

GUIDELINES FOR CONTESTABILITY IN ELECTRICITY CONNECTIONS IN NORTHERN IRELAND

CONSULTATION REPORT AND RECOMMENDATIONS

14 March 2016



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Introduction

1 Background

- 1.1 The principal objective of the Northern Ireland Authority for Utility Regulation (“Utility Regulator” or “UR”) is set out in Article 12 of The Energy (Northern Ireland) Order 2003 (“The Energy Order”) and it is to protect the interests of consumers of electricity supplied by authorised suppliers, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the generation, transmission or supply of electricity.
- 1.2 Article 5 of The Energy Order requires the UR to publish a Forward Work Programme and in the 2014-15 document the UR set out plans for the introduction of contestability in electricity connections in order to promote choice for customers and reduce both connection costs and timescales. The stated intention was to introduce contestability for all types of connections, including demand and generation, all voltage levels and both large and small scale connections.
- 1.3 The UR has issued the following papers in relation to the introduction of contestability in Northern Ireland:
- Contestability in Connections Call for Evidence, 9th September 2014 ¹
 - Contestability in Connections Consultation Paper, 2nd December 2014 ²
 - Contestability in Connections Proposed Next Steps Paper, 11th May 2015 ³
 - Contestability in Connections Decision Paper (“the Decision Paper”), 31st July 2015 ⁴
- 1.4 The Decision Paper advised that NIE Networks and SONI (“the Licensees”) were asked to develop implementation guidelines for consultation and that, following receipt of responses, to present a recommendation report to the UR on the guidelines.

2 Contestability Guidelines

- 2.1 NIE Networks and SONI produced the proposed joint implementation Guidelines (“the Guidelines”) for contestability and on 14 October 2015 the UR

¹ Contestability in Connections Call for Evidence, 9th September 2014 - http://www.uregni.gov.uk/uploads/publications/Contestability_in_Connections.pdf

² Contestability in Connections Consultation Paper, 2nd December 2014 - http://www.uregni.gov.uk/uploads/publications/Contestability_in_Connections-Final.pdf

³ Contestability in Connections Proposed Next Steps Paper, 11th May 2015 - http://www.uregni.gov.uk/uploads/publications/UR_Next_Steps_Paper-Contestability_in_Connections.pdf

⁴ Contestability in Connections Decision Paper (“the Decision Paper”), 31st July 2015 - http://www.uregni.gov.uk/uploads/publications/Contestability_in_Connections_-_final_decision_paper_-_July_2015.pdf

published the guidelines for consultation and invited responses by 5 November 2015.

- 2.2 On 21 October 2015 a stakeholder engagement workshop was held to discuss the Guidelines and the implementation of contestability. A number of parties having an interest in contestability attended. The workshop provided an opportunity for NIE Networks and SONI to present the proposed approach on implementing contestability in electricity connections within Northern Ireland to those interested parties who attended.

3 Structure of this report

- 3.1 Responses to the Guidelines consultation were received from four parties, namely:

- SSE
- Renewable Energy Systems Limited
- Northern Ireland Renewables Industry Group, and
- Omexom UK Renewables.

- 3.2 This report summarises the consultation responses, presents the views of the Licensees and makes recommendations on the implementation of contestability in electricity connections in Northern Ireland. The paper takes each section of the Guidelines in turn and considers responses relevant to each section.

- 3.3 Note that in this document where the Licensees believe it is necessary to differentiate between the obligations or views of the Transmission System Operator (“TSO”), the Transmission Owner (“TO”) or the Distribution Network Owner (“DNO”) the appropriate term has been used.

4 Connections Update

- 4.1 A significant number of applications for the connection of generators to the Distribution System have been received by NIE Networks which may require additional network infrastructure to be developed. NIE Networks and SONI have had to consider how those generation connection applications should be dealt with.

- 4.2 A joint UR, NIE Networks and SONI stakeholder engagement workshop was held on 16 December 2015 to discuss potential options for processing outstanding generation applications. That consultation with industry is ongoing in parallel with the implementation of contestability. The Licensees advise that, depending on the outcome to those discussions, consequential changes may be required to the arrangements set out in the Guidelines, in particular the application and offer processes.

- 4.3 This document has been prepared in advance of any agreement on the approach to be followed in processing outstanding connection applications and

therefore does not take account of any future change to the current arrangements.

Section B - The Scope of Contestability

1 Introduction

- 1.1 Section B of the Guidelines covered the scope of contestability.
- 1.2 It was proposed in Section B that the first phase of contestability should include generation and demand connections with a capacity of 5 MW or greater.
- 1.3 Regarding transitional arrangements, it proposed that where:
- (i) a customer received a connection offer for a generation or demand connection with a capacity of 5 MW or greater, and
 - (ii) the customer accepted the offer prior to the introduction of contestability, and
 - (iii) where NIE Networks or SONI has already commenced pre-construction works in accordance with the connection programme,
- contestability would not be available. These pre-construction works would include, but would not be limited to, works relating to wayleaves, consents, site and route selection studies, system studies or placing of contracts.
- 1.4 Additionally, where an offer to connect is made prior to the implementation date for contestability and not accepted by that date, contestability will be available but the timelines for requesting an offer for the Non-Contestable Works will be 'by agreement'.
- 1.5 Section B also made detailed proposals on:
- Contestability boundaries
 - Inspection and monitoring of progress on the Contestable Works
 - Scope of Non-Contestable Works, and
 - Scope of Contestable Works.

2 Responses and Views of the Licensees

Definition of the Contestable Works

- 2.1 One respondent supported the proposed definition of Contestable Works.
- 2.2 Two respondents proposed that consideration should be given to permitting contestability for connections operating at 33 kV or above in the first phase, in addition to connections with a capacity of 5 MW or above.
- 2.3 This proposal was given due consideration and initially seemed to be worthwhile but on further examination it was found to be impracticable. Article 20 of The Electricity (Northern Ireland) Order 1992 ("the Electricity Order") requires the customer to provide information on, "...*the maximum power at*

which electricity may be required to be conveyed through the connection.”, but not the voltage at which the connection will operate at. The Licensees and the customer will therefore not know if contestability is available until after system studies are carried out and the optimal connection point and voltage are determined.

- 2.4 The Guidelines must define who the first phase of contestability will be open to. Using voltage level as a defining requirement has the potential to confuse this. It is therefore not a clear factor for defining in the Guidelines where contestability will be available to a potential customer during the first phase.

Transitional Arrangements

- 2.5 Two respondents proposed that contestability should be considered for those connections where offers are already accepted and works commenced as some customers may wish to pay for abortive work and complete the works on a contestable basis.
- 2.6 Another respondent did not support the timelines proposed in the Guidelines and believes that the connection should be allowed to change from non-contestable to contestable up to the point where works commence.⁵
- 2.7 The Licensees still believe there needs to be a cut-off point after which contestability is no longer practical. While in all cases the Licensees agree that the customer would have to pay for all costs incurred by the Licensees up to the point of a change to contestability, financial settlement is not the only consideration. For example, progression of Connection Works may have entailed detailed discussions with the planning authorities and the public and so may have involved many hours of engagement, consultation and possibly tendering of contracts. It would not only be inefficient to abandon this work and start again but it may jeopardise good working relationships between the Licensees and stakeholders/communities and could cause delays for both the connection project and other works. Therefore the Licensees believe that during the transitional period, the option for the customer to switch to delivering Contestable Works can only be agreed on a case by case basis if the relevant licensee determines that it is practical.
- 2.8 The Guidelines proposed that where an offer is made before the contestability implementation date and not accepted by that date then the timelines for provision of a modified offer and acceptance would be by agreement. One respondent asked for clarification of the term ‘by agreement’.
- 2.9 It would be difficult, if not impossible, to define alternative timelines covering every case and the term ‘by agreement’ simply means that the timeline for provision of a Contestable Offer⁶ would be agreed on a case by case basis for those not automatically qualifying.

