

**DISPUTE BROUGHT BY EP NI ENERGY LIMITED IN RELATION TO THE TERMS OF A
CONNECTION TO SONI LIMITED'S ELECTRICITY TRANSMISSION SYSTEM**

FINAL DETERMINATION

14 December 2023

CONTENTS

	PAGE
1. <u>SECTION ONE – INTRODUCTION</u>	2
2. <u>SECTION TWO – THE PARTIES TO THE DISPUTE</u>	4
3. <u>SECTION THREE – APPLICABLE LEGAL AND REGULATORY FRAMEWORK</u>	5
4. <u>SECTION FOUR – FACTUAL BACKGROUND</u>	18
5. <u>SECTION FIVE – GENERAL VIEWS OF EPNIE</u>	21
6. <u>SECTION SIX – GENERAL VIEWS OF SONI</u>	26
7. <u>SECTION SEVEN – THE PARTIES' VIEWS ON THE PROPOSED AMENDMENTS</u>	35
8. <u>SECTION EIGHT – THE ISSUE FALLING TO BE DETERMINED</u>	71
9. <u>SECTION NINE – FINAL DETERMINATION</u>	72
<u>APPENDIX 1 – BUNDLE OF DOCUMENTS</u>	76

1. **SECTION ONE – INTRODUCTION**

- 1.1 On 4 August 2023, the Northern Ireland Authority for Utility Regulation (the **Authority** – and hereafter referred to as the **Utility Regulator**) received an application (the **Application: (B1)**) from EP NI Energy Limited (**EPNIE**) requesting the Utility Regulator to determine a dispute (the **Dispute**) between EPNIE and SONI Limited (**SONI**): together the **Parties**.
- 1.2 The Dispute relates to the terms of draft connection agreements (the **Connection Agreements**) for two open cycle gas turbines (known as **GT6** and **GT7**, together the **OCGTs**) at Kilroot Power Station, and specifically the refusal of SONI to accept amendments suggested by EPNIE to certain terms (the **Proposed Amendments**).
- 1.3 The Application has been acknowledged (**B23**) and the Parties have been informed (by letter dated 1 September 2023 (**B24**)) that the Utility Regulator has jurisdiction to consider and determine the issues in dispute under Condition 26(1) of the licence granted to SONI (the **SONI Licence: A2**) under Article 10(1)(b) of the Electricity (Northern Ireland) Order 1992 (the **Electricity Order: (A1)**).
- 1.4 The Utility Regulator has appointed us, David de Casseres (Board member of the Utility Regulator) and Tanya Hedley (Director of the Utility Regulator) jointly to determine the Dispute on its behalf (together the **Decision-Makers**).
- 1.5 The letter of 1 September 2023 noted that the Application relates to two separate draft connection agreements. As the Connection Agreements contain the same terms, and the same Proposed Amendments are in dispute in relation to both, the dispute in relation to each agreement has been consolidated into a single process in respect of which the Utility Regulator will issue a single determination. That single determination will apply to both of the Connection Agreements.
- 1.6 The Utility Regulator is considering this dispute in accordance with its *Policy on the Resolution of Complaints, Disputes and Appeals and Guide for Applicants (August 2018)* (the **Dispute Policy: (A3)**).
- 1.7 This document is our determination in respect of the Dispute.
- 1.8 In reaching this determination, we have reviewed and considered the following materials and documents –
- (a) A Statement of Case (the **Statement**) prepared for us by the case management team – the Statement sets out an overview of the background to the Dispute, the applicable statutory and regulatory framework, the views of the Parties in respect of the Dispute, and the issue to be determined.

- (b) The documents set out in Appendix 1 to the Statement (and also copied to the Parties), which included all of the submissions of the Parties.
- 1.9 The Parties were also afforded the opportunity to comment on –
 - (a) a draft of the Statement, and
 - (b) a provisional determination, dated 15 November 2023 (the **Provisional Determination**).
- 1.10 The comments received from the Parties were taken into account by the case management team in preparing the Statement (as also reflected within the relevant sections of this determination).
- 1.11 In arriving at our final determination, we have taken into account the submissions received from EPNIE on the Provisional Determination. SONI provided submissions on the Provisional Determination after the deadline that we had set. No application for an extension to that deadline had been sought or granted. As such, we have had no regard to the submissions provided by SONI.
- 1.12 This document is structured as follows –
 - (a) Parties to the dispute (at [Section 2](#)).
 - (b) Applicable legal and regulatory framework (at [Section 3](#)).
 - (c) Factual background to the Dispute (at [Section 4](#)).
 - (d) General views of EPNIE (at [Section 5](#)).
 - (e) General views of SONI (at [Section 6](#)).
 - (f) Parties' views on the Proposed Amendments (at [Section 7](#)).
 - (g) The issue for determination (at [Section 8](#)).
 - (h) Our determination in relation to that issue (at [Section 9](#)).
- 1.13 This determination references a number of documents (including correspondence provided by the Parties). An index to these documents is attached at [Appendix 1](#) and any document which was not included in the Bundle provided to the Parties with the Statement is enclosed with this determination.

2. **SECTION TWO – THE PARTIES TO THE DISPUTE**

EPNIE

- 2.1 EPNIE is a company involved in the generation of electricity – it is a subsidiary of EP UK Investments Limited, a wholly owned subsidiary of Energetický a průmyslový holding a.s..
- 2.2 EPNIE is authorised by a licence to generate issued on 24 March 2021 under Article 10 of the Electricity Order.
- 2.3 EPNIE's head office is based at –
- Kilroot Power Station
Larne Road
Carrickfergus
Co. Antrim, United Kingdom
BT38 7LX
- 2.4 Kilroot Power Station is a power generation plant currently consisting of two dual fuel registered coal units and four distillate-fired OCGTs. The power station has been in continuous operation since 1981 as one of the largest power generators in Northern Ireland with an existing gross maximum export capacity of 655.18 MW.
- 2.5 EPNIE is developing GT6 and GT7 at Kilroot Power Station to commence operation in the capacity year 2023 / 2024.

SONI

- 2.6 SONI is the licensed transmission system operator (**TSO**) for Northern Ireland. SONI is a subsidiary of EirGrid PLC.
- 2.7 It holds a licence – issued under Article 10(1)(b) of the Electricity Order (**A1**) – authorising its activities in this regard (the SONI Licence: **A2**). The SONI Licence includes various conditions.
- 2.8 SONI has been responsible for planning for the future of the Northern Ireland transmission system (the **NI Transmission System**) since 2014.
- 2.9 Among other things, SONI is required, under Condition 25(2) of the SONI Licence, and subject to stated exceptions, to offer to enter into a connection agreement for connection to the all-island transmission networks with exit or entry points on the NI Transmission System upon receipt of an application by any person.

3. **SECTION THREE – APPLICABLE LEGAL AND REGULATORY FRAMEWORK**

3.1 The legal and regulatory framework applicable in determining the Dispute is summarised below.

The Electricity Order (A1)

3.2 Article 3 of the Electricity Order provides a definition of a 'transmission system' as a system which –

- (a) *consists (wholly or mainly) of high voltage¹ lines and electrical plant; and*
- (b) *is used for conveying electricity –*
 - (1) *from a generating station to a substation;*
 - (2) *from one generating station to another;*
 - (3) *from one substation to another;*
 - (4) *to a substation in Northern Ireland from a place outside Northern Ireland; or*
 - (5) *from a substation in Northern Ireland to a place outside Northern Ireland;*

3.3 Article 10 (1)(b) of the Electricity Order provides (relevantly) –

10. *Licences authorising supply, etc.*

(1) *The Authority may grant a licence authorising any person—*

...

(b) to participate in the transmission of electricity for that purpose²

3.4 Article 11 of the Electricity Order provides (relevantly) –

11. *Conditions of licences*

(1) *A licence may include—*

(a) *such conditions (whether or not relating to the activities authorised by the licence) as appear to the grantor to be requisite or expedient...*

(3) *Without prejudice to the generality of paragraph (1)(a), conditions included in a licence by virtue of that sub-paragraph may require the licence holder—*

...

¹ Defined to be at or over 110KV.

² SONI is the licensed TSO for Northern Ireland.

(c) to refer for determination by the Director such questions arising under the licence, or under any document referred to in the licence, as are specified in the licence or are of a description so specified;...

3.5 Article 12 (2) of the Electricity Order provides –

(2) It shall be the duty of [SONI as] the holder of a licence under Article 10(1)(b), as appropriate having regard to the activities authorised by the licence, to—

(a) take such steps as are reasonably practicable to—

(i) ensure the development and maintenance of an efficient, co-ordinated and economical system of electricity transmission which has the long-term ability to meet reasonable demands for the transmission of electricity; and

(ii) contribute to security of supply through adequate transmission capacity and system reliability; and

(b) facilitate competition in the supply and generation of electricity.

Commission Regulation (EU) 2016/631 of 14 April 2016 establishing a network code on requirements for grid connection of generators (the RFG Code)

3.6 SONI cites Articles 3, 7, 29 and 71 of the RFG Code as being relevant to the Dispute. EPNIE disputes the relevance of those articles, but not the summary that SONI has provided of them. That summary states as follows –

Article 3: *this allows TSOs to refuse connection if the generating unit does not meet the requirements set out in the RFG Code. The RFG Code requirements have been transposed into the SONI Grid Code, and the wording in the Connection Agreements reflects that these rights are derived from primary legislation at the top of the “legal hierarchy”. There are absolutely no corresponding rights provided to connecting generators under those rules, and therefore the fairness of the Connection Agreements should be considered in light of the asymmetric allocation of roles within primary legislation.*

Article 7: *states that the regulatory authorities (RAs) need to “respect the responsibility assigned to the relevant TSO in order to ensure system security, including as required by national legislation” when applying the RFG Code.*

Article 29: *places the onus on demonstrating compliance with RFG Code onto the generator. There is no equivalent obligation on the TSO, while*

Articles 36 & 37 provide TSOs with rights to enforce the RFG Code (and hence many relevant aspects of the Grid Code) by not permitting operation until the “relevant system operator considers that the power generating unit complies with the provisions of this regulation”. The RFG Code allows for a dispute if there is disagreement, it does not allow for (or contemplate) unilateral action being taken by the generator.

Article 71: this places an obligation on the RAs to “ensure that all relevant clauses in contracts and general terms and conditions are brought into compliance with the requirements of this Regulation”.

The SONI Licence (A2)

3.7 Condition 15 requires SONI to ensure that, in conducting the Transmission System Operator Business (as defined in Condition 1 of the SONI Licence), it does not unduly discriminate between any persons, or any class or classes of persons.

3.8 Condition 16 requires SONI to have in place and comply with a Grid Code –

(a) covering all material technical aspects relating to connections to and the operation and use of the total system or (insofar as relevant to the operation and use of the total system) the operation of electric lines and electrical plant within Northern Ireland connected to the total system or any other system in Northern Ireland for the transmission or distribution of electricity and (without prejudice to the foregoing) making express provision as to the matters referred to in paragraph 6; and

(b) which is, in respect of the transmission system, designed so as to:

(a) permit the development, maintenance and operation of an efficient, co - ordinated and economical system for the transmission of electricity in Northern Ireland as part of efficient, co-ordinated and economical systems for the transmission of electricity on the Island of Ireland;

(b) facilitate the transmission system being made available to persons authorised to supply or generate electricity in Northern Ireland, on terms which neither prevent nor restrict competition in the supply or generation of electricity on the Island of Ireland; and

(c) subject to sub-paragraphs (i) and (ii), promote the security and efficiency of the electricity generation, transmission and distribution system in Northern Ireland as a whole.

(c) which is, in respect of the distribution system, designed so as to:

(a) permit the development, maintenance and operation of an efficient, co - ordinated and economical system for the distribution of electricity; and

(b) neither prevent nor restrict competition in the generation and supply of electricity in Northern Ireland, or, to the extent that the Grid Code, in respect of the distribution system, may have such effect, on the Island of Ireland.

3.9 Condition 23A requires SONI to maintain in force a Capacity Market Code which makes provision in respect of capacity arrangements –

to secure generation adequacy and capacity to meet the demands of consumers including (without limitation) rules and procedures for the application for and allocation of agreements to remunerate the provision of electricity capacity (whether through the provision of generation, electricity supplied via interconnectors, reduction in demand or otherwise) across the Island of Ireland...

3.10 Condition 25 requires SONI to offer terms for use of the NI Transmission System. It states (relevantly) –

Offer of terms for connection to the All-Island Transmission Networks

2 *On application by any person, the Licensee shall (subject to paragraph 6) offer to enter into a Connection Agreement (or amend an existing Connection Agreement) for connection (or modification of an existing connection) to the All Island Transmission Networks at entry or exit points on the transmission system, and such offer shall make detailed provision regarding:*

(a) *the carrying out of works (if any) required to connect the transmission system to any other system for the transmission of electricity and for the obtaining of any consents necessary for such purposes;*

(b) *the carrying out of works (if any) in connection with the extension or reinforcement of the All-Island Networks rendered necessary or appropriate by reason of making the connection or modification to an existing connection and for the obtaining of any consents necessary for such purposes;*

(c) the installation of appropriate meters (if any) required to enable the Licensee to measure electricity being accepted into the All-Island Transmission Networks at the specified entry point or points or leaving such system at the specified exit point or points;

(d) the carrying out of works (if any) in relation to the installation of such switchgear or other apparatus (if any) as may be required for the interruption of supply;

(e) the date by which any works required so as to permit access to the All-Island Transmission Networks (including for this purpose any works to reinforce or extend any of the All-Island Networks) shall be completed and so that:

(i) where the application is for a Relevant Generation Connection, that date is within 24 months of the date the agreement is entered into (the 'relevant period'), unless it is not reasonably practicable for the works to be completed within the relevant period (in which case the licensee shall provide the applicant with the reasons why it is not reasonably practicable to complete the works within the relevant period); and

(ii) unless otherwise agreed by the person making the application, a failure to complete such works by such date shall be a material breach of the agreement entitling the person to rescind the agreement;

(f) the installation of special metering, telemetry or data processing equipment (if any) for the purpose of enabling any person who is bound to comply with the Grid Code to comply with its obligations in respect to metering thereunder or the performance by the Licensee of any service in relation to such metering thereunder;

(g) the connection charges to be paid to the Licensee, such charges:

(i) to be presented in such a way as to be referable to the statements prepared in accordance with paragraph 1 (or, as the case may be, paragraph 7) of Condition 30 or any revision of such statements; and

(ii) to be set in conformity with the requirements of paragraph 5 of Condition 30 and (where relevant) of paragraph 3; and

(h) such further matters as are or may be appropriate for the purposes of the agreement.

...

Offer of terms - general

4 The Licensee shall, as soon as practicable after it receives an application in accordance with paragraph 1 or 2, request (to the extent necessary) an offer from the Transmission Owner and/or the Republic of Ireland System Operator (in accordance with the Transmission Interface Arrangements and/or the System Operator Agreement as appropriate) in respect of that application and the works (if any) necessitated by that application.

...

6 The Licensee shall not be obliged pursuant to this Condition to offer to enter or to enter into any Connection Agreement or any Use of System Agreement:

(a) if to do so would involve the Licensee:

(i) in breach of its duties under Article 12 of the Order; or

(ii) in breach of any regulations made under Article 32 of the Order or of any other enactment relating to safety or standards applicable in respect of the transmission system; or

(iii) in breach of the Conditions of the Licence;

(iv) in breach of the Grid Code; or

(b) if the person making the application does not undertake to be bound by such parts of the Grid Code and to such extent as the Authority shall from time to time specify in directions issued to the Licensee for the purposes of this Condition; or

(c) if, when requested to do so by the Licensee, the Transmission Owner and/or the Republic of Ireland System Operator does not

offer to enter into an agreement for connection/extension works in respect of the Connection Agreement or Use of System Agreement in question.

- 3.11 Condition 26 provides a procedure under which disputes as to terms of use (connection agreements) offered or entered into under Condition 25 can be referred to the Utility Regulator for determination –

1 If, after a period which appears to the Authority to be reasonable for the purpose, the Licensee has failed to enter into a Connection Agreement or Use of System Agreement with any person entitled or claiming to be entitled thereto pursuant to a request under Condition 25, the Authority may, pursuant to Article 11(3)(c) of the Order and on the application of that person or the Licensee, settle any terms of the Connection Agreement or Use of System Agreement in dispute between the Licensee and that person in such manner as appears to the Authority to be reasonable having (insofar as relevant) regard in particular to the following considerations:

(a) that such person should pay to the Licensee:

(a) in the case of provision of use of the All-Island Transmission Networks in respect of generation or supply in Northern Ireland, the use of system charges determined in accordance with paragraph 1 or 7 of Condition 30; and

(b) in the case of provision of a connection (or a modification to an existing connection) to the All Island Transmission Networks at an entry or exit point on the transmission system, the whole or an appropriate proportion (as determined in accordance with paragraph 3 of Condition 25) of the costs referred to in paragraph 5 of Condition 30 together with a reasonable rate of return on the capital represented by such costs;

(b) that no such person should pay any charges such as are referred to in sub - paragraph (b) of paragraph 4 of Condition 30 in respect of any connection (or any modification of an existing connection) to the All-Island Transmission Networks at an entry or exit point on the transmission system made prior to such date as shall be specified in a direction issued by the Authority for the purposes of this Condition and that no such charges should be paid in respect of any such connection or modification made after such date unless the Authority is satisfied that the extension or reinforcement in respect of which the charges are to be paid was rendered necessary or appropriate by virtue

of providing connection to or use of system to the person or making such a modification;

(c) that the performance by the Licensee of its obligations under the Connection Agreement or Use of System Agreement should not involve the Licensee in a breach such as is referred to in paragraph 6 of Condition 25;

(d) that the performance by the Transmission Owner of its obligations under any agreement necessitated in relation to the Connection Agreement or Use of System Agreement pursuant to paragraph 4 of Condition 25 should not involve the Transmission Owner in a breach such as is referred to in condition 20 of the Transmission Owner Licence;

(e) that the performance by the Republic of Ireland System Operator of its obligations under any agreement necessitated in relation to the Connection Agreement or Use of System Agreement pursuant to paragraph 4 of Condition 25 should not involve the Republic of Ireland System Operator in a breach of the Republic of Ireland System Operator Licence;

(f) that any methods by which the transmission system is connected to any other system for the transmission or distribution of electricity accord (insofar as applicable to the Licensee) with the Grid Code and with the Distribution Code; and

(g) that the terms and conditions of the Connection Agreement or Use of System Agreement so settled by the Authority and of any other such agreements entered into by the Licensee pursuant to an application under Condition 25 should be, so far as circumstances allow, in as similar a form as is practicable.

