoverable in any way other than through that process.

46. In particular, as indicated above, to the extent that the CMA did not allow the recovery of all of SONI's costs it did so because SONI was unsuccessful on a number of grounds of appeal and because a proportion of its costs were either unnecessary or excessive. We do not consider that SONI has any basis for an expectation that costs which were disallowed on such grounds would be paid in part by NI customers under the cost-sharing mechanism.
47. The licence modification proposal is therefore, in our view, aligned with the expectations that both SONI and consumers have in relation to CMA appeals. We also regard it as clear that the CMA's understanding was the same. The proposal simply prevent SONI, because the issue was not explicitly addressed in the previous licence drafting, from being able to recover from consumers costs that the CMA concluded it should not be able to recover.

SONI Issue 3 – Equal treatment

48. SONI stated that our proposal fails to afford equal treatment to SONI. It has commented that neither the UR in relation to other regulated businesses in NI nor Ofgem in GB has proposed, let alone introduced, an explicit term to an appellant's licence to exclude any recovery of costs related to an appeal.
49. It comments that the UR is treating SONI differently to all other regulated utilities in NI and GB, to the detriment of its shareholders and without any objective justification. No equivalent licence modifications were introduced following the appeals brought under the new regime by Firmus, Northern PowerGrid or British Gas Trading.
50. SONI also comments that the UR addresses its consultation paper to NIE Networks among others. In NIE's referral to the Competition Commission of the RP5 price control, the CC determined that it was in the public interest for the external inquiry costs claimed by NIE (set at £2.8 million) to be shared equally between NIE's shareholders and its consumers.
51. SONI states that the UR's differential treatment of SONI goes against all existing precedent and, given it has arisen in the context of a contentious appeal process, effectively appears to amount to an abuse of process.

UR Response on Issue 3

52. Our proposals are in line with the CMA Costs Order and Costs Determination and past Competition Commission (CC) decisions, regarding the referral costs that NI consumers should pay to regulated companies.

53. The UR is not required to act consistently with Ofgem – a different regulator acting under different legal provisions in another jurisdiction. However, it understands that no equivalent licence modifications were introduced following the appeals brought by Northern PowerGrid and British Gas Trading for the same reason as no such modifications were made by the UR to the licence of Firmus, i.e. simply because they were not required.
54. In each of these instances the companies effectively had to bear their own costs, and no comparable 50:50 risk-share provisions applied under which part of those costs could be passed on to consumers. A modification is required to SONI's licence because it makes provision for an 'other opex' category which, if explicit clarity is not introduced, might be read (contrary to the UR's intention or to the requirements of fairness) as allowing for some irrecoverable costs of the CMA appeal to be passed onto consumers.
55. Contrary to SONI's views, the proposed licence modification should therefore ensure consistency between SONI and the other regulated utilities.
56. However, even if this were not the case, the UR would not feel bound to act consistently with any past event that, if it were repeated, would give rise to an outcome so plainly inconsistent with its principal objective and general duties. No company has an entitlement to the perpetuation of outcomes that are not aligned with those duties, and the principle of equal treatment does not require the continuation over an indefinite period of time of any given policy, where it is clear in the light of all the facts that an alternative policy is more appropriate.
57. With regard to previous CC cases, specific exclusionary licence modifications were also introduced in NI via past regulatory decisions. For example, this was the case in the NIE RP5 price control referral to the CC.
58. In that case the CC's 2014 determination explicitly considered the treatment of NIE's £2.8 million external costs relating to the referral. It decided that £1.4 million of these costs should be recoverable from customers, with the remaining £1.4 million borne by NIE's shareholders.
59. The CC also specified several cost items to be out of scope of its 50:50 cost risk sharing mechanism. One of these was the cost of external advisers incurred by NIE in relation to the CC inquiry (including but not limited to the costs of external advisors that NIE sought to recover in its submissions on its inquiry costs).¹⁵
60. Within the NIE RP5 licence modifications following the CC determination, Annex 2 of NIE's licence had the following abbreviated text;

For the purposes of this Annex, in each Regulatory Reporting Year t, the qualifying opex expenditure amount (QOEt), shall:

¹⁵https://assets.publishing.service.gov.uk/media/535a5768ed915d0fdb000003/NIE_Final_determination.pdf paragraph 19.48 (g) pages 19-10, 19-11 and 20-4.

