

DISPUTE BETWEEN TI LIRIC LIMITED AND SONI LIMITED
UNDER ARTICLE 31A OF THE ELECTRICITY (NORTHERN IRELAND) ORDER 1992 AND
CONDITION 26 OF SONI LIMITED'S TRANSMISSION LICENCE

FINAL DETERMINATION

09 April 2025

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1. **SECTION ONE – INTRODUCTION**

- 1.1 On 10 September 2024, the Northern Ireland Authority for Utility Regulation (the **Authority** – and hereafter referred to as the **Utility Regulator**) received an application (the **Application: (B2)**) from TI LirIC Limited (**TI LirIC**), requesting the Utility Regulator to determine a dispute (the **Dispute**) against SONI Limited (**SONI**): together, the **Parties**.
- 1.2 The Dispute is brought under Article 31A of the Electricity (Northern Ireland) Order 1992 (the **Electricity Order: A1**) and Condition 26 of SONI's transmission licence (the **Licence: A2**). It relates to the terms of the connection offer made by SONI on 28 June 2024 (the **Connection Offer: B4**) to TI LirIC for the electricity transmission system, proposed to be constructed and owned and operated by TI LirIC (referred to for ease as the 'LirIC interconnector'), to be connected to the Northern Ireland electricity transmission system owned by NIE Networks Limited and operated by SONI.
- 1.3 Following an initial review of the Application, the Utility Regulator acknowledged the Application and informed the Parties (by letter dated 23 September 2024 (**B11**)) that it has jurisdiction to consider and determine the issues in dispute under Article 31A of the Electricity Order and Condition 26 of the Licence.
- 1.4 The Utility Regulator has appointed us, Rosamund Blomfield-Smith and David de Casseres, to determine the Dispute on its behalf (the **Decision-Makers**).
- 1.5 The Utility Regulator is processing and determining this dispute in accordance with its *Policy on the Resolution of Complaints, Disputes and Appeals and Guide for Applicants (August 2018)* (the **Dispute Policy: (A4)**).
- 1.6 This document is our determination in respect of the Dispute.
- 1.7 In reaching this determination, we have reviewed and considered the following materials and documents –
- (a) A Statement of Case (the **SOC**) prepared for us by the case management team – the SOC sets out an overview of the background to the Dispute, the applicable statutory and regulatory framework, the views of the Parties and the issues to be determined.
 - (b) The documents set out in Appendix 1 to the SOC (and also copied to the Parties), which included all of the submissions of the Parties.
- 1.8 The Parties were also afforded the opportunity to comment on –
- (a) a draft of the SOC, and
 - (b) a draft determination, dated 18 February 2025 (the **Draft Determination**).

- 1.9 The comments received from the Parties were taken into account by the case management team in preparing the SOC (as also reflected within the relevant sections of this determination).
- 1.10 In arriving at our final determination, we have taken into account the submissions received from the Parties on the Draft Determination.
- 1.11 Our determination is structured as follows –
- (a) The Parties to the Dispute (at [Section 2](#)).
 - (b) The applicable legal and regulatory framework (at [Section 3](#)).
 - (c) The factual background to the Dispute (at [Section 4](#)).
 - (d) The views of TI LirIC (at [Section 5](#)).
 - (e) The views of SONI (at [Section 6](#)).
 - (f) The issues to be determined (at [Section 7](#)).
 - (g) Our determination in relation to those issues (at [Section 8](#)).
 - (h) Our observations on other matters (at [Section 9](#)).
 - (i) Our analysis of the costs position in this Dispute (at [Section 10](#)).
- 1.12 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 SOC or Draft Determination is enclosed within this determination.

2. **SECTION TWO – THE PARTIES**

TI LirIC Limited

- 2.1 TI LirIC is a private limited company (incorporated in England, company number 12300898) and is a subsidiary of Transmission Investment Holdings Limited (also incorporated in England, company number 11810806). TI LirIC is proposing to construct, develop, own and operate electric lines and plant which are to convey electricity from Scotland (at Kilmarnock South) to Northern Ireland (at Kilroot) and vice versa.
- 2.2 With regard to the electric lines and plant to be located in Northern Ireland¹, TI LirIC is therefore proposing to participate in the transmission of electricity for the purposes of giving a supply to any premises or enabling a supply to be so given.
- 2.3 This is a licensable activity under Article 8(1)(b) of the Electricity Order for which authorisation is required by way of a licence. TI LirIC applied to the Utility Regulator for a licence authorising it to participate in the transmission of electricity and, following due process, the Utility Regulator granted an electricity transmission licence to the company on 12 December 2024.
- 2.4 With regard to the electric lines and plant to be located in Great Britain², under the applicable statutory framework for Great Britain, primarily the Electricity Act 1989 (the **1989 Act**), TI LirIC would be undertaking the licensable activity of participating in the operation of an electricity interconnector. It would therefore need to be authorised to do so either under licence (an interconnector licence) or an exemption from the requirement to hold such a licence.
- 2.5 TI LirIC holds an interconnector licence granted by Ofgem under section 6(1)(e) of the 1989 Act.

SONI Limited

- 2.6 SONI is a subsidiary of EirGrid plc.
- 2.7 It co-ordinates and directs the flow of electricity (essentially plans, manages and operates) onto and over the electricity transmission system in Northern Ireland, which is owned by NIE Networks Limited, and is authorised by licence to undertake this activity by its electricity transmission licence (the **Licence**).

¹ Which includes the adjacent territorial sea, i.e. up to 12 nautical miles.

² Which for this purpose includes the adjacent territorial sea and any area designated under section 1(7) of the Continental Shelf Act 1964.

- 2.8 Among other things, SONI is required under the Licence (Condition 25 refers), on application by any person, to offer to enter into a connection agreement for connection to the transmission system.
- 2.9 SONI is represented by Tughans solicitors, Belfast.

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

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

3.2 We note that the Parties have referred to other additional sources of law (and other documentation) which are not summarised below (because they are not specifically part of the applicable framework in determining the Dispute). However, as they form part of the Parties' submissions, we have read these in full.

The Electricity Order (A1)

3.3 Article 3 of the Electricity Order provides the following definition –

"transmission system" means a system which –

(a) consists (wholly or mainly) of high voltage lines and electrical plant; and

(b) is used for conveying electricity –

(i) from a generating station to a substation;

(ii) from one generating station to another;

(iii) from one substation to another;

(iv) to a substation in Northern Ireland from a place outside Northern Ireland; or

(v) from a substation in Northern Ireland to a place outside Northern Ireland.

3.4 Article 10 of the Electricity Order provides (relevantly) –

10. Licences authorising supply, etc.

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

(a) to generate electricity for the purpose of giving a supply to any premises or enabling a supply to be so given;

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

...

3.5 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 ...

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

12. General duties of electricity distributors and transmission licence holders

...

(2) It shall be the duty of 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.

3.7 Article 31A of the Electricity Order provides (relevantly) –

31A. Dispute resolution

(1) Any person may make a complaint under this Article (hereinafter referred to as “a complaint”) if—

(a) the subject matter of the complaint constitutes a dispute between the complainant and—

(i) the holder of a transmission licence;

(ii) the holder of a distribution licence;

(iii) a distribution exemption holder; or

(iv) a supply exemption holder;

(b) it is wholly or mainly a complaint against that holder regarding an obligation imposed upon him pursuant to the Directive or Directive 2009/72/EC of the European Parliament and of the Council of 13th July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC; and

(c) the subject matter of the complaint—

(i) does not fall to be dealt with under Article 26 or Article 42A; and;

(ii) is not capable of being determined pursuant to any other provision of this Order.

(2) A complaint shall be made in writing to the Authority and shall be accompanied by such information as is necessary or expedient to allow the Authority to make a determination in relation to the complaint.

(3) The Authority shall establish and publish such procedures as it thinks appropriate for the determination by it of a complaint.

(4) The procedures established under paragraph (3) shall provide for the determination of the complaint to be notified to the complainant within the requisite period or such longer period as the Authority may agree with the complainant.

(5) For the purposes of paragraph (4) the requisite period in any case means—

(a) the period of two months from the date when the complaint was received by the Authority; or

(b) where the information sent to the Authority under paragraph (2) was in its opinion insufficient to enable it to make a determination, the period of four months from the date the complaint was received by the Authority.

(5A) Where the Authority makes a determination under this Article, it may include in the determination an order requiring any party to the dispute to pay such sum in respect of the costs or expenses incurred by the Authority in making the determination as the Authority considers appropriate and this order shall be final and shall be enforceable as if it were a judgement of the county court.

(5B) In making an order under paragraph (5A), the Authority shall have regard to the conduct and means of the parties and other relevant circumstances.

(6) For the purposes of this Article “determination” in relation to any complaint means a determination about the exercise of any power or duty conferred or imposed on the Authority in relation to electricity under this Order or the Energy (Northern Ireland) Order 2003 insofar as that power or duty relates to the subject matter of the complaint.

The Licence (A2)

3.8 Condition 15 of the Licence provides –

Non-Discrimination

1 In undertaking the Transmission System Operator Business, the Licensee shall not unduly discriminate as between any persons or class or classes of persons (including itself in undertaking any activity other than the Transmission System Operator Business).

3.9 Condition 25 of the Licence provides –

Requirement to Offer Terms – Users and Connectees

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:...

(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.

3.10 Condition 26 of the Licence provides –

Functions of the Authority – Disputes with Users and Connectees

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.

3.11 Condition 30 of the Licence provides (relevantly) –

Statements of Charges

1 The Licensee shall, in co-operation with the Republic of Ireland System Operator, as soon as practicable after the date on which this Condition becomes effective (and, in any event, not later than such date as the Authority may direct) prepare (and obtain the Authority's approval to) statements setting out:...

(b) the basis upon which charges will be made for connection to the All-Island Transmission Networks at entry or exit points on the transmission system;

2 The Licensee shall ensure that the charges provided for in, or calculated in accordance with, the statements referred to in paragraph 1 are neither designed to prevent nor have the effect of preventing the operation of an organised electricity market in any of the services referred to in paragraph 2 of Annex XI of Directive 2012/72/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency.

3 The statements prepared under paragraph 1 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 (or payments to which it would become entitled, as the context requires) for the provision of such services, including such of the information set out in paragraphs 4, 5, 6, 7 and 8 as is required by such paragraphs to be included in the relevant statement.

...

Connection

5 Except to the extent that the Authority may otherwise direct, the statement referred to in paragraph 1(b) shall include:

(a) a schedule listing those items (including the carrying out of works and the provision and installation of electric lines or electrical plant or meters) of significant cost liable to be required for the purpose of connection (at entry or exit points on the transmission system) to the All-Island Transmission Networks for which connection charges may be made or levied and including (where practicable) indicative charges for

each such item and (in other cases) an explanation of the methods by which and the principles on which such charges will be calculated;

(b) the methods by which and the principles on which any charges will be made in respect of extension or reinforcement of the All-Island Transmission Networks rendered necessary or appropriate by virtue of providing such connection to the All-Island Transmission Networks (at entry or exit points on the transmission system) or associated use of the All-Island Transmission Networks in respect of supply or generation in Northern Ireland;

(c) the methods by which and the principles on which connection charges will be made in circumstances where the electric lines or electrical plant to be installed are of greater size or capacity than that required for use of system by the person seeking connection;

(d) the methods by which and the principles on which any charges (including any capitalised charge) will be made for maintenance and repair required of electric lines, electrical plant or meters provided and installed for making a connection to the All Island Transmission Networks at entry or exit points on the transmission system;

(e) the methods by which and the principles on which any charges will be made for the provision of special metering or telemetry or data processing equipment by the Licensee for the purposes of enabling any person which is bound to comply with the Grid Code to comply with its obligations in respect of metering thereunder, or for the performance by the Licensee of any service in relation thereto;

(f) the methods by which and principles on which any charges will be made for disconnection from the transmission system and the removal of electrical plant, electric lines and ancillary maters following disconnection; and

(g) such other matters as shall be specified in directions issued by the Authority from time to time for the purposes of this Condition.

Directive 2009/72/EC

3.12 Article 12 of Directive 2009/72/EC states –

“Each transmission system operator shall be responsible for: ... (g) providing system users with the information they need for efficient access to the system;”

SONI Limited's Transmission Connection Charging Methodology Statement (the TCCMS) (A3)

3.13 Section 9 of the TCCMS provides –

9. Bonds and Credit Cover

9.1 *An Applicant seeking to connect to the All-Island Transmission Networks must provide security in the form of a number of bonds which are designed to protect other Users of the system. Detailed requirements are set out in sub-paragraphs 9.2 - 9.3.*

9.2 Connection Charges Bond:

9.2.1 *A User must post a connection charges bond upon acceptance of their Connection Offer based on the connection charges within the Connection Offer. This bond will cover any connection charges expected to be incurred during the pre-construction and construction of the connection which are not covered under the payments already made by the User in respect to the connection charges. The bond will be drawn down should the User decide not to proceed to completion. The connection charges bond must be provided prior to execution of the Connection Agreement. This requirement is a condition precedent to acceptance of the Connection Offer.*

9.3 Maximum Export Capacity Bond and Maximum Import Capacity Bond:

9.3.1 *Due to limited capacity on the Transmission System, Applicants should only request a Connection Offer for an MIC or MEC that they can reasonably achieve, and Applicants should not attempt to reserve additional capacity on the network for later development of their facilities;*

9.3.2 *A generation User will require an MEC bond and a load User will require an MIC bond;*

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;*

9.3.4 *The value of the MEC bond is set at £7,000 per MW;*

9.3.5 SONI shall be entitled to draw down the MIC bond under the terms of the Connection Offer and/or the Connection Agreement including where the User withdraws its acceptance of the Connection Offer and/or terminates the Connection Agreement and/or fails to pay for the appropriate loss in TUoS revenue; and

9.3.6 The User is required to maintain an MIC bond for two years from the date of acceptance of the Connection Offer or date of execution of the Connection Agreement (whichever date is the later).

Practice and procedure

- 3.14 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 – supplemented as required in order to ensure good governance and best practice.³

³ The Dispute Policy (A4).

4. SECTION FOUR – FACTUAL BACKGROUND

4.1 The following summary of the factual background is derived mainly from the relevant section of the SOC 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.

4.2 On 22 December 2022, TI LirIC applied to SONI for it to offer terms for connecting (what will be) the LirIC Interconnector to the transmission system operated by SONI (purely for ease this is referred to as 'SONI transmission system') with the proposed connection point being at land at Kilroot. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4.3 Paragraphs 5 and 7 of Condition 25 of the Licence require SONI to offer, having been requested to do so, terms for connection as soon as practicable but in any event, unless the Utility Regulator gives consent to a longer period, within 3 months of it being in receipt of all such information as it reasonably requires for the purposes of formulating the terms of the offer⁵.

4.4 On 11 January 2023, SONI confirmed that the Connection Application contained all the information it reasonably required. Ordinarily therefore SONI was required to make its connection offer by 11 April 2023.

4.5 Pursuant to paragraph 5 of Condition 25⁶, SONI applied to the Utility Regulator (on three separate occasions) for an extension to the timetable for making its connection offer. The Utility Regulator consented to each request resulting in the timetable by which the connection offer was required to be made being extended to 28 June 2024⁷.

4.6 On 28 June 2024, SONI issued its offer to TI LirIC for the making of the requested connection (the **Connection Offer**)⁸. The Connection Offer required it to be accepted within 90 calendar days, i.e. by 26 September 2024.

4.7 Paragraphs 11.15 and 11.16 of the Connection Offer require that TI LirIC must put in place a MEC bond of the amount of £[REDACTED] (the **MEC Bond**)⁹ –

⁴ Connection application forms (Appendices 1-3 to the SONI Response) (B36), (B37) and (B38).

⁵ The Licence (A2), pp. 122-123.

⁶ The Licence (A2), p. 122.

⁷ The published decisions from the Utility Regulator relating to these requested extensions are available at the following links: <https://www.uregni.gov.uk/publications/soni-condition-25-extension-connection-offer-ti-liric-ltd-ti-liric-interconnector>, <https://www.uregni.gov.uk/publications/utility-regulator-decision-soni-condition-25-extension-ti-liric> & <https://www.uregni.gov.uk/publications/consent-extend-connection-offer-timelines-relating-connection-application-ti-liric-ltd>

⁸ Letter from SONI to TI LirIC dated 28 June 2024 (Appendix 1 to the Application) (B3) and The Connection Offer (Appendix 2 to the Application) (B4).

