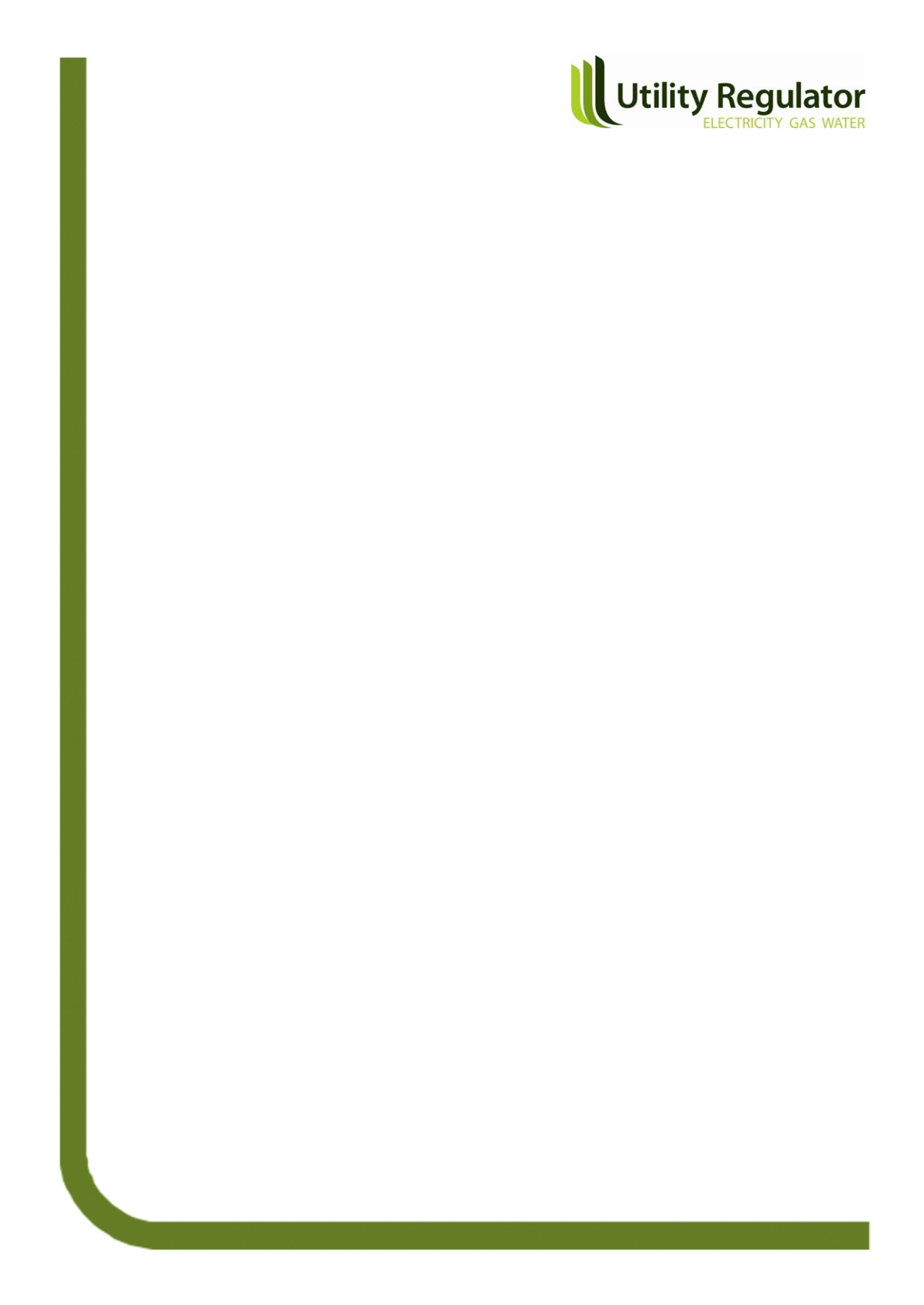


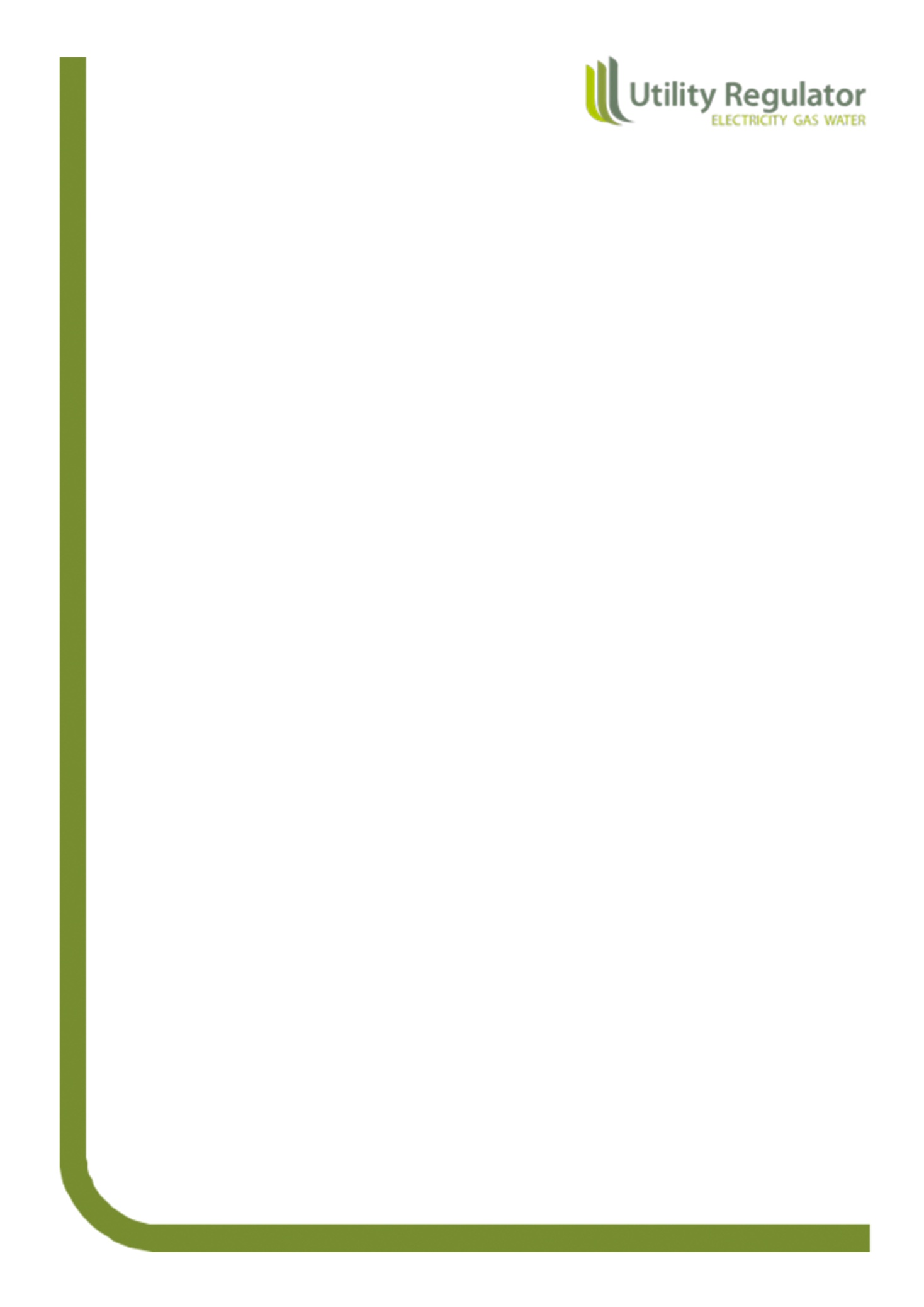
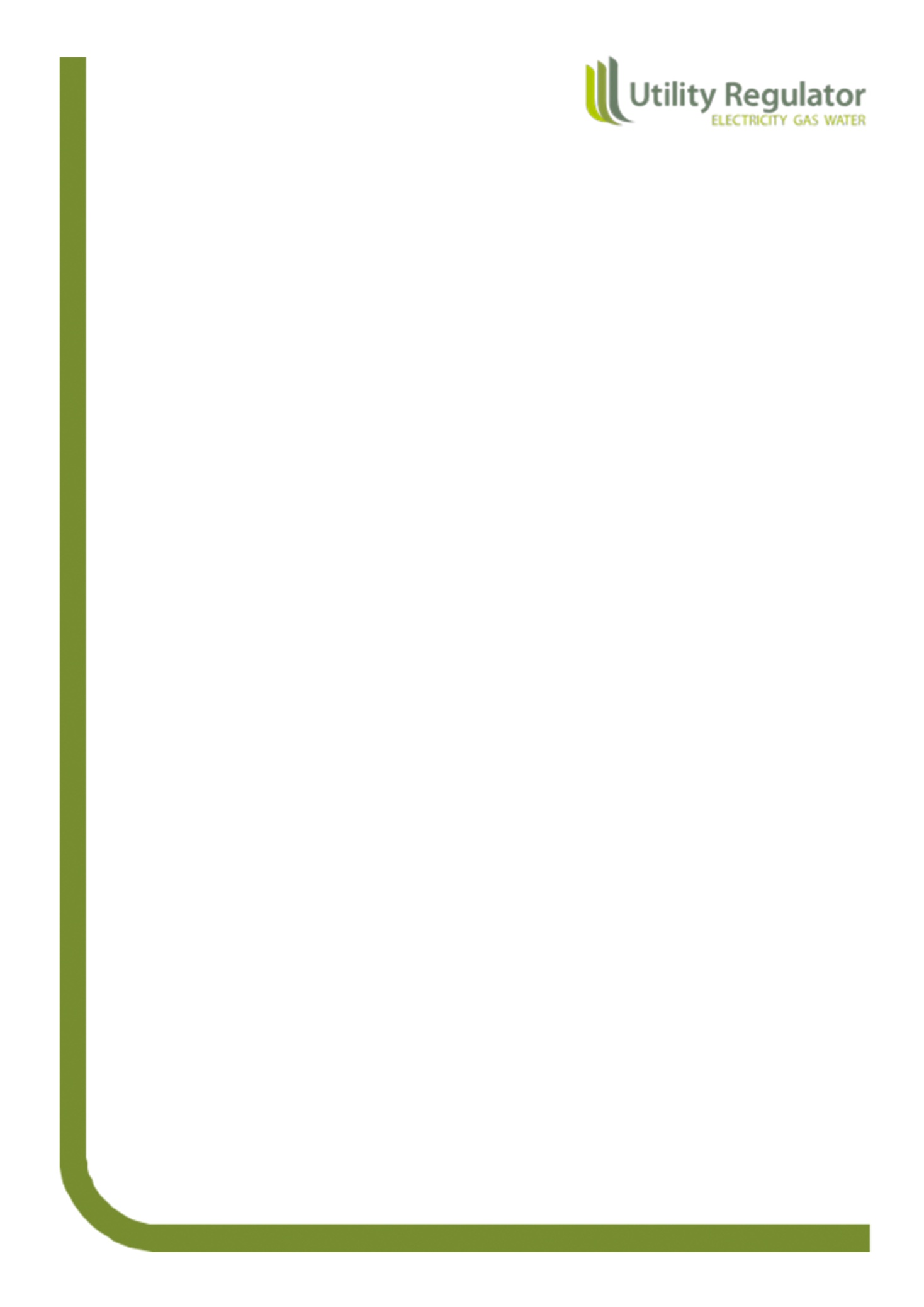