.....
b) *exclude any amounts reasonably allocated or attributed to any of the following:*

.....
v. *costs of external advisers incurred by the Licensee in relation to the Competition Commission inquiry which resulted in the Final Determination;*
.....

61. Similarly, in its 2015 determination, the CMA decided that Bristol Water should be allowed to recover from customers £0.95 million of costs relating to the referral. The CMA then clarified that this allowance, and the actual costs incurred by Bristol Water in connection with the determination, should be excluded from the cost sharing mechanism. They state,

*“We note that.....Bristol Water receives 50% of any overspend over its totex allowance. It is not our intention that any of the costs detailed in paragraph 12.12 should be eligible for cost sharing. We consider that, in calculating performance against the totex allowances, our £0.95 million award should fall outside the definition of menu totex. The actual costs incurred by Bristol Water in connection with the determination should be treated as a disallowable cost”.*¹⁶

62. In the present case, the CMA Costs Order was specific and unambiguous. It required that the UR pay £325,000 in respect of costs reasonably incurred by SONI in connection with the appeal. It acknowledged that this was effectively a determination of the contribution that NI customers were to make to SONI's costs. Under the statutory regime governing the appeals process, this is the equivalent of previous cost sharing decisions made on CC inquiries.

63. Had the CMA considered it appropriate that NI customers should pay a higher proportion of SONI's costs associated with the appeal, the amount allocated to UR would have reflected this.

64. The UR does not consider it justifiable that SONI would expect that the amount not awarded to it under the Costs Order would be subject to the 50:50 cost-risk sharing mechanism, effectively circumventing that Order and giving rise to an outcome quite different from the one determined by the CMA.

65. We have therefore concluded that our proposed modifications are necessary to implement the CMA Decision in line with the Costs Order and to provide an appropriate level of protection for NI customers.

SONI Issue 4 – Perception of bias and improper motive

66. SONI commented that the proposal creates a perception of bias and improper motive. SONI and its shareholder are mindful that the contentious nature of the

¹⁶ See [CMA Final Determination for Bristol Water](#), p368, para 12.16.

CMA appeal process has put strain on the regulatory relationship between SONI and the UR.

67. SONI and EirGrid wish to move forward from the CMA appeal and re-institute a constructive and professional working relationship, to ensure that SONI can continue to deliver on its licence obligations in the best interests of NI consumers.
68. SONI expects the UR to exercise fairness at all times when carrying out its functions. The late advancement of these proposals, aimed solely at SONI, the original failures in the consultation process and the adversarial context in which they have arisen all mean that this proposal fails to reflect the UR's values of transparency, consistency and proportionality.

UR Response on Issue 4

69. The UR can confirm that there is neither any bias nor improper motive within its decision. The modifications are reflective of the CMA Costs Order, which is explicit and was known to SONI at the end of January 2018.
70. Prior to the publication of the Order, SONI had an opportunity to make representations to the CMA on the Draft Order. Since the publication of the Order, the UR has been transparent as to its proposals to modify the licence to ensure that SONI is not able to recover a greater proportion of its costs from consumers than the CMA was prepared to allow it.
71. The modification is consistent with the CMA Costs Order for the reasons given above. Furthermore, the CMA stated that,

“We are mindful of the need to incentivise appellants to spend prudently and in a proportionate manner in appeals.....For the reasons set out above, we have reduced the costs claimed by SONI by approximately []% to a level which we consider to be appropriate in all the circumstances.”¹⁷

72. If appeal costs which have not otherwise been recovered by SONI are subject to the 50:50 mechanism, CMA decisions on appropriate costs would not be implemented. The incentive on any future appellants to spend prudently would also be severely blunted.
73. In all of the circumstances, the UR is content that its proposals are made for proper reasons in order to ensure that the conditions of the licence are set in a manner that is consistent with its principal objective and general duties. The SONI proposal that it should be allowed to recover from consumers 50% of the costs that were disallowed by the CMA (because they related to grounds of appeal on which it was unsuccessful, or reflected unnecessary or excessive expenditure) is in the UR's view unsustainable.

