

COMPLAINT TO THE UTILITY REGULATOR

BY SOLAR VENTURES LIMITED IN RELATION TO A REQUEST TO NORTHERN IRELAND
ELECTRICITY LIMITED FOR A CONNECTION OFFER FOR A DISTRIBUTED GENERATION SITE
(PHOTO-VOLTAIC) AT EDWIN CALVIN FARM, MACOSQUIN, COLERAINE.

Final Determination

30 July 2015

1 Introduction

- 1.1 The Northern Ireland Authority for Utility Regulation (referred to hereafter as the **Utility Regulator**)¹ has received, by way of a letter and enclosures dated 7 May 2015, a formal complaint from Solar Ventures Limited (**SVL**) (**B18+19**) regarding a ‘distribution connection’ dispute between SVL and Northern Ireland Electricity Ltd (**NIE**) (the **Dispute**).
- 1.2 The Dispute relates to the refusal by NIE to accept a connection application submitted by SVL on 30 October 2014 (**B10**). The application was in respect of a site for a Distributed Generation Site (Photo-voltaic) at Edwin Calvin Farm, Macosquin, Coleraine (the **Solar Farm**).
- 1.3 The Dispute between SVL and NIE (together, the **Parties**) falls to be determined by the Utility Regulator under Article 26 of the Electricity (Northern Ireland) Order 1992 (**A1**) (the **Electricity Order**), and in accordance with Article 37(11) of Directive 2009/72/EC (**A2**) of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (the **Directive**).
- 1.4 The Utility Regulator has considered the Dispute in accordance with its Policy on the Resolution of Complaints, Disputes and Appeals and Guide for Applicants dated June 2013 (**A7**) (the **Procedure**).
- 1.5 The Board of the Utility Regulator has appointed us, Tanya Hedley, Director of Compliance and Network Operations and Bill Cargo, Utility Regulator Board Member

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

jointly to determine the Dispute (together, the **Decision-Makers**). We do so as delegates of the Utility Regulator and on its behalf.

- 1.6 This document is our final determination in relation to the Dispute. It reflects our current thinking as at 30 July 2015.
- 1.7 In writing this final determination, we have had the benefit of being able to consider the following materials relevant to the factual and legal background of the Dispute -
 - (a) A Statement of Case (the **Statement**) prepared for us by a small team of skilled staff of the Utility Regulator. The Statement provides an overview of the background to the Dispute, the views of the Parties and the issues that fall to be determined.
 - (b) A bundle of documents which accompanied the Statement and contained the papers listed in an appendix to the Statement.
 - (c) The Parties' responses to the Statement and the accompanying bundle of documents.
 - (d) A draft determination dated 22 July 2015 and the Parties' responses to the draft determination.
- 1.8 The Parties were given the opportunity to comment on a draft determination and have had copies of the draft Determination and papers listed in the appendix to the Determination. The Parties' comments on the draft Determination have been taken into account in the preparation of this final determination.
- 1.9 This final determination adopts the following structure:
 - (a) The Parties (at Section 2);
 - (b) The applicable legal framework (at Section 3);
 - (c) The factual background to the Dispute (at Section 4);

- (d) The issue falling to be determined (at Section 5);
- (e) Our determination in relation to that issue (at Section 6);
- (f) Our concluding observations (at Section 7); and
- (g) Our final Order (at Section 8).

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

2 Section Two - The Parties

The following summary as to the status of the parties is predominantly derived from the Statement

SOLAR VENTURES LIMITED

- 2.1 Solar Ventures Limited (SVL) is a UK company dedicated to the development of Solar Photovoltaic (PV) Farms across the UK.
- 2.2 The company's head office is based at Units 7 & 8, Island Trade Park, Avonmouth, Bristol, BS11 9FB with offices at 2 Argyle Square, Donnybrooke, Dublin 4.
- 2.3 Mr Andrew McAdam is a Director of Solar Ventures Limited.

NIE LIMITED

- 2.4 NIE is a subsidiary of ESBNI Limited. It is the owner of the electricity transmission system in Northern Ireland, and the owner and operator of the electricity distribution system in Northern Ireland.
- 2.5 NIE is licensed separately in relation to both activities.
- 2.6 It is licensed to undertake these activities and accordingly holds an electricity transmission licence and an electricity distribution licence (**A6**) granted or taken under Article 10(1)(b) and 10(1)(bb) of the Electricity (Northern Ireland) Order 1992 (**A1**) respectively.
- 2.7 NIE is the only party in Northern Ireland entitled to offer terms to connect, or to modify an existing connection, to the electricity distribution system.
- 2.8 NIE's distribution licence (**A6**) (also known as the successor distribution licence) is the relevant licence for the purposes of this dispute (the Licence)