**Decision on Modifications to the SONI Market Operator Licence and SONI Transmission System Operator Licence, necessitated to implement the Integrated Single Electricity Market**

**(I-SEM)**

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10 March 2017

**About the Utility Regulator**

Value and sustainability in energy and water.

Our Mission

The Utility Regulator is the independent non-ministerial government department responsible for regulating Northern Ireland’s electricity, gas, water and sewerage industries, 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.

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.

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

Our Values

Our Vision

**Abstract**

The first in a series of licence modifications to necessitate the implementation of I-SEM were made to the SONI Transmission System Operator (TSO) and Market Operator (MO) licences were consulted on in April 2016, with a decision published on 1 July 2016. A second tranche of licence modifications were published for consultation on 16 December 2016; the decision for that process is the subject of this document.

In response to representations made by respondents to the statutory consultation, we have made some minor editorial changes to the drafting of some conditions which do not change the reasons for or effects of the modifications which were consulted on. We have also amended some of the drafting of conditions which, while changing the effect of the condition, provides clarity and is in response to suggestions made by SONI themselves.

**Audience**

This document is most likely to be of interest to the SONI System Operator and SONI Market Operator. Later consultations will appeal to a wider audience as they will focus on remaining System Operator, Generator, Supplier and Interconnector licence conditions which will need to be modified to facilitate I-SEM implementation*.*

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| **Refer to separate publications for:**  Annex 1 (SONI TSO licence modifications - mark-up to show changes since consultation)  Annex 2 (SONI MO licence modifications – mark-up to show changes since consultation)  Annex 3 (SONI TSO licence – to take effect 5 May 2017)  Annex 4 (SONI MO licence – to take effect 5 May 2017) | |

1 Introduction

**BACKGROUND**

The Integrated Single Electricity Market (I-SEM) is due to go-live on 23 May 2018 and will more fully facilitate coupling with the electricity markets in the rest of Europe. The Utility Regulator (UR) in Northern Ireland and the Commission for Energy Regulation (CER) in Ireland, referred to as the Regulatory Authorities (RAs), have been working alongside EirGrid plc and SONI Ltd to develop the I-SEM, under the governance of the SEM Committee (SEMC).

The RAs have worked on a number of I-SEM related policy decisions regarding:

* I-SEM Roles and Responsibilities
* Energy Trading Arrangements
* Capacity Remuneration Mechanism
* Market Power
* Financial Transmission Rights

In addition to this, an information paper on ‘Mitigation measures for potential conflicts of interest within the EirGrid group’ (SEM-16-041) was published in July 2016. While the measures proposed in that information paper are deemed necessary by the SEM Committee, they were not driven specifically by the I-SEM design, nor are they necessary to enable I-SEM go-live; they were instead introduced at this juncture because the I-SEM programme provided an opportunity to carry out a governance review of I-SEM and DS3 roles assigned within the EirGrid group.

The policy decisions noted in the information paper above will be implemented via a combination of licence condition modifications, market rules (including the Trading & Settlement Code, the NEMO Exchange Rules, and the Capacity Market Code) and other practical means which will be overseen by the RAs and reported to stakeholders via new compliance requirements.

A dedicated ‘Governance & Licensing’ workstream was established within the RAs in 2015, and the UR and CER commenced a licence modification process, publishing the first in a series of licence modification consultations on 20 April 2016. The initial focus of the work has been on the EirGrid plc and SONI Ltd Transmission System Operator (TSO) and Market Operator (MO) licences. In line with Article 14 of the Northern Ireland Electricity Order 1992 and sections 19 and 20 of the Electricity Regulation Act (1999), each respective regulator consulted on proposed licence modifications to the SONI Ltd and EirGrid plc Transmission System Operator (TSO) and Market Operator (MO) licences in their jurisdiction. The decision for the April consultation was published on 1 July 2016[[1]](#footnote-1), with the licence condition modifications taking effect on 1 September 2016. These modifications included a new Capacity Market condition in the TSO licences, re-introduction of a Transition condition for I-SEM in both the TSO and MO licences, and a necessary editorial change to the Grid Code condition in the SONI TSO licence only.

A second consultation relating to the EirGrid plc and SONI Ltd Transmission System Operator (TSO) and Market Operator (MO) licence conditions was published on 16 December 2016, closing on 23 January 2017.

Two responses were received to the UR’s December consultation and three responses were received to the CER’s notice of modifications (one of which was marked ‘strictly confidential’).

Respondents to the Utility Regulator’s consultation in Northern Ireland were:

* SONI Ltd
* Bord Gais Energy

The two responses to the UR are published separately alongside this decision paper for reference. The CER publishes a separate decision for the EirGrid plc TSO and MO licences.

We would like to thank all respondents for their informative comments and feedback. In this decision paper, we set out a summary of the responses received alongside our reasoning and decision on each condition. The UR does not consider it necessary to provide full responses to some representations in this decision because those responses will be responded to in other workstreams, projects or future phases of the I-SEM project. The UR [[2]](#footnote-2) is publishing the licence modifications, acting on behalf of the SEMC, in Annexes 1 and 2 to this decision paper. The modifications will take effect accordingly and in line with the relevant statutory legislation.[[3]](#footnote-3)

**PURPOSE OF PAPER**

This decision paper outlines UR decisions which give effect to SEMC policy on further necessary licence modifications required for the implementation of I-SEM to the SONI Ltd TSO and MO licences, beyond those which took effect on 1 September 2016.

