

**COMPLAINT TO THE UTILITY REGULATOR BY ALTGOLAN WIND FARM LTD IN
RELATION TO A DISTRIBUTION SYSTEM CONNECTION OFFER DATED 23 OCTOBER 2018
MADE BY NORTHERN IRELAND ELECTRICITY NETWORKS LIMITED**

DETERMINATION

07.09.20

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1 SECTION ONE - INTRODUCTION

- 1.1 On 18 January 2019, the Northern Ireland Authority for Utility Regulation (the **Authority** - and hereafter referred to as the **Utility Regulator**) received an application from Altgolán Windfarm Limited (**AWFL**)¹ requesting the Utility Regulator to determine a 'distribution connection' dispute (the **Dispute**) between AWFL and Northern Ireland Electricity Networks Limited (**NIE Networks**) (**B1**).
- 1.2 The Dispute relates to the terms of an offer made by NIE Networks to AWFL, dated 23 October 2018, for the connection of a 20MW windfarm, being developed by AWFL near the town of Killen in Northern Ireland (the **Wind Farm**), to NIE Networks' electricity distribution system (the **Connection Offer**) (**B2**).
- 1.3 The Connection Offer was made in response to an application made by AWFL to NIE Networks on 19 June 2018 requesting a connection of the Wind Farm to NIE Networks' electricity distribution system (**B3**).
- 1.4 The Dispute between AWFL and NIE Networks (each a **Party** and together the **Parties**) falls to be determined by the Utility Regulator under Article 26 of the Electricity (Northern Ireland) Order 1992 (the **Electricity Order**) (**A1**).
- 1.5 The Utility Regulator has progressed its determination of the Dispute in accordance with its Policy on the Resolution of Complaints, Disputes and Appeals and Guide for Applicants dated August 2018 (the **Policy**) (**A2**) – as adapted to reflect the circumstances of the case.
- 1.6 The Dispute was acknowledged and the Parties informed on 3 May 2019 (**B4**) that the Utility Regulator had the jurisdiction to determine the Dispute under Article 26 of the Electricity Order.
- 1.7 The Utility Regulator has appointed us, Claire Williams (a member of the Authority) and Colin Broomfield (Director in Wholesale Markets), to jointly determine the Dispute (together, the **Decision-Makers**)². We do so as delegates of the Utility Regulator and on its behalf.
- 1.8 This document is our determination in respect of the Dispute and includes the order we make under Article 26 of the Electricity Order.
- 1.9 In reaching this determination, we have reviewed and considered the following materials and documents:
 - (a) A Statement of Case (the **Statement**) prepared for us by the case management team – the Statement sets out an overview of the background to the Dispute, the applicable

¹ The application itself was made by DW Consultancy Limited (**DWC** - AWFL's shareholder) acting for and on behalf of AWFL in respect of the matter.

² As confirmed to the Parties on 30 January 2020.

statutory and regulatory framework, the views of the Parties in respect of the Dispute and the issues to be determined.

- (b) The documents which accompanied the Statement (and also copied to the Parties), which include all of the submissions of the Parties.
- (c) Our determination on a preliminary matter as reflected in our Findings of Fact.

1.10 The Parties were also afforded the opportunity to comment on:

- (a) a draft of the Statement of Case; and
- (b) a provisional determination dated 31 July 2020 (the **Provisional Determination**).

1.11 This document is structured as follows:

- (a) The Parties to the Dispute (at Section 2),
- (b) Applicable legal framework (at Section 3),
- (c) Background to the Dispute (at Section 4),
- (d) Views of AWFL (at Section 5),
- (e) Views of NIE Networks (at Section 6),
- (f) Information Requests and Findings of Fact (at Section 7),
- (g) Issue for Determination (at Section 8),
- (h) Determination of the Issue (at Section 9),
- (i) Recovery of Utility Regulator's Costs (at Section 10), and
- (j) The Order (at Section 11).

1.12 This determination references a number of documents (including correspondence provided by the Parties). An index to these documents is attached at Appendix 1. The Parties have received copies of all of these documents.

2 SECTION TWO – THE PARTIES TO THE DISPUTE

ALTGOLAN WINDFARM LIMITED (AWFL)

- 2.1 AWFL is a subsidiary of DWC.
- 2.2 DWC is a UK-based renewable energy business which develops, builds and operates wind projects across Northern Ireland and the Republic of Ireland.
- 2.3 AWFL will own and operate the Wind Farm – which is planned to be a 20MW wind farm located within the townlands of Altgolan and Meenclogher, Killen, Castlederg, Strabane. Co Tyrone, Northern Ireland.
- 2.4 AWFL's registered office is at:
- Forsyth House
Cromac Square
Belfast
Northern Ireland
BT2 8LA
- 2.5 DWC is acting on behalf of AWFL in the Dispute.

NIE NETWORKS LIMITED (NIE Networks)

- 2.6 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.
- 2.7 NIE Networks is licensed separately in relation to both activities.
- 2.8 It is licensed to undertake these activities and accordingly holds an electricity transmission licence and an electricity distribution licence (**A3**) (the **Distribution Licence**) granted under Article 10(1)(b) and 10(1)(bb) of the Electricity Order (**A1**) respectively.

3 SECTION THREE - APPLICABLE LEGAL FRAMEWORK

- 3.1 The legal framework applicable in determining the Dispute is summarised below.
- 3.2 The Utility Regulator confirmed on 3 May 2019 that it has valid jurisdiction under Article 26(1A) of the Electricity Order (**A1**) to consider and to make a determination in respect of the Dispute.

The Electricity Order

- 3.3 Article 3 of the Electricity Order establishes a legal definition of distribution.
- 3.4 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 low voltage line to '*be construed accordingly*'.
- 3.5 The connection for the Wind Farm would be low voltage and, therefore, a distribution connection.
- 3.6 Articles 19 to 24 of the Electricity Order make provision in respect of distribution connections.
- 3.7 In particular, they establish:
- (a) a duty to connect on request (Article 19(1));
 - (b) a procedure for applicants who 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).
- 3.8 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'.

3.9 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.

3.10 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.

(3) Where a dispute arising under Article 19 to 25 between an electricity distributor and a person requiring a connection falls to be determined under this Article, the Authority may give directions as to the circumstances in which, and the terms on which, the

distributor is to make or (as the case may be) to maintain a connection pending the determination of the dispute.

- (4)
- (5) ...
- (6) *A person making an order under this Article shall include in the Order his reasons for reaching his decision with respect to the dispute.*
- (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. ..."*

3.11 Article 19(1)(a) of the Electricity Order places a duty on an electricity distributor to make a connection between a distribution system of his and any premises, when required to do so by:

"(i) the owner or occupier of the premises; or .."

