



**Formal complaint from [REDACTED] to the Utility Regulator
against NIE Networks with respect of an exemption from the
Electricity (Standards of Performance) Regulations (Northern
Ireland) 1993**

Final Determination

08 March 2019

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Formal complaint from [REDACTED] to the Utility Regulator against NIE Networks with respect of an exemption from the Electricity (Standards of Performance) Regulations (Northern Ireland) 1993

Final Determination

1 Section One - Introduction

- 1.1 The Northern Ireland Authority for Utility Regulation (the **Authority**) received on 26 October 2018, by way of a letter, a formal complaint from [REDACTED] (the **Complainant**) regarding a dispute between NIE Networks and [REDACTED]
- 1.2 The dispute between the Complainant and NIE Networks (together, the **Parties**) relates to NIE Networks considering itself as being exempt from having to make payments under Article 14 of the Electricity (Standards of Performance) Regulations (Northern Ireland) 1993 for the period from 19 to 21 September 2018 at [REDACTED]
[REDACTED]
- 1.3 The dispute falls to be determined by the Authority under Article 42A of the Electricity (Northern Ireland) Order 1992 (the **Electricity Order**).
- 1.4 The Authority has considered this dispute in accordance with its Policy on the Resolution of Complaints, Disputes and Appeals and Guide for Applicants dated August 2018 (the **Procedure**).
- 1.5 The Authority's CEO has appointed us, Tanya Hedley (Director of Compliance and Network Operations) and Caspar Swales (Manager in Finance & Network Assets) jointly to determine the dispute on its behalf (together, the **Decision-Makers**). We do so as delegates of the Authority and on its behalf.
- 1.6 This document is our final determination in relation to the Dispute. Representations were received upon the draft determination of 7 February 2019 from the Complainant dated 17 February 2019. Those were in turn commented upon by NIE Networks on 26 February 2019. We have considered those submissions in full.
- 1.7 In determining this dispute, we have had the benefit also of being able to consider the

2 Section Two – The Parties

[REDACTED]

2.1 [REDACTED] is a private individual who resides at [REDACTED]
[REDACTED]

NIE Networks Limited

2.2 NIE Networks is a subsidiary of ESBNI Limited which is a member of the ESB group of companies. It is the owner of the electricity transmission system in Northern Ireland, and the owner and operator of the electricity distribution system in Northern Ireland.

2.3 NIE Networks is licensed separately in relation to both activities.

2.4 It is licensed to undertake these activities and accordingly holds an electricity transmission licence and an electricity distribution licence granted or taken under Article 10(1)(b) and 10(1)(bb) of the Electricity Order.

2.5 NIE Networks' distribution licence (also known as the successor distribution licence) is the relevant licence for the purposes of this dispute (the **Licence**).

3 Section Three - Factual Background

3.1 The following summary of the factual background is derived from the Investigation Report.

3.2 This dispute relates to NIE Networks considering itself as being exempt from having to make payments under Article 14 of the Electricity (Standards of Performance) Regulations (Northern Ireland) 1993 (**Guaranteed Standards Regulations**) for the period from 19 to 21 September 2018 at [REDACTED]

3.3 The key events and milestones in this case are detailed below:

Date	Event
Aug 18	Policy on the Resolution of Complaints, Disputes and Appeals and Guide for Applicants - https://www.uregni.gov.uk/sites/uregni/files/media-files/Complaints%20Disputes%20and%20Appeals%20-%20August%202018.pdf
17/09/2018	The Met Office issued a Yellow Wind Warning for Northern Ireland for Wednesday 19 September 2018
18/09/2018	The Met Office upgraded this to an Amber Wind Warning
18/09/2018	NIE Networks issued its escalation plans in preparation for Storm Ali
19/09/2018	The Met Office provides further update on Amber Wind Warning
18/09/2018	NIE Networks escalated in preparation of Storm Ali
19/09/2018	Duty Incident Team (DIT) mobilised and Incident Centre in [REDACTED] opened from 06:00hrs
19/09/2018	12 Local Incident Centres (LIC) across Northern Ireland opened from 07:00hrs
19/09/2018	First High Voltage (HV) fault attributed to severe weather conditions occurred at 08:19hrs
19/09/2018	At its peak 12:00hrs NIE Networks confirms that approx 66,000 customers were off supply
19/09/2018	NIE Networks aware customer off supply at 15:52hrs
19/09/2018	Customer contacts NIE Networks at 15:52hrs
19/09/2018	Customer contacts NIE Networks at 21:30hrs
20/09/2018	Customer contacts NIE Networks at 08:46hrs
20/09/2018	Customer contacts NIE Networks at 08:48hrs
20/09/2018	Customer contacts NIE Networks at 14:18hrs
20/09/2018	Customer contacts NIE Networks at 17:53hrs

