



COMPLAINT TO THE UTILITY REGULATOR

BY TCI RENEWABLES LTD (ON BEHALF OF BROCKAGHBOY WIND FARM LTD) IN RELATION TO NORTHERN IRELAND ELECTRICITY LTD'S CONNECTION ARRANGEMENTS FOR BROCKAGHBOY WIND FARM

DETERMINATION

DET- 524

28 August 2014

CONTENTS

<u>Part</u>		<u>Page</u>
Section 1.	Introduction	1
Section 2.	The Parties	4
Section 3.	Applicable Legal Framework	5
Section 4.	Factual Background to the Clustering Approach	10
Section 5.	Factual Background to the Dispute	14
Section 6.	Views of TCI	23
Section 7.	Views of NIE	34
Section 8.	Views of SONI	41
Section 9.	Jurisdiction to determine the Dispute	42
Section 10.	Issues to be Determined	44
Section 11.	Determination	46
Section 12.	Concluding Observations	53
Section 13.	The Order	55

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1 Section One - Introduction

- 1.1 The Northern Ireland Authority for Utility Regulation (referred to hereafter as the **Utility Regulator**)¹ received, by way of a letter dated 13 March 2014, a formal complaint from Brockaghboy Wind Farm Ltd (**BWFL**) regarding a 'distribution connection' dispute between it and Northern Ireland Electricity Limited (**NIE**).
- 1.2 BWFL is a subsidiary of TCI Renewables Limited (**TCI**). TCI formally submitted the complaint (as BWFL's parent company). Therefore for ease and for the purposes of this determination all references are to TCI (rather than BWFL).
- 1.3 The dispute relates to the grid connection application by TCI (**B13**) submitted on 18 January 2012, to connect Brockaghboy Wind Farm (the **Wind Farm**) to NIE's electricity distribution system.
- 1.4 TCI requests the Utility Regulator to make a determination on whether in the circumstances of the case NIE is required to make a connection offer and if so to determine the terms to be included in that connection offer with regard to the method of connection and that:
- (a) TCI be issued with a valid direct 33 kV grid connection offer, based on the March 2010 Statement of Charges and the Distribution Code (**D-Code**) dated May 2010, for the Wind Farm without further undue delay; and
 - (b) such connection offer must contain terms which are reasonable in all the circumstances of the case, having regard to all the material issues identified.
- 1.5 NIE contends that there is no dispute to determine because it is not holding a connection fee with regard to a distribution connection application and therefore it is not in receipt of a valid distribution connection application in respect of which it is required to make a connection offer.

¹ Where legislative or licence provisions are quoted, the reference is to 'the Authority'.

- 1.6 For the reasons given in Section Nine, the Utility Regulator does not accept NIE's contention. Accordingly the complaint referred by TCI is a dispute between TCI and NIE (together, the **Parties**) which falls to be determined by the Utility Regulator (the **Dispute**).
- 1.7 The Dispute falls to be determined by the Utility Regulator under Article 26 of the Electricity (Northern Ireland) Order 1992 (**A1**) (the **Electricity Order**), and in accordance with Article 37(11) of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (**A2**) (the **Directive**).
- 1.8 The Utility Regulator has considered the Dispute in accordance with its Policy on the Resolution of Complaints, Disputes and Appeals and Guide for Applicants dated June 2013 (the **Procedure**) (**A3**).
- 1.9 The Board of the Utility Regulator has appointed us, Tanya Hedley and Brian McHugh (Directors within the Utility Regulator), jointly to determine the dispute (together the **Decision-Makers**). We do so as delegates of the Utility Regulator and on its behalf.
- 1.10 This document sets out our determination of the Dispute and includes the order we make in determining the Dispute.
- 1.11 In making and writing this determination, we have had the benefit of being able to consider the following materials relevant to the factual and legal background to the Dispute:
 - (a) A Statement of Case (the **Statement**) prepared for us by a small team of skilled staff of the Utility Regulator. The Statement provides an overview of the background to the Dispute, the views of the Parties, and the issues that fall to be determined.
 - (b) A bundle of documents (the **Bundle**) which accompanied the Statement and contained the papers listed in an appendix to the Statement.
 - (c) All further documents and correspondence relating to the subject matter of the Dispute. All documents considered in the making of this determination are listed in Appendix 1 and have either already been shared with the Parties or are enclosed with the determination as further detailed in Appendix 1.
- 1.12 The Parties were given the opportunity to comment on a draft Statement and Bundle (and have had copies of the final Statement and Bundle) and on a draft determination dated 9 July 2014 (the **Draft Determination**). The Parties comments on the draft Statement and on the Draft Determination have been taken into account in our determination of the Dispute.
- 1.13 This determination adopts the following structure:

- (a) The Parties (at Section 2);
- (b) Applicable legal framework (at Section 3);
- (c) Factual background to the clustering approach (at Section 4);
- (d) Factual background to the Dispute (at Section 5);
- (e) Views of TCI and NIE (at Sections 6 and 7 respectively);
- (f) Views of SONI (at Section 8);
- (g) Jurisdiction to determine the Dispute (at Section 9);
- (h) Issues to be determined (at Section 10);
- (i) Determination (at Section 11);
- (j) Concluding observations (at Section 12); and
- (k) The Order (at Section 13).

1.14 Where we use cross-references (e.g. **A4**) these are to documents in the Bundle.

2 Section Two - The Parties

2.1 The following summary as to the status of the Parties is predominantly derived from the Statement.

TCI

2.2 TCI is a UK-based independent renewable energy business, originally established in Australia in 1996 and latterly incorporated in the UK in 1997 with dedicated full-time operations in Great Britain, Northern Ireland and North America. The company's operations are primarily focused on the design, planning, development and operation of large-scale onshore wind farms, the UK majority of which are located in Northern Ireland.

2.3 Currently TCI has developed or is developing numerous wind farm sites across the United Kingdom, many of which are found in Northern Ireland.

2.4 The company is head-quartered in Oxford with a dedicated office of 15 years establishment in Belfast comprising seven specialist full-time Northern-Irish employees and one Northern-Irish shareholding Director. The company has attained planning consent for 122.8MW of onshore generation in Northern Ireland, with 62MW under consideration by the Planning Service and a further 100MW in pre-planning development – 110.5 MW of which grid connection applications have been submitted to NIE to date, with 21MW connected.

2.5 BWFL is a wholly owned subsidiary of TCI.

NIE

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

2.7 NIE holds a licence in relation to distribution activities (the **Licence**) and a separate licence in relation to transmission activities.

2.8 NIE is the only party in Northern Ireland entitled to offer terms to connect, or to modify an existing connection, to the electricity distribution system.

3 **Section Three – Applicable Legal Framework**

3.1 The applicable legal framework in determining the Dispute is summarised below. Copies of the relevant legislation are included in the Bundle for reference **(A)**. As part of our consideration of the Dispute, we have read the appropriate parts of the relevant legislation included in the Bundle.

The Electricity Order (A1)

3.2 Article 3 of the Electricity Order establishes a legal definition of distribution.

3.3 Specifically, it defines:

- (a) a distribution system as *"a system which consists (wholly or mainly) of low voltage lines and electrical plant and is used for conveying electricity to any premises or to any other distribution system"*; and
- (b) a high voltage line as *"an electric line of a nominal voltage of or exceeding 110 kilovolts" with a low voltage line to "be construed accordingly"*.

3.4 The connection to the Wind Farm could be low voltage and therefore a distribution connection or high voltage and connected at transmission level.

3.5 Articles 19 to 26 of the Electricity Order make provision in respect of distribution connections. In particular, they establish:

- (a) a duty to connect on request (Article 19(1));
- (b) a procedure for applicants to require a connection (Article 20);
- (c) a number of exceptions from the duty to connect (Article 21);
- (d) a right for an electricity distributor to recover the reasonable costs of making a connection to such extent as is reasonable in all the circumstances (Article 22);
- (e) a right for an electricity distributor to require reasonable security for payment (Article 23); and
- (f) a right for an electricity distributor to impose certain additional terms of connection (Article 24).

3.6 Alternatively, Article 25 of the Electricity Order permits an electricity distributor and a connection applicant to enter into a connection agreement on agreed terms - which may be different to those specified in Articles 19 to 24 of the Electricity Order - and for those agreed

terms to determine the respective rights and liabilities of the parties. This is referred to as a 'special connection agreement'.

3.7 Under Article 26 of the Electricity Order, it is open to an electricity distributor and/or a connection applicant to refer any dispute arising under Articles 19 to 25 of the Electricity Order to the Utility Regulator for determination.

3.8 Specifically, Article 26 of the Electricity Order provides:

“(1) A dispute arising under Articles 19 to 25 between an electricity distributor and a person requiring a connection,

(a) may be referred to the Authority by either party, and such a reference shall be accompanied by such information as is necessary or expedient to allow a determination to be made in relation to the dispute; and

(b) on such a reference, shall be determined by order made either by the Authority or, if the Authority thinks fit, by an arbitrator appointed by the Authority,

and, subject to paragraph (1A), the practice and procedure to be followed in connection with any such determination shall be such as the Authority may consider appropriate.

(1A) The procedures established under paragraph (1) shall provide for the determination of the dispute to be notified to the party making the reference within the requisite period or such longer period as the Authority may agree with that person.

(1B) For the purposes of paragraph (1A), the requisite period in any case means –

(a) the period of 2 months from the date when the dispute was referred to the Authority; or

(b) where the information sent to the Authority under paragraph (1)(a) was in its opinion insufficient to enable it to make a determination, the period of 4 months from when the date when the dispute was referred to the Authority.

(2) No dispute arising under Articles 19 to 25 which relates to the making of a connection between any premises and a distribution system may be referred to the Authority after the end of the period of 12 months beginning with the time when the connection is made.

...

(7) An order under this Article –

(a) may include such incidental, supplemental and consequential provision (including provision requiring either party to pay a sum in respect of the costs or expenses incurred by the person making the order) as that person considers appropriate; and

(b) shall be final and shall be enforceable, in so far as it includes such provision as to costs or expenses, as if it were a judgment of the county court.

- (8) *In including in an order under this Article any such provision as to costs or expenses as is mentioned in paragraph (7), the person making the order shall have regard to the conduct and means of the parties and any other relevant circumstances...".*

The Directive (A2)

- 3.9 The Authority also has the duty to determine distribution connection charging (and other) complaints under the Directive. Article 37(11) of the Directive provides that:

"Any party having a complaint against a transmission or distribution system operator in relation to that operator's obligations under this Directive may refer the complaint to the regulatory authority which, acting as dispute settlement authority, shall issue a decision within two months after receipt of the complaint. This period may be extended by two months where additional information is sought by the regulatory authority. That extended period may be further extended with the agreement of the complainant. The regulatory authority's decision shall have binding effect unless and until overruled on appeal."

- 3.10 This particular provision of the Directive is reflected in domestic legislation by Article 31A of the Order which provides for the resolution of disputes arising in respect of obligations imposed on, among others, licensed distributors (including therefore NIE in that capacity) where the subject matter of the complaint does not fall to be dealt with under Article 26 or Article 42A of the Order.

- 3.11 Article 32 of the Directive sets out certain requirements on Member States with regard to the implementation of third-party access to electricity networks. Article 32(1) provides that Member States shall ensure:

- (a) the implementation of a system of third party access to the transmission and distribution systems based on published tariffs which are applicable to all eligible customers, applied objectively and without discrimination between system users;
- (b) that those tariffs or the methodologies are approved and published prior to their entry into force.

The Licence (A5)

- 3.12 Condition 31 of the Licence relates to the "*Functions of the Authority – Distribution Disputes*".

- 3.13 Paragraph 1 of Condition 31 provides as follows:

"1. If, after a period which appears to the Authority to be reasonable for the purpose, the Licensee has failed to enter into an agreement with any person entitled or claiming to be entitled thereto pursuant to a request under Condition 30, the Authority may...on the application of that person or the Licensee, settle any terms of the agreement in dispute...in such manner as appears to the Authority to be reasonable having (insofar as relevant) regard in particular to the following considerations...".

3.14 Condition 30 of the Licence requires NIE to offer terms for connection to and use of the Distribution System.

3.15 More specifically, Condition 30 provides:

“2. On application made by any person the Licensee shall (subject to paragraph 5) offer to enter into an agreement for connection to the Distribution System or for modification to an existing connection, and such offer shall make detailed provision regarding.

...

(f) the connection charges to be paid to the Licensee, such charges (unless manifestly inappropriate):

(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 8) of Condition 32 or any revision thereof; and

(ii) to be set in conformity with the requirements of paragraph 5 of Condition 32 and (where relevant) of paragraph 4;

...

4. The Licensee shall offer terms for agreements in accordance with paragraphs 1 and 2 as soon as practicable and (save where the Authority consents to a longer period) in any event not more than the period specified in paragraph 6 after receipt by the Licensee of an application containing all such information as the Licensee may reasonably require for the purpose of formulating the terms of the offer.

...

6. For the purpose of paragraph 4, the period specified shall be:...(b) in the case of persons seeking connection...3 months”.