3.12 Article 19(3) goes on to provide that:

"The duties under this Article shall be performed subject to such terms as may be agreed under Article 20 for so long as the connection is required."

3.13 Article 20 states:

"(1) Where a person requires a connection to be made by an electricity distributor in pursuance of Article 19(1), he shall give the distributor a notice requiring him to offer terms for making the connection.

(2) That notice must specify—

(a) the premises or distribution system to which a connection to the distributor's system is required;

- (b) *the date on or by which the connection is to be made; and*
 - (c) *the maximum power at which electricity may be required to be conveyed through the connection.*
 - (3) *The person requiring a connection shall also give the distributor such other information in relation to the required connection as the distributor may reasonably request.*
 - (4) *A request under paragraph (3) shall be made as soon as practicable after the notice under paragraph (1) is given (if not made before that time).*
 - (5) *As soon as practicable after receiving the notice under paragraph (1) and any information requested under paragraph (3) the distributor shall give to the person requiring the connection a notice –*
 - (a) *stating the extent to which the proposals specified in the other person's notice under paragraph (1) are acceptable to the distributor and specifying any counter proposals made by the distributor;*
 - (b) *...*
 - (c) *...*
 - (d) *specifying any other terms which that person will be required to accept under Article 24; "*
- 3.14 The provisions of Article 21 of the Electricity Order state that nothing in Article 19(1) requires an electricity distributor to make a connection if and to the extent that:
- (a) he is prevented from doing so by circumstances beyond his control;
 - (b) circumstances exist by reason of which his doing so would or might involve his being in breach of regulations under Article 32, and he has taken all such steps as it was reasonable to take both to prevent the circumstances from occurring and to prevent them from having that effect; or
 - (c) there is a lack of capacity or there are exceptional circumstances which render it impracticable for him to do so.
- 3.15 Article 21 of the Electricity Order further provides that without prejudice to the generality of paragraph (1), an electricity distributor is not required to make a connection if:

- (a) making the connection involves the distributor doing something which, without the consent of another person, would require the exercise of a power conferred on him by any provision of Schedule 3 and 4 (of the Electricity Order);
- (b) those provisions do not have effect in relation to him; and
- (c) any necessary consent has not, at the time of the request is made, been given.

3.16 Article 22 of the Electricity Order reads as follows:

"(1) Where any electric line or electrical plant is provided by an electricity distributor under Article 19(1), the distributor may require any expenses reasonably incurred in providing it to be defrayed by the person requiring the connection to such extent as is reasonable in all the circumstances.

(2) Regulations made, after consultation with the Authority, may make provision for entitling an electricity distributor to require a person requiring a connection in pursuance of Article 19(1) to pay to the distributor, in respect of any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of making the connection, such amount as may be reasonable in all the circumstances if—

(a) the connection is required within the prescribed period after the provision of the line or plant; and

(b) a person ("the initial contributor") has made a payment to the distributor in respect of those expenses, the line or plant having been provided for the purpose of making a connection to any premises or distribution system as required by that person.

(3) Regulations under paragraph (2) may require an electricity distributor who, in pursuance of this Article or the regulations, has recovered any amount in respect of expenses reasonably incurred in providing any electric line or electrical plant—

(a) to exercise his rights under the regulations in respect of those expenses; and

(b) to apply any payments received by him in the exercise of those rights in making such payments as may be appropriate towards reimbursing the initial contributor and any persons previously required to make payments under the regulations.

- (4) *Any reference in this Article to any expenses reasonably incurred in providing an electric line or electrical plant includes a reference to the capitalised value of any expenses likely to be so incurred in continuing to provide it."*

3.17 Article 23 of the Electricity Order reads as follows:

- "(1) *Subject to the following provisions of this Article, an electricity distributor may require any person who requires a connection in pursuance of Article 19(1) to give him reasonable security for the payment to him of all money which may become due to him under Article 22 in respect of the provision of any electric line or electrical plant.*
- (2) *If a person fails to give any security required under paragraph (1), or the security given has become invalid or insufficient, and he fails to provide alternative or additional security, the electricity distributor may if he thinks fit—*
- (a) *if the connection has not been made, refuse to provide the line or plant for so long as the failure continues; or*
- (b) *if the connection is being maintained, disconnect the premises or distribution system in question.*
- (3) *Where any money is deposited with an electricity distributor by way of security in pursuance of this Article, the distributor shall pay interest, at such rate as may from time to time be fixed by the distributor with the approval of the Authority, on every sum of 50p so deposited for every three months during which it remains in the hands of the distributor."*

3.18 Finally, Article 24 of the Electricity Order provides that an electricity distributor may require any person who requires a connection in pursuance of Article 19(1) above to accept in respect of the making of the connection:

- (a) *any restrictions which must be imposed for the purpose of enabling the distributor to comply with regulations under Article 32 (relating to supply and safety); and*
- (b) *any terms which it is reasonable in all the circumstances for that person to be required to accept; ...*

The Distribution Licence

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

- 3.20 More specifically, with regard to connection charges, paragraph 9(a) of Condition 30 (as presently in force) provides that any connection offer made by NIE Networks shall set out:

"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 consistent with and referable to the statements prepared in accordance with paragraph 1(b) (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 paragraphs 6 and 7 of Condition 32."

- 3.21 Paragraph 6 of Condition 32 of the Distribution Licence sets out the matters that the 'connection charging statement' (the **Connection Charging Statement**) prepared by NIE Networks pursuant to the obligation in paragraph 1(b) of Condition 32 needs to include.

- 3.22 Paragraph 7 of Condition 32 of the Distribution Licence reads:

"Connection charges for those items referred to in paragraph 6 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."

- 3.23 As confirmed by previous determinations made by the Utility Regulator on connection disputes, in reaching our determination we are required to consider the Connection Charging Statement that is in force at the time of the determination, not at the time that the application or offer was made.

- 3.24 The currently applicable Connection Charging Statement which is approved by the Utility Regulator, and therefore in full force and effect, is the "Statement of Charges for Connection to the Northern Ireland Electricity Networks' Distribution System" effective from 15 July 2020 (**A4**).

- 3.25 Accordingly, this is the relevant Connection Charging Statement for the purposes of the Utility Regulator's determination of the Dispute. However, there are no material or substantive differences to those sections of Connection Charging Statement that are relevant to this Dispute between the latest version and the version that applied when the Connection Offer was made by NIE Networks.

Practice and procedure

- 3.26 The practice and procedure to be followed by us in determining the Dispute on behalf of the Utility Regulator is set out in the Policy. The Policy has been supplemented, as required, in respect of this Dispute in order to ensure good governance and best practice.
- 3.27 For completeness, we note that the principal objective and general duties of the Utility Regulator under Article 12 of the Energy (Northern Ireland) Order 2003³ (the **Energy Order**) do not apply in relation to the determination of the Dispute (see Article 13(2) of the Energy Order for reference).