⁹ The Connection Offer (Appendix 2 to the Application) (B4), p. 32.

"at the time of acceptance of this Offer as a condition precedent of the acceptance of this Offer."

- 4.8 TI LirIC wrote to SONI in a letter dated 28 July 2024 expressing a number of concerns about the terms of the Connection Offer, including the requirement to post the MEC Bond as a condition to acceptance of the Connection Offer¹⁰.
- 4.9 SONI responded by way of a letter dated 20 August 2024 (the **Initial SONI Reply**) in order to address the points raised by TI LirIC¹¹.
- 4.10 On 21 August 2024, the Parties met in person to discuss the issues further. It was accepted that, as the Parties were not agreed on the appropriateness of applying the MEC Bond, TI LirIC could raise the matter as a dispute to be resolved by the Utility Regulator as set out in paragraph 17.1 of the Connection Offer¹².
- 4.11 On the same date, SONI wrote to TI LirIC summarising some of the proposed actions and next steps following that meeting¹³.
- 4.12 Accordingly, TI LirIC lodged the Dispute with the Utility Regulator on 10 September 2024, highlighting that the main issue in dispute is whether SONI is entitled to require TI LirIC to provide a 'MEC bond' as a condition to acceptance of the Connection Offer¹⁴.
- 4.13 Given that the Connection Offer was due to expire on 26 September 2024, TI LirIC also requested the Utility Regulator to issue an interim direction to the effect that¹⁵ –

"the date for acceptance of the Connection Offer be extended until 90 calendar days after the date on which the Utility Regulator finally determines the dispute, or if later 90 calendar days after the date of any new connection offer issued by SONI following the direction of the Utility Regulator, and that TI LirIC's place in the transmission grid connection queue position is maintained pending determination of the dispute."

- 4.14 On 13 September 2024, SONI wrote to TI LirIC providing some further clarifications following the 21 August 2024 meeting (the **Subsequent SONI Reply**)¹⁶.
- 4.15 Following an initial review of the Application, the Utility Regulator acknowledged the Application and informed the Parties (in its letter dated 23 September 2024) that it has

¹⁰ Letter from TI LirIC to SONI dated 28 July 2024 (Appendix 3 to the Application) (**B5**).

¹¹ The Initial SONI Reply (Appendix 4 to the Application) (**B6**).

¹² The Application (**B2**), p. 4; The SONI Response (**B35**), p. 3; and The Connection Offer (Appendix 2 to the Application) (**B4**), p. 36.

¹³ Letter from SONI to TI LirIC dated 21 August 2024 (Appendix 7 to the SONI Response) (**B42**).

¹⁴ The Application (**B2**), p. 1.

¹⁵ The Application (**B2**), p. 2.

¹⁶ The Subsequent SONI Reply (Appendix 8 to the SONI Response) (**B43**).

jurisdiction to consider and determine the issues in dispute under Article 31A of the Electricity Order and Condition 26 of the Licence¹⁷.

- 4.16 With regard to the requested interim direction, the Utility Regulator clarified that it does not have the power to grant the direction sought but that if the Dispute proceeds to a final determination, the Utility Regulator could, if necessary, order SONI to re-issue a connection offer which is compliant with the terms of the determination. Alternatively, it pointed out that SONI could agree to keeping the Connection Offer open for 90 days following the final determination of the Dispute¹⁸.
- 4.17 In a letter dated 26 September 2024, SONI confirmed that it would keep the Connection Offer open and that it will not lapse before the final determination of the Dispute¹⁹. It also confirmed that, following the final determination of the Dispute, it will apply an offer acceptance period to the existing Connection Offer or to any newly issued variation offer in line with any direction from the Utility Regulator contained within the final determination.
- 4.18 On 17 October 2024, the Utility Regulator issued a letter to the Parties setting out a proposed timetable for the Dispute²⁰.
- 4.19 However, following a letter from SONI dated 23 October 2024 requesting an extension to the period provided for its representations²¹, the Utility Regulator issued an updated timetable²².
- 4.20 In accordance with the updated timetable, on 8 November, SONI provided its initial representations in respect of the Dispute (the **SONI Response**)²³.
- 4.21 TI LirIC provided further representations following the Response in a letter dated 22 November 2024 (the **TI Response**)²⁴.
- 4.22 The Utility Regulator provided a draft of the SOC to the Parties on 6 December 2024²⁵. In accordance with the applicable timetable, the Parties were invited to provide any comments on the initial Statement of Case by 20 December 2024²⁶.
- 4.23 On 20 December 2024, TI LirIC confirmed by email that it was content with the draft SOC and had no comments on it²⁷.

¹⁷ Letter from the Utility Regulator to the Parties dated 23 September 2024 (**B11**).

¹⁸ Letter from the Utility Regulator to the Parties dated 23 September 2024 (**B11**).

¹⁹ Letter from SONI to the Utility Regulator dated 26 September 2024 (Appendix 9 to the SONI Response) (**B44**).

²⁰ Letter from the Utility Regulator to the Parties dated 17 October 2024 (**B18**).

²¹ Letter from SONI to the Utility Regulator dated 23 October 2024 (**B22**).

²² Letter from the Utility Regulator to the Parties dated 25 October 2024 (**B25**).

²³ The SONI Response (**B35**).

²⁴ The TI Response (**B45**).

²⁵ Draft Statement of Case (**B48**).

²⁶ Letter from the Utility Regulator to the Parties dated 25 October 2024 (**B25**).

²⁷ Email from TI LirIC to the Utility Regulator, 20 December 2024 (**B50**).

- 4.24 On the same date, SONI responded with a letter addressed to the Utility Regulator (the **SONI SOC Response**). The case management team reviewed the SONI SOC Response and updated the SOC to reflect SONI's comments to the extent that they relate to clarification of points already outlined in the SONI Response.
- 4.25 Supplementing the above background, SONI notes in the SONI SOC Response that it met with TI LirIC on 14 November 2024 to discuss a number of additional issues relating to the Connection Offer that do not form part of this Dispute. We do not address these further as they do not form a part of the issues in this case.
- 4.26 On 13 January 2025, TI LirIC contacted the Utility Regulator requesting the opportunity to respond to the new legal arguments it considered SONI had made in the SONI SOC Response²⁸.
- 4.27 The Utility Regulator acceded to this request such that TI LirIC could respond, by 20 January 2025, to and only to any *new* legal arguments that it considered SONI had made. In light of this, at the same time the case management team also set out a revised timetable for the determination of the Dispute²⁹.
- 4.28 On 20 January 2025, TI LirIC sent in its response in respect of a new legal argument that it considered SONI to have made in the SONI SOC Response, including a letter to the UR dated 20 January and an accompanying KC submission dated 19 January (the **TI Response to the SONI SOC Response**)³⁰. The case management team has reviewed the TI Response to the SONI SOC Response and updated this Statement of Case to summarise any new legal argument raised by SONI and TI LirIC's comments in relation to it.
- 4.29 An updated SOC was produced to include the new legal argument raised by SONI and the TI Response to the SONI SOC Response (**B54**).
- 4.30 The Draft Determination was sent to the Parties on 18 February 2025. TI LirIC provided representations to the Draft Determination in a letter dated 12 March 2025 (the **TI DD Response**)³¹. SONI also provided its representations on the same date (the **SONI DD Response**)³².

²⁸ Email from TI LirIC to the Utility Regulator, 13 January 2025 (**B51**).

²⁹ Email from the Utility Regulator to the Parties, 14 January 2025 (**B52**).

³⁰ TI Response to the SONI SOC Response (**B53**).

³¹ TI DD Response (**B55**).

³² SONI DD Response (**B56**).

5. SECTION FIVE – VIEWS OF TI LIRIC

5.1 TI LirIC's views are set out in –

- (a) the Application **(B2)**,
- (b) the TI Response **(B45)**,
- (c) the TI Response to the SONI SOC Response **(B53)**, and
- (d) the TI DD Response **(B55)**.

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 issues set out in Section Seven of this document.

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

The Application

5.4 The Application sets out TI LirIC's position in respect of the disputed terms of the Connection Offer, namely the terms requiring TI LirIC to provide a MEC bond.

Pre-Application Correspondence

5.5 TI LirIC notes that the Parties had several meetings following its Connection Application (dated 22 December 2022) to discuss the Project and progress the application³³.

5.6 TI LirIC states that, despite the regular engagement over a long period of time, SONI only mentioned the possibility of a MEC bond being required at a meeting on 13 March 2024 and even then, it was "*inconclusive*", as SONI suggested within the same meeting that security may not be required and/or that SONI could look at different options³⁴.

5.7 TI LirIC further states that SONI did not have a firm view on the need for a MEC bond until close to the issue of the Connection Offer. It was not confirmed until a meeting on 3 May 2024 (just two months before the Connection Offer was issued)³⁵.

5.8 TI LirIC states that it was clear from the meetings that SONI was "*not sure how the LirIC interconnection project should be treated as regards the TCCMS*" or "*how the TCCMS*

³³ The Application **(B2)**, p. 1.

³⁴ The Application **(B2)**, pp. 1-2.

³⁵ The Application **(B2)**, p. 1.

*should be applied and whether an interconnector could or should be required to post an "MEC bond"*³⁶.

TI LirIC is not a "generation User" for the purposes of the TCCMS

5.9 TI LirIC contends that only a generator can be required to provide a MEC bond and that, as it is not a generator, TI LirIC cannot be required to provide a MEC bond³⁷.

5.10 TI LirIC draws this position from Section 9 of the TCCMS³⁸ –

"9.3.2 A generation User will require an MEC bond and a load User will require an MIC bond;

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..."

5.11 In particular, TI LirIC submits that –

- (a) The words 'generation', 'generator', 'load' and 'load User' are undefined in the TCCMS. The fact that SONI did not define the terms 'generation User' and 'load User' suggests that either the meaning is obvious, or SONI considered that they were already defined appropriately elsewhere³⁹.
- (b) Generally, in law, where legislation refers to a term which is undefined, "*an appropriate starting point is that the language is to be taken to bear its ordinary meaning*"⁴⁰. While the TCCMS does not constitute legislation, it is akin to legislation in that it has been made pursuant to a licence which was issued pursuant to statute⁴¹.
- (c) 'Generator' is defined in the Cambridge Dictionary as "*a machine that produces electrical power*". A transmission system does not produce electrical power. TI LirIC notes that to suggest otherwise is "*the equivalent of arguing that a road is the same as a car factory*"⁴².
- (d) In the preceding paragraph of the TCCMS, namely paragraph 9.3.1, the term 'Applicant' is used (as opposed to the term User)⁴³ –

³⁶ The Application (B2), pp. 1-2.

³⁷ The Application (B2), p. 1.

³⁸ The TCCMS (A3).

³⁹ The Application (B2), p. 9.

⁴⁰ *R v Secretary of State for the Environment, Transport and the Regions, Ex p Spath Holme Ltd* [2001] 2 AC 349.

⁴¹ The Application (B2), pp. 9-10.

⁴² The Application (B2), p. 9.

⁴³ The TCCMS (A3).

"9.3.1 Due to limited capacity on the Transmission System, Applicants should only request a Connection Offer for an MIC or MEC that they can reasonably achieve, and Applicants should not attempt to reserve additional capacity on the network for later development of their facilities;"

- (e) The use of the different wording in the subsequent paragraphs was intentional to make clear that not all categories of 'Applicant' would be required to place MEC bonds – only 'generation Users'. It would have been very easy for the TCCMS drafter to use the word 'Applicant' in paragraph 9.3.2 if the intention was in line with SONI's proposition, but they chose not to⁴⁴.
- (f) It appears that the MEC Bond is designed to prevent 'capacity hoarding' i.e. reserving additional capacity on the network for later facility development⁴⁵.
- (g) EirGrid's TCCMS (which TI LirIC understands came first) is very similar to SONI's TCCMS, in that it also refers to 'capacity hoarding' and MEC bonding. The SONI 'MEC bond' and the EirGrid 'MEC Capacity Bond' are essentially the same thing, and it is very clear from the EirGrid website that the EirGrid 'MEC Capacity Bond' is solely a requirement placed on generators only. As SONI and EirGrid are part of the same corporate group and work closely together, it is of no surprise that the TCCMS's are similar as they need to align⁴⁶.
- (h) The term 'User' is defined in the Grid Code (prepared by SONI). In the Grid Code, SONI identifies 6 categories of Users in the context of the process of applying for connections to the SONI transmission system⁴⁷ –
 - (i) Generators with respect to Generating Units connected to or seeking a new or modified connection to the Transmission System,
 - (ii) Generators with respect to CDGU's and Controllable PPMs connected to or seeking a new or modified connection to the Distribution System,
 - (iii) Large Demand Customers,
 - (iv) HVDC Converter Station owners,
 - (v) HVDC System owners, and
 - (vi) Interconnector owners.

⁴⁴ The Application (B2), p. 9.

⁴⁵ The Application (B2), p. 9.

⁴⁶ The Application (B2), p. 10.

⁴⁷ The Application (B2), pp. 10-11.

- (i) TI LirIC clearly does not fall into category (i) or (ii) as it does not have a generating unit and is not connected to the distribution system. Nor does it fall into category (iii), which TI LirIC interprets as the same as 'load User'. Rather, it must most relevantly fall into category (vi), which is clearly distinguished from a generator. It would seem "*perverse*" if in preparing the Connection Offer, SONI was required to treat TI LirIC as an 'Interconnector Owner' for the purposes of the Grid Code and as a 'Generator' for the purposes of the TCCMS⁴⁸.
- 5.12 TI LirIC is of the view that SONI should not be permitted (and is not required) to seek a MEC bond unless that is specifically provided for under the TCCMS, and TI LirIC maintains that the TCCMS neither explicitly nor implicitly provides that a transmission system owner seeking a connection to the SONI transmission system would be required to post a MEC bond⁴⁹.
- 5.13 TI LirIC states that the suggestion that SONI is permitted to treat a person as being the same as a 'generation User' when they are not is "*wholly arbitrary*" and not in keeping with the Licence⁵⁰.
- 5.14 TI LirIC observes that –
- (a) The purpose of a charging statement under the Licence is to enable prospective connectees to estimate in advance the likely cost of seeking a connection⁵¹.
 - (b) It is "*extremely material*" to the project cost that £[REDACTED] is required to be paid in cash within 90 calendar days, particularly given that the requirement was only communicated shortly before the Connection Offer was issued⁵².
 - (c) If the Utility Regulator does consider it necessary to require that a transmission system seeking a connection to the SONI transmission system should be required to post a MEC bond, then this should be introduced through a specific amendment to the TCCMS to provide clarity to any future connectees⁵³.
 - (d) As SONI is required to prepare the TCCMS in co-operation with EirGrid, any amendment would also require EirGrid's input⁵⁴.
 - (e) The single electricity market was founded on the premise that connection charging should be harmonised across the island (reflected in the similarity of SONI and EirGrid TCCMS's). Any deviation from the position adopted in the TCCMS's could

⁴⁸ The Application (B2), p. 11.

⁴⁹ The Application (B2), p. 14.

⁵⁰ The Application (B2), p. 14.

⁵¹ The Application (B2), p. 14; see also the Licence: Condition 30 (A2), p. 136.

⁵² The Application (B2), p. 14.

⁵³ The Application (B2), p. 14.

⁵⁴ The Application (B2), p. 14; see also the Licence: Condition 30(1) (A2), p. 136.

be a 'SEM matter' and should be referred to the SEM Committee for consideration pursuant to Article 6 of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007⁵⁵.

If TI LirIC is a 'generation User' for the purposes of the TCCMS, then it would require a licence to generate electricity under Article 10(1)(a) of the Electricity Order and consent from the Department for the Economy under Article 39(1) of the Electricity Order

- 5.15 TI LirIC states that as the TCCMS was introduced by SONI (and approved by the Utility Regulator) pursuant to Condition 30 of the Licence, which was itself issued pursuant to Article 10(1) of the Electricity Order, the meaning of 'generate' should be applied equally across the Electricity Order and all subordinate legislation to ensure consistency⁵⁶.
- 5.16 It suggests that if a transmission system is found to be a 'generation User', and therefore a 'generator', this would create issues when applying other electricity legislation⁵⁷.
- 5.17 Firstly, it would mean that all persons engaged in the distribution or transmission of electricity would require a generation licence⁵⁸. In respect of this, TI LirIC refers to the following provisions in the Electricity Order⁵⁹ –

Article 8(1)(a): “A person who (a) generates electricity for the purpose of giving a supply to any premises or enabling a supply to be so given shall be guilty of an offence unless he is authorised to do so by a licence.”