2 If the person wishes to proceed on the basis of the Connection Agreement or Use of System Agreement as settled by the Authority, the Licensee shall forthwith:

(a) notify the Transmission Owner and the Republic of Ireland System Operator in order that the Licensee can obtain the necessary agreement envisaged by paragraph 4 of Condition 25;

(b) forthwith on obtaining those agreements, enter into and implement a Connection Agreement or Use of System Agreement as so settled.

3 If either party to a Connection Agreement or Use of System Agreement entered into pursuant to Condition 25 or this Condition proposes to vary the

contractual terms of such agreement in any manner provided for under such agreement, the Authority may, at the request of the Licensee or other party to such agreement, settle any dispute relating to such variation in such manner as appears to the Authority to be reasonable.

- 3.12 Condition 30 requires SONI to prepare, obtain the Utility Regulator's approval for, and publish a charging statement setting out –

the basis upon which charges will be made for connection to the All-Island Transmission Networks at entry or exit points on the [NI Transmission System].

- 3.13 Paragraph 3 of Condition 30 provides that the connection charging statement shall be in such form and contain such detail as shall be necessary to enable any person to make a reasonable estimate of the charges to which it would become liable upon connecting to the NI Transmission System.

Grid Code

- 3.14 Connection Condition 15 of the Grid Code published by SONI under Condition 16 of the SONI Licence (and which SONI considers relevant to the Dispute) provides as follows –

CC15.2.1 Energisation Operational Notification

The TSO will issue an EON to the Generator for a Generating Unit connecting to the Transmission System, subject to completion of the Pre-Synchronisation Checklist. This checklist will require agreement on the protection and control settings relevant to the Connection Point.

Upon receipt of the EON, a Generator may energise its internal network and auxiliaries for the associated Generating Unit by using the grid connection that is specified for the Connection Point.

CC15.2.2 Interim Operational Notification

The TSO will issue an ION to the Generator for a Generating Unit following receipt of all the information requested under CC10[.]

Upon receipt of the ION, a Generator may operate the associated Generating Unit and generate power for a limited period of time, by using the grid connection that is specified for the Connection Point.

The limited period of time shall be agreed with the TSO and shall not be longer than 24 months.

CC15.2.3 Final Operational Notification

The TSO will issue a FON to the Generator for a Generating Unit connected to the Transmission System, subject to completion of the Commissioning/Acceptance Tests and updated Planning Code data.

Upon receipt of the FON, a Generator may operate the associated Generating Unit and generate power by using the grid connection that is specified for the Connection Point.

Capacity Market Code

- 3.15 Section G of the Capacity Market Code published by SONI under Condition 23A of the SONI Licence (and which SONI considers relevant to the Dispute) states as follows –

G.3.1.2 *The value of Grid Code Commissioned Capacity in respect of a Generator Unit or Interconnector at a given time is the Registered Capacity based on the Final Compliance Certificate, Operational Certification or Final Operational Notification for that Generator Unit or Interconnector under the applicable Grid Code. For the avoidance of doubt Commissioned Capacity is not de-rated capacity.*

G.3.1.3 *The Grid Code Commissioned Capacity of a Capacity Market Unit is the sum of the Grid Code Commissioned Capacity of the Generator Units or the Interconnector comprising the Capacity Market Unit.*

G.3.1.4 *The Proportion of Delivered Capacity in respect of Awarded New Capacity at a given time is a percentage value being:*

(a) the greater of:

(i) zero; and

(ii) the lesser of:

(A) the Grid Code Commissioned Capacity; and

(B) the Initial Capacity (Total);

less the Initial Capacity (Existing);

(b) divided by:

(i) the Initial Capacity (Total); less

(ii) the Initial Capacity (Existing),

where “Initial Capacity (Existing)” and “Initial Capacity (Total)” shall have the values determined when the Awarded New Capacity Qualified.

3.16 Section J of the Capacity Market Code states as follows –

J.6.1.1 For the purposes of this section:

(a) **Minimum Completion:** Awarded New Capacity achieves Minimum Completion when:

(i) all the construction, repowering or refurbishment works associated with providing the Awarded New Capacity are substantially complete (subject only to snag or punch list items or any other matters which do not prevent substantial completion or taking over taking place under the applicable Major Contracts);

(ii) each new or refurbished Generator Unit or Interconnector providing the Awarded New Capacity has undergone commissioning testing;

(iii) a Final Compliance Certificate, Operational Certificate or Final Operational Notification has been issued under the applicable Grid Code in respect of each new or refurbished Generator Unit or Interconnector providing the Awarded New Capacity;

(iv) the Proportion of Delivered Capacity in respect of the Awarded New Capacity is not less than 50%; and

(v) each new or refurbished Generator Unit or Interconnector providing the Awarded New Capacity has met all Trading and Settlement Code and Grid Code requirements for participating in the Balancing Market; and

(b) **Long Stop Date:** the Long Stop Date in respect of Awarded New Capacity means

(i) in the case of a Capacity Award with a capacity duration greater than one year, the last day of the eighteenth full calendar Month after

the start of the first Capacity Year in which the Awarded New Capacity is to be provided; or

(ii) in the case of a Capacity Award with a capacity duration of one year or less, the last day of the first full calendar Month after the start of the first Capacity Year in which the Awarded New Capacity is to be provided.

J.6.1.2 *The System Operators shall terminate all the Awarded New Capacity in respect of a new or refurbished Generator Unit or Interconnector in the event that:*

...

(b) Minimum Completion has not been achieved by the applicable Long Stop Date.

3.17 The Glossary to the Capacity Market Code defines the terms used in Section 6(J) as follows –

'Awarded New Capacity' *in respect of a Capacity Market Unit, means Awarded Capacity which is New Capacity at the time of the relevant Capacity Auction.*

'Final Compliance Certificate' *means a final compliance certificate issued by SONI in accordance with the Northern Ireland Grid Code for a wind farm power station connected to the Transmission System or the Distribution System and includes a notification, certificate, permit or authorisation having equivalent effect that is issued by SONI instead of a final compliance certificate.*

'Final Operational Notification or FON' *means a notification issued by the relevant System Operator to a power-generating facility owner, demand facility owner, distribution system operator or HVDC system owner who complies with the relevant specifications and requirements, allowing them to operate respectively a power-generating module, demand facility, distribution system or HVDC system by using the grid connection.*

'Operational Certificate' *in relation to a new or refurbished Generator Unit or Interconnector, means a certificate issued by the relevant System Operator under the applicable Grid Code confirming that the new or refurbished Generator Unit or Interconnector has successfully completed compliance testing under the Grid Code and includes a notification, certificate, permit or authorisation having equivalent effect that is issued by the relevant System Operator instead of an operational certificate.*

'Proportion of Delivered Capacity' in respect of Awarded New Capacity at a given time is a percentage value determined in accordance with paragraph G.3.1.4 (as modified, where appropriate, under paragraph G.3.1.5).

Transmission Connection Charging Methodology Statement (TCCMS)

3.18 The charging statement published by SONI under Condition 30 of the SONI Licence is the TCCMS.

3.19 Paragraph 9.3.3 of the TCCMS (which SONI considers relevant to the Dispute) provides that –

Once a generator has demonstrated to the satisfaction of SONI that it has passed the Capacity Test then the MEC bond is returned. However, if the generator has not passed the Capacity Test by the date specified in the Connection Offer and/or the Connection Agreement, or where the User withdraws its acceptance of the Connection Offer and/or terminates the Connection Agreement, then SONI is entitled to draw down the MEC bond.

Practice and procedure

3.20 The practice and procedure being followed by the Utility Regulator for the purposes of the determination of the Dispute is that set out in the Dispute Policy **(A3)** – supplemented as required in order to ensure good governance and best practice.

3.21 For completeness, the Decision-Makers should note that, in determining disputes, the principal objective and general duties of the Utility Regulator under Article 12 of the Energy (Northern Ireland) Order 2003³ do not apply (see Article 13(2) of the Energy Order).

³ Energy (Northern Ireland) Order 2003 – <https://www.legislation.gov.uk/nisi/2003/419/contents>.

4. **SECTION FOUR – FACTUAL BACKGROUND**

4.1 The following summary of the factual background is derived mainly from the relevant section of the Statement and we note that it is not in contention between the Parties. We take the following summary to be accurate and adopt it for the purposes of this determination.

The connection offer

4.2 On 22 January 2021, EP Kilroot Limited made an application to SONI pursuant to Condition 25 of the SONI Licence in respect of connections to GT6 and GT7. SONI made an offer of connection in respect of GT6 on 21 April 2021, which was accepted on 22 April 2021. SONI made an offer of connection in respect of GT7 on 4 May 2021, which was accepted on 19 May 2021.

4.3 By agreements dated 7 November 2022, those offers were novated from EP Kilroot Limited to EPNIE (**B2** and **B3**).

Requests for variation

4.4 Between 6 April 2023 and 5 July 2023, EPNIE and SONI exchanged correspondence and held several meetings in relation to requests made by EPNIE for amendments to the Connection Agreements.

4.5 An initial request for amendments and several queries regarding terminology used within the Connection Agreements was submitted by EPNIE to SONI by email on 6 April 2023 (**B4**).

4.6 SONI responded to EPNIE's queries by email on 3 May 2023 (**B5**) and stated that –

A general overall comment is that it should be noted that the general terms and conditions within a connection agreement are as far as possible standard across all connection agreements and not open to negotiation.

4.7 EPNIE sent SONI additional queries on the terminology used within the Connection Agreements by email on 10 May 2023 (**B5**).

4.8 On 24 May 2023, EPNIE sent letters to SONI regarding the Connection Agreements in which it identified three areas on which it requested further information from SONI (**B6** and **B8**). It also made certain proposals to amend the Connection Agreements (**B7** and **B9**).

4.9 SONI responded to EPNIE's proposal to amend the Connection Agreements on 2 June 2023 (**B10**). SONI agreed to consider the proposed amendments to the draft

Connection Agreements to determine whether SONI was able to accept any of the amendments. However, SONI advised that *'there are a number of proposed changes to the SONI standard template connection agreement which are simply not acceptable and cannot be agreed'*.

4.10 EPNIE responded on 12 June 2023 (**B11**). EPNIE requested SONI to state which amendments within the proposed Connection Agreements were not acceptable and not possible for SONI to agree to. EPNIE requested that SONI provide its response no later than 20 June 2023.

4.11 On 19 June 2023, SONI provided its responses to EPNIE's 12 June 2023 letter (**B12 and B15**). SONI's response included updated versions of each of the Connection Agreements in both clean and marked-up versions (**B13, B14, B16 and B17**). The updated drafts contained changes that SONI had accepted and comments in relation to the changes not accepted.

4.12 On 23 June 2023, the parties met in person to discuss SONI's response to EPNIE's proposed amendments.

4.13 EPNIE sent SONI a joint actions list on 29 June 2023 documenting outstanding actions that were raised at the 23 June meeting (**B18**).

4.14 The parties met in person on 5 July 2023 to discuss progress against the actions shared on 29 June 2023.

4.15 Following that meeting, EPNIE sent a letter to SONI on 5 July 2023 requesting confirmation as to whether SONI had accepted the Proposed Amendments (**B19**). In the letter, EPNIE requested a response by 5pm on 10 July 2023.

4.16 SONI provided its response on 11 July (**B20**). In its response, SONI reiterated that –

beyond amends to connection agreements that reflect project specific requirements or that assist with clarification, SONI considers that it is largely obliged [to] issue connection agreements reflecting the relevant terms that are published on the SONI website.⁴

4.17 SONI noted that –

Under SONI's transmission system operator licence, SONI has a licence obligation not to ... unduly discriminate as between any persons or class or classes of persons.

⁴ <https://www.soni.ltd.uk/media/documents/Form-of-Standard-Terms-of-Connection-Agreement.pdf>

- 4.18 An appendix to SONI's letter outlined SONI's response to each of the Proposed Amendments and reaffirmed SONI's position that it was unable to agree to those changes. SONI advised EPNIE of its right to refer the matter to the Utility Regulator for determination under Condition 26 of the SONI Licence.
- 4.19 EPNIE made the Application on 4 August 2023.
- 4.20 Over the course of the correspondence between the Parties, SONI accepted some of the amendments to the Connection Agreements put forward by EPNIE. The Proposed Amendments which remain in dispute are –
- (a) a proposed amendment to clause 6.5.5,
 - (b) a proposed amendment to clause 7.8,
 - (c) a proposed amendment to clause 7.13 ,
 - (d) a proposed new clause 13.11, and
 - (e) a proposed amendment to clause 21.1.
- 4.21 The text of the Proposed Amendments is set out in Section Seven, together with the views of the Parties on each.
- 4.22 The Parties have confirmed that, aside from the Proposed Amendments, the remaining clauses in the Connection Agreements are agreed.
- 4.23 The Parties have also agreed that they are willing to enter into the Connection Agreements in their current form and that the Decision-Makers may direct that the terms be varied in their final determination. As such, the resolution of the Dispute need not delay energisation of GT6 and GT7.

5. **SECTION FIVE – GENERAL VIEWS OF EPNIE**

5.1 EPNIE's views are set out in⁵ –

- (a) the Application (**B1**),
- (b) its reply, dated 29 September 2023 (the **Reply to the Response: (B50)**) to SONI's submissions in respect of the Application, dated 19 September 2023 (the **Response: (B35)**), and
- (c) its response, dated 30 November 2023, to the Provisional Determination (the **PD Response:(B65)**).

5.2 We have read the above documents in full and have had full regard to all of these submissions. In doing so, we have borne in mind that our role is to determine the issue set out in Section Eight of this document.

5.3 The summary below is derived mainly from the relevant section of the Statement. We adopt it as accurate for the purposes of this determination.

5.4 This section outlines the general views that have been expressed by EPNIE as relevant to the issues for determination.

5.5 EPNIE's views on the Proposed Amendments, and our provisional determination on them, are set out in Section Seven.

General points made by EPNIE in the Application

5.6 In the Application, EPNIE draws attention to SONI's obligations under Conditions 15(1), 25(5) and 25(6) of the SONI Licence, as well as Article 12(2) of the Electricity Order.⁶

General points made by EPNIE in the Reply to the Response

5.7 EPNIE agrees that the SONI Licence is to be interpreted in the context of relevant aspects of the legal hierarchy, but it disputes the relevance to the Dispute of the specific aspects of the RFG Code cited by SONI as it has not been suggested that GT6 and GT7 do not meet the requirements of the RFG Code or raise system security concerns.⁷ SONI has not evidenced how any of the Proposed Amendments would infringe the requirements of the legal hierarchy.⁸

⁵ EPNIE made no substantive comments on the draft Statement (**B57**).

⁶ Application (**B1**), pp. 10 – 11.

⁷ Reply to the Response (**B50**), pp. 5 – 6.

⁸ Reply to the Response (**B50**), p. 7.

- 5.8 In addition, EPNIE does not agree that the SONI Licence, Transmission Interface Arrangements (**TIA**), Transmission Connection and Charging Methodology Statement (**TCCMS**), the Capacity Market Code (**CMC**) and the Grid Code are relevant to the Dispute, as the Proposed Amendments do not require consequential modifications to these documents. It is unaware of any consultation by SONI on standard connection agreement terms in recent times.⁹
- 5.9 EPNIE states that it is clear that EPNIE is not seeking to hoard capacity as it has secured capacity contracts, consents and licences and the market contractual arrangements mitigate the risk of capacity not being used in an appropriate timeframe. SONI's points about its duty to plan and develop the NI Transmission System in an economic, coordinated and efficient manner are therefore not relevant.¹⁰
- 5.10 EPNIE is not seeking special treatment and the Application suggests that the proposed amendment should be included in all connection agreements going forward. EPNIE states that the Utility Regulator may wish separately to consider whether a review is required of connection agreements entered into in recent years to determine whether discrimination has taken place.¹¹
- 5.11 In response to SONI's statement that SONI only accommodates proposed amendments to the standard template connection agreement to reflect the particular characteristics of a project, address drafting errors and provide clarity, EPNIE states that SONI should consider any matter relevant to whether the proposed change is appropriate, including non-project specific factors such as the introduction of the capacity market.¹²
- 5.12 EPNIE notes that the standard terms have been in place prior to the introduction of the single electricity market (**SEM**) and the capacity market and the impact of these should be taken into account by SONI. The issue is not EPNIE desiring alternative commercial terms, but what is fair and reasonable for all generators entering into a connection agreement.¹³
- 5.13 EPNIE is concerned by SONI's reference to the Proposed Amendments potentially restricting or delaying third party access to the network where EPNIE is given an extended period to demonstrate that it can use all of its reserved capacity. This suggests that SONI has predetermined that EPNIE will fail to achieve its reserved capacity for GT6 and GT7 and is already preparing to offer that capacity to third parties. Parties who have made commitments to the market such as accepting connection offers etc. should

⁹ Reply to the Response (**B50**), p. 7.

¹⁰ Reply to the Response (**B50**), pp. 6 – 7, 45.

¹¹ Reply to the Response (**B50**), p. 8.

¹² Reply to the Response (**B50**), p. 8.

¹³ Reply to the Response (**B50**), pp. 9 and 47.

have significant priority over processing connection applications from others who have yet to commit to projects.¹⁴

- 5.14 EPNIE considers that there is a risk that SONI could remove or restrict EPNIE's reserved capacity before the latter has a chance to demonstrate usage and trigger reductions to, or termination of, EPNIE's capacity contracts and hence reduce security of supply.¹⁵
- 5.15 EPNIE notes that the Grid Code allows a generator 24 months to demonstrate Grid Code compliance including demonstration of capacity. The demonstration of capacity has significant influence on a project and is an area for potential discrimination between generators if not applied consistently, which should mean alignment of connection agreements with the Grid Code.¹⁶
- 5.16 EPNIE states that it is not its position that every term in the Connection Agreements must be reciprocated between the Parties, but that certain terms should be reciprocal and considered on their own merits and that EPNIE will be adversely affected if they are not.¹⁷
- 5.17 EPNIE notes that the Utility Regulator's determination must be consistent with the latter's duties under the applicable legal framework and the relevant principles of public law including that its determination should be reasonable, evidence-based, and all relevant considerations taken into account as set out in the Application.¹⁸
- 5.18 EPNIE states that it is not attempting to utilise the dispute process under Condition 26(1) as a mechanism to change existing industry arrangements outside of due process, or to obtain more favourable commercial terms than, or commercial advantage over, other parties.¹⁹
- 5.19 In response to SONI's assertion that it has not been able to consult all internal stakeholders, or consider the potential implications of the Proposed Amendments on other parties, such as NIE Networks (**NIEN**), EPNIE states that SONI has been aware of much the detail on the proposed changes since 6 April 2023 when these were communicated by email.²⁰
- 5.20 EPNIE disagrees that it would be entirely contrary to the spirit of the power in Condition 25(2)(h), Condition 26(1) and the EU Electricity Regulation (2019/943) (the **Electricity**

¹⁴ Reply to the Response (**B50**), p. 10.

¹⁵ Reply to the Response (**B50**), p. 10.