¹⁷ See the [CMA Final Determination on Costs](#), p18, paras 72 & 73.

CCNI Views

74. The Consumer Council welcomed the UR consultation document as it aimed to protect NI consumers by avoiding an over-recovery of costs. They also commented that they do not see how consumers can benefit from allowing SONI to recover any appeal costs that are not included in the CMA Costs Order. They believed that the modification provided protection to consumers and a precedent for future appeals. Therefore they supported the modification.
75. CCNI also noted that the cost figures the UR has included in the consultation paper are not based on SONI's actual CMA appeal costs. The Consumer Council are concerned about this lack of consistency and transparency. They say that it is important that the regulatory process is consistent, open and transparent, and in their view this requires disclosure of information relevant to consumers, such as SONI's costs that consumers may be asked to pay. CCNI ask the UR to address and clarify this in its decision paper.

UR Response on CCNI comments

76. In our response to the CMA Draft Order, the UR was content for the amount of its legal costs to be published. We submitted to the CMA that, in the interests of transparency, SONI's legal costs should also be published as NI consumers will be paying for a proportion of those costs and should be in a position to know how that amount was arrived at. The UR also noted that in the past legal costs of both sides have been published, such as in the NIE Competition Commission referral.
77. However, the CMA chose to redact certain information in the Costs Order. The UR has maintained this position in this paper. We would have taken a different position if costs in relation to the appeal were being met by NI customers. But in circumstances in which, by virtue of the proposed licence modifications, NI customers will not be meeting any such costs, the UR does not think that it is necessary to specify the amount in question, contrary to the CMA's approach.

IOD Views

78. The Institute of Directors (IOD) made two pertinent points in their response.
- (a) Given the criticality of the service which SONI provides, it is essential that they are financeable and that the reasonable costs of the appeal are recoverable.
 - (b) In the interest of maintaining best practice regulation and reducing the level of regulatory risk which organisations like SONI have to bear, the IOD is of the view that the UR should review the position outlined in its consultation.

UR Response to IOD comments

79. The UR agrees with the comment that reasonable costs of the appeal should be recoverable. However, the amount of those reasonable costs has already been determined by the CMA. To make further provision for costs specifically rejected by the CMA would undermine this decision and be detrimental to NI consumers.
80. The UR considers that it has followed best practice regulation. This is demonstrated by the alignment with other utilities who have had to bear their own costs, and indeed with the general expectation of the position in relation to the pursuit of unsuccessful grounds of appeal and/or incurring of unnecessary or excessive professional fees. This is also supported by CMA / CC precedent in removing these costs from pain/gain mechanisms for Bristol Water and NIE respectively.
81. The way in which regulation allocates risk between companies, consumers and others is an important feature of any regulatory regime. Reducing regulatory risk may result in a material increase in allowances and risk higher electricity prices or may result in the categories of risk being passed from the company to NI consumers and businesses. No evidence has been made to present a positive case as to why NI consumers should be expected to bear this risk. The UR considers the position outlined in the consultation document and this document to be appropriate.

UR Decision on exclusion of costs incurred in relation to the CMA appeal from the 50:50 cost risk share mechanism

82. We consider it is reasonable and appropriate to exclude SONI's external costs relating to the CMA appeal from the scope of costs covered by the risk sharing mechanism. The Competition Commission ('CC') had previously made exclusion decisions from cost sharing mechanisms in regards to external referral costs for example in the NIE RP5 referral¹⁸ and in the Bristol Water Determination.
83. We have decided that the licence modification in relation to the 50:50 mechanism is consequential on the CMA Costs Order and designed to ensure that, where the CMA has decided to allocate costs to NI customers, no additional burden should fall on those customers.
84. These licence modifications ensure that NI customers only contribute £325k to SONI's external costs.
85. In calculating the annual 50:50 allowances we would expect SONI's auditors to confirm within their auditor's report to the UR that costs of '*preparing for, bringing or participating in*' the appeal have not been included in the 50:50 mechanism. This includes the identifiable submitted SONI costs that the CMA made a decision on and the £236k payable by SONI to the CMA.
86. The UR has decided to modify the SONI licence in the form of the draft as indicated in the consultation paper.