For ease of reference, Chapters 3 and 4 (which outline our decision on the proposed modifications) are presented as follows:

* High level summary of responses, outlining the key themes and an indication of acceptance by the UR;
* A summary of general comments or queries made by respondents which the UR has provided an explanatory counter-response or clarification for;
* A decision position on each individual licence condition modification which was consulted on in the statutory notice of 16 December 2016. The licence modifications, showing a mark-up of changes from consultation to decision, can be found in Annexes 1 and 2. Final versions of the licences which will take effect on 28 April 2017 are located in Annexes 3 and 4.

**APPROACH TO CONSIDERATION OF REPSONSES**

The UR and CER have collaboratively considered all responses to each respective consultation carefully in the interests of policy-fit, consistency and alignment across the two jurisdictions. The UR’s consultation of 16 December 2016 focussed predominantly on modifications necessary for I-SEM implementation; other ongoing work programmes regarding DS3 and regulated price controls are considered outside the scope of I-SEM implementation and not necessary for I-SEM go-live.

A number of responses focussed on concerns around how mitigation measures for potential conflicts of interest within the EirGrid Group were being applied. While the SEMC was keen to implement some of the “conflicts of interest” mitigation measures in a timely fashion, the licences are not the appropriate fora to implement all policy positions. The RAs analysed each concern and, given the interest in this area, has provided a response in Chapter 2 of this document.

For many of the licence modifications, the UR has accepted suggested amendments to the licence modifications from respondents where they are minor editorial changes, sensible and helpful amendments to assist with clarification or interpretation, or where they aid understanding of practical arrangements and day-to-day operations.

Other suggested additions or amendments to the existing licence conditions which were not subject to the consultation published on 16 December will not be modified within this decision; this would be contrary to statutory process. The exceptions to this are where SONI have proposed amendments themselves which clarify their obligations but could be viewed as changing the effect of the original modifications by widening the scope.

The reasons and effects for the modifications to the SONI TSO and MO licences remain largely unchanged from those published during the consultation phase, and highlighted in the statutory notices published on 16 December 2016[[4]](#footnote-4). Where the UR is of the view that an effect has changed by the acceptance of a suggestion from SONI, an explanation is provided in the paper.

2 Mitigation measures for potential conflicts of interest in the EirGrid Group

The SEMC published an information paper (SEM-16-041) entitled ‘I-SEM and DS3: Information paper – Mitigation measures for potential conflicts of interest in the EirGrid Group’ in July 2016[[5]](#footnote-5). This was in response to stakeholder concerns about potential conflicts between I-SEM roles and other activities carried out within the EirGrid group, particularly in relation to:

* The ability to favour interconnection that EirGrid may own, be developing or wish to develop; and
* The ability to excessively influence the design of detailed market rules to suit the interest of its system operation responsibilities.

The information paper outlined the SEMC’s position on a set of measures that the RAs could employ to mitigate potential conflicts of interest within the EirGrid Group. It also acknowledged that the DS3 framework is at an earlier stage of development than the I-SEM programme so any further mitigation measures in light of the DS3 project would be reviewed at a later date.

The mitigation measures proposed in SEM-16-041 cover both governance and operational aspects of the EirGrid businesses.  Some of the governance-focussed mitigation measures will be implemented via means other than the licences. For example, the SEMC recommended changes to acknowledge stakeholder concerns in relation to the Board membership of the EirGrid plc/ SONI Ltd TSOs and the East West Interconnector.

Such changes would mean that:

* The Chair of the EIL Board will no longer also be on the SONI Ltd (TSO) Board. The aim of this change is to help to alleviate any concerns regarding potential conflicts of interest on decisions made by the TSO and Interconnector businesses.
* The CEO of EirGrid plc will no longer chair the SONI Ltd Board. This will help to instil a sense of independence of SONI Ltd from EirGrid plc. SONI Ltd can operate its business separately from EirGrid plc. (while recognising that there is a need for the company to co-operate to support the efficient and effective functioning of the SEM/ I-SEM).
* The Chair of the SONI Ltd Board will not be a member of the EirGrid plc Board and the majority of the SONI Ltd Board will no longer consist of EirGrid employees. This will help to create a more NI-focussed Board for SONI Ltd.

The SEMC also stipulated that a clear protocol should apply to the EirGrid CEO and CFO in respect to business being discussed at EIL which relates to any other parts of the EirGrid group on which either of them serve as Board members. Additionally, changes to the SONI Ltd Board were sought by the Utility Regulator to reflect the NI network planning responsibilities of SONI following certification.

It is not the intention of the RAs to introduce any licence conditions around board membership of any of the EirGrid group entities, but the RAs can instead confirm that the agreement reached between the RAs and EirGrid Group regarding the above changes to board membership have been implemented by EirGrid Group.

Bord Gais Energy proposed the introduction of a ‘supervisory’ board (which would not be a board of directors), independent of the EirGrid group board. While the RAs understand the logic behind this suggestion, the changes at board level which have recently been implemented will be monitored by the SEMC to review the effectiveness of such changes. Should any further more stringent measures be required, a ‘Day 2’ proposal will be considered.

Bord Gais Energy also suggested that condition 15 of the SONI TSO licence (which relates to Non-Discrimination) be amended in line with SEM-16-041 which refers to the need for licences to clarify requirements to facilitate competition to cover all areas of competition and between all types of asset. SONI is subject to a statutory duty to facilitate competition, and for this reason the licence does not need to be modified.

While implementation of mitigation measures against the potential for conflicts of interest is important, the I-SEM programme is not driving the conflicts of interest review, nor are the mitigation measures necessary to allow I-SEM go-live. The RAs continue to work with the EirGrid group to ensure that mitigation measures are being implemented and are of the view that many of the measures are primarily driven by good regulatory practice (e.g. transparency, industry engagement) which have the spin-off benefits of helping to mitigate any perceived conflicts of interest.

Further clarification on modifications regarding the ‘Compliance and Assurance Officer’ condition and the ‘Restriction on the Use of Certain Information’ condition within the SONI TSO licences is provided in Chapter 3.

3 Decision on SONI licence modifications required to TSO and MO licences for I-SEM implementation

**HIGH LEVEL SUMMARY OF RESPONSES**

SONI Ltd welcomed the proposed modifications to their TSO licence in general. The majority of SONI’s comments focussed on refining details of the drafting of the licence conditions, essentially to encourage clarification where needed. Where a change to the effect of any licence condition is proposed, the UR will in most cases not be accepting proposed amendments because such changes would necessitate a further consultation via the statutory licence modification consultation process in NI. However, a small number of amendments which could be viewed as changing the effect of some conditions have been accepted where the suggestions are sensible and have been made by the licence holder to aid clarification and interpretation.

Bord Gais Energy’s response outlined a number of detailed drafting suggestions for the Central Dispatch and Merit Order, the Balancing Market Principles Statement and the Compliance & Assurance Officer (and related) conditions. While a number of the suggestions are helpful, the UR publishes a decision within this document of only the licence modifications which were subject to statutory consultation; any other ‘new’ suggestions or modifications which did not form part of the December consultation may be consulted on at a later date.

**RESPONSES to individual licence conditions**

This section of the decision follows the same order as the conditions consulted on, ie. ‘new’ conditions are considered first, followed by existing conditions in the licence where modifications were proposed.

* 1. condition 22a: cENTRAL dISPATCH AND mERIT oRDER (to be entitled ‘scheduling and dispatch’)

The objectives of the scheduling and dispatch process for I-SEM are different to those in the current SEM. While agreeing with the need for a new condition to reflect the change in the objectives, SONI proposed some changes to the drafting of the new condition, to ensure that it aligns with the draft Grid Code which is currently being consulted on and to ensure that it does not pre-empt policy decisions that will need to be taken in connection with the draft Electricity Balancing Guideline, thereby aiding overall workability of the condition.

SONI also proposed a change to the drafting of the condition to accommodate the outcome of ongoing work on the policy parameters which will be employed to facilitate the ex-ante market, but wanted to ensure that the governance arrangements as proposed are retained. Bord Gais Energy suggested some amendments to tighten the wording of the objectives and to prescribe timing around constraints and the scheduling and dispatch audit.