¹⁶ Reply to the Response (**B50**), p. 11.

¹⁷ Reply to the Response (**B50**), p. 13.

¹⁸ Reply to the Response (**B50**), p. 14.

¹⁹ Reply to the Response (**B50**), pp. 14 and 47.

²⁰ Reply to the Response (**B50**), p. 15.

Regulation) for the Utility Regulator to accept the proposed changes. Under Condition 25(2)(h) SONI is enabled to make appropriate provisions for the purposes of a connection agreement. EPNIE is not requesting terms to be inserted into Connection Agreements in its own commercial favour, but amendments that are fair and reasonable, and which should be made to the standard connection agreement.²¹

- 5.21 SONI has not previously raised any repercussive effects of the Proposed Amendments on the SEM or pan-European markets.²²
- 5.22 EPNIE does not agree that what might be considered adverse to EPNIE's interests is inherently subjective as it can be considered objectively and in the context of similar implications for all generators.²³ In response to SONI's statement that no other counterparty has disputed the reasonableness of the terms in dispute, EPNIE states that it cannot comment on the actions of other generators, but that its proposals are based on the extensive operational experience of the wider EPUKI group.²⁴
- 5.23 In response to SONI's statement that many of the terms to which EPNIE is objecting are also terms to which it is subject under the relevant connection offers, EPNIE disagrees and states that SONI has not provided any specific conflicts between the Proposed Amendments and the connection offers.²⁵
- 5.24 EPNIE notes that under Condition 26(1)(g) of the SONI Licence the Utility Regulator should determine the Dispute in such manner as appears to it to be reasonable, having regard (insofar as relevant) to terms and conditions settled by it being in as similar a form as is practicable with those in other connection agreements entered into by SONI. EPNIE states that the Proposed Amendments are necessary and will not discriminate against other generators or users, whereas not including the amendments in the Connection Agreements would have discriminatory effect on EPNIE.²⁶

Other items for consideration

- 5.25 In response to SONI's points about the scope of the dispute resolution function under Condition 26(1) of the SONI Licence, EPNIE notes that it is not a matter of being generally unhappy with standard terms but rather that SONI's failure to enter into a connection agreement that includes the Proposed Amendments has a discriminatory effect on EPNIE. EPNIE has the right to refer the Proposed Amendments to the Utility Regulator for determination under Condition 26 and the Utility Regulator has the powers to determine the Dispute. Indeed, under Condition 26(3) the Utility Regulator can also

²¹ Reply to the Response **(B50)**, p. 16.

²² Reply to the Response **(B50)**, p. 16.

²³ Reply to the Response **(B50)**, p. 17.

²⁴ Reply to the Response **(B50)**, p. 20.

²⁵ Reply to the Response **(B50)**, p. 20.

²⁶ Reply to the Response **(B50)**, p. 47.

settle any disputed variation of the terms of any connection agreement entered into as well.²⁷

5.26 In relation to costs, EPNIE notes that the Dispute Policy states that, at an early stage, the Utility Regulator will draw the Parties' attention to its view that it has the power to recover costs in a particular case. EPNIE notes that the Utility Regulator has not done so to date in relation to the Dispute and it presumes that this is because the power to make a costs order is not available in this case. However, should the Utility Regulator consider that it is, EPNIE reserves the right to make submissions on costs.²⁸

5.27 EPNIE requests that the Utility Regulator confirm whether or not such powers are available and, if so, provides an additional step in the process for the Parties to make submissions on costs.²⁹

²⁷ Reply to the Response **(B50)**, p. 47.

²⁸ Reply to the Response **(B50)**, p. 47.

²⁹ Reply to the Response **(B50)**, p. 47.

6. SECTION SIX – GENERAL VIEWS OF SONI

6.1 The views of SONI are set out in –

- (a) the Response **(B35)**), and
- (b) its response to the draft Statement (the **SOC Response: (B58)**).

6.2 We have read the above documents in full and have had full regard to all of these submissions. In doing so, we have borne in mind that our role is to determine the issue set out in Section Eight of this document.

6.3 The summary below, is derived mainly from the relevant section of the Statement. We adopt it as accurate for the purposes of this determination.

6.4 In an email dated 15 November 2023 **(B62)**, SONI was invited to make submissions on the Provisional Determination by 5pm on 30 November 2023. SONI's submissions were received by email at 9.28pm on 30 November 2023. No extension to the deadline had been sought in advance or in the covering email. As such, we have had no regard to SONI's submissions on the Provisional Determination and do not provide a summary of them in this determination.

6.5 This section outlines the general views which have been expressed by SONI as relevant to the issues for determination.

6.6 SONI's views on the Proposed Amendments are set out in Section Seven.

Summary

6.7 In its summary of its position, SONI states that the proposed changes to the Connection Agreements are contrary to the duties placed upon SONI and the Decision-Makers by the relevant legal framework³⁰ –

- (a) In light of SONI's duties, including the obligations not to unduly discriminate, SONI only accommodates proposed amendments to its standard template connection agreement to reflect the particular characteristics of specific projects, to address drafting errors, or to provide clarity. SONI has already made such changes to the form of Connection Agreements.
- (b) EPNIE's proposals relate (with the exception of one item) to terms that have been in place since 2007. EPNIE appears to be advancing the Proposed

³⁰ Response **(B35)**, pp. 3 – 4.

Amendments simply because it would prefer alternative commercial terms to form part of SONI's standard connection agreement.

- (c) SONI considers that to accommodate the proposed changes could have a significant adverse impact on its ability to discharge its statutory role. The proposals could be detrimental to SONI's ability to finance its activities and are outside the scope of current industry arrangements. They could also impact upon NIEN (and its licences), as well as the accepted construction offers for GT6 and GT7 (the **Construction Offers**). The changes are not consistent with the TIA between SONI and NIEN and other industry arrangements.
- (d) Certain of the Proposed Amendments could also restrict or delay third party access to the network if EPNIE is provided with an extended period to demonstrate that it will be able to use all of the capacity that it has reserved upon the NI Transmission System. Given the intense competition for network capacity in the Kilroot area for projects that will contribute to the delivery of decarbonisation targets, any delay to the release of capacity, where in all the circumstances SONI, acting as a reasonable and prudent operator and having regard to its licence obligations decided that was appropriate, would also have wider implications.

The applicable legal framework

- 6.8 SONI states that its role and responsibilities in relation to connections to the NI Transmission System are defined in EU law, which applies in Northern Ireland via Article 9 of the Protocol on Ireland and Northern Ireland, which forms part of the Withdrawal Agreement between the UK Government and European Union.³¹
- 6.9 It states that the legal framework takes the form of a hierarchy in which international agreements (such as the Withdrawal Agreement and the Trade and Cooperation Agreement) sit at the top, with EU-derived regulations (the Electricity Regulation and network codes) underneath, and then – in descending order – Northern Ireland statutes, energy licences (such as the SONI Licence), codes and other documents required by the licences (such as the Grid Code and TCCMS), and finally commercial contracts (such as the Connection Agreements).³²
- 6.10 It states that both the Electricity Regulation and the RFG Code contain provisions that relate to connections to the pan-European electricity market. These provisions are intended to ensure that parties who will be competing in this market are doing so on

³¹ Response (B35), p. 1.

³² Response (B35), p. 1.

appropriate terms. The EU regulations define different roles and place obligations onto all parties, including SONI, the Utility Regulator and the connecting generators. As an example, it states that these regulations provide TSOs with specific rights to ensure that they are able to fulfil their duties and maintain a stable and secure transmission system across Europe. Meanwhile, connecting generators are responsible for demonstrating their own compliance with the technical requirements defined in the RFG Code.³³

- 6.11 SONI states that the legislation is intended to ensure that generators competing in both local and pan-European markets do so on a level playing field and that they meet certain minimum technical standards. The legislation empowers the TSOs to take action where the standards are not met. In Northern Ireland, these minimum standards have been transposed into the Grid Code.³⁴
- 6.12 SONI states that Articles 3, 7, 29 and 71 are particularly applicable to the Dispute and provides summaries of those articles.³⁵
- 6.13 It states that the Electricity Order places a duty on SONI to plan and develop the NI Transmission System in an economic, coordinated, and efficient manner, and requires it to facilitate competition in the generation of electricity. One way that SONI does so is by minimising opportunities for competing parties to hoard network capacity that they will not be capable of using within a reasonable timeframe.³⁶
- 6.14 SONI states that the obligation in the SONI Licence requiring it to offer connection to any persons on application – and which provides a framework for dispute if SONI fails to enter into a Connection Agreement – must be read in the context of the elements of the legal framework which sit above it, such as the Electricity Regulation, network codes and Northern Ireland statutes.³⁷
- 6.15 SONI states that the SONI Licence, the transmission owner licences, the TCCMS, the CMC and the Grid Code are all relevant to the Dispute. They all have formal processes for their modification which the determination of the Dispute should not shortcut – particularly where this could impact third parties such as NIEN or disadvantage EPNIE's competitors.³⁸
- 6.16 The Decision-Makers are also bound by various elements of the legal hierarchy, including ensuring a level playing field for generators and securing that licence holders are able to finance their activities. SONI states that the Dispute should also be

³³ Response (B35), p. 2.

³⁴ Response (B35), p. 2.

³⁵ Response (B35), p. 2.

³⁶ Response (B35), p. 2.

³⁷ Response (B35), p. 2.

³⁸ Response (B35), p. 3.

considered in the context of its duty not to unduly discriminate against any party or class of parties.³⁹

General observations

- 6.17 The Application refers to terms which are *'fair'* or *'reasonable'*, particularly when arguing that specific clauses ought to be reciprocated between the Parties. However, the terms of any connection agreement need not necessarily be reciprocated between the parties, and EPNIE need not like all of the commercial terms in the Connection Agreements. The Decision-Makers must have regard to the other duties and obligations of the Utility Regulator, including the requirements of other existing industry arrangements and the need to ensure that all relevant clauses within the Connection Agreements align with the Parties' relevant roles and responsibilities in the RFG Code.⁴⁰
- 6.18 EPNIE has not alleged that the terms of the Connection Agreements to which it is objecting are in any way non-compliant with statute or the SONI Licence, or that SONI has acted unfairly and prejudicially against EPNIE's interests.⁴¹
- 6.19 In the Application, EPNIE states that when exercising its statutory functions, the Utility Regulator must have regard to relevant principles of public law including that its determination should be reasonable, evidence-based and take into account all relevant considerations. However, the overarching consideration is for the Decision-Makers to ensure that their determination is compatible with the relevant legal framework and existing industry arrangements, including the mechanisms that secure the financeability of licensees.⁴²
- 6.20 SONI notes that in the timeframe for the Response it has not been able to fully consult with all internal stakeholders or fully consider the potential implications of each of the proposed changes or implications for its required interaction with other parties, such as NIEN.⁴³
- 6.21 However, the Proposed Amendments could have implications for NIEN (and its licence and statutory obligations) and the provisions of other contractual arrangements between SONI and NIEN, such as the TIA or Construction Offers.⁴⁴
- 6.22 EPNIE should not be allowed to utilise the dispute process under Condition 26(1) of the SONI Licence as a mechanism to change existing industry arrangements outside of due process, particularly to obtain more favourable commercial terms, and therefore

³⁹ Response (B35), p. 3.

⁴⁰ Response (B35), p. 5.

⁴¹ Response (B35), p. 5.

⁴² Response (B35), p. 5.

⁴³ Response (B35), p. 6.

⁴⁴ Response (B35), p. 5.

commercial advantage, over other parties who have entered, or will in the future enter, a connection agreement with SONI. The Decision-Makers should give very careful consideration to the potentially adverse and wide-ranging implications of accommodating the Proposed Amendments, as well as the processes that would need to be followed to protect the rights of third parties impacted by any consequential modification industry documentation as a result of any changes.⁴⁵

- 6.23 SONI notes that the terms of the SONI Licence, in particular Condition 25, give SONI the exclusive ability to issue offers for connections to the NI Transmission System, and wide-ranging powers, for example in Condition 25(2)(h), to make '*detailed provision*' for '*such further matters as are or may be appropriate for the purposes of the agreement*'. Those wide-ranging powers are exclusively reserved to SONI, not a connection applicant. It would be entirely contrary to the spirit of this drafting if the Decision-Makers were to accept the changes proposed by EPNIE. It would be offensive to the purpose of Condition 26(1) and the level playing field principles set out in the Electricity Regulation if a party applying for connection could direct that terms be inserted into connection agreements in its own commercial favour.⁴⁶
- 6.24 In relation to EPNIE's point that it has not been suggested that GT6 and GT7 do not meet the requirements of the RFG Code or raise system safety concerns, SONI states that it had flagged the provisions of the RFG Code as they demonstrate the asymmetric allocation of roles between the TSO and generators. Notably, the RFG Code allows SONI to prevent a generating unit from operating where it considers a particular unit to be non-compliant. This is relevant in view of the obligations that EPNIE wishes to impose on SONI, in particular under the Grid Code.⁴⁷
- 6.25 SONI states that it is relevant that GT6 and GT7 are competing in both the SEM and the pan-European markets. It states that the Utility Regulator's obligations under the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 and relevant European legislation are of relevance in this respect and that EPNIE has not considered the potential repercussive effects of the Proposed Amendments.⁴⁸
- 6.26 In response to EPNIE's statement that the Response was the first time that SONI had raised such effects, SONI states that it previously attempted to have without prejudice discussions with EPNIE, but this proposal was rejected. This limited SONI's ability to engage on the detail. SONI also states that it engaged with EPNIE on some of the relevant issues since October 2022 but this had proved unfruitful.⁴⁹

⁴⁵ Response (B35), pp. 5 – 6.

⁴⁶ Response (B35), p. 6.

⁴⁷ SOC Response (B58), p. 3.

⁴⁸ Response (B35), p. 6.

⁴⁹ SOC Response (B58), p. 5.

- 6.27 In response to EPNIE's statement that the terms of the connection agreement were drafted before the introduction of the SEM and the capacity market, SONI states that the relevant terms were drafted at the time that the SEM went live. Only one amendment (Amendment 5) touches on issues related to the capacity market and SONI does not consider that the terms of the Connection Agreements are inconsistent with arrangements for the capacity market.⁵⁰
- 6.28 SONI refutes the suggestion that it has predetermined that EPNIE will fail to achieve its reserved capacity for GT6 and GT7. SONI states that its point is that the proposed amendments 'could' restrict or delay third party access if EPNIE was given a protracted period to demonstrate that it was able to use its reserved capacity. That judgment can only be made when the relevant circumstances arise. The connection offer process is a standalone process as set out in the SONI Licence and is not linked to any other timelines. Every party is given 12 months to prove utilisation of MEC, which in reality will be proved via Grid Code testing completed well within 12 months.⁵¹
- 6.29 What might be considered adverse to EPNIE's interests is inherently subjective. To the extent the Decision-Makers consider such considerations ought to be taken into account, SONI notes that⁵² –
- (a) Unlike in an ordinary arm's length contract between two private entities, SONI has wide-ranging obligations under statute and licence, and is subject to these overriding obligations when creating and exercising its contractual rights. These include obligations under the SONI Licence, specifically the obligation in Condition 15(1), not to unduly discriminate. To the extent SONI exercised its contractual rights prejudicially or was otherwise in breach of these overriding obligations, EPNIE would be able to refer these actions to the Utility Regulator to consider enforcement action against SONI.
 - (b) An agreement with the TSO to connect to the NI Transmission Network is a specific industry arrangement underpinned by particular considerations, between two very different parties with very different statutory, licence and contractual obligations. These include, as outlined in Condition 26(1), the principle that the connected party must pay charges determined pursuant to the TCCMS. This reflects the principle that SONI ought to be kept cash positive with regard to its incurred costs associated with any given connection, and that many of SONI's own obligations to any connected party are contingent upon third party actions (for example those of NIEN), which are subject to their own regulated back to back arrangements with SONI. EPNIE

⁵⁰ SOC Response (B58), p. 4.

⁵¹ SOC Response (B58), p. 4.

⁵² Response (B35), pp. 6 – 7.

has adduced no evidence that any of the terms to which it is objecting are not typical for connection agreements of this nature. It is SONI's view that the commercial balance of the connection agreement should favour SONI's interests (or those of the relevant TSO or distribution network operator) having regard to the particular circumstances and context such as, for example, the requirement for SONI to pay NIEN particular charges when they fall due (and ensure its activities relating to the NI Transmission System are kept financeable) or the requirement for SONI to enforce the relevant provisions of Grid Code.

- (c) All of the disputed terms within the Application, with the exception of the terms set out in clause 7.13 (which EPNIE is seeking to modify) are terms which are and have been contained in every other relevant connection agreement issued by SONI to any generator counterparty since 2007. This includes the connection agreements accepted by other entities within the EP group of companies, specifically EP Kilroot Limited and EP Ballylumford Limited. In that time, no other counterparty has disputed the reasonableness of any of the general terms in dispute.

The duties of the Utility Regulator

- 6.30 SONI states that the reference to a '*dispute*' under Article 13(2)(a) of the Energy Order does not include the '*resolution of a question*' under licence conditions imposed under Article 11(3)(c) of the Electricity Order. The resolution of the Dispute will have broad implications, including an indirect modification to the terms of the SONI Licence which require it to enter into terms with counterparties. Given that the Utility Regulator is required to abide by its duties under Article 12 of the Energy Order when making modifications to the SONI Licence, it would be anomalous and inconsistent not to take those duties into account in determining the Dispute.⁵³
- 6.31 In addition, some of the changes sought by EPNIE would require changes to other industry documentation, which would need to follow specific processes and would be subject to the Utility Regulator's duties under Article 12.⁵⁴
- 6.32 Finally, the Article 12 duties should be given appropriate weight under general public law principles, including the requirement for decisions to be rational.⁵⁵

Other items for consideration

⁵³ SOC Response **(B58)**, p. 2.

⁵⁴ SOC Response **(B58)**, p. 2.

⁵⁵ SOC Response **(B58)**, p. 2.