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

4 SECTION FOUR - BACKGROUND TO THE DISPUTE

- 4.1 The following summary of the factual background is derived from the relevant section of the Statement but with some minor drafting changes being made. We take the following summary to be accurate and adopt it for the purposes of this determination.
- 4.2 AWFL is developing the Wind Farm - a 20MW windfarm near the town of Killen in Northern Ireland.
- 4.3 AWFL submitted an application, requesting a connection of the Wind Farm to the electricity distribution system, to NIE Networks on 19 June 2018 (**B3**). NIE Networks issued the Connection Offer on 23 October 2018 (**B2**).
- 4.4 The Connection Offer included, among others, terms:
- (a) requiring AWFL to pay a proportion of the cost of the generation cluster infrastructure (the **Cluster Charge**); and
 - (b) setting out the amount of the Cluster Charge to be paid by AWFL as [REDACTED] ex VAT and setting out how the derivation of the Cluster Charge was calculated. The calculation was based on costs (stated as [REDACTED]) of the Drumquin Cluster – as the connection of the Wind Farm to the NIE Networks distribution system is proposed to be made to the distribution assets of the Drumquin Cluster.
- 4.5 On 14 December 2018 (**B5**), AWFL wrote to NIE Networks:
- (a) requesting, among other things, for more detail to be provided on the composition of the total Drumquin Cluster costs of [REDACTED]⁴; and
 - (b) referring to DWC's other subsidiary, Dooish Wind Farm Limited (**DWFL**) having been offered a transmission connection offer⁵ for its Wind Farm (then known as Curraghamulkin Wind Farm but now as Dooish Wind Farm) from SONI Limited (**SONI**) that also included a charge relating to the costs of the Drumquin Cluster which did not seem to have been considered in the calculation presented by NIE Networks in the Connection Offer, and asking NIE Networks to provide clarity on this issue⁶.
- 4.6 NIE Networks responded to AWFL's letter on 21 December 2018 (**B6**).
- 4.7 With regard to AWFL's request for more detail on the total costs of the Drumquin Cluster, NIE Networks' response stated that the Drumquin Cluster cost allocation was in line with its then

⁴ At paragraph 3.1 of AWFL's letter of 14 December 2018 (**B5**).

⁵ AWFL submitted a copy of this transmission connection offer from SONI to DWFL in its application to the UR for determination of the Dispute (**B20**).

⁶ At paragraph 3.2 of AWFL's letter of 14 December 2018 (**B5**).

current Connection Charging Statement and that the Cluster Charge was in line with the costs of the Drumquin Cluster, as also approved by the Utility Regulator⁷.

- 4.8 With regard to SONI's transmission connection offer (as referred to in AWFL's letter), NIE Networks responded that it could not discuss connection offers to third parties without the consent of the third party. It also stated it issues connection offers to the distribution system only based on its Connection Charging Statement.
- 4.9 In a further letter of 3 January 2019 (**B7**), AWFL:
- (a) sought from NIE Networks a breakdown of the [REDACTED] cost of the Drumquin Cluster⁸; and
 - (b) gave its consent (through DWC) to NIE Networks to discuss with SONI the connection offer from SONI to DWFL and confirmed that it had raised the issue about cluster charging with SONI and that SONI had granted an extension of time to DWFL for the acceptance of the transmission connection offer⁹.
- 4.10 The Parties held a telephone conference call on 14 January 2019 to discuss the queries raised in AWFL's letters.
- 4.11 On 17 January 2019, NIE Networks sent by email to AWFL, the follow up actions from the conference call on 14 January 2019 which, among other things, under point 3 headed Payment of Cluster Charge, set out a high level breakdown of the costs of the Drumquin Cluster and confirmed that NIE Networks agreed to review internally again (**B8**).
- 4.12 Also on 17 January 2019, NIE Networks sent a letter to AWFL (**B9**) stating that it would amend the Connection Offer to reflect an updated Scheduled Completion Date and Longstop Date. NIE Networks sent a further letter on 18 January 2019 in which it (i) confirmed the specific amendments, and (ii) stated that save for these amendments the whole terms and conditions of the Connection Offer shall continue in full force and effect (**B10**).
- 4.13 As referred to above, on 18 January 2019 AWFL referred the Dispute to the Utility Regulator for determination (copied to NIE Networks) but also asked for a meeting with the Utility Regulator and NIE Networks to discuss the Dispute. On 28 January 2019, NIE Networks also sent a letter to the Utility Regulator in relation to the Dispute (**B11**).
- 4.14 In its letter of 11 February 2019 (**B12**), the Utility Regulator agreed to hold a meeting to facilitate the possibility of a resolution between the Parties. That meeting was held on 21 March 2019 (**B13**). The meeting concluded with no agreement between the Parties and AWFL confirming

⁷ At paragraph 3.1 of NIE Networks' letter of 21 December 2018 (**B6**).

⁸ At paragraph 3.1 of AWFL's letter of 3 January 2019 (**B7**).

⁹ At paragraph 3.1 of AWFL's letter of 3 January 2019 (**B7**).

that it would consider whether it wished for the referral of the Dispute to be formally progressed by the Utility Regulator.

- 4.15 AWFL formally requested on 25 April 2019 (**B14**) for the Utility Regulator to progress with the process for its determination of the Dispute.

5 SECTION FIVE – VIEWS OF AWFL

5.1 The views of AWFL are set out in:

- (a) its letter of 18 January 2019 referring the Dispute to the Utility Regulator (**B1**);
- (b) its letter of 17 June 2019 (**B15**) sent in response to:
 - (i) NIE Networks correspondence of 17 May 2019 (**B16**); and
 - (ii) the Utility Regulator's information request of 4 June 2019 (**B17**); and
- (c) its response of 19 July 2019 (**B18**) to an initial draft of a Statement of Case (**B19**), in which it clarifies and confirms the issue in dispute.

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

5.3 The summary below, of the views which have been expressed by AWFL as relevant to the issue for determination, is derived from the relevant section of the Statement. We adopt it as accurate for the purposes of this determination.

Summary

5.4 AWFL disputes the amount (value) of the Cluster Charge set out in the Connection Offer.

5.5 This is on the basis that:

- (a) the transmission connection offer (**B20**) made by SONI to DWFL includes a Shared Connection Asset Charge which relates to the costs of the Drumquin Cluster;
- (b) the value of the Cluster Charge does not take account of the potential impact of the Shared Connection Asset Charge which SONI is requesting from DWFL; and
- (c) there would be a proposed over recovery of funds by both SONI and NIE Networks in respect of the costs of the Drumquin Cluster.