Suggested amendments to the condition are summarised as follows:

1. The title of the condition should be changed to “Scheduling and Dispatch” rather than “Central Dispatch and Merit Order”. SONI suggested this amendment since an assessment will be required by the TSOs/ RAs to determine if the I-SEM arrangements fit closer with “central dispatch” or “self-dispatch”, so it would therefore be prudent to amend the title of the condition so as not to prejudice the outcome of this assessment.
2. Amend paragraph 3(a) so that the words ‘as far as practical’ are included in terms of the merit order minimising the cost of diverging from physical notifications; this would be consistent with the wording of the objectives referred to in paragraphs 3(b) and 3(c);
3. SONI proposed that the wording of paragraph 5 should be updated to reflect the scheduling of interconnector flows by the ex-ante markets introduced to comply with the Capacity Allocation and Congestion Management (CACM) guidelines, interim intra-day arrangements and possible exchanges of energy through mechanisms aligned with the Guideline on Electricity Balancing and any of the other Network Codes once finalised. Bord Gais Energy also suggest that paragraph 5 of the condition be worded with reference to ‘flows’ of electricity rather than exports of electricity.
4. Rather than being prescriptive, SONI suggest that the definitions of Long Notice Adjustment Factor (LNAF) and System Imbalance Flattening Factor (SSIF) should be removed, and instead be acknowledged within the proposed definition for ‘scheduling and dispatch parameters’ as possible policy parameters. This request is because the scheduling and dispatch systems already include a large number of technical parameters that fundamentally differ in purpose and origin from LNAF and SSIF. SONI Ltd also commented that the governance process in paragraph 7 of the condition should not refer explicitly to any particular parameter to allow the governance process to operate most effectively.
5. Bord Gais Energy suggest that the definition of ‘scheduling and dispatch parameters’ be amended to read “means the parameters to be used in the Licensee’s scheduling and dispatch support systems which shall be designed to defer, (with exceptions only related to system safety and security), central dispatch instructions to enable the maximum use by participants of the Ex-Ante Markets and shall include a Long Notice Adjustment Factor and a System Imbalance Flattening Factor”. Bord Gais Energy consider the current drafting too broad.
6. SONI also suggest that the definition of ‘non-energy actions’ be modified to acknowledge constraints on more than just the transmission system. And to incorporate actions taken to facilitate priority dispatch and to meet other statutory requirements such as dispatch to ensure maximum cross-zonal capacity is maintained.
7. An amendment to the definition of ‘SEM Generation’ is also suggested by SONI which, while not I-SEM specific, will allow the TSOs to schedule and dispatch more than just generating units if required in future.
8. SONI suggest to include ‘relevant legislation’ in paragraph 5(i) to widen the scope of the factors (in addition to the relevant Grid Codes and any arrangements for the dispatch of renewable generators) which SONI should take into account when carrying out its functions under paragraph 4 of the condition.

After consideration of these suggestions, the UR has decided to:

1. Amend the title of the condition to “Scheduling and Dispatch” in line with SONI’s reasoning;
2. Retain the wording of paragraph 3(a) so that the words ‘as far as practical’ are not included. It is the UR’s view that such words would reduce the importance of this objective;
3. Amend paragraph 5(f) of the condition to acknowledge ‘flows’ of electricity across any Interconnector, to allow consideration of imports as well as exports (but the UR/CER does not propose to accept extended wording to paragraph 5(f) referring to the ex-ante trading arrangements or other mechanisms in compliance with the Network Codes) to allow for consideration of imports as well as exports;
4. Retain the definitions of LNAF and SSIF in paragraph 11 because they will be referenced in paragraph 6 as potential policy parameters;
5. Not amend the definition of ‘scheduling and dispatch parameters’ to acknowledge exceptions relating to system safety and security. It is the UR’s view that including any exceptions would be too prescriptive;
6. Amend the definition of ‘non-energy actions’ to read: ‘means dispatch instructions ~~issued with the intent of~~ **categorised through the ex-post market systems as** resolving **system security** constraints ~~in the transmission system~~ **and meeting other statutory requirements** rather than balancing energy between demand and generation’ for the reason provided by SONI;
7. Amend the definition of ‘SEM generation’ so that the definition is entitled ‘SEM Units’ instead, and so that the definition includes Demand Side Units and Systems Service providers as well. The amendment to this definition is extended throughout the condition where referenced in paragraphs 1, 2, 4, and 5.
8. Accept SONI’s suggestion that ‘relevant legislation’ should be included within paragraph 5(i) as this provides a broader and realistic list of factors to take into consideration.

In addition to the suggested changes outlined above, Bord Gais Energy propose that the condition be amended at paragraph 3 as follows: “…The merit order so established ~~shall take account of~~ shall meet the following objectives:…” and that a new sub-paragraph be added to include an objective of ‘minimising the time in advance that early non-energy actions are taken’ to allow market participants to have as much scope as possible to resolve imbalances without TSO intervention before Gate Closure 2. The UR deems the first proposed change unnecessary as it does not add to the effect of the condition.

SONI has also asked for clarity from the RAs on the scope and timetable for the audit of the scheduling and dispatch process which is stipulated in paragraph 9 of the condition, and base this on the assumption that revenues can be recovered for carrying out this task. A terms of reference and timeline for the audit will be provided in due course. Bord Gais Energy suggest that paragraph 9 of the condition specifies that a periodic audit be carried out ‘at least once annually’. The RAs are of the view that the wording of paragraph 9 is robust enough to allow for an audit at any time the RAs deem necessary, but will take the views of Bord Gais Energy into consideration when deciding on the frequency, audit period, process and timetable for the audit.

A decision on the drafting of the new ‘Scheduling and Dispatch’ condition (previously entitled ‘Central Dispatch and Merit Order’ condition) can be viewed in Annex 1 (Condition 22A).

* 1. CONDITION 22B: BALANCING MARKET PRINCIPLES STATEMENT

This is a proposed new condition to the TSO licences; a consultation on the Balancing Market Principles Statement (BMPS) Terms of Reference was published on 26 May 2016.

The BMPS licence condition will:

* Require the TSO to prepare the BMPS (in accordance with the TOR) and publish it following approval;
* Enable the TSO to propose changes to the BMPS in accordance with a specified procedure which will ensure that market participants are given an opportunity to submit representations;
* Require the TSO to ensure that the BMPS is an accurate statement of the scheduling and dispatch process and report exceptions against it.

While generally content with the proposed wording of the BMPS licence condition, SONI suggested that additional wording be placed in paragraph 3 of the condition so that primacy is given to documents such as the Grid Code and Trading and Settlement Code. The UR agrees that this additional wording clarifies (rather than changes the effect of) the requirements of the condition, since the BMPS is essentially an additional reference document which is an extension of the Grid Code and TSC. The wording of paragraph 3 shall be amended (with additional wording noted in bold for ease of reference) to read ‘The Licensee shall ensure that, following updates **to obligations on the Licensee and/ or the Licensee’s associated operational processes** and in accordance with paragraphs 5 and 6, the Balancing Market Principles Statement is as accurate and up-to-date a description of the scheduling and dispatch process as is practicable’.

Bord Gais Energy requests that stronger wording be added to paragraph 1 of the condition to make it clear that the BMPS should ‘accurately and transparently’ describe the TSOs’ scheduling and dispatch process for the balancing market. While the UR understands the intention behind this proposal, we do not find it necessary to add these additional words as there is currently no ambiguity around the wording as is. An obligation to describe the scheduling and dispatch process inherently means that the description should be accurate. Bord Gais Energy also suggest that version control be specified in paragraph 2 so that any BMPS updates are made known to market participants as early as possible on their update and entry into force given the impact of any potential changes. The RAs are in agreement with Bord Gais Energy’s suggestion to number and date the versions of the BMPS to save any confusion when referencing; however, the RAs are not of the view that this needs to be prescribed within the licence but rather will take this request into account from a practical point of view on implementation. Bord Gais Energy propose that the BMPS should be specified as being published in paragraph 3; this is already specified in paragraph 2 and the RAs are not of the view that there is any ambiguity within paragraph 3 that it should be the published version of the BMPS which is ‘as accurate and up-to-date a description of the scheduling and dispatch process as is practicable’.

A decision on the drafting of the new ‘Balancing Market Principles Statement’ condition can be viewed in Annex 1 (Condition 22B).

* 1. CONDITION 23B: COMPLIANCE AND ASSURANCE OFFICER

The desired effect of this new licence condition is for EirGrid and SONI to (jointly) appoint one independent ‘Compliance and Assurance Officer’ (who can be an employee of either organisation, acting independently on behalf of both SONI and EirGrid) to increase transparency, address perceptions of and mitigate against any possible conflicts of interest, as well as ensuring an environment where any potential conflicts of interest will not be acted upon.

SONI suggested that the wording of paragraph 1 be tightened to clarify that one individual could undertake the role across the EirGrid group, provided that they are sufficiently independent. The UR is satisfied that one individual can carry out this role in terms of practicality and in the interests of cost efficiency and encouragement of synergies and agrees that the wording of paragraph 1 be amended to ensure no ambiguity.