Article 10(1): [the Utility Regulator has authority to] “grant a licence authorising any person (a) to generate electricity (b) to participate in the transmission of electricity...” etc.

- 5.18 Secondly, as a matter of EU law, a transmission system owner cannot be the same person as a generator⁶⁰. TI LirIC refers to Directive (EU) 2019/944 –

“1. Member States shall ensure that: (b) the same person or persons are not entitled either: (i) directly or indirectly to exercise control over an undertaking performing any of the functions of generation or supply...”⁶¹

⁵⁵ The Application (B2), p. 14.

⁵⁶ The Application (B2), p. 12.

⁵⁷ The Application (B2), p. 12.

⁵⁸ The Application (B2), p. 12.

⁵⁹ The Electricity Order (A1).

⁶⁰ The Application (B2), p. 12.

⁶¹ Directive (EU) 2019/944 Article 43, para 1

5.19 Thirdly, if the definition of 'generation' includes the transmission of electricity, then the construction and operation of all transmission electrical equipment in Northern Ireland since 1992 would have required Article 39 consent from the Department for the Economy⁶².

5.20 In respect of this, TI LirIC refers to the following –

(a) Article 39 of the Electricity Order –

39. (1) ... a generating station shall not be constructed, extended or operated except in accordance with a consent granted by the Department [for the Economy],

*where “generating station” is defined as “in relation to a generating station wholly or mainly driven by water, includes all structures and works for holding or channelling water for a purpose directly related to the generation of electricity by that station;”.*⁶³

(b) SONI's 2021 consultation on the Relevant Consent for Interconnectors to Accept a Transmission Connection Offer (the **2021 Consultation**), in which SONI states that “...*the relevant legislation defines an interconnector as a transmission line. As a consequence, in the context of the EU Internal Market in Electricity, interconnector flows are neither classified as production (generation) nor consumption (demand), but part of the overall transmission infrastructure facilitating the wider market...*”⁶⁴.

5.21 For the reasons identified above, TI LirIC submits that SONI clearly does not consider TI LirIC to be a generator or even akin to a generator⁶⁵.

Timing for the giving of a MEC bond

5.22 TI LirIC submits that, while it is firmly of the view that it should not be required to post a MEC bond at all, should it be determined by the Utility Regulator that SONI is entitled to include terms requiring TI LirIC to post a MEC bond, SONI is not entitled to require the bond to be posted upon the acceptance of the Connection Offer⁶⁶.

5.23 In respect of the timing of the MEC Bond, TI LirIC states the following –

⁶² The Application (B2), p. 12.

⁶³ The Electricity Order, Article 39 (A1).

⁶⁴ The Application (B2), pp. 12-13; The 2021 Consultation (Appendix 7 to the Application) (B9), p. 10.

⁶⁵ The Application (B2), p. 13.

⁶⁶ The Application (B2), pp. 14-15; The TCCMS, sections 9.3.1-9.3.4.

- (a) Section 9 of the TCCMS does not provide any timeline for the provision of a MEC bond, nor does it link the posting of a MEC bond to acceptance of a connection offer⁶⁷.
- (b) This is in direct comparison to a 'Connection Charges Bond' and 'MIC bond' under the TCCMS, both of which specify timelines and only one of which is required upon acceptance⁶⁸.
- (c) The Parties should be entitled to rely on wording of the TCCMS as written. The assumption should be that it means what it says so that potential connecting parties can determine in advance of an application how the costs of connection will be calculated. This is key to the development of the transmission system and to ensuring competition⁶⁹.
- (d) Timelines for developing a sub-sea transmission system are considerably longer than an onshore renewables project. The MEC bond policy appears to have been introduced to address the latter. Accordingly, it seems irrational to apply the same timelines for the provision of a MEC bond, given the high-risk element of developing a project of this type in the early stages⁷⁰.
- (e) SONI already appears to have acknowledged that, given the high risk and cost involved at the early stage of a sub-sea transmission project, there is a low risk of 'capacity hoarding'. As such, placing a MEC bond on acceptance should not be necessary to prevent such activity⁷¹.

5.24 TI LirIC considers that the requirement to place a MEC bond on acceptance of a connection offer would have two undesirable effects⁷² –

- (a) Firstly, it would create a barrier to entry for new transmission systems seeking to connect (with the potential, for example, to interfere with Northern Ireland's target of 1GW of offshore wind from 2030).
- (b) Secondly, it would create a reverse incentive for parties to hoard capacity. If a project proves not to be commercially viable, there is no incentive to abandon the capacity as the right to drawdown on the MEC Bond will only crystallise at that point.

⁶⁷ The Application (B2), p. 15.

⁶⁸ The Application (B2), p. 15; the TCCMS, sections 9.2.1 and 9.3.6.

⁶⁹ The Application (B2), p. 15.

⁷⁰ The Application (B2), p. 15.

⁷¹ The Application (B2), pp. 15-16.

⁷² The Application (B2), p. 16.

5.25 In addition, TI LirIC states that SONI has acknowledged the following in its 2021 Consultation⁷³ –

- (a) that even if an interconnector is required to post a MEC bond, it does not have to do so in the same manner as other classes of connectee,
- (b) that even if other classes of connectee are required to post a MEC bond, SONI does not need to require the same of interconnectors (so long as it does not discriminate between them as a class), and
- (c) that in the case of an interconnector an accepted grid connection offer is the start of the development process, rather than the end (which is the case with a generator).⁷⁴

5.26 TI LirIC submits therefore that if, contrary to its submissions, SONI is entitled to require it to post a MEC bond, it should not be required to do so on acceptance of the Connection Offer.

Discrimination

5.27 TI LirIC refers to Condition 15 of the Licence which provides that SONI "*shall not unduly discriminate as between any persons or class or classes of persons*"⁷⁵.

5.28 TI LirIC submits that if SONI has not required a MEC bond to be, or have been, provided by other persons whose 'transmission systems' are connected to the SONI transmission system, then it is unduly discriminating as between TI LirIC and these other parties as they are in the same class as TI LirIC⁷⁶.

5.29 More specifically, TI LirIC submits that SONI will have discriminated against TI LirIC if SONI⁷⁷ –

- (a) has not required EirGrid to pay a MEC bond for the connection of the North South Interconnector (which is to connect EirGrid transmission system (in the Republic of Ireland) to the SONI transmission system), and
- (b) did not require Moyle Limited to pay a MEC bond for the connection of the Moyle transmission system to the SONI transmission system.

⁷³ The Application (B2), p. 17.

⁷⁴ TI LirIC illustrates this point by reference to the development of an offshore wind farm as compared to the development of an interconnector.

⁷⁵ The Application (B2), p. 20; The Licence, Condition 15 (A2), p. 68.

⁷⁶ The Application (B2), p. 20.

⁷⁷ The Application (B2), p. 20.

- 5.30 With regard to the EirGrid and the North South Interconnector, TI LirIC submits that both it and EirGrid are the same class of persons as⁷⁸ –
- (a) both are currently developing infrastructure which is proposed to connect to the SONI transmission system, and
 - (b) neither is a licensed transmissions system operator in Northern Ireland;
- 5.31 TI LirIC also submits that although EirGrid's transmission system is part of the All-Island Transmission Network, TI LirIC is no different from EirGrid given that SONI states in its 2021 Consultation on Relevant Consent for Interconnectors to Accept a Transmission Connection Offer that "*interconnectors are defined in law as part of the Transmission System*"⁷⁹.
- 5.32 TI LirIC states that the same observations apply with regard to the Moyle Interconnector, save that this has already been constructed⁸⁰.
- 5.33 TI LirIC also confirms that it asked SONI to explain its apparent discrimination as between TI LirIC and EirGrid and that the Initial SONI Reply⁸¹ does not address TI LirIC's submissions that EirGrid appears to be treated more favourably than TI LirIC by SONI.

TI Response

- 5.34 The TI Response sets out TI LirIC's submissions in respect of the points made by SONI in the SONI Response.
- 5.35 It starts with making the following observations on the nature of the SONI Response, namely that it⁸² –
- (a) is very detailed and touches upon a number of points which are not relevant to the Dispute. In particular, TI LirIC notes that the SONI Response contains representations on policy implications should the Decision Makers determine in favour of TI LirIC and states that these are matters which are "*separate from a decision on whether the policy as written should be applied in this case*".
 - (b) seems to imply that TI LirIC intentionally misquoted or withheld information in an attempt to mislead the reader. However, TI LirIC clarifies that quotations were limited so far as possible in the interest of brevity on the assumption that both the Utility Regulator and SONI would be familiar with the documents referred to.

⁷⁸ The Application (B2), p. 20.

⁷⁹ The 2021 Consultation (Appendix 7 to the Application) (B9), p. 13.

⁸⁰ The Application (B2), p. 20.

⁸¹ The Initial SONI Reply (Appendix 4 to the Application) (B6), pp. 2-3.

⁸² The TI Response (B45), p. 1.

- 5.36 On the status of the TCCMS, TI LirIC contends that the TCCMS is a regulatory document which has been approved by the Utility Regulator pursuant to Condition 30 of the Licence (as opposed to a high-level guidance document) and it is the only document which allows applicants to judge in advance what the costs associated with an application for connection will be. As such, it should be "*capable of being relied upon as written and without further aids to interpretation*"⁸³.
- 5.37 On the relevant provisions of the TCCMS, TI LirIC's views are as follows –
- (a) It agrees with SONI that it (TI LirIC) is an 'Applicant' for the purposes of the TCCMS and, should it proceed to accept the Connection Offer, it will become a 'User'⁸⁴.
 - (b) TI LirIC accepts that it may be asked to provide security in the form of "*a number of bonds*" and assumes that this a maximum of three and a minimum of one⁸⁵.
 - (c) TI LirIC further accepts that, in common with all Users (and with reference to paragraph 9.2.1 of the TCCMS), TI LirIC **must**⁸⁶ provide security in the form of a Connection Charges Bond in respect of connection charges incurred by SONI. TI LirIC points out that this bond applies to all classes of Users and so (at a minimum) all Users must be required to provide this bond, being the only bond that applies to Users rather than a class of Users⁸⁷.
 - (d) Section 9.3.2 of the TCCMS makes clear that there are at least two types of User: a "generation User" and a "load User". Therefore, it is clear that different types of User can be required to post different types of bond⁸⁸.
 - (e) SONI has not suggested that TI LirIC is a "load User" and has not requested a MIC bond – and TI LirIC agrees with this approach⁸⁹.
 - (f) SONI confirms in the SONI Response that it⁹⁰ –
 - (i) does not consider TI LirIC to be a 'generation User',
 - (ii) is not seeking to treat TI LirIC as a 'generation User', and

⁸³ The TI Response (B45), p. 2.

⁸⁴ The TI Response (B45), p. 2.

⁸⁵ The TI Response (B45), p. 2.

⁸⁶ Emphasis in the TI Response.

⁸⁷ The TI Response (B45), p. 2; the TCCMS, Section 9.2.1 (A3).

⁸⁸ The TI Response (B45), p. 3; the TCCMS, Section 9.3.2 (A3).

⁸⁹ The TI Response (B45), p. 3.

⁹⁰ The TI Response (B45), p. 3; The SONI Response (B35), p. 8.

(iii) has not and does not intend to classify the proposed Interconnector as a generator.

5.38 TI LirIC remains of the view that, as 'generation' is not defined in the TCCMS, best practice is to give the undefined terms their ordinary and natural meaning. The ordinary and natural meaning of 'generation User' is "*a User which generates electricity*", which TI LirIC is not⁹¹.

5.39 In respect of SONI's argument that an Interconnector is most comparable to an energy storage or battery connection, TI LirIC states that –

- (a) This is "*clearly wrong*" and notes that the Utility Regulator has previously determined that batteries are generators for the purposes of the Electricity Order, and has issued a number of generation licences on this basis (whereas interconnectors have historically been issued with transmission licences)⁹².
- (b) Batteries are not the same class of unit in any regulatory document (referring in particular to the SEM Trading and Settlement Code and the SONI Grid Code)⁹³.
- (c) SONI's 2021 Consultation acknowledges very clearly that interconnectors are very different to traditional onshore generators, an approach which appears to be inconsistent with the SONI Response⁹⁴.

5.40 TI LirIC agrees with SONI that the TCCMS cannot be modified outside of the established regulatory framework, including the need to consult, so in seeking to treat an interconnector as a generator SONI is essentially trying to "*shoehorn a square peg into a round hole*"⁹⁵.

5.41 TI LirIC observes that "*the sum of SONI's argument...appears to be that it is entitled to apply the TCCMS as if the word 'generation' does not exist*" and, in TI LirIC's view, "*this is obviously wrong*"⁹⁶.

TI Response to the SONI SOC Response

5.42 The TI Response to the SONI SOC Response sets out TI LirIC's comments in relation to one new legal argument that it considered SONI to have made.

5.43 This is the submission made by SONI that the proper rules for the interpretation of the TCCMS are those applied by the courts when interpreting legislation. In making this submission SONI cited the case of *R (Quintavalle) v Secretary of State for Health* [2003] 2

⁹¹ The TI Response (B45), p. 3.

⁹² The TI Response (B45), pp. 3-4; the SONI Response (B35), p. 12 and p. 28.

⁹³ The TI Response (B45), p. 4.

⁹⁴ The TI Response (B45), p. 4; the 2021 Consultation (Appendix 7 to the Application) (B9), p. 13.

⁹⁵ The TI Response (B45), p. 5.

⁹⁶ The TI Response (B45), p. 5.

AC 687 and submitted that the Section 9 provisions of the TCCMS are to be interpreted using the purposive approach to interpretation.

5.44 In responding to SONI's new submission as to the approach to interpretation of the TCCMS, TI LirIC presents a legal opinion from a KC, which opinion makes the following submissions –

- (a) Condition 30 of the Licence is intended to ensure that potential market entrants are not discouraged from applying for connection offers by "*opaque charging structures*". The objectives of the Electricity Order require "*full transparency and clarity in charging structures in order to remove structural disincentives to market participation*". The TCCMS is intended to be the instrument that fulfils those objectives⁹⁷.
- (b) There is no ambiguity in the language of Section 9 of the TCCMS which would warrant the use of a purposive interpretation as outlined under paragraph 8 of *Quintavalle*⁹⁸.
- (c) The TCCMS does not make provision for the imposition of the requirement to place a MEC bond as a precondition to the acceptance of a connection offer by an applicant who is not a generation user⁹⁹.
- (d) Paragraph 10 of the judgment of Lord Bingham in *Quintavalle* is clear that an adjudicator cannot use a purposive interpretation to address omissions of express language¹⁰⁰. As such, there are limitations to the purposive approach to statutory interpretation¹⁰¹.
- (e) This is not a dispute about the meaning of express words in an enactment¹⁰². If there are lacunae in the TCCMS then that is a matter that can be properly addressed by an approved revision to the TCCMS¹⁰³.
- (f) SONI's approach does not align with more recent jurisprudence from the Supreme Court on the correct approach to statutory interpretation in *R (on the application of O (a minor, by her litigation friend AO) v Secretary of State for the Home Department* [2022] UKSC 3¹⁰⁴.

⁹⁷ TI Response to the SONI SOC Response (B53), p. 4.

⁹⁸ TI Response to the SONI SOC Response (B53), p. 1 and p. 4.

⁹⁹ TI Response to the SONI SOC Response (B53), p. 3.

¹⁰⁰ TI Response to the SONI SOC Response (B53), p. 1 and p.4.

¹⁰¹ TI Response to the SONI SOC Response (B53), p. 3.

¹⁰² TI Response to the SONI SOC Response (B53), p. 3.

¹⁰³ TI Response to the SONI SOC Response (B53), p. 5.

¹⁰⁴ TI Response to the SONI SOC Response (B53), pp. 5-6.

The TI DD Response

- 5.45 The TI DD Response contains TI LirIC's representations in response to the Draft Determination. TI LirIC's comments are grouped under seven headings.