Cluster Charge

5.6 In its letter of 18 January 2019 (**B1**), AWFL states that it has a significant concern in relation to the value of the Cluster Charge being apportioned to AWFL and that this is because SONI's transmission connection offer to DWFL, which it states "*is also due to connect into the Drumquin*

Cluster, albeit via a transmission connection rather than a distribution connection", includes a 'Shared Connection Asset Charge' of [REDACTED]¹⁰.

5.7 AWFL's position is that the cost of the Drumquin Cluster is [REDACTED] and that NIE Networks has already recovered [REDACTED] of this from three other wind farm generators that are connected to the electricity distribution system by way of connecting to the infrastructure of the Drumquin Cluster¹¹.

5.8 It therefore contends that because SONI is charging DWFL a 'Shared Connection Asset Charge' of [REDACTED] and NIE Networks is charging AWFL a Cluster Charge of [REDACTED], there is an over-recovery by NIE Networks and SONI (jointly) of [REDACTED] and that there is no policy or methodology for NIE Networks or SONI to fully redistribute this over-recovered amount¹².

5.9 In support of its position, AWFL refers to:

- (a) Condition 30 of NIE Networks' distribution licence which is titled 'Requirement to Offer Terms for Connection to and Use of Distribution System' and more specifically to paragraph 3(b) of Condition 30 which reads:

"For the purposes of determining an appropriate proportion of the costs directly or indirectly incurred in carrying out works...under an agreement for making a connection...the Licensee shall have regard to...the ability or likely future ability of the Licensee to recoup a proportion of such costs from third parties".

- (b) Condition 32 of NIE Networks' distribution licence which is titled 'Basis of Charges for Use of and Connection to the Distribution System' and more specifically to paragraph 7 of Condition 32 which reads:

"Connection charges for those items referred to in paragraph 6 shall be set at a level which will enable the Licensee to recover 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...of any electric lines, electrical plant, meters,..."¹³

5.10 In its letter of 17 June 2019 (B15), AWFL states that:

¹⁰ At page 2 of AWFL's letter of 18 January 2019 (B1).

¹¹ At page 3 of AWFL's letter of 18 January 2019 (B1).

¹² As above.

¹³ At pages 3-4 of AWFL's letter of 18 January 2019 (B1).

- (a) it is waiting for further clarity from SONI as to how SONI has determined the £5 million Shared Connection Asset Charge and on how and where this charge will be distributed;
 - (b) without closure on the DWFL Shared Connection Asset Charge issue it cannot have confidence that the Cluster Charge is fairly due and properly calculated; and
 - (c) SONI has provided little explanation as to how Shared Connection Asset Charge is derived but has said that the costs will be passed through to NIE Networks as the distribution network operator¹⁴.
- 5.11 AWFL also states that NIE Networks' position that there is no statutory requirement on NIE Networks to accept from SONI any monies received by SONI which is the Shared Connection Asset Charge is in contrast to the position adopted by SONI¹⁵.
- 5.12 AWFL also contends that the lack of engagement between NIE Networks and SONI as to how their respective connection offers interact with each other is essentially at the crux of the Dispute (which is between AWFL and NIE Networks) and it appears that both NIE Networks and SONI have still not discussed these two connection offers, and the associated implications of trying to recover both the Cluster Charge and the Shared Connection Asset Charge¹⁶.
- 5.13 It proceeds to submit that the core issue of the Dispute is the value of the Cluster Charge being apportioned to AWFL and the proposed combined over recovery of funds by both SONI and NIE Networks in respect of the infrastructure of the Drumquin Cluster¹⁷.

¹⁴ At page 2 of AWFL's letter of 17 June 2019 (B15).

¹⁵ As above.

¹⁶ At page 3 of AWFL's letter of 17 June 2019 (B15).

¹⁷ As above.

6 SECTION SIX – VIEWS OF NIE NETWORKS

6.1 The views of NIE Networks are set out in:

- (a) its initial letter of 28 January 2019 (**B11**) sent to the Utility Regulator following its receipt (having been copied in by AWFL) of AWFL's referral of the Dispute to the Utility Regulator on 18 January 2019;
- (b) its letter of 17 May 2019 (**B16**) as sent in response to the Utility Regulator's letter of 3 May 2019 (**B4**), inviting it formally to make representations, if it wished to do so, in respect of the Dispute; and
- (c) its response dated 17 June 2019 (**B21**) to the Utility Regulator's request for information dated 4 June 2019 (**B17**).

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

6.3 The summary below, of the views which have been expressed by NIE Networks as relevant to the issue for determination, is derived from the relevant section of the Statement. We adopt it as accurate for the purposes of this determination.

Summary

6.4 NIE Networks contends that the fact that a different legal entity to AWFL has requested a transmission connection from SONI has no bearing on the amount of the Cluster Charge that NIE Networks is entitled to request (and AWFL is required to pay) in accordance with the apportionment provisions in NIE Networks' Connection Charging Statement.

Cluster Charge

6.5 In its letter of 17 May 2019 (**B16**), NIE Networks submits that:

- (a) Both AWFL and DWFL are companies with their own legal identity and that each company has made a connection application to licensees who also have their own legal identities and are not affiliated. That is that each of AWFL and DWFL has applied for a connection to different networks (namely the distribution network for AWFL and the transmission network for DWFL)¹⁸.
- (b) AWFL is seeking to link the Shared Connection Asset Charge applied by SONI in its transmission connection offer to DWFL (**B20**) to the Connection Offer made by NIE

¹⁸ At paragraph 2.11 of the supplementary document to NIE Networks' letter of 17 May 2019 (**B16**).

Networks to AWFL, but there is nothing which requires NIE Networks to take account of SONI's transmission connection offer to DWFL or indeed the joint ownership of DWC of both AWFL and DWFL. It states that there is no legislative or regulatory requirement or mechanism for NIE Networks to take account of such matters and therefore contrary to AWFL's submissions, NIE Networks is not required to "take cognisance" of the Shared Connection Asset Charge being levied by SONI¹⁹.

- (c) In issuing the Connection Offer, NIE Networks has taken full account of its responsibilities under the relevant conditions of its Distribution Licence, the Connection Charging Statement, and its stated policy for processing generation connection applications²⁰.
 - (d) The approach taken by NIE Networks to calculating the cost of the Drumquin Cluster is in accordance with the paragraph 7.4 of the Connection Charging Statement. That is that the proportion of the cluster to be paid for by AWFL is 20/90th with 20 being the MEC of the Wind Farm and 90 the correct denominator for the single transformer cluster substation at Drumquin²¹.
 - (e) The Shared Connection Asset Charge being requested by SONI from DWFL has not been the subject of agreement between SONI and NIE Networks with regard to either the need for it to be charged or the amount to be charged. NIE Networks has no control over the fact that SONI has applied the Shared Connection Asset Charge to DWFL.²²
- 6.6 NIE Networks also states that AWFL has not presented any reasons for its objection to the Cluster Charge other than to refer to the requirement for DWFL to pay SONI a Shared Connection Asset Charge²³.
- 6.7 NIE Networks also submits that any alleged over-recovery is entirely a matter for SONI to address and that there is no mechanism for NIE Networks to either accept monies received by SONI as a Shared Connection Asset Charge or to pay a rebate to any wind farm connecting to the Drumquin Cluster at distribution level. In support of this it also submits that its position has been confirmed by the Utility Regulator's letter of 15 December 2014 (B22)²⁴.
- 6.8 It proceeds to contend that even if a rebate mechanism did exist, the possibility of a rebate being due to AWFL because of a recovery of Shared Connection Asset Charge from DWFL by SONI may not materialise for some time (being dependent on energisation of the transmission

¹⁹ At paragraph 2.12 of the supplementary document to NIE Networks' letter of 17 May 2019 (B16).