Connection Queue

⁵ The Licensees interpret ‘works’ to mean ‘construction works’.

⁶ Contestable Offer is a new defined term. See Section C for more details.

- 2.10 One respondent made a number of points with regard to contestability affecting the position in the connection queue.
- 2.11 The Licensees confirm that contestability will have no impact on the connection queue. The customer's position in the queue will be determined by the time of receipt of a valid connection application, complete in all respects, and the customer will hold that position unless the offer to connect is not accepted within the connection offer validity period or the customer withdraws the application.

Scope of the Contestable Works

- 2.12 One respondent requested clarification on the provision of CTs and VTs.
- 2.13 The Licensees agree that CTs and VTs which form part of the Contestable Works can be provided contestably and will clarify that in the updated Guidelines.
- 2.14 One respondent requested clarification on the provision of protection equipment associated with switchgear forming part of the Contestable Works.
- 2.15 The Licensees agree that protection equipment associated with switchgear forming part of the Contestable Works can also be provided as part of the Contestable Works and will clarify that further in the updated Guidelines. As stated in Section B paragraph 4.7 of the Guidelines, any protection equipment which will apply to both the Transmission or Distribution System and the customer's system will be assessed on a case by case basis to ensure that the integrity of protection schemes is maintained. To confirm, any new protection equipment must be able to integrate and operate with any existing protection schemes on the Transmission or Distribution system and be compliant with relevant technical specifications and standards.

Inspection of Contestable Works

- 2.16 One respondent proposed that the level of inspection and review of the Contestable Works and activities could be reduced based on satisfactory performance.
- 2.17 The Licensees agree with this proposal and the level of inspection might be reduced based on satisfactory performance and experience gained. A procedure is being developed for monitoring and inspecting the Contestable Works and how to develop and review appropriate levels of inspection.

Monitoring the Delivery of Contestable Works

- 2.18 One respondent proposed that the Licensees should be kept up to date on timelines but that a customer would not be accountable to the licensees on timelines and slippages.

- 2.19 On monitoring the progress of Contestable Works, the Licensees acknowledge that, subject to legal advice, the Connection Offer ⁷ and/or Adoption Agreement will not impose detailed timelines for the delivery of the Contestable Works.
- 2.20 However, the Licensees are considering specifying high level timelines in the Connection Offer for certain milestones to be met in relation to the Contestable Works. The Licensees are also considering specifying that in the event that milestones set out in the Connection Offer in relation to the Contestable Works are not met, then the Licensees shall have the right to change the terms of the Connection Offer. The reason for this is to:
- 2.20.1 Ensure that the obligation of the Licensees under the Order to develop the relevant system in an efficient, co-ordinated and economical manner is not hindered by the contestable delivery of connection assets.
- 2.20.2 Ensure that no other customer is disadvantaged by the progression of the delivery of Contestable Works and, in addition to the duties under the Order, allow the Licensees to fulfil their obligations under their licences.
- 2.21 In addition, the Licensees will need to monitor the progress of Contestable Works for the following reasons:
- the delivery of the Non-Contestable Works needs to be co-ordinated with the delivery of the Contestable Works,
 - the Licensees will require to carry out monitoring and inspections in a timely and efficient manner and need to plan for these activities, and
 - in the case of clusters, the Licensees may be delivering sole-use Contestable and Non-Contestable Works which will require to be co-ordinated with the delivery of Shared Contestable Works being delivered by the Lead Developer.

Final Testing and Energisation

- 2.22 One respondent proposed that in the future the decision to define commissioning of Contestable Works, including final testing and energisation, as Non-Contestable should be reconsidered.
- 2.23 The Licensees do not object to it being reconsidered in the future but believe it is out of scope for initial implementation of contestability.

Approved equipment

- 2.24 One respondent asked if the Licensees intend to make available a list of approved equipment.
- 2.25 The Licensees confirm that a list of current suppliers and approved equipment will be published in advance of the implementation of contestability.

⁷ Connection Offer is a new defined term. See Section L for more details

Efficient and co-ordinated development

- 2.26 One respondent sought clarification on the proposal that the Licensees will specify requirements to ensure that the development of distribution and transmission infrastructure is carried out in an efficient and co-ordinated manner. Concern was expressed that this may place constraints on the development of viable and expedient route and site selection.
- 2.27 The Licensees do not intend to place any undue constraints on the development of viable routes and site selection but where such routes and sites can be modified to avoid unduly constraining other network developments then that should be the case. Note that as stated in the Guidelines the Licensees will require that the independent selection of routes and locations for infrastructure are compliant with relevant technical specifications and standards.

Planning permission

- 2.28 One respondent requested clarification on the point that 'securing of planning permission is a contestable activity however the Licensees reserve the right to apply for planning permission wayleaves and easements for contestable works if the Licensee is also developing distribution or transmission infrastructure in the area'. Clarity was sought to ensure that the Licensee obtaining this planning permission is not seen as having commenced work on the project and therefore precluding contestability.
- 2.29 The Licensees agree that where a customer has opted for contestability and a Licensee applies for planning permission for reasons of other developments in the area then this will not preclude contestability for the other aspects of the connection. To clarify, the Licensees only see this situation arising under exceptional circumstances.

Definitions

- 2.30 One respondent made the point that use of the terms "Point of Connection" and "Connection Point" are confusing.
- 2.31 The Licensees agree that there is potential for confusion between Point of Connection and Connection Point but both are existing terms widely used in industry documentation. The Licensees will review the definitions and consider if amendments should be made.

Section C - The Application Process

1 The Application Process

- 1.1 Section C of the Guidelines covered the process of applying for an offer of connection.
- 1.2 It proposed that the initial application did not need to provide any information regarding contestability.

2 Responses and Views of the Licensees

- 2.1 No comments were submitted directly relating to Section C although one respondent did cross refer to this section in comments on Section D, suggesting that customers should be given the opportunity at the outset to request 'dual' quotes.
- 2.2 Regarding the proposal that the initial application does not need to provide any information regarding contestability, the Licensees have reconsidered this matter in respect of the Licensees relevant statutory duties and licence obligations.
- 2.3 The Licensees are considering replacing defined terms used in the Guidelines and introducing the following new defined terms:
 - 2.3.1 The term "the Non-Contestable Offer" to replace the defined term "the Offer" that was used in the Guidelines. The Non-Contestable Offer would set out the same information as described in the Guidelines Section D paragraph 1.2 for the Offer, i.e. the Non-Contestable Offer will be an offer that will provide all information to the customer if the relevant Licensees were to complete all the Connection Works.
 - 2.3.2 The term "the Contestable Offer" as a new defined term that will be introduced in the updated Guidelines. The Contestable Offer would set out the same information as described in the Guidelines Section D paragraph 2.2 for the modified Offer, i.e. the Contestable Offer will be an offer that will provide all information to the customer if the relevant Licensees were to complete only the Non-Contestable Works and the customer complete the Contestable Works.
- 2.4 The Licensees are proposing to amend the Guidelines as follows:
 - (i) When applying for an offer to connect to the Distribution System, the customer has the option of notifying the DNO at any time prior to ten calendar days after the date of issue of the Non-Contestable Offer if a modification to the offer is required,
 - (ii) When applying for an offer to connect to the Transmission System, a customer may notify the TSO at the application stage whether a Contestable Offer or Non-Contestable Offer is required. The customer also has the option of notifying the TSO at any time prior to ten calendar

days after the date of issue of the initial offer if a modification to the initial offer is required. The modification would ensure the customer then has a Contestable Offer and a Non-Contestable Offer, regardless of what the initial offer was. More detail on this proposal and its justification is contained in Section D.

