



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

Final Determination

8 June 2018

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

Final Determination

1 Section One – Introduction

- 1.1 The Northern Ireland Authority for Utility Regulation (the **Authority**) received on 1 March 2018, by way of a letter, a formal complaint from [REDACTED] (the **Complaint**) regarding a dispute between NIE Networks and him.
- 1.2 The dispute between [REDACTED] and NIE Networks (together, the **Parties**) relates to NIE Networks considering itself as being exempt from having to make payments under Article 14 of the Electricity (Standards of Performance) Regulations (Northern Ireland) 1993 for the period from 16 to 18 October 2017 at [REDACTED]
[REDACTED]
- 1.3 The dispute falls to be determined by the Authority under Article 42A of the Electricity (Northern Ireland) Order 1992 (the **Electricity Order**).
- 1.4 The Utility Regulator has considered this dispute in accordance with its Policy on the Resolution of Complaints, Disputes and Appeals and Guide for Applicants dated June 2013 (the **Procedure**).
- 1.5 The Utility Regulator CEO has appointed Tanya Hedley (Director of Compliance and Network Operations) and Caspar Swales (Manager in Finance & Network Assets) jointly to determine the dispute on its behalf (together, the **Decision-Makers**). We do so as delegates of the Utility Regulator and on its behalf.
- 1.6 This document is our final determination in relation to the Complaint. No representations were received from the Parties in respect of our draft determination of 17 May 2018.

1.7 In determining this dispute, we have had the benefit of being able to consider the following materials relevant to the background to the Complaint: -

- (i) A Report from the Investigating Team (the Investigation Report) prepared for us by a skilled staff member of the Authority; and
- (ii) One volume of documents (the Bundle) which contained all the papers submitted by the Parties.

Contained at Annex 1 are the documents referred to at 1.9 above.

1.8 This final determination adopts the following structure: –

- (i) Introduction (at Section 1);
- (ii) the Parties (at Section 2);
- (iii) the factual background to the dispute (at Section 3);
- (iv) the relevant licence conditions & statutory regulations (at Section 4);
- (v) Submission from NIE Networks regarding the restoration of supply at [REDACTED] [REDACTED] (at Section 5);
- (vi) Additional information submitted by NIE Networks at the request of the Authority (at Section 6);
- (vii) Our determination in relation to the issue (at Section 7).

2 Section Two – The Parties

[REDACTED]

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

NIE Networks Limited

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

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

2.4 It is licensed to undertake these activities and accordingly holds an electricity transmission licence and an electricity distribution licence (A3) granted or taken under Article 10(1)(b) and 10(1)(bb) of the Electricity Order (A1) respectively.

2.5 NIE Networks' distribution licence (A3) (also known as the successor distribution licence) is the relevant licence for the purposes of this dispute (the Licence).

3 Section Three - Factual Background

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

3.2 This dispute relates to NIE Networks considering itself as being exempt from having to make payments under Article 14 of the Electricity (Standards of Performance) Regulations (Northern Ireland) 1993 for the period from 16 to 18 October 2017 at [REDACTED]

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

Date	Event
2012	LV network reinforcement works carried out
Jun-13	Policy on the Resolution of Complaints, Disputes and Appeals and Guide for Applicants - http://www.uregni.gov.uk/uploads/publications/Appeals_Complaints_and_Disputes_Policy_-_June_13.pdf
2017	LV network patrolled with 10 poles being classed in good condition and 2 poles identified as having minor levels of decay
13/10/2017	Met Office Public Weather Advisor issues email to NIE Networks indicating potential weather at 10:28hrs
16/10/2017	Met Office Public Weather Advisor issues further email to NIE Networks indicating potential weather issues at 09:24hrs
16/10/2017	NIE Networks escalated in preparation of Storm Ophelia
16/10/2017	First High Voltage fault attributed to severe weather conditions occurred at 11:00hrs
16/10/2017	NIE Networks aware customer off supply at 17:54hrs
17/10/2017	[REDACTED] contacts NIE Networks at 11:34hrs
17/10/2017	[REDACTED] contacts NIE Networks at 15:42hrs
17/10/2017	[REDACTED] contacts NIE Networks at 17:04hrs

17/10/2017	██████████ contacts NIE Networks at 19:01hrs
18/10/2017	██████████ contacts NIE Networks at 08:01hrs
16/10/2017	At its peak 19:00hrs NIE Networks confirms that approx 20,000 customers off supply
18/10/2017	Supply restored at 09:20hrs
19/10/2017	██████████ compensation claim submitted to NIE Networks
19/10/2017	NIE Networks confirms receipt of compensation claim
30/10/2017	NIE Networks letter to ██████████ re Guaranteed Service Standards (GSS) confirming payment will not be made
22/01/2018	██████████ appeals decision by NIE Networks to exempt itself from making a payment under GSS
30/01/2018	NIE Networks letter to ██████████ re GSS again confirming payment will not be made
06/02/2018	██████████ seeks assistance from the Consumer Council Northern Ireland (CCNI)
07/02/2018	CCNI seeks further information from ██████████
12/02/2018	██████████ submits further information to CCNI
21/02/2018	CCNI confirms that it cannot provide further assistance
01/03/2018	██████████ submits formal complaint to Utility Regulator
05/03/2018	Utility Regulator formally accepts complaint as being properly made
05/03/2018	Utility Regulator information request to NIE Networks
20/03/2018	NIE Networks response to information request

4 Section Four – Relevant Licence Conditions & Statutory Regulations

The Licence requirements

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

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

4.3 The licence (the Licence) can be found at the following link:

<https://www.uregni.gov.uk/sites/uregni/files/media-files/NIE%20Distribution%20Licence%20effective%202022%20January%202018.pdf>

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

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

4.6 The Electricity (Standards of Performance) Regulations (Northern Ireland) 1993 (the Guaranteed Standards Regulations) are made by the Authority under Articles 42 and 64 of the Order.

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

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

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

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

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

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

- 5.1 NIE Networks provided a written submission in response to the Utility Regulator's request for information on 20 March 2018.

6 Section Six – Any additional evidence submitted by the Parties

6.1 On 16 April 2018, the Authority requested further information from NIE Networks and this was provided on 24 April 2018.

7 Section Seven – Determination in relation to Issue

7.1 On reviewing the evidence provided, we conclude the following:

- (i) The supply interruption was due to the effects of the weather and that a ‘Severe Weather Event’¹ (SWE) applied to this particular supply interruption. The *commencement threshold* (72 high voltage (HV) faults in the 24 hour period following the first HV fault attributed to the SWE) was breached by 142 HV faults over the 24 hour period beginning 11:00hrs on 16 October 2017.
- (ii) The effects of the weather experienced were outside the design standards of the network. That the LV fuse blew indicates the network reacted to the severe weather event as designed.
- (iii) NIE Networks had maintained the network applicable to this case in accordance with the appropriate standards of design and maintenance.
- (iv) NIE Networks had demonstrated that all reasonable steps had been taken to restore supply as soon as could reasonably have been expected.
- (v) Restoration was in line with the procedures set out in NIE Networks’ Emergency Plan document.

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

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

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

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

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

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

For the purposes of this definition:

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

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

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

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

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

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

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

Tanya Hedley and Caspar Swales

Authorised on behalf of the Authority

Annex 1

Bundle (Volume of Documents)

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

[http://www.uregni.gov.uk/uploads/publications/Appeals_Complaints_and_Disputes_Policy -
_June_13.pdf](http://www.uregni.gov.uk/uploads/publications/Appeals_Complaints_and_Disputes_Policy_-_June_13.pdf)

Report from investigation team to decision makers