²⁰ At paragraph 2.13 of the supplementary document to NIE Networks' letter of 17 May 2019 (B16).

²¹ At paragraphs 3.12 and 3.13 of the supplementary document to NIE Networks' letter of 17 May 2019 (B16).

²² At paragraphs 2.14 and 2.5 of the supplementary document to NIE Networks' letter of 17 May 2019 (B16).

²³ At paragraphs 3.13 of the supplementary document to NIE Networks' letter of 17 May 2019 (B16).

²⁴ At paragraphs 3.17 and 3.19 of the supplementary document to NIE Network' letter of 17 May 2019 (B16).

connection) and so could not be taken into account by NIE Networks when calculating the Cluster Charge payable by AWFL at the time of issuing the Connection Offer²⁵.

²⁵ At paragraphs 3.20 to 3.21 of the supplementary document to NIE Networks' letter of 17 May 2019 (**B16**).

7 **SECTION SEVEN – INFORMATION REQUESTS AND FINDINGS OF FACT**

Information Requests

7.1 On 4 June 2019, the Utility Regulator requested further information from NIE Networks with regard to the following matters:

- (a) the amount already recovered by NIE Networks from persons whose premises are connected to the electricity distribution system by way of a connection to the Drumquin Cluster;
- (b) when payment of the Cluster Charge is to be made by AWFL; and
- (c) details of those costs which fall within the costs of the Drumquin Cluster but are yet to be incurred by NIE Networks, together with an indicative timetable of when any such costs are scheduled to be incurred by NIE Networks²⁶.

(the first information request) (B17).

7.2 In its response to the first information request (B21) NIE Networks confirmed that:

- (a) there are three Wind Farms currently connected to the Drumquin Cluster and that it has recovered in full from each of these Wind Farms their share of the costs of the Drumquin Cluster infrastructure which amounts to a total of [REDACTED]²⁷;
- (b) the costs yet to be incurred by NIE Networks in respect of the Drumquin Cluster are estimated to be in the region of [REDACTED]²⁸; and
- (c) the Cluster Charge is payable in stages according to the terms of the Connection Offer. NIE Networks also set out when the Cluster Charge would be payable at each stage of the development depending on whether NIE Networks carried out all of the works or only those which are non-contestable. The amount paid at the cluster stage is offset against the security required²⁹.

7.3 On 26 July 2019 (B23), following DWFL's referral to the Utility Regulator of DWFL's dispute with SONI about the terms of the transmission connection offer made by SONI to DWFL, the Utility Regulator informed the Parties that given the potentially overlapping issues regarding the facts which apply in respect of both disputes, the Utility Regulator considered it necessary for

²⁶ At page 2 of the Utility Regulator's letter of 4 June 2019 (B17).

²⁷ At section 1 of NIE Networks' letter of 17 June 2019 (B21).

²⁸ At section 2 of NIE Networks' letter of 17 June 2019 (B21).

²⁹ At section 3 of NIE Networks' letter of 17 June 2019 (B21).

the facts which apply in respect of both disputes to be ascertained so that it could then proceed to determine each dispute.

7.4 On 14 August 2019, the Utility Regulator therefore requested the following from NIE Networks:

- (a) A detailed line diagram (or similar) of all the NIE Network owned network (e.g. lines, plant, etc.) which comprises the Drumquin Cluster and identifying (by way of using different colours or similar for the purposes of such identification):
 - (i) those parts of the network which are low voltage (i.e. less than 110 kilovolts); and
 - (ii) those parts of the network which are high voltage (i.e. of or exceeding 110 kilovolts).
- (b) A detailed breakdown of the costs incurred by it in respect of the construction/development of the network identified, in the diagram provided pursuant to the above, as low voltage.
- (c) Details of the costs associated with the 'shared connection asset' (for which SONI's connection offer to DWFL proposes the Shared Connection Asset Charge) that had been added to either the transmission RAB and/or the distribution RAB.

(the **second information request**) (B24).

7.5 The second information request also requested certain information that would or may have been exchanged between NIE Networks and SONI under Transmission Interface Arrangements (**TIA**) entered into between these two parties for the purposes of the planning and construction of the transmission assets forming part of the Drumquin Cluster.

7.6 NIE Networks responded to the second information request on 28 August 2019 (**B25**) and:

- (a) submitted a line diagram of the Drumquin Cluster which distinguishes the distribution and transmission assets;
- (b) submitted a table showing breakdown of the [REDACTED] identifying cost of network operating at 110kV and lower voltages;
- (c) stated that at that present time there are no costs associated with the 'shared asset' on either the transmission RAB or the distribution RAB;
- (d) submitted files and documents relating to the planning and construction of the transmission assets of the Drumquin Cluster.

7.7 Having considered NIE Networks' response to the second information request, on 8 November 2019, the Utility Regulator made a further information request to NIE Networks as follows:

- (a) Whether NIE Networks has paid any monies to SONI which relate to, or are in respect of the costs of, the Drumquin Cluster. A 'yes' or 'no' response is required to this question.
- (b) If yes, details of:
 - (i) the amount of each payment made;
 - (ii) the date of each payment;
 - (iii) what the amount paid related to (i.e. for which costs of SONI); and
 - (iv) in which capacity (i.e. as distribution licensee or transmission licensee), NIE Networks paid the amount to SONI.
- (c) Where information is provided in response to (b):
 - (i) whether any or all of the total amount paid by NIE Networks to SONI has been recovered, or is due to be recovered, by NIE Networks from another third party; and
 - (ii) if so, how much of the total amount paid by NIE Networks to SONI, has NIE Networks recovered or is due to recover, from which third party, and the date, or likely date, of the payment from the third party.
- (d) Whether NIE Networks has received any monies from SONI which relate to, or are in respect of, the costs of the Drumquin Cluster. A 'yes' or 'no' response is required to this question.
- (e) If yes, provide details of:
 - (i) the amount of each payment received;
 - (ii) the date each payment was received;
 - (iii) what the amount paid related to (i.e. for which costs of NIE Networks); and
 - (iv) in which capacity (i.e. as distribution licensee or transmission licensee), NIE Networks received the amount from SONI.
- (f) Where information is provided in response to (e), in respect of the amount(s) received from SONI:

- (i) whether any or all of the amount received by NIE Networks from SONI has been recovered, or is due to be recovered, by NIE Networks from another third party; and
- (ii) if so, how much of the amount(s) received from SONI, NIE Networks has recovered, or is due to recover, from which third party and the date or likely date of the payment from the third party.