21/09/2018	Supply restored at 12:30hrs to the customer
27/09/2018	Customer's compensation claim is submitted to NIE Networks
03/10/2018	NIE Networks letter to the customer re Guaranteed Standards of Service confirming payment will not be made
26/10/2018	The Complainant submits formal complaint to the Authority
06/11/2018	The Authority acknowledges receipt of complaint
07/11/2018	The Authority formally accepts complaint as being properly made
07/11/2018	The Authority makes an information request to NIE Networks
19/11/2018	NIE Networks responds to the information request
23/11/2018	The Authority makes a further information request to NIE Networks
28/11/2018	NIE Networks responds to further information request
18/01/2019	The Decision-Makers make an information request to NIE Networks
24/01/2019	NIE Networks responds to this information request
07/02/2019	Draft Determination issues
17/02/2019	Comments on the Draft Determination by the Complainant
26/02/2019	Response to comments raised by NIE Networks

4 Section Four – Relevant Licence Conditions & statutory regulations

4.1 NIE Networks is the owner and operator of the electricity distribution system in Northern Ireland.

4.2 NIE Networks is licensed in relation to this activity under Article 10(1) bb of the Electricity Order.

4.3 The licence can be found at the following link:

<https://www.uregni.gov.uk/sites/uregni/files/media-files/NIE%20Distribution%20Licence%20effective%2022%20January%202018.pdf>

4.4 NIE Networks is required by Condition 34 of the Licence to conduct the Distribution Business in the manner which it reasonably considers to be best calculated to achieve any standards of overall performance that may be determined by the Authority pursuant to Article 43A of the Electricity Order.

4.5 Article 43A contains provisions that cover ‘Overall standards of performance: electricity distributors’.

4.6 The Guaranteed Standards Regulations are made by the Authority under Articles 42 and 64 of the Electricity Order.

4.7 When an incident occurs which triggers the right for an individual customer to be paid compensation, NIE Networks should either:

a) tell the customer that compensation is due, and make the payment, or

b) satisfy itself that an exemption applies in the case of that customer, and that it does not need to pay the compensation (Guaranteed Standards Regulations 14).

4.8 In the case of supply restoration the customer must make a claim (Guaranteed Standards Regulations 4(3)(d)) within a period of 1 month from the date upon which the supply was restored to the customer’s premises. If no claim is made there is no duty to pay compensation.

4.9 The Authority will determine the dispute by applying the standards under the

Guaranteed Standards Regulations to the facts of the case. If the Authority claims that it did not make the payment because an exemption applies, it is for the Authority to decide whether the exemption was properly claimed. The duty to make the payment is disappplied in the case of certain exceptional events (Guaranteed Standards Regulations 14(6)(a)). The mere fact of severe weather is not enough however. For the exemption to apply, NIE Networks must also have taken all reasonable steps to prevent the severe weather from having the effect it did. Those steps may be either preparatory or responsive to the event as it occurs.

5 **Section Five – Submission from NIE Networks regarding the restoration of supply**

5.1 NIE Networks provided a written submission in response to the Authority's request for information of 7 November 2018 on 19 November 2018.

6. **Section Six – Any additional evidence submitted by the Parties**

- 6.1 On 23 November 2018, the Authority requested further information from NIE Networks and this was provided on 28 November 2018.
- 6.2 On 18 January 2019, the Authority's Decision Makers requested further information from NIE Networks and this was provided on 24 January 2019.
- 6.3 On 17 February 2019, the Complainant submitted comments upon the Draft Determination.
- 6.4 On 26 February 2019, NIE Networks responded to the Complainant's comments.

7 Section Seven - Determination in relation to Issue

7.1 On reviewing the evidence provided by the investigative team and additional submissions by the Parties we conclude the following:

- (i) The supply interruption was due to the effects of the weather and that a 'Severe Weather Event'¹ (SWE) applied to this particular supply interruption. The *commencement threshold* (72 high voltage (HV) faults in the 24 hour period following the first high voltage fault attributed to the SWE) was breached by the 254 HV faults and 587 low voltage (LV) faults over the 24 hour period beginning 08:19 hours on 19 September 2018.
- (ii) The effects of the weather experienced were outside the design standards of the network as approved by the Department for the Economy in Northern Ireland.²
- (iii) NIE Networks had demonstrated that all reasonable steps had been taken to

¹ A SWE is defined in NIE Networks' Electricity Distribution Licence under Condition 1. Interpretation and Construction.

(1) Means an event where a minimum, verified, number of incidents affecting the distribution high voltage network linked to severe weather conditions has occurred within a 24 hour period.