- 6.33 Should the Decision-Makers consider finding in favour of EPNIE in the Dispute, SONI requests that they set out clearly and comprehensively in the draft determination the basis for doing so. This will allow SONI to consider the potential ramifications, and undertake analysis, of any amendment to the Connection Agreements. This would also help ensure that disputes of this nature are unlikely to arise in future.⁵⁶
- 6.34 The question of whether the Proposed Amendments are reasonable in all the circumstances cannot be divorced from the scope of the Decision-Makers' powers to make such determinations, and the potential ramifications of those decisions on a wider basis.⁵⁷
- 6.35 Condition 26(1) is clearly intended to cover circumstances where SONI has failed to enter into a connection agreement where there is adequate capacity on the system. This view is borne out by the particular considerations that the Decision-Makers are required to take into account in making their decision, as set out in Conditions 26(1)(a) – (g). None of these considerations touches on the Decision-Makers making what are in some cases inherently subjective decisions on whether terms in a connection agreement are necessary or adversely affect a connectee. In a public law context, there is some precedent for courts and bodies with similar powers to the Decision-Makers being reluctant to be drawn into determinations on such subjective matters.⁵⁸
- 6.36 Before doing so in this case, the Decision-Makers should consider the risk of setting a precedent in becoming a de facto negotiator of commercial terms in every connection offer or connection agreement and undermining SONI's functions. SONI would welcome some clarity on this point in the draft and final determinations.⁵⁹
- 6.37 In EPNIE's case, SONI has not failed to enter into a connection agreement, and has agreed to do so on the basis of its standard terms. It is not appropriate for a party generally unhappy with specific commercial terms to refer such an issue to the Utility Regulator and this is not the expressed purpose or implicit intention of the scheme under Condition 26(1).⁶⁰
- 6.38 On the issue of costs, SONI requests that the Decision-Makers have regard to Article 31A(5A) of the Electricity Order, together with the fact that SONI has made its position clear for some considerable time and spent considerable time engaging with EPNIE on several of its amendments. In addition, the terms to which the Proposed Amendments relate are standard terms that SONI would be unable to change for one particular applicant in view of its non-discrimination duties. SONI states that it would be fair and

⁵⁶ Response (B35), p. 23; SOC Response (B58), pp. 9 – 10.

⁵⁷ SOC Response (B58), p. 9.

⁵⁸ Response (B35), p. 23.

⁵⁹ Response (B35), p. 23.

⁶⁰ Response (B35), p. 23.

proportionate for EPNIE to pay a sum equal to the full amount of any costs and expenses incurred by the Utility Regulator in determining the Dispute.

7. **SECTION SEVEN – THE PARTIES' VIEWS ON THE PROPOSED AMENDMENTS**

- 7.1 EPNIE's general views on the Dispute are set out in Section Five, and SONI's general views are set out in Section Six.
- 7.2 This section sets out the views of the Parties on each of the Proposed Amendments in turn as relevant to the issues for determination.
- 7.3 These views are set out in the Application (**B1**), the Reply to the Response (**B50**) and the PD Response (**Bx**) (on the part of EPNIE) and the Response (**B35**) (on the part of SONI).
- 7.4 We have read the above documents in full and have had full regard to all of these submissions. In doing so, we have borne in mind that our role is to determine the issue set out in Section Eight of this document.
- 7.5 Apart from in relation to the PD Response, the summary below is derived mainly from the relevant section of the Statement. We adopt it as accurate for the purposes of this determination.

Amendment 1 – Clause 6.5.5 of the Connection Agreements

EPNIE's view

- 7.6 EPNIE proposes that clause 6.5.5 of the Connection Agreements is amended as follows (proposed amendment in bold and underlined) –

*All sums payable by the Generator to SONI **or by SONI to the generator** [sic.] pursuant to this Agreement whether of charges, interest or otherwise shall (except to the extent otherwise required by law) be paid in full, free and clear of and without deduction, set-off or deferment in respect of sums the subject of any disputes or claims whatsoever save for sums the subject of a final award or judgment or which by agreement between SONI and the Generator may be so deducted or set off.*

- 7.7 EPNIE considers that it is fair and reasonable that this 'no set-off' provision is reciprocated in respect of amounts due to it by SONI.⁶¹
- 7.8 EPNIE believes that whether the terms of connection agreements are reciprocated between the parties should be assessed on a case-by-case basis.⁶²

⁶¹ Application (**B1**), p. 12.

⁶² Reply to the Response (**B50**), p. 21.

- 7.9 EPNIE does not object to SONI's set-off powers, but considers that equivalent provision should be made for generators. It is not clear how this would impact SONI's financeability and EPNIE notes that SONI has not assessed any such impact.⁶³
- 7.10 As neither Party has identified an exhaustive list of charges, and can only identify likely charges, the proposed amendment will support all charges.⁶⁴
- 7.11 EPNIE considers it appropriate that this amendment should be made generally in the template connection agreement for all generators.⁶⁵

SONI's view

- 7.12 SONI does not believe that the terms of the Connection Agreements should be reciprocated between the Parties. What is 'fair and reasonable' should be considered with regard to the differing statutory obligations and roles within the industry structure. The Connection Agreements reflect the roles set out in the legal hierarchy above them and therefore differ from the terms that might be entered into between two arm's length private entities.⁶⁶
- 7.13 SONI states that its role as the facilitator of connections places it in the middle of various commercial transactions and the Proposed Amendments have the potential to adversely impact its cash flow and financial risk profile. SONI's has not assessed its financeability in light of the potential cash flow impact that could result from this change, particularly if replicated across all connection agreements.⁶⁷
- 7.14 It has not undertaken a detailed cash flow analysis and submitted it to the Utility Regulator as part of its price control. Current assumptions around the price control are that SONI is not going to be out of pocket by having to carry the kinds of costs that could result from the proposed amendment. If the Decision-Makers were minded to find in favour of EPNIE then a full financeability assessment would be required, and SONI would expect the Decision-Makers to have due regard to the significance of that undertaking.⁶⁸
- 7.15 SONI notes that EPNIE has not objected to the principle that it must pay any charges without set-off or deduction. SONI does not consider that it is reasonable that it need be bound by a contractual restriction on its own set-off rights, particularly where these may impact its financeability.⁶⁹

⁶³ Reply to the Response (B50), pp. 21 and 22.

⁶⁴ Reply to the Response (B50), p. 21.

⁶⁵ Application (B1), p. 12.

⁶⁶ Response (B35), pp. 7 – 8.

⁶⁷ Response (B35), p. 8.

⁶⁸ SOC Response (B58), p. 6.

⁶⁹ Response (B35), p. 8.

- 7.16 SONI could only exercise its set-off rights in respect of sums owed to SONI by EPNIE which are either set off pursuant to⁷⁰ –
- (a) legal set-off rights, which can only be awarded by a court and relates to debts due and payable, liquidated or ascertainable without valuation or estimation, and actionable before a court, or
 - (b) equitable set-off rights, which are sums which are so closely connected that it would be manifestly unjust to enforce one without taking the other into account (*Geldof Metaalconstructie NV v Simon Carves Limited* [2010] EWCA Civ 667) (the **Geldof Case**), which is typically regarded as imposing a high threshold and as being difficult to rely on in practice.
- 7.17 SONI is unclear as to why EPNIE would object to set-off in such circumstances.
- 7.18 In practice, SONI considers that the only sums that it is likely to ever repay to EPNIE would be any rebate payments calculated pursuant to section 7 of the TCCMS (in circumstances where a third-party user connects to the transmission networks by making use of connection assets funded by EPNIE), or any over-charge of operation and maintenance (**O&M**) payments (the **Potential Payments**). The most likely charges which SONI considers EPNIE would be required to pay to SONI would be such O&M payments or any charges associated with modifications as defined in the Connection Agreements and referred to in clause 7 (**Potential Debts**).⁷¹
- 7.19 In circumstances where the Potential Debts were such that SONI could exercise its set-off rights as outlined above, SONI believes it is reasonable in all the circumstances for it to be able to set off such Potential Debts against any Potential Payments owed to EPNIE.⁷²
- 7.20 SONI must also be cognisant of the fact that it has obligations to pay any Potential Debts on to NIEN, as they relate to capital charges re-charged to SONI under the Construction Offers and the TIA. In circumstances where EPNIE refused to pay any Potential Debts to SONI, NIEN might take action against SONI for payment. SONI also considers that the wording of clause 6.5.5 of the Connection Agreements as drafted properly reflects the 'cash positive' provisions of the TCCMS in relation to SONI.⁷³

⁷⁰ Response (**B35**), p. 8.

⁷¹ Response (**B35**), p. 8.

⁷² Response (**B35**), p. 8.

⁷³ Response (**B35**), p. 8.

EPNIE's view on the Provisional Determination

- 7.21 EPNIE notes that we had not provided an example to illustrate where the proposed amendment, if made, would adversely affect SONI's cash flow.⁷⁴
- 7.22 It states that we had misinterpreted the proposed amendment in the Provisional Determination as it was not intended to allow any party to withhold sums from SONI. Rather, it was intended to prevent SONI from withholding sums from a generator. In contending that SONI should be able to set off payments due to a generator, but not allowing the generator to do so, the Provisional Determination was biased towards SONI.⁷⁵
- 7.23 If we were to make the proposed amendment to the Connection Agreements, EPNIE suggests that SONI should be guided to consult widely on making it to its standard connection agreement.⁷⁶

Amendment 2 – Clause 7.8 of the Connection Agreements

EPNIE's view

- 7.24 EPNIE proposes that clause 7.8 of the Connection Agreements is amended as follows (proposed amendment in bold and underlined)⁷⁷ –

*Where SONI wishes to make a Modification to the Transmission System, SONI shall complete and submit to the Generator a Modification Notification and shall advise the Generator of any works which SONI reasonably believes the Generator may have to carry out as a result. **Notwithstanding any other provision of this Agreement, SONI shall be responsible for and shall indemnify the Generator for all costs and expenses associated with any such works.***

- 7.25 EPNIE considers that, under clause 7.8 as currently drafted, it could be liable for costs and expenses resulting from modifications that it is required to undertake, or may be made liable for costs and expenses by SONI or NIEN. It is unreasonable that EPNIE should bear the costs and expenses of such modifications. EPNIE believes that the person requiring a connection that necessitates the modification should be liable for the costs associated with the modification, therefore such costs should lie with SONI and/or NIEN as applicable.⁷⁸

⁷⁴ PD Response (B65), p. 6.

⁷⁵ PD Response (B65), p. 6.

⁷⁶ PD Response (B65), p. 7.

⁷⁷ Application (B1), p. 12.

⁷⁸ Application (B1), pp. 12 – 13.

- 7.26 EPNIE is concerned that clause 7.8 does not clearly state who would be liable for any works which SONI reasonably believes the generator may have to carry out as a result of a SONI or NIEN modification. The site lease between EPK and NIEN states in clause 5.4(a)(vii) that the Landlord (NIEN) shall pay the costs incurred by the tenant. EPNIE has proposed the amendment to provide clarity and avoid undue discrimination (where other generators could find themselves liable for these costs). It is EPNIE's opinion that this proposed amendment is in alignment with the original intent.⁷⁹
- 7.27 EPNIE objects to any expectation of having to fund unknown future works to its own assets on its side of the connection point in the context of a modification it has no control over, this would create unknown future liabilities that could impact EPNIE's ability to finance its activities.⁸⁰
- 7.28 EPNIE states that the situation with respect to EP Ballylumford Limited (**EPB**) to which SONI refers is the reason why clarification in clause 7.8 is needed. However, as that situation has not yet been resolved, it is of no relevance to the Dispute.⁸¹
- 7.29 Contrary to SONI's suggestion, EPNIE has not sought to introduce a mechanism to veto modifications by NIEN.⁸²
- 7.30 SONI refers to the TIA, but has failed to provide any relevant extract from that document. EPNIE disagrees that the TIA contemplates that the costs of modifications are to be passed on to a user, and can find no wording to that effect. Assuming that 'user' means connected party, SONI's assertion that costs for replacement of NIEN assets be passed to the user does not correlate with clause 7.11 of the Connection Agreements. Under that clause, neither party is obliged to compensate the other in relation to a modification required by a third party save in relation to a generator being compensated for modifications associated with a third party system user.⁸³
- 7.31 EPNIE notes that SONI does not actually confirm that the statutory framework would allow EPNIE sufficient opportunity to raise technical objections to modification works. In addition, technical considerations are just one factor out of many. Out of a number of technically viable options, the least favourable for EPNIE could be chosen, with its opportunity to object limited to technical points.⁸⁴
- 7.32 It is EPNIE's understanding that when works take place to connection points on the NI Transmission Network, SONI enters into a Construction Agreement with NIEN. For the construction offers for GT6 and GT7, EPNIE entered into an agreement with SONI,

⁷⁹ Reply to the Response (**B50**), p. 24.

⁸⁰ Reply to the Response (**B50**), p. 24.

⁸¹ Reply to the Response (**B50**), p. 25.

⁸² Reply to the Response (**B50**), p. 26.

⁸³ Reply to the Response (**B50**), p. 26.

⁸⁴ Reply to the Response (**B50**), p. 28.

which then engaged NIEN. In the context of an NIEN modification, the Construction Agreement between SONI and NIEN would include provisions for how NIEN would reimburse SONI if necessary.⁸⁵

- 7.33 EPNIE considers that it is inappropriate to subsidise SONI or NIEN's projects via the generator and considers that SONI should charge NIEN for the costs. SONI does not confirm that a connection offer for other system users and a construction offer for NIEN could be applied in this case.⁸⁶
- 7.34 The costs of work required by a generator should be covered through NIEN's price control mechanism under which it seeks regulatory approval for the recovery of the wider project costs associated with the modification.⁸⁷
- 7.35 EPNIE does not agree that the proposed amendment would cause a fundamental change to other industry documents. However, even if it did, that should not be cause to reject the amendment, which is in the interests of managing a fair, non-discriminatory connections process that does not unfairly saddle generators with potential unknown future liabilities for modifying their connections apparatus to accommodate any third parties. Should there be a need to update the TIA, the Utility Regulator could consider such an update as part of its determination.⁸⁸
- 7.36 Other than the inclusion of text to clarify who is responsible for costs, EPNIE is content with the existing wording of clause 7.8.⁸⁹
- 7.37 EPNIE considers it is appropriate that this issue should be addressed generally in the template connection agreement for all generators.⁹⁰

SONI's view

- 7.38 SONI states that although in the Reply to the Response EPNIE suggests that it is not clear who would be liable for any works, in the Application it states that it is unreasonable that it would need to bear the costs of works required by SONI or NIEN. As such, EPNIE clearly understands that it would be required to undertake works under that clause and is seeking an amendment to require SONI to indemnify it for the cost of such works.⁹¹
- 7.39 In relation to the lease for the Kilroot site, SONI states this was an agreement between NIEN and EP Kilroot Limited – a separate entity from EPNIE. As such, it is not relevant to the Dispute and it is not the function of the Decision-Makers to apply an interpretation

⁸⁵ Reply to the Response (B50), p. 28.

⁸⁶ Reply to the Response (B50), p. 29.

⁸⁷ Reply to the Response (B50), p. 29.

⁸⁸ Reply to the Response (B50), p. 30.

⁸⁹ Reply to the Response (B50), p. 27.

⁹⁰ Application (B1), p. 13.

⁹¹ SOC Response (B58), p. 6.

of the terms of that lease to the Dispute. Notwithstanding this, SONI assumes that the clause in the lease is a standard landlord / tenant clause and not intended to address the particular circumstances of a modification required for technical reasons under a connection agreement.⁹²

- 7.40 Clause 7.8 does not require EPNIE to bear any costs incurred by NIEN. Rather, EPNIE is required to undertake certain works to its own assets on its side of the connection point, where those works are required in the context of a modification required to be made by NIEN and/or SONI to any associated transmission assets (i.e., 'Connection Assets' and/or 'System Assets' as defined in the TCCMS).⁹³
- 7.41 For context, SONI sets out some background to a recent modification notification served by SONI on EPB, of which EPNIE will be aware as it is part of the same group. This demonstrates what clause 7.8 is intended to cover in practice.⁹⁴
- 7.42 In this example, certain asset replacement work is required to be carried out in respect of the transmission assets to which EPB's own assets connect. EPB has been requested to carry out certain cabling and protection works (the **EP Works**), at the same time as the work being carried out by NIEN, in order to connect to the replacement NIEN transmission assets. The EP Works are required to be made to the assets owned by EPB on its side of the connection point, rather than to the transmission assets owned by NIEN on the NI Transmission System side of the connection point. The wording of clause 7 is required to ensure that EPB bears only the cost of replacement assets on its side of the connection point.⁹⁵
- 7.43 In circumstances where NIEN wishes to make a modification to transmission assets, including to comply with its own statutory and licence obligations, and a connected party is required to make modifications to its own assets as a result, it is not reasonable for the latter to either have the ability to veto such modifications by NIEN, or seek to fix SONI with the costs of the works.⁹⁶
- 7.44 The current wording of clause 7.8 reflects the terms of the TIA, in particular Section C, which reflects that NIEN has the ability to notify SONI of particular modifications to its assets, including replacement of assets and contemplates that the costs of such modifications are to be passed on to the relevant user.⁹⁷
- 7.45 SONI believes that the current wording of clause 7.8 gives EPNIE sufficient protection in terms of SONI's actions. It contemplates that SONI must inform EPNIE of the

⁹² SOC Response (**B58**), p. 6.

⁹³ Response (**B35**), p. 9.

⁹⁴ Response (**B35**), p. 9.

⁹⁵ Response (**B35**), p. 9.

⁹⁶ Response (**B35**), p. 9.

⁹⁷ Response (**B35**), p. 9.

technical details of the works that need to be carried out and also provide sufficient information to permit assessment of the reasonableness (*'reasonably'*) of the requirement to carry out the EPNIE works, and of the causal link between the NIE Networks works and the EPNIE works in question (*'as a result'*).⁹⁸

- 7.46 To the extent that NIEN proposed and planned works that were arbitrary, capricious or technically unnecessary, SONI imagines that the current statutory framework would allow EPNIE sufficient opportunity to raise any technical objections to such works.⁹⁹
- 7.47 However, where NIEN confirms to SONI that technical works are required to be made by EPNIE as a result of a modification it wishes to make to its assets, and establishes a clear causal link between its own works and those required by EPNIE, SONI is obliged under existing industry arrangements to trigger the modification processes under the Connection Agreements to ensure the overall coherence of the relevant industry frameworks.¹⁰⁰
- 7.48 SONI has no power or remit to fund capital works of this nature, nor any mechanism under which it could recover such costs under its tariff arrangements. The only exception is where it could recover from another system user in circumstances where that user requested a connection offer or a modification to an existing connection which resulted in the modification in question (which is already accommodated by the wording of clause 7.11 of the Connection Agreements).¹⁰¹
- 7.49 SONI is prohibited from owning any network assets and therefore could not capitalise the costs under accounting rules. It notes that EPNIE is requesting that SONI pay the uncapped and unspecified costs of any upgrades to its assets. Therefore, if the amendment were to be approved by the Utility Regulator, this would render SONI's obligations unfinanceable, resulting in a breach of Article 12(2)(b) of the Energy (Northern Ireland) Order 2003.¹⁰²
- 7.50 SONI has no mechanism to pass these costs on to NIEN under the TIA. Even if this were to be modified following the processes set out within the TIA, SONI considers that NIEN would similarly have no mechanism to recover such costs. Costs of modifications to a customer's own assets on the customer's side of the connection required over the lifetime of the connection are not allowed in NIEN's transmission charging statement (the **NIEN Charging Statement**). Such works would not constitute modifications required to NIEN's own connection assets, which would be recovered through site-specific O&M connection charges under the NIEN Charging Statement or the TCCMS.