Changes to the draft SOC

- 5.46 TI LirIC notes that the issues for determination as set out in Section Seven of the Draft Determination differed from those contained in the draft SOC on which it provided comments.
- 5.47 It states that the question put to the Decision Makers is of fundamental importance to the Dispute and that it was disappointed that this was changed only after the Parties had responded to the draft SOC. Had the amended version of the issues for determination been included in the draft SOC, TI LirIC would have responded to it¹⁰⁵.
- 5.48 As neither TI LirIC nor SONI provided representations on the issues for determination in the draft SOC, this implicitly reflected an agreement between the Parties as to those issues¹⁰⁶.
- 5.49 In this case, the Dispute centres on the Connection Offer which refers, at paragraphs 11.14 – 11.15, to Section 9 of the TCCMS, and the ability of SONI to require TI LirIC to pay the MEC Bond under that provision¹⁰⁷.
- 5.50 As such, TI LirIC asks that the issue for determination be changed back to that contained in the draft SOC. It states that for the Utility Regulator to determine the Dispute on a basis other than that which was notified to it would be to deprive TI LirIC of an effective remedy and be incompatible with Articles 26 and 31A of the Electricity Order¹⁰⁸.
- 5.51 It also has concerns about the procedural fairness of changing the issue for determination without reference to the Parties as this means that the Parties did not have the opportunity to provide representations on the matter to be determined¹⁰⁹.

Section 9 of the TCCMS

- 5.52 TI LirIC states that is surprised by the findings of fact in the Draft Determination in relation to Condition 30 of the Licence¹¹⁰.

¹⁰⁵ TI DD Response (B55), p. 3.

¹⁰⁶ TI DD Response (B55), p. 3.

¹⁰⁷ TI DD Response (B55), p. 3.

¹⁰⁸ TI DD Response (B55), pp. 3-4.

¹⁰⁹ TI DD Response (B55), p. 12.

¹¹⁰ TI DD Response (B55), p. 4.

- 5.53 It considers that the manner of calculating the monies to be paid to SONI for a connection should be clear from the face of the document. It points to the opinion it obtained from counsel which supports that interpretation¹¹¹.
- 5.54 It states that the position adopted in the Draft Determination – that Condition 30(5) provides only for the connection charging statement to include methods and principles for charges which arise in respect of connection charges – is factually incorrect. Rather, Condition 30(5) provides a non-exhaustive list of items that may be included in the TCCMS which is intended to expand on the general requirements of Condition 30(3)¹¹².
- 5.55 The TCCMS contains a variety of matters not specifically referred to in Condition 30(5) and the Decision Makers have erred by proposing to limit the content of the TCCMS to only those items listed in Condition 30(5)¹¹³.
- 5.56 TI LirIC suggests that the statement in the Draft Determination that Condition 30(5) does not empower SONI to include in the TCCMS provisions requiring bonds for MEC or for MIC is incorrect as it ignores the general application of Condition 30(3)¹¹⁴.
- 5.57 TI LirIC considers that the finding that Section 9 should never have been included in the TCCMS flows from the mistaken assumption that the costs incurred by a generator providing a bond on acceptance of an offer for connection works are not "*charges to which it would become liable ... for the provision of such services*"¹¹⁵.
- 5.58 However, TI LirIC states that this assumption is not supported by the facts and it notes that the Utility Regulator confirmed by email to TI LirIC's solicitors that it had sought no legal advice on that matter¹¹⁶.
- 5.59 In TI LirIC's view, it is irrational to separate the monies paid to SONI for connection works and the monies paid to SONI in respect of reserving capacity. It states that no regulatory document it has read makes any reference to a cost of reserving capacity and that the placing of a bond is not a payment to reserve capacity, but rather security for a potential future charge for breach of a connection offer¹¹⁷.
- 5.60 TI LirIC understands that SONI has a desire to create a financial incentive to stop generators from unfairly reserving capacity that they cannot use and therefore requires MEC bonds on the acceptance of a connection offer. The cost of connection will include such a bond as it is not possible for a generator to accept a connection offer without reserving

¹¹¹ TI DD Response (B55), p. 4.

¹¹² TI DD Response (B55), p. 4.

¹¹³ TI DD Response (B55), p. 4.

¹¹⁴ TI DD Response (B55), p. 5.

¹¹⁵ TI DD Response (B55), p. 6.

¹¹⁶ TI DD Response (B55), p. 5.

¹¹⁷ TI DD Response (B55), p. 5.

capacity. As such, the charges that an applicant may become liable to pay to SONI under the bond are clearly part of the connection¹¹⁸.

- 5.61 TI LirIC also states that the position taken in the Draft Determination ignores the cost of the bond being called. It notes that there is a sizable cost to provision of a bond, even where it is not drawn down, that generator Users should be aware of to be able to budget for in advance (and interconnector Users if the policy wording was changed to include them)¹¹⁹.
- 5.62 The Draft Determination also appears to ignore the fact that SONI, EirGrid and the Utility Regulator all approved the inclusion of Section 9 and SONI has been applying it in practice for some significant time¹²⁰.
- 5.63 It also ignores that EirGrid has a similar provision in its own charging statement which is designed to broadly reflect the SONI TCCMS, and which EirGrid has been applying. If the Utility Regulator maintains its position, it will have obvious implications for EirGrid and call into question the validity of any bonds placed with SONI or EirGrid by any generator under their respective charging statements¹²¹.
- 5.64 TI LirIC notes that SONI has not suggested at any point during the Dispute that the TCCMS should not include Section 9¹²².
- 5.65 It states that it has not had an opportunity to make representations on this matter, which is not grounded in the facts or on legal advice that can be shared with the parties¹²³.
- 5.66 TI LirIC assumes that if the position in the Draft Determination is maintained, the Utility Regulator will instruct SONI to remove Section 9 from the TCCMS¹²⁴.

Policy considerations

- 5.67 TI LirIC notes that having found that Section 9 of the TCCMS has no legal basis, the Draft Determination goes on to consider the merits of SONI's policy with respect to bonds as a means to discourage 'capacity hoarding'¹²⁵.
- 5.68 TI LirIC states that it does not disagree with discouraging capacity hoarding in principle but questions whether consideration of the merits of the policy is relevant to the Dispute. It notes that simply because SONI considers MEC bonds to be a good idea does not mean that it is entitled to require one of TI LirIC, particularly as it is not a generator¹²⁶.

¹¹⁸ TI DD Response (B55), p. 5.

¹¹⁹ TI DD Response (B55), p. 5.

¹²⁰ TI DD Response (B55), p. 5 and p. 6.

¹²¹ TI DD Response (B55), p. 6.

¹²² TI DD Response (B55), p. 6.

¹²³ TI DD Response (B55), p. 6.

¹²⁴ TI DD Response (B55), p. 6.

¹²⁵ TI DD Response (B55), p. 6.

¹²⁶ TI DD Response (B55), p. 6.

- 5.69 TI LirIC states that the Decision Makers have determined that Section 9 of the TCCMS is of no legal effect as SONI did not have the power to include it. However, because it has been published for some time now, potential connectees should be aware of it and consider it as representative of SONI's general bonding policy, which the Utility Regulator has implicitly endorsed by erroneously approving the flawed TCCMS¹²⁷.
- 5.70 TI LirIC suggests that this fails to address the root of the Dispute in that this general policy clearly states that it applies only to "generation Users"¹²⁸.
- 5.71 It notes that the SONI Response was largely concerned with the impact of this determination on the industry at large and SONI noted any amendment to the TCCMS should only be made following proper consideration and public consultation. It would not be good regulatory practice to essentially delete a section of an approved regulatory document by way of a dispute determination¹²⁹.
- 5.72 TI LirIC states that the Utility Regulator believes it to be on notice of SONI's general bonding policy, while noting that Section 9 of the TCCMS states that MEC bonds are only required from generators. If the TCCMS really does not apply, then TI LirIC would expect that the bonding requirements would be set out in more detail in the Connection Offer (rather than referring to the TCCMS) so as to explain the exact conditions as to when the bond can be drawn down¹³⁰.
- 5.73 TI LirIC refers to SONI's 2021 decision paper "Relevant Consent for Interconnectors to Accept a Transmission Connection Offer". It notes that the paper (i) makes clear that the placement of security by an interconnector is not an absolute requirement, and (ii) refers back to Section 9 for the detail on security that will be required. It also notes that the TCCMS was updated after that paper and was not amended to state that interconnectors should provide security. This shows that SONI's general policy was not to require security from interconnectors¹³¹.
- 5.74 TI LirIC states that the Capacity Test is not defined in the TCCMS but is instead expanded upon in the Connection Offer. The formula used is not appropriate for an interconnector as it has been drafted with a generator in mind. This again implies that SONI's general policy was not intended to apply to interconnectors¹³².

¹²⁷ TI DD Response (B55), p. 7.

¹²⁸ TI DD Response (B55), p. 7.

¹²⁹ TI DD Response (B55), p. 7.

¹³⁰ TI DD Response (B55), p. 7.

¹³¹ TI DD Response (B55), p. 8.

¹³² TI DD Response (B55), p. 8.

Findings in respect of charges

- 5.75 TI LirIC states that the Decision Makers have erred in law in their provisional finding that a MEC bond does not relate to connection charges but rather relates to the reservation of capacity. It refers to SONI's submission that the bonding regime is intended to prevent 'capacity hoarding' and to help maintain an orderly and management connections queue and states that it *"does not object to the concept of capacity being managed in this way"*¹³³.
- 5.76 TI LirIC agrees that the bond itself is not a charge but argues that it is a form of security to ensure that a charge, if levied, is actually paid. That charge would become payable, as a penalty, where the connectee failed the Capacity Test. TI LirIC then suggests that Section 9 was included in the TCCMS to create a separate category of connection charge, together with a regime to secure payment of that charge¹³⁴.
- 5.77 TI LirIC suggests that the case of *ParkingEye Limited v Beavis* [2015] UKSC 67 supports its assertion that the money paid when the MEC Bond is called upon is a charge. It states that the facts in that case are strongly comparable to the circumstances of a connection offer and, applying the reasoning of the Supreme Court, it is clear that the liability which flows from a MEC bond being drawn by SONI is clearly a charge relating to the connection¹³⁵.
- 5.78 TI LirIC agrees that the detail around how the bond itself is placed could be included elsewhere, but the mechanism for levying the charge must be included in the TCCMS¹³⁶.
- 5.79 TI LirIC notes that in the circumstances where SONI was to draw down on the MEC Bond, it is not clear how that would be accounted for in its price control and asks, if the MEC Bond is not a connection charge, what authority SONI has to levy that charge if it is not included in the TCCMS¹³⁷.

Finding in respect of Article 31A

- 5.80 TI LirIC refers the Utility Regulator to Article 12 of Directive 2009/72/EC which states¹³⁸ –
- "Each transmission system operator shall be responsible for: ... (g) providing system users with the information they need for efficient access to the system;"*
- 5.81 TI LirIC considers that SONI has not provided TI LirIC with the information it needs by failing to offer terms of connection in accordance with the TCCMS (which describes MEC bonds as

¹³³ TI DD Response (B55), p. 9.

¹³⁴ TI DD Response (B55), p. 9.

¹³⁵ TI DD Response (B55), p. 9.

¹³⁶ TI DD Response (B55), p. 11.

¹³⁷ TI DD Response (B55), p. 11.

¹³⁸ TI DD Response (B55), p. 11.

applying only to generators) and by only notifying it of the applicability of the MEC Bond after the application for connection had been made¹³⁹.

Procedural considerations

- 5.82 Ti LirIC notes that the majority of correspondence from the Parties in the Dispute has focused on the interpretation of the TCCMS and that TI LirIC incurred the cost of obtaining an opinion from counsel on a point of law raised by SONI¹⁴⁰.
- 5.83 TI LirIC is disappointed, and regards it unfair that the Decision Makers are not of the view that they need to consider and respond to the arguments of the Parties in relation to the interpretation of Section 9 of the TCCMS, which is the central issue to the Dispute. It also considers it irrational to determine that the approved regulatory document which forms the basis of the Dispute has no legal standing due to an error in its approval¹⁴¹.

Next steps

- 5.84 TI LirIC states that, should the Utility Regulator maintain its minded to position as set out in the Draft Determination then TI LirIC assumes that it will require SONI to issue an amended connection offer with, as a minimum, the following amendments¹⁴² –
- (a) Removing references to Section 9 of the TCCMS as it does not apply.
 - (b) Including details of the charge which will be levied in the event that the Capacity Test is not passed, including a formula setting out how the charge would be calculated, which is appropriate for an interconnector.
 - (c) Setting out how the charge would be invoiced and in what circumstances the MEC Bond would be drawn against i.e. when would payment of the charge be due. It assumes that SONI would allow a party a number of days to make payment before drawing on the security, but this is not articulated in the Connection Offer.
 - (d) Providing TI LirIC with the usual 90-day period to review the offer before accepting it.
 - (e) In the absence of a policy for interconnector Users (as the TCCMS wording only refers to generation Users), the Connection Offer should include specific wording relating the requirements for a bond for TI LirIC (reflecting the nature of the project as nationally significant infrastructure), its size, timing and drawdown policy, as required by Article 12 of Directive 2009/72/EC. Only then will TI LirIC be able to

¹³⁹ TI DD Response (B55), p. 11.

¹⁴⁰ TI DD Response (B55), p. 11.

¹⁴¹ TI DD Response (B55), p. 12.

¹⁴² TI DD Response (B55), p. 12.

reasonably estimate its liability for charges for the project connecting to the system.

6. **SECTION SIX – VIEWS OF SONI**

6.1 The views of SONI are set out in –

- (a) the SONI Response (**B35**),
- (b) the SONI SOC Response (**B49**), and
- (c) the SONI DD Response (**B56**)

6.2 We have read the above documents in full and have had full regard to all of these submissions.

6.3 In doing so, we have borne in mind that our role is to determine the issues set out in Section Seven of this document.

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

The SONI Response

6.5 The SONI Response sets out –

- (a) the sequence of events relating to the issuing of the Connection Offer and the meetings and correspondence that followed (as is outlined in Section Four above)¹⁴³,
- (b) some general observations on SONI's understanding of the applicable legal framework¹⁴⁴,
- (c) some general observations of SONI on the UR's role and remit with regard to the determination of the Dispute and on certain aspects of the arrangements in Great Britain with regard to the scale of connections queue¹⁴⁵, and
- (d) its summary and detailed replies to the points made by TI LirIC in the Application¹⁴⁶.

Pre-Application Correspondence

6.6 SONI disputes that a meeting took place on 13 March 2024¹⁴⁷.

¹⁴³ The SONI Response (**B35**), pp. 1-4.

¹⁴⁴ The SONI Response (**B35**), pp. 4-5.

¹⁴⁵ The SONI Response (**B35**), pp. 5-7.

¹⁴⁶ The SONI Response (**B35**), pp. 7-30.

¹⁴⁷ The SONI Response (**B35**), p. 2.

- 6.7 SONI's understanding is that the reference to the meeting on 13 March 2024 is reference to a phone call that took place between one employee of SONI [REDACTED] and TI LirIC [REDACTED]
- 6.8 While SONI does not have any minutes or notes of that phone call (and, as such, is not in a position to confirm whether any specific SONI employees expressed any views on the matters referred to by TI LirIC), it provides the following comments in relation to it -
- (a) TI LirIC has not provided any written record of the call on 13 March 2024. Recollections of the call and what was or was not discussed may therefore vary, or actually refer to 'meetings' other than that call¹⁴⁸. The purpose of the call on 13 March 2024 was to discuss Ofgem's position in respect of the project. In scheduling the call, Mr- [REDACTED] also mentioned a desire to discuss the timing of events such as security posting at offer acceptance, reflected in email exchanges¹⁴⁹.
 - (b) From the point of engagement SONI has "*clearly signposted*" TI LirIC to the relevant documentation, including the TCCMS and SONI's Connections Policy¹⁵⁰. This is reflected in correspondence dating back to 2019¹⁵¹. TI LirIC was advised to familiarise itself with SONI's published methodology for calculating potential connection charges that were likely to be charged under the Connection Offer and ensure it is aware of the offer acceptance criteria¹⁵².
 - (c) It is "*not SONI's role or remit to advise potential applicants or applicants as to all potential charges that might apply under any connection offer it may be planning to issue in advance of issuing the relevant connection offer*". The charging methodology and bonding requirements are set out in the documentation referred to above¹⁵³.
 - (d) Any views that any one or specific SONI employee may or may not have expressed are "*irrelevant*" to the legal questions at issue.
 - (e) SONI accepts that, at a point in time, there "*may have been some uncertainty as to the extent of the capacity security or capacity bond that would be required*" (as to whether it should be a MEC bond, MIC bond or both). However, SONI disputes that it ever gave any "*definitive impression... that no capacity bond or capacity*

¹⁴⁸ The SONIResponse (B35), p. 2.