3.16 The relevant provisions of Condition 32 (i.e. those referred to in Condition 30) are:

(a) Paragraph 1 which reads:

“1. The Licensee shall...prepare a statement approved by the Authority setting out the basis upon which charges will be made, as part of the Distribution Business, for...(b) connection to the Licensee’s distribution system...”.

(b) Paragraph 3 which reads:

“3. The statements referred to in paragraphs 1 and 2 shall be in such form and to 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 for the provision of such services, and (without prejudice to the foregoing) including such of the information set out in paragraphs 4 and 5 as is required by such paragraphs to be included in the statement”.

(c) Paragraph 6 which reads:

“6. Connection charges for those items referred to in paragraph 5 shall be set at a level which will enable the Licensee to recover:

(a) the appropriate proportion of the costs directly or indirectly incurred in carrying out any works, the extension or reinforcement of the Distribution System and the provision and installation, maintenance and repair and, following disconnection, removal of any electric lines, electrical plant, meters, special metering, telemetry, data processing equipment or other items; and

(b) a reasonable rate of return on the capital represented by such costs”.

(d) Paragraph 7 which requires NIE, where directed to do so by the Utility Regulator, to prepare a statement or statements approved by the Utility Regulator providing that charges for connection to NIE’s distribution system will be made on such basis as shall be specified in the direction. It also provides that each statement prepared in accordance with the requirements of the paragraph shall, from the date it is approved by the Utility Regulator or such later date specified by the Utility Regulator, replace the previous corresponding statement prepared by NIE.

3.17 In determining disputes, the principal objective and general duties of the Utility Regulator under Article 12 of the Energy (Northern Ireland) Order 2003 (the **Energy Order**) do not apply (see Article 13(2) of the Energy Order for reference).

Practice and procedure (A3)

3.18 The practice and procedure to be followed by the Decision-Makers in determining this dispute on behalf of the Utility Regulator is set out in the Procedure **(A3)**.

3.19 We understand that the Procedure may be supplemented as required in order to ensure good governance and best practice.

4 **Section Four - Factual Background to the Clustering Approach**

4.1 The approach for connecting groups, or 'clusters', of generation projects to NIE's distribution system is of importance to the issues for determination and so a summary of the factual background to this is set out below. The following summary of the factual background is derived from the relevant section of the Statement. We take it to be accurate and adopt it for the purposes of this determination.

Background to Clustering Approach

4.2 On 16 March 2010 **(B5)**, NIE issued a consultation paper entitled "*Charges for Connecting Groups of Generators to the Northern Ireland Distribution System*" (the **2010 Consultation**).

4.3 The 2010 Consultation:

(a) outlined NIE's view that its distribution connection charging methodology as applicable for generation connections i.e. charges based on the Least Cost Technically Acceptable (**LCTA**) connection, was:

"impractical and inefficient when connecting a number of closely located projects to the system";

(b) set out its proposals for connecting groups, or 'clusters', of generation projects to the distribution system – hence reference to 'clustering approach'; and

(c) invited views on the proposals by 28 April 2010.

4.4 On 11 October 2010 NIE submitted to the Utility Regulator a 'Medium Term Plan' Paper entitled Pre-construction Work to Establish Four Wind Farm Cluster Substations **(B6)**. The cluster substations in question were Killymallaght, Mid Antrim, Pomeroy and Altahullion (none of which, for the avoidance of doubt, were in the vicinity of the Wind Farm, as NIE confirmed that it was not at that stage in a position to seek funding for pre-construction works for a cluster infrastructure at Limavady.²).

4.5 As part of that paper NIE stated it was not in a position to seek funding for pre-construction works for Drumquin, Brockaghboy or Derrygonnelly. Appendix 3 of the paper also identified onshore wind generation that was in planning. Brockaghboy was listed in this table and marked as part of a cluster.

4.6 On 15 October 2010 **(B7)**, NIE issued a consultation report on "*Charges for Connecting Groups of Generators to the Northern Ireland Distribution System*" (the **2010 Report**).

4.7 The 2010 Report:

² The Wind Farm is in the vicinity of Limavady.

- (a) discussed the views of respondents and points raised by them;
 - (b) set out the criteria which NIE used to assess the responses and to develop a charging methodology proposal;
 - (c) set out NIE's recommendations for changes required in connection charging policy; and
 - (d) confirmed that NIE intended to take forward the clustering approach (and more specifically the proposals for a hybrid model) in discussions with the Utility Regulator with a view to incorporating it into the next distribution connection charging statement.
- 4.8 On 15 November 2010 (**B9**), the Utility Regulator issued a “*Consultation on Electricity Connection Policy to the Northern Ireland Distribution System*” (the **Connection Policy Consultation**).
- 4.9 Chapter 10 of the Connection Policy Consultation explained that NIE had previously issued the 2010 Consultation and the 2010 Report, and invited respondents to make known any further views they may have on NIE's recommendations to the Utility Regulator.
- 4.10 The closing date for responses to the Connection Policy Consultation was 10 January 2011.
- 4.11 On 21 December 2010, the Utility Regulator had, notwithstanding the absence of an approved cluster charging methodology, given approval to NIE for expenditure on pre-construction works for four wind farm clusters at Killymallaght, Mid-Antrim, Pomeroy and Altahullion.
- 4.12 On 25 February 2011, the Utility Regulator submitted a 'For Decision' paper to the Board of the Utility Regulator entitled “*Charges for Connecting Groups of Generators (Clustering) to the Northern Ireland Distribution System*” (the **Board Paper**).
- 4.13 More specifically the Board Paper explained:
- (a) the obligation on NIE (set out in Condition 32 of the Licence) to prepare a statement approved by the Utility Regulator setting out the basis upon which charges will be made for connection to the distribution system; and
 - (b) that the Utility Regulator had approved in principle the concept of clustering and agreed a process specifically for the Magherakeel cluster. (With regard to Magherakeel, what had been approved related to funding and cost recovery matters for two wind farms being in a cluster).
- 4.14 It also:

- (a) outlined the consultation and liaison with NIE that had taken place to date;
- (b) identified some of the risks involved with the hybrid model based on clustering proposed by NIE;
- (c) asked the Board to approve the development of a new connection charging methodology in line with the 'Option 3' Hybrid model (based on a clustering approach) proposed by NIE;
- (d) stated that:

"While the charging methodology will be set within [NIE's] Statement of Charges each cluster will be subject to individual approval from the Utility Regulator"; and

- (e) included the following paragraph:

"Any modification to the Statement of Charges for Connection to the Northern Ireland Distribution System requires Utility Regulator sign off. This is a final safety measure that will allow the Utility Regulator review [sic] all proposed methodologies".

4.15 On 21 April 2011 (**B10**), the Utility Regulator issued its *"Decision Paper on the Charges for Connecting Groups of Generators (Clustering) to the Northern Ireland Distribution System"* (the **Decision Paper**).

4.16 In this respect, the Decision Paper:

- (a) contained much of the information included in the Board Paper;
- (b) communicated that the Utility Regulator's decision was to approve the development of a new connection charging methodology in line with the 'Option 3' Hybrid model; and
- (c) explained that the Utility Regulator would instruct NIE to submit for approval its revised Statement of Charges for Connection to the Northern Ireland Distribution System.

Current Position on Clustering Methodology

4.17 The current Statement of Charges for Connection to the Northern Ireland Distribution System approved by the Utility Regulator and its predecessors including the dates on which they became effective are listed below.

Statement of Charges for Connection to the Northern Ireland Distribution System (B3)	March 2010
-----------------------------------------------------------------------------------------------	------------

Statement of Charges for Connection to the Northern Ireland Distribution System	1 October 2012
Statement of Charges for Connection to the Northern Ireland Electricity Distribution System (B28)	9 May 2013
Statement of Charges for Connection to the Northern Ireland Electricity Distribution System (B37)	1 October 2013

- 4.18 The last Statement of Charges approved by the Utility Regulator and therefore currently in full force and effect is the Statement of Charges dated 1 October 2013 **(B37)**.
- 4.19 The Statement of Charges dated 1 October 2012 included a section referred to as Annex 1 – Windfarm Clusters but was listed as for future use and was intentionally left blank.
- 4.20 On 9 May 2013 **(B28)** the Utility Regulator approved a new Statement of Charges for Connection to the Northern Ireland Electricity Distribution System. This Statement of Charges included:
- a) Section 7 - Charging arrangements for Authorised Generators connecting to the network as part of a Generator Cluster; and
 - b) Appendix 2 - Methodology for Connecting Groups of Generators to the Northern Ireland Distribution System using Cluster Substations.
- 4.21 The Statement of Charges dated 1 October 2013 also contains these provisions. The cluster methodology included in the Statement of Charges is underpinned by the principles agreed between the Utility Regulator and NIE dated 13 March 2013 **(B25)**.

5 Section Five - Factual Background to the Dispute

5.1 The following summary of the factual background is derived from the relevant section of the Statement and from the Parties responses to the Draft Determination. We adopt it as accurate for the purposes of our determination.

Planning Permission for the Wind Farm

5.2 Planning permission from the Department of Environment (the **Department**) is required for all wind farms in Northern Ireland. (In addition, NIE has stated that its policy is to require a person seeking connection of a wind farm to have received planning permission for that development before a connection application is accepted.)

5.3 A full planning application was received by the Department from TCI on 14 December 2007 for a wind farm, with a total installed capacity of 60MW, to be located at land approximately 750m South East of Dowlin's Bridge, Drumbane Road, Garvagh, Coleraine, BT51 5DR (the Wind Farm).

5.4 TCI's planning application for the Wind Farm was granted by the Department on 12 January 2012 (**B11**) comprising up to 15 turbines (of 3MW each), offering a total installed capacity of up to 45MW.

5.5 The planning permission is subject to a number of conditions. Paragraph 1 of the planning permission states that:

“the development hereby permitted shall be begun before the expiration of 5 years from the date of this permission”.

Indicative Connection Studies

5.6 In anticipation of its application for planning permission for the Wind Farm, TCI had made enquiries of NIE with regard to the electricity connection. This is evident from a letter dated 20 June 2007 (**B1**) sent from NIE to TCI with details of its indicative connection study for 60MW of capacity, together with approximate connection costs for a 14km of 110kV to a new 110/33 kV substation between Kells and Coleraine.

5.7 On 25 October 2010 (**B8**), having requested that NIE undertake a preliminary investigation in anticipation of a reduction in the scale of the project to 39MW, TCI received a revised indicative grid study.

5.8 As part of this revised indicative grid study NIE stated that it proposed to:

“connect this Wind Farm to a new 110/33 kV substation, located in the vicinity of the wind farm. Then a short 33 kV line or cable would be required to connect to the wind farm.”

5.9 NIE highlighted a number of issues which would limit the amount of embedded generation which could be safely accepted. This included:

- (a) minimising the impact of the wind farm on the environment, developers, and customers by means of a cluster substation; and
- (b) transmission issues, Grid Code (**G-Code**) compliance and constraints.

5.10 The indicative grid study (**B8**) referred to NIE's view that a 'clustering approach' was the proposed method of connection (with charges based on an LCTA connection) and stated that:

"Initial wind farm connections were taken to the nearest 110/33 kV substation source, which in this case would be Coleraine Main. However, after careful consideration of the evolving renewable generation demands, and requirements of Northern Ireland to meet significant renewable targets, this has necessitated a change in connection methodology. NIE are of the view that the establishment of "cluster" substations specifically for wind generation is the most efficient way of connecting wind farms which can be grouped in a locality."

and

"To assist in your project evaluation, (in the absence of per MW charges to cluster substations being finalised) you should allow for the following approximate connection costs

<i>Item</i>	<i>Cost</i>
<i>20 km 3 x 200 mm² new build 33 kV overhead line</i>	<i>£1,804,000</i>
<i>2 km 3 x 240 mm² XLPE 33 kV u/g cable</i>	<i>£392,000</i>
<i>33 kV switchgear at Coleraine & Wind Farm</i>	<i>£419,000</i>
<i>Communications</i>	<i>£348,000</i>
<i>Special Protection Schemes</i>	<i>£290,000</i>
<i>Operation & Maintenance</i>	<i>£539,000</i>
<i>TOTAL for 22 MW</i>	<i>£3,792,000</i>
<i>TOTAL for 39 MW (39÷22×£3,792,000)</i>	<i>£6,722,182"</i>

5.11 The indicative grid study (**B8**) also refers to a consultation on the costing of connecting to a cluster substation the outcome of which was unknown at that time. NIE therefore stated:

"In the absence of this being finalised, the costing would be based on the theoretical connection to Coleraine indicated in the previous diagram".

Connection application

- 5.12 On 18 January 2012 (**B13**), TCI made its formal application for a grid connection offer from NIE which was accompanied by the £40,500 connection application fee, pursuant to the March 2010 Statement. The application letter confirms that it is an application for:

“...the interconnection of this 45MW maximum capacity wind farm.”