Section D - The Offer and Offer Acceptance Process

1 Offer and Offer Acceptance Process

- 1.1 Section D of the Guidelines covered the offer and offer acceptance process.
- 1.2 It proposed that the relevant Licensee would initially provide a customer with a connection offer (“the Offer”) which will set out details of the Connection Works and Reinforcement Works required for the new connection.
- 1.3 The Offer would not split the Connection Works into Contestable and Non-Contestable Works.
- 1.4 Should the customer be interested in undertaking the Contestable Works, the relevant Licensee must be notified within 10 calendar days of the date of issue of the Offer, following which the Licensee would provide to the customer within 30 calendar days a modification to the Offer setting out, among other things, the Non-Contestable Works.
- 1.5 The customer’s options would be:
- (i) Accept the initial Offer, in which case the relevant Licensee would be responsible for the full connection and the customer would not undertake any Connection Works,
 - (ii) Accept the modified Offer, in which case the relevant Licensee would be responsible for the Non-Contestable Works and the customer would be responsible for the Contestable Works, and
 - (iii) Not accept either offer if the customer decides not to proceed with the connection.
- 1.6 Section D also advised that should the customer accept to undertake Contestable Works then all the Contestable Works must be undertaken.

2 Responses and Views of the Licensees

Format and Content of the Offer

- 2.1 Three respondents expressed the view that the initial offer should contain a contestable/non-contestable split, with one justifying that view by adding that since preparation of the full offer would involve design and costing the overall works there should be no problem in providing the split.
- 2.2 One respondent proposed that if a split offer is not to be the normal standard then it should be offered at the outset, rather than going through the Offer and modified Offer process.
- 2.3 One respondent proposed that there should be an option to defer the contestable offer, interpreted by the Licensees as meaning defer the decision to request and/or accept an offer for the Non-Contestable Works.

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- 2.4 NIE Networks notes that new 'contestability' licence conditions will not be in place for the initial phase, meaning that NIE Networks is committing to contestability in advance of an obligation to do so.
- 2.5 However, in agreeing to carry out additional activities which are not set out in the licences or statute, NIE Networks is not relieved from the obligation to comply with existing licence and statutory requirements.
- 2.6 The DNO's obligations regarding connection to the Distribution System are set out in the Electricity Order. Article 19 of the Electricity Order places the DNO under a duty to make a connection between the distribution system and any premises when required to do so by the owner or occupier of the premises. The DNO does not believe that an offer to provide the Non-Contestable Works meets the requirements of Article 19.
- 2.7 The obligations of the TSO regarding the provision of offers to connect to the Transmission System are set out in Condition 25 of the TSO Licence, which requires the TSO, on application by any person, to offer to enter into a connection agreement which shall make detailed provision regarding, among other things, the carrying out of works required to connect the transmission system to any other system for the transmission of electricity. As either a Contestable or Non-Contestable Offer would set out all of the detail required to connect to the transmission system both fall within the scope of Licence Condition 25. The TSO notes however, that as a connection offer can only be issued in accordance with the approved Statement of Charges, the SONI Transmission Connection Charging Methodology Statement must be revised and approved to include provision for any necessary contestable related costs, such as charging for the oversight of Contestable Works, prior to the TSO being in a position to issue Contestable Offers.
- 2.8 As such, the Licensees are of the view that in order to meet current licence and statutory obligations they must provide an offer to connect within 90 days of receipt of an application:
- (i) in the DNO's case a Non-Contestable Offer, and
 - (ii) in the TSO's case, either a Non-Contestable Offer or a Contestable Offer, whichever is requested at the outset by the customer.

The Licensees would like to clarify that while a Non-Contestable Offer and Contestable Offer will have differences between the connection charges payable to the relevant Licensee, there may also be differences between the terms and conditions set out in the different types of offer. Therefore as the information required for both types of offer is not made available on preparation of the initial offer, a split offer, as suggested, is not feasible within the 90 days.

Timelines for the Offer and Offer acceptance

- 2.9 Two respondents considered that the timelines for offer and offer acceptance were not workable and proposed that offers for both Contestable and Non-Contestable Works should be made by 90 days. One of these respondents added that the request for a contestable quote within 10 days and a further 30

days to provide a modified Offer meant that placing a contract with an ICP had to be completed within the remaining 50 days of validity, which would be very tight.

- 2.10 The Licensees do not believe that two offers, a Non-Contestable Offer and a Contestable Offer, can be provided in 90 days. However, having reviewed the timescales, the Licensees believe that the modified offer (Non-Contestable Offer or Contestable Offer) could be supplied within 25 days from issue of the initial offer. The customer would then have at least 55 days and at most 65 days to decide which offer to accept

Connection queue

- 2.11 One respondent sought clarification on how the modified Offer would affect the connection queue position.
- 2.12 As stated in Section 2, Scope of Contestability, the Licensees confirm that contestability will have no impact on the connection queue. The position in the queue will be determined by the time of receipt of a valid connection application, complete in all respects, and the customer will hold that position unless the offer to connect is not accepted within the connection offer validity period or the customer withdraws the application.

Undertaking Non-Contestable Works

- 2.13 Two respondents proposed that accepting the modified Offer should not require the customer to undertake all of the Contestable Works, with one adding that smaller customers may only wish to carry out cable and plant work.
- 2.14 In terms of customers having the option to select the scope of Contestable Works they wish to undertake, this matter was clarified in paragraph 4.2.5 of the Decision Paper –

“We consider that the guidelines for all connections are the same for all connection types. This would mean that the implementation of contestability will have a clear boundary with the developer having to take on all contestable activities from the point of connection as defined by SONI and NIE, or none.”

Section E - The Connection Process

1 The Connection Process

- 1.1 Section E of the Guidelines covered the connection process. It covered from offer acceptance through to commissioning.
- 1.2 The section was based on the assumption that the customer had agreed to undertake the Contestable Works and described processes for
- Programmes
 - Design development
 - Pre-construction works
 - Construction Works
 - Communication arrangements
 - Pre-commissioning, and
 - Commissioning.
- 1.3 The section made reference to high-level flow charts contained in the appendix section.

2 Responses and Views of the Licensees

- 2.1 One respondent appreciated the requirement for review of detailed designs by the relevant Licensee but would prefer a more formal approach to design that includes indicative design parameters and process timescales, such that an agreed design can be 'frozen' and moved forward into construction without the uncertainty for the customer that the proposed installation may not be adopted due to design issues.
- 2.2 It was proposed that suitable milestones and timescales should be added to the process charts contained in the Guidelines appendices.
- 2.3 The Licensees agree to have a more formal approach with suitable timescales and that will be set out in the Guidelines.
- 2.4 The Licensees are considering the extent to which detailed designs will be 'approved'. There is a balance to be struck between fully entrusting the customer to ensure the detailed designs are satisfactory and, on the other hand, checking all designs and calculations. However, the requirements of the CDM Regulations will need to be considered.
- 2.5 The Licensees have a duty to ensure that nothing is connected to the system that may jeopardise the integrity of the system or affect other customers connected to, or making use of, the relevant system. The Licensees will therefore specify what needs to be reviewed and will have the right, but not the obligation, to alert the customer to any concerns.