¹⁴⁹ The SONIResponse (B35), p. 2; and Emails between SONI and TI LirIC dated March 2024 (Appendix 4 to the SONI Response) (B39).

¹⁵⁰ The latest approved Connections Policy is available at: <https://www.soni.ltd.uk/media/documents/SONI-Connections-Policy.pdf>.

¹⁵¹ Email between SONI and TI LirIC dated 7 October 2019 (Appendix 5 to the SONI Response) (B40); and Email between SONI and TI LirIC dated 20 May 2022 (Appendix 6 to the SONI Response) (B41).

¹⁵² The SONIResponse (B35), pp. 2-3.

¹⁵³ The SONIResponse (B35), p. 3.

security would ever need to be put in place on acceptance of the connection offer"¹⁵⁴.

SONI's observations on the legal framework

6.9 While SONI confirms that it would largely "*not take issue*" with the relevant sources of law identified by TI LirIC as being relevant to the determination of the Application, it seeks in its response to add some further context and observations below¹⁵⁵ –

- (a) In SONI's view, TI LirIC "*cites selectively*" from the relevant sources (for example, the TCCMS is relevant in its entirety rather than just those provisions cited in the Application).
- (b) The Electricity Order places a duty upon SONI to plan and develop the SONI transmission system in an economic, coordinated and efficient manner, and requires SONI to facilitate competition in the generation and supply of electricity. SONI notes that one way it fulfils such obligations is "*by minimising opportunities for competing parties to hoard network capacity that they will not be capable of using within a reasonable timeframe*".
- (c) The Licence and the TCCMS have formal processes that must be followed before they can be modified, including defined consultation processes and in some cases rights of appeal or dispute. Determination of the Dispute could not shortcut these processes.
- (d) The duties of the Decision Makers are also shaped by various provisions and include obligations that they do not unduly discriminate between persons whose activities consist of or include generating, supplying, distributing or transmitting electricity.
- (e) The Application should be considered in the context of SONI's duty not to unduly discriminate¹⁵⁶.

General observations

6.10 Before proceeding with its detailed submissions, SONI sets out a number of general observations on the Application, including (but not limited to) the following¹⁵⁷ –

- (a) The discretion of the Decision-makers is not absolute but fettered by the terms of existing industry arrangements. In SONI's view, TI LirIC should not be allowed to

¹⁵⁴ The SONI Response (**B35**), p. 3.

¹⁵⁵ The SONI Response (**B35**), pp. 4-5.

¹⁵⁶ The Licence, Condition 15 (**A2**), p. 68.

¹⁵⁷ The SONI Response (**B35**), pp. 5-7.

utilise the dispute process under Condition 26(1) "*as a mechanism to change existing industry arrangements outside of due process, particularly to obtain more favourable commercial terms, and therefore commercial advantage, over other parties...*".

- (b) The Decision-Makers should give due consideration to the potential implications of accommodating TI LirIC's request, as "*any changes would need to follow their own defined processes, which are not solely within the gift of SONI and/or the Utility Regulator/the Decision-makers*".
- (c) There is no justification for treating TI LirIC in a way that could be interpreted as discriminatory towards or against other applicants regarding the quantum or timing of posting a MEC Bond. This could lead to third party legal challenges and undermine the bonding regime.
- (d) As at the date of the SONI Response, SONI had received a number of other connection applications from third parties seeking to connect, whose connections will be or may be impacted by the Connection Offer due to available capacity on the SONI transmission system. A number of them will be constrained or limited in light of the capacity reserved for TI LirIC's project.
- (e) The project is competing with other interconnectors between the SEM and Great Britain, facilitating competition in both markets. The impact goes beyond Northern Ireland.
- (f) TI LirIC has not adduced any evidence that any of the terms to which it is objecting are "*not typical*" for a connection agreement of this nature.

6.11 SONI's replies to the substantive points made by TI LirIC are summarised below.

TI LirIC is not a 'generation User' for the purposes of the TCCMS

6.12 SONI submits that TI LirIC has approached the issue from an incorrect starting point and that it is "*misdirected*" in its assessment of the defined terms within the TCCMS¹⁵⁸.

6.13 SONI confirms in its response that it does not consider TI LirIC to be a 'generation User' and has not suggested to TI LirIC that it is a 'generation User'. It also acknowledges TI LirIC's contention that to treat a person as being the same as a generation User' when they are not is "*arbitrary*"¹⁵⁹.

6.14 In relation to this, SONI states that –

¹⁵⁸ The SONI Response (B35), p. 7 and p. 9.

¹⁵⁹ The SONI Response (B35), p. 16.

- (a) TI LirIC appears to have taken the basis for this from paragraph 11.15 of the Connection Offer, which states that "*the terms of Section 9 of the TCCMS shall apply to the MEC Bond and the Customer shall comply with the same as if it were a "generation user" (for the purposes only of Section 9.3 of the TCCMS)*"¹⁶⁰;
- (b) the inclusion of this wording was "*simply an attempt to simplify matters and direct the parties towards how to establish the appropriate bond amount and approach the required capacity test to enable the release of security at the appropriate stage*". It was "*in no way an attempt to suggest that SONI considered [TI LirIC's] interconnector was the equivalent to a generating unit, or that [TI LirIC] was actually considered a generation User*"¹⁶¹.

6.15 SONI submits that the defined terms (within Section 9 of the TCCMS) which are key are the terms Applicant, User, MEC and MIC and that TI LirIC has failed to consider the definitions of these, their importance and their implication in the Application¹⁶².

6.16 In this regard, SONI states that –

- (a) TI LirIC falls within the definition of 'Applicant' under the TCCMS and will fall within the definition of User upon accepting and signing any connection offer from SONI¹⁶³.
- (b) Paragraph 9.1 of the TCCMS confirms that **all**¹⁶⁴ Applicants are required to place a bond¹⁶⁵.
- (c) Section 9 of the TCCMS envisages three different types of bond: a Connection Charges Bond, MEC bond and MIC bond.
- (d) The question for SONI in preparing the Connection Offer was what the most appropriate bond (or bonds) would be in the circumstances, noting that the TCCMS is "*not intended to be an all-encompassing document which sets out in detail every technology type or scenario that may arise*"¹⁶⁶. SONI concluded that it would be a MEC bond¹⁶⁷.
- (e) This is because TI LirIC's proposed interconnector will have both a MEC and MIC (as those terms are defined in the TCCMS). The technology or type of asset which

¹⁶⁰ The SONI Response (B35), p. 16; The Connection Offer (Appendix 2 to the Application) (B4), p. 32.

¹⁶¹ The SONI Response (B35), p. 16.

¹⁶² The SONI Response (B35), p. 10.

¹⁶³ The SONI Response (B35), p. 8 and p.11.

¹⁶⁴ Emphasis in the SONI Response.

¹⁶⁵ The SONI Response (B35), p. 12; The TCCMS, Section 9.1.

¹⁶⁶ The SONI Response (B35), p. 12.

¹⁶⁷ The SONI Response (B35), pp. 12-13.

results in the import or export of electricity is not a vital concept, fact or idea behind the provisions of Section 9.3 of the TCCMS¹⁶⁸.

- (f) The fundamental concept of an interconnector is that it facilitates the export and import of electricity to the All-Island Transmission Networks. In this regard, because of the nature of the power flows on an interconnector, it could be considered that a person proposing to own/operate an interconnector is a "*prime candidate*" for being required to pay both a MEC bond and a MIC bond. However, in requiring only a MEC bond SONI sought to be fair and consistent with how it approached other technologies that have both export and import functionality, including for example energy storage or battery connection, where it has sought only a MEC bond or only a MIC bond¹⁶⁹.

6.17 With regard to TI LirIC's arguments in respect of Condition 30 of the Licence, SONI refutes any assertion that the TCCMS could not enable TI LirIC "*to make a reasonable estimate of the charges to which it would become liable (or payments to which it would become entitled, as the context requires)*", as paragraph 9.3.4 of the TCCMS clearly and simply states that "*the value of the MEC bond is set at £7,000 per MW*"¹⁷⁰.

6.18 To the extent that TI LirIC has argued it was not clear a MEC bond would be required, SONI notes that any connection charges bond or MIC bond would have been even greater than the MEC Bond, so the only assumption TI LirIC could reasonably have come to would be that it might have been requested to post a greater amount of security than has been asked of it. In particular, SONI states that it would consider that a connection charges bond (which TI LirIC could be required to deliver under the terms of the TCCMS) would be to the value of circa £[REDACTED] in the circumstances of the project, but SONI's "*standard operational approach*" is to simply "*remain cash positive throughout the lifecycle of a project*", *demonstrating consideration and understanding of the financial constraints on developers and striking a balance between protecting both SONI and the NI consumer.*"¹⁷¹

6.19 With regard to TI LirIC's submissions regarding the similarity in language used between the TCCMS and EirGrid's TCCMS, SONI makes the following observations –

- (a) While paragraph 9.3 of the TCCMS and paragraph 8.3 of the EirGrid's TCCMS are broadly comparable, the paragraphs immediately preceding these differ markedly¹⁷².

¹⁶⁸ The SONI Response (B35), p. 12.

¹⁶⁹ The SONI Response (B35), p. 12.

¹⁷⁰ The SONI Response (B35), p. 17; The Licence: Condition 30 (A2), p. 136; The TCCMS (A3), Section 9.3.4.

¹⁷¹ The SONI Response (B35), pp. 11-12

¹⁷² The SONI Response (B35), p. 14.

- (b) TI LirIC refers to a SEM decision which relates to the harmonisation of the respective connection charging methodology statements on the basis of broad policy objectives. On SONI's interpretation, the SEM decision highlights that the statements need not be identical but only 'sufficiently similar' to meet broad statutory objectives. There is no reason why the two statements should necessarily be read as sharing a common policy regarding the timing of a MEC bond¹⁷³.
 - (c) There is no fundamental inconsistency between the SONI and EirGrid capacity bond regimes and any divergence between the charging mechanisms in place is not inconsistent with SEM's harmonisation¹⁷⁴. SONI notes that EirGrid's TCCMS is "*also technology agnostic*"¹⁷⁵.
 - (d) EirGrid's decision to remove the requirement of bonds on acceptance was taken in a specific context. Any divergence has been driven by Republic of Ireland Government policy adopted pursuant to a legally binding direction issued by the Commission for Regulation of Utilities (CRU) that was not defined by the SEM Committee as a SEM matter¹⁷⁶.
 - (e) The SEM Committee is the only body that can determine something to be a SEM matter¹⁷⁷.
- 6.20 SONI states that, in applying the MEC Bond, it sought to be fair and consistent with how it approached other technology types that have both an import and export functionality. In particular –
- (a) SONI stated that the TCCMS "*deliberately does not create the potential for undue discrimination between classes of Applicants and Users by defining the capacity reserved purely in terms of MEC and MIC, and avoiding any distinction between technologies and types of Applicants/Users*"¹⁷⁸.
 - (b) The most comparable technology type is (in SONI's view) an energy storage or battery connection¹⁷⁹. Such assets will have both an MEC and MIC which, in most cases, will be the same level of MW.
 - (c) SONI could have taken the view that multiple bonds were required but, to date, SONI has only ever applied one or the other bond and, in energy storage cases, SONI has only sought a MEC bond (which it notes has a number of benefits in

¹⁷³ The SONI Response (B35), p. 15.

¹⁷⁴ The SONI Response (B35), p. 15.

¹⁷⁵ The SONI Response (B35), p. 23.

¹⁷⁶ The SONI Response (B35), p. 23.

¹⁷⁷ The SONI Response (B35), p. 15.

¹⁷⁸ The SONI Response (B35), p. 14.

¹⁷⁹ The SONI Response (B35), p. 12 and p. 28.

terms of simplicity, transparency and the potential for earlier return of the bond). SONI therefore considered a MEC bond the most appropriate in the circumstances of TI LirIC's project¹⁸⁰.

■ [REDACTED]

- (e) SONI stated that the above approach helped the financial characteristics of the project in a way that was also consistent with its approach to other projects¹⁸². Given the rationale under paragraph 9.3.1, to make special allowances for TI LirIC and not require a capacity bond to be put in place as security for reservations of capacity on the SONI transmission system would be seen to be treating TI LirIC more favourably than other Applicants or Users¹⁸³. As such, in taking the approach it did, SONI was "*ensuring that there has been no undue discrimination against any party*"¹⁸⁴.

6.21 In brief, SONI's submits that while TI LirIC is not a 'generation User' –

- (a) it is an Applicant – and therefore required to pay a bond (which may be one or more of (i) a connection charges bond, (ii) a MEC bond, and (iii) a MIC bond);
- (b) it will (if/when it accepts a connection offer from SONI and thereby enters into a Connection Agreement) be a User that has a MEC and a MIC; and
- (c) because it has a MEC, SONI is entitled to include terms in the Connection Offer requiring TI LirIC to provide a MEC bond.

If TI LirIC is a 'generation User' for the purposes of the TCCMS, then it would require a licence to generate electricity under Article 10(1)(a) of the Electricity Order and consent from the Department for the Economy under Article 39(1) of the Electricity Order

¹⁸⁰ The SONI Response (B35), pp. 13-14.

¹⁸¹ The SONI Response (B35), p. 13.

¹⁸² The SONI Response (B35), p. 13.

¹⁸³ The SONI Response (B35), p. 13.

¹⁸⁴ The SONI Response (B35), p. 14.

- 6.22 SONI submits that as it has not classified (and does not intend to classify) TI LirIC's proposed interconnector as a generator and that there is nothing for the Utility Regulator to determine in respect of this question¹⁸⁵.

Timing for the giving of a MEC bond

- 6.23 SONI is of the view that the MEC Bond must be delivered on acceptance of the offer, for the following reasons –

- (a) Paragraph 9.3.3 of the TCCMS entitles SONI to draw down a MEC bond in the event that a User withdraws its acceptance of a connection offer. This indicates that a MEC bond must be in place at the point that any connection offer is accepted¹⁸⁶.
- (b) The SONI Connections Policy dated July 2021 (the **Connections Policy**), which contains terms and conditions applicable to the acceptance of a connection offer, requires that the "*appropriate security cover (e.g. MEC Bond and/or MIC Bond) is in place and in a form agreed with SONI*" at the point of accepting any connection offer. Where the applicant fails to comply with such terms, the connection offer is deemed to have expired, and a new connection application is needed. The Connections Policy is therefore clear that any MEC bond must be delivered on acceptance of the offer, and the use of the term "*appropriate*" suggests that there is an assessment to be made by SONI as to what is the most appropriate form of bond or security¹⁸⁷.
- (c) TI LirIC will have been familiar with the Connections Policy, having assisted in its evolution by contributing to the 2021 Consultation (which included consideration of the requirement to provide financial security for the proposed interconnector) and given its reference within subsequent correspondence between the Parties¹⁸⁸.
- (d) SONI acknowledges that the posting of £[REDACTED] bond at the point of acceptance is or can be a significant commitment, but notes that it is designed to be so¹⁸⁹. It points out that all Applicants are asked to post a "*proportionately sized bond*" at the point that the connection offer is accepted¹⁹⁰ and MEC bonds are

¹⁸⁵ The SONI Response (B35), p. 8, p. 16, and p. 28.

¹⁸⁶ The SONI Response (B35), p. 18; the TCCMS, Section 9.3.3 (A3).

¹⁸⁷ The SONI Response (B35), p. 18; the SONI Connections Policy available at: <https://www.soni.ltd.uk/media/documents/SONI-Connections-Policy.pdf>.

¹⁸⁸ The SONI Response (B35), p. 19; TI LirIC's 2021 Consultation response available at: <https://www.soni.ltd.uk/media/documents/SONI-Consultation-on-Requirements-for-Interconnectors.pdf>; Emails between SONI and TI LirIC dated March 2024 (Appendix 4 to the SONI Response) (B39).

¹⁸⁹ The SONI Response (B35), p. 19.

¹⁹⁰ The SONI Response (B35), p. 19.

required to be put in place *"by all connecting parties utilising export capacity, to the same quantum, at the same point in the process"*¹⁹¹.