Bord Gais Energy would prefer that an entirely objective and independent party, externally assigned by the EirGrid group fulfils the role and that an independent audit of compliance occurs annually, similar to Elexon. The RAs will monitor the effectiveness of the compliance and assurance reporting in terms of conflicts of interest; at this stage, the RAs are satisfied that the independence of the C&A officer from the EirGrid Board of Directors is sufficient without having to be externally commissioned. The RAs are of the view that the TSOs should not incur unnecessary costs at the expense of consumers of an external appointment if they are satisfied of the independence of an in-house member of EirGrid group’s personnel.

The new condition 23B specifies compliance with conditions 5 (Prohibition of Cross-Subsidies), 11 (Restriction on Use of Certain Information) and 15 (Non-Discrimination) of the SONI TSO licence. Bord Gais Energy suggest that in addition to these, conditions 23A (Capacity Market) and 29 (Economic Purchasing of System Support Services) be included as conditions which the C&A officer needs to report compliance on. Bord Gais Energy has concerns around possible conflicts of interest around the TSOs’ role in operating the balancing market, capacity market and ancillary services procurement. The RAs provide assurances that an independent auditor and monitor, separate and in addition to the Compliance and Assurance officer will be appointed for the Capacity Market, so the RAs see additional reporting on compliance with condition 23A as an unnecessary duplication. The requirement for an independent auction monitor and auditor was set out in CRM Decision 3. The detailed role of both the monitor and auditor is set out in the Capacity Market Code which was published for consultation on 12 January 1017 (SEM-17-004). SEM-17-007, published on 27 January 2017 consults on the Terms of Reference for the Capacity Market Auditor and Monitor. Following the publication of the decision the auditor/monitor will be procured by the RA’s. As regards compliance with condition 29 of the SONI licence, this will be considered as part of the DS3 programme of works.

The new condition obliges SONI to furnish the new C&A officer with a copy of complaints ‘as soon as reasonably practicable and in any event within one month of receiving any such complaint’. Bord Gais Energy is of the view that one week is a more reasonable period. In advance of publishing this licence condition for statutory consultation, the RAs discussed the provisions of the drafting with EirGrid and SONI to ensure that the obligations outlined within it aligned practically with processes and procedures already in place in the EirGrid group. A one-week turnaround does not appear realistic, so the wording ‘within one month’ (which means a timeframe less than one month) will remain.

Bord Gais Energy also suggests that the Compliance and Assurance officer establishes a risk management plan as well as monitoring the Licensee’s compliance with certain conditions. The RAs are of the view that it is not within the remit of the C&A officer to maintain a separate risk management plan, but it will be expected that the C&A officer flags any perceived risk associated with non-compliance to the RAs as part of the public reporting process.

Paragraph 5 of the new condition obliges SONI to provide the UR with a copy of the Compliance and Assurance Officer’s report, together with its response to that report. SONI has proposed that the report which will be provided to the UR/ CER for approval will be the ‘Final Report’. The RAs will amend the wording by clarifying that it is the ‘Final Report’ which the RAs will be provided with, as it is not the intention that multiple iterations of the report will be subject to review. The report will be subject to query and approval by the RAs, so any changes to the ‘Final Report’ can be requested by the RAs before publication. It should also be noted that the report will only receive ‘Final Report’ status once verified and approved by EirGrid’s Audit Committee before being presented to the EirGrid Boards.

Bord Gais Energy made further suggestions regarding the frequency and content of the C&A officer’s report. The RAs accept the suggestion that the C&A officer should report annually ‘or more often where reasonably requested by the [RA]’ so that the RAs retain an element of discretion on how often the report is required. The RAs will consider the suggestions on content of the report when reviewing and approving the format of the first annual compliance statement. We acknowledge that the Information paper on mitigation measures for conflicts of interest outlined that by November 2016, the RAs will agree the details of a compliance officer and annual compliance report with EirGrid and SONI; and by February 2017, the RAs will approve the first annual compliance statement. The Next Steps assumed that SONI and EirGrid would have had visibility of the associated licence modifications in September 2016, but instead the consultation was postponed until December 2016. The C&A officer’s report format will be considered during Q2 of 2017.

Related to condition 23B, Bord Gais Energy proposed that a new provision be added to Condition 5 (Prohibition of Cross-Subsidies) of the existing licence, so that a new paragraph (3) would read “The Licensee shall provide all such necessary information as is required to enable the fulfilment of obligations under Condition 23B”. While the UR agrees with the sentiment of the proposal, the UR is not of the view that such detail is required in condition 5. Paragraph 2 of the new condition 23B outlines that ‘The Licensee shall ensure that the Compliance and Assurance Officer is independent and has access to such staff, premises, systems, information, documentation, equipment, facilities and other resources as he might reasonably expect to require to fulfil the duties and tasks assigned to him’. The RAs are of the view that the wording in paragraph 2 is sufficiently wide enough for all such necessary information to be provided to the C&A officer to enable him/ her to fulfil the obligations under condition 23B.

A decision on the drafting of the new ‘Compliance and Assurance Officer’ condition can be viewed in Annex 1 (Condition 22A).

* 1. CONDITION 1: INTERPRETATION AND CONSTRUCTION

This licence condition was modified to give proper legal effect to the other new and modified licence conditions for implementation of I-SEM. A number of definitions were proposed within this condition. These included:

* ‘Associated Business’
* ‘Balancing Market’
* ‘CACM Regulation’
* ‘Capacity Market’
* ‘Capacity Market Code’
* ‘Ex-Ante Markets’
* ‘Gate Closure’
* ‘NEMO Activity’
* ‘SMO & NEMO Business’

SONI suggested that the definition of ‘ex-ante markets’ excludes reference to ‘gate closure’ since the definitions consulted on relate only to the balancing market gate closure which may cause unnecessary confusion. This change should similarly be applied in the Central Dispatch and Merit Order licence condition (now entitled “Scheduling and Dispatch”). The UR is satisfied that this amendment clarifies the effect of the condition and accepts this suggestion.

SONI also suggested that the definition of the ‘NEMO Activity’ is linked to the Network codes rather than to the Market Operator licence. The UR is of the view that this is a sensible proposal which is less prescriptive than the wording which was consulted on and that this would future-proof the licence definition, however the amendment would change the effect of the licence condition which was consulted on as it extends the scope of the TSOs’ obligations to comply with other regulations which were not noted in the consultation. Since the suggestion was proposed by SONI to their own licence, the UR is content to accept the proposal.

Bord Gais Energy suggested that the definition on ‘Transmission System Operation Business’ should include ‘Ancillary Services’ also since SONI TSO will procure ancillary services from the interconnector. While that role has been assigned to the TSOs, the DS3 work programme will consider any changes needed in relation to ancillary services at a later date.

* 1. CONDITION 1A: TRANSITION

Although this licence condition took effect on 1 September, the UR and CER consulted in December on the positioning of the condition; the condition was positioned as Condition 1A. No respondents had any issue with the positioning of the condition so this will remain as ‘Condition 1A’ of the SONI Ltd TSO licence.

Since 1 September 2016, a “stocktake” exercise was undertaken by ESP Consulting on behalf of the RAs and SEMC, the result of which was to extend the I-SEM go-live date to 23 May 2018. Because of this, the transition condition was updated at paragraph 15 to note that ‘This Condition shall cease to have effect on ~~30 June~~ 31 December 2018…’. SONI welcomed this acknowledgement.

* 1. CONDITION 3: AVAILABILITY OF RESOURCES AND UNDERTAKING OF ULTIMATE CONTROLLER

SONI suggested that, rather than refer solely to CACM, all Network Codes/ European regulations are referred to within this condition. The UR views this suggestion as sensible and practical. The effect of the licence modification which was consulted on has essentially changed as the inclusion of the Network Codes widens the scope of the TSO’s obligations, but the UR is of the view that this change future proofs the licence and is accepted a change made by SONI themselves.

* 1. CONDITION 11: RESTRICTION ON USE OF CERTAIN INFORMATION

An obligation will exist for the Compliance and Assurance officer (under condition 23B) to report on actions taken by the EirGrid and SONI TSOs to evidence that any staff transferring ‘in house’ within the EirGrid goup will not result in any unfair commercial advantage.

Bord Gais Energy commented that paragraph (1)(a) of the condition be elaborated to nullify “the Licensee nor any other person**, including without limitation all subsidiaries, associated or affiliated undertakings, joint ventures or shareholders of the Licensee**…” from using protected information for the purpose of obtaining any unfair commercial advantage in relation to the TSO business or any other business. The RAs are satisfied that the wording of the condition is sufficient enough that ‘any other person’ does not need to be described any further, and that it is clear that ‘any other person’ incorporates any person other than the Licensee. A further suggestion by Bord Gais Energy was to add the words “and also” in paragraph 3 of the condition so that it reads “The Licensee shall implement such measures and procedures **and also** take all such other steps as may be specified…”. This additional wording does not add to the effect of the condition, nor does it provide clarity or aid understanding.