- 2.6 The Licensees agree that this design review should not be prolonged unnecessarily and a review period needs to be defined.

Section F - Accreditation

1 Accreditation

- 1.1 Section F of the Guidelines covered accreditation of Independent Connection Providers (ICPs) and proposed that Contestable Works can only be undertaken by ICPs accredited under the National Electricity Registration Scheme (NERS) operated by Lloyd's Register.
- 1.2 It proposed that details of ICPs to be used shall be submitted to the relevant Licensee in advance of the Contestable Works commencing.
- 1.3 Failure to operate under the NERS could affect commissioning and adoption of the assets by the Licensee.
- 1.4 It recognised that the scope of NERS is limited to operating voltages of 132 kV and below. In the event of a connection application with an operating voltage of higher than 132 kV the Licensees will need to give further consideration to appropriate accreditation.

2 Responses and Views of the Licensees

Accreditation scheme

- 2.1 One respondent advised that it was fully accredited under the Lloyd's scheme and also under the Achilles scheme. They claimed to operate equally well under both schemes with little or no issue. The issue of accreditation was seen to be more about ensuring that prospective ICPs are compliant and working to the applicable standards, be it through regular auditing and competency reviews of ICPs.
- 2.2 One respondent saw the value in accreditation in that it provided confidence to both customers and Licensees that the ICP is competent. However, it was strongly recommended that consideration be given to a wider approach such as the Achilles system, stating that the majority of responses to the UR. Next Steps paper stated that Lloyds accreditation under the NERS scheme should not be the only form of accreditation considered, including SONI's own response. Concern was therefore expressed that Lloyd's was the only proposal and believed it was inappropriate.
- 2.3 It was added that connections have been delivered in ROI without being part of the NERS scheme. Customers, many of whom operate on an all-island basis, would prefer to have harmonised processes in both jurisdictions. The respondent agreed that it is unquestionably the customer's responsibility to select a suitably-qualified contractor to deliver the connection to the specified standard but proposed that this responsibility cannot be dependent on whether a contractor has some form of accreditation or not and that accreditation should be neither a prerequisite nor a bar to participation in a customer's procurement process. The respondent stated that the Registration Scheme (NERS) operated by Lloyd's Register is not appropriate, could restrict competition in Northern Ireland, prevent the timely roll-out of contestability and reduce opportunities for

contestability in Northern Ireland compared to those available elsewhere within the Single Electricity Market. It was the respondent's view that, at the very least, the Achilles system should be included as an appropriate form of accreditation.

- 2.4 Furthermore, it was suggested that in the event that Lloyds register is retained as the accreditation methodology, the Licensees need to consider which aspects of delivering the works will require accreditation. It is not appropriate that customers would be required to retain accredited providers for all aspects of works. In the event that Lloyds registration is a requirement clarification needs to be given as to which parts of the process require accreditation and this needs to follow through in the guidelines i.e. in the event that accreditation is retained, it should only cover specialist areas of the works.
- 2.5 NIE Networks remains of the view that the Lloyd's scheme works well in GB and only the Lloyd's accreditation scheme has been designed to meet the needs of network companies adopting assets provided by ICPs. This view is supported by views expressed at the workshop that complying with the Lloyd's scheme is not an issue for competent suppliers.
- 2.6 Additionally, no justification was submitted to support the view that the Lloyd's scheme is technically inappropriate. Under the Lloyd's scheme a technical assessment is carried out on the service providers who elect to be assessed for accreditation for Contestable Works associated with the installation of electrical connections.
- 2.7 No justification was provided to support the proposal that the Achilles scheme should also be accepted.
- 2.8 The only argument put forward against the Lloyd's scheme is that it is not required in Ireland and therefore would be a barrier to companies active in Ireland entering the contestability market in Northern Ireland. However, similar arguments could be put forward for companies active in GB holding Lloyd's accreditation if the Achilles scheme was put in place in Northern Ireland.
- 2.9 The Licensees agree that comparisons with the contestability market in Ireland are relevant but GB comparisons are also relevant. The specifications and standards to be applied in Northern Ireland will be largely those currently applied in GB and ICPs currently active in GB may be interested in the Northern Ireland market.
- 2.10 The Licensees recognise the difference in accreditation requirements in neighbouring jurisdictions however continue to support the implementation of the Lloyd's scheme for all connections. The Licensees believe that customers/ICPs should be treated the same in terms of accreditation requirements regardless of connection voltage, size or type of connection or previous experience of delivering connections.

Scope of accreditation

- 2.11 One respondent proposed that in the event that Lloyd's register accreditation is retained as the only method of determining competence, there needs to be better definition of the scope of works for which accreditation is required.
- 2.12 Two respondents proposed that in order to avoid discriminating against local contractors, accreditation should only be required for specialist work involving electrical or communications equipment.
- 2.13 One respondent proposed that if NIE Networks will be inspecting progress of the works regularly, then an accreditation process for non-specialist work would be an unnecessary overhead.
- 2.14 The Licensees agree that further work is required to define the activities for which accreditation is required as well as the level of inspection for the different aspects of Contestable Works.

Section G - Adoption of Contestable Works

1 Adoption

1.1 Section G of the Guidelines covered adoption of the Contestable Works and contained proposals on:

- Conditions precedent,
- ICP Warranties,
- Defects correction,
- Liability for breach,
- Construction and commissioning, and
- Additional protection for NIE Networks

2 Responses and Views of the Licensees

Consultation on the Adoption Agreement

2.1 One respondent stated that the Adoption Agreement should be subject to consultation.

2.2 NIE Networks does not believe the Adoption Agreement should be subject to consultation. When developing the Adoption Agreement consideration will be given to other relevant model agreements in use in GB and Ireland. It is anticipated that the Adoption Agreement will be subject to regulatory oversight.

Parties to the Adoption Agreement

2.3 One respondent proposed that the Adoption Agreement should be between the ICP and the relevant Licensee as the ICP is the competent organisation with regards to the electrical design and construction of the contestable works and as such the ICP is the key party to the Adoption Agreement. Furthermore, this will become even more evident as contestability is extended further to higher volume connections where end customers are neither comfortable nor capable of signing up to the terms of the Adoption Agreement.

2.4 Two respondents expressed the opposite view that an ICP is a contractor to the customer and should have no contractual relationship with the Licensee. As such, there should be no references to the ICP in the accreditation section and the customer will retain full liability for delivering assets of the required quality.

2.5 It was also proposed that the Guidelines should either explain how the proposed contractual framework should be constructed, or confine warranty arrangements to the customer's responsibility and remove references to ICPs.

2.6 In the case of transmission connections, given the split responsibility model in place between the TSO and TO, the scope and applicability of the Adoption Agreement needs to be considered further. All transmission assets, regardless of the ownership of contestably-built transmission assets, shall be built to the

relevant transmission technical specifications and standards, to ensure the safety and security of the electricity system and in recognition that the assets may be taken over at some future time. The appropriate contractual arrangements for transmission customer connections is subject to further consideration by the TSO and the TO, and will be developed subject to legal advice and any necessary changes to the Transmission Interface Arrangements (“the TIA”) as part of the implementation of contestability. The Guidelines will be updated when this has been finalised.