⁹⁸ Response (B35), p. 9.

⁹⁹ Response (B35), p. 10.

¹⁰⁰ Response (B35), p. 10.

¹⁰¹ Response (B35), p. 10.

¹⁰² Response (B35), p. 10.

Nor would the works constitute modifications to system assets recovered through general use of system charges levied to all customers.¹⁰³

- 7.51 Any finding against SONI on this amendment would trigger numerous issues in terms of consequential changes to SONI's and NIEN's remit and relationship, and would require significant changes to the industry documentation, potentially extending to licence modifications and TIA changes. These changes would have to follow their own defined processes, which are not solely within the gift of SONI and or the Decision-Makers. Should the Decision-Makers consider finding against SONI on this point, NIEN, consumer representatives and other relevant stakeholders and third parties should be properly and fully consulted as to the potential impact of the proposed consequential amendments to industry documents that would be required to implement such a decision, and the relevant processes for any such amendments followed.¹⁰⁴

EPNIE's view on the Provisional Determination

- 7.52 EPNIE states that the costs incurred by a generator in work on its side of the connection can and should be included in the regulatory approvals for the wider project costs covered by SONI or NIEN. If SONI considers that it has no way to pay such costs that does not mean it is right for the generator to bear those costs.¹⁰⁵
- 7.53 EPNIE states that it is entirely appropriate for consumers to ultimately fund modifications to assets owned by generators where the work is triggered by SONI or NIEN, with the costs subject to regulatory approval through price control mechanisms. Where the works are driven by wider system reinforcement and are not necessary for a generator's local connection, the costs should be socialised. Whether the works are on the generator's side of the connection is irrelevant to who should pay the costs.¹⁰⁶
- 7.54 EPNIE questions what was meant by the reference in paragraph 9.12 of the Provisional Determination to work to the NI Transmission System from which the generator benefits. Such work was not part of the Dispute.¹⁰⁷
- 7.55 EPNIE considers that Clause 7.11 of the Connection Agreements leaves open the issue of who bears the costs as it does not mean that a party cannot have any obligation to compensate the other for works done in consequence of a modification by that other party. The proposed amendment is intended to make clear that EPNIE is reimbursed

¹⁰³ Response (B35), p. 10.

¹⁰⁴ Response (B35), p. 10.

¹⁰⁵ PD Response (B65), p. 7.

¹⁰⁶ PD Response (B65), p. 8.

¹⁰⁷ PD Response (B65), p. 8.

for all costs and expenses associated with work necessitated by a Modification required by SONI or NIEN.¹⁰⁸

- 7.56 EPNIE does not consider that potential exposure to unforeseen liabilities was previously understood by generators or SONI. A generator could not price these in as a cost of doing business or obtain financing to cover them.¹⁰⁹
- 7.57 EPNIE notes that the issue in dispute is who funds the relevant works, not the reasonableness of the requirement to undertake them.¹¹⁰
- 7.58 EPNIE welcomes the confirmation that any modification notification can be referred to the Utility Regulator for determination under Clause 7.9.2 of the Connection Agreements.¹¹¹

Amendment 3 – Clause 7.13 of the Connection Agreements

EPNIE's view

- 7.59 EPNIE proposes that clause 7.13 of the Connection Agreements is amended as follows (proposed amendment in bold and underlined)¹¹² –

*For the avoidance of doubt, SONI shall, ~~at its sole discretion~~ **acting reasonably, and in accordance with Prudent Operating practice** [sic.], determine whether a Modification Application qualifies as a Modification. When giving such consideration SONI will take to into account a number of factors, including, but not limited to, the following:*

7.13.1 changes to the MEC contracted to the Facility; or

7.13.2 changes to the running regime and/or generation technology of the Facility and its effect on network stability; or

7.13.3 effects on other generation Connected or contracted to the NI System.

- 7.60 EPNIE states that, as drafted, clause 7.13 would allow SONI to reject any modification and it is not clear whether arbitration would be available. The proposed amendment reflects the fact that SONI should already be acting reasonably and in accordance with

¹⁰⁸ PD Response (B65), pp. 8 – 9.

¹⁰⁹ PD Response (B65), p. 9.

¹¹⁰ PD Response (B65), p. 9.

¹¹¹ PD Response (B65), pp. 9 – 10.

¹¹² Application (B1), p. 13.

prudent operating practice. There is no reason why SONI should object to including it unless it does not expect to act in such a way.¹¹³

7.61 EPNIE does not accept that requiring SONI to act reasonably, and in accordance with Prudent Operating Practice could ever be in conflict with its statutory or licence functions.¹¹⁴

7.62 EPNIE disagrees with SONI's assertion that the proposed amendment would have the impact of imposing new obligations on SONI that go beyond its licence obligations and would be inconsistent with its industry arrangements with third parties. SONI must implicitly always act in a reasonable manner and as a prudent operator in undertaking its functions in its capacity as the TSO and there is no scenario where it could determine whether a Modification Application constitutes a Modification on an unreasonable or imprudent basis.¹¹⁵

7.63 The introduction of the words '*sole discretion*' appears to give SONI additional authority beyond the SONI Licence in determining Modifications, when in fact SONI is, and should always be, bound by relevant requirements in the licence, and its wider duties and obligations in legislation.¹¹⁶ The words '*sole discretion*' are unnecessary and do not appear in any other connection agreement that EPNIE has sight of.¹¹⁷

7.64 In response to SONI's comment that this wording was changed for all connection agreements from 2018, EPNIE states that SONI did not consult on that change and generators connected after that date were most likely unaware of it. As such, it would seem that SONI has discriminated against generators connected since 2018.¹¹⁸

7.65 Clause 23.1 provides that –

Any dispute or difference of whatever nature howsoever arising under, out of or in connection with this Agreement between the Parties shall be resolved in accordance with the Disputes Resolution Procedure in this clause 23.

7.66 EPNIE expects that a dispute between it and SONI as to whether a Modification Application qualifies as a 'modification' would be referable under this procedure and requests the Utility Regulator's confirmation in this regard. If it is not, EPNIE requests directions from the Utility Regulator to ensure that it is referable.¹¹⁹

¹¹³ Application (B1), p. 13.

¹¹⁴ Reply to the Response (B50), p. 32.

¹¹⁵ Reply to the Response (B50), p. 33.

¹¹⁶ Application (B1), p. 13; Reply to the Response (B50), p. 34.

¹¹⁷ Application (B1), p. 13. See, for example, the connection agreements for Kilroot Power Station (B21) or Ballylumford Power Station (B22).

¹¹⁸ Reply to the Response (B50), p. 36.

¹¹⁹ Application (B1), p. 14.

- 7.67 EPNIE states that it is not asserting that it is EPNIE's place to make an assessment as to whether proposed changes on EPNIE's side of the connection would have a material effect on NIEN and its plant or apparatus.¹²⁰
- 7.68 SONI has previously been able to meet its licence obligations without the need for 'sole discretion' in determining whether a Modification Application qualifies as a 'Modification' under previous connection agreements, so it is not clear why these words are now considered to be necessary.
- 7.69 EPNIE notes that SONI has not provided the extracts of the TIA to which it refers and, if SONI consider there to be an inconsistency between the TIA and the Connection Agreements in what would be deemed a modification, then SONI should seek to resolve that inconsistency.¹²¹
- 7.70 EPNIE considers it is appropriate that the proposed amendment should be made to the template connection agreement for all generators.¹²²

SONI's view

- 7.71 SONI sets out the definitions of the key terms used or referenced in clause 7.13 as follows¹²³ –

Prudent Operating Practice: *the standard of practice attained by exercising that degree of skill, diligence, prudence and foresight which could reasonably be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances*

Modification Application: *an application form in the form or substantially in the form set out in Schedule 6 of the Connection Agreements [which allows EPNIE to provide further terms around a proposed Modification]*

Modification: *any actual or proposed replacement, modification, alteration or construction by or on behalf of [EPNIE] to [EPNIE's assets or plant] or the manner of its operation, or on behalf of SONI to NIE Network TO's] transmission assets or plant or the manner of its operation, which (in either case) has or will have a Material Effect on the other Party*

Material Effect: *an effect causing the carrying out of any works on [NIENs] [plant and apparatus or ROI plant or apparatus] altering the manner of [its] operation [or which would] cause or be likely to cause [either SONI or EPNIE]*

¹²⁰ Reply to the Response (B50), p. 32.

¹²¹ Reply to the Response (B50), pp. 34 and 35.

¹²² Application (B1), p. 13.

¹²³ Response (B35), p. 11.

to affect any works or to alter the manner of operation of its plant and/or apparatus.

- 7.72 If a Modification Application is received by SONI from EPNIE, SONI (together with NIEN) has sole responsibility under the SONI Licence and other relevant industry arrangements for determining whether the proposed works constitute a 'Modification' within the meaning of the Connection Agreements. This would be where such works would have a 'Material Effect' on NIEN's plant or apparatus, or assets or apparatus owned by the Republic of Ireland transmission asset owner (ESB PLC).¹²⁴
- 7.73 It is not, and should not be, EPNIE's place to make an assessment as to whether proposed changes on its side of the connection would have a material effect on NIEN and its plant or apparatus. SONI accepts that both it and NIEN must comply with their respective statutory and licence obligations in making such an assessment. However, SONI would not agree to the imposition of new obligations on it and NIEN that are not otherwise explicitly provided for within their respective licences. The obligations to act reasonably or exercise 'Prudent Operating Practice' when making such a determination would be new obligations.¹²⁵
- 7.74 As those general obligations do not exist within the current licence framework and have not been assessed in that context, SONI considers imposing them upon it contractually would not be reasonable in all the circumstances, nor appropriate in a dispute that must be heard in the context of the existing legal framework, including extant industry arrangements.¹²⁶
- 7.75 SONI disagrees that the wording in question would override its statutory and licence obligations and notes that the latter would always override any contractual provisions. Additionally, SONI had proposed to amend clause 7.13 to clarify this point by including a new sub-paragraph referencing its licence obligations, but that proposal was rejected by EPNIE as not going far enough.¹²⁷
- 7.76 SONI states that whilst it would, as a matter of course, normally endeavour to act reasonably and in accordance with Prudent Operating Practice, the existing legal framework is clearly drafted in a particular way for a particular reason, and implicitly acknowledges the wide range of obligations and standards that are relevant to any TSO exercising its statutory and licence functions, including for example, economic, efficient and coordinated network planning which requires a longer term view, as well as the constraints applicable to SONI when exercising its TSO function. This includes the coordinated series of contractual and licence arrangements with regulated third parties

¹²⁴ Response (B35), pp. 11 – 12.

¹²⁵ Response (B35), p. 12.

¹²⁶ Response (B35), p. 12.

¹²⁷ Response (B35), p. 12.

such as NIEN, which mean that SONI is not always the only party involved in the relevant decisions.¹²⁸

- 7.77 SONI states that the amendment does not take account of the fact that, in circumstances where SONI and NIEN disagree whether any Modification Application constitutes a modification, Section S, paragraph 6.2 of the TIA (as approved by the Utility Regulator) provides that it be deemed a Modification for the purposes of the TIA.¹²⁹
- 7.78 There is presently no inconsistency between the TIA and the Connection Agreements.¹³⁰ However, the proposed amendment could create such an inconsistency. This could arise where NIEN considered that a Modification Application submitted by EPNIE qualified as a Modification, but EPNIE sought recourse against SONI under the Connection Agreement on the basis that the application did not qualify as a Modification, applying a different set of criteria (which might be interpreted subjectively by any third party arbitrator), namely that SONI was obliged to act reasonably and in accordance with Prudent Industry Practice.¹³¹
- 7.79 To the extent that there is any current inconsistency, SONI cannot unilaterally amend the TIA to resolve it. As any proposed amendment would affect the interests of NIEN and it has not put forward its views, the Decision-Makers may not be able to find against SONI on this point.¹³²
- 7.80 In principle, SONI has no issues with the proposal that the Utility Regulator confirm whether a decision under clause 7.13 can be the subject of a dispute using the procedure in clause 23.1. However, it notes that as NIEN would not be party to any dispute process, or determination issued by the Decision-Makers, the TIA might need to be updated to accommodate this principle given the points made in paragraph 7.67.¹³³
- 7.81 SONI understands that the TIA cannot be modified without the involvement of NIEN, which may object to such a proposal on the basis that this clause primarily deals with whether a 'Modification' has arisen at all, that would trigger the variation clauses, rather than what the variation looks like.
- 7.82 The wording '*at its sole discretion*' was introduced as part of a set of amendments to the terms for all new connecting generators in 2018, and has been reflected in all new

¹²⁸ Response (B35), p. 12.

¹²⁹ Response (B35), p. 12; SOC Response (B58), p. 8.

¹³⁰ SOC Response (B58), p. 8.

¹³¹ Response (B35), p. 12.

¹³² SOC Response (B58), p. 8.

¹³³ Response (B35), p. 13.

connection agreements since then. The Connection Agreements for Kilroot Power Station and Ballylumford Power Station were issued before this change was made.¹³⁴

- 7.83 In response to EPNIE's statement that it is unaware of any recent consultation on standard connection agreement terms, SONI states that it is not required to undertake such a consultation.¹³⁵
- 7.84 SONI also states that EPNIE's allegation that it has discriminated against generators since 2018 is extremely serious and unfounded. EPNIE is the only entity seeking preferential treatment and generators connecting after 2018 would have had the opportunity to review and object to the proposed wording they were being asked to sign. The change to connection agreements was made in 2018 to align with Section S paragraph 6.2 of the TIA so, if indeed there is any discrimination, it would be justified.¹³⁶
- 7.85 SONI does not consider that it is discriminatory to amend its connection agreement and apply new terms uniformly to all new applicants.¹³⁷
- 7.86 SONI does not consider that it has the power retrospectively to amend existing connection agreements to introduce this particular and specific change, so the wording in existing connection agreements signed before that date, such as those in place in respect of Kilroot or Ballylumford Power Stations, has remained unchanged.¹³⁸

EPNIE's view on the Provisional Determination

- 7.87 EPNIE welcomes the provisional decision to remove the relevant wording from Clause 7.13. It welcomes confirmation that SONI's determination as to whether a Modification Application qualifies as a Modification would fall within the dispute resolution procedure in Clause 23 of the Connection Agreements. It also welcomes the suggestion that SONI should consider whether it would be appropriate to consult before making significant amendments to the standard connection agreement in future.¹³⁹

Amendment 4 – proposed new Clause 13.11 of the Connection Agreements

EPNIE's view

- 7.88 EPNIE proposes that a new clause 13.11 is included in the Connection Agreements as follows. This copies a provision that is already included in clause 13.1 of the Connection Agreements for the benefit of SONI¹⁴⁰ –

¹³⁴ Response (B35), p. 13.

¹³⁵ SOC Response (B58), p. 3.

¹³⁶ SOC Response (B58), p. 3.

¹³⁷ SOC Response (B58), p. 3.

¹³⁸ Response (B35), p. 13; SOC Response (B58), p. 3.

¹³⁹ PD Response (B65), p. 11.

¹⁴⁰ Application (B1), p. 14.

If SONI shall be in breach of the provisions of this Agreement or of the Grid Code and such breach causes or can reasonably be expected to cause a material adverse effect on the business, operations or financial position of the Generator, then Generator may:

13.11.1 where the breach is capable of remedy, give written notice to SONI specifying in reasonable detail the nature of the breach and requiring SONI within 28 days after receipt of such notice or within any longer period agreed between the Generator and SONI, (the agreement of the Generator not to be unreasonably withheld or delayed) to remedy the breach; or

13.11.2 where the breach is incapable of remedy, give written notice to SONI specifying in reasonable detail the nature of the breach and the reasons that the breach is incapable of remedy and requiring SONI within five (5) Business Days after receipt of such notice to undertake to the Generator not to repeat the breach.

- 7.89 EPNIE states that there needs to be an equivalent mechanism to inform SONI of any breaches of the Grid Code by SONI which result in a material adverse effect on EPNIE's business, operations or financial position so that these can be addressed and resolved in a timely manner.¹⁴¹
- 7.90 EPNIE does not consider that the proposed amendment amounts to a substantial change to the roles and responsibilities of the parties under a connection agreement. Rather it ensures reciprocal and fair rights.¹⁴²
- 7.91 EPNIE does not agree that the RFG Code requires SONI to have the current one-sided contractual mechanism and does not consider SONI's enforcement role in relation to the Grid Code justifies a lack of reciprocal rights for a generator under a connection agreement.¹⁴³
- 7.92 Nor does EPNIE consider that directing the inclusion of such a clause would be outside the powers of the Utility Regulator.¹⁴⁴
- 7.93 EPNIE considers that the proposed amendment should be made in the template connection agreement for all generators.¹⁴⁵

SONI's view

¹⁴¹ Application (B1), p. 14.

¹⁴² Reply to the Response (B50), p. 37.

¹⁴³ Reply to the Response (B50), p. 38.

¹⁴⁴ Reply to the Response (B50), p. 39.

¹⁴⁵ Application (B1), p. 14.

- 7.94 SONI notes that EPNIE does not provide any references to the legal framework that support this substantial change to roles and responsibilities set out in the standard terms.¹⁴⁶
- 7.95 SONI sets out the text of clause 13.1, which EPNIE seeks to replicate for generators' benefit¹⁴⁷ –

13.1 Generator Breaches Causing Material Adverse Effect

If the Generator shall be in breach of the provisions of this Agreement or of the Grid Code (in circumstances which do not amount to an event of default under Clause 12) and such breach causes or can reasonably be expected to cause a material adverse effect on the business, operations or financial position of SONI, NIE, or other System Users then SONI may:

13.1.1 where the breach is capable of remedy, give written notice to the Generator specifying in reasonable detail the nature of the breach and requiring the Generator within 28 days after receipt of such notice or within any longer period agreed between SONI and the Generator, (the agreement of SONI not to be unreasonably withheld or delayed) to remedy the breach; or

13.1.2 where the breach is incapable of remedy, give written notice to the Generator specifying in reasonable detail the nature of the breach and the reasons that the breach is incapable of remedy and requiring the Generator within five (5) Business Days after receipt of such notice to undertake to SONI not to repeat the breach.

- 7.96 SONI states that the rationale for clause 13.1 is its role under the Grid Code and Condition 16 of the SONI Licence. Condition 16 obliges SONI to prepare and implement, and where necessary, enforce the provisions of the Grid Code, with the aim of facilitating the development, maintenance and operation of an efficient, coordinated and economical transmission system, making access to the NI Transmission System available to licensed suppliers and generators, and generally facilitating competition in the generation and supply of electricity. SONI's role under the Grid Code is essential to it delivering a secure and stable transmission system and is conferred on SONI by primary legislation.¹⁴⁸
- 7.97 In that context, clause 13.1 transposes SONI's statutory rights by giving it a contractual mechanism to serve urgent notice on EPNIE requiring it to remedy outstanding breaches of the Connection Agreements or Grid Code which have a material adverse

¹⁴⁶ Response (B35), p. 13.