(the **third information request**) (B26).

7.8 NIE Networks responded to the third information request on 15 November 2019 (B27) and confirmed that:

- (a) it had not paid any monies to SONI which relate to or are in respect of the costs of the Drumquin Cluster; and
- (b) it had not received any monies from SONI which relate to or are in respect of the costs of the Drumquin Cluster.

Findings of Fact

- 7.9 Having also made information requests to the parties in the DWFL/SONI dispute and received responses to such requests, on 6 December 2019 the Utility Regulator sent a draft statement setting out the facts established from the responses provided by NIE Networks and SONI (**draft statement of facts**) (B28).
- 7.10 The Utility Regulator confirmed that if any one of the parties to either dispute disagreed with the facts set out in the draft statement of facts, we as the Decision-Makers would determine this as a preliminary matter and make a finding of facts which would apply for the purposes of the proceeding to determine the Dispute.
- 7.11 There was not unanimous agreement to the draft statement of facts.
- 7.12 On 24 March 2020, we determined the facts as a preliminary matter and made the Findings of Fact (B29).
- 7.13 Accordingly, the facts which apply for the purposes of this determination are those which are set out in the Findings of Fact.

8 SECTION EIGHT – ISSUE FOR DETERMINATION

- 8.1 Paragraph 8.2 below confirms the issue to be determined by the Utility Regulator. The same issue for determination was set out in our Provisional Determination and was not commented on by either Party.
- 8.2 The issue to be determined by us as the Decision-Makers in respect of the Dispute is whether NIE Networks is entitled to request and recover from AWFL the amount of the Cluster Charge stated in the Connection Offer.

9 SECTION NINE – DETERMINATION OF THE ISSUE

- 9.1 The issue for determination by us is whether NIE Networks is, in respect of the connection requested by AWFL for the Wind Farm to be connected to the electricity distribution system, entitled to request and recover from AWFL the amount of the Cluster Charge stated in the Connection Offer.
- 9.2 In making our determination we have taken full account of the Findings of Fact.
- 9.3 The Connection Offer provides that the Cluster Charge:
- (a) is a proportion of the cost of the generation cluster infrastructure;
 - (b) is based on the charging arrangements set out in section 7 of the Connection Charging Statement;
 - (c) the relevant generation cluster infrastructure is known as the Drumquin Cluster; and
 - (d) amounts to [REDACTED].
- 9.4 Section 7 of the Connection Charging Statement is entitled "NIE Networks' Charging Arrangements for Authorised Generators connecting to the network as part of a Generator Cluster".
- 9.5 Paragraph 7.1 of the Connection Charging Statement confirms that section 7 sets out the charging principles applied to the connection of Authorised Generators to generation cluster infrastructure ³⁰.
- 9.6 Paragraph 7.8 of the Connection Charging Statement provides that, subject to the requirements of paragraph 7.14³¹, the proportion of the cost of the Drumquin Cluster infrastructure that will be charged to each Authorised Generator that is connecting to the First Transformer is assessed on the basis of (a) the MVA of capacity installed or to be installed by each Authorised Generator connecting to the generation cluster infrastructure, divided by (b) the connection capacity of the relevant cluster infrastructure. Paragraph 7.15 provides an illustration of how the charges are applied in the given example.

³⁰ Which may be Designated Generation Cluster Infrastructure, Approved Generation Cluster Infrastructure or Constructed Generation Cluster Infrastructure (in each case as that term is defined in the Connection Charging Statement). The Connection Offer does not confirm the category of generation cluster infrastructure in respect of the Drumquin Cluster but nothing turns on this for the purpose of this provisional determination.

³¹ Paragraph 7.14 essentially provides that where the generation cluster infrastructure is constructed and the construction is complete, RPI will be applied to the costs of the relevant generation cluster infrastructure when calculating the Authorised Generator's contribution.

- 9.7 A First Transformer is defined in section 12 of the Connection Charging Statement as *"the first electrical transformer to be installed or installed as part of the [generation cluster infrastructure] having an electricity capacity not exceeding 90MW"*.
- 9.8 AWFL's primary contention is that NIE Networks is not entitled to recover the amount of the Cluster Charge in circumstances where:
- (a) its subsidiary DWFL is in receipt of a transmission connection offer which provides for a 'Shared Connection Asset Charge';
 - (b) the 'Shared Connection Asset Charge' relates to the costs of the Drumquin Cluster;
 - (c) the value of the Cluster Charge does not take account of the potential impact of the Shared Connection Asset Charge which SONI is requesting from DWFL; and
 - (d) if AWFL were to pay the Cluster Charge to NIE Networks and DWFL were to pay the 'Shared Connection Asset Charge' to SONI, there would be an over-recovery of the costs of the Drumquin Cluster.
- 9.9 NIE Networks' primary contention is that it is entitled to request (and AWFL is required to pay) the amount of the Cluster Charge as this is in accordance with the apportionment provisions in the Connection Charging Statement and its responsibilities under the relevant Conditions of its Distribution Licence.
- 9.10 It is not in dispute between the Parties that:
- (a) AWFL is an Authorised Generator³²;
 - (b) the Wind Farm is to be connected to generation cluster infrastructure;
 - (c) the relevant generation cluster infrastructure is the infrastructure known as the Drumquin Cluster; and
 - (d) the connection of the Wind Farm to the Drumquin Cluster is by way of a connection to a First Transformer.
- 9.11 That being the case, section 7 of the Connection Charging Statement, is applicable in respect of the connection charges that apply with regard to the connection of the Wind Farm to the NIE Networks' electricity distribution system.
- 9.12 The Connection Charging Statement meets the requirements of Condition 32 of the Distribution Licence and is approved by the Utility Regulator. The methodology for calculating the relevant

³² By reference to the definition of that term in section 12 of the Connection Charging Statement.

proportion of the costs of the Drumquin Cluster from persons connecting to the electricity distribution system forming part of the Drumquin Cluster is accordingly approved by the Utility Regulator.