At the end of paragraph 3 of the condition, Bord Gais Energy suggest that in order to give the market comfort on the security of information, the ISO27001 certification standard should be included as a measure which SONI/ EirGrid should have. This is to give the market assurance that information handling, processes, technologies and assets are protected and supported against unauthorised access, unapproved changes and unplanned outages. Bord Gais Energy is of the view that achievement of ISO27001 standard best proves the quality of access restriction and alleviates the burden on the RAs to monitor and assess in detail whether such internal ring fencing is as effective as needed to alleviate conflict of interest concerns. The RAs are of the view that such a change is prescriptive and, while seeing the merit in achievement of this standard, a licence obligation in this regard is not required.

The UR will amend paragraph 6 of the condition, as suggested by Bord Gais Energy to read “The Licensee shall ensure that when any member of staff is to be transferred ~~from~~ between the TSO Business ~~to~~ and any Associated Business or vice versa…’ as this provides better clarity on the movement of staff which should be restricted while also reassuring stakeholders.

SONI have suggested that the ‘cooling off period’ definition in paragraph 9 be modified to clarify that it should mean a period of time during which a member of staff is not actively engaged in any work of the Licensee which required access to protected information which could potentially result in an unfair commercial advantage. The UR accepts this suggestion as it clarifies, rather than changes, the effect of the licence condition.

* 1. CONDITION 12: INDEPENDENCE OF THE TRANSMISSION SYSTEM OPERATOR BUSINESs

No comments were received on this licence condition modification so the condition as consulted on will not be subject to further change.

* 1. CONDITION 22: CENTRAL DISPATCH AND MERIT ORDER

The existing Central Dispatch and Merit Order condition is to be modified to allow the UR to ‘switch it off’; it will be replaced by condition 22A which provides for the new scheduling and dispatch arrangements under I-SEM in relation to the Balancing Market. SONI welcomed this modification.

* 1. CONDITION 23: SINGLE ELECTRICITY MARKET TRADING AND SETTLEMENT CODE

Wording was added to the condition so that compliance of the TSO with the Trading and Settlement Code would include the performance of its obligations in operating the Capacity Market and Balancing Market for I-SEM; this was in addition to the existing obligations as operator of the transmission system and appointed Meter Data Provider.

Bord Gais Energy suggested that a new subsection (e) be added to read “and any other obligation that arises thereunder that is clearly applicable to the Licensee”. The RAs are of the view that such an addition could ‘future-proof’ the licence, but will not add any new provisions to the licence at this stage as that would be both contrary to statutory process and unnecessary for I-SEM implementation.

* 1. CONDITION 23A: CAPACITY MARKET

Although this condition took effect on 1 September 2016 and was part of the first tranche of licence modifications, a few minor editorial changes were proposed in the December 2016 consultation.

Bord Gais Energy focussed on further suggested changes to paragraphs 2, 4 and 6. Bord Gais Energy would prefer confirmation that the de-rating factors and volume calculation methodologies for the Capacity Market will be codified in the Capacity Market Code (CMC). Bord Gais Energy are also of the view that assumptions related to the calculation of the capacity requirements should be provided in line with timelines in the CMC but no later than three months before the relevant capacity auction. A decision on the de-rating factors and capacity requirement methodologies was published by the SEMC on 8 December 2016[[6]](#footnote-6).   This elaborated on the governance arrangements as requested by respondents. Furthermore, a SEMC consultation on the Capacity Market Code was published on 12 January 2017[[7]](#footnote-7). The licences are not the appropriate medium for confirmation of these issues, and instead stakeholders should raise views or concerns via the public consultation process for the CRM work.

Bord Gais Energy suggest that additional wording should be added to paragraph 4(f) of the condition, the intention of which is to ensure no undue discrimination between persons who are or may seek to become parties to the CMC. Bord Gais Energy would further this obligation so that no undue discrimination exists ‘particularly in favour of its subsidiaries, associated or affiliated undertakings, joint ventures or shareholders’. The UR are of the view that such wording is not necessary as the current wording is wide enough in scope to cover all parties. Bord Gais Energy also suggest that paragraph 4(g) be amended to further the obligation of the Licensee to ‘promote and protect’ the interests of consumers. However, protecting consumers is not a statutory obligation of the TSOs; this is a duty of the RAs.

A further suggestion by Bord Gais Energy is that wording be added to paragraph 6 so that the RAs can request information ‘including but not limited to technical information regarding the execution of its tasks in line with any agreed methodolgies’. The RAs are of the view that the ‘request for information’ is wide enough to encompass any type of information.

* 1. ANNEX 1

The consultation on the SONI TSO licence proposed an amendment to Annex 1. Annex 1 sets out the revenue entitlement to SONI as TSO. However, due to other ongoing work on the SONI Ltd price control, Annex 1 will be not be amended in the context of these I-SEM related changes. The Utility Regulator is carrying out a separate process on this.

* 1. OTHER general comments & POINTS OF CLARIFICATION

Revenue allowances

SONI’s response is based on an assumption that the revenue adjustment process will ensure that SONI can finance and fulfil its functions in the transition from SEM to I-SEM. The UR notes that SONI have been assigned a number of roles and responsibilities by the SEMC for the I-SEM. As the roles and responsibilities of entities will change in the I-SEM, including new functions, the RAs will endeavour to ensure that the financing of each entity reflects the efficiently incurred costs associated with the carrying out of the required functions. As the functions in the new market will be carried out by a number of entities which are Common Joint Ventures between SONI and EirGrid, the RAs intend to consult on the regulatory revenue principles underpinning such entities in March 2017. In addition, the RAs will consult on the revenue allowances and associated tariffs/charges of the entities in June 2017 with a decision expected in September 2017.

A separate exercise is also being undertaken by the RAs to assess the I-SEM project costs ( i.e. costs incurred in preparation for go-live) of EirGrid and SONI.

Transition

SONI have asked for a timetable for implementation of each condition to ensure that there is no ambiguity in terms of when compliance is expected in respect of each condition. The RAs will provide such a timetable in due course.

Economic purchasing of System Support Services

Bord Gais Energy suggested that additional wording be added to the existing condition 29 of the SONI TSO licence. Such changes relate to the DS3 programme of works (and were not subject to this consultation) and are therefore not being considered as part of this decision paper.

4 Decision on SONI MO licence modifications required for I-SEM implementation

**HIGH LEVEL SUMMARY OF RESPONSES**

SONI Ltd was generally content with the modifications proposed to its MO licence but SONI and Bord Gais Energy proposed some amendments to the drafting of some of the conditions. Amendments suggested which provide clarification to aid understanding and interpretation (while not changing the effect of the condition) have been accepted.

**RESPONSES to individual licence conditions**

This section of the decision follows the same order as the conditions consulted on, ie. ‘new’ conditions are considered first, followed by existing conditions in the licence where modifications were proposed.

* 1. CONDITION 15A: NOMINATED ELECTRICITY MARKET OPERATOR (nEMO)

A new ‘NEMO’ condition was proposed for the MO licences held by EirGrid and SONI. It is the RAs’ view that NEMO regulation through market operator licences will ensure a proportionate, transparent approach to regulation which both protects the interests of consumers, and ensures compliance with CACM.

SONI have proposed some modifications to the drafting of the condition in their licence to address concerns which they have regarding:

* Barriers to entry (SONI want to ensure that no other competitors are deterred from entering the market);
* Restricting SONI’s ability to respond to competition;
* Proportionality.

As a starting point, SONI propose that the definition of ‘NEMO Activity’ is extended to include ‘the corresponding activities in relation to interim intraday market coupling pending the development of the enduring arrangements under the CACM Regulation’. This suggestion is accepted by the UR/CER as a matter for clarification, albeit that it could be seen to change the effect of the modification by including a different timeframe. However, it is the UR’s view that the ‘NEMO Activity’ needs to incorporate arrangements for the interim until an enduring solution is implemented. Since SONI suggested this amendment themselves to aid clarity in their own licence, the UR is content to accept the amendment.