- (e) SONI did devote some time to considering whether a different approach ought to be taken in respect of interconnector connection applications compared to other technology types, in particular to see whether it could *"work backwards"* from a target energisation date and seek bonding at a defined period before that. However, following analysis of this approach, it appeared *"perverse"* that a straightforward project could fall away after 3 years and forfeit a bond, whereas a complicated project could fall away after 4 years without a bond being in place. It therefore concluded that requiring MEC or MIC bonds to be delivered at the point of acceptance regardless of the technology type or project characteristics is the *"most consistent, transparent and non-discriminatory approach"*¹⁹².
- (f) SONI is *"simply applying the provisions of its own connections policy"* and *"adopting its standard approach to bonds, consistent with the approach it takes to all customers"*¹⁹³.

6.24 SONI disagrees with TI LirIC's suggestion that the high-risk nature of the project presents an argument in favour of SONI operating a different bonding regime, in that the bond is not necessary to prevent 'capacity hoarding'. It points out that the proposed project has yet to be assessed by the relevant authorities in Northern Ireland or Great Britain¹⁹⁴ as being required and states that, if anything, the *"increased chance of non-delivery of the project is a case for a more stringent approach to both bonding and...queue management"*¹⁹⁵.

6.25 In respect of TI LirIC's points regarding SONI's 2021 Consultation¹⁹⁶, SONI notes that –

- (a) Following the 2021 Consultation, it did consider that it was appropriate to have *"vastly different relevant consents for different projects"*. However, it did not consider it appropriate to move away from the policy of having any security or capacity bonds in place at the time of offer acceptance¹⁹⁷.
- (b) The impact of reserving capacity is 'live' from the point that the application is deemed effective and its duties do not *"manifest themselves in making it as easy as possible for Applicants to reserve capacity and accept offers"* nor empower it to

¹⁹¹ The SONI Response (B35), p. 23.

¹⁹² The SONI Response (B35), p. 21.

¹⁹³ The SONI Response (B35), p. 18.

¹⁹⁴ In this regard, SONI confirmed in its comments on the draft SoC that Ofgem has since assessed the project to determine whether TI LirIC's proposed interconnector is in the interests of GB consumers such that it should in principle obtain a cap and floor regime and has decided to grant a cap and floor regime in principle.

¹⁹⁵ The SONI Response (B35), p. 19.

¹⁹⁶ The 2021 Consultation (Appendix 7 to the Application) (B9).

¹⁹⁷ The SONI Response (B35), p. 21.

"give a helping hand to" particular projects (each of which will have "differing financial characteristics")¹⁹⁸.

Discrimination

- 6.26 SONI denies that there has been any undue discrimination against TI LirIC¹⁹⁹.
- 6.27 SONI states that, again, TI LirIC is "*misreading or misunderstanding*" both the Licence and the TCCMS, and the nature of the NSTL, for the following reasons²⁰⁰ –
- (a) Article 300 of the Trade and Cooperation Agreement defines an 'electricity interconnector' and makes a clear exception for any transmission tie-line between Ireland and Northern Ireland. As such, the TCA distinguishes a tie-line between Ireland and Northern Ireland from an interconnector (such as TI LirIC's proposed project) in UK law²⁰¹.
 - (b) Specifically, the NSTL and Louth-Tandragee tie-line (**LTTL**) are not connecting to the transmission system in Northern Ireland or the Republic of Ireland, but instead *form part of* the All-Island Transmission Network. This is a direct contrast with TI LirIC's interconnector, which must *apply* to connect to the All-Island Transmission Network²⁰².
 - (c) The TCCMS introduces no such obligation as regards the NSTL²⁰³.
 - (d) The Licence provisions cited by TI LirIC are "*irrelevant*"²⁰⁴.
- 6.28 In respect of the Moyle Interconnector, SONI is of the view that a completely different legal framework applied to the industry at that time, making comparisons "*irrelevant and impossible*". Anything that was done at that time would pre-date the current legal framework, including the TCCMS which forms the basis of TI LirIC's Application²⁰⁵.
- 6.29 SONI refutes that there can be any read across legally from how the Moyle Interconnector may or may not have been treated historically and the legal question of whether TI LirIC ought to be required to post a MEC bond under a connection offer issued in 2024 (which must be governed by the legal framework currently in place)²⁰⁶.

¹⁹⁸ The SONI Response (**B35**), p. 21.

¹⁹⁹ The SONI Response (**B35**), p. 9, p 12 and p. 14.

²⁰⁰ The SONI Response (**B35**), p. 24.

²⁰¹ The SONI Response (**B35**), p. 26.

²⁰² The SONI Response (**B35**), p. 27.

²⁰³ The SONI Response (**B35**), p. 27.

²⁰⁴ The SONI Response (**B35**), p. 27.

²⁰⁵ The SONI Response (**B35**), p. 27.

²⁰⁶ The SONI Response (**B35**), p. 27-28.

The SONI SOC Response

- 6.30 The SONI SOC Response sets out SONI's comments in relation to the draft SOC²⁰⁷.
- 6.31 As part of this, SONI raised a new legal argument as follows –
- (a) If the Decision-Makers do not favour the particular interpretation put forward by SONI in the SONI Response, it would also be open to them to determine the terms 'generation user' in paragraph 9.3.2 or 'generator' in paragraph 9.3.3 of the TCCMS "*purposively*", "*as if*" they apply to TI LirIC in respect of its project²⁰⁸.
 - (b) In other words, 'generation user' or 'generator' is a shorthand term intended to capture any applicant/user reserving or using MEC and a 'load user' a shorthand term intended to capture any applicant/user reserving MIC. This would be "*most consistent*" with the export capacity utilised by the project and the terms of the TCCMS²⁰⁹.
 - (c) Whilst TI LirIC is not a 'generator' in the sense of a unit producing electrical power, for the purposes of the TCCMS, it is performing an equivalent function by reserving export capacity on the SONI transmission system²¹⁰.
 - (d) TI LirIC point to the traditional 'literal' rule of law that words must be given their natural and ordinary meaning, but "*the TCCMS is not a legal contract negotiated between two parties, where the intention of the Decision-Makers would be to determine what was the parties' shared intention when the document was entered into*". Rather, it is an "*overarching statement published by SONI*" under its Licence²¹¹.
- 6.32 SONI relies on paragraph 8 of the case of *Quintavalle*, at which the House of Lords stated that provisions should be read "*in the context of the statute as a whole...[and] in the historical context of the situation which led to its enactment*"²¹².

The SONI DD Response

- 6.33 SONI's only comment on the Draft Determination was to draw attention to its statement in its correspondence of 26 September 2024²¹³ that it would keep open the Connection Offer until

²⁰⁷ The SONI SOC Response (B49).

²⁰⁸ The SONI SOC Response (B49), p. 4.

²⁰⁹ The SONI SOC Response (B49), p. 4.

²¹⁰ The SONI SOC Response (B49), p. 4.

²¹¹ The SONI SOC Response (B49), p. 4.

²¹² The SONI SOC Response (B49), p. 4.

²¹³ Letter from SONI to the Utility Regulator, dated 26 September 2024 (B16).

the Dispute was determined and would then provide a period for acceptance for that offer, or any varied offer, in line with any direction given by the Utility Regulator²¹⁴.

- 6.34 It notes that in view of the Draft Determination, it did not intend to make any amendments to the Connection Offer and stated that it would be appropriate for the Utility Regulator to make a direction that the Connection Offer should be kept open for acceptance for a period not exceeding 90 days²¹⁵.

²¹⁴ The SONI DD Response (**B56**), p. 1.

²¹⁵ The SONI DD Response (**B56**), p. 2.

7. **SECTION SEVEN – THE ISSUES TO BE DETERMINED**

- 7.1 The SOC set out the issues for determination.
- 7.2 However, for the reasons given in Section Eight below, we consider that the second issue for determination by us is not quite that which was set out in the SOC.
- 7.3 That is, the second issue for determination by us is not whether SONI is entitled, under and in accordance with the provisions of Section 9 of the TCCMS²¹⁶, to include terms in the Connection Offer which require TI LirIC to provide (give/post) a MEC bond.
- 7.4 Rather the second issue for determination by us is whether it is appropriate for SONI to include terms in the Connection Offer which require TI LirIC to provide a MEC bond.
- 7.5 We note that in the TI DD Response, TI LirIC objects to the change in the issues for determination between the SOC and the Draft Determination²¹⁷.
- 7.6 The SOC is a document drawn up by the Utility Regulator's case management team to assist the Decision Makers gain an understanding of the factual background and what each Party has said in its submissions in the Dispute. The case management team does not interrogate the evidence, nor does it come to a view on the legal position on matters in relation to the Dispute. That is our function as Decision Makers.
- 7.7 Although the case management team suggests casting the issues for determination in a particular way in the SOC, it is only after we consider the evidence and arguments presented that the issues for determination are finally settled. It would not be appropriate for the case management team to be able to bind the Decision Makers with respect to those issues. That is particularly the case where, as here, the issues suggested in the SOC did not quite reflect the correct legal position as we have found it. To proceed on the basis of the issues for determination in the SOC would therefore have meant that we were proceeding on the basis of an error in law.
- 7.8 The same applies to TI LirIC's suggestion that to determine the matter otherwise than on the basis that a complaint was made would deprive it of an effective remedy²¹⁸, and its assertion that the Parties had agreed the issue between them. The general question is whether or not it was appropriate for SONI to include a requirement for the MEC Bond in the Connection Offer. The position of Section 9 of the TCCMS is relevant to that question, but not determinative of it for the reasons we have given in Section 8. Simply because the Parties agree on a particular issue for determination cannot relieve our

²¹⁶ The TCCMS (A3).

²¹⁷ The TI DD Response (B55), pp. 2-4.

²¹⁸ We note that in making this point TI LirIC refers to Article 26 (as well as Article 31A) of the Electricity Order. However, Article 26 relates to disputes regarding the supply of electricity.

obligation as Decision Makers from adopting a correct interpretation of the legal position.

7.9 We note that TI LirIC has had, through its submissions on the Draft Determination, an opportunity to comment on the recast issues for determination. It has taken advantage of that opportunity to provide comments in the TI DD Response.

7.10 The issues for determination by us are therefore as follows.

Issue One

7.11 The first determination we need to make, under Article 31A of the Electricity Order, is whether there is any power or duty conferred or imposed on the Utility Regulator under the Electricity Order or the Energy (Northern Ireland) Order 2003, that relates to the subject matter of the Dispute and which can and should be exercised in respect of the Dispute.

Issue Two

7.12 The second issue for determination by the Decision Makers is whether it is appropriate for SONI to include terms in the Connection Offer which require TI LirIC to provide (give/post) a MEC bond.

Issue Three

7.13 The third issue for determination arises only if we determine that it is appropriate for SONI to include terms in the Connection Offer which require TI LirIC to provide (give/post) a MEC bond.

7.14 In this circumstance, the third issue for determination by the Determination is whether the terms of the Connection Offer can require TI LirIC to provide the MEC Bond upon TI LirIC's acceptance of the Connection Offer.

8. **SECTION EIGHT –DETERMINATION**

Issue One – Article 31A Determination

- 8.1 The Dispute has been referred to the Utility Regulator as a complaint/dispute under (i) Article 31A of the Electricity Order, and (ii) Condition 26 of the Licence and has been accepted as a referral for determination under each of these provisions.
- 8.2 The first issue for us is to decide on what type of determination (if any) should be made under Article 31A(6) of the Electricity Order (which determination may include an order in relation to costs in exercise of the power contained in Article 31A(5A)).
- 8.3 Articles 31A(1) of the Electricity Order provides for any person to make a complaint to the Utility Regulator where –
- (a) the subject matter of the complaint is a dispute between the complainant and, among others, the holder of a transmission licence (in this case SONI),
 - (b) the complaint is (wholly or mainly) about an obligation imposed on SONI in accordance with (now) EU Directive 2019/944 on common rules for the internal market for electricity (the **Electricity Directive**), and
 - (c) the dispute is not capable of being determined under any other provision of the Electricity Order.
- 8.4 Article 31A(2) of the Electricity Order provides for the Utility Regulator to make a determination in relation to the complaint and Article 31A(6) provides that for these purposes a determination means a determination about the exercise of any power or duty conferred or imposed on the Utility Regulation under the Electricity Order or the Energy Order.

The Article 31A Complaint

- 8.5 TI LirIC has referred to recitals 17 and 19 of the Electricity Directive. However, the recitals of an EU Directive do not place any obligations on any person but rather are intended to provide guidance and background to the substantive provisions in the directive.
- 8.6 TI LirIC has also referred to Article 43 of the Electricity Directive – which effectively provides that the same person shall not control a transmission system owner/operator and a generator.

- 8.7 It cites this Article 43 in support of its submission that SONI can only require a MEC bond from a generator and it is not (or rather will not be) a generator because it will own/operate a transmission system, namely the proposed interconnector.
- 8.8 Notwithstanding this TI LirIC does not make any submissions as to which obligations imposed on SONI under the Electricity Directive are relevant for the purposes of the Article 31A complaint.
- 8.9 In other words, there is no evidence which has been adduced to support TI LirIC's suggestion that SONI has failed to comply with an obligation placed on SONI pursuant to the Electricity Directive.
- 8.10 Accordingly, having had the opportunity to consider all of the submissions made by TI LirIC in relation to its Article 31A complaint, it is apparent that TI LirIC's initial contention that Article 43 of the Electricity Directive imposes obligations on SONI which are relevant to matters relating to MEC bond is not supported by its subsequent submissions.
- 8.11 In the TI DD Response, TI LirIC refers us to Article 12 of Directive 2009/72/EC. This requires that each transmission system operator shall be responsible for providing system users with the information that those users need for efficient access to the transmission system²¹⁹.
- 8.12 We note that there were numerous discussions between SONI and TI LirIC and that SONI advised TI LirIC of the need for a MEC bond in advance of the Connection Offer being made. SONI therefore did provide TI LirIC with the information that it needed. We do not consider it necessary to meet the requirements of Article 12 that all information regarding a connection must necessarily be available in advance of a connection application being made. In any event, we note that any deficiency in this regard will be corrected by the expectation set out in Section 9 that SONI will amend its documentation to make clear going forward that a MEC bond is required in respect of interconnector connections.
- 8.13 The determination we make under Article 31A(6) of the Electricity Order is therefore that TI LirIC's Article 31A complaint is not well founded and there is no power or duty conferred or imposed on the Authority under the Electricity Order or the Energy Order which it is relevant to exercise in respect of the Article 31A complaint.
- 8.14 We deal with the question of the recovery of the Utility Regulator's costs in respect of the determination of the Article 31A complaint in Section Nine of this determination.

²¹⁹ The TI DD Response (B55), p. 11.

Issue Two – Connection Offer and Terms Requiring a MEC Bond

- 8.15 As confirmed in Section Seven above, the second issue for determination by us is whether it is appropriate for SONI to include terms in the Connection Offer which require TI LirIC to provide (give/post) a MEC bond.

Relevant Licence Conditions

- 8.16 Condition 25 of the Licence sets out the obligations on SONI with regard to the requirement to offer terms for connection to the SONI transmission system²²⁰.
- 8.17 With regard to Condition 25 of the Licence, the provisions relevant for the purposes of determining the Dispute are found in paragraphs 2(g) and (h)²²¹.
- 8.18 These provide that in offering to enter into a connection agreement, SONI's offer shall make detailed provision regarding (amongst other things) –
- (a) the connection charges to be paid to SONI, with those charges (i) presented so as to be referable to the statements prepared in accordance with Condition 30, and (ii) set in conformity with the specified requirements of Condition 30 (paragraph 2(g) refers), and
 - (b) such further matters as are or may be appropriate for the purposes of the agreement (paragraph (2)(h) refers).
- 8.19 Condition 30 of the Licence places obligations on SONI in respect of charging statements²²². The provisions relevant for the purposes of determining the Dispute are –
- (a) paragraph 1(b) - which requires SONI to prepare a statement which sets out the basis upon which charges will be made for the connection to (essentially) the SONI transmission system, i.e. a connection charging statement²²³, and
 - (b) paragraph 5 – which sets out what the connection charging statement (prepared pursuant to paragraph 1(b)) shall include²²⁴.

Remit of the TCCMS

- 8.20 It is relevant to note that paragraph 5 of Condition 30 provides only for the connection charging statement to include methods and principles for charges which arise in respect

²²⁰ The Licence (A2), pp. 119-126.

²²¹ The Licence (A2), p. 124.

²²² The Licence (A2), pp.136-142.

²²³ The Licence (A2), p. 136.