- 2.7 In the case of distribution connections the DNO accepts that for larger connections, where the customer is financially stable and has been, and is likely to remain, active in the industry for some time then the customer may be the more suitable counter-party.
- 2.8 Alternatively, where a customer is building a few tens of houses and has engaged a large contractor to provide the connection, then the DNO believes that the contractor is likely to be the more suitable entity to discharge the obligations set out in the Adoption Agreement.
- 2.9 A further example is where a person is having a house built and wishes to have a contestable connection. It is the DNO’s view that this person is very unlikely to be able or willing to meet the requirements of the Adoption Agreement.
- 2.10 For these reasons, the DNO remains of the view that the Adoption Agreement should be with the most appropriate party, to be determined by the DNO on a case by case basis. It may be the customer, the ICP or both. Further legal advice will be taken in relation to this issue to enable the Guidelines to be updated.

Conditions Precedent

- 2.11 One respondent proposed that 2.1(i) and (ii) should be deleted as Section F deals with accreditation.
- 2.12 Paragraph 2.1(i) correctly states that the ICP(s) delivering the Contestable Works must be properly accredited and reference to this requirement is appropriately placed in the section on conditions precedent to the adoption process.
- 2.13 Paragraph 2.1(ii) correctly states that an ICP delivering Contestable Works must do so in accordance with the Licensee’s policies and specifications. Again, reference to this requirement is appropriately placed in the section on conditions precedent to the adoption process.

ICP Warranties

- 2.14 On ICP warranties, one respondent proposed that the current draft rests on an assumption of commercial relationships between parties that are unlikely to be found in real life. Also, for warranties to be effective they must rely on some form of enforcement mechanism. Third parties cannot be bound by a contract between the customer and NIE Networks, therefore a warranty cannot be

enforced against an ICP unless an agreement exists between itself and NIE Networks. However, the ICP would be contracted by the customer for delivery of certain works and the procurement process would not involve NIE Networks. It is therefore hard to see how an ICP could be contractually bound into any warranty arrangement with NIE Networks.

- 2.15 One respondent proposed that the term “without limitation” in paragraph 3.1 was a particularly onerous requirement.
- 2.16 In the case of transmission connections, appropriate warranties for Contestable Works and their transfer to the TO, is subject to further consideration by the TSO and TO, and will be developed subject to legal advice on the contractual framework required and any necessary changes to the TIA as part of the implementation of contestability. The Guidelines will be updated when this has been finalised.
- 2.17 For DNO connections the Adoption Agreement will ensure a contractual relationship between NIE Networks and the counter-party to the agreement. Whether it is the ICP or customer that is best placed to provide a warranty will be a factor in determining the appropriate counter-party to the Adoption Agreement (see 2.10 above).

Defect Correction

- 2.18 One respondent sought clarification of the term ‘defect’ to further understand the scope of the liability proposed. It was proposed that for the successful development of competition in this market it is important that the application of liabilities for defects are demonstrably no more onerous than those NIE Networks applies to itself and its suppliers.
- 2.19 This comment is under consideration by the Licensees.
- 2.20 Three respondents stated that the defect periods set out in paragraph 4.2 were excessive. It was proposed that they are beyond those that would be classified as normal practice for manufacturers and installers. Typical manufacturing warranties provide for 1-2 years and so to request beyond 2 years adds an additional level of cost through the provision of additional warranty beyond this 2 year period.
- 2.21 This comment is under consideration by the Licensees.

Construction and Commissioning

- 2.22 One respondent held the view that the Adoption Agreement relates to the end of the process of contestability so it is not an appropriate document in which to set out the design review and construction supervision requirements. These should be part of the requirements in the contestable delivery version of the connection agreement.
- 2.23 One respondent requested further detail on the proposed inspection and witnessing regime, whether this will be chargeable and what the likely charging will be. These are two separate activities, inspection relating to the observation

- of installation activities to confirm compliance to work practices, and witnessing relating to the observation and successful completion of commissioning tests.
- 2.24 One respondent noted that a Completion Certificate is issued to confirm adoption, but there is no further explanation of how this relates to energisation. Section B, paragraph 4.13 suggests that the certificate will precede energisation. The process charts in the Appendices do not mention the Completion Certificate or energisation.
- 2.25 It was proposed that a clear sequence is developed for the adoption and energisation of the assets, that covers the ICP completing works and pre-commissioning, notifying the relevant Licensee, final commissioning by the Licensee, issuing of the completion certificate and energisation. It was further noted that this is underpinned by timeframes appropriate to voltage and complexity of the works.
- 2.26 For transmission connections, the TSO agrees with the view that any oversight of the Contestable Works should be set out in the Transmission Connection Offer however this is subject to further consideration by the TSO and TO, and will be developed subject to legal advice on the contractual framework required and any necessary changes to the TIA as part of implementation of contestability. The sequencing of adoption and energisation is also subject to these discussions.
- 2.27 For distribution connections the DNO is of the view that the Adoption Agreement should be signed early in the process so that the obligations on all parties are understood and accepted at the outset. Where a contractor undertaking elements of the Contestable Works is not a party to the Adoption Agreement then the counter-party to the Adoption Agreement may wish to reflect its obligations to the DNO in an agreement with its contractor. It is therefore appropriate to refer to the obligations regarding design review and supervision in the Adoption Agreement. The processes for testing and commissioning are being developed by the DNO and will be subject to legal advice.

Additional Protection for NIE Networks

- 2.28 Two respondents did not support the use of credit ratings as not all contractors have credit ratings so their use would be unreasonably discriminatory. This approach is also unlikely to be of any value in protecting the financial interests of final customers. Also, it was stated that it was unclear who would decide the threshold of acceptability for credit ratings. If a contractor fails to live up to the expectations of a credit rating, what practical recompense is available to electricity customers?
- 2.29 In practice, no contractor can be obliged to maintain a credit rating into the future. In the event of failure to adhere to an obligation like this, NIE Networks would have no means of enforcement other than civil litigation (which might well not yield any benefit if the contractor was insolvent).

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- 2.30 It was stated that it was unclear how NIE Networks expects to monitor the credit ratings of all connecting customers and ICP organisations over the full warranty period.
- 2.31 Changes to the legal ownership/structure of counterparties are likely to change over 10 years, so NIE Networks could well have difficulty in knowing whether this credit rating obligation had been discharged.
- 2.32 One respondent believed that the potential requirement stated in paragraph 7.1 for the ICP and/or customer to provide a guarantee or other form of security was too vague and didn't agree it was necessary.
- 2.33 One respondent believed that the potential requirement to maintain a policy of insurance or demanding a bond in respect of any liability would be double charging for no additional benefit.
- 2.34 One respondent believed that paragraph 7 states that NIE Networks' preferred protection would be the present and (unenforceable) future credit rating of an organisation, potentially requiring litigation to obtain a remedy for non-performance, with the alternative of demanding two forms of straightforward financial guarantees and that the logic of that is not immediately apparent.
- 2.35 One respondent stated that the requirement for acceptable credit rating was onerous. Not all contractors have credit ratings, so their use would be unreasonably discriminatory. This approach is also unlikely to be of any value in protecting the financial interests of final customers. It is unclear who would decide the threshold of acceptability for credit ratings. In practice, no contractor can be obliged to maintain a credit rating into the future. Furthermore, it is unclear how NIE Networks expects to monitor the credit ratings of all connecting customers and ICP organisations over the full warranty period.
- 2.36 In response, NIE Networks needs to be sure that where a defect occurs on the Contestable Works within the warranty period the customer or ICP is either capable of rectifying the defect or NIE Networks can rectify the defect and recover its costs.
- 2.37 NIE Networks is of the view that credit ratings have always been seen as the lowest cost option for these circumstances. If the customer or ICP does not have or cannot maintain a sufficient credit rating then another form of security may be required (for example a bond) to ensure cost recovery. It will be the responsibility of the counter-party to the Adoption Agreement to satisfy NIE Networks that it has sufficient financial strength to meet its obligations under the Adoption Agreement. This is subject to further consideration by the Licensees and will be developed subject legal advice on the contractual framework required.