- 5.13 As part of the covering letter to NIE, TCI stated that:

“It is not possible to definitely determine if a distribution or transmission connection is the most appropriate connection method to meet the system operators and the developer’s needs until the system operators complete some initial studies to determine the appropriate connection voltage and connection point onto the system. TCI reserves the right to transfer the connection application to SONI without negatively impacting on the date of the connection application. In the absence of a clear connection policy on how the system operators will manage connections that cannot be definitely placed at the connection stage, TCI requests NIE to allow for open discussions with the developer and SONI during the early stages of the connection offer process on the connection options for Brockaghboy wind farm.”

Initial consideration of connection application

- 5.14 A tripartite meeting involving TCI, NIE and SONI was held at SONI headquarters, Castlereagh House on 5 March 2012. The minutes of the meeting (**B14**) recorded (under item 2.1) that *“NIE confirmed that it couldn’t transfer the distribution connection application from TCI to SONI, should a transmission connection be the ultimate solution”*. TCI states that it was however *“agreed between the parties that a conjoined approach to the assessment of our application was appropriate on this occasion given the 45MW capacity of the required connection and that the date of 18 January 2012 would be upheld by SONI as our connection application date to them should an actual transmission connection offer from SONI latterly be requested”*.
- 5.15 TCI in turn formally wrote to SONI on 15 March 2012 (**B15**) confirming the agreed terms of its tripartite meeting of 5 March 2012 whilst confirming to SONI its formal instruction to assess TCI’s application for grid connection in conjunction with NIE.
- 5.16 Following further tripartite meetings (on 7 November 2012 (**B19**) and 3 December 2012 (**B20**)) a paper entitled *‘Brockaghboy Connection Options & Budget Costs’* and dated 14 December 2012 (**B21**) was produced by NIE and SONI. The purpose of the document was to provide budget costs. The following five scenarios were considered and costed:
- (a) 33 kV overhead double circuit to proposed Mid-Antrim cluster substation (**Scenario 1**);
 - (b) 33 kV overhead double circuit to Limavady Main (**Scenario 2**);

- (c) 110 kV overhead single circuit to proposed Mid-Antrim cluster substation (**Scenario 3**);
- (d) 110 kV overhead single circuit to Limavady Main substation (**Scenario 4**); and
- (e) 110 kV overhead single circuit to Creagh Main substation (**Scenario 5**).

5.17 The paper also stated that:

“The only charging basis at present is using an LCTA charging methodology”.

5.18 On 28 February 2013 (**B22**) TCI concluded that its preference was for an LCTA based direct connection to Limavady Main, as per Scenario 2 of the December 2012 Connection Options Paper (**B21**). TCI also requested a corresponding LCTA based connection offer from NIE within 90 days (if not before).

Further consideration of connection application

5.19 On 1 March 2013 TCI (**B23**) met with NIE and SONI to discuss their instruction to NIE of 28 February 2013. NIE informed TCI that Scenario 2 included in the December 2012 Connection Options Paper (**B21**) was not actually technically acceptable as the Wind Farm would not be able to fulfil the G-Code or D-Code requirements of 0.95-0.95 power factor (**PF**) 0.95-0.98 PF respectively.

5.20 At this meeting, in response to this information:

- (a) TCI requested clarification as to how Scenario 2 had come to appear in the December 2012 Connection Options Paper (**B21**) in the first instance if it was not a technically acceptable option.
- (b) TCI requested that NIE provide evidence through the dispute process of the full technical assessment which it undertook at the time of including Scenario 2 in the December 2012 Connection Options Paper (**B21**), and the latter technical assessment it undertook which subsequently highlighted the error in its original assessment. TCI also requested an explanation of how NIE came to observe the error in its original study and why this error was only flagged to TCI after TCI’s election to have a connection offer based on Scenario 2.
- (c) TCI stated that, given that the grid connection application date for the Wind Farm predated regulatory approval for charges based on clustering, it is entitled to an LCTA based connection offer if the cluster charging cost is higher than said LCTA.

5.21 NIE’s response at this meeting was that:

“...on the basis that the application has been received prior to the updated SOC, TCI is entitled to an offer on the basis of the present SOC. After the revision to the SOC is approved all new applications will be based on that updated SOC which provides for the scope for NIE to make a per MW offer based on connection to a cluster.”

and

“In respect of applications made prior to the updated SOC we are looking at asking those parties, after the updated SOC is approved, whether they wish to receive an LCTA or whether they wish to receive a revised offer based on per MW. It'll be a case of each party electing for one or the other rather than a case of NIE offering the lesser of the two costs.”

5.22 On 15 March 2013 NIE provided an updated 'Brockaghboy Connection Options & Budget Costs' paper (**B26**). This paper stated that:

“Following on from the scenarios identified on the document dated 14 December 2012, we have reviewed the Scenarios 1 and 2, and evaluated these against the Grid and Distribution Code requirements. We have concluded that Scenarios 1 and 2 would not provide compliance.

The Scenarios identified in this paper remain valid as complying with both Grid and Distribution Codes.”

5.23 A further tripartite meeting took place on 18 April 2013 (**B27**).

5.24 At this meeting:

- (a) NIE stated with regard to PF that the initial studies were considered at 0.98 lag and the new studies were carried out at 0.95 lag;
- (b) SONI clarified that these requirements are existing requirements and other wind farms are being designed to this standard;
- (c) TCI stated that it had a concern that the technical criteria that were being stipulated were not approved requirements under the 1 May 2010 D-Code and therefore not binding; and
- (d) SONI clarified that the technical criteria contained in the Wind Farm Power Station Settings Schedule (**WFPS Settings Schedule**) and the recent G-Code modifications that were currently with the Utility Regulator for approval were not new requirements but clarifications.

5.25 TCI further highlighted that the May 2010 D-Code (**B4**) makes no reference whatsoever to the WFPS Settings Schedule (**B40**) referred to.

5.26 Following NIE's withdrawal of all distribution based connections from the December 2012 Connection Options Paper, TCI states that the only alternate connection options available to it

for the connection of the Wind Farm were those qualified in the March 2013 Connection Options Paper **(B26)**.

- 5.27 With no available distribution based direct connection options for the Wind Farm TCI believe it had no alternative but to elect to discuss and pursue direct 110kV transmission based methods of connection.

Request for transmission based connection offer

- 5.28 TCI, having previously made a connection application to SONI on 15 March 2012 **(B15)**, formally requested a transmission based connection offer from SONI on 24 May 2013 **(B30)**.

- 5.29 Within this request TCI stated that:

“this particular connection is contra to our preference for an LCTA based distribution level connection into Limavady Main by way of a double circuit 33 kV overhead line and is primarily driven by the declarations of both NIE and SONI that this connection is not technically acceptable”

“within the time limits of the planning permission granted for the Brockaghboy wind farm (expires 12 Jan 2017), that we have been left with no alternative but to pursue the more complex and significantly more costly option of connecting Brockaghboy wind farm by means of a direct 110 kV transmission connection.”

“we consider it quite an oversight on behalf of NIE not to have taken the expiry of the planning permission for Brockaghboy wind farm and other consented wind farms into consideration in the context of those grid connection applications it placed in abeyance as it planned its idealised cluster substation strategy at the detriment of many proposed wind farms and their owners/developers.”

- 5.30 A transmission based connection offer **(B36)** from SONI was issued to TCI on 23 August 2013, at a cost of £11.128m with an estimated connection timing of 52 months.

Further correspondence in relation to the Wind Farm

- 5.31 In the meantime, on 7 June 2013 TCI’s lawyers, Pinsent Masons LLP, wrote to NIE **(B32)** asking for confirmation that all grid connection applications/offers and associated connections for Type B generators (as defined in the May 2010 D-Code) have been assessed and designed in a uniform and non-discriminatory manner (in accordance with Condition 15 of its Licence) with a reactive power requirement of 0.95 absorbing – 0.95 generating.

- 5.32 NIE responded to this letter on 1 August 2013 **(B34)**. In its letter NIE stated that:

“Since the introduction of the current Distribution Code on 1 May 2010, all wind farm generation connections in Northern Ireland have been assessed and designed in accordance with both that Code and the Grid Code”

and

“For all connections, where survey work had not commenced by this point, the design philosophy applied to Brockaghboy has been applied also to all Wind Farm connection studies.”

5.33 The WFPS Settings Schedule **(B40)** was approved by the Utility Regulator on 29 October 2013.

5.34 TCI met with NIE on 29 October 2013. No minutes of this meeting have been produced. TCI submits that:

“NIE ultimately accepted and acknowledged that the Power Factor settings which it retrospectively applied to the connection options presented in the December 2012 Connection Options Paper (which resultantly led to the withdrawal of connection option Scenarios 1 and 2) were not duly ratified and approved by the Utility Regulator as obliged.”

5.35 TCI also submits that NIE's acknowledgement is recorded in TCI's e-mail exchange to NIE on 4 November 2013 at 15:56 **(B42)**. NIE states in this e-mail exchange in reference to the design approach based on the May 2010 D-Code:

“...this has not been formally ratified by NIE”

and

“...the need for NIE to confirm its position on this...”

5.36 TCI's e-mail exchange confirms TCI's position that only those Codes/settings enforceable are those which are approved by the Utility Regulator. NIE submits that its position was that there was ongoing discussion in November 2013 around whether the more stringent G-Code requirements or the less stringent D-Code requirements would apply to offers, NIE confirmed to TCI that whilst still to be finally ratified, NIE's expectation was that a change was imminent whereby the less stringent D-Code would apply instead of the more stringent G-Code.

5.37 Following this e-mail exchange, NIE recommenced internal liaisons concerning the distribution design for the Wind Farm.

5.38 On 7 November 2013 **(B43)** TCI reminded NIE that the 90 day terms of the SONI connection offer were due to close on 21 November 2013. TCI also asked NIE as to when they would receive a copy of the power flow assessments (that they assumed would be readily available).

5.39 On 14 November 2013 TCI and NIE met to discuss the connection of the Wind Farm. TCI state that as part of this meeting:

“NIE explained in detail a technically acceptable proposal to connect the Wind Farm to Limavady Main substation by way of a double circuit 500mm² 33 kV underground cable arrangement to include the possible upgrade of two 45 MVA transformers and associated switchboard at Limavady Main.”

5.40 On 15 November 2013, in response to NIE's e-mail of the same date, TCI set out a summary recap (**B45**) which stated the following:

“

- *NIE to prepare and issue 33kV distribution Connection Offer based on connection into Limavady Main, in compliance with the current May 2010 D-Code, within 90 days (namely; on or before 12 Feb 2014)*
- *NIE to respond to TCI letter of 7 Nov 2013 within 28 days referred to therein (namely; on or before 5 Dec 2013)*
- *NIE to consult with the Utility Regulator imminently concerning the upgrade replacement of the two 45MVA transformers and associated switchboard at Limavady Main – please confirm when meeting scheduled. ”*

5.41 Following a series of queries raised by TCI during their review of the SONI connection offer received on 23 August 2013 (**B36**), SONI agreed on 18 November 2013 (**B47**) to extend the validity period of their connection offer from 21 November 2013 to Friday 6 December 2013.

5.42 Following a meeting between TCI and SONI held on 28 November 2013, which NIE also attended, SONI agreed on 6 December 2013 (**B49**) to withdraw its transmission based connection offer for the Wind Farm:

“until such times as TCI inform SONI that they have exhausted all possibilities of a distribution connection option with NIE and request to have a Transmission Connection Offer for Brockaghboy Wind Farm.”

5.43 TCI submit it was agreed between the parties at the meeting on 28 November 2013 that NIE would prepare and issue a 33 kV distribution connection based on connection into Limavady Main substation in compliance with the May 2010 D-Code (**B4**), within 90 days (namely, on or before 12 February 2014). NIE submits that it did not agree to prepare and issue a connection offer for the Wind Farm on a direct connection basis and that TCI confirmed in an e-mail dated 9 January 2014 (**B52**) that it was not prepared to consider a distribution connection offer premised on the concept of a cluster based connection.

5.44 No connection offer has as yet been issued by NIE.

Cluster submission

5.45 NIE requested for the Competition Commission on 29 November 2013 to make provision for the funding of the net costs of clusters in its Final Report (Cluster Substations- Page 159 of NIE's response to the PD – https://assets.digital.cabinet-office.gov.uk/media/5329de19ed915d0e600001dd/131212_nie.pdf).

5.46 The Competition Commission determined that the net costs of clusters will be treated as pass-through within the price control. This was therefore to be considered by the Utility Regulator after the Competition Commission Final Determination was published (26 March 2014)³.

5.47 The Utility Regulator has not, to date, received a Pre-Construction submission for Cluster Infrastructure in the vicinity of the Wind Farm from either NIE or SONI.⁴

The Complaint

5.48 TCI submitted the complaint on 13 March 2014 **(B58)**. This included a covering letter **(B58)** and an Appendix **(B59)** which referenced a number of Exhibits (1-19).

Further connection request to SONI

5.49 The documentation provided by SONI shows that TCI made a formal request for SONI to provide a connection offer on 27 February 2014 **(B56)**. This included a resubmission on 28 February 2014 **(B57)** of the formal transmission connection application dated 31 May 2013 **(B31)**.