²²⁴ The Licence (A2), pp. 137-139.

of the making (and maintaining and repairing etc.) of the connection, namely connection charges²²⁵.

8.21 Paragraph 5 of Condition 30 does not provide for a connection charging statement to include provision for charges or payments which concern or relate to the export or import capacity of the connection. In other words, Condition 30 of the Licence does not empower SONI to include in the TCCMS provisions requiring bonds for MEC or for MIC. Any such bond does not fall within the remit of being connection charges, rather such bonds relate to the reservation of capacity on the SONI transmission system which arises by virtue of a connection agreement being entered into.

8.22 We note that TI LirIC states that paragraph 5 of Condition 30 provides a non-exhaustive list of items to be included in the TCCMS. It also states that paragraph 5 should be read in conjunction with paragraph 3 of Condition 30 and that, taken together, these provisions do not restrict the matters which the TCCMS may include²²⁶. We disagree.

8.23 Paragraph 5 begins –

"Except to the extent that the Authority may otherwise direct, the statement referred to in paragraph 1(b) shall include:..."

8.24 It is therefore clear that paragraph 5 must be read in the context of paragraph 1(b). As paragraph 1(b) relates to charges for connection to the SONI transmission system, it is irrelevant whether the matters set out in paragraph 5 contain an exhaustive list or not. Everything in that statement must relate to connection charges and we note that the existing list in paragraph 5 sets out matters which do so.

8.25 Paragraph 3 begins –

"The statements prepared under paragraph 1 shall be in such form and contain such detail..."

8.26 As such paragraph 3 simply requires that the statement under paragraph 1(b) is in such form and in such detail as necessary for a person to make a reasonable estimate of the connection charges to which they would be liable. Again, that paragraph does not require any information other than those which relate to connection charges.

8.27 As stated above, a MEC bond is not a connection charge, but rather relates to the reservation of capacity on the SONI transmission system which arises by virtue of a connection agreement being entered into.

²²⁵ The Licence (A2), pp. 137-139.

²²⁶ The TI DD Response (B55), pp. 4-5.

- 8.28 TI LirIC states that the Parties were not previously invited to comment on this matter. However, we note that the explicit purpose of providing the Draft Determination to the Parties for comment is to invite representations on our provisional decision. Both Parties presented representations and the TI DD Response states *"Had we been invited to comment on this important point of law we would have submitted the following line of reasoning"*²²⁷. It is therefore clear that TI LirIC has availed itself of the opportunity to comment that we provided to it. SONI has chosen not to submit representations disagreeing with our view.
- 8.29 TI LirIC states that²²⁸ –
- (a) it is *"completely irrational"* to separate amounts paid to SONI for connection works and for reserving capacity,
 - (b) no regulatory document makes that distinction, and
 - (c) the MEC Bond is not a payment to reserve capacity, but security for a potential charge for breach of the Connection Offer.
- 8.30 We do not agree that the distinction we have made is irrational. The connection to the system and the reservation of capacity are two separate matters. That the latter is not possible without the former does not change that position. By way of analogy, we note that under Condition 30(1)(a) a separate charging statement is required for charges in relation to the use of the SONI transmission system. As with the reservation of capacity, such use is only possible once a connection to the system has been made, yet charges in that respect are contained in a separate statement.
- 8.31 That the distinction between connection charges and the bonding regime in relation to reservation of capacity has not been made explicitly in existing regulatory documents does not undermine the rationality of that distinction. However, future clarity will be aided by our asking SONI to remove any provisions which relate to MEC or MIC bonds from Section 9 of the TCCMS²²⁹.
- 8.32 With respect to the final point, TI LirIC points to the decision of the Supreme Court in *ParkingEye* to support its argument that the MEC Bond is security for a charge that can be levied where a person fails the Capacity Test²³⁰.

²²⁷ The TI DD Response (B55), p. 5.

²²⁸ The TI DD Response (B55), p. 5.

²²⁹ Including any terms/definitions which are used only in those provisions. Note that this principle applies in respect of the other places we refer to removal of the MIC/MEC bond provisions.

²³⁰ The TI DD Response (B55), pp. 9–11.

- 8.33 We note that the Supreme Court in *ParkingEye* was faced with a very different question (whether the term in question was a penalty clause) in a very different context (overstaying in a car park) to that which we must decide.
- 8.34 However, TI LirIC does not need to reach for caselaw to make the point that the MEC Bond would be forfeited in circumstances where it fails the Capacity Test. That position is plain from the Connection Agreement. Nor is it in dispute that the intention of the MEC Bond is to dissuade a connectee from reserving capacity that it cannot use (an aim that TI LirIC agrees can be met through a bonding regime). But it does not follow from either of these points that this means that the MEC Bond is a charge with respect to connection, and *ParkingEye* does not assist in making that argument.
- 8.35 Although we agree that it is not possible to accept a connection offer without reserving capacity, this does not mean that the charges in respect of each must be conflated. Likewise, the cost of putting the MEC Bond in place, or losing it if called upon, is irrelevant to whether or not it constitutes a connection charge.
- 8.36 Therefore, we maintain our view that, from a strict legal perspective, the provisions in the TCCMS which provide for MEC and MIC bonds to be required by SONI (i.e. paragraph 9.3 of the TCCMS) are *ultra vires* – there is no power under the Licence to include such provisions.
- 8.37 That conclusion is based on legal advice which we have received²³¹ and we do not consider it to be either unfair or irrational.
- 8.38 On the basis of the preceding analysis, we do not – as we do not need to – consider and respond to the legal arguments submitted by the Parties as to the interpretation of the provisions of Section 9 of the TCCMS which relate to MEC and MIC bonds.
- 8.39 We acknowledge that the TCCMS, including Section 9, was approved by the Utility Regulator. This seems to have been an oversight. Notwithstanding this, the Utility Regulator is not required in law to proceed on the basis that the provisions relating to MEC and/or MIC bonds under Section 9 should have been included now that it has uncovered that error.
- 8.40 We note that TI LirIC refers to EirGrid's approval of the version of the TCCMS which applies in the Republic of Ireland and suggests that our determination may have implications for EirGrid²³². We do not consider that EirGrid's decisions, made under its

²³¹ In an email from A&L Goodbody to the case management team on 25 February 2025 (B57), TI LirIC asked for "a copy of the legal advice obtained by the Utility Regulator". The case management team responded on 26 February 2025 (B58) confirming that there was no separate written legal advice but that the Draft Determination reflected our views on the applicable regulatory and legal framework. We confirm that our views were informed by legal advice provided to us orally and which is reflected in our determination.

²³² The TI DD Response (B55), p. 6.

own regulatory framework, are relevant to our interpretation of SONI's powers under Condition 30 of the Licence. It will be for EirGrid to consider what, if any, relevance our determination has for any decisions that it has made.

- 8.41 That the TCCMS cannot include provisions relating to MEC and/or MIC bonds does not mean that SONI is not empowered to offer connection terms which require the person applying for a connection to the SONI transmission system to give a MEC or a MIC bond.
- 8.42 This is because paragraph 2(h) of Condition 25 provides that SONI's connection offer can include "*such further matters as are or may be appropriate for the purposes of the [connection] agreement*"²³³.
- 8.43 As such, our determination does not call into question the validity of any MEC Bonds placed with SONI as provision for such bonds can be made in a connection offer notwithstanding our findings on Section 9 of the TCCMS.

Connection Terms – Requirement for a MEC Bond

- 8.44 It is our determination that it is appropriate for SONI to include terms in the Connection Offer which require TI LirIC to provide (give/post) a MEC bond.
- 8.45 Our reasons for this are as follows.
- 8.46 It is well known and accepted that any person that enters into a connection agreement is, until such date as the connection is actually made and used, essentially reserving (for itself) capacity on the transmission system.
- 8.47 The reservation of capacity on the transmission system by one person in this way can mean that another person that wants their premises (which in most, but not necessarily all cases, will be a generating station) or network (e.g. another transmission or distribution network, including an interconnector) to be connected to the transmission system may not be able to get such a connection because there is no or insufficient capacity available on the system to accommodate that person's proposed connection.
- 8.48 SONI notes that the Electricity Order places a duty upon it to plan and develop the SONI transmission system in an economic, coordinated and efficient manner and also to facilitate competition in the generation and supply of electricity. It also states that one way in which it fulfils its statutory obligation is by "*minimising opportunities for competing*

²³³ The Licence (A2), p. 124.

parties to hoard network capacity that they will not be capable of using within a reasonable timeframe"²³⁴.

- 8.49 The primary role of a bonding regime therefore is to prevent 'capacity hoarding' and help "*maintain an orderly and manageable connections queue*"²³⁵. We note that TI LirIC agrees that 'capacity hoarding' is what the MEC Bond appears designed to prevent²³⁶, and supports its prevention from a policy perspective²³⁷.
- 8.50 The reservation of system capacity by one person can potentially and effectively prevent others from entering the competitive market. We acknowledge and accept, given that system capacity is, at least to some extent, a limited resource, meaning that parties are competing for such capacity, that there must be a mechanism by which a party which reserves capacity is required to guarantee its need for and use of that capacity. To enable parties to proceed with no such guarantee may unfairly prevent other parties from competing, and lead to significant delays in the use and development of the network.
- 8.51 By giving a bond, the person reserving the capacity (by way of entering into a connection agreement) is in essence giving a guarantee to SONI (and indeed other persons who would want but are unable to get a connection to the system) that it needs and will use the capacity (on the system) it is reserving.
- 8.52 TI LirIC suggests that because SONI has acknowledged that a sub-sea interconnector requires more consents than other types of connection sites, SONI has in TI LirIC's case already acknowledged that the risk of capacity hoarding is already low given the high risk and cost involved at the early stage of the project²³⁸. Accordingly, it does not consider that the placing of the MEC Bond should be necessary to prevent capacity hoarding in this case²³⁹.
- 8.53 SONI disagrees that "*the high-risk nature of TI's proposed project presents an argument in favour of SONI operating a different bonding regime*"²⁴⁰.
- 8.54 TI LirIC also contends "*the cost of developing this technology is already sufficiently challenging without the addition of significant security payments many years before planning permission is even granted*"²⁴¹.

²³⁴ The SONI Response (**B35**), p. 4.

²³⁵ The SONI Response (**B35**), p. 6.

²³⁶ The Application (**B2**), p. 9; the TI DD Response (**B55**), p. 5 and p. 9.

²³⁷ The TI Response (**B45**), p. 3; the TI DD Response (**B55**), p. 6.

²³⁸ The Application (**B2**), p. 16.

²³⁹ The Application (**B2**), p. 16.

²⁴⁰ The SONI Response (**B35**), p. 19.

²⁴¹ The Application (**B2**), p. 16.

8.55 However, that the costs of developing a project are or may be challenging to the party developing the project does not mean that it cannot be appropriate for SONI to require a bond from a party that will be reserving capacity on the system.

8.56 Indeed, where a connection applicant considers that it is significantly important for its project to be guaranteed to be able to export a significant amount of electricity onto the transmission system so as to reserve (namely lock up) that amount of capacity on the system, the applicant should also be willing to give a guarantee, in the form of a bond, that it will need and use that capacity. This is not simply *"because SONI considers MEC bonds to be a good idea"*²⁴². Indeed, TI LirIC states that it *"does not object to the concept of capacity being managed in this way"* (i.e. through a bonding regime)²⁴³.

8.57 Taking into consideration, in particular –

- (a) the amount of system capacity that TI LirIC will reserve for its requested connection to the SONI transmission system, and
- (b) the lengthy period for which such system capacity will be reserved by TI LirIC in respect of its requested connection,

we conclude that it is appropriate for the Connection Offer to include terms which require TI LirIC to give a bond in respect of the Maximum Export Capacity of the requested connection, i.e. a MEC bond.

8.58 We also consider that SONI's decision to include a term requiring a MEC bond to be payable is appropriate for the following reasons –

- (a) Both Parties acknowledge that Applicants will be asked to provide security to SONI in the form of a bond or a number of bonds²⁴⁴.
- (b) SONI observes (and, for the reasons given above, we agree) that, due to the nature of the power flows, an interconnector could be considered a *"prime candidate"* for requiring capacity bonds for both MEC and MIC²⁴⁵.

■ [REDACTED]

²⁴² TI DD Response (B55), p. 6.

²⁴³ TI DD Response (B55), p. 9.

²⁴⁴ The SONI Response (B35), p. 8 and The TI Response (B45), p. 2.

²⁴⁵ The SONI Response (B35), p. 28.

- [REDACTED]
- [REDACTED]
- (d) We also note that SONI states that TI LirIC could have been asked to provide a connection charges bond but it is SONI's "*standard operational approach...to simply remain cash positive throughout the lifecycle of a project*"²⁴⁷ and a connection charges bond would be to the value of circa £[REDACTED] million for this case.
 - (e) Had SONI not adopted its standard operational approach in this case, it could potentially have offered terms which required TI LirIC to post three types of bonds (which inevitably would have been of significantly higher amount than the single MEC bond).
 - (f) TI LirIC does not object to the use of a bonding regime to prevent 'capacity hoarding'.

8.59 We therefore consider it was reasonable and appropriate for SONI to adopt its standard operational approach and offer terms which require TI LirIC to provide a MEC bond.

8.60 While we do not, for the purposes of making our determination on this Issue Two, need to consider the specific Section 9 provisions of the TCCMS, we would note that the said provisions essentially represent SONI's general (and published) policy and also the Utility Regulator's approval of that general policy with regard to bond requirements.

8.61 TI LirIC states that although we have found that Section 9 should not have been included in the TCCMS we have gone on to state that the fact of its inclusion means that applicants would have been aware of SONI's general bonding policy. It goes on to make a series of points directed against our view²⁴⁸. We reiterate that our comments in relation to Section 9 below are not necessary for our determination, which is that SONI was entitled to require the MEC Bond in the Connection Offer regardless of Section 9. We also clarify, for the avoidance of doubt, that our position is not that Section 9 in its entirety should not have been included in the TCCMS, but that it is the provisions within Section 9 that relate to MEC and MIC bonds which are *ultra vires* and which should not have been included in the TCCMS.

²⁴⁶ The SONI Response (B35), p. 13.

²⁴⁷ The SONI Response (B35), p. 12.

²⁴⁸ The TI DD Response (B55), pp. 7-8.

8.62 Against that background, we confirm that had it been the case that the Section 9 provisions of the TCCMS applied for the purposes of making our determination, we would have said the following –

- (a) The TCCMS is not a statutory document but rather a statement which sets out the basis (i.e. methods and principles) upon which charges will be made for connection to the system.
- (b) It is not necessary or appropriate to undertake a forensic examination of the wording of the TCCMS of the kind that the Parties have sought to undertake in their submissions. Rather, the overall purpose of the bonding regime and whether a person will be exporting electricity onto the system and/or importing electricity from the system is the relevant consideration.
- (c) The general policy setting out the bonding regime is, as stated in section 9.1 of the TCCMS, designed to protect other Users of the system. It is also designed to enable SONI to require any connection Applicant, who if they enter into a connection agreement with SONI will become a User, which will be exporting generated electricity onto the system, to provide a MEC bond.
- (d) We acknowledge TI LirIC's point that it is not a generator. But from the perspective of the impact on the system, it is performing the same function. While TI LirIC will not itself be generating electricity, it will be exporting generated electricity onto the SONI transmission system and therefore be in exactly the same position as any generator that is exporting generated electricity onto the system. The only difference is that an interconnector will not have generated the electricity that it exports, and that is not a relevant difference in terms of the aims that the policy seeks to meet.
- (e) That the SONI TCCMS is in different terms to the transmission system charging statement prepared and published by EirGrid in respect of connections to exit or entry points on that part of the All-Island Transmission Network located in the Republic of Ireland is not a relevant factor or consideration for the purposes of determining the Dispute.
- (f) Accordingly, had the provisions in the TCCMS been directly relevant for the purposes of our determination, we would have concluded that the Connection Offer could include terms requiring TI LirIC to pay a MEC bond.
- (g) Indeed, given that TI LirIC will also be importing electricity from the transmission, we acknowledge and accept SONI's submission that the Connection Offer could have included terms requiring TI LirIC to also pay a MIC bond.