Section H - Consents and Wayleaves

1 Introduction

1.1 Section H of the Guidelines covered consents and wayleaves and contained proposals on:

- Site acquisition
- Planning permission
- Wayleaves and easements
- Construction and installation agreement, and
- Legal options

2 Responses and Views of the Licensees

2.1 One respondent expressed the view that the customer is responsible for wayleaves, not an ICP, adding that it is unlikely an ICP would be appointed in advance of wayleaves being obtained.

2.2 Furthermore, one respondent stated that applying for wayleaves, consent and acquiring land are not activities requiring accreditation.

2.3 The Licensees accept that wayleaves and easements may be obtained by a party other than the party which is to enter into the Adoption Agreement. However it will be a condition precedent to adoption that wayleaves are in place as required.

2.4 The Licensees agree that the acquisition of land, wayleaves and consents are not activities requiring accreditation under the NERS scheme and appropriate amendments will be made to the Guidelines.

Section I - Arrangements for Shared Connections and Clusters

1 Introduction

- 1.1 Section I of the Guidelines covered shared connections and clusters.
- 1.2 The following general principles were outlined in the Guidelines for contestability on Connection Works which are shared:
- 1.2.1 Shared Contestable Works can only be undertaken by an ICP where the customers making use of the Shared Connection Works unanimously appoint a Lead Developer to be responsible for delivering all of the Shared Contestable Works, and
- 1.2.2 The Lead Developer must be one of the customers making use of the Connection Works.
- 1.3 Where a Lead Developer has been appointed, the Lead Developer may also deliver its Unique Contestable Works. The other customers have a number of options regarding their Unique Contestable Works. They can:
- (i) deliver the Unique Contestable Works themselves
 - (ii) appoint the Lead Developer to deliver the Unique Contestable Works, where the Lead Developer agrees, or
 - (iii) agree that the relevant Licensee delivers the Unique Contestable Works.
- 1.4 For clusters the following additional principles were also outlined:
- 1.4.1 For the Cluster Infrastructure to be delivered contestably there cannot be a contribution from the Northern Ireland customer base, as set out in the Decision Paper.
- 1.4.2 The pre-construction works of Cluster Infrastructure are non-contestable and shall be the responsibility of the TSO whereas the construction of Cluster Infrastructure is contestable.

2 Responses

- 2.1 One respondent said that the Guidelines should not include an absolute requirement for unanimity in appointing a Lead Developer, without inclusion of a mechanism for appeal to the UR on the basis of potential abuse of process. This view was supported by the explanation that in Ireland the unconditional requirement for unanimity has been found to have the potential for minority connection customers to obstruct customers having more demanding delivery timelines, by exploiting the timetable requirements of the contestability process.
- 2.2 One respondent said that they understood the principles proposed for delivery of shared and Cluster Infrastructure but believes that this will in practice, mean that the majority of shared infrastructure cannot be delivered contestably, particularly in the case of cluster connections, where the anticipatory nature of

sizing the cluster will mean that an element of funding from the wider NI customer base is likely to be required.

- 2.3 They added further that appropriate commercial measures could be put in place to deliver the cluster works contestably, with a contribution from the NI customer base, thus introducing competition and saving money for NI customers without exposing NI customers to undue risk.
- 2.4 A number of respondents also raised the point that if contestably-delivered clusters must be entirely financed by customers then there must be sensible cost-sharing arrangements in place to rebalance contributions when subsequent connections are made.
- 2.5 One respondent raised concerns about what would happen if a shared connection does progress contestably and one connectee withdraws.
- 2.6 One respondent raised the point that if contestability is to apply to cluster connections, some of these may be developed out of sequence with the licensees' timetable and will not have UR capex approval.
- 2.7 One respondent raised an issue with the wording, "As Cluster Infrastructure normally involves transmission works, the TSO is responsible for the pre-construction works and the TO is responsible for the construction works." They suggested that this wording should reflect the fact that a cluster may or may not include transmission works, so long as the principle of the loop into the existing circuit being non-contestable is respected.
- 2.8 The respondent also commented that it was incorrect to say that the TO is responsible for the construction of Cluster Infrastructure.
- 2.9 One respondent raised an issue with the wording in paragraph 3.11 and said this wording is confusing however they did not argue with the principle set out in the paragraph.

3 Development of a Contractual Framework

- 3.1 The Guidelines set out general principles relating to the contestable delivery of shared connections clusters. Paragraph 1.1 advised, "It is important to emphasise that these processes have not yet been tested and the contractual framework is still under development."
- 3.2 At the consultation workshop held on 21 October 2015, the Licensees stated that the contestable delivery of shared assets presents a number of significant difficulties and that creative thinking was required in order to develop a robust contractual framework.
- 3.3 The following concerns raised by respondents highlight the complexity of implementing contestability for Shared Works:
 - Risks arising out of the Lead Developer needing to be appointed unanimously

- Connectees being required to fully fund the Cluster Infrastructure where a Lead Developer has been appointed
 - Latecomers to the cluster not partially funding the cluster infrastructure paid for by earlier connectees, and
 - Consequences if a party terminates its agreement.
- 3.4 The Licensees have undertaken further analysis of the arrangements which exist in Ireland for shared assets to be built contestably. The Lead Developer concept has been taken from the contestability model in Ireland where there is the 'Gate' process. At the connection offer stage in Ireland all customers which will share the use of connection assets are known and offers are issued simultaneously to those customers. At that stage those customers can seek to reach agreement between themselves on whether or not the shared connection assets are to be built contestably. It is a fundamental principle that this group of customers acts as a consortium and that a 'Lead Developer' is appointed by the group to interface with the TO and the TSO. However the 'Gate' process removes a number of difficulties associated with shared assets being built contestably as described in Section 4 below.
- 3.5 The Licensees are not aware of a contractual model in Great Britain which allows shared assets to be built contestably.
- 3.6 The Licensees therefore believe that a bespoke contractual framework must be established for Northern Ireland so that shared assets can be built contestably. That framework must resolve the concerns raised by the Respondents and the difficulties referred to in Section 4 below.
- 3.7 As stated previously, the implementation of contestability is happening in parallel with a consultation on the connection offer process in Northern Ireland. Therefore changes may be required in the future to processes being developed to facilitate contestability in connections to account for any changes to the current connection offer process.

4 Contractual Framework Difficulties

- 4.1 In Northern Ireland NIE Networks has a statutory duty to provide a connection when requested to do so (subject to a number of exceptions) and is obliged by its licence to issue a connection offer within 90 days. SONI's obligation to issue a connection offer within 90 days is set out in the TSO licence. The connection of customers therefore occurs incrementally and not all customers seeking connection to a shared asset will apply for connection at the same time. This presents a number of difficulties as described below.