5.50 As part of the connection application process NIE provided a construction offer to SONI dated 14 May 2014 **(B80)**.

5.51 SONI provided a revised connection offer to TCI on 28 May 2014 **(B89)**.

Additional information relevant to the dispute

5.52 NIE (Gerry Hodgkinson and Michael Atkinson) met with the Utility Regulator (Jody O'Boyle) on 12 December 2013 to discuss issues concerning connections. In this meeting NIE also gave a presentation **(B50)** highlighting issues on Limavady Main and increasing wind generation.

5.53 The Utility Regulator has confirmed that it did not give any guidance either specifically in respect of the design of the connection or otherwise generally.

³ <https://assets.digital.cabinet-office.gov.uk/media/534cd495ed915d630e00003f/final-determination.pdf>

⁴ Since the recent transfer of certain functions from NIE to SONI, in principle the entity to make such a submission would be SONI. To date for continuity purposes (and until NIE and SONI agree on a more streamline process) NIE has in practice made such submissions (albeit for and on behalf of SONI).

6 Section Six - Views of TCI

6.1 The views of TCI are set out in:

- (a) the complaint dated 13 March 2014 (**B58**);
- (b) its letter and additional commentary dated 16 April 2014 (**B65**);
- (c) its letter to the Utility Regulator dated 13 June 2014 (**B97**);
- (d) its response dated 27 June 2014 to the draft Statement (as sent to the Parties on 17 June 2014) (**B101 & B102**); and
- (e) its response dated 21 July 2014 to the Draft Determination (as sent to the Parties on 9 July 2014) (**B113 & B114**).

6.2 We have read all the above documents in full and have had full regard to all of these submissions. The following is a summary of the key elements of those submissions.

6.3 TCI's principal argument is that NIE has certain existing obligations in relation to distribution connections and connection offers and should comply with these obligations and make an offer to TCI with regard to the connection of the Wind Farm to its distribution system.

TCI's Key Points

6.4 TCI's complaint (as submitted on 13 March 2014) can be summarised as follows:

- (a) Unless the Utility Regulator has granted an extension of time to NIE's obligations under Condition 30 of the Licence (**A5**) NIE has to provide an offer within 3 months of 14 November 2013. TCI has not been provided with a connection offer and NIE is therefore in breach of Condition 30 of the Licence.
- (b) Condition 32 of the Licence (**A5**) provides for, amongst other matters, such charging statement to be approved by the Utility Regulator and published by NIE before it can have any legal force or effect. The only charging statement published and in full force and effect and approved by the Utility Regulator at the time of TCI's grid connection application for the Wind Farm and in accordance with NIE's Licence obligations is the March 2010 Statement (**B3**).
- (c) NIE has failed to meet its obligations under Article 32 of the Directive in that third party access to distribution systems shall be based on published tariffs and the published tariffs or the methodologies underlying their calculation are approved prior to their entry into force.

- (d) In consequence of Conditions 30 and 32 of the Licence **(A5)** and Article 24 of the Order, NIE is required to make a connection offer for the Wind Farm on terms which it is reasonable in all the circumstances of the case for that person (i.e. TCI) to be required to accept.
- 6.5 TCI submits that "*reasonable in all the circumstances of the case*" in the context of the Wind Farm is as follows:
- (a) NIE has certain existing obligations in relation to distribution connections and connection offers and has an absolute requirement to meet such obligations at all times in dealing with TCI's grid connection application for the Wind Farm;
- (b) NIE is obliged to offer, within 3 months and present, in a connection offer, charges for a connection in a way that is referable to the connection charging statement approved by the Utility Regulator, namely the March 2010 Statement;
- (c) a direct 33 kV distribution based connection is technically acceptable for the Wind Farm based on the May 2010 D-Code **(B4)**; and
- (d) TCI should be offered a grid connection offer which proposes a method of connection which takes into account the time limited nature of the planning permission of the Wind Farm and the need to commence development.
- 6.6 TCI notes that it is now two full years since it made a connection application for the Wind Farm, including a connection application fee of £40,500 + VAT under the March 2010 Statement.
- 6.7 TCI also submits that the Utility Regulator has a duty to determine distribution connection charging complaints under Article 37 of the Directive **(A2)**. NIE is a distribution system operator and the complaint relates to obligations set out in Article 32 of the Directive **(A2)** which relate to the provision of third party access to NIE's distribution system.
- Acceptability of Scenario 2***
- 6.8 TCI submits that it is at a loss as to why NIE cannot provide a direct 33 kV overhead double circuit connection to Limavady Main (under Scenario 2) as was previously confirmed as technically acceptable by NIE **(B21)** (power factor settings of 0.95 absorbing and 0.98 generating). TCI states that NIE did not provide it with any objective, fact based power flow technical assessment paper as to why Scenario 2 would not provide compliance and that NIE has failed to satisfy TCI or TCI's technical advisers in this regard.
- 6.9 In support of this, on 16 April 2014 **(B65)** TCI submitted additional commentary, including:

- (a) an independent Reactive Power Capability Study (**B41**); and
- (b) an independent Voltage Rise (and Reactive Power Capability) assessment (**B64**).

6.10 TCI states that these have been provided:

“In the absence of NIE providing a satisfactory objective justification of the technical basis upon which they withdrew Scenario 2 from the December 2012 Connections Options Paper.”

6.11 The assessments consider the requirements set out in the May 2010 D-Code (**B4**) and the requirements of the G-Code (**B39**) and the proposed WFPS Setting Schedule (although TCI states that these were not then approved).

6.12 The assessment by TNEI Services Limited (TCI's independent technical advisors) concludes that the voltage rise between the Limavady Main 33 kV substation and the Wind Farm will not in itself constitute a G-Code (**B39**) compliance issue. The assessment also states that compensation equipment can be integrated to control potential voltage rise issues.

6.13 TCI submits that the May 2010 D-Code (**B4**) makes no reference to the WFPS Setting Schedule (**B40**) and that only a ratified May 2010 D-Code (**B4**) and associated power factor requirements apply.

6.14 TCI submits that NIE's response (dated 1 August 2013 (**B34**)) to Pinsent Masons LLP's letter of 7 June 2013 (**B32**) falls short of specifically answering its question and that NIE has not applied 0.95 absorbing – 0.95 generating power factor settings on all grid connection applications/offers and associated connections for Type B generators since the introduction of the May 2010 D-Code.

6.15 TCI submits that the WFPS Settings Schedule (**B40**) that was approved by the Utility Regulator on 29 October 2013 had no legal force or effect for assessing the connection options available for the Wind Farm at the time of the application.

Acceptance of SONI Transmission connection offer

6.16 TCI confirmed that on 13 May 2014 it had accepted a SONI transmission connection offer (**B77 + B78**) in the interim of the Utility Regulator making its determination. TCI stated it has the right (as does any applicant) to:

“proceed/withdraw (at its own expense) its transmission connection acceptance at any stage should an acceptable and more timely grid distribution connection offer which is reasonable in all the circumstances of the case to accept arise from the determination.”

Consideration of cluster approach

6.17 TCI submits that it is:

“merely seeking NIE to comply with its legal obligations and duties as enshrined in the License, the Directive and the Electricity Order. The cost and method of connection must be strictly in line with such obligations.”

6.18 TCI appreciates that NIE does have an element of discretion as to the physical method of connection. However it contends that such method of connection must be strictly referable to the legal framework subsisting at the time of the grid connection application; namely the March 2010 Statement **(B3)**. TCI contends that a direct connection into Limavady Main is the appropriate method of connection.

6.19 TCI believes that in concluding that a cluster connection was the appropriate method of connection NIE has ignored the fact that no methodology for clustering was published and approved at that time to facilitate the delivery of such a method of connection and therefore questions why no approval was sought from the Utility Regulator for pre-construction works associated with a proposed new cluster substation in the vicinity of the Wind Farm at that time.

6.20 TCI submits that:

“NIE were not only obliged to provide an LCTA cost of connection for the Wind Farm at the time of grid connection application but also an LCTA based method of connection; namely a direct connection, due to no other methods of connection being permissible under the legal framework subsisting at the time of the grid connection application; namely the March 2010 Statement.”

6.21 TCI submits that it had never rejected the possibility of a cluster developing in the region of the Wind Farm and that it was open to considering all available connections options where they were reasonable in all of the circumstances of the case to accept and:

“had the statement of charges prevailing at the time of our connection application permitted the construction of such connections and where such connections were operationally attainable within the time limited expiry of the planning permission for the Wind Farm.”

6.22 TCI submits that the map **(B18)** it provided was prepared to assist and inform such discussions surrounding all possible connections. The basis of TCI producing this map was not predicated on TCI’s acceptance of clustering but rather an identification of the various grid route lengths for information purposes only. TCI’s observation of the Brockaghboy cluster on the map was only to acknowledge NIE’s identified location for a cluster.

6.23 TCI submits that:

- (a) No such cluster principles or methodology were approved by the Utility Regulator at the time of its grid connection application to NIE on 18 January 2012 (**B13**), some 16 months prior to the Utility Regulator's approval of the same in May 2013 (**B28**).
- (b) The grid connection application for the Wind Farm should only have been considered in the context of the statement of charges in legal force and effect at the time of the Wind Farm's grid connection application; namely, the March 2010 Statement (**B3**).
- (c) A connection offer in keeping with this statement of charges should therefore have been made in accordance with Condition 30 of the Licence (**A5**).

6.24 TCI submits that:

"NIE arguably protracted the issuance of a connection offer for the Wind Farm until such a time as the Utility Regulator approved the methodology for connecting generators using cluster substations, believing that the Wind Farm would be obliged to the same."

"NIE's continuous reference to the commencement of discussions with the Utility Regulator concerning clustering in 2010 to the point where the Utility Regulator issued its decision paper in April 2011 on the "development" of a cluster charging methodology is not a material consideration or valid excuse for not meeting its legal obligations pursuant to Condition 30 of the Licence. Such obligations upon NIE are absolute."

6.25 In TCI's view, the legal precedent established by the Dunmore Determination provides that the connection charges shall be those which reflect the published charging methodology and tariffs approved by the Utility Regulator at the date of grid connection application.

6.26 TCI does not dispute that the March 2010 Statement (**B3**) provides for an element of discretion for NIE to determine that the connection design need not be on an LCTA basis. However, TCI submits:

"that whilst there is therefore some element of discretion granted to NIE in determining the design of the connection, such a method of connection must be strictly referable to approved methodologies (i.e. in the case of the Wind Farm, LCTA)."

6.27 Further, TCI submits that:

- (a) a distribution connection offer should be strictly referable to (1) the connection charges published and approved at the date of the grid connection application, and (2) the physical method of connection approved at date of the grid connection application; and
- (b) the applicable law clearly envisages (as stated in the Dunmore Determination) a situation in which persons wanting to access a distribution system (including by way of a connection) should be able to assess the charges for which they may be liable

when they request a connection and should subsequently be liable only to charges which accord with such approved and published tariffs and/or methodologies.

- 6.28 TCI submits that the Utility Regulator's Decision Paper of April 2011 (**B10**) had simply approved the "*development*" of a clustering methodology rather than "*approved the cluster approach*" as NIE infers. TCI notes NIE's acknowledgement that work was still on-going with the Utility Regulator to transition from LCTA to cluster based connections.
- 6.29 TCI is of the view that cluster based connection offers are only valid and applicable to connection applications post 9 May 2013 when the statement of charges (**B28**) to facilitate such connections was published and approved by the Utility Regulator and it believes this position was clearly established as part of the Dunmore Determination.
- 6.30 TCI refers to the meeting of 7 November 2012 (**B19**) where it draws specific attention to NIE that NIE can only issue connection offers based on the current Statement of Charges (that charging statement in legal force and effect at the date of the grid connection application; namely, the March 2010 Statement). TCI submits that it was principally for this reason that it was willing to engage in collaboration with NIE in pursuing all possible methods of connection permissible under the current statement of charges in force and effect at the time of its grid connection application as provided for in the 14 December 2012 Connection Options Paper (**B21**).
- 6.31 TCI does not dispute that discussions around clustering or the concept of clustering took place. TCI is however of the view that the cluster based method of connection was:

"not discussed in any greater detail than the other available connection option scenarios for the Wind Farm. Indeed, many of the protracted discussions around clustering were led by NIE repeatedly advising TCI that they could not at the stage of our discussions apply either cluster based costings or associated methodologies for connection as these were not approved by the Utility Regulator".

- 6.32 TCI submits that this was the reason that no such costings or methodologies featured in either of the December 2012 (**B21**) or March 2013 Connection Options Papers (**B26**). TCI submits that:

"it was not only the absolute purpose of the December 2012 Connection Options Paper to identify to TCI the various connection options available for connection at the 33 kV distribution level and 110 kV transmission level but also to represent those connections which had been examined by NIE to represent the least cost technically acceptable connection options following the ongoing dialogue between the parties over the course of the prior 11 months".