- 8.63 TI LirIC refers to the 2021 decision paper "Relevant Consent for Interconnectors to Accept a Transmission Connection Offer: Response Report". It notes that the decision paper referred to security cover such as a relevant capacity bond and then, in a footnote, referred to Section 9 in relation to such bonds²⁴⁹. This is not correct. We note that the footnote referred to appears in the 2021 Consultation but does not appear in the decision paper published after the consultation. As such, the decision paper does not refer back to the TCCMS in relation to its discussion of capacity bonds payable by interconnectors.
- 8.64 The 2021 Consultation and the decision paper both make clear that having in place any required security cover – with specific reference to a capacity bond – will be one of three terms that will need to be met for acceptance of a connection offer to be deemed valid by SONI.
- 8.65 We note TI LirIC's comments on the Capacity Test²⁵⁰, however, no arguments in this regard were raised as part of the Application (or the TI Response) and the nature of the Capacity Test does not form part of the issues for our determination in the Dispute. To the extent that TI LirIC's points about the Capacity Test are intended only to support its point that SONI did not intend its general policy on bonding to apply to interconnectors, we have found above that it is appropriate for SONI to include terms requiring a bond in the Connection Offer on general principles.

Issue Three – Connection Offer – Terms for timing of the MEC bond

- 8.66 Given our determination on Issue Two, we are required to determine Issue Three, namely whether the terms of the Connection Offer can require TI LirIC to provide the MEC Bond upon TI LirIC's acceptance of the Connection Offer.
- 8.67 Given that, as highlighted above, a connection offer can include terms relating to such further matters as are or may be appropriate, the issue we are required to determine is whether it is appropriate for SONI to include in the Connection Offer terms which require the MEC Bond to be paid on acceptance of the Connection Offer.
- 8.68 It is our determination that it is appropriate for SONI to include in the Connection Offer terms which require TI LirIC to provide the MEC Bond on acceptance of the Connection Offer.
- 8.69 Our reasons for this are as follows –

²⁴⁹ The TI DD Response (B55), p. 8.

²⁵⁰ The TI DD Response (B55), p. 8.

- (a) In the event that TI LirIC accepts the Connection Offer, TI LirIC would also be reserving capacity from the date of the acceptance.
- (b) The purpose of the MEC Bond is to provide security for the reservation of that capacity.
- (c) There is no good reason for the MEC Bond not to be given at and from the same date as which the capacity is reserved by TI LirIC.
- (d) TI LirIC has 90 days within which to accept (or not, as the case may be) the Connection Offer. This gives it sufficient time to make the necessary arrangements to provide the MEC Bond.
- (e) The MEC Bond is clearly representative of a commitment to move forward with the project. By taking on such a commitment, other potential applicants are either delayed or altogether prevented from accessing the system. It is appropriate that SONI has some material guarantee from the outset in respect of the reservation of the capacity. To postpone the payment of the MEC Bond arguably renders the bonding regime meaningless.
- (f) It is a standard term in SONI's Connections Policy that "*the appropriate security cover (e.g. MEC Bond and/or MIC Bond)*" is to be in place when the Connection Offer is accepted.

8.70 Again, while the provisions in the TCCMS are not directly applicable, we note the general policy set out at –

- (a) paragraph 9.1 of the TCCMS – which makes it clear that the Applicant seeking to connect must provide security in the form of one or more bonds, and
- (b) paragraph 9.3.3 of the TCCMS – which provides that SONI is entitled to draw down the MEC bond in the scenario that the User withdraws its acceptance of the Connection Offer and/or terminates the Connection Agreement.

8.71 Given that the general policy refers to the Applicant providing security and to SONI being able to draw down a MEC bond in the event the User withdraws its acceptance of the Connection Offer, it would be at odds with that general policy for the MEC Bond not to be payable upon the acceptance of a connection offer. It is therefore our determination that it is appropriate for the Connection Offer to include terms which require the MEC Bond to be provided upon acceptance of the Connection Offer.

8.72 We note that neither Party commented on our provisional determination on Issue 3.

Conclusion and remedy

- 8.73 As set out above, we have found that it was appropriate for SONI to include in the terms requiring TI LirIC (i) to provide the MEC Bond (ii) upon acceptance of the Connection Offer.
- 8.74 However, we have also found that the provisions relating to MIC and MEC bonds under Section 9 (i.e. paragraph 9.3) should not have been included in the TCCMS. As such, it is not appropriate for the Connection Offer to refer to Section 9 in relation to the MEC Bond.
- 8.75 Therefore, SONI must remove references to Section 9 of the TCCMS from the Connection Offer which relate to the provision of the MEC Bond. It must also make provision in the Connection Offer for those matters that were incorporated by reference to Section 9.
- 8.76 We note that the Connection Offer already contains a formula setting out how the charge should be calculated, but we agree with TI LirIC that the Connection Offer should set the length of time that TI LirIC will be given to pay any amount before the bond is drawn upon. SONI must make this clear in the Connection Offer.
- 8.77 Finally, SONI must keep the Connection Offer open for acceptance for 90 days from the date on which it sends TI LirIC the Connection offer varied as set out above.

9. **SECTION NINE – OTHER OBSERVATIONS**

9.1 The Section Nine is not part of our formal determination.

9.2 Rather it sets out some general observations on transmission connections, disputes and related matters that we consider it appropriate and helpful to relay to the Parties and to other persons that may be looking to connect to the transmission network.

TCCMS

9.3 We have, in Section Eight, noted that the sections that the provisions in the TCCMS which relate to MEC and MIC bonds are ultra-vires – as they do not relate to connection charges.

9.4 It will therefore be necessary and appropriate for SONI to propose revisions to the TCCMS to remove these provisions and submit its proposed revisions to the Utility Regulator for consideration and approval in line with Condition 30(12).

9.5 We will expect SONI to make available a separate document in relation to its MEC and MIC bonding regime and this should make clear how those bonds might be applied in the context of applications to connect interconnectors to the SONI transmission system.

9.6 We note TI LirIC's point that where SONI was to draw down on a MEC bond, it is not clear how that would be accounted for in its price control²⁵¹. The Utility Regulator is alive to the potential need to manage any such payment to SONI within the context of its price control should it ever be made.

Potentially Avoidable Disputes – Impact on Connections Queue

9.7 We are of the view that the dispute before us could potentially have been avoided through better and clearer communications and discussion between the Parties.

9.8 TI LirIC has accepted that SONI may request at least one and up to three bonds from a person applying for a connection to the network.

9.9 In this case SONI requested a MEC bond only from TI LirIC. SONI submitted that a Connection Charges bond would have been of a significantly higher amount. TI LirIC did not dispute this.

9.10 It is not clear from the submissions whether TI LirIC knew or appreciated that a Connection Charges bond would be significantly higher in cost than the MEC Bond before proceeding with this dispute. If not, given that it accepts it may be required to post a Connection Charges bond, we consider that it could and should have made

²⁵¹ TI DD Response (B55), p. 11.

appropriate enquiries of SONI to ascertain the position at an earlier stage. Had it done so, it is possible that it may not have considered the need to dispute the terms relating to the payment of the MEC Bond. We therefore wish to remind parties that they should discuss and clarify their respective positions on all matters that could potentially impact the other party's decision on the terms of the connection offer.

- 9.11 We note that in this case the Connection Offer made by SONI on 28 June 2024 was open for acceptance by TI LirIC until 26 September 2024 and would have expired if not accepted by that date. Had the Connection Offer expired, SONI would have been in a position to make a connection offer to the next person in its connection queue.
- 9.12 The referral of this dispute – which could potentially have been resolved through clearer and better communications between the parties – has therefore resulted in an (not insignificant) extension to the period within which the Connection Offer can be accepted and has had a potentially avoidable knock-on effect of delay for other prospective connectees in the connections queue.

Parties Submissions

- 9.13 It is also our view that the Parties' submissions in the Dispute – which dispute was essentially concerned with a relatively discrete issue – were unnecessarily lengthy and veered into areas which were not pertinent or relevant to the substantive issue in dispute. The case management team, the Decision Makers and the Utility Regulator's legal team therefore spent some considerable time and cost on reviewing all of the submissions and documentation, including those that were not relevant to the issue in dispute.
- 9.14 We would therefore encourage parties to disputes to ensure that their submissions are properly developed and limited to those matters which are properly relevant to the matters in dispute.

10. SECTION TEN – COSTS

- 10.1 Article 31A(5A) of the Electricity Order provides that a determination in relation to a complaint made under Article 31A(6) may include provision requiring either party to pay a sum in respect of the costs and expenses incurred by the Utility Regulator in determining the complaint.
- 10.2 It would therefore be open to the Utility Regulator (as drawn to the Parties' attention at the outset of the process) to recover its costs incurred in making the determination in respect of the Article 31A complaint.
- 10.3 However, given the limited scope and extent of the Article 31A complaint and given our conclusions in respect of the Article 31A dispute, we have concluded that it would not be appropriate, in the circumstances of this particular case, to include a provision requiring either party to pay the costs incurred by the Utility Regulator in determining the Article 31A complaint.
- 10.4 Accordingly, the Utility Regulator has determined not to seek recovery of its costs under Article 31A(6) of the Order.

Appendix 1 – Bundle of documents

Doc ref	Document title
A1	Electricity (Northern Ireland) Order 1992
A2	SONI's transmission licence
A3	SONI Limited Transmission Connection Charging Methodology Statement (TCCMS)
A4	Complaints Disputes and Appeals Policy and Guide – https://www.uregni.gov.uk/publications/resolution-complaints-disputes-and-appeals-policy-and-guide-applicants

Doc ref	From	To	Date	Document title
B1	TI LirIC	Utility Regulator	11/09/2024	B1 - 2024-09-11 - Liric initial submission
B2	TI LirIC	Utility Regulator	10/09/2024	B2 – 2024-09-10 Application for Determination of Dispute-signed
B3	TI LirIC	Utility Regulator	28/06/2024	B3 - Appendix 1 - TI LIRIC Offer Cover Letter
B4	SONI	TI LirIC	28/06/2024	B4 - Appendix 2 - TI LIRIC OFFER
B5	TI LirIC	SONI	30/07/2024	B5 - Appendix 3 - 240730 Letter to SONI Concerning LirIC Connection Offer of 28th June 2024
B6	SONI	TI LirIC	20/08/2024	B6 - Appendix 4 - Response to Offer Questions
B7	EirGrid	N/A	N/A	B7 - Appendix 5 - Extract from EirGrid website
B8	SONI	N/A	21/09/2022	B8 - Appendix 6 - 210922 Decision-Paper-Consultation-on-Requirements-for-Interconnectors
B9	SONI	N/A	N/A	B9 - Appendix 7 - SONI-Consultation-on-Requirements-for-Interconnectors
B10	Utility Regulator	All Parties	23/09/2024	B10 - 2024-09-23 - Email to the parties confirming jurisdiction
B11	Utility Regulator	All Parties	23/09/2024	B11 - 2024-09-23 - UR to Parties Confirming Jurisdiction
B12	TI LirIC	UR	23/09/2024	B12 - 2024-09-23 - LirIC acknowledging letter
B13	SONI	UR	23/09/2024	B13 - 2024-09-23 - SONI acknowledging UR initial letter on jurisdiction
B14	SONI	UR	26/09/2024	B14 - 2024-09-26 - SONI query on paragraph 7
B15	Utility Regulator	SONI	26/09/2024	B15 - 2024-09-26 - UR response to SONI query

B16	SONI	Utility Regulator	26/09/2024	B16 - 2024-09-26 - SONI response to UR
B17	Utility Regulator	SONI	27/09/2024	B17 - 2024-09-27 - UR confirming receipt of email
B18	Utility Regulator	All Parties	17/10/2024	B18 - 2024-10-17 - Letter to parties confirming timetable
B19	Utility Regulator	All Parties	17/10/2024	B19 - 2024-10-17 - Letter confirming jurisdiction and timeline
B20	TI LirIC	Utility Regulator	17/10/2024	B20 - 2024-10-17 - TI LirIC confirming they have received email and timetable
B21	SONI	Utility Regulator	17/10/2024	B21 - 2024-10-17 - SONI confirming they have received email and letter
B22	SONI	Utility Regulator	23/10/2024	B22 - 2024-10-23 - SONI email contesting the timetable
B23	SONI	Utility Regulator	23/10/2024	B23 - Letter to UR - TI Dispute - 23.10.2024
B24	Utility Regulator	All Parties	25/10/2024	B24 - 2024-10-25 - Email to parties with DM and timetable extension letter
B25	Utility Regulator	All Parties	25/10/2024	B25 - 2024-10-25 - Letter to parties re extension and decision makers
B26	SONI	Utility Regulator	29/10/2024	B26 - 2024-10-29 - SONI further extension request
B27	SONI	Utility Regulator	29/10/2024	B27 - Letter to UR - TI Dispute - 29.10.2024
B28	TI LirIC	All Parties	29/10/2024	B28 - 2024-10-29 - TI LirIC approving SONI extension request
B29	SONI	Utility Regulator	30/10/2024	B29 - 2024-10-30 - SONI confirming no issues with DM appointments
B30	Utility Regulator	SONI	30/10/2024	B30 - 2024-10-30 - UR acknowledging SONI no issue with DM
B31	Utility Regulator	SONI	30/10/2024	B31 - 2024-10-30 - UR response to SONI to clarify timetable
B32	SONI	Utility Regulator	30/10/2024	B32 - 2024-10-30 - SONI confirming timetable can remain as is
B33	TI LirIC	Utility Regulator	01/11/2024	B33 - 2024-11-01 - TILL confirming no objection to DMs
B34	SONI	All Parties	10/11/2024	B34 - 2024-11-11 - SONI initial submission
B35	SONI	All Parties	08/11/2024	B35 - SONI Submission - Comp E-778 Dispute - 8 Nov 2024
B36	TI LirIC	SONI	27/09/2022	B36 - Appendix 1 - TI GBNi interconnector grid connection application_SONI_v1 27-09-2022
B37	SONI	N/A	12/10/2022	B37 - Appendix 2 - SONI-Large-Demand-Customer-Connection-Application-Form_version02_clean from TI 12-10-2022
B38	SONI	N/A	12/10/2022	B38 - Appendix 3 - SONI-Generator-Connection-Application-Form_version02_clean from TI 12-10-2022
B39	TI LirIC	SONI	13/03/2024	B39 - Appendix 4 - Emails re 13 March 2024 phone call

B40	SONI	TI LirIC	07/10/2019	B40 - Appendix 5 - Emails between AH and RS 2019
B41	SONI	TI LirIC	20/05/2022	B41 - Appendix 6 - Email from ██████████ 20.05.2022
B42	SONI	TI LirIC	21/08/2024	B42 - Appendix 7 - Letter from SONI to TI 21-08-2024
B43	SONI	TI LirIC	13/09/2024	B43 - Appendix 8 - Letter from SONI to TI 13-09-2024
B44	SONI	TI LirIC	26/09/2024	B44 - Appendix 9 - Letter from SONI to UR 26-09-2024
B45	TI LirIC	All Parties	22/11/2024	B45 - 2024-11-22 - LirIC response to SONI submission
B46	TI LirIC	All Parties	22/11/2024	B46 - Complete_with_Docusign_241122_TILL_Response_
B47	Utility Regulator	TI LirIC	25/11/2024	B47 - 2024-11-25 - UR confirming receipt of LirIC submission
B48	Utility Regulator	All Parties	06/12/2024	B48 - 2024-12-06 - Draft Statement of Case
B49	SONI	Utility Regulator	20/12/2024	B49 - 2024-12-20 - The SONI SOC Response
B50	TI LirIC	Utility Regulator	20/12/2024	B50 - 2024-12-20 - The TI LirIC Response to the SOC
B51	TI LirIC	Utility Regulator	13/01/2025	B51 - 2025-01-13 - Email from TI LirIC to the Utility Regulator
B52	Utility Regulator	All Parties	14/01/2025	B52 - 2025-01-14 - Email from the Utility Regulator to the Parties
B53	TI LirIC	All Parties	20/01/2025	B53 - TI Response to the SONI SOC Response
B54	Utility Regulator	All Parties	22/01/2025	B54 – 2025-01-22 - Updated Statement of Case
B55	TI LirIC	Utility Regulator	12/03/2025	B55 - 2025-03-12 - TI response to DD
B56	SONI	Utility Regulator	12/03/2025	B56 - 2025-03-12 - SONI response to DD
B57	██████████	Utility Regulator	25/02/2025	B57 - 2025-02-25 - ██████████ ██████████ request for written legal advice
B58	Utility Regulator	██████████	26/02/2025	B58 - 2025-02-26 - UR response to ██████████ ██████████