- 9.13 Given the above we are satisfied that NIE Networks is entitled to request and recover from AWFL an amount that reflects a proportion of the cost of the Drumquin Cluster as assessed on the basis of the MVA of capacity installed or to be installed by AWFL.
- 9.14 We are also satisfied that NIE Networks' entitlement to request and recover such an amount from AWFL is not informed or negated by the fact that SONI has made a Transmission Connection Offer to DWFL (a subsidiary of AWFL) that requests a Shared Connection Asset Charge relating to the costs of the Drumquin Cluster.
- 9.15 The costs of the Drumquin Cluster are [REDACTED]. The connection capacity of the Drumquin Cluster is 90MW and the MVA capacity of the Wind Farm is 20MW.
- 9.16 Our determination therefore is that NIE Networks is entitled to request and recover from AWFL a 'cluster charge' which is calculated on the basis of (i) dividing [REDACTED] (the costs of the Drumquin Cluster) by 90 (the distribution connection capacity of the Drumquin Cluster), and (ii) multiplying the amount derived from (i) by 20 (the MVA capacity of the Wind Farm).

10 **SECTION TEN – RECOVERY OF THE UTILITY REGULATOR'S COSTS**

Making a Costs Order

- 10.1 Paragraph 7 of Article 26 of the Electricity Order provides that an order made under the Article 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 Utility Regulator in making the order) as the Utility Regulator considers appropriate.
- 10.2 In its letter of 3 May 2019 (**B4**), the Utility Regulator:
- (a) confirmed to the Parties that it had accepted AWFL's application as a referral of a dispute under and in accordance with Article 26 of the Electricity Order;
 - (b) in accordance with the Policy³³, drew the Parties' attention to Article 26(7) of the Electricity Order; and
 - (c) informed the Parties that it was likely that a costs order would be made.
- 10.3 Paragraph 8 of Article 26 of the Electricity Order provides that in including in an order such provision as to costs and expenses as mentioned in paragraph 7, the Utility Regulator shall have regard to the conduct and means of the parties and other relevant circumstances.
- 10.4 The Policy³⁴ states that where the Utility Regulator is considering whether to make a provision for payment of the Utility Regulator's costs, it will have regard to:
- (a) the nature and complexity of the complaint or dispute;
 - (b) the resources of the parties;
 - (c) the conduct of the parties in relation to the complaint or dispute (whether before or after the date of the application);
 - (d) the outcome of the complaint or dispute; and
 - (e) what is fair and proportionate in all the circumstances of the case.
- 10.5 The Utility Regulator's letter of 3 May 2019 (**B4**) also referred the Parties to its published Information Note setting out and confirming its policy on cost recovery in respect of its dispute settlement role.

³³ Paragraph 9 of Section D of the Policy.

³⁴ At paragraph 24 of Section D of the Policy

10.6 Among other things, the Information Note confirms:

- (a) that, other than in exceptional cases, whenever the Utility Regulator determines a dispute in respect of which it has the power to recover its costs, it will make a costs order; and
- (b) that the Utility Regulator will take into account all the circumstances of the case in determining which party (or parties) is required to pay its costs.

Provisional Conclusion on Recovery of Costs

10.7 Our provisional conclusions on the recovery of the costs and expenses incurred by the Utility Regulator, as set out in the Provisional Determination, were that it would be appropriate for the order determining the Dispute to include provision requiring AWFL to pay a sum amounting to the full amount of the expenses, namely its external costs, incurred by the Utility Regulator in determining the Dispute.

10.8 The reasons for these provisional conclusions were set out in the Provisional Determination, namely that (a) the starting point was for AWFL to make a payment in respect of the costs incurred by the Utility Regulator, and (b) having considered the circumstances of the case we did not identify any reasons which led us to move away from that starting point.

Parties' submissions on the provisional conclusions

10.9 NIE Networks did not make any submissions on the provisional conclusions relating to costs and the provisional costs order.

10.10 AWFL submitted that the Utility Regulator should not make provision for AWFL to pay the external costs incurred by the Utility Regulator because it is not fair and proportionate in all of the circumstances of the case for the following reasons:

- (a) the Dispute arose due to the fact that AWFL and its related company DWFL were in a unique, exceptional and unprecedented situation in respect of two separate network connections involving overlapping issues which would result in the over-recovery of costs of the Drumquin Cluster (and AWFL was not the author of that situation);
- (b) AWFL (through DWC) raised the matter with NIE Networks and SONI and sought to understand the position and have the situation resolved;
- (c) it (AWFL) was not legally in a position to decide who amongst NIE Networks and SONI were adopting the correct position;

- (d) had AWFL considered it to be a stand-alone case relating solely to the Connection Offer it would not have raised a dispute; and
- (e) in and of itself the Dispute was not overly complex;
- (f) if it had not been for the 'overlapping and complex' issues with the DWFL Dispute there would have been no requirement for the Utility Regulator to retain external advisors; and
- (g) when considering the provisional outcomes for both this Dispute and the DWFL Dispute, the Utility Regulator has ruled in favour of the overall position adopted by DWFL and AWFL.

10.11 AWFL also:

- (a) made submissions in respect of the amount of the external costs incurred on the basis that it believed they represented 50% of the total costs of both this Dispute and the AWFL Dispute; and
- (b) submitted that imposing costs on AWFL in the circumstances of this case may well impose an impediment or barrier in respect of seeking just and fair determinations from the Utility Regulator.

10.12 We have given careful consideration to AWFL's submissions and make the following points and observations:

- (a) The Dispute was referred to the Utility Regulator for determination almost three months prior to the DWFL Dispute and therefore costs and expenses were incurred in respect of it prior to the DWFL Dispute being referred to the Utility Regulator.
- (b) The Utility Regulator is entitled to retain and use external advisors as it considers necessary or appropriate for the purposes of being in a position to exercise its functions, including the determination of disputes. In respect of this Dispute it retained external advisors for the purposes of facilitating its management and determination of the Dispute and not for the reason that the DWFL Dispute had also been referred to it.
- (c) AWFL states that it was not legally in a position to decide which of NIE Networks or SONI was adopting the correct position but also confirms that it did not engage third party counsel. AWFL could have engaged third party counsel to advise it on the matter.
- (d) Had AWFL engaged third party counsel it is possible that it may not have taken the decision to refer the Dispute to the Utility Regulator. This is particularly so in the context where AWFL:

- (i) asserts that the Dispute was not in and of itself overly complex; and
- (ii) confirms that if it were not for the DWFL transmission connection offer there would have been no requirement to raise the Dispute.
- (e) The external costs incurred in respect of the Dispute are not based on or calculated on the basis of 50% of the total costs of the two disputes. They are based on the costs incurred by the Utility Regulator in respect of this Dispute and not by reference to the total costs of both disputes.
- (f) The outcome of any dispute is not to be, and cannot be, considered, assessed or determined by the outcome of any other separate dispute.
- (g) We have determined not to make the order that AWFL, in referring the Dispute to the UR for determination, effectively asked us to make under Article 26(1) of the Electricity Order.
- (h) We do not consider that in the circumstances of this case, ordering AWFL to make a payment to the Utility Regulator in respect of its costs/expenses makes the dispute resolution process inaccessible for any or all other persons. Each case will be considered on its merits and in accordance with our statutory powers and duties and taking account the particular circumstances of that case.