Transmission or distribution connection

- 6.33 TCI disagrees with NIE's submission that TCI could not determine if a transmission or distribution connection was appropriate. TCI submits that these are matters to be led and

informed upon by either NIE or SONI subsequent to a grid connection application being made depending on the networks capacity to appropriately receive the 45MW generation capacity of the Wind Farm.

- 6.34 TCI submits that in making grid connection applications to NIE and latterly SONI it was only to avoid the situation where NIE sought to impose an illegitimate grid connection upon TCI.

Application fee

- 6.35 TCI notes that the initial studies carried out by NIE and SONI in May 2012 (**B16**) were undertaken by agreement of those specific parties. TCI submits that neither NIE nor SONI ever expressed that such studies were outside the scope of the connection application fee paid by TCI. TCI merely considered that such studies were a prerequisite normal practice to arriving at the technically acceptable connection options available.

- 6.36 TCI also submits that:

“NIE appear to be of the view that it’s only obligation was for it (and SONI) to assist TCI as to whether it wanted a distribution or transmission connection. TCI are firmly of the view that NIE has strict legal obligation which must be met at all times in the receipt and processing of a valid grid connection application. The same obligations apply to SONI, who similarly accepted a valid grid connection application from TCI.”

- 6.37 TCI's position is that it sought to proactively manage its expectations by requesting open and transparent connection meetings with NIE immediately following its connection application. TCI submits that the issue of application fees was not a matter driven by it but a matter agreed between NIE and SONI as minuted on 5 March 2012 (**B14**). TCI also submits that it:

“would have willingly obliged a request for application fees from SONI if requested.”

- 6.38 TCI highlights that neither NIE nor SONI reverted to TCI seeking additional or further fees. This is despite this opportunity being afforded as recorded in the connection meeting minutes of 21 May 2013 (**B29**). TCI states that:

“it is our understanding c/o SONI that NIE threatened not to provide the required NIE construction offer to SONI to facilitate the reissue of the SONI Transmission Connection Offer if TCI did not agree to the requested charge and make the said payment in advance of their issue of the required construction offer to SONI.”

- 6.39 TCI refers to paragraph 44 (last sentence) of NIE’s information submission dated 14 May 2014 (**B79**) and the final paragraph of the NIE letter to TCI dated 20 March 2014 (**B60**). TCI believe the former of these placed unnecessary and irrelevant conditionality on SONI’s ability to provide its transmission connection offer to TCI, and the latter of these was a specific request to TCI from NIE to withdraw from the distribution connection process before they

would even oblige SONI's request for a transmission connection offer to support SONI's connection offer to TCI.

- 6.40 TCI submits that the formal grid connection application made to SONI on 15 March 2012 **(B15)** by TCI was to ensure receipt of a connection offer for the mutually effective and efficient connection of the Wind Farm.
- 6.41 TCI submits that at no stage in its complaint to the Utility Regulator has it either refuted or contested that the joint approach to which it engaged with NIE and latterly SONI was in pursuit of anything other than arriving at a connection offer for the Wind Farm. TCI submits that the issue of "*just one application fee*" to facilitate a connection offer (from either or indeed both parties) is not contested.

DS3 Programme

- 6.42 Whilst TCI welcomes the contribution of the DS3 programme, TCI states that the DS3 project referred to by NIE is not relevant to the issues under consideration in the context of its complaint.

The D-Code

- 6.43 TCI is of the view that the May 2010 D-Code **(B4)** specifically governs any distribution based grid connection proposed and that the only design requirements (including reactive power) that can be applied are to those that are approved and in force at the relevant time.
- 6.44 TCI highlights that the May 2010 D-Code **(B4)** makes no reference whatsoever to the referred to WFPS Settings Schedule **(B40)** and that the reactive power settings referred to within the May 2010 D-Code **(B4)** differ from those stated in and referred to in both the Grid Code **(B39)** and the WFPS Settings Schedule **(B40)**.
- 6.45 Therefore it is TCI's view that neither the Grid Code **(B39)** nor WFPS Setting Schedule **(B40)** has any governance over distribution connections.
- 6.46 TCI questions how distribution connection Scenario 1 and Scenario 2 even came to feature in the December 2012 Connection Options Paper **(B21)** in the first instance if such concerns were so widely understood and appreciated over such a long period of time.
- 6.47 TCI fails to see why the arrangements of the Grid Code **(B39)** and WFPS Setting Schedule **(B40)**, submitted to the Utility Regulator on 7 March 2013, is relevant to the distribution connection of the Wind Farm when distribution connections are obliged only to the technical requirements of the May 2010 D-Code **(B4)**.

6.48 TCI maintains that it is not a matter of choice for NIE to decide what the most appropriate Code is, it is a matter of what code they are obliged to apply; namely the May 2010 D-Code **(B4)** which governs all distribution connections.

6.49 TCI is of the view that NIE has acted unlawfully in imposing the more onerous G-Code **(B39)** requirements on the distribution connection and submits that NIE has admitted this when it states that:

“NIE applied these design requirements to all offers issued from March 2013 onwards”.

6.50 TCI also submits that its:

“independent assessment, which takes into account the requirements of the D-Code, the Grid Code and the proposed WFPS Setting Schedule, concludes that the voltage rise between the Limavady Main 33 kV substation and the Wind Farm will not in itself constitute a grid code compliance issue, and that various configurations of capacitive and inductive compensation equipment can be integrated in any event with voltage control to manage any potential occurrence of voltage rise where such rise was to ever exceed allowable statutory limits.”

6.51 TCI submits it has clearly demonstrated through its information submission dated 16 April 2014 **(B65)** that there are D-Code compliant technically acceptable distribution connections options for the Wind Farm.

6.52 TCI refers to a meeting between it and NIE on 29 October 2013 **(B41)** that covered the application of the Grid Code **(B39)** and WFPS Settings Schedule **(B40)** to Scenarios 1 and 2 of the December 2012 Connection Options Paper **(B21)**. TCI submits that the reasons for the withdrawal of these scenarios were not properly explained. In a subsequent meeting on 14 November 2013 (in TCI's recollection) NIE explained that:

“a technically acceptable proposal to connect the Wind Farm to Limavady Main substation by way of a double circuit 500mm² 33 kV cable arrangement, to include the possible upgrade of two 45 MVA transformers and associated switchboard at Limavady Main, was possible.”

This explanation by NIE was included by TCI in its 15 November 2013 e-mail to NIE **(B45)**.

6.53 TCI understood that NIE would prepare a connection offer on this basis within 90 days. That NIE did not query TCI's recap of this meeting **(B45)** is, in TCI's view, evidence of the acceptance of the deliverables.

6.54 TCI submits that it had no further meetings or specific communications with NIE concerning the distribution connection of Brockaghboy during the remainder of November 2013 and submits that:

“If NIE concluded from the meeting of 14 November 2013 that they were not intending to provide TCI with the direct connection, which they had purposely assessed and specifically presented to TCI as a

technically acceptable solution to our request for a direct connection to Limavady Main, then they had blatantly sought to not only mislead us by proposing a viable direct distribution connection which it was not in turn prepared to offer, but to also knowingly jeopardise the diminishing timescale for TCI's acceptance of the SONI Connection Offer – a matter to which NIE were fully aware”.

Additional Matters

- 6.55 TCI refers to the meeting NIE had with the Utility Regulator on 12 December 2013. TCI states that it remains unclear as to what exactly was discussed at this meeting. TCI was of the clear understanding from NIE that the meeting NIE had scheduled with the Utility Regulator for 12 December 2013 was solely for the purpose of discussing how the direct connection of the Wind Farm into Limavady Main would impact upon the existing available capacity at the substation to the extent that the costs of connecting the Wind Farm into Limavady Main could be significantly reduced if the ancillary works required to accommodate the Wind Farm could be shared with the consumer if the Utility Regulator agreed to the replacement of the two existing 45 MVA transformers at Limavady Main to accommodate other direct connectees. The presentation **(B50)** made by NIE has been included in the bundle of documents and the Utility Regulator confirmed its stance in relation as to what was discussed on 3 June 2014 **(B93)**.
- 6.56 TCI refer to NIE's e-mail of 18 December 2013 **(B51)** as the first occasion upon which it had been made aware that NIE would not be issuing TCI with a direct distribution connection for the Wind Farm into Limavady Main. TCI questions the timing of this in relation to its SONI Connection Offer **(B49)** that had lapsed on 6 December 2013. TCI submits that it was deliberately misled by NIE in this regard.

Draft Determination

- 6.57 In responding to the Draft Determination, TCI reiterates a number of the submissions outlined above.
- 6.58 In addition it submits that:
- (a) TCI has made a valid application for a distribution connection and met all the procedural requirements set out in the Electricity Order. It also submits that it has in any event paid a connection fee which has been accepted.
 - (b) If NIE had not by virtue of its communications to TCI in relation to its application for the connection of another TCI wind farm (the Pigeon Top Wind Farm) and at the tripartite meeting held in March 2012 in respect of the Wind Farm informed TCI that a LCTA connection was forthcoming TCI would have referred the matter as a dispute to the Utility Regulator at that time (i.e. March 2012).

- (c) TCI fully expected (which was a legitimate expectation) a connection offer to be issued based on the March 2010 Statement.
- (d) As set out in the opinion of its legal advisors Pinsent Masons LLP (**B106**), it would be manifestly inappropriate for the Utility Regulator, as a best practice regulator, to determine that the terms as to charges are referable to and set in conformity with the October 2013 Statement and for the March 2010 statement not to apply.
- (e) It is NIE's negligence and mismanagement of the transition from LCTA to clustering based connection methodology that led to the delay between the time when TCI applied for the connection and the time when the Utility Regulator is asked to determine the Dispute.
- (f) NIE's presentation given to the Utility Regulator did not represent TCI's understanding of NIE's objective for that meeting.
- (g) That NIE did not query TCI's recap (in its e-mail of 15 November 2013 (**B45**)) of the meeting held on 14 November 2013 is evidence of the acceptance of the deliverables discussed and agreed.
- (h) There are a number of matters which support its position that the provisions of the D-Code and the G-Code are not those in force at the date of the determination.

6.59 In responding to the Draft Determination, TCI also contends that:

- (a) The Decision-Makers had not considered the applicable EU law as set out in Article 32 of the Directive.
- (b) The Decision-Makers have not had full regard to all of TCI's submissions.
- (c) The policy set out in the relevant licence conditions has not been followed by the Utility Regulator because NIE did not comply with such licence conditions and this non-compliance has gone unchallenged by the Utility Regulator.

7 Section Seven - Views of NIE

7.1 The views of NIE are set out in:

- (a) its letter dated 16 April 2014 (**B66**);
- (b) its response to TCI's complaint dated 14 May 2014 (**B79**);
- (c) its letter dated 21 May 2014 (**B85**);
- (d) its response dated 27 June 2014 to the draft Statement (as sent to the Parties on 17 June 2014) (**B103**); and
- (e) its response dated 21 July 2014 to the Draft Determination (as sent to the Parties on 9 July 2014) (**B112**).

7.2 We have read all the above documents in full and have had full regard to all of these submissions. The following is a summary of the key elements of those submissions.

NIE's Key Points

7.3 NIE contends that the central issue, as NIE understand it, is that TCI submits that it can demand a direct connection into Limavady Main as the physical method of distribution connection for the Wind Farm.

7.4 NIE, however, takes the position that it should determine the physical method of connection, in line with its obligations to develop the network in an efficient and co-ordinated manner, provided that the method of connection is reasonable in all the circumstances. In the case of the Wind Farm and other wind farms in the vicinity of Limavady, NIE submits that there remains a compelling case for a cluster connection, in accordance with the NIE Statement of Charges, as the physical method of connection.

7.5 In any case, NIE submits that it is not in receipt of a valid application for the Wind Farm for a connection to the distribution network.

Connection Application

7.6 NIE submits that it assigned the original (and only) fee received from TCI to the construction offer developed for SONI to enable the formal transmission offer process to progress. The transmission offer was issued by SONI to TCI in August 2013 (**B36**).

7.7 NIE submits that TCI chose to pursue a further transmission connection offer with SONI and initiated this process at the end of February 2014 (**B56**).

- 7.8 NIE has also stated that it will provide a further construction offer to SONI which will be used by SONI to issue a connection offer for the Wind Farm, subject to the appropriate fee being paid for this further construction offer.
- 7.9 NIE submits that the agreement between TCI, NIE and SONI was that only one connection offer would be issued to TCI at either transmission or distribution level for which TCI paid one fee. While TCI may have made two applications for connection only one application fee was received which was allocated to the 2012 transmission connection application.
- 7.10 NIE states that it is not currently holding any fee with regard to a distribution connection application. NIE also make reference to the letter from SONI to TCI dated 6 December 2013 **(B49)** and in particular where SONI states that:

“In conclusion, SONI confirm that the Transmission Connection Offer for the connection of Brockaghboy Wind Farm that was issued on 23rd August 2013 has now formally been withdrawn as of the date of this letter until such times as TCI inform SONI that they have exhausted all possibilities of a distribution connection option with NIE and request to have a Transmission Connection Offer for Brockaghboy wind Farm. This request should be made within a 3 month period following the conclusion of a decision by TCI to either terminate their distribution connection application or accept/reject any distribution connection offer from NIE. Following this 3 month period SONI will be unable to re-issue any revised Transmission Connection Offer in line with the information outlined above. SONI will then endeavour to issue a revised Transmission Connection Offer for Brockaghboy Wind Farm within 28 days of a formal request from TCI subject to the agreement of NIE that it's Construction Offer to SONI remains valid during this period.”

