



Response to

Review of Electricity Distribution and Transmission Connections Policy – next steps

Introduction

The arc21 Joint Committee ('arc21') is a Local Government sector statutory entity encompassing six Constituent Councils located along the Eastern Region of Northern Ireland. These Councils cover approximately 33% of the land mass of Northern Ireland and includes approximately 59% of its population and accounts for approximately 60% of the national Local Government controlled municipal waste arisings.

The establishment of arc21 and its functions is embodied in NI legislation and associated agreements. Consistent with EU, UK and Northern Ireland policy and legislative frameworks arc21 it is primarily responsible for activities associated with the production, ongoing development and implementation of a common statutory Waste Management Plan for the six Constituent Councils of arc21. These are Antrim and Newtownabbey Borough Council, Ards and North Down Borough Council, Belfast City Council, Lisburn & Castlereagh City Council, Mid and East Antrim Borough Council and Newry Mourne and Down District Council.

The statutory waste management plan incorporates the internationally accepted waste hierarchy. As well as waste prevention, minimisation, re-use, recycling the hierarchy also includes energy recovery from waste. arc21 is currently in the process of a public procurement for regional scale waste treatment infrastructure that includes a facility to recover energy from fuel derived from council collected waste (an 'energy from waste' EfW facility that generates electricity). The requirements for the public procurement are aligned with UK and NI energy policy in relation to reduction of the most damaging greenhouse gas emissions, energy security and resource management and also reflect key aspects of the Northern Ireland Sustainable Development Strategy.

The EfW will require a grid connection to achieve R1 'recovery' status consistent with the revised Waste Framework Directive.



Background

In November 2016 the Utility Regulator published a Call for Evidence relating to its review of electricity distribution and transmission connections policy to which arc21 responded. The responses to this call for evidence have now been considered and on 3 April 2017 the Utility Regulator issued a consultation document on the next steps.

The consultation document sets out the next steps in relation to the connections process and network management, customer service and transparency. The Utility Regulator also sets out its view of the issues considered in the consultation and identifies some potential actions it intends to undertake.

It also sets out a list of actions on issues that stakeholders feel are important and highlights the expectation that the Utility Regulator expects NIE Networks and SONI to consider what steps they need to take and then to begin to deliver actions.

It therefore anticipates that there will be further engagement with those organisations going forward.

Consideration is also given to modifications to NIE Network's and SONI's Licence with the aim of providing clarity and removing inconsistencies between their connections regulatory and legal obligations.

arc21 Response

1. Preliminary Observations

The projects arc21 promote do not currently participate in the electricity market as a power producer and are, through its residual waste treatment project, engaging with the sector as an owner of a generator for the first time. In this context, we would offer the following preliminary observations:

- 1.1 “Connections Market”** – it is difficult to reconcile the term “connections market” used in the consultation document with what has developed since 2002. Rather than a ‘market’ it has been and - as indicated by the Utility Regulator’s views in the Next Steps document – will continue to be an allocation of limited resources. We struggle to see why that is not recognised in plain language and future actions mapped out accordingly. The vista projected by NIE Networks (in their recent update letter to applicants for network connections) of a market where no transactions take place is in our view not a market, whether regulated or not.



1.2 Government Policy Framework – in para 1.10 of the next steps consultation document the Utility Regulator stresses “..we must work within the policy framework set by Government.” arc21 fully supports this providing it is done on a non selective basis. We feel that it is not right that some Government policies inform decision making and others are ignored.

In October 2016, the Executive agreed the publication of a draft *Programme for Government 2016-2021* for a period of consultation. This Programme for Government is a different model than before being constructed around a framework of outcomes. The outcomes in the framework were identified as being only achieved by collaboration and partnership across organisations and across sectors. Delivery plans have and are being developed by Government departments with input from a wide range of stakeholders which set out the intended approach to making progress on the achievement of outcomes, including collaboration across sectors. Local government has also widely adopted the outcome based model for Councils Community Plans as part of their response to the Part 10 of the Local Government Act (NI) 2014.

In January 2017 the Department for the Economy published proposals for a new Industrial Strategy *Economy 2030*. It prioritises key Investments in energy, waste treatment networks and facilities and recognises Northern Ireland’s major cities and population centres as drivers for economic growth and supporting this through investment in infrastructure.

arc21 believe that many of the outcomes desired by the draft Programme for Government and Industrial Strategy and associated indicators should inform policy and the Utility Regulator’s forward planning and actions. These include: increase environmental sustainability, promoting a modern and sustainable economic infrastructure, improve air quality, increase household waste recycling; improve our international reputation; and, increase the competitiveness of the economy.