(2) Is deemed to begin at the start of a 24-hour period when the number of incidents caused by the severe weather event at distribution high voltage in that period is equal to or greater than the commencement threshold number; and

(3) Is deemed to end at the earlier of:

- the time of restoration of the last customer off supply due to an LV incident linked to the severe weather event, or
- the end of a 48-hour period that commences when the number of customers off supply due to high voltage incidents linked to the severe weather event has fallen to zero.

(4) Where any conflict arises between this definition and the Regulations, the Regulations shall have precedence.

(5) This definition shall come into force on such date as the Authority may direct and shall cease to have effect on such other date as the Authority may direct.

For the purposes of this definition:

a) "commencement threshold number" means 13 times the average daily fault rate experienced by NIE's distribution high voltage network.

b) "distribution high voltage" means 6.6kV, 11kV and 33kV.

c) "incidents" are defined as any occurrence on the NIE distribution system or other connected distributed generation, transmission or distribution system, which:

- Results in an interruption of supply to customer(s) for one minute or longer; or
- Prevents a circuit or item of equipment from carrying normal load current or being able to withstand "through fault current" for one minute or longer.

d) "weather conditions" means the effect of one or more of wind, lightning, rain, snow, ice, flooding, thermal heating and other recognised weather phenomena as the Authority may from time to time deem appropriate for inclusion in this list.

"the Regulations" means the Electricity (Standards of Performance) Regulations (Northern Ireland) 1993, as amended or replaced.

² Article 40 of the Electricity (Northern Ireland) Order 1992 requires the Department to issue consent for overhead lines. Paragraph (2A) states

"The Department shall only grant a consent under paragraph (1) in relation to a direct line (within the meaning of the Directive) where it is satisfied that it will meet the published criteria."

The published criteria can be found at

<https://www.economy-ni.gov.uk/publications/article-40-electricity-northern-ireland-order-1992-revised-criteria>

restore supply as soon as could reasonably have been expected.

- (iv) Restoration was in line with the procedures set out in NIE Network's Emergency Plan Document.

7.2 In concluding the above we have therefore determined that NIE Networks were justified in claiming an exemption from the Electricity (Standards of Performance) Regulations (Northern Ireland) 1993 in the case of the Complainant and that no payments are required to be paid under Article 14.

8. **Section Eight – Additional observations by the Decision-Makers**

- 8.1 In light of comments received from the Complainant dated 17 February 2019 upon the Draft Determination, which were subsequently commented upon by NIE Networks on 26 February 2019 we wish to make the following observations.
- 8.2 The Decision-Makers recognise the great inconvenience to customers being without electricity supplies during severe weather events and on this occasion to the Complainant and her family over the period 19 to 21 September 2018.
- 8.3 The Authority has identified that the current Guaranteed Service Standards Scheme has been in place since 1999 and intends to consult on proposals to update it. Further information upon our work on this is available on our website at www.uregni.gov.uk. The Authority intends to consider, for example, the introduction of severe weather categories.
- 8.4 The Authority is also seeking to incentivise NIE Networks to improve reliability through a new reliability incentive. The reliability incentive has been designed around regulatory best practice and is expected to improve the level of reliability received by NIE Networks' customers in a cost-effective way.
- 8.5 Whilst a severe weather event occurred in Northern Ireland over the relevant period and an exemption was properly claimed by NIE Networks, the Decision-Makers do recognise the Complainant's concern that the condition of the equipment may have contributed to the power outage. However, we also accept that equipment fails for a number of reasons, many of which cannot be addressed within a maintenance or refurbishment programme. We also recognise that there is no evidence that this specific failure was due to the age or condition of the asset nor that it could have been addressed by a refurbishment programme. The effects of the weather experienced were also outside the design standards of the network as approved by the Department for the Economy in Northern Ireland.
- 8.6 The Decision-Makers have noted the Complainant's concerns around her understanding of how the particular fault may have been dealt with in her immediate area. Whilst we cannot be clear as to how the low voltage fault in the Complainant's

area was exactly dealt with, it is the case that NIE Networks do prioritise high voltage faults as this ensures the largest possible numbers of customers are reconnected in the shortest time.

Tanya Hedley and Caspar Swales

Authorised on behalf of the Authority

Annex 1

Bundle (Volume of Documents) including the Report from the Investigation Team to the Decision Makers at A13 of the Bundle



Policy on the Resolution of Complaints, Disputes and Appeals and Guide for Applicants –

<https://www.uregni.gov.uk/sites/uregni/files/media-files/Complaints%20Disputes%20and%20Appeals%20-%20August%202018.pdf>