SONI also suggest that references to ‘NEMO Exchange Rules’ are replaced by ‘Exchange Rules’, and that these ‘Exchange Rules’ not only set out the terms on which it will carry out the NEMO Activity (as currently drafted in the licence condition at paragraph 3) but also ‘and on which market participants will participate in the Ex-Ante Markets’. Amending the wording to ‘Exchange Rules’ is accepted however the UR does not accept that any additional wording is necessary regarding participation in the ex-ante markets. SONI’s reasoning is that this will reduce any barrier to entry as the Exchange Rules are not intended to be a set of rules solely for any NEMO operation in the I-SEM, but instead they are to apply only to SONI as NEMO. It is the UR’s view that the words proposed by SONI suggest that the Exhange Rules have to be applied by all NEMOs providing services in the I-SEM so has decided to remove any possibility of ambiguity. In addition, SONI/ EirGrid has suggested that additional wording be added to the condition to clarify that the approval by the Authority/ Commission under paragraphs 3 and 4 (which relate to the approval of Exchange Rules or amendments to the Exchange Rules) is not required for the procedures implementing the Exchange Rules. The RAs provide confirmation in this decision paper that the RAs’ approval of the procedures are not required but that the clarity is not necessary in the licences since the approval is clearly for the Exchange Rules only.

In its response, SONI refer to the European Commission’s Winter Package, where it is outlined that oversight of NEMO activities will be undertaken at a European level. The RAs confirm that the arrangements on the island of Ireland will be revised as necessary to comply with any new legislation in this regard.

The UR provides clarity in this decision that the NEMO website referred to in paragraph 8 does not need to be a stand-alone website, and can be linked to the existing SEMO website. Bord Gais Energy responded that no confusion should exist as to which entity certain documentation applies, so the NEMO website should be sufficiently separate from SEMO. While the RAs appreciate the necessity for separation, a NEMO website which is linked to the SEMO website is still a separate site and is a more cost efficient method. The NEMO and SEMO will still be required to provide evidence of cost lines as part of the separate regulated price control reviews.

Bord Gais Energy queried if the Exchange Rules would be consulted upon. The Exchange Rules and NEMO charges will not be subject to public consultation, but will go through a consultative process via the NEMO Business Liaison Group (BLG) meetings which industry are invited to. The Exchange Rules will essentially be ‘off-the-shelf’ rules, with some specific references required for I-SEM so the RAs do not deem it necessary for such standardised rules to be consulted on.

Bord Gais Energy also requested that the RAs consider if provision should be made in the NEMO condition for the NEMO to become party to the TSC. The RAs consider that it is important that any NEMOs operating in the market would be made aware of any local arrangements unique to the SEM. To ensure the efficient operating of the market, the RAs propose any such special arrangements necessary to ensure the efficient operation of the market be contained within the market rules, i.e. the Trading and Settlement Code and that any NEMOs operating in SEM must be Parties to the Trading and Settlement Code. There is not a necessity for a licence obligation for SONI/EirGrid as NEMO to be party to the TSC. In order to be active in the ex ante markets, an obligation exists in the Trading & Settlement Code (Part B, Chapter B.8) that a SEM NEMO shall *‘accede to and remain a party to the Framework Agreement and thereby become and remain a Party to this Code’*. The Trading & Settlement Code outlines the market rules for I-SEM, and in the event where the NEMO condition in the SONI MO licence might no longer be required, the Trading & Settlement Code obligations will remain.

* 1. CONDITION 15B: AGENT OF LAST RESORT (AOLR)

The Agent of Last Resort (AOLR) role is a new function for I-SEM which will be undertaken jointly by SONI and EirGrid. The UR proposed a licence condition to reflect the MO’s responsibilities under the AoLR role.

The proposed licence condition is drafted to acknowledge the objective of the AoLR and scope of its services. The objective of the AOLR services is to facilitate participation of renewable generators and de minimis generators in the ex-ante markets. SONI as AoLR will be obliged to submit an AoLR Contract to the UR for approval, and subsequently be obliged to publish that contract along with the AoLR procedures on its website. An annual report is also to be provided to the UR for publication on the website; publication of such documents is to create transparency.

Bord Gais Energy suggested that paragraph (4) of this condition be re-phrased to ensure that SONI/ EirGrid as SEMO do not make profit in providing AOLR services and become commercially driven. It is the view of the RAs that such clarification is not required within the licence since the the AOLR will levy a fee for its services, and this will be subject to regulatory scrutiny to ensure that it does not create a barrier to entry; this was confirmed in the SEMC’s decision of September 2015 (SEM-15-063).

Bord Gais Energy also suggested that the annual report on AOLR should outline an assessment and findings to make it tangible. The RAs do not want to describe the content of the AOLR report within the licence, but reassure stakeholders that the report will be approved by the RAs and published on the SEMO website, as per the drafting of paragraph 8. Bord Gais Energy asks that, rather than consult on modifications with ‘parties that propose to become AOLR participants’, consultation should take place with wider ‘industry’. The RAs accept this amendment to ensure that the consultative is wider than to just potential AOLR participants.

SONI have suggested minor tweaks to the licence condition which was consulted on to ensure the service provides value for users. SONI suggest that the arrangements that they are required to enter into in paragraph 5 are limited to those that can be realised at a reasonable cost. This will limit the power of potential service providers and assist with any commercial negotiations undertaken. The UR is also of the view that only arrangements which can be realised at a reasonable cost should be entered into but further amendments to the licence condition will not be made.

SONI also comment that costs associated with its carrying out of the AOLR role will be provided for through the MO price control. Similar to the TSO price controls, the RAs will endeavour to ensure that the financing of each entity reflects the efficiently incurred costs associated with the carrying out of the required functions. As the functions in the new market will be carried out by a number of entities which are Common Joint Ventures between SONI and EirGrid, the Regulatory Authorities intend to consult on the regulatory revenue principles underpinning such entities in March 2017. In addition, the RAs will consult on the revenue allowances and associated tariffs/charges of the entities in June 2017 with a decision expected in September 2017. A separate exercise is also being undertaken by the RAs to assess the I-SEM project costs (i.e. costs incurred in preparation for go-live) of EirGrid and SONI.

* 1. CONDITION A: TRANSITION

Since 1 September 2016, a “stocktake” exercise was undertaken by ESP Consulting on behalf of the RAs and SEMC, the result of which was to extend the I-SEM go-live date to 23 May 2018. Because of this, the transition condition was updated at paragraph 15 to note that ‘This Condition shall cease to have effect on ~~30 June~~ 31 December 2018…’. SONI welcomed this acknowledgement. No other comments were received.

* 1. CONDITION 1: INTERPRETATION AND CONSTRUCTION

The UR proposed modifications to incorporate new and amended definitions in the licence.

SONI were generally comfortable with the proposed modifications but requested that reference to ‘gate closure’ be removed from the ‘Ex-Ante Market’ definition as it has no value-add (and in fact that ‘gate closure’ be removed from the licence altogether). For the purpose of clarity, the UR accepts this change and this is consistent with the amendments made to the TSO licence.

SONI also proposed an amendment to the definition of ‘SEM Trading and Settlement System’ to clarify that the system means the hardware, software and processes needed for ‘the **operation of the** trading **and settlement arrangements described in Condition 15’.** The UR accepts this amended wording as it provides a better clarification of the arrangements.

* 1. CONDITION 2: PREPARATION OF ACCOUNTS

The UR proposed that Condition 2 be amended to extend the obligations of SONI such that it will be required to prepare accounting records in respect of its NEMO Activity, separate from those prepared in respect of its Market Operation Activity. A new paragraph 2a was proposed to specify that the first financial year shall run from the date on which the UR directs that Condition 15A (NEMO) shall take effect up to and including 30 September 2018.

SONI requested clarity on what date we intend to apply this condition. This information will be provided to SONI in due course.

* 1. CONDITION 3: AVAILABILITY OF RESOURCES AND UNDERTAKING OF ULTIMATE CONTROLLER

No comments were received on this licence condition modification so the condition as consulted on will not be subject to further change.

* 1. CONDITION 5: PROHIBITION OF CROSS-SUBSIDIES

No amendments were proposed to this licence condition modification so the condition as consulted on will not be subject to further change.

* 1. CONDITION 6: PROVISION OF INFORMATION TO THE AUTHORITY

No comments were received on this licence condition modification so the condition as consulted on will not be subject to further change.

* 1. CONDITION 9: RESTRICTION ON USE OF CERTAIN INFORMATION

Although this condition was not consulted upon, Bord Gais Energy request that paragraph (1)(a) of the existing condition be re-worded to read ‘that neither the Licensee nor any other person, including without limitation all subsidiaries, associated or affiliated undertakings, joint ventures or shareholders of the Licensee, shall use that protected information for the purpose of obtaining any unfair commercial advantage in relation to the Market Operation Activity, the NEMO Activity or any other business’.