¹⁸https://assets.publishing.service.gov.uk/media/535a5768ed915d0fdb000003/NIE_Final_determination.pdf paragraph 19.48 (g) pages 19-10, 19-11 and 20-4.

3. Amendment to bridge for the K_t allocation between price control periods

87. In reviewing the licence to ensure the CMA licence modifications have the intended effect we considered a further amendment to Annex 1 necessary. This modification addresses an issue with the formulae in the current licence and in the drafting of the December 2017 CMA implementation consultation.

SONI Views on K_t allocation

88. SONI expressed the concern that, as drafted, the change in treatment of K_t in the formula – from $t-1$ in the versions of Annex 1 which would apply for $t=1$ and $t=2$, to the current licence which would apply K factors on a $t-2$ basis from $t=3$ onwards – would give rise to risk of a double count of the K factor.

89. SONI would interpret this as implying that SONI would be recovering the 2015/16 K factor in both years $t=2$ and $t=3$ of this price control, which might lead to it inadvertently and unwillingly recovering additional monies from customers as a result.

UR response and decision on K_t allocation

90. Having considered the consultation response from SONI, the UR agrees that the drafting needs to be amended in order to avoid the risk of double counting the K factor in one year of the control.

91. The purpose and effect of the proposed modification is to ensure that any over or under-recovery at the end of the 2010-2015 price control period is carried forward to K factor adjustment in the 2015-2020 price control, i.e. to create a bridge between one price control period and the next, so that there is continuity across the price controls.

92. However, a complication arises because in the 2010-2015 price control period the licence calculated K on a prior year basis (i.e. for year $t-1$) whereas in the current price control period there is a two-year lag in the calculation of the K factor (i.e. it is calculated using the $t-2$ data).

93. We agree with SONI that an adjustment needs to be made to the proposed modification to take into account the effect of this change, since otherwise the data for the penultimate year of the previous price control period would be used twice – once in the final year of that period (in relation to which it was the $t-1$ data) and once again in the first year of the current period (in relation to which it is the $t-2$ data).

94. In order to avoid this double counting, we have amended the drafting by introducing additional wording into the opening lines of paragraph 2.2(f) of Annex 1 with the effect that in the first year of the current price control period K_t will be set to zero, and in the following year it will rely on the $t-2$ data from the final year of the 2010-2015 period. After that, K_t will continue to be set by

reference to the data for each year $t-2$, drawn from the current price control period. The modification being made to the licence will reflect this change in the drafting that was consulted on.

95. For the purposes of clarity, we have also made two minor amendments;

- a. In 2.2(c)(i)(B) we have updated the sub paragraph reference to "Table A in paragraph 2.2(b)(iv)" to reflect "Table A in paragraph 2.2(b)(vi)"
- b. in sub-paragraph 2.2(f)(i) of Annex 1 to the formula for K_{TSO_t} by relocating the words '*in Relevant Year $t=3$, and subsequent Relevant Years, only*' and making minor changes to the drafting.

96. These changes are intended solely for the purpose of clarity and do not change the purpose or legal effect of the drafting that was consulted on.

4. Provision of costs in respect of fees payable under Condition 8 of the Transmission Licence within Annex 1 Paragraph 8

97. SONI may make a claim to the Authority¹⁹, under paragraph 8.1 of Annex 1 that identified costs and revenues of the licensee (whether a positive or negative amount) shall be treated as excluded SSS/TUoS costs in Relevant Year t. We proposed to modify Annex 1 of the licence paragraph 8.1 to provide an explicit provision for SONI to make a claim for recovery of costs incurred in Relevant Year t in respect of fees payable under Condition 8²⁰ of their transmission licence in that Relevant Year t.

SONI Views on fees payable under Condition 8

98. SONI commented that it is not clear why these costs would be passed through to the customers through the SSS tariffs and would welcome further clarification in relation to this.