Further, we are concerned that there is no reference in the consultation document to the Northern Ireland Executive’s Sustainable Development Strategy or the extant Sustainable Development Implementation Plan (particularly were DETI and DOE were identified as the lead Department for delivering Strategic Objectives) and given the timetable set in the Next Steps document (*‘Publication of Decision 30 May 2017’*) there appears no time allowed to consult key government departments such as the Department of Infrastructure, the Department for Finance and the Department for Agriculture, Environment and Rural Affairs on the outcome of the consultation. We believe, given the Utility Regulator’s declared mission is “**value and sustainability in energy and water**”, this is a significant oversight and weakness and should be addressed. It appears odd to us that the Utility Regulator could make a decision that



could impact sources of energy and electricity prices and all the consequences that has for the economic prospects of Northern Ireland for the next decade without consulting key government departments on the outcome of the consultation.

- 1.3 Technology neutrality / Non-discrimination** - we struggle to understand in the absence of a genuine market and if the oft quoted 'trilemma' is a frame for decision making, how the stances of technology neutrality by the Utility Regulator and non-discrimination licence condition imposed upon network operators are appropriate or desirable or necessary under extant legislation. It is common sense that a subsidy free price taking generator will reduce prices for consumers and that a non-intermittent generator that than can offer a range of system services will contribute more to system security than an intermittent wind powered generator. Why not recognise these in prioritising connection offers?
- 1.4 'Market' signals** – we struggle to understand why NIE Networks in its recent letters to applicants on their connection applications has been allowed by the Utility Regulator to seek to remove the evidence of the 'demand' for connections. If the Utility Regulator considers that a market exists then it is surprising that it considers 'demand' signals should be suppressed as this could result in decision the Utility Regulator may make in respect of the 'supply' side being based on false information.
- 1.5 Extant legislation** – a plain reading of Article 3(2) of Directive 2009/72/EC allows for the imposition on undertakings operating in the electricity sector, in the general economic interest, **public service obligations** which may relate to security, including security of supply, regularity, quality and price of supplies and environmental protection, including energy efficiency, energy from renewable sources and climate protection with such obligations being required to clearly defined, transparent, non-discriminatory and verifiable. Article 3(2) also mentions that - in relation to security of supply, energy efficiency/demand-side management and for the fulfilment of environmental goals and goals for energy from renewable sources - Member States may introduce the implementation of long-term planning, taking into account the possibility of third parties seeking access to the system.

It appears to us that there has since 2009 been a framework grounded in legislation for the Utility Regulator to work to develop a 'fit for purpose' scheme for prioritising grid connections and we struggle to understand why the Utility Regulator has not sought to simply transpose (if required) this framework into NI legislation and then direct its efforts to modifying licences of the distribution and transmission system operators and consulting on its implementation in practice. We struggle to understand why the Utility Regulator has wanted to limit itself to applying over-simplistic principles to



complex problems if it is at odds to its vision of making a difference for consumers by “...*listening, innovating and leading*”.

- 1.6 Transparency** – the process for applicants for grid connection has been and - given the Utility Regulator views in the consultation document – is acknowledged as being opaque. For example, NIE Networks has updated applicants for grid connections on 11 April 2017 by saying it is offering grid connections in ‘Phase 1’ ‘subject to planning’, but does not say whether the validity of the offer runs from the date of the offer or from when planning permission is determined. If it is the latter it is both tying up capacity and seems contrary to the Utility Regulator’s July 2015 determination.
- 1.7 Cause and Effect** - It would not be unreasonable for an observer to come to the conclusion given that in July 2015 – based on a single complaint (which was not tested in the Courts) - the Utility Regulator disallowed a fairly robust, logical and obvious criterion and tool for NIE Networks for queue management of grid connection applications (i.e. the need for an applicant to have planning permission for the developing the generator). This was a criterion all the other sector participants seemed to be content with. The Utility Regulator came to its decision essentially on the grounds there is not an explicit/express requirement in extant legislation for NIE Networks to refuse an applicant without planning permission a grid connection offer. It is difficult not to see the outcome of this decision as anything other than a precedent for ‘regulation by complaint’. Therefore, is it realistic to expect the Utility Regulator (or NIE Networks) to venture into any interpretation of the extant Northern Ireland law or provisions in EU Directives (mandatory and non-mandatory)? The consequences of the July 2015 decision by the Utility Regulator in terms of the volume of grid applications were wholly foreseeable and it is disappointing to see that the Utility Regulator has not used the privilege position its independence affords to have engaged with the Department for the Economy and have already obtained the legislative cover it thinks it needs for an alternative regime to emerge and be established. The Department may, possibly, consider the Utility Regulator has sufficient legislative cover already, including for allowing NIE Networks to lawfully use planning permission as a criterion.
- 1.7 Pre-determined outcome?** – the next steps consultation document includes the views of the Utility Regulator and given that the timetable is for the decision is 30 May 2017 it is difficult to see how any feedback to the next steps consultation will be considered properly given these time restraints. A reasonable inference for respondents to take is that the views expressed by the Utility Regulator in the document are, effectively, its draft final determination. This does not seem appropriate in the circumstances.