Bord Gais Energy also welcomes confirmation that Codes of Conduct will ensure that any internal discussions amongst different entities of the EirGrid Group will prohibit staff from conveying any potentially commercially advantageous information. The RAs will take this suggestion into consideration during discussions with EirGrid and SONI regarding the implementation of mitigation measures against conflicts of interest, but is not likely to prescribe the content of Codes of Conduct within the licences.

Bord Gais Energy suggested that the words ‘and also’ be added on lines 1 and 2 of paragraph 3 of the condition, otherwise the paragraph may be misinterpreted . The UR is of the view that these additional words are not necessary as they do not add anything to the content of the condition.

* 1. CONDITION 10: INDEPENDENCE OF THE MARKET OPERATION ACTIVITY

No comments were received on this licence condition modification so the condition as consulted on will not be subject to further change.

* 1. CONDITION 11: PROHIBITED ACTIVITIES

SONI welcomed the clarity provided by this modification.

Bord Gais Energy asked the UR/CER to consider whether the NEMO function should be referenced here, especially if the NEMO is expected to register an assetless unit under the TSC. The RAs are not inclined to make this amendment as the stipulation within the TSC which the NEMO has to be party to is clear enough and will remain in operation in the event that the NEMO condition in the MO licences is no longer required.

* 1. CONDITION 13: NON-DISCRIMINATION

No comments were received on this licence condition modification so the condition as consulted on will not be subject to further change.

* 1. CONDITION 14: MARKET OPERATOR AGREEMENT

The RAs proposed that this condition be modified to reflect that the scope of the existing Market Operator Agreement should now include provision in relation to NEMO Activity (since EirGrid and SONI were designated as NEMOs in Ireland and Northern Ireland respectively) as well as Market Operation Activity.

SONI requested that a transition provision be added to the SONI MO licence within this condition, similar to that drafted in the EirGrid licence. The UR agrees that such a provision should exist and has amended Condition 14 accordingly since this was an unintentional omission from the consultation proposals which SONI have alerted the UR’s attention to.

Bord Gais Energy asked that a new sub condition be added to ensure that the interests of electricity consumers in NI/Ireland are protected. The RAs have a duty to protect consumers, and part of its remit is via licence compliance review. Adding a new requirement to the MO licence for SONI to protect the interests of consumers would be a fundamental change to the obligations placed on them and a separate consultation process would be required for this. No further amendment will be made to the condition in this respect.

* 1. CONDITION 15: SINGLE ELECTRICITY MARKET TRADING AND SETTLEMENT CODE

Eirgrid plc and SONI Ltd jointly currently carry out the SEMO function for the SEM. SEMO is responsible for the administration and operation of the TSC, and will remain as such for I-SEM. The TSC is undergoing revision to take account of I-SEM related market rules and it is essential that the MO adopts such changes as may be directed by the UR to implement the I-SEM arrangement

A new sub-paragraph was proposed by the UR in paragraph 1 of the condition to oblige the TSO to adopt amendments made to the TSC as directed by the UR (following such consultation as it considers appropriate) and the expanded scope of the TSC to include settlement arrangements in relation to the new capacity market will be reflected in the licence condition.

SONI have a concern that the condition as currently drafted could be construed as requiring the TSC to extend to all market timeframes, including the ex-ante markets. In line with this concern, SONI suggest that paragraph 3 is amended (with additional wording highlighted in bold) as follows: ‘The trading and settlement arrangements referred to in paragraph (1)(a) are arrangements which (a) set out rules and procedures for the sale and purchase of wholesale electricity in the Single Electricity Market **other than in the Ex-Ante Markets and the Capacity Market** and (b) sets out the settlement arrangements for the Capacity Market. The UR is content with this additional wording in the interests of clarifying the timeframes which the TSC rules and procedures apply to.

Bord Gais Energy suggested that paragraph (4)(f) be re-worded to ‘to ensure no undue discrimination between persons who are parties to the Single Electricity Market Trading and Settlement Code; and particularly in favour of its subsidiaries, associated or affiliated undertakings, joint ventures or shareholders’. The objective outlined in paragraph (4)(f) aligns with the actual objective specified in the Trading and Settlement Code. The TSC as amended for I-SEM has been subject to consultation and a decision on the content is due to be published in Q2-2017. No further change will be made to paragraph (4) of condition 15 otherwise the wording would be inconsistent with the actual code.

Bord Gais Energy also suggests an addition to paragraph (6) to assist the RAs in their objective of ensuring technical audits can be carried out from time to time, assessing compliance with methodologies where applicable. Additional wording proposed by Bord Gais Energy is highlighted in bold as follows: ‘The Licensee shall provide to the Authority such information as the Authority may request concerning the Single Electricity Market Trading and Settlement System or any aspect of its operation, **and the execution of the Licensee’s objectives and compliance with approved methodologies related thereto’.** The UR is of the view that this additional wording is not necessary as the proposed wording of ‘such information as the Authority may request’ is wide enough to cover any type of information.

* 1. CONDITION 16: MARKET SYSTEM DEVELOPMENT PLAN

SONI point out that the modification to this condition at paragraph (5), to include publication on the NEMO website as well as the Single Market Operation Business website, introduces an inconsistency into the licence. The Market System Development Plan covers changes to the balancing market systems, which are required to give effect to the TSC. There is therefore no basis for publishing it on the NEMO website.

The RAs agree to remove this additional wording in the condition to remove this error. The wording is paragraph (5) will therefore remain unchanged from the existing licence as ‘Where, and to the extent, required by the Authority, the Licensee shall publish the Market System Development Plan on the web-site for the Single Market Operation Business’.

* 1. CONDITION 19: PROCUREMENT OF ASSETS AND SERVICES

The RAs separately proposed to amend this condition in the respective licences to acknowledge compliance with the CACM Regulation.

Bord Gais Energy are of the view that, due to concerns around potential conflicts of interest, the wording of paragraph (4)(c) should be amended to read “…facilitating the participation of electricity undertakings in the Single Electricity Market in a manner that does not unduly disadvantage any person or class or classes of persons when compared with any other person or class or classes of persons particularly in favour of its subsidiaries, associated or affiliated undertakings, joint ventures or shareholders”. The RAs are of the view that the drafting of the condition is sufficiently broad enough already and this extra suggested wording is unnecessary.

* 1. other general comments

Bord Gais Energy proposed that a condition be added for the Compliance and Assurance officer function in the MO licence as well as in the TSO licence. The confidential response to the CER also suggested that the Compliance Office functions should cover the operations of all EirGrid Group entities. The role and responsibilities of the compliance officer should be set out separately in each licence (though a single independent individual could perform the role if required).

The RAs are not of the view that this is necessary at this stage. The Compliance & Assurance Officer condition in the TSO licence requires the officer to submit an annual report, focussing on compliance with conditions 5, 11 and 15 which deal with the working relationships with other entities in the EirGrid Group. Should a duplicate licence condition (albeit with necessary differences in respect of relevant licence condition compliance) be included in the MO licences, additional costs would be incurred. The RAs will monitor the completion of the Compliance & Assurance Officer’s report and consider any stakeholder views on its content after the first report is published.

**DECISION**

The Utility Regulator, acting through its SEMC, directs that new licence conditions as set out in Annexes 3 and 4 should be made in the respective licences of the SONI Ltd TSO and MO. Annexes 1 and 2 show a mark-up of the modifications which were consulted on in December 2016 for ease of reading.

3 Next Steps

The licence modifications described above will come into effect in the SONI Ltd TSO and MO licences from 5 May 2017 (56 days after publication of the decision in NI), in line with the statutory modification process.

Generator, Supplier and Interconnector licence modifications will also be subject to consultation in June 2017. The UR has commenced engagement with licence holders.

1. https://www.uregni.gov.uk/publications/notices-decision-modifications-soni-tso-and-mo-licences-necessitated-implement-i-sem [↑](#footnote-ref-1)
2. Note that reference in the paper to the UR/ CER are to the UR/ CER acting through its SEM Committee. [↑](#footnote-ref-2)
3. Should an appeal or challenge be made to the licence mods, the statutory process and timeline will be followed in each jurisdiction respectively. [↑](#footnote-ref-3)
4. https://www.uregni.gov.uk/consultations/i-sem-statutory-consultation-modifications-soni-mo-and-tso-licences-1 [↑](#footnote-ref-4)
5. https://www.semcommittee.com/news-centre/mitigation-measures-potential-conflicts-interest-eirgrid-group [↑](#footnote-ref-5)
6. https://www.semcommittee.com/news-centre/publication-crm-capacity-requirement-and-de-rating-methodology-decision-paper [↑](#footnote-ref-6)
7. https://www.semcommittee.com/news-centre/crm-capacity-market-code-consultation [↑](#footnote-ref-7)