UR response and decision on fees payable under Condition 8

99. UR costs of the CMA appeal are borne by NI customers. As such, it would be unreasonable to allocate identifiable costs to different customer categories. Therefore it is our intention to permit SONI to recover its licence fees via a Dt even when they contain costs of the UR which relate to the CMA appeal (which may include both the UR's own costs and all or a proportion of the costs that the UR has had to pay to the CMA or SONI in accordance with the CMA's Costs Order).

100. The UR has decided to implement the draft as indicated in the consultation paper.

¹⁹ In accordance with the Requirements and Guidance on Excluded SSS/TUoS Costs.

²⁰ SONI Transmission Licence - Condition 8. Payment of Fees.

5. Licence Modifications Decisions

101. The Utility Regulator has therefore decided to proceed with the making of the modifications set out in Annex 1 of the Licence to participate in the transmission of electricity held by SONI Limited as set out in the consultation paper for the 2015-2020 period.
102. The first modification excludes SONI's external costs incurred in relation to the CMA appeal from the 50:50 risk share mechanism by means of modifying paragraph 2.2(c)(i)(B).
103. The second modification modifies the licence within paragraph 2.2 to enable the K adjustment to bridge between price control periods and prevent double counting within the K adjustment.
104. The third modification modifies the licence within paragraph 8.1 to include any costs incurred by the Licensee in Relevant Year t in respect of fees payable under Condition 8 of this Licence in that Relevant Year t.
105. The modifications are highlighted in red and are in Schedule 1 of this document.
106. The effective date the licence modifications outlined in this document is 01 August 2018, subject to no appeal being received.

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

MODIFICATIONS TO THE ELECTRICITY TRANSMISSION LICENCE HELD BY SONI LIMITED

In accordance with Article 14(2) of the Electricity (Northern Ireland) Order 1992 ("the **Order**") the Northern Ireland Authority for Utility Regulation ("the **Authority**") published (on 28 March 2018) a notice of its intention to modify the conditions of the electricity transmission licence ("the **Licence**") held by SONI Limited ("the **Licensee**").

In accordance with Article 14(5) of the Order the Authority has considered representations duly made to it and has decided to proceed with the making of certain modifications to 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 has decided to proceed with the making of modifications to Annex 1 of the electricity transmission licence (the "**Licence**") held by SONI Limited (the "**Licensee**")
2. On 28 March 2018 the Authority published a notice and an accompanying consultation paper²¹ (together the "**Consultation Notice**") stating that it intended to modify the Licence, and stating the reasons for and effect of the modifications.
3. The purpose of the Consultation Notice was to bring the proposed modifications to the attention of the Licensee and other persons likely to be affected by them, and to invite representations or objections in connection thereto.

²¹ <https://www.uregni.gov.uk/consultations/consultation-cma-costs-and-k-term-amendment>

4. The Authority received three responses which were made and not withdrawn. These were from the Licensee, the Consumer Council Northern Ireland and the Institute of Directors. The Authority has taken into account the representations made therein, and made amendments to the proposed modifications where it considers it appropriate to do so.
5. The Authority has summarised the representations received, set out how it has taken account of them and (if appropriate) its response to them, and described the changes made to the modifications proposed in the notice of 28 March 2018 in its paper entitled "*SONI Licence Modifications Decision to effect the CMA Cost order, Condition 8 and an amendment to the K Term*" published on 31 May 2018 together with this notice (the "**Decision Paper**").
6. The effect of the proposed modifications to the Licence will be to exclude SONI's costs incurred in relation to the CMA appeal from the 50:50 risk share mechanism, to include fees payable under Condition 8 of its Transmission licence specifically within its D_t term and to modify the licence to enable the K_t provisions to make a bridge between the previous price control and this one.
7. The reasons why the Authority proposed to make Article 14(8) modifications were set out fully in the Consultation Notice, and relate to changes which are consequential on the CMA's Final Determination on the SONI TSO amount for 1 October 2015 to 30 September 2020 which was published on 10 November 2017²² and the CMA Costs Order²³ which was published on 30 January 2018.
8. The changes made to the proposed modifications, together with the reasons for those changes, are described in the Decision Paper. The Authority's reasons for making the modifications are otherwise the same as those which were set out in the Consultation Notice, as supplemented by the Decision Paper.
9. The modifications are shown in the new version of 'Annex 1 Charge Restrictions' of the Licence and are set out (and shown in mark-up form) in the Schedule to this notice.
10. The modifications will take effect from 01 August 2018.
11. 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.