- 7.11 On the basis that it is not in receipt of the required fee, NIE does not accept that it is currently in receipt of a valid distribution connection application for the Wind Farm.

Cluster approach

- 7.12 NIE highlights the cluster principles and methodology that were consulted on in 2010 by NIE and the Utility Regulator **(B5 and B9)**, and the approved approach detailed in the Decision Paper **(B10)**. The agreed outcomes of this were the specific charging arrangements which would apply to cluster connections, approved by the Utility Regulator in May 2013 **(B28)**.
- 7.13 NIE refers to the Dunmore Determination **(B12)** and submits that this determination confirmed that whereas the charges for connection should be based on the prevailing Statement of Charges at the time of connection offer (in the case of Dunmore this was the 2010 Statement of Charges), it was reasonable for NIE to apply the cluster method for the physical connection of Dunmore Wind Farm.
- 7.14 NIE submits that it needs to consider two elements of any distribution connection offer to be made; these elements being the connection charges and the physical method of connection.
- 7.15 NIE submits that:

“Ultimately, where a number of wind farms either have either [1] gained planning permission or [2] are in the planning process in the same vicinity and where the conditions for a cluster are met, NIE’s approach to the physical connection of wind farms must align with the approved cluster methodology (as set out in the May 2013 Statement of Charges – now updated to October 2013)”.

Consideration of cluster approach

- 7.16 NIE submits that it has consistently maintained that a cluster connection was potentially the most appropriate physical method for a distribution connection to the Wind Farm and that this is evidenced throughout the various meetings.
- 7.17 In 2010, NIE concluded that a cluster connection was the appropriate physical method of connection for the Wind Farm because there was sufficient wind farm generation potential in the vicinity of a potential cluster connection point. This position was confirmed to TCI in the indicative grid study provided by NIE dated 25 October 2010 **(B8)**. NIE also refers to the expectation of a cluster in this location as documented in the 2013 SONI ten year plan **(B38)**.
- 7.18 NIE submits that TCI itself acknowledged the possibility of a cluster substation in the vicinity of Brockaghboy during discussions with NIE and SONI, as evidenced by a map produced by TCI, dated 24 September 2012 **(B18)**.
- 7.19 TCI, NIE and SONI agreed a joint approach to arriving at a connection offer, using just one application fee as documented in the minutes of the meeting held on 5 March 2012 **(B14)**.
- 7.20 NIE submits that any connection charge assessment for the Wind Farm was based on the LCTA connection and that a number of scenarios were considered. NIE refer to the minutes from the joint meeting between TCI, SONI and NIE on 7 November 2012 **(B19)** where this requirement is highlighted.
- 7.21 NIE notes that TCI has suggested in its submissions (paragraph 3.12 of TCI’s Appendix document) that NIE’s position through the discussions was that *“cluster charging and associated cluster methodologies is of no relevance to the Wind Farm”*. NIE submits that this is factually incorrect and a blatant misrepresentation of the discussions underway at that time.
- 7.22 Instead, NIE submits that it continued to stress the importance of adopting a cluster based connection approach in line with the now approved cluster methodology (as of May 2013), and that a cluster located local to Garvagh and supplied from Mid Antrim was one option being considered as the physical connection method for any distribution connection offer.
- 7.23 NIE confirmed in subsequent correspondence to TCI in December 2013, including an e-mail on 18 December 2013 **(B51)**, that NIE would update TCI on the most appropriate connection method for a number of wind farms in the vicinity of Garvagh in mid-January 2014. NIE submits this was in keeping with the Dunmore Determination **(B12)** which (at paragraph

9.27(a)) referred to NIE's statutory duty to develop and maintain an efficient, coordinated and economical system of electricity distribution **(A1)**.

7.24 NIE points to TCI's e-mail dated 9 January 2014 **(B52)** where TCI stated that:

"TCI is not prepared to consider a distribution connection offer premised on the concept of a Cluster based connection for Upper Ballyrogan wind farm, nor indeed our Brockaghboy wind farm."

7.25 Following this NIE states that it engaged on a call with TCI on 16 January 2014 and confirmed it would update TCI in the short term on NIE's decision around the physical method of connections for wind farms in the vicinity of Limavady.

7.26 NIE then confirmed by e-mail on 24 January 2014 **(B54)** its decision that the physical method of connection for wind farms in the vicinity of Limavady would be by the cluster method. NIE states that it confirmed this position in more detail on a call with TCI on 30 January 2014 and subsequently as part of an update note from NIE to TCI on 11 February 2014 **(B55)**.

7.27 The updated note dated 11 February 2014 **(B55)** includes the following:

"This conclusion is based on an assessment of potential generation capacity within an appropriate radius (including Brockaghboy and Upper Ballyrogan) and in alignment with NIE plans for the future development of network infrastructure."

7.28 NIE submits that it has acted consistently throughout the engagement with TCI in highlighting the importance of the cluster approach in terms of the physical method of connection from an early stage and continuing to engage with TCI around potential connection scenarios and associated LCTA costs until the position on the physical method of connection was clear.

Report

7.29 NIE submits that the report issued by NIE and SONI on 14 December 2012 **(B21)** was essentially a high level desk top exercise intended to present the relative quantum of costs for each of five scenarios. NIE submits that:

"This report was not intended to confirm the physical method of connection but was intended as an opportunity to present TCI with a range of cost options which might inform a further assessment by TCI as to whether connection at transmission level or distribution level was preferred and allow TCI to make an informed decision on whether to proceed with either a transmission or distribution connection offer."

7.30 That TCI has chosen to represent the inclusion of Scenario 2 in the 14 December 2012 NIE report **(B21)** as an undertaking by NIE to provide TCI with a direct connection into Limavady Main (is according to NIE):

"a further misrepresentation of the purpose of the LCTA studies being provided to TCI at that time."

The D-Code

- 7.31 NIE's position is that the D-Code **(B4)** requirements are not relevant to the core issues of the appropriate physical method of connection, but submits that, even on the less onerous May 2010 D-Code requirements, a direct overhead connection into Limavady Main was not technically feasible.
- 7.32 NIE refers to the impact of increasing levels of renewables penetration as the reason for a more stringent application of design requirements to address wider technical matters including reactive power.
- 7.33 The design criteria relating to these wider requirements were initially taken forward by SONI under the G-Code **(B39)**. The WFPS Settings Schedule **(B40)** was developed jointly by NIE and SONI as clarification of the requirements set out in the G-Code on the basis that the design criteria are equally applicable to the D-Code **(B4)**.
- 7.34 NIE states the output of this work was not concluded at the time of 14 December 2012 options study report provided to TCI **(B21)**. A further report which did take on board the updated requirements was issued to TCI on 15 March 2013 **(B26)**. This report referred to three transmission connection scenarios with the Scenario 1 and Scenario 2 removed.
- 7.35 The WFPS Setting Schedule had been submitted to the Utility Regulator in March 2013; when the more stringent conditions were imposed by SONI from March 2013. NIE confirmed it has applied these design requirements to all offers issued from March 2013 onwards.
- 7.36 It was further concluded by NIE in November 2013 that the less onerous requirements in NIE's approved D-Code **(B4)** (rather than the G-Code **(B39)**) would be the most appropriate design criteria to adopt from that point for distribution connections while the May 2010 D-Code remained in force.
- 7.37 NIE confirmed in an e-mail to TCI on 12 March 2013 **(B24)** that a direct connection (as per Scenario 2 **(B21)** i.e. two 33 kV overhead lines) into Limavady Main would not meet even the requirements of the 2010 D-Code **(B4)**. This was confirmed to TCI on 1 August 2013 **(B34)**.
- 7.38 NIE notes that:

"[the] industry was advised on 22 November 2013 in an e-mail to the secretary of the industry group NIRIG (NIE Exhibit 9) that until such times as the ongoing Distribution Code review process was complete, at which point it is expected that the D-Code and G-Code requirements will fully align, the less onerous requirements of the currently approved D-Code would apply to future distribution connection offers i.e. from 22 November 2013."

- 7.39 Whereas TCI has alleged that NIE acted unlawfully in initially imposing the more onerous G-Code requirements (**B39**), NIE state it had, in fact, confirmed to TCI on 12 March 2013 (**B24**) and 1 August 2013 (**B34**) that the technical design associated with TCI's own preferred distribution physical connection method i.e. a direct connection into Limavady Main was not a technically acceptable solution, even based on application of the less onerous approved D-Code requirements.
- 7.40 NIE therefore submits that the more onerous G-Code (**B39**) requirements are not relevant to any complaint made by TCI.

Assessments provided by TCI

- 7.41 NIE submits that TCI's independent technical advisors TNEI Services Limited report dated 29 October 2013 (**B41**) verifies that the less stringent D-Code design requirements could not satisfy a 33 kV overhead solution.
- 7.42 NIE submits that the April 2014 TNEI study considered underground cable based distribution connections for Brockaghboy Wind Farm into both Limavady Main and the Mid Antrim Cluster. While the study showed that, in theory, long underground cable distribution connections meet NIE's voltage requirements based on application of the D-Code, NIE would currently not commit to installing underground cable connections of the magnitudes involved to either Limavady or Mid Antrim. This was due to the uncertainty around the technical feasibility of such connections.

Additional Matters

- 7.43 On 14 May 2014 NIE issued a construction offer (**B80**) to SONI in relation to an application submitted to SONI by TCI for a transmission connection for the Wind Farm. This construction offer was accepted by SONI on 4 June, in response to the transmission connection offer issued by SONI to TCI being accepted.
- 7.44 NIE submits that it is therefore clear that TCI has no requirement for a distribution connection offer for the Wind Farm and that TCI's request for a determination in relation to such an offer is therefore vexatious.

Draft Determination

- 7.45 In responding to the Draft Determination, NIE's further submissions are summarised as follows:
- (a) It would be unacceptable to NIE if the determination could be relied upon by any party to refuse to pay a connection application fee but still expect a connection offer.

- (b) It is entitled, by virtue of the provisions in the Statement of Charges, to require any party requiring a connection offer to pay the appropriate connection application fee in accordance with the approved Statement of Charges.
- (c) The Draft Determination fails to give appropriate consideration to the requirements of the approved Statement of Charges issued by NIE under Condition 32 of the Licence.
- (d) The connection application process is set out in the approved Statement of Charges; that process does not mirror identically the process set out in Article 20 of the Order but provides a more streamlined and customer friendly process. Therefore the requirements of Article 20(5)(a) are set out in the Statement of Charges.
- (e) The final determination should make provision for any connection offer to be made to be conditional on the Utility Regulator granting approval for the construction of the cluster substation.

8 Section Eight – Views of SONI

8.1 On 19 May 2014 (**B83**) the Utility Regulator requested that SONI, as having been involved in the discussion surrounding the Wind Farm, provide:

- Details of all connection offers provided or likely to be provided in relation to this project.
- Any minutes of meetings held with affected parties in regard to this matter.
- Any additional evidence that would assist the Utility Regulator with regards to this issue including any and all contractual documentation between SONI and TCI.

8.2 SONI provided a response to this request on 2 June 2014 (**B92**), enclosing the following documents which are included in the Bundle:

- TCI connection application form dated 31 May 2013 (**B31**).
- Brockaghboy progress meeting minutes (**B14, B19, B20, B23, B27, B29 + B33**).
- Generator Construction Offer dated 13 August 2013 (**B35**).
- Brockaghboy Connection Offer dated 23 August 2013 (**B36**).
- Query Sheet to: SONI Grid Connection Offer dated 23 August 2013 (**B36a**).
- Brockaghboy Connection Offer withdrawal letter dated 6 December 2013 (**B49**).
- TCI Connection Application dated 28 February 2014 (**B57**).
- Generator Construction Offer dated 14 May 2014 (**B80**).
- Brockaghboy SONI Revised Connection Offer dated 28 May 2014 (**B89**).

8.3 SONI noted that the Dispute was between NIE and TCI and that SONI was not party to it. No further comments in relation to the Dispute were provided.