¹⁴⁷ Response (B35), p. 14.

¹⁴⁸ Response (B35), p. 14.

effect on the business, operations or financial position of SONI, NIEN, or other system users. These provisions work in conjunction with clause 12.2.5 of the Connection Agreements, which provides SONI with the relevant contractual mechanism to require urgent remediation of ongoing breaches, and ultimately a route to terminate the Connection Agreement for default if such breaches are not or cannot be remedied, following the processes outlined in clauses 12.2.5 and 13.7, to which EPNIE has not objected.¹⁴⁹

7.98 Clause 13.1 reflects SONI's enforcement role, and the significant or ongoing wider system impacts that outstanding breaches of the Connection Agreements or Grid Code might have on third parties and the system more generally. The terms are necessarily one-sided, as the Parties' roles and functions in the context of the Connection Agreements are inherently different. This is of paramount importance due to the significant potential for such breaches to jeopardise the stability or security of the NI Transmission System.¹⁵⁰

7.99 SONI states that EPNIE's proposed changes appear to turn the existing industry structure, and the provisions of primary legislation, on their head and give EPNIE a contractual mechanism requiring SONI to remedy perceived breaches, including breaches of the Grid Code, within narrow timeframes. In SONI's view, this is both inappropriate, and falls outside the discretion of the Decision-Makers to order. In support of that contention, SONI makes the following points¹⁵¹ –

- a) The proposed clause does not reflect the differing roles of the Parties by, for example, failing to acknowledge that SONI is the party that oversees and implements EPNIE's compliance with the Grid Code, whereas EPNIE plays no such oversight or implementation role with respect to SONI. The latter is the role of the Utility Regulator, or the dispute resolution and arbitration mechanisms under the Connection Agreements to the extent a breach had an ongoing financial or other detrimental impact on EPNIE.
- b) The proposed clause does not reflect that, given the nature of the roles played by the various stakeholders involved in running the transmission system, including, for example, NIEN as owner of the NI Transmission Network, many of SONI's obligations within both the Connection Agreements and the Grid Code are contingent upon third party actions or contracts, including the TIA or Construction Offers. The interconnected nature of the current industry arrangements is reflected in the existing wording of the Grid Code (for example PC2.2, CC.A1.1.8, OC6.3.2) and the Connection Agreements (for example, the

¹⁴⁹ Response (B35), p. 14.

¹⁵⁰ Response (B35), p. 14.

¹⁵¹ Response (B35), p. 14 – 15.

limitation of liability provisions in clause 10), whereas EPNIE's compliance with the terms of the Connection Agreements and the Grid Code is almost entirely within its control. Accepting this amendment would require a significant review of the current industry arrangements to ensure that the relevant obligations imposed on SONI are passed through to third parties as appropriate.

- c) The proposed clause does not acknowledge that EPNIE's outstanding breaches will likely have wider system ramifications, which might be extremely serious, and are significantly more likely to have an impact on third parties (including other system users, consumers or NIEN), whereas any breaches by SONI are likely to only impact EPNIE. In SONI's view, the appropriate remedy for such breaches would be a financial one, and to the extent SONI breaches the Connection Agreements, including its obligation under clause 11.1 to comply with the Grid Code, EPNIE would be entitled to raise a dispute under clause 23 of the Connection Agreements. EPNIE would also be entitled to recover reasonably foreseeable costs arising from SONI's breach under the existing terms of the Connection Agreements, subject to the usual rules around claims for breach of contract. SONI has made these points previously to EPNIE and they have not been addressed.

EPNIE's view on the Provisional Determination

- 7.100 EPNIE states that it is not suggesting that it determines whether or not SONI is in breach of the Grid Code or the Connection Agreements. Rather, it is seeking to put in place an administrative requirement as to the rectification of a breach which had been determined by a competent authority. This is important so that a generator will know that SONI will rectify the breach in a particular timeframe, or not repeat it, as applicable.¹⁵²

Amendment 5 – Clause 21.1 of the Connection Agreements

EPNIE's view

- 7.101 EPNIE proposes that clause 21.1 of the Connection Agreements is amended as follows (proposed amendment in bold and underlined)¹⁵³ –

*For the purposes of this Clause 21, a Capacity Test means a test by undertaken by [sic] the Generator to demonstrate to the satisfaction of SONI (acting reasonably and in accordance with Prudent Operating Practice) that the Generating Unit(s) can achieve 95% of the Facility's MEC for a duration of \geq 30 mins. The Capacity Test shall be undertaken by the Generator ***within****

¹⁵² PD Response (B65), p. 12.

¹⁵³ Application (B1), p. 15.

twelve months from the date on which the Facility is Connected to NI System, Energised at the Connection Point and issued with a Temporary Compliance Certificate before the later of: (1) within twenty-four (24) months from the date on which the Facility is Connected to NI System, Energised at the Connection Point and issued with a Temporary Compliance Certificate; and (2) the latest Long Stop Date associated with the capacity awarded through the Capacity Market.

7.102 EPNIE considers that, without the amendment, clause 21.1 conflicts with its commitments in the Grid Code and the capacity market. It notes that there are three processes at play that all seek to manage the timely delivery of capacity for the same connection each of which has a different timeline which introduces investor uncertainty¹⁵⁴ –

- a) Grid Code compliance demonstration (up to 24 months),
- b) connection agreement MEC demonstration (up to 12 months), and
- c) CMC compliance demonstration (before Long Stop Date as defined).

7.103 The Grid Code (CC15.2.2) allows a unit to operate under an Interim Operational Notification for up to 24 months. This allows generators 24 months to demonstrate all Grid Code compliance including demonstrating the unit's maximum export capacity through a registered capacity test.¹⁵⁵

7.104 Under J.6.1.2 of the CMC, the system operators will terminate awarded new capacity in the event that '*Minimum Completion has not been achieved by the applicable Long Stop Date*'. Under J.6.1.1 of the CMC, 'Minimum Completion' requires that '*the Proportion of Delivered Capacity in respect of the Awarded New Capacity is not less than 50%*'. The 'Long Stop Date' in respect of awarded new capacity means¹⁵⁶ –

in the case of a Capacity Award with a capacity duration greater than one year, the last day of the eighteenth full calendar Month after the start of the first Capacity Year in which the Awarded New Capacity is to be provided...

7.105 Therefore, the CMC requires a minimum of 50% of the capacity to be delivered 18 months after the beginning of the first capacity year. That capacity is demonstrated through the Registered Capacity test during the Operational Notification procedure whilst operating under an Interim Operation Notification. Under G.3.1.2 of the CMC¹⁵⁷ –

¹⁵⁴ Application (B1), p. 15.

¹⁵⁵ Application (B1), p. 15.

¹⁵⁶ Application (B1), p. 15.

¹⁵⁷ Application (B1), p. 16.

the value of Grid Code Commissioned Capacity in respect of a Generator Unit or Interconnector at a given time is the Registered Capacity based on the Final Compliance Certificate, Operational Certification or Final Operational Notification for that Generator Unit or Interconnector under the applicable Grid Code...

7.106 However, clause 21.4 of the Connection Agreements provides¹⁵⁸ –

Where the Generator fails to pass the Capacity Test within the specified timeframes, then SONI shall be entitled to draw down on the MEC Bond. For the avoidance of doubt, the Generator shall be deemed to have failed to pass the Capacity Test in the event that the Generator fails to meet both the MEC and duration requirements of the Capacity Test.

7.107 Clause 21.6 of the Connection Agreements provides that¹⁵⁹ –

Following the Capacity Test, if the Generator is unable to fully utilise the MEC for the Facility stated in Schedule 2 of this Agreement then SONI (acting reasonably and in accordance with Prudent Operating Practice) reserves the right to vary the MEC to a value equal to that achieved during the Capacity Test.

7.108 Therefore, the MEC could be reduced by SONI, and SONI is entitled to draw down on the MEC bond, within twelve months from the date of energisation but before the Long Stop Date for the capacity contract awarded to the GT6 and GT7 connections. EPNIE notes that clause 21.7 provides that, in applying the principles outlined in clause 21, SONI may take into consideration circumstances that are outside of EPNIE's control. However, this does not provide sufficient certainty.¹⁶⁰

7.109 EPNIE states that its proposed amendment ensures that clause 21.1 does not cause conflict with those commitments. This is in contrast to the standard 12 months, which is not tailored as relevant to the GT6 and GT7 connections. It states that, without this amendment, SONI could put EPNIE in breach of the CMC and trigger the termination of the capacity contracts for GT6 and GT7. This is because, if EPNIE is unable to demonstrate an MEC above 50% of the awarded capacity within 12 months, SONI has the right to reduce the MEC to the demonstrated capacity and a reduced MEC would impose export limits on GT6 and GT7 under clause 8.1.¹⁶¹

¹⁵⁸ Application (B1), p. 16.

¹⁵⁹ Application (B1), p. 16.

¹⁶⁰ Application (B1), p. 16.

¹⁶¹ Application (B1), p. 16.

- 7.110 This would result in EPNIE being unable to fulfil its capacity market obligations when it is afforded longer time under the CMC and Grid Code. EPNIE acknowledges that the likelihood of this scenario arising is very low but notes that it carries significant adverse consequences for the project and EPNIE.¹⁶²
- 7.111 EPNIE considers that the regulatory scheme should operate as a coherent and consistent whole, and not result in inconsistent outcomes where it is afforded greater time under the Grid Code and CMC to demonstrate capacity testing but less under the Connection Agreements.¹⁶³
- 7.112 In response to SONI's points in relation to the TCCMS, EPNIE notes that the TCCMS does not specify a particular timeframe.¹⁶⁴
- 7.113 EPNIE states that it is not disputing the size or reasons for drawdown of the MEC bond, or intending to tie MEC bonds to the capacity market. Rather, it is attempting to ensure that the timeframes in the connection offer, Grid Code and CMC operate as a coherent and consistent whole to avoid the risk that EPNIE is frustrated in delivering its capacity market obligations.¹⁶⁵
- 7.114 EPNIE states that SONI is not correct that EPNIE accepted connection offers for GT6 and GT7 on the basis of the current MEC bond regime which does not differ from the Connection Agreements.¹⁶⁶
- 7.115 This is because, for example, clause 10.15 of the GT6 connection offer dated April 2021 states that the capacity test will be the later of¹⁶⁷ –
- a) 60 months from the date of acceptance of the offer, or
 - b) 12 months from the date that GT6 is connected and energised at the Connection Point to the NI Transmission System, and issued with a Temporary Compliance Certificate.
- 7.116 The GT6 connection offer was accepted on 22 April 2021 and the GT7 offer was accepted on 28 February 2020. On the basis of the period of 60 months, EPNIE states that it should have until at least 22 April 2026 for GT6 and until 28 February 2025 for GT7, before SONI can draw down the MEC bond and reduce the export capacity of the units. In the Connection Agreements, SONI has sought to reduce this period to 12

¹⁶² Application (B1), p. 17.

¹⁶³ Application (B1), p. 17.

¹⁶⁴ Reply to the Response (B50), p. 39.

¹⁶⁵ Reply to the Response (B50), p. 40.

¹⁶⁶ Reply to the Response (B50), p. 41.

¹⁶⁷ Reply to the Response (B50), p. 41.

months from energisation only, which, assuming energisation takes place in Q4 2023, would set the capacity test to sometime in Q4 2024.¹⁶⁸

- 7.117 EPNIE notes that the connection offer should have included a mechanism to align the capacity test with any associated capacity market Long Stop Date(s) but, unfortunately, this was not picked up at the time. However, the opportunity now exists to correct that oversight by aligning the capacity test date in the Connection Agreement. The 60-month period from offer acceptance will naturally fall in a similar timeframe as most capacity market contracts. Assuming a connection offer is accepted around the same time as the final capacity auction results are published, the capacity contract Long Stop Date would fall 66 months after acceptance. For the sake of six months and avoiding potential negative market repercussions, EPNIE proposes that SONI aligns the capacity test date and Long Stop Dates (as relevant) for all future connection offers and connection agreements for all parties going forward.¹⁶⁹
- 7.118 Should the Connection Agreements be amended to align the capacity test date with capacity market Long Stop Date then EPNIE would have until 31 March 2026 before SONI could draw down the MEC bond and reduce the export capacity for GT6. In the alternative, EPNIE should have until 22 April 2026 under the terms of the connection offer. EPNIE notes that it is not seeking more time than was previously agreed, but rather seeking that SONI aligns connection agreements with their capacity awards, for the sake of all market participants in Northern Ireland.¹⁷⁰
- 7.119 It considers that a generator should be given sufficient opportunity to demonstrate capacity through the Grid Code and the CMC before the reduction of MEC as a function of last resort is used under the Connection Agreements.¹⁷¹
- 7.120 In response to SONI's points regarding the position in the Republic of Ireland, EPNIE notes that there are two bond regimes, the first of which only allows the bond to be drawn down by the Scheduled Operational Long Stop Date in line with EPNIE's suggested amendments. However, it states that the MEC bond regime in the Republic of Ireland is entirely different from that in Northern Ireland as, in the former, generators are only required to place their MEC bond one month prior to energisation as opposed to at the point of offer acceptance as is the case in Northern Ireland. As such, EPNIE considers that alignment with the Republic of Ireland is not feasible.¹⁷²
- 7.121 EPNIE states that the Connection Agreements do not reflect SONI's position that the remedy for breach of the MEC bond would be to call it in rather than reduce the MEC,

¹⁶⁸ Reply to the Response (B50), pp. 41 – 42.

¹⁶⁹ Reply to the Response (B50), pp. 42 – 43.

¹⁷⁰ Reply to the Response (B50), p. 43.

¹⁷¹ Reply to the Response (B50), p. 44.

¹⁷² Reply to the Response (B50), p. 43.

and that SONI would only do so where it considered (in light of all its obligations) that EPNIE could not fully utilise its MEC.¹⁷³

- 7.122 EPNIE states that it is not trying to hoard capacity and it believes that the proposed amendment ensures that the MEC reserved to it will be fully utilised.¹⁷⁴
- 7.123 In response to SONI's comments on its 'atypical' commercial bidding strategy in relation to the capacity market, EPNIE states that it is not a factor in relation to the proposed amendment and that it has no intention to distort a level playing field.¹⁷⁵
- 7.124 EPNIE considers that this issue should be addressed generally in the template connection agreement for all generators.¹⁷⁶ It is not seeking more time than its competitors.¹⁷⁷ EPNIE states that all connection agreements should as far as possible align with the CMC, Grid Code and the connection offers, and these obligations should be considered for all parties so as not to discriminate. Whether or not there are other parties behind EPNIE in the connections queue should not be a relevant factor in considering the proposed amendment.¹⁷⁸

SONI's view

Background to the MEC Bond Regime

- 7.125 SONI states that clause 21.1 of the Connection Agreements is intended to capture the period over which EPNIE is required to maintain its MEC bond (as defined in the Connection Agreements), as specified by SONI in accordance with section 9 of the TCCMS. This is to mitigate against any risk of capacity hoarding in circumstances where the generator has been unable to demonstrate its ability to utilise the full MEC (as defined in the Connection Agreements) associated with an accepted connection offer or signed connection agreement.¹⁷⁹
- 7.126 In part, these provisions of the TCCMS assist SONI to ensure generation adequacy and capacity to meet the demands of consumers, including by addressing the risk of capacity hoarding. As set out in section 9 of the TCCMS, due to limited capacity on the NI Transmission System, an applicant should only request a connection offer for a MEC that it can reasonably achieve and should not attempt to reserve additional capacity for later development of its generating unit.¹⁸⁰

¹⁷³ Reply to the Response (B50), p. 44.

¹⁷⁴ Reply to the Response (B50), p. 45.

¹⁷⁵ Reply to the Response (B50), p. 46.

¹⁷⁶ Application (B1), p. 17.

¹⁷⁷ Reply to the Response (B50), p. 45.

¹⁷⁸ Reply to the Response (B50), pp. 40 and 46.

¹⁷⁹ Response (B35), p. 16.

¹⁸⁰ Response (B35), p. 16.

7.127 SONI states that the key mechanism to prevent the hoarding of capacity is the requirement for a generator to put in place a MEC bond which is released, and any sums repaid, once the generator has demonstrated to SONI's satisfaction that it has passed the capacity test. If the generator has not passed the capacity test by the date specified in the connection offer and/or the connection agreement, SONI is entitled to draw down the MEC bond.¹⁸¹

7.128 In particular, paragraph 9.3.3 of the TCCMS provides that –

9.3.3 Once a generator has demonstrated to the satisfaction of SONI that it has passed the Capacity Test then the MEC bond is returned. However, if the generator has not passed the Capacity Test by the date specified in the Connection Offer and/or the Connection Agreement, or where the User withdraws its acceptance of the Connection Offer and/or terminates the Connection Agreement, then SONI is entitled to draw down the MEC bond.

7.129 SONI notes that Conditions 26(1)(a) and 26(1)(a)(b) of the SONI Licence require that the Decision-Makers must have particular regard to the principle that EPNIE should pay to SONI the whole or an appropriate proportion of the costs referred to in Condition 30(5) (i.e. as determined under the TCCMS as approved by the Utility Regulator). As the TCCMS has been approved by the Utility Regulator, and EPNIE must pay to SONI any costs according to the principles specified in the TCCMS, SONI believes there are sufficient grounds for the Decision-Makers to dismiss EPNIE's proposed amendment.¹⁸²

7.130 Although the TCCMS does not specify a timeframe, it clearly allows SONI to do so.¹⁸³ SONI assumes that in approving the TCCMS, the Utility Regulator will have satisfied itself that it was appropriate and that the 12-month post-energisation period over which an MEC bond must be held pending satisfaction of a capacity test, as specified in the connection agreement, was also appropriate. SONI notes that not every connection applicant will be successful in any capacity market auction, so there should be no necessary connection between the relevant bonding periods under SONI's MEC bond regime (which should be considered on a standalone basis) and those provided for under the CMC (which are outside of the discretion of the Decision-Makers to amend in any event).¹⁸⁴

7.131 SONI states that, as of the date of the Response, it received a number of applications from third parties seeking to connect to the NI Transmission System whose connections will be or may be impacted by the Connection Agreements. A number of these connections (or those of future applicants) are and will be constrained or limited in light

¹⁸¹ Response (B35), p. 16.

¹⁸² Response (B35), p. 16.

¹⁸³ SOC Response (B58), p. 8.