²² <https://www.gov.uk/cma-cases/energy-licence-modification-appeal-soni>

²³ https://assets.publishing.service.gov.uk/media/5a7088fb40f0b62f97b1ee75/soni_appeal_final_costs_order.pdf

12. A copy of the modifications 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

13. Dated this 5th day of June 2018.

Jenny Pyper

A handwritten signature in black ink, appearing to read 'Jenny Pyper', with a stylized flourish at the end.

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 - SONI Transmission Licence - ANNEX 1 Charge Restrictions

ANNEX 1 Charge Restrictions

1 Definitions

1.1 In this Annex:

Achieved DBC	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.
Annual Out-turn Report	has the meaning given to it in paragraph 1 of Condition 39.
Applicable Exchange Rate	means the annual average exchange rate for the conversion of euro into sterling as published by Thomson Reuters.
Average Specified Rate	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.
Demonstrably Inefficient or Wasteful Expenditure	means expenditure which the Authority has (giving the reasons for its decision) determined 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.
Dispatch Balancing Costs	means costs relating to or incurred in respect of: <ul style="list-style-type: none"> (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;

	<p>(b) the management of Energy Imbalances;</p> <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>
Energy Imbalances	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.
Ex-Ante DBC Target	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.
Ex-Post DBC Target	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.
Ex-Post Adjustment	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.
Imperfection Charge	has the meaning given to it in the Single Electricity Market Trading and Settlement Code.
Legal Requirement	means, in relation to the Licensee, any of the following: <p>(a) any enactment to the extent that it applies to the Licensee;</p> <p>(b) any regulation made by the Council or the</p>

	<p>Commission of the European 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;</p> <p>(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;</p> <p>(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.</p>
Maximum Regulated SSS/TUoS Revenue	means the revenue calculated in accordance with the formula in paragraph 2 of this Annex.
Moyle Interconnector Collection Agency Agreement	has the meaning given to that expression in Condition 37.
Other System Charges	has the meaning given to it in the Single Electricity Market Trading and Settlement Code.
Permitted One-Year Percentage	means 4 per cent of the Maximum Regulated SSS/TUoS Revenue.
Permitted Three-Year Percentage	means 5 per cent of the Maximum Regulated SSS/TUoS Revenue in the second of the Relevant Years.
Price Control Decision Paper	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 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 further decision paper on the same subject.

Quantity Entering the Total System	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).
Regulated SSS/TUoS Revenue	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.
Relevant Change of Law	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).
Relevant Year	means a financial year commencing on 1 October and concluding 30 September.
Relevant Year t	means that Relevant Year for the purposes of which any calculation falls to be made; " Relevant Year t - 1 " means the Relevant Year preceding Relevant Year t and similar expressions shall be construed accordingly.
SEM Decision Paper	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".
SO Interconnector Trade	has the meaning given to it in the Single Electricity Market Trading and Settlement Code.
SSS/TUoS Charge(s)	means the charges for System Support Services and for use of the All-Island Transmission Networks as provided for under Condition 30.
SSS/TUoS Charge Restriction Condition	means this Annex as from time to time modified or replaced in accordance with its own terms or pursuant to any enactment.
Testing Charges	has the meaning given to it in the Single Electricity Market Trading and Settlement Code.
Transmission Network Pre-construction Project	means a transmission network project (a) identified, by the Licensee or the Transmission Owner, as a project which is necessary for the

	<p>purposes of developing the transmission system;</p> <p>(b) in respect of which the Licensee is, as the Transmission System Operator, responsible for carrying out activities required to progress the project from the conceptual design stage to, but not including, the construction stage; and</p> <p>(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.</p>
Uncollected SSS/TUoS Revenue	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).
Uninstructed Imbalance	has the meaning given to it in the Single Electricity Market Trading and Settlement Code.
Unit	means a kilowatt hour.