2. Issues covered in Next Steps Consultation Document

2.1 Connections network management

- Utilising Network Capacity** (paras 1.14 to 1.21) – in paras 1.4 and 1.5 of the consultation document it mentions reasons for not building more reinforcement to increase capacity and that it may not be required. We struggle to reconcile this position given the Eirgrid/SONI *All-Island Generation Capacity Statement 2017-2026* published on 27 April 2017 (extracts below) and the lead time in planning and executing the reinforcement necessary if (i) the north-south interconnector does not show up, and (ii) the large conventional generators are decommissioned in line with the requirements of the Industrial Emissions Directive (IED).

Adequacy Analysis

Jurisdictional Adequacy Analysis

In the following sections, we look at Ireland and Northern Ireland separately. Each jurisdiction is studied on their own, with a small reliance on the other, as provided by the current interconnection. As we have taken account of the current interconnection between the jurisdictions, the analysis is valid up to 2020. From 2021, this analysis is valid only in the absence of the second North South Interconnector. Both jurisdictions would require additional capacity to meet the adequacy standard in the absence of the second North South Interconnector.

Northern Ireland in the absence of the second North South Interconnector

In Northern Ireland, a significant amount of plant is due to decommission or be restricted in its running hours due to emissions legislation. By 2021, this causes the system to experience deficits over 100 MW in the median demand scenario. By 2024, the Kilroot steam units are assumed to have closed, and so the system goes into further deficit, over 200 MW. This situation would be relieved by the second North South Interconnector, or by the commissioning of new generation.

Without the second North South Interconnector, it will not be possible to share enough capacity from Ireland to alleviate the serious concerns over security of supply that Northern Ireland will face from 2021 onwards.

It can be seen that the high and low scenarios for Northern Ireland do not cause a large spread in results.

Northern Ireland	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	Scale
Low Demand	550	530	310	200	-50	-70	-40	-160	-150	-150	> = 500
Median Demand	530	510	280	160	-100	-110	-90	-220	-220	-220	0
High Demand	520	490	250	130	-140	-160	-150	-290	-300	-310	< = -500

Figure o-6 Adequacy results for Northern Ireland

3.2 Changes to Conventional Generation in Northern Ireland

In Northern Ireland, we will only consider new conventional generators that have a connection agreement with SONI or NIE Networks. In addition, to be included in our adequacy studies, plant needs to have planning permission, financial close and have indicated a commissioning date to SONI by the data freeze date.

Plant	Export Capacity (MW)	Expected to close by the end of year:
Ballylumford 4, 5	250	2018 ¹⁵
Kilroot ST1, ST2	514	2023

Table 3-3 Closures of conventional generators. (Dates are interpreted as 'by the end of each year'.)

15 With the option of a 2-year extension to 2020

There seems an imperative - even on an 'insurance' basis - to build more reinforcement to allow base-load generators who could be on line by 2021 or 2023 to be connected to mitigate the risk of supply deficits that will impact consumers and the prospects for economic development of Northern Ireland.

The consultation discusses the potential to operate the current network more efficiently "...without building network which is not economically justifiable. ..." Innovation is always welcome and arc21 note NIE Networks is considering these ideas in the context of RP6. That said there is little in terms of detail in this consultation nor in the RP6 documentation either. If this is to be an activity which is to be prioritised over investment in new physical assets that could provide immediate price reductions for consumers much more information should be shared to show value for money. The opportunity cost of keeping subsidy free, price taking generators off the grid should be evaluated.

- **Recovering network capacity** (paras 1.22 to 1.25)

An argument provided in May 2015 to the Utility Regulator in the complaint by Solar Ventures Limited in relation to a request to Northern Ireland Electricity Limited for a connection offer and reported in the Utility Regulator's decision document¹ (which resulted in the Utility Regulator disallowing the electricity distributor from using planning permission policy when considering applications

¹ https://www.uregni.gov.uk/sites/uregni.gov.uk/files/media-files/DET-572_Determination_of_Solar_Ventures_connection_dispute_with_NIE.pdf



for a grid connection²) was that there was (ref. para 4.94) a time bound window to access subsidy support mechanisms in the form of [NI]ROCs, Feed in Tariff and Contracts for Difference.