10.13 However, we do note that:

- (a) AWFL had, prior to referring the Dispute to the Utility Regulator for determination, engaged in various correspondence and meetings with NIE Networks (and the Parties to the DWFL Dispute) in an attempt to understand the issues relating to the costs (and recovery of costs) of the Drumquin Cluster; and
- (b) there was a level of confusion and misunderstanding which could be said to have resulted from the lack of information about the costs and recovery of costs of the Drumquin Cluster.

Conclusions on Costs

10.14 Taking all of the above into consideration, we have determined to include a provision in the Order (at Section 11) for AWFL to pay a sum which represents approximately (just under) 80% of the Utility Regulator's expenses, namely its external costs, incurred in determining the Dispute.

- 10.15 The Utility Regulator's total external costs on this matter are (just over) [REDACTED]. Accordingly, the effect of our Order is that AWFL shall pay a sum of [REDACTED] which equates to 80% of the external costs the Utility Regulator has incurred in making this determination.
- 10.16 The Utility Regulator will inform AWFL by way of separate correspondence on the method for making the payment.

11 SECTION ELEVEN – THE ORDER

11.1 AWFL has effectively asked us to make an order under Article 26(1) of the Electricity Order which provides that NIE Networks cannot request and recover from AWFL the amount of the Cluster Charge stated in the Connection Offer.

11.2 For the reasons given in section 9 we do not make that order. The Order we do make is set out below.

The Order

11.3 We order that NIE Networks is entitled to request and recover from AWFL the amount of the Cluster Charge stated in the Connection Offer.

11.4 We also order that by no later than 28 days from the date of this determination, AWFL makes a payment to the Utility Regulator of [REDACTED] which amount is 80% of the Utility Regulator's expenses (external costs of just over [REDACTED]) incurred in determining the Dispute.

Claire Williams and Colin Broomfield

Authorised on behalf of the Northern Ireland Authority for Utility Regulation

APPENDIX 1 – INDEX OF DOCUMENTS

Ref	From	To	Date	Document
A1			Latest Version	Electricity (Northern Ireland) Order 1992 - http://www.legislation.gov.uk/nisi/1992/231/contents
A2			Latest Version	Policy on the Resolution of Complaints, Disputes and Appeals and Guide for Applicants - https://www.uregni.gov.uk/publications/resolution-complaints-disputes-and-appeals-policy-and-guide-applicants
A3			Consolidated	NIE Networks' Distribution Licence (consolidated) - https://www.uregni.gov.uk/sites/uregni/files/media-files/NIE%20Distribution%20Licence%20-%20effective%2029%2001%202019.pdf
A4			Latest Version in effect from 1 February 2020	Statement of Charges for Connection to Northern Ireland Electricity Networks' Distribution System - https://www.nienetworks.co.uk/documents/connections/socc-1st-march-19-v1-4.aspx
B1	AWFL	UR	18/01/2019	Application by AWFL for UR to determine the Dispute
B2	NIE Networks	AWFL	23/10/2018	Connection Offer made by NIE Networks to AWFL
B3	AWFL	NIE Networks	19/06/2018	Connection application by AWFL to NIE Networks
B4	UR	AWFL and NIE Networks	03/05/2019	UR's letter to the Parties confirming acceptance, etc.
B5	AWFL	NIE Networks	14/12/2018	AWFL letter to NIE Networks with queries on the Connection Offer
B6	NIE Networks	AWFL	21/12/2018	NIE Networks' response to AWFL letter of 14/12/2018
B7	AWFL	NIE Networks	03/01/2019	AWFL's response to NIE Networks letter of 21/12/2018
B8	NIE Networks	AWFL	17/01/2019	Email from NIE Networks to AWFL following conference call between the Parties on 14/01/2019

Ref	From	To	Date	Document
B9	NIE Networks	AWFL	17/01/2019	Letter from NIE Networks to AWFL confirming that it would amend the Connection Offer.
B10	NIE Networks	AWFL	18/01/2019	Letter confirming the amendments to the Connection Offer
B11	NIE Networks	UR	28/01/2019	NIE Networks' initial response to AWFL's reference to the UR for determination of the Dispute.
B12	UR	AWFL	11/02/2019	Letter from UR to AWFL and Informal meeting proposals
B13	UR	AWFL/NIE Networks	20/03/2019	Email to AWFL and NIE Networks [UR to confirm that was to both Parties) attaching agenda for the 'tripartite' meeting between UR, AWFL and NIE Networks.
B14	AWFL	UR	25/04/2019	Email from AWFL to the UR attaching letter formally requesting the UR to progress with the determination of the Dispute
B15	AWFL	UR	17/06/2019	AWFL's letter responding to NIE Networks correspondence of 17 May 2019 and UR's correspondence of 4 June 2019
B16	NIE Networks	UR	17/05/2019	NIE Networks' representations to AWFL's referral of the Dispute to the UR
B17	UR	AWFL and NIE Networks	04/06/2019	Information request from the UR to NIE Networks (first information request)
B18	AWFL	UR	19/07/2019	AWFL's representations on an initial draft of a Statement of Case
B19	UR	AWFL and NIE Networks	02/07/2019	An initial draft of a draft Statement of Case (and the covering email)
B20	SONI	DWFL	29/08/2018	Transmission Connection Offer from SONI to DWFL
B21	NIE Networks	UR	17/06/2019	NIE Networks' response to the first information request
B22	UR	NIE Networks	15/12/2014	Letter from the UR with regard to the Statement of Charges for Connection to the Northern Ireland Electricity Distribution System
B23	UR	AWFL and NIE Networks	26/07/2019	Letter informing parties of need to ascertain the applicable facts given potentially overlapping issues with the dispute referred to for determination by DWFL (in respect of the transmission connection offer from SONI).
B24	UR	AWFL and NIE Networks	14/08/2019	Information request from the UR to NIE Networks (second information request)

Ref	From	To	Date	Document
B25	NIE Networks	UR	28/08/2019	NIE Networks' response to the second information request (includes cover email and letter)
B26	UR	AWFL and NIE Networks	08/11/2019	Information request from the UR to NIE Networks (third information request)
B27	NIE Networks	UR	15/11/2019	NIE Networks' response to the third information request
B28	UR	AWFL and /NIE Networks	06/12/2019	Draft Statement of Facts (with covering letter)
B29	UR	AWFL and NIE Networks	24/03/2020	Determination of Preliminary Matter - Findings of Fact (including cover letter and appendices)