9 Section Nine – Jurisdiction to determine the dispute

- 9.1 As noted in Section One, NIE contends that there is no dispute to determine, and therefore the Utility Regulator has no jurisdiction in respect of this matter, because NIE does not currently hold a connection fee with regard to a distribution connection application and therefore is not in receipt of a valid distribution connection application.
- 9.2 Article 26 of the Electricity Order provides that the Utility Regulator may on reference by either party to a dispute arising under Articles 19 to 25 of the Electricity Order determine the dispute. There is nothing in Articles 19 to 26 which:
- (a) provides that NIE is only required to offer terms for making the connection requested by the applicant where the applicant has paid a connection fee;
 - (b) requires the applicant to pay a connection fee; or
 - (c) provides that a dispute may only be referred to the Utility Regulator for determination where the applicant has paid a connection fee.
- 9.3 Accordingly the question of whether or not the applicant has paid a connection fee does not inform whether or not the Utility Regulator has the jurisdiction to determine the dispute referred to it by TCI.
- 9.4 We note that in this respect the NI legislative provisions (i.e. Articles 19 to 25 of the Electricity Order) can be contrasted with the corresponding GB legislative provisions (sections 16 to 23 of the Electricity Act 1989). The GB legislation makes provision for an electricity distributor to be able to require an applicant to pay connection offer expenses (essentially a connection fee) pursuant to regulations made by the Secretary of State.
- 9.5 We acknowledge that each of the Statements of Charges listed in paragraph 4.17 enables NIE to require authorised generators to pay a connection application fee. However, the inclusion of such a provision in the Statement of Charges does not mean that where such a generator has not paid such a fee, the Utility Regulator does not have the jurisdiction to determine a dispute referred to it pursuant to Article 26 of the Electricity Order.
- 9.6 For completeness, but not relevant to the question of whether the Utility Regulator has jurisdiction to determine the dispute, we note that at the same time as submitting its application for a distribution connection TCI did actually pay a 'connection fee' of £40,500. It is not transparent from NIE's submissions whether this amount has been paid by NIE to SONI and if so for what purpose. We note that NIE has in its 24 May 2014 submissions (**B79**) stated that the fee was "*allocated to the 2012 transmission connection application*" but it does not clarify what this means in practice and whether TCI was informed of and agreed to the 'allocation'.

- 9.7 In addition, and again not relevant to the question of whether the Utility Regulator has jurisdiction to determine the dispute, we note that NIE submits that TCI, NIE and SONI agreed a joint approach to arriving at a connection offer using just one application fee and that this joint approach is reported in the minutes of the March 2012 meeting (**B14**). We note that the minutes of that meeting report that "*NIE and SONI agreed that the application fee paid to NIE 18 January 2012 [sic] will cover NIE & SONI's costs for processing application*". However, given it refers to NIE and SONI's costs it is not clear from these minutes that the connection fee would somehow be 'allocated' to any transmission connection application that may subsequently be made by TCI or indeed that TCI agreed to that being the case.
- 9.8 In responding to the Draft Determination, NIE clarified that where it receives a construction application from SONI for a transmission construction offer, because preliminary studies are required, it requires an application fee from SONI to cover such costs. It went on to explain that because TCI made an application to SONI for a transmission connection, NIE understood that the parties accepted that NIE would apply the £40,500 (it had received from TCI with its distribution connection application) to the transmission construction application costs. NIE's response does not clarify the basis on which it understood that the parties had accepted this. However, because the issue is not germane to the question of jurisdiction it is not necessary to explore this further.
- 9.9 To conclude on this particular issue, the Utility Regulator has the jurisdiction to determine the Dispute.

10 Section Ten – Issues to be Determined

10.1 The issues falling to be determined by us were set out in the Statement. We generally agree with the issues as set out in the Statement, but have made some changes following our consideration of the Dispute.

10.2 We consider that the issues to be determined in respect of TCI's application to NIE for a connection to be made between the Wind Farm and NIE's electricity distribution system are as follows.

Issue 1

10.3 The first issue to be determined by us is whether NIE is in receipt of a valid distribution connection application by virtue of which TCI is entitled to a connection offer from NIE for the making of a connection between the Wind Farm and NIE's distribution system.

Issue 2

10.4 The second issue to be determined by us is:

- (a) whether TCI is entitled to a connection offer which sets out charges that are referable to the March 2010 Statement of Charges (**B3**); or
- (b) whether NIE can make a connection offer which sets out charges that are not referable to the March 2010 Statement of Charges (**B3**) but instead are based on the October 2013 Statement of Charges (**B37**), even though the October 2013 Statement of Charges (**B37**) had not been approved by the Utility Regulator at the time TCI made its application for a connection.

Issue 3

10.5 The third issue to be determined by us is:

- (a) whether TCI is entitled to a connection offer which is based on the LCTA connection methodology set out in the March 2010 Statement of Charges (**B3**) and is entitled to a direct connection into the Limavady Main or elsewhere; or
- (b) whether NIE can make a connection offer which is based on a clustering methodology.

Issue 4

10.6 The fourth issue to be determined by us is whether the terms of the connection offer need to reflect and be compliant with the D-Code and the G-Code (in so far as the G-Code is applicable to the making of a connection between the Wind Farm and NIE's distribution

system), in force at the date of the connection application (18 January 2012) or at the date of this determination or some other more relevant or appropriate date.

11 Section Eleven – Determination

Issue 1

- 11.1 TCI requires a connection to be made between NIE's distribution system and the Wind Farm. It has given notice (on 18 January 2012) **(B13)** to NIE requiring NIE to offer terms for making the connection. The information available to us shows that the notice met the procedural requirements of Article 20 of the Electricity Order.
- 11.2 NIE has not submitted that any of the exceptions set out in Article 21 of the Electricity Order apply in the circumstances of the case.
- 11.3 We have considered the submissions made by NIE in response to the Draft Determination. NIE accepts that the connection application process does not mirror the process set out in Article 20 of the Electricity Order but submits that it provides a more streamlined and customer friendly process. We are not immediately persuaded by this argument. However, we do not need to reach a formal conclusion on the point as, in determining the Dispute, we are required to reflect the applicable legislative provisions.
- 11.4 Accordingly our determination is that TCI is entitled to a connection offer from NIE for the making of a connection between the Wind Farm and NIE's distribution system.

Issue 2

- 11.5 There is only one key question that arises in relation to Issue 2. That is whether TCI is entitled to a connection offer which is based on the LCTA connection methodology set out in the March 2010 Statement of Charges **(B3)**.
- 11.6 We consider that our determination in relation to this issue turns on the legal position of:
- (a) whether, for the purposes of determining the terms as to charges, which it is reasonable in all the circumstances of the case for a complainant to be required to accept, the Utility Regulator should apply the same tests as would ordinarily be applied by NIE under its licence conditions, including for example that the charges are, unless manifestly inappropriate, referable to and set in conformity with the applicable Statement of Charges, and
 - (b) if so, which Statement of Charges is the applicable Statement of Charges for the purposes of determining the terms which need to apply to the making of the connection.
- 11.7 We have the benefit of a legal opinion given by our external legal advisers in respect of another (similar but not identical) dispute between the Parties **(B100)**, which has been updated to take into account legal submissions made by the Parties **(B107 and B117)**. We

have accepted this legal opinion, which applies also in respect of this Issue 2, which confirms that in determining disputes the Utility Regulator should follow its policy unless there are justifiable reasons for not doing so.

- 11.8 The current policy with regard to connection charges is that they should, unless manifestly inappropriate, be referable to and in conformity with the October 2013 Statement of Charges.
- 11.9 We have given detailed consideration to the issue of whether or not there are justifiable reasons for not following our policy and also whether it would be manifestly inappropriate for us to apply the October 2013 Statement of Charges **(B37)**.

Following UR Policy

- 11.10 Having considered the submissions made by the Parties, we consider that there are no justifiable reasons for departing from the Utility Regulator's policy in making our determination in relation to the Dispute.
- 11.11 We do not consider that any of the submissions put forward by TCI justify departing from the uniform application of the policy, particularly where the policy itself provides for exceptions to ensure that it is not of overly rigid application.
- 11.12 The Utility Regulator's policy is not inconsistent with Article 32 or any other provision of the Directive. The policy clearly provides for charging methodologies to be approved and published before they come into effect and for connection offers and charges to be referable to such approved and published charging methodologies. Accordingly no justifiable reasons for departing from the policy have been made out by TCI.

Manifestly Inappropriate

- 11.13 We have received and accept legal advice that applying a particular Statement of Charges would be manifestly inappropriate if it is clearly and obviously wrong or inappropriate, and that this test has a higher threshold than the test of unreasonableness.
- 11.14 In its response to the Draft Determination **(B112 and B114)** TCI contends it would be manifestly inappropriate for the Utility Regulator to determine the terms as to charges such that they are referable to and set in conformity with the October 2013 Statement of Charges.
- 11.15 In doing so TCI firstly refers to the reasons given in the opinion of its legal advisors (Pinsent Masons LLP) dated 30 June 2014 **(B86)**. The specific reasons given in that opinion do not however refer to the Dispute⁵ and the legal arguments raised were responded to in the legal opinion which accompanied the Draft Determination.

⁵ They refer to the dispute relating to Pigeon Top Wind Farm and to the circumstances of that dispute. This is particularly evident from the subject title which reads "Legal Opinion in relation to the Complaint by TCI Renewables Limited (Pigeon Top

11.16 In addition -

- (a) TCI states it is manifestly inappropriate for the October 2013 Statement of Charges to apply as the delay referred to in the Draft Determination was caused by NIE's negligence and mismanagement of the connection process; and
- (b) Counsel for TCI has in his legal opinion concluded that NIE applying the October 2013 Statement of Charges for the purpose of making the connection offer would allow NIE to take advantage of its own default in not complying with its licence obligations.

11.17 We have considered the above submissions.

11.18 It is evident from the information before us that there was some delay on the part of NIE in the process it followed. We are also conscious that NIE has not made a connection offer to TCI.

11.19 Although matters which relate to NIE's potential non-compliance with licence obligations are formally outside the scope of our determination, such that we reach no formal conclusions at this stage as to whether any breach of those obligations took place, there is little doubt that they indicate certain failures of good practice throughout the whole connection process. This is because NIE did not make absolutely clear to TCI that it was not making a connection offer to TCI as sought by TCI.

11.20 In addition, NIE did not make clear at the outset that the purpose of the paper it prepared in conjunction with SONI in December 2012 was to provide budget costs on the connection scenarios set out in it, and that the paper was not setting out which of those options were technically acceptable for the purpose of connecting the Wind Farm.

11.21 Further, NIE did not respond with speed or clarity to TCI's requests for further information with regard to the application of the D-Code, the status of proposed changes to the D-Code and how (if at all) such changes impacted on the information it had previously provided to TCI.

11.22 However, we also note that any delay with regard to bringing this matter to a conclusion was not only on the part of NIE. TCI also played its part in that delay.

11.23 We note that following its connection application of 18 January 2012 a progress meeting was held on 5 March 2012 but that the next progress meeting was not until eight months later. There is no evidence before us which confirms that TCI made attempts to progress the matter more quickly during that period.

11.24 The position with regard to the December 2012 paper was clarified by NIE within 2 days of receiving TCI's further request or clarification that it wanted a LCTA based direct connection

Wind Farm)" and paragraph 2.12 of the opinion which reads "...it would be manifestly inappropriate for the Authority as a best practice regulator to determination in relation to this complaint the terms..." [underlining is our emphasis]

and confirmed in writing by way of an updated paper issued on 15 March 2013. Although TCI questioned NIE's reasons for this being the case at the time it was more than three months later that it formally sought further information in respect of the concerns it had in relation to the D-Code.

- 11.25 In addition TCI proceeded with an application for a transmission connection on 24 May 2013. It was therefore known to TCI at this time that a connection offer on the basis sought by TCI was not forthcoming. TCI therefore had opportunity to refer the matter to the Utility Regulator as a dispute sooner than it did.
- 11.26 In conclusion, therefore, it appears to us that the process related to the connection application in this case was prolonged, and that the Parties could have done much more to bring the matter to finality – or, if they could not do so, to refer it to the Utility Regulator – at a much earlier stage. NIE's approach was not a model of good process. However, TCI also did not do what it might reasonably have been expected to do in order to progress the matter; it had every reason to understand that the charging statement was likely to be amended before the matter was concluded if the lengthy delay continued, and yet itself contributed to that delay.
- 11.27 We conclude therefore that any delay that occurred was attributable to the actions and the inaction of both of the Parties, and it cannot simply be characterised, as TCI has submitted, as a matter delay by NIE on which it has later sought to rely to its own benefit.
- 11.28 On balance, having taken into account (i) the Parties' submissions, (ii) the matters noted above, and (ii) the legal advice on the test for what is manifestly inappropriate, including that it is a high threshold, we do not consider that there is sufficient reason for us to depart from the usual approach of giving effect to the applicable charging statement (in this case the October 2013 Statement of Charges) in all the circumstances of the case.
- 11.29 We do not consider it manifestly inappropriate for us to apply the October 2013 Statement of Charges.

Issue 3

- 11.30 Issue 3 is not concerned with the basis of the charges for connection (which has been determined under Issue 2) but with other terms relating to the connection, specifically terms which relate to the design of the connection.
- 11.31 NIE submits that it cannot make a connection offer which is based on a direct connection into Limavady Main but could make an offer based on a connection into a new cluster substation. TCI submits that it is entitled to a direct connection into Limavady Main.