Appointment of the Lead Developer

- 4.2 When a cluster is designated a connection offer proposing connection to that cluster may be issued to one customer or to a number of customers. Where a number of customers are to connect into a shared asset then the Licensees are still firmly of the view that those customers must be unanimous in their decision to build the asset contestably and must appoint a Lead Developer. This does

not prevent a single customer which has received a connection offer into a cluster from building the asset contestably where no other customers have received a similar connection offer, but that customer must, where practical, deal with any latecomers (see below). The Licensees propose that the decision to appoint a Lead Developer should be made within the 90 day validity period of the connection offer and if the unanimous decision is not made in the specified time then the shared works will be delivered by the relevant Licensee(s). To facilitate the appointment of a Lead Developer it will be necessary for any party being required to connect to shared infrastructure to give permission to the Licensees to disclose their details to any other party who may be required to connect into that infrastructure.

- 4.3 To clarify, the role of the Lead Developer will be to deliver the Shared Contestable Works and be the single point of contact interfacing with the relevant Licensee on the delivery of these works. The individual connection offers for all customers, including the Lead Developer, connecting to the Shared Contestable Works will contain the relevant terms and conditions of a Contestable Offer. It is the responsibility of the Lead Developer along with the other customers who appointed the Lead Developer to ensure that the appropriate contractual framework is set up between them.

Funding of the Cluster Infrastructure

- 4.4 The UR has proposed that the NI customer base contribution should not be available for Cluster Infrastructure that is being delivered contestably. Any decision on NI customer base contributions is therefore outside the Licensees' remit. In response to the comments on cost sharing for the delivery or use of Shared Contestable Works, the Licensees believe that where the customers sharing the assets are all at the same stage in the connection offer process at the same time i.e. all customers sharing the assets are issued their offers simultaneously, then the cost sharing can be equitable from the outset.
- 4.5 However the issue arises when there is a latecomer i.e. a customer applying for a connection once a decision to contestably deliver connection works has already been made. In this scenario the latecomer has the potential to make a sole use connection asset a shared connection asset or a shared connection asset shared by more customers. This scenario is not specific to cluster connections but to any connections.
- 4.6 The Licensees have identified that those situations where there is a connection asset being delivered, or that has been delivered, contestably to which a latecomer is to be connected have the potential to present significant difficulties.
- 4.7 The Licensees can think of two scenarios in which a latecomer situation can arise:
- (i) Where the Contestable Works have been delivered and already adopted by NIE Networks and the connection method offered to a latecomer makes use of the Contestable Works.

- (ii) Where the Contestable Works are in the process of being delivered and the connection method offered to a latecomer makes use of the Contestable Works.
- 4.8 Under the present connection charging methodologies the TSO and the DNO have mechanisms whereby the cost of the Shared Connection Works can be shared equitably amongst the customers making use of the Shared Connection Works. A difficulty arises where the Shared Contestable Works are being delivered contestably in that the cost of the Shared Contestable Works is unknown to the TSO or DNO. This applies whether the Contestable Works have already been adopted by NIE Networks or are still in the process of being delivered.
- 4.9 There is a balance to be struck when dealing with a latecomer between the Licensees duty under the Order to develop efficient, co-ordinated and economic systems and unnecessarily or unfairly hindering the delivery of the earlier customer's connection. The Licensees believe that this balance may be difficult to achieve and how it can be achieved is subject to legal review.

Termination of a Connection Agreement

- 4.10 The Licensees believe that respondents' concerns about the financial arrangements if a customer making use of the shared connection assets terminates is a matter for the customers. If customers unanimously decide to contestably deliver shared assets and appoint a Lead Developer, then the onus is firmly with the customers to satisfy themselves that the contractual arrangements they have set between them for delivering the contestable works are robust enough to protect against the impact of a customer dropping out.
- 4.11 The Licensees will, in their connection offers and Statement of Charges, make provision for such a situation happening but only for the Non-Contestable Works.

Cluster Infrastructure and transmission works

- 4.12 In response to the comment that Cluster Infrastructure may not always include transmission works, the Licensees would like to clarify that Cluster Infrastructure will always comprise an element of transmission works, some of which may be contestable and some of which may be non-contestable. The Licensees would like to point out that in the case where a cluster substation is planned to loop into an existing transmission circuit, although the loop into the existing line would be non-contestable, there are other transmission works that could be contestable, such as the construction of the 110/33 kV substation and the procurement and installation of a 110/33 kV transformer.
- 4.13 The wording in Section I paragraph 3.2 will be amended as follows, "As Cluster Infrastructure involves transmission works, prior to the introduction of contestability in connections, the TSO was always responsible for the transmission pre-construction works and the TO was always responsible for the transmission construction works."

- 4.14 The wording in Section I paragraph 3.8.1 will also be updated to reflect this change and will be as follows, “The pre-construction works of Cluster Infrastructure is non-contestable and shall remain the responsibility of the TSO whereas the construction of Cluster Infrastructure is contestable.”
- 4.15 In response to the comment that the wording of paragraph 3.11 Section I is confusing, the Licensees agree that this should be updated and propose the following wording, similar to that proposed by the respondent, “Where an asset is to be delivered contestably and a licensee issues an offer to a latecomer to connect to these assets in advance of their completion, that latecomer shall have no remedy against the licensees for the consequences of any delay in completion of these Contestable Works.”

TSO/DNO preferred connection method

- 4.16 The Licensees would like to clarify that, outside of clusters, there is also the potential for the Licensees to require a connection asset to be delivered at a higher functional specification than the least cost technically acceptable connection (i.e. above the minimum standard required for the connection). As noted in the Guidelines, Section A, paragraph 6.2, the Licensees’ obligations to develop the systems in an efficient, co-ordinated and economical way must not be undermined by the introduction of contestability. It does mean however, that the Licensees will need to put in place a process with the UR to cover the incremental cost of any such system operator preferred connection method, based on the non-contestable costs, for this to be fed back to the customer delivering the Contestable Works.
- 4.17 For the avoidance of confusion, in the case of clusters specifically, the minimum standard connection requires a 90 MVA transformer (as set by the DNO) regardless if the full 90 MVA is to be used. Thus the Least Cost Technically Acceptable (LCTA) connection method for a cluster will be on this basis and the inclusion of a 90 MVA transformer is not considered a system operator preferred connection method if the full 90 MVA is not used. This is in line with NIE Networks’ Statement of Charges.

5 Conclusions

- 5.1 The Licensees are considering applying the following principles in any connection offer / connection agreement which relates to a connection which is to be shared or which has the potential to be shared. The Licensees shall not be responsible for drafting the terms of any agreement between a customer or Lead Developer and any other party which may connect to the infrastructure being built contestably by the customer or Lead Developer. The principles below remain subject to legal advice:
- (i) All connection offers /agreements issued by NIE Networks to connect large scale generation and demand (≥ 5 MW) which are in respect of connections which are to be shared, or have the potential to be shared, shall be special agreements under Article 25 of the Electricity Order. As such, the rights and liabilities of the parties shall be those arising under the agreement. NIE Networks cannot accept the risk of disputes being

referred to the Utility Regulator up to 12 months after the time when the connection is made.