¹⁸⁴ Response (B35), p. 16.

of the MEC reserved to GT6 and GT7. Both SONI and the Decision-Makers need to be mindful of the risks of third party challenge on grounds of, inter alia, undue discrimination to the extent that EPNIE is allowed longer to pass Capacity Tests for GT6 and GT7 than other applicants.¹⁸⁵

The Connection Agreements and the Grid Code

- 7.132 SONI states that the procedure for energisation testing is set out in CC15 of the Grid Code. Units connecting to the NI Transmission System would be allowed to operate under an Interim Operational Notification (as defined in Grid Code) for up to 24 months if agreed with SONI¹⁸⁶ –

*CC15.2.2 The limited period of time **shall be agreed with the TSO** and shall not be **longer than 24 months**. (SONI's emphasis)*

- 7.133 SONI notes that there are three sequential notifications within CC15 that are issued¹⁸⁷ –

CC15.2.1 Energisation Operational Notification

The TSO will issue an EON to the Generator for a Generating Unit connecting to the Transmission System, subject to completion of the Pre-Synchronisation Checklist. This checklist will require agreement on the protection and control settings relevant to the Connection Point. Upon receipt of the EON, a Generator may energise its internal network and auxiliaries for the associated Generating Unit by using the grid connection that is specified for the Connection Point.

CC15.2.2 Interim Operational Notification

The TSO will issue an ION to the Generator for a Generating Unit following receipt of all the information requested under CC10. Upon receipt of the ION, a Generator may operate the associated Generating Unit and generate power for a limited period of time, by using the grid connection that is specified for the Connection Point. The limited period of time shall be agreed with the TSO and shall not be longer than 24 months.

CC15.2.3 Final Operational Notification

The TSO will issue a FON to the Generator for a Generating Unit connected to the Transmission System, subject to completion of the

¹⁸⁵ Response (B35), pp. 16 – 17.

¹⁸⁶ Response (B35), p. 17.

¹⁸⁷ Response (B35), p. 17.

Commissioning/Acceptance Tests and updated Planning Code data. Upon receipt of the FON, a Generator may operate the associated Generating Unit and generate power by using the grid connection that is specified for the Connection Point.

- 7.134 Rather than addressing the risk of capacity hoarding by requiring a short term demonstration that a unit can achieve a significant percentage of full MEC ($\geq 95\%$ of the unit's MEC) over a time limited period (of ≥ 30 mins), CC15 is intended to set out all the required pre-energisation technical information and pre-commissioning tests that must be provided or satisfied before any given unit is issued with an energisation operational notification (**EON**) to permit energisation via the connection point. Following that, an interim operational notification (**ION**) is issued that permits the unit to operate and export electricity for a time-limited period to allow full Grid Code testing to be carried out, before a final operational notification (**FON**) is issued confirming that all Grid Code compliance testing has been completed and permitting the unit to operate and export in the ordinary manner.¹⁸⁸
- 7.135 SONI states that, from a technical perspective, achieving full Grid Code compliance would involve more than demonstrating that a unit had been able to achieve its MEC. Testing to ensure Grid Code compliance is far wider than simply dealing with what a Generating Unit must do satisfy a capacity test.¹⁸⁹
- 7.136 SONI states that the period any given unit normally takes to complete full Grid Code compliance testing, including passing its capacity test, depends on the complexity of the technical configurations involved and the nature of the technology in question, but typically ranges between six to nine months. This means the 12-month period specified under both typical connection offers and clause 21.1 of the Connection Agreements gives generators sufficient time to meet their capacity test.¹⁹⁰
- 7.137 CC15.2.2 of the Grid Code does not allow the generator 24 months to demonstrate compliance, as suggested by EPNIE.¹⁹¹ It allows the ION to be in place for up to 24 months (if agreed by SONI). However, SONI would not be in a position to agree to an extended period of testing time under an ION unless it was in receipt of a detailed commissioning plan that set out particular technical reasons as to why any full capacity test or indeed full Grid Code compliance testing would take longer. In each case, the length of time testing would take depends on the specific technical characteristics of the relevant unit, any derogations sought from the Grid Code, any risks associated with

¹⁸⁸ Response **(B35)**, p. 18.

¹⁸⁹ Response **(B35)**, p. 18; SOC Response **(B58)**, p. 5.

¹⁹⁰ Response **(B35)**, p. 18; SOC Response **(B58)**, p. 5.

¹⁹¹ SOC Response **(B58)**, p. 4.

operating under an ION for a prolonged period of time, and the other specific factual circumstances of the connection.¹⁹²

- 7.138 SONI states that it would have to weigh those considerations in each case, having regard to its licence obligations, including those under Condition 25(6) of the SONI Licence, and consulting with NIEN (which would need to take account of its obligations under Condition 25(4) of NIEN's transmission owner licence). The limited period under which any unit can operate under an ION issued pursuant to CC15.2.2 must '*not be longer than 24 months*'.¹⁹³
- 7.139 The RFG Code places responsibility for demonstrating compliance with its technical requirements on the connecting party and this flexibility means that SONI is not placing arbitrary restrictions in that party's way.¹⁹⁴
- 7.140 SONI states that, for these reasons, it would not be appropriate for the Decision-Makers to make any blanket consequential direction regarding a period of time under which SONI must always permit a unit to operate under an ION, or without satisfying its capacity tests. SONI does not consider that the Decision-Makers have the power to make such a decision, bearing in mind the factors under Condition 26(1) of the SONI Licence that they are required to take into account.¹⁹⁵
- 7.141 As of the date of the Response, EPNIE has not set out the specific detail under the required commissioning plan as to when it will deliver the full MEC associated with GT6 and GT7 or meet the capacity tests for those units, so SONI is in no position to agree any extended timeline for fulfilment of any capacity tests.¹⁹⁶

The Connection Agreements and the CMC

- 7.142 SONI sets out the relevant paragraphs of the CMC cited in the Application as it states that, they have been cited incompletely within the application¹⁹⁷ –

J.6.1.2 The System Operators shall terminate all the Awarded New Capacity in respect of a new or refurbished Generator Unit or Interconnector in the event that:

...

¹⁹² Response (B35), p. 18.

¹⁹³ Response (B35), p. 18.

¹⁹⁴ Response (B35), p. 18.

¹⁹⁵ Response (B35), p. 18.

¹⁹⁶ Response (B35), pp. 18 – 19.

¹⁹⁷ Response (B35), pp. 19 – 20.

(b) Minimum Completion has not been achieved by the applicable Long Stop Date.

J.6.1.1 *For the purposes of this section:*

(a) Minimum Completion: Awarded New Capacity achieves Minimum Completion when:

(i) all the construction, repowering or refurbishment works associated with providing the Awarded New Capacity are substantially complete (subject only to snag or punch list items or any other matters which do not prevent substantial completion or taking over taking place under the applicable Major Contracts);

(ii) each new or refurbished Generator Unit or Interconnector providing the Awarded New Capacity has undergone commissioning testing;

(iii) a Final Compliance Certificate, Operational Certificate or Final Operational Notification has been issued under the applicable Grid Code in respect of each new or refurbished Generator Unit or Interconnector providing the Awarded New Capacity;

(iv) the Proportion of Delivered Capacity in respect of the Awarded New Capacity is not less than 50%; and

(v) each new or refurbished Generator Unit or Interconnector providing the Awarded New Capacity has met all Trading and Settlement Code and Grid Code requirements for participating in the Balancing Market; and

(b) Long Stop Date: the Long Stop Date in respect of Awarded New Capacity means

(i) in the case of a Capacity Award with a capacity duration greater than one year, the last day of the eighteenth full calendar Month after the start of the first Capacity Year in which the Awarded New Capacity is to be provided; or

(ii) in the case of a Capacity Award with a capacity duration of one year or less, the last day of the first full calendar Month after the start of the first Capacity Year in which the Awarded New Capacity is to be provided.

G.3.1.2 *The value of Grid Code Commissioned Capacity in respect of a Generator Unit or Interconnector at a given time is the Registered Capacity based on the Final Compliance Certificate, Operational Certification or Final Operational Notification for that Generator Unit or Interconnector under the*

applicable Grid Code. For the avoidance of doubt Commissioned Capacity is not de-rated capacity.

G.3.1.3 *The Grid Code Commissioned Capacity of a Capacity Market Unit is the sum of the Grid Code Commissioned Capacity of the Generator Units or the Interconnector comprising the Capacity Market Unit.*

G.3.1.4 *The Proportion of Delivered Capacity in respect of Awarded New Capacity at a given time is a percentage value being:*

(a) the greater of:

(i) zero; and

(ii) the lesser of:

(A) the Grid Code Commissioned Capacity; and

(B) the Initial Capacity (Total);

less the Initial Capacity (Existing);

(b) divided by:

(i) the Initial Capacity (Total); less

(ii) the Initial Capacity (Existing),

where "Initial Capacity (Existing)" and "Initial Capacity (Total)" shall have the values determined when the Awarded New Capacity Qualified.

7.143 SONI also sets out the most relevant defined terms used in paragraphs J.6.1.1 and J.6.1.2¹⁹⁸ –

'Awarded New Capacity' *in respect of a Capacity Market Unit, means Awarded Capacity which is New Capacity at the time of the relevant Capacity Auction.*

'Final Compliance Certificate' *means a final compliance certificate issued by SONI in accordance with the Northern Ireland Grid Code for a wind farm power station connected to the Transmission System or the Distribution System and includes a notification, certificate, permit or authorisation having equivalent effect that is issued by SONI instead of a final compliance certificate.*

¹⁹⁸ Response (B35), p. 20.

'Final Operational Notification or FON' means a notification issued by the relevant System Operator to a power-generating facility owner, demand facility owner, distribution system operator or HVDC system owner who complies with the relevant specifications and requirements, allowing them to operate respectively a power-generating module, demand facility, distribution system or HVDC system by using the grid connection.

'Operational Certificate' in relation to a new or refurbished Generator Unit or Interconnector, means a certificate issued by the relevant System Operator under the applicable Grid Code confirming that the new or refurbished Generator Unit or Interconnector has successfully completed compliance testing under the Grid Code and includes a notification, certificate, permit or authorisation having equivalent effect that is issued by the relevant System Operator instead of an operational certificate.

'Proportion of Delivered Capacity' in respect of Awarded New Capacity at a given time is a percentage value determined in accordance with paragraph G.3.1.4 (as modified, where appropriate, under paragraph G.3.1.5).

- 7.144 SONI does not accept EPNIE's view that these provisions of the CMC mean that *'capacity is demonstrated through a "Registered Capacity" test during the "Operational Notification" [sic] procedure whilst operating under an Interim Operation Notification'*. SONI also states that this is not how the CMC is applied in practice by the system operators (including SONI).¹⁹⁹
- 7.145 SONI states that J.6.1.1(a)(iii) of the CMC is clear that for *'Minimum Completion'* to have been achieved, a unit must have been issued with a *'Final Compliance Certificate, Operational Certificate or Final Operational Notification'*. The CMC does not contemplate a unit operating under an ION before a Registered Capacity test is undertaken or Minimum Completion assessed, as is clear from the definition of each of *'Final Compliance Certificate'* and *'Operational Certificate'*.²⁰⁰
- 7.146 SONI states that each definition in the CMC requires the unit to have successfully completed compliance testing under the Grid Code, which in terms of new connections is not done as a pre-requisite to issuance of an ION, but only done as a pre-requisite to issuance of a FON, as noted in the relevant paragraphs of Grid Code set out in the Response.²⁰¹

¹⁹⁹ Response (B35), p. 20.

²⁰⁰ Response (B35), p. 20.

²⁰¹ Response (B35), p. 21.

- 7.147 As such, SONI considers that EPNIE's contention that the periods are irreconcilable is both incorrect and misleading, as the CMC does not contemplate the kind of extended post-energisation delay in satisfying a capacity test and completion of full Grid Code compliance testing that EPNIE clearly envisages.²⁰²
- 7.148 The 'grace periods' provided for in the CMC are not intended to address a situation where a generator's connection is energised, operating under an ION at a reduced capacity, and then paid for Awarded New Capacity, as they do not permit the generator to be paid without having achieved its FON (or equivalent), including satisfying its capacity test.²⁰³
- 7.149 Instead, SONI understands that these grace periods are (primarily) intended to accommodate pre-energisation delays, which are, to a much more significant degree, outside the relevant generator's control. That could include, for example, issues with gas capacity on the gas transmission network.²⁰⁴
- 7.150 SONI notes that its Connection Agreement MEC bond regime is entirely consistent with that adopted by the Republic of Ireland TSO, whose connection offer terms provide, at clause 24.3.11, that Capacity Tests A and B (demonstrating that the Generating Unit can achieve greater than 75% and 95% of the MEC respectively) must be achieved by no later than 12 months following energisation, otherwise a proportion of the MEC bond may be drawn down according to a specified formula.²⁰⁵
- 7.151 SONI states that this supports its argument, with evidence from an all-island perspective, that there is no inconsistency between the respective TSOs' capacity bond regimes (which have been in force in the Republic of Ireland for at least ten years) and the provisions of the CMC, and that the Republic of Ireland TSO, and the Commission for the Regulation of Utilities would have satisfied themselves as such.²⁰⁶
- 7.152 Contrary to EPNIE's assertion that there are two bonding regimes in the Republic of Ireland, SONI states that there is only one (MEC Bond Regime two), and that this is drafted in accordance with SONI's description in the Response. EPNIE states that alignment with the Republic of Ireland is not feasible simply because it does not like how the commercial arrangements work or because those arrangements undermine EPNIE's point about alleged inconsistency of SONI's arrangements with the CMC, which operates on an all-island basis.²⁰⁷

²⁰² Response (B35), p. 21.

²⁰³ Response (B35), p. 21.

²⁰⁴ Response (B35), p. 21.

²⁰⁵ Response (B35), p. 21.

²⁰⁶ Response (B35), p. 21.

²⁰⁷ SOC Response (B58), p. 9.

- 7.153 EPNIE's proposed amendment would increase the period it has to meet the capacity test after energisation from the standard 12-months post-energisation to the later of (a) 24 months or (b) the Long Stop Date under any relevant Capacity Market Awards. As EPNIE has been Awarded New Capacity in respect of GT6 and GT7 in the 2023/24 T-4, 2023/24 T-1 and 2024/25 T-4 capacity auctions, SONI states that this would mean that the latest possible date to complete the capacity test would be 30 March 2026 (being the Long Stop Dates for 2024/25 T-4 in respect of GT6, and 2024/25 T-3 in respect of GT7).²⁰⁸
- 7.154 SONI states that, were these changes made, they would need to be made to all connection agreements, and that could mean the latest date by which a connected generator is required to satisfy a capacity test could be potentially upwards of 60 months, to the extent that any unit was awarded capacity in a T-4 auction.²⁰⁹ The potential for a 60-month timeframe is inconsistent with EPNIE's suggestion that all generators be given 24 months to demonstrate that they can use their MEC.²¹⁰ In addition, as SONI issued a number of connection offers to EPNIE, some of which were modifications to the original connection offers for the units, there would be an ambiguity under the proposed amendment as to when the 60-month period actually commenced.²¹¹
- 7.155 SONI notes that even if EPNIE's arguments were correct, in the first instance, the remedy for a breach of a MEC bond would be for the financial bond to be called in, rather than a reduction of the MEC. Although, under the accepted connection offers and the Connection Agreements, SONI would have the right to reduce the MEC, it would only do so in circumstances where it determined that EPNIE was unable fully to utilise the MEC for GT6 and/or GT7 in accordance with clause 21.6 of the Connection Agreements. In making that determination, SONI would need to act reasonably and in accordance with Prudent Operating Practice, including in accordance with its other licence obligations.²¹²
- 7.156 In such circumstances, SONI would not be frustrating EPNIE in its delivery of its CMC commitments. Rather, EPNIE would itself have failed to achieve its capacity test within the requisite period, or to have taken such alternative steps as were required in the circumstances to satisfy SONI that it had the ability to do so in such a period as SONI considered reasonable in the circumstances.²¹³

²⁰⁸ Response (B35), p. 21.

²⁰⁹ Response (B35), p. 21.

²¹⁰ SOC Response (B58), p. 5.

²¹¹ SOC Response (B58), p. 9.

²¹² Response (B35), p. 22.

²¹³ Response (B35), p. 22.

- 7.157 SONI notes that neither the Grid Code nor the CMC make provision for reduction of export capacity awarded under a Connection Agreement, or any bonding regime. As such, reduction of capacity under the Connection Agreement is a last resort in that it is the only remedy allowing SONI to recover export capacity contractually committed to a generator.²¹⁴
- 7.158 SONI states that, in circumstances where EPNIE disagreed that SONI had acted in accordance with its obligations under the Connection Agreements, it would have the remedy to challenge SONI's actions through the dispute resolution mechanisms in those agreements. This is a different remedy, one which is underpinned by different (and invariably fact specific) considerations, to the relatively simplistic mechanisms provided in the CMC, which solely relate to whether or not EPNIE is paid an award for delivery of the Awarded New Capacity.²¹⁵
- 7.159 SONI states that if EPNIE's proposed amendment were to be granted, and MEC were to be reserved to an applicant that had failed to demonstrate that it had the ability to utilise that MEC potentially upwards of 30 months after energisation, this could have potentially very significant negative ramifications for SONI's NI Transmission System planning obligations, particularly given its relatively small size and existing constraints across the network. This issue is of particular relevance where there is currently considerable interest in access to the network in the Kilroot and Ballylumford areas. At no point in the Application does EPNIE explain why it should be given longer than its competitors to demonstrate that it will be capable of using its reserved MEC, nor does it make any reference to the impact of its retention of MEC that it may not need.²¹⁶
- 7.160 SONI notes that the parties competing with EPNIE for capacity in this part of the grid would also help to maintain security of supply and would form part of the portfolio of generation necessary to achieve decarbonisation targets set out in the Climate Change Act (Northern Ireland) 2022.²¹⁷
- 7.161 Any decision to extend the period beyond the standard 12 months would need to take into account the full implications on EPNIE's competitors who would be disadvantaged by this, and the value to the system that they could deliver. SONI considers that the Utility Regulator's wider duties to promote competition are also directly relevant in this regard.²¹⁸
- 7.162 SONI notes that EPNIE has taken an atypical approach to its commercial bids into the capacity market, in that each of GT6 and GT7 is committed to delivering partial capacity

²¹⁴ SOC Response (B58), p. 9.

²¹⁵ Response (B35), p. 22.

²¹⁶ Response (B35), p. 22.

²¹⁷ Response (B35), p. 22.