- 11.32 Having considered the relevant issues, it is our view that it was and remains reasonable in all the circumstances of the case for NIE to make a connection offer including terms that provide for the connection to be made through a cluster substation, and we therefore so determine.
- 11.33 As a preliminary point, we have determined under Issue 2 that (for the purposes of charging) the applicable Statement of Charges is the October 2013 Statement of Charges (**B37**), which clearly makes provision for clustering as the connection methodology.
- 11.34 However, even if we had determined that the applicable Statement of Charges was the March 2010 Statement of Charges (**B3**), this would not have precluded us from determining that it was reasonable in all the circumstances of the case for NIE to make a connection offer including terms that provide for clustering as the connection methodology.
- 11.35 A wind farm can be connected into a shared substation even if the applicable Statement of Charges is the March 2010 Statement of Charges (**B3**). This is because paragraph 6.7.3 of the March 2010 Statement provides for flexibility as to the design of the connection.
- 11.36 NIE has a statutory duty as an electricity distributor to develop and maintain an efficient, coordinated and economical system of electricity distribution (Article 12(1)(a) of the Electricity Order).
- 11.37 Both the 2010 Consultation (issued by NIE) (**B5**) and the Connection Policy Consultation (issued by the Utility Regulator) (**B9**) noted that the number and nature of generation connections to the distribution system has changed in the recent past, and this trend is expected to continue as a result of government targets and incentives for renewable and embedded generation.
- 11.38 This change in the number and type of connections requiring to be made to the distribution system is likely to have an impact on the actions that NIE will need to take in order to discharge its Article 12(1)(a) duty.
- 11.39 Adopting a clustering approach, in circumstances where it may be possible to do so, will allow more generation capacity to be connected to the distribution system. As a matter of first principle, it is also likely to result in the maintenance of a more efficient, coordinated and economical system of electricity distribution.
- 11.40 The alternative is a system based on individual connections carried out without reference to each other, even when they are closely proximate in time and in location. This is unlikely to be the most efficient, economical or coordinated way to proceed (and we do not consider that TCI has put forward evidence to suggest otherwise in relation to the Dispute).
- 11.41 For these reasons, as noted in the Decision Paper, the Utility Regulator has approved the principle of clustering.

- 11.42 In relation to the Wind Farm, NIE's proposal to base the connection on a clustering methodology appears to us to be consistent with the discharge of its Article 12(1)(a) duty.
- 11.43 Given all of the above, we believe it is reasonable in all the circumstances for NIE to make a connection offer including terms that provide for the connection to be designed on the basis of a connection to a cluster substation.
- 11.44 Accordingly our determination is that, while TCI is entitled to a connection offer, that connection offer may provide for the method of connection to be via a cluster substation and is not required to be a direct connection.
- 11.45 We acknowledge that, should NIE decide to proceed with connection through a cluster substation, this may delay the timetable for the eventual connection of the Wind Farm. We also appreciate that, given the length and nature of the process to date, TCI may feel frustrated by the possibility of further delay.
- 11.46 In any event, and in particular with regard to matters relating to costs, we wish to draw attention to the fact that our determination in relation to Issue 3 does not constitute (and shall not be taken as constituting):
- (a) an approval by the Utility Regulator for NIE to incur any expenditure in relation to any new cluster substation that may be considered by NIE as required for the purposes of making the connection or any other substation; or
 - (b) an approval by the Utility Regulator for NIE to incur any expenditure in the expectation that such expenditure can be recovered through NIE's allowed regulated revenue,
- nor does our determination mean (or should it be taken as meaning) that the Utility Regulator has considered or determined any of such matters.
- 11.47 In relation to this issue, in response to the Draft Determination, NIE has requested that we make provision for the connection offer to be conditional on the Utility Regulator granting approval for the construction of the cluster substation. NIE submits that it should be clear that such a conditional offer is compliant with the terms of the determination.
- 11.48 We do not accede to NIE's request and decline to make the provision sought by it. Such a conditional offer would not be compliant with our determination.
- 11.49 The connection offer which NIE issues to TCI must be capable of being accepted, which means that TCI must have sufficient certainty that the connection offered will be made and made on the terms set out in the offer.
- 11.50 Including conditional terms in the offer, of the type sought by NIE, will not provide sufficient certainty to TCI that accepting the offer will lead to a connection being made.

- 11.51 Where an application for funding of a cluster substation has been made to the Utility Regulator, that application will be duly considered by the Utility Regulator, including for example whether NIE's request for funding (including in particular the level of funding) meets the requirements applicable to the case (including for example requirements in relation to design). It is NIE's responsibility to ensure that the requirements are met. It cannot make the offer to connect conditional upon it meeting those requirements.
- 11.52 We acknowledge that there may be cases where the costs associated with the cluster which the Utility Regulator allocates to NIE to be recovered through NIE's allowed regulated revenue are less than those applied for by NIE but again this is not a sufficient reason for the connection offer to be conditional on the Utility Regulator's approval of the costs.

Issue 4

- 11.53 There is only one key question that arises in relation to Issue 4. This is whether the connection offer to which TCI is entitled needs to reflect the D-Code and, where applicable, the G-Code (each 'the Code') currently in force and effect or the version that was in force and effect at the date of TCI's application for a connection.
- 11.54 In determining connection disputes the Utility Regulator is required to consider the relevant licence conditions and unless there are justifiable reasons for not doing so, follow the policy set out in those conditions.
- 11.55 In accordance with the conditions of the Licence, NIE is required to comply with the D-Code (Condition 27 of the Licence) and in so far as applicable to it in its capacity as the owner and operator of the distribution system, with the G-Code (Condition 26 of the Licence). At any given time the Code with which NIE needs to comply is the Code that is at that time in force and effect. This is the Utility Regulator's policy as reflected in the relevant licence conditions.
- 11.56 We consider that there are no justifiable reasons for departing from this policy in making our determination in relation to the Dispute.
- 11.57 Accordingly, having considered all of the submissions of the Parties, our determination is that TCI is entitled to a connection offer which reflects, in respect such technical issues as are governed by the D-Code and/or the G-Code (to the extent it applies to the making of a connection between the Wind Farm and NIE's distribution system), the provisions of each Code in force and effect at the date of this determination.

12 Section Twelve – Concluding Observations

12.1 This Section Twelve is not part of our formal determination.

12.2 We note that this Dispute is the third connection dispute between the Parties that has been referred to the Utility Regulator for determination and that there are a number of similarities in respect of each of the disputes in respect of NIE's processes for dealing with connection applications.

Requests made by TCI

12.3 In its submissions in response to the Draft Determination, TCI asked the Utility Regulator to confirm whether it has enquired of NIE if it obtained external legal advice on its decision not to issue a connection offer for the Wind Farm given TCI's entitlement to a connection offer from NIE for the making of a connection between the Wind Farm and NIE's distribution system as noted at paragraph 11.3 of the Draft Determination.

12.4 The Utility Regulator has not made any enquiries of NIE as to whether it obtained such external legal advice.

12.5 TCI has also requested that the determination sets out the Utility Regulator's position on the matters that TCI has raised with regard to the impartiality and independence of the Decision-Makers and to include details of the procedures applied by the Utility Regulator to ensure it is running a transparent, independent and impartial determination process.

12.6 The Utility Regulator does not consider that it is necessary or appropriate for the determination to set out the information requested by TCI. The Utility Regulator has already relayed its position on such matters to TCI and, as confirmed at paragraph 3.18, the practice and procedures followed are set out in the Procedure.

TCI's Contentions in respect of the Draft Determination

12.7 We also consider it necessary and appropriate to respond to the following contentions made by TCI in its submissions to the Draft Determination.

12.8 TCI contends that in making the Draft Determination the Decision-Makers have not considered the applicable EU law as set out in Article 32 of the Directive. This is incorrect and unsubstantiated by the evidence. The legal opinion enclosed with the Draft Determination, which opinion was considered by us, clearly refers to matters concerning the application of Article 32 of the Directive. We considered fully the applicable EU law referred to by TCI.

12.9 TCI contends that in making the Draft Determination the Decision-Makers have not had full regard to all of TCI's submissions. Again this is incorrect and unsubstantiated by the evidence. We have reviewed all of the submissions made by TCI (and those made by NIE),

summarised these submissions in both our Draft Determination and this determination (which summaries have not been disputed as to their accuracy or completeness by either Party) and taken legal advice in respect of the legal matters raised by such submissions.

NIE's Processes

- 12.10 We consider that NIE's processes are not as transparent as they could be including in particular with regard to the nature and extent of information being provided to applicants in respect of the connections being sought by them.
- 12.11 The Utility Regulator has in its previous determinations encouraged NIE to review its procedures for dealing with connection applications with a view to ensuring that such applications are dealt with in a systematic, transparent and consistent manner. We consider that NIE needs to give particular focus to ensuring that applications are dealt with in a timely manner and that comprehensive and clear information, explanation and reasons need to be provided to applicants of the decisions being made by NIE in respect of the connection application.
- 12.12 In responding to the Draft Determination, NIE confirms that it is currently undertaking a full review of the connection process and arrangements for generation connections and is expecting to bring forward proposals for consultation by late summer.
- 12.13 We strongly encourage NIE to meet its proposed timescales in respect of this project.

Potential breaches of statutory and/or licence obligations

- 12.14 We also note some of the issues raised by TCI in its submissions refer to potential breaches by NIE of its statutory and/or licence obligations. At the present time the investigation team has not investigated and we have not considered the question of whether or not NIE was or is in breach of any statutory or licence obligation. These are matters relating to the Utility Regulator's enforcement functions and the Utility Regulator will consider separately whether it is necessary or appropriate for it to investigate the complaints made and/or consider exercising its enforcement functions.

13 Section Thirteen – The Order

13.1 TCI has effectively asked us to make an order under Article 26(1) of the Electricity Order to the effect that TCI should receive a connection offer which:

- (a) provides that the connection charges shall be those which reflect the charging methodology for the LCTA connection as set out in the March 2010 Statement, and
- (b) provides that the method of connection is a direct connection into the Limavady Main.

13.2 For the reasons given above, we decline to make an order in relation to either paragraph 13.1(a) or 13.1(b).

13.3 We order that NIE:

- (a) makes a connection offer to TCI for the connection of the Wind Farm to NIE's distribution system, which offer:
 - (i) shall include terms which provide for the connection charges to be paid by TCI on the basis of the charging methodology as set out in the October 2013 Statement of Charges **(B37)**;
 - (ii) does not need to include terms which provide for the method of connection to be a direct connection into the Limavady Main, but is not precluded from doing so should NIE wish to include such terms;
 - (iii) shall include terms which reflect, to the extent applicable and required, the provisions of the current D-Code and G-Code; and
- (b) makes such a connection offer to TCI such that it is:
 - (i) received by TCI no later than 21 working days from the date of this determination; and
 - (ii) capable of being accepted by TCI, should it wish to accept, without further delay.

Costs

13.4 The Procedures refer to the possibility of a costs order and therefore the Parties have been on notice to this effect. We also believe it unlikely that either of the Parties would be precluded by limited means from meeting any costs order that may be made.

13.5 In addition we invited submissions from the Parties as to whether we should make any incidental, supplemental or consequential provision, including provision requiring either Party

to pay the costs or expenses incurred by the Utility Regulator in making the order.

- 13.6 NIE's submissions on the question of costs are that it should not bear any of the costs incurred by the Utility Regulator on the basis that the Utility Regulator has declined to make the order that was effectively sought by TCI and given that the dispute should not have been brought on the basis that it was entitled to apply a cluster based connection method under the March 2010 Statement.
- 13.7 TCI's submissions on costs are that it would be entirely appropriate for us to make an order as to costs and expenses in its favour, such that NIE should be responsible for discharging all of TCI's costs and expenses reasonably by it, as it was through no fault of its own that it was left with no alternative but to refer the dispute for determination. TCI sets out a number of reasons for this submission.
- 13.8 It further submits that we may also wish to consider whether NIE should be responsible for all or part of the costs incurred by the Utility Regulator but without any particular supporting reasons.
- 13.9 We should note that we can only make provisions with regard to the Utility Regulator's costs. We cannot as submitted by TCI make provision for the costs of either Party to be borne (whether in whole or in part) by the other Party.
- 13.10 Having considered the relevant submissions and having had regard to the matters referred to in Article 26(8) of the Electricity Order, in this particular case we exercise our discretion not to make a costs order. However, this should not be regarded as setting any precedent as to the future.
- 13.11 The Utility Regulator expressly reserves the right to order the payment of costs in any other dispute and will consider each case on its own merits and circumstances.

Tanya Hedley

Brian McHugh

Authorised on behalf of the Utility Regulator

COMPLAINT TO THE UTILITY REGULATOR BY TCI RENEWABLES LIMITED (ON BEHALF OF BROCKAGHBOY WIND FARM LTD) IN RELATION TO NORTHERN IRELAND ELECTRICITY LIMITED'S CONNECTION ARRANGEMENTS FOR BROCKAGHBOY WIND FARM

Section A: - Relevant legislation and background documents

Redacted for Publication

Section B - Documents and correspondence relevant to the Complaint

Redacted for Publication