3 Section Three - Applicable Law

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

*The Electricity Order (A1)*²

- 3.2 Article 3 of the Electricity Order establishes a legal definition of distribution (see tab).
- 3.3 Specifically, it defines -
- (a) a distribution system as *‘a system which consists (wholly or mainly) of low voltage lines and electrical plant and is used for conveying electricity to any premises or to any other distribution system’*, and
 - (b) a high voltage line as *‘an electric line of a nominal voltage of or exceeding 110 kilovolts’* with low voltage line to *‘be construed accordingly’*.
- 3.4 The connection to the Solar Farm would be low voltage and therefore a distribution connection.
- 3.5 Articles 19 to 24 of the Electricity Order make provision in respect of distribution connections.
- 3.6 In particular, they establish -
- (a) a duty to connect on request (Article 19(1));
 - (b) a procedure for applicants to require a connection (Article 20);
 - (c) a number of exceptions from the duty to connect (Article 21);
 - (d) a right for an electricity distributor to recover the reasonable costs of making a connection to such extent as is reasonable in all the circumstances (Article 22);

² <http://www.legislation.gov.uk/nisi/1992/231/contents>

- (e) a right for an electricity distributor to require reasonable security for payment (Article 23); and
- (f) a right for an electricity distributor to impose certain additional terms of connection (Article 24).

3.7 Alternatively, Article 25 of the Electricity Order permits an electricity distributor and a connection applicant to enter into a connection agreement on agreed terms - which may be different to those specified in Articles 19 to 24 of the Electricity Order - and for those agreed terms to determine the respective rights and liabilities of the parties. This is referred to as a 'special connection agreement'.

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

3.9 Specifically, Article 26 of the Electricity Order provides -

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

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

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

and the practice and procedure to be followed in connection with any such determination shall be such as the Authority may consider appropriate.

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

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

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

- (b) where the information sent to the Authority under paragraph (1)(a) was in its opinion insufficient to enable it to make a determination, the period of 4 months from when the date when the dispute was referred to the Authority.
- (2) No dispute arising under Articles 19 to 25 which relates to the making of a connection between any premises and a distribution system may be referred to the Authority after the end of the period of 12 months beginning with the time when the connection is made.
- (7) An order under this Article -
 - (a) may include such incidental, supplemental and consequential provision (including provision requiring either party to pay a sum in respect of the costs or expenses incurred by the person making the order) as that person considers appropriate; and
 - (b) shall be final and shall be enforceable, in so far as it includes such provision as to costs or expenses, as if it were a judgment of the county court.
- (8) In including in an order under this Article any such provision as to costs or expenses as is mentioned in paragraph (7), the person making the order shall have regard to the conduct and means of the parties and any other relevant circumstances. ...”

3.10 Article 19 places a duty on an electricity distributor to make a connection between a distribution system of his and any premises, when required to do so by

- “(i) the owner or occupier of the premises”

3.11 Article 19 also provides that

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

3.12 Article 20 states

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

- (2) That notice must specify—
 - (a) the premises or distribution system to which a connection to the distributor's system is required; .
 - (b) the date on or by which the connection is to be made; and .
 - (c) the maximum power at which electricity may be required to be conveyed through the connection. .
- (3) The person requiring a connection shall also give the distributor such other information in relation to the required connection as the distributor may reasonably request.
- (4) A request under paragraph (3) shall be made as soon as practicable after the notice under paragraph (1) is given (if not made before that time).

Directive 2009/72/EC (A2)³

3.13 The Authority also has the power to determine distribution connection charging (and other) complaints under the Directive.

3.14 In this regard -

- (a) Article 37(11) of the Directive provides -

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

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<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0055:0093:EN:PDF>

Practice and procedure (A7)⁴

- 3.15 The practice and procedure to be followed by the Decision-Makers in determining this dispute on behalf of the Utility Regulator is set out in the Policy on the Resolution of Complaints, Disputes and Appeals and Guide for Applicants.
- 3.16 The Policy on the Resolution of Complaints, Disputes and Appeals and Guide for Applicants will be supplemented as required in order to ensure good governance and best practice.

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http://www.uregni.gov.uk/uploads/publications/Appeals_Complaints_and_Disputes_Policy_-_June_13.pdf

4 Section Four - Factual Background to the dispute and the respective views of the Parties throughout the connection process

SVL's Connection Application

- 4.1 SVL applied for a grid connection on 30 October 2014 (**B10**) for the connection of a 11MW Distributed Generation Site (Photo-voltaic) at Edwin Calvin Farm, Macosquin, Coleraine.
- 4.2 SVL has confirmed that it has not included any information relating to the actual grid connection application submission itself, or its validity, since this is not in question.
- 4.3 On 18 November 2014 NIE responded to SVL by way of an email (**B11**) stating

“As this proposed solar site does not have full planning approval, I therefore cannot accept your application for a full connection offer. This application is invalid and I am happy to arrange for a full refund of your application fee.”

- 4.4 SVL has stated that following ongoing discussions a request was made for NIE to provide a ‘close down letter’ indicating that all attempts to resolve the dispute had been exhausted, respective positions had been noted and that the parties were amenable to the process moving forward to the