Also worryingly, para 4.68 of the decision document reported (emphasis added):
“It is NIE’s view that where the network reaches capacity (as has happened in certain parts of Northern Ireland) and connection offers can no longer be given (pending 33kV reinforcement) due to a lack of capacity then connection to the network is in the hands of those speculative developers who already hold connection offers. This is not in the interests of customers and is not conducive to the efficient planning of the network.”

There is no publicly available information available that arc21 is aware of that disproves this view. It does not seem unreasonable to assume, given the detailed operational and investment information that NIE Networks hold, such hoarding is already taking place given the clear position it set out in 2015. Yet the Utility Regulator seems sanguine about this. Due to the lack of transparency and limited information put in in the public domain the Utility Regulator should act in the consumers’ interest to ensure that there is no hoarding of capacity. The Utility Regulator should also ensure that it is possible for NIE Networks to revoke grid connection offers or revised capacity allocated if not fully utilised.

- **Building more network capacity** (paras 1.26 to 1.29)

The consultation document in paras 1.4 and 1.5 references not building new build and we have responded to that above.

The view of the Utility Regulator is that no new spend on assets is to be made up-front. It is noted that the Utility Regulator’s draft determination on the Transmission & Distribution 6th Price Control (RP6) dated March 2017 scaled back NIE Networks proposed investment in distribution and transmissions systems, particularly the distribution system. Whilst the Utility Regulator references the D5 mechanism there is insufficient information available to any applicant to say if the four system projects identified will have any relevance to the prospects of a grid connection for them (although it looks unlikely). It is hard to reconcile the

² In para 6.27 the Utility Regulator stated - *“We have determined that, on the basis of its statutory duties, NIE is not entitled to refuse to consider a connection application solely on the basis that planning permission has not been granted in relation to the relevant site. ...”*



development of long-term strategic physical assets and a ‘case by case’ determination approach mechanism.

- **Connections charging framework** (paras 1.30 to 1.35)

The Utility Regulator observes in para 1.33 that it is possible in certain circumstances that an applicant would be willing to pay more “deep” connection costs if this had a material impact on schedule or other aspects of their project. arc21 agrees this should be done on a case by case basis by each developer who can assess the financial viability of their proposal relative to paying for extra deep reinforcement charges.

In para 1.40 the Utility Regulator quotes from NIE Networks Statement of Charges without commenting whether it endorses it as being legal and compliant with NIE Networks licence conditions. It says if a developer triggers the requirement for a second transformer then they must bear 100% of the cost of this upfront regardless of what percentage of capacity is used. In the absence of long term energy policy and without a requirement for planning permission for new generator capacity it is difficult for the Utility Regulator to be reasonable certain that assets underwritten by the consumer will not be under-utilised. That said some developers may be willing to take a commercial decision to progress. In which case the potential for future rebates is likely to be a very material consideration in any investment decision and should be an essential part of any connections policy.

2.2 Connections process and queue (1.41 to 1.43)

- **Planning permission** (paras 1.44 – 1.46) – arc21 struggles to see how a ‘milestone’ approach for grid application management will align with developing a strategic approach to identifying optimum investment in the network which one would think the Utility Regulator would want to encourage.

For a future connections policy arc21 considers that an initial pass/fail criterion in relation to planning permission being an essential pre-requisite prior to a valid application for a grid connection to NIE Networks followed by the use of a multi-criteria evaluation matrix.



Further, we would suggest that “regionally significant” developments seeking a grid connection as defined under the Planning Act (NI) 2011³ be considered in a separate stream to those developments that are not regionally significant. The Act, in force from 1 April 2015, has a special regime (“Section 26”) for planning applications for developments considered of regional significance⁴.

All proposed developments need to be screened against criteria in the Planning (Development Management) Regulations (Northern Ireland) 2015⁵ and if they fall under the Section 26 regime it means that the development proposed is of importance to the whole of Northern Ireland.

Under this regime the Minister for the Department for Infrastructure (acting through the Department) is the planning authority, not local councils. The Minister will be making his determination on such planning applications in the context of the same policy framework the Utility Regulator works to. It would be perverse if the Minister (possibly with the endorsement of other NI Executive Ministers) gives planning permission for a development with an important electricity generation component (thereby validating its regional significance) but the Utility Regulator and/or NIE Networks and/or SONI do not acknowledge this when it comes to prioritising a grid connection offer.