²¹⁸ Response (B35), p. 22.

each capacity year. These volumes do not appear to correlate with the derogation obtained for each unit from the minimum generation requirements set out in the Grid Code. However, irrespective of EPNIE's route to demonstrating overall compliance and meeting its commercial obligations under the CMC, its commercial bidding strategy and the risks that it chose to take as a private developer are not reasons that SONI believes that it could use to justify a distortion of the otherwise level playing field in EPNIE's favour.²¹⁹

The connection offer

- 7.163 SONI states that EPNIE's argument about the 60-month time period in the connection offer is moot as it has always been SONI's policy to require a capacity test to be undertaken following signature of a connection agreement within 12 months of energisation. That approach is consistent with EirGrid PLC. The terms of a connection agreement are clearly stated to supersede the terms of a connection offer so by the time of energisation and signature of the connection agreement the net affect will be the same for all generators.²²⁰

EPNIE's view on the Provisional Determination

- 7.164 EPNIE states that the 12 month timeframe is inappropriate and insufficient in light of what was agreed in the connection offers and in the context of wider timeframes generally.²²¹ EPNIE does not consider that an argument as to it being inappropriate and insufficient should have to be made outside those points.²²²
- 7.165 EPNIE states that the Clause 12.1 of the Connection Agreements does not reflect the terms of the offers that it accepted in relation to the relevant timeframe as it does not include provision to undertake the capacity test within 60 months of the date of acceptance of the connection offers. It states that the Utility Regulator does not have the vires to overrule the terms of connection offers accepted bilaterally between the Parties.²²³
- 7.166 EPNIE suggests that, as a minimum, Clause 12.1 of the Connection Agreements should be amended to reflect clause 10.15 of the connection offers.²²⁴

²¹⁹ Response (B35), p. 22.

²²⁰ SOC Response (B58), p. 8.

²²¹ PD Response (B65), p. 14.

²²² PD Response (B65), p. 16 - 17.

²²³ PD Response (B65), p. 14.

²²⁴ PD Response (B65), p. 15.

- 7.167 EPNIE states that it does not consider that any rigid timelines apply generally in industry documentation or that other connection agreements should set a fixed precedent for the timelines in the Connection Agreements.²²⁵
- 7.168 EPNIE continues to hold that there is a conflict between the various timelines in the different industry documents, that SONI has the ability to provide appropriate timelines in the Connection Agreements beyond 12 months and that the timelines with other documents should be aligned.²²⁶
- 7.169 EPNIE states that it is not clear how the timeframes in the Connection Agreement serve to prevent capacity hoarding. It understands capacity hoarding to occur where developers speculatively hold on to transmission capacity (to the detriment of other developers) in relation to projects that are not close to passing significant consenting and funding milestones and have not yet entered construction. EPNIE does not fall into that category.²²⁷
- 7.170 EPNIE invites the Utility Regulator to set out how a dispute under Clause 23 of the Connection Agreements would be managed where SONI reduced the MEC such that a generator would never be able to achieve Minimum Completion under the CMC resulting in termination of capacity under the CMC.²²⁸

²²⁵ PD Response **(B65)**, p. 15.

²²⁶ PD Response **(B65)**, p. 16.

²²⁷ PD Response **(B65)**, p. 16.

²²⁸ PD Response **(B65)**, p. 17.

8. SECTION EIGHT – THE ISSUE FALLING TO BE DETERMINED

8.1 The Statement set out the issue for determination. We note that in their responses to the draft Statement, neither Party made any comment on the way in which it set out that issue. We agree with the issue as set out in the Statement.

8.2 The issue to be determined in the Dispute is whether, taking into account the matters set out in Condition 26, it is reasonable in all the circumstances that each of the Proposed Amendments should be made to the Connection Agreements.

9. SECTION NINE – FINAL DETERMINATION

9.1 The Parties have made a number of points in their various submissions. We have not sought to address every point made in our discussion below. Where we do not mention a particular point, this does not mean that we either agree or disagree with it. We did not find it necessary to come to a clear finding on every point made in order to come to our decision on the issue for determination. Instead we refer below only to what we consider to be those points which are most relevant to our decision. We have, however, carefully considered all points made by the Parties.

9.2 We confirm that in coming to our determination we have had regard to the matters set out in Condition 26 of the SONI Licence insofar as relevant to the Dispute.

Amendment 1 – Clause 6.5.5 of the Connection Agreements

9.3 We do not consider that Amendment 1 is reasonable.

9.4 We agree with SONI that the terms of the Connection Agreements must reflect the roles played by the different participants in the energy industry in Northern Ireland.

9.5 As SONI states, its role as TSO requires it to sit at the centre of a range of commercial transactions and the proposed amendment has the potential to adversely impact its cash flow and hence its ability to make the payments that it is required to make. This is the case even if the amendment was made only to the Connection Agreements and not more widely.

9.6 Having regard to the principle under Condition 26(1)(g) that the terms of connection agreements should be as consistent as possible, we note that the risk to SONI's financeability would clearly be heightened should the amendment be made generally across all connection agreements. This is because SONI would be required to pay over disputed sums to generators with no ability on SONI's part to then withhold payment from those it is obliged to make payments to under other parts of the regulatory framework. Any risk to SONI's cash flow in this regard would ultimately be borne by consumers, which we do not consider to be appropriate.

9.7 However, in view of the need for consistency insofar as possible across connection agreements, it would also not be appropriate to make the proposed amendment to the Connection Agreements in isolation – even where making the proposed amendment to the Connection Agreements alone would not pose any risk to SONI, whilst removing any perceived risk from the generator. Indeed, we note that EPNIE itself suggests that the amendment should be made more generally.

9.8 We note that the sums due from SONI to generators are likely to be greater than sums paid by generators to SONI. This, together with SONI's position in the regulatory framework, means that it is appropriate that it is treated differently to generators in terms of set offs. We do not agree with EPNIE that this position reflects any 'bias' towards SONI on our part.

Amendment 2 – Clause 7.8 of the Connection Agreements

9.9 We do not consider that Amendment 2 is reasonable.

9.10 We agree with SONI that it has no way to pay costs incurred by a generator to undertake work on its side of the connection where required to do so as a result of work undertaken by SONI to the NI Transmission System.

9.11 We accept EPNIE's point that simply because a proposed amendment to the Connection Agreements might necessitate changes to other industry documents, that is not sufficient reason to reject the amendment if it would otherwise be reasonable.

9.12 However, we do not consider that it would be appropriate to make amendments elsewhere in the regulatory framework to allow SONI to make such payments (or indeed those costs to be funded by NIEN) as this would lead to consumers funding modifications to assets owned by generators. We do not agree with EPNIE that it would be appropriate for consumers to shoulder those costs as a default position.

9.13 Rather we consider that it is appropriate for the default position to be that the owner of the assets funds any work where that work is necessitated by work that is being done to the NI Transmission System. This is particularly so where the work relates to a modification that is being made system-wide. In this regard the cost of such work is akin to the cost to any company where it is required to undertake work to comply with changes to safety standards, for example, or funding upgrades, or maintenance to a system which that company must use as part of its business and from which it thus benefits.

9.14 We consider that the generator's responsibility to fund that work is clear under Clause 7.11.

9.15 This is in contrast to work that is necessitated by a request from another user for a connection agreement or a variation to a connection agreement. It would not be appropriate for other generators to fund such work and, as such, Clause 7.11 makes an exception in that regard.

9.16 We understand EPNIE's point that this position means that it is potentially exposed to unforeseen liabilities. However, that is well understood within the industry and has been

the position for many years. As such, it is one of the factors that a generator will make provision for as a cost of doing business, as best it can.

- 9.17 The current drafting means that SONI's belief that the relevant works are required must be 'reasonable'. Should EPNIE not consider that SONI is acting reasonably in making such a determination, it will be able to refer any Modification Notification to the Utility Regulator for determination under Clause 7.9.2 of the Connection Agreements. We note that EPNIE states that this does not go to the question of who should pay for such work. However, we consider it to be relevant to that question as a generator should not fund work that is not reasonably required. We consider this to be sufficient protection against arbitrary decisions by SONI in relation to the works that it may require EPNIE to carry out.
- 9.18 We recognise that there may be situations in which it is appropriate for consumers to fund work undertaken by generators on their side of the connection – and there have been occasions in the past where we have facilitated this. Where there are unique circumstances in relation to a particular modification, it is appropriate that the Utility Regulator makes a decision as to who should fund such work on a case by case basis rather than to amend the Connection Agreements to include a default position that consumers will always pay.

Amendment 3 – Clause 7.13 of the Connection Agreements

- 9.19 We do not consider Amendment 3 to be reasonable. However, we also do not consider the current wording of Clause 7.13 to be reasonable as it stands.
- 9.20 As SONI points out, the decision as to whether or not a Modification Application qualifies as a Modification is not entirely within its discretion. This is because, when it receives a Modification Application, SONI will liaise with NIEN to ascertain whether or not the proposed works will have a material effect in relation to NIEN's plant and apparatus (and potentially ESB PLC in relation to its plant and apparatus) to ascertain whether the work would have a material effect. In those circumstances falling within Section S, paragraph 6.2, of the TIA, where there is any disagreement between SONI and NIE as to whether proposed work would be a Modification as defined under the TIA, such work will be deemed to be a Modification.
- 9.21 As such, the decision as to whether proposed work constitutes a Modification is not within SONI's sole discretion. We therefore consider that although the rationale provided by SONI for inserting the phrase '*at its sole discretion*' in 2018 is reasonable, the insertion of those words actually contradicted that rationale. SONI's rationale is better served by their absence.

- 9.22 However, neither would it appropriate to impose additional criteria in relation to the way in which that decision must be made. This is because the various documents in the regulatory framework work together to ensure that any changes to the NI Transmission System are dealt with appropriately within the context of a series of decisions made by NIEN and SONI (including where one must input into the decision of the other). To impose another set of criteria on SONI at the very end of that process would potentially introduce inconsistencies in the manner identified by SONI in the Response.
- 9.23 Therefore, we consider that it would be reasonable to decline to make the proposed amendment but to also remove the text '*at its sole discretion*,' from Clause 7.13. We note that EPNIE is content with this decision. We consider that this amendment should be made to SONI's template connection agreement going forward.
- 9.24 SONI will need to make that decision within the parameters set out in other parts of the regulatory framework such as obligations in statute and the SONI Licence, including where the decision is, in effect, dictated by the operation of the TIA.
- 9.25 Clause 23 states –
- Any dispute or difference of whatever nature howsoever arising under, out of or in connection with this Agreement between the Parties shall be resolved in accordance with the Disputes Resolution Procedure in this Clause 23.*
- 9.26 Given the breadth of the drafting in Clause 23, we consider that it must be the case that SONI's decision as to whether or not a Modification Application qualifies as a Modification would fall within that clause, such that the dispute resolution procedure in the Connection Agreements would be available. We note that SONI does not disagree with that interpretation. We also note SONI's reservations as to the lack of involvement of NIEN in that process. However, that does not change the interpretation of the clause.
- 9.27 We do not consider that SONI amending its template connection agreement, with those changes then applying to all applicants going forward, constitutes discrimination. SONI must be capable of improving and modifying its standard terms of connection over time and there may indeed be cases where it is required to do so in light of changes to other industry documents or changes in the wider industry.
- 9.28 We note EPNIE's point that SONI did not consult when it made the relevant amendments to its connection agreement in 2018. We agree with SONI that it is not under an obligation to consult on such changes. However, we would encourage SONI to consider whether it might be appropriate, or constitute best practice, to undertake some consultation with the industry before it makes significant amendments to its template connection agreement in future.

Amendment 4 – proposed new Clause 13.11 of the Connection Agreements

- 9.29 We do not consider Amendment 4 to be reasonable.
- 9.30 We agree with SONI that it is SONI's role as TSO to ensure that generators comply with the Grid Code. Statute provides that it is the Utility Regulator that is given the function of ensuring that SONI meets its regulatory responsibilities, including compliance with the Grid Code. It is not the role of a generator to seek to make any determination as to whether SONI is in breach of the Grid Code or to stipulate actions that it should take to remedy any supposed breach.
- 9.31 We agree with SONI that a breach of either the Connection Agreements or the Grid Code by a generator could have a detrimental impact on SONI, NIEN or other system users and that SONI therefore needs the power in Clause 13.1 to swiftly bring such breaches to an end – backed up by the ability to terminate the Connection Agreements under Clause 12.2.5.
- 9.32 By contrast, a breach by SONI of the Connection Agreements will affect only EPNIE and can be dealt with appropriately through the dispute resolution process in Clause 23.
- 9.33 A breach by SONI of the Grid Code would be dealt with by the Utility Regulator through its enforcement powers. Where the breach by SONI was the result of a breach by another industry participant regulated by the Utility Regulator, the latter could take action against that party also, thus ensuring compliance across the system as a whole.
- 9.34 As such, it would be entirely inappropriate to provide EPNIE with regulatory powers in relation to rectification of any breach by SONI and where the use of such powers would be governed by contract and subject to arbitration. Such matters are the remit of the Utility Regulator using the powers that it has been given by and under statute.
- 9.35 We note that EPNIE states that the proposed amendment would not involve it determining whether or not SONI is in breach of the Grid Code or the Connection Agreements, but would provide a mechanism in relation to the rectification of such a breach. However, the nature and timing of any steps to be taken by SONI in relation to a breach of the Grid Code will be for the Utility Regulator to decide. For example, a notice issued by the Utility Regulator under Article 42 of the Energy Order will set out the steps that SONI is required to take to bring itself into compliance with the relevant regulatory requirement. It is also likely to set out a timeline for SONI to take such action. In this way the certainty that EPNIE seeks will be provided.
- 9.36 It would not be appropriate for EPNIE to specify such steps or to have a blanket timeline for rectification of any breach written onto the face of the Connection Agreements. Doing

so would risk fettering the discretion of the Utility Regulator to specify a different timeline as part of any enforcement action.

- 9.37 Likewise, any dispute resolution process in relation to breach of the Connection Agreements should be capable of determining the appropriate timeline to rectify the breach rather than having that specified in advance.
- 9.38 We note that EPNIE refers to seeking an ability to inform SONI of any breach by the latter of the Grid Code. It does not need a provision in the Connection Agreements to do so and, where it considers that SONI has not remedied any identified breach, it can raise that matter with the Utility Regulator.

Amendment 5 – Clause 21.1 of the Connection Agreements

- 9.39 We do not consider Amendment 5 to be reasonable.
- 9.40 We note that EPNIE has not sought to argue that the current 12 month timeframe in Clause 21.1 is an insufficient or inappropriate period on its own terms within which to expect a generator to complete capacity testing. Its main focus is instead on the argument that the time period is insufficient and inappropriate in view of the contrast, and interrelationship, between that timeframe and others in different industry documents.
- 9.41 We have some sympathy with EPNIE with respect to the complexity of the framework surrounding the testing and compliance for generators. However, the various timelines that apply are well documented in the Connection Agreements, the Grid Code and the CMC. They have been in place for several years and are well understood by participants in the Northern Ireland energy industry. EPNIE has not provided any evidence that it has been affected by investor uncertainty in this regard.
- 9.42 We do not agree with EPNIE that there is any 'conflict' between the different timelines set out in the Connection Agreements, Grid Code and CMC. Those documents are intended to perform different functions, and the different timelines within them relate to different matters, as set out by SONI in the Response. There is, for example, the potential for (although not a guarantee of) a longer timeframe for a generator to operate under an ION. This is because the testing to be carried out before an FON is issued is more extensive than the capacity test undertaken under the Connection Agreements.
- 9.43 We accept SONI's submission that the purpose of the time period in Clause 21.1 and the MEC bond regime is to protect against capacity hoarding. We consider this to be an important function and that the timeline serves to ensure that generators are making genuine efforts to deliver the capacity that they have reserved.

- 9.44 We note EPNIE's submission that the Utility Regulator does not have the power to '*overrule the terms of Connection Offers*'.²²⁹ However, that is to ignore the regulated context in which connection agreements are made. Under Condition 26 of the SONI Licence, where a dispute is brought to the Utility Regulator in relation to the terms of a connection agreement, it may settle those terms in such manner as appears to it to be reasonable. Whereas the terms of a connection offer are a relevant consideration in the Utility Regulator's determination in that regard, they do not limit its discretion as to the terms that it may settle.
- 9.45 In this case, we note EPNIE's submission that the Connection Agreements are inconsistent with the terms of the connection offers for GT6 and GT7 in that the latter also contained a time period of 60 months from acceptance of those offers to complete capacity testing. However, we consider that it is clear in the Connection Agreements that the 60 month period falls away at the point at which those agreements are signed to be replaced by the single 12-month period. In signing those agreements, a generator accepts that term.
- 9.46 EPNIE states that it does not consider the fact that the 12-month period is contained in other connection agreements to set a '*fixed precedent*'. However, we do note the need for consistency as between such agreements.
- 9.47 We agree with EPNIE that, if a capacity test is not passed, SONI has the power under the Connection Agreements to reduce the MEC. That may, in turn, affect EPNIE's ability to meet its obligations in relation to the capacity market. However, that risk (which EPNIE itself puts as '*very low*'²³⁰) does not mean that the timeframe in Clause 21.1 is unreasonable in circumstances where no argument has been presented that 12 months is not a generally sufficient or appropriate time in itself to meet a capacity test.
- 9.48 We note SONI's submission that where a generator failed to pass the capacity test, its first step would be to call in the MEC bond, rather than to reduce the MEC.²³¹ It states that it would only reduce the MEC in circumstances where it determined that EPNIE was unable fully to utilise the MEC for GT6 and/or GT7 in accordance with clause 21.6 of the Connection Agreements.
- 9.49 We also note that Clause 21.6 states that SONI must exercise its power to reduce the MEC acting reasonably and in accordance with Prudent Operating Practice. We expect there to be dialogue between SONI and a generator before reaching such a decision.

²²⁹ PD Response (**B65**), p. 14.

²³⁰ Application (**B1**), p. 17.

²³¹ Response (**B35**), p. 22.

EPNIE would be able to use the dispute resolution procedure in Clause 23 to challenge any decision to reduce its MEC.

9.50 We consider that together these provisions provide appropriate protection for EPNIE in relation to any decision made by SONI to reduce the MEC following a failure to pass a capacity test. We would anticipate that, should EPNIE have to use that dispute resolution procedure, it would draw attention to SONI's statements regarding calling in the bond before reducing the MEC.

9.51 EPNIE has invited us to set out how such a dispute would be managed in terms of its interaction with the CMC. We do not consider that it would be appropriate for us to provide advice to a generator in that regard. In the context of any dispute brought under Clause 23 it will be for a generator to take its own advice as to how that process interacts with other industry mechanisms.

Conclusion and remedy

9.52 For the reasons given above, we have found that, taking into account the matters set out in Condition 26, it is not reasonable in all the circumstances to make the Proposed Amendments sought by EPNIE.

9.53 However, we have found that it is reasonable to amend Clause 7.13 to remove the words '*at its sole discretion*'.

9.54 As such, SONI must vary Clause 7.13 of the Connection Agreements so that the clause reads as follows –

For the avoidance of doubt, SONI shall determine whether a Modification Application qualifies as a Modification. When giving such consideration SONI will take into account a number of factors, including, but not limited to, the following:

...

9.55 Although not part of the remedy in the Dispute, we consider that this amendment should be made to SONI's template connection agreement going forward.