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

Relevant Year t	Relevant Year
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_{TSO_t}), 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:

$$M_{TSO_t} = A_{TSO_t} + B_{TSO_t} - BI_t + D_{TSO_t} + Q_t + K_{TSO_t} + INCENT_t$$

where:

- (a) A_{TSO_t} 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 ;

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 any other provision of this Licence or under the Northern Ireland Market Operator Licence;

- (b) B_{TSO_t} 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:

Relevant Year t	1	2	3	4	5
	£m	£m	£m	£m	£m
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	1.783	1.629	1.664
Pension Deficit	0.189	0.189	0.57	0.57	0.57
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:

Relevant Year t	1	2	3	4	5
	£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:

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

where:

C_{TSO_t} 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, but subject to the following –

(A) ~~minus~~ that part (if any) of such actual costs that the Authority determines to be Demonstrably Inefficient or Wasteful Expenditure shall be deducted;

~~(A)~~(B) any costs incurred by the Licensee in Relevant Year t in connection with preparing for, bringing, or participating in its appeal to the Competition and Markets Authority by virtue of a notice of appeal dated 11 April 2017 and made under Article 14B of the Electricity Order (including any costs of the Competition and Markets Authority required to be borne by the Licensee in accordance with an order made under paragraph 12 of Schedule 5B to the Electricity Order) shall not be treated as costs incurred in respect of any costs category listed in Table A in paragraph 2.2(b)(vi) of this Annex.

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 paragraph 6.1 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.

(f) K_{TSOt} means the correction factor (whether a positive or negative number) to be applied from year t=2 onwards to the maximum core SSS/TUoS revenue in Relevant Year t, so that in year t=1, K_{TSOt} shall be equal to zero, and in year t=2 and all subsequent Relevant Years K_{TSOt} shall be derived using the following formula:

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

where:

(i) F_{TSOt-2} means:

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

(subject, in Relevant Year t = 3 and subsequent Relevant Years only, to the deductions specified in (B) and (C) below)

minus

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

minus

~~(B)~~(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).

and for the purpose of calculating the value of K_{TSO_t} in Relevant Year t=-2, any reference in this paragraph to a term having a value in Relevant Year t-2 shall be treated as a reference to the value that was attributable to the corresponding term in this Annex under the provisions of this Annex as they were in force on the last day of that Relevant Year t-2.

(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
Average RAB Total	7.457	5.738	5.208	6.218	5.486

(b) WACC_t 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 1 month prior to the 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_{TSO_t} 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, 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 ,

- (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 ;
 - (ii) 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 to it by the Licensee asking it to do so, determine that there has been, or is likely to be, a Relevant Change of 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 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 of Law had not taken place, give effect to that determination by also determining, and notifying the Licensee of, an amount (whether a positive or negative figure) that is an allowed amount for change of law, for the purposes of calculating D_{TSO_t} in accordance with paragraph 2.2(d) of this Annex, for each Relevant Year t specified in the Authority's notification.
- 6.3 In determining the matters provided for in paragraphs 6.1 and 6.2, 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 of 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 of Law; and
- (d) any other circumstances relevant to the case.

6.4 Where the Licensee requests the Authority to make a determination pursuant to paragraph 6.1, the request shall:

- (a) unless the Authority otherwise consents, be made no later than the first day in the April immediately preceding the first Relevant Year in respect of which the Licensee would (if the Authority were to make a determination pursuant to paragraph 6.1) want the Authority to determine an allowed amount for change of law under paragraph 6.2; and
- (b) 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 may request and require to be provided by the Licensee for the purposes of its consideration of the request.

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 any other provision of 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) under the arrangements 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 any other provision of 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;
- (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;
- (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 any provision of this Licence or under the Northern Ireland Market Operator Licence. The financing costs are to be charged at Average Specified Rate plus 2%.
- (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.

(h) any costs incurred by the Licensee in Relevant Year t in respect of fees payable under Condition 8 of this Licence in that Relevant Year;

~~(h)~~(i) any reasonable and efficient costs incurred in Relevant Year t in 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_{TSO_t} or B_{TSO_t} ;
- (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 (i) 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 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 any other provision of 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 (i) or such other categories of costs as determined by the Authority.

9 Reporting

9.1 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.