Article 3(2) of Directive 2009/72/EC⁶ concerning common rules for the internal market in electricity (adopted in 2009 and in force from 2011) seems to have suitable provisions to allow such an approach (e.g. *‘Member States may introduce the implementation of long-term planning, taking into account the possibility of third parties seeking access to the system.’*)

arc21 would then propose using the same multi-criteria basis for prioritising grid connection applications for each stream. In our view, there is already a frame set in legislation relating to a (non-exhaustive) list of public service obligations that could be developed so as to satisfy Government policy and satisfy legislative requirements. For the purposes of illustration some example criteria – anchored in public service obligations- are shown in Annex I attached.

³ http://www.legislation.gov.uk/nia/2011/25/pdfs/nia_20110025_en.pdf

⁴ Meaning a “*proposed development would, if carried out be of significance to the whole or a substantial part of Northern Ireland or have significant effects outside Northern Ireland*” – Section 26(4)(a) of the 2011 Act.

⁵ http://www.legislation.gov.uk/nisr/2015/71/pdfs/nisr_20150071_en.pdf

⁶ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0072&from=en>



The weighting given to each such criterion could be consulted on and then set but periodically reviewed so that the outcomes are in line with the extant policy framework and developments in legislation

- **Prioritisation of connections** (paras 1.47 to 1.51) - arc21 does not consider it appropriate for the Utility Regulator to abdicate any responsibility for developing a 'robust process' for considering new applications beyond 'Phase 1'. arc21 believe that no such robust process is possible without the leadership and innovation of the Utility Regulator and such involvement would be compatible with its vision of making a difference for consumers by *"...listening, innovating and leading"*. Otherwise an institutional 'pass-the-parcel' is likely to develop that will drag on for years with 'regulation by complaint' becoming embedded. How can the Utility Regulator innovate if it is not involved?

Concluding remarks

In arc21's view that locking citizens and electricity bill payers in to paying c20-years of subsidies (when subsidy free renewable generation could be available) and preventing access to new generators without subsidies (by hoarding of transmission/distribution capacity) can only put the bills up for consumers.

arc21 struggles to see how a 'milestone' approach for grid application management will align with developing a strategic approach to identifying optimum investment in the network which one would think the Utility Regulator would want to encourage. arc21 would suggest a multi-criteria approach to the allocation of capacity for grid connections and deeper reinforcement of the network, however funded.

arc21 would recommend that regionally significant developments seeking a grid connection as defined under the Planning Act (NI) 2011 be considered in a separate stream to those developments that are not regionally significant and are prioritised so as to align with government policy.

In any conventional market-place it is possible to 'outbid' others for some tangible or intangible asset at any point before a contractual commitment is made by offering a 'better proposition'. Conventionally this done by offering more money. In the 'market/competition' for grid connection and capacity the 'currency' should be the quality of the characteristics of the connecting generator (as informed by policy), not just money. It is arguable that it is not material how late or early it is when an applicant turns up (it could be argued that using timing of applications to prioritise is in itself discriminatory) if the proposition the applicant



makes has (objectively) better economic and technical characteristics than those applications already lodged.

arc21 would like to see a timely structured process to develop a connections regime before time overtakes us all and the Utility Regulator is left with making expedient, 'keep-the-lights-on' short-termist decisions.

15th May 2017
arc21



ANNEX I

Tentative example criteria for public service obligations to inform the general economic interest and decision making in relation to prioritising grid connections. (based on Article 3 of Directive 2009/72/EC).

Public service obligation	Example Criterion
1._Security of supply	
	1.1_Fuel from indigenous sources?
	1.2_Continuous presence of operational staff?
	1.3_Ease of maintenance?
	1.4_Proximity to demand
2._Regularity of supply	
	2.1_Availability hours/year
	2.2_Grid code compliance
3._Quality of supply	
	3.1_System Services
	3.2_System Policies
	3.3_System Tools
4._Price of supply	
	4.1_Subsidy requirement from consumers?
	4.2_Price taker or maker in the market?
	4.3_Associated Transmission Reinforcement capex
5._Environmental protection	
	5.1_Energy efficiency
	5.2_Enables demand-side management?
	5.3_Energy from renewable sources?
	5.4_Climate protection / Net air quality implications
	5.5_Provision of environmental educational programme?
6._Economic interests	
	6.1_Public good infrastructure as a result of development
	6.2_Inward investment into Northern Ireland?
	6.3_NI job creation in construction phase for low carbon generator
	6.4_NI job creation in operational phase for low carbon generator