- (ii) The Lead Developer must be appointed by all parties who are to connect to a shared asset or cluster. Evidence must be provided to the relevant Licensee of the agreement reached between them. A Lead Developer should not be permitted to deliver Shared Connection Works on behalf of a customer without the permission of that customer. If a Lead Developer or any of the other customers withdraw their agreement with the Lead Developer at any point, it will be the responsibility of the customers to resolve the situation. In the event that the Lead Developer withdraws the remaining customers must reach agreement on the new Lead developer and provide evidence of same to the Licensee or the remaining customers may apply to modify their offer. The Licensees can only resolve any issues with the Connection Offer or Connection Agreement. Entering into a Lead Developer arrangement is at the connecting customers own risk.
- (iii) If a contracted customer at a cluster which has a Lead Developer terminates a connection offer prior to the Shared Contestable Works being complete the repercussions shall be dealt with under the agreement between that customer and the Lead Developer.
- (iv) Where a group of customers unanimously agree to shared assets being delivered contestably and appoint a Lead Developer to do so then a member of that group shall have no remedy against the Licensees for any delay in delivery or failure by the Lead Developer to complete construction of the shared assets which would result in any commitments given by the DNO or the TSO in a connection offer to that group member not being honoured.
- (v) Where the DNO or the TSO issue a connection offer to a third party which offers to connect the third party to an asset being delivered contestably then that third party shall have no remedy against the DNO or the TSO for any delay in delivery or failure by the customer or Lead Developer to complete construction which would result in any commitments given by the DNO or the TSO in the said connection offer not being honoured.

Section J - Charging Arrangements

1 Introduction

1.1 Section J of the Guidelines covered Charging Arrangements and contained proposals on:

- Charging statements
- Operating and maintenance charges
- Charges for Contestable Works, and
- Charges for Non-Contestable Works

2 Responses and Views of the Licensees

Charging for Transmission works

- 2.1 One respondent expressed the view that to allow contestable delivery of cluster connections to the transmission system, SONI must implement Condition 30 1(b) of its Licence in a non-discriminatory manner. This Condition requires that the Licensee prepares a statement that sets out, inter alia, “the basis upon which charges will be made for connection to the All-Island Transmission Networks at entry or exit points on the transmission system”
- 2.2 The respondent added that, for the avoidance of undue discrimination between holders of licences, or applicants for licences, the licensee’s charging statement must charge NIE Networks on the same basis as it does for other licensees connecting to the transmission system. Arrangements currently in place for cost reallocation between transmission connectees must therefore be extended to include NIE Networks, to ensure equality of treatment.
- 2.3 The respondent stated that when this is done, contestable delivery of cluster connections will be financially feasible without requiring any up front contribution from final customers.
- 2.4 The Licensees are considering the above responses. The Licensees can confirm that a comprehensive review of the transmission and distribution connection charging methodologies and the TIA will be carried out as part of the implementation of contestability and will consider these concerns as part of that review.

Section K - Governance and Disputes

1 Introduction

1.1 Section K of the Guidelines covered governance and disputes and contained proposals on:

- How governance will be addressed in other documents, and
- An escalation process for dealing with disputes

2 Responses and Views of the Licensees

Governance and Disputes Proposals

2.1 One respondent supported the proposals on Governance arrangements.

2.2 Regarding disputes, one respondent stated that all references to ICPs should be removed from this section.

2.3 The same respondent also proposed that the escalation process is unnecessarily cumbersome and the UR should be the next port of call if the dispute concerns an issue of policy. Furthermore, mediation and arbitration should only apply to matters of technical dispute.

2.4 One respondent questioned the proposal in paragraph 2.3 that the complaint process should not apply to any question of whether or not the Contestable Works have been carried out and completed to the satisfaction of NIE Networks, in relation to which the decision of NIE Networks is final the respondent held the view that there should be some acknowledgement that decisions of NIE Networks should be reasonable.

2.5 Paragraph 2.4 proposed that NIE Networks and SONI would expect the complaints process above to have been exhausted prior to any complaint being raised with the Utility Regulator. One respondent proposed that it should not be a requirement for mediation and/or arbitration processes to have been followed before the UR is involved.

2.6 The Licensees note the above comments. As set out in Section K of the Guidelines, it is not intended that the Guidelines themselves would prescribe the governance and dispute arrangements to apply. Ultimately the appropriate dispute processes to follow will be determined in accordance with the provisions, as applicable, of the connection offers / agreements, Grid Codes, Adoption Agreement etc.

Amendments to documentation

2.7 Regarding the proposal in paragraph 2.5 that any party seeking an alteration or amendment to documentation should submit a request in writing to NIE Networks or SONI, setting out the element of the documentation which they require to be revised and the reasons for the request. One respondent stated that it is inappropriate to include this explanation of a change process within a

section on disputes and that a separate process should be defined for review of contestability-related documentation.

- 2.8 One respondent proposed that the industry should be involved in the review of change requests, to ensure that the widest range of perspective and experience is brought to bear on the assessment. Industry discussions could be held regularly or on an ad hoc basis to review proposals. There needs to be broader industry involvement to ensure that the change works for all industry sectors – demand, generation, small and large. The level of contestability and information on document change proposals should be part of a regular reporting package on the state of competition and industry engagement, rather than a single subject response to an ad hoc request for information.
- 2.9 The GB arrangements for review of documentation seem appropriate where there are 14 distribution licensees and Ofgem is keen to ensure equitable treatment across all regions. The development of contestability will be much more transparent in Northern Ireland and the Licensees therefore believe that governance and dispute arrangements can evolve with time as needs determine.

Section L - Definitions and Acronyms

1 Introduction

1.1 Section L of the Guidelines contained definitions and acronyms.

2 Responses and Views of the Licensees

2.1 One respondent provided a number of suggestions relating to modifying certain definitions:

- (i) The definition of Adoption Agreement should read - “The agreement transferring ownership of the Contestable Works to NIE Networks”
- (ii) The definition of Connection Works could be split into ‘Customer Connection Works’ and ‘Company Connection Works’.
- (iii) The definition of Contestable Works should read “Works identified in the Connection Offer as being eligible for delivery by parties other than NIE, in accordance with the arrangements defined in these Guidelines (and ‘Contestable’ will be interpreted accordingly).”
- (iv) The definition of ICP is confused within the guidelines and also the requirement of a single point of registration through Lloyds register places inappropriate burden on developers.
- (v) The definition of Lead Developer should read “The party appointed in accordance with the Utility Regulator’s decision, by customers at a shared connection, to deliver the Shared Contestable Works. The Lead Developer must be one of the customers being connected”
- (vi) The definition of Reinforcement Works should read “Works that are required by a new or modified connection to either the Transmission or the Distribution System and which are modifications to the existing systems”.

2.2 The Licensees appreciate the suggested amendments and will make appropriate changes.

2.3 The Licensees are considering making the following changes in the updated Guidelines:

- (i) “Non-Contestable Offer” to replace the defined term “the Offer” that was used in the Guidelines. The Contestable Offer will set out the same information as described in the Guidelines Section D paragraph 1.2 for the Offer, i.e. the Non-Contestable Offer will be an offer that will provide all information to the customer if the relevant Licensees were to complete all the Connection Works.
- (ii) “Contestable Offer” to be a new defined term that will be introduced in the updated Guidelines. The Contestable Offer will set out the same

information as described in the Guidelines Section D paragraph 2.2 for the modified Offer, i.e. the Contestable Offer will be an offer that will provide all information to the customer if the relevant Licensees were to complete only the Non-Contestable Works and the customer complete the Contestable Works.

(iii) “Connection Offer” to be a new defined term in the updated Guidelines to refer to any offer issues for connection by one of the Licensees.

2.10 Respondents also commented that adding key milestones into the high level process maps in the Appendices would be useful.

2.11 The Licensees agree that this would be useful and will update accordingly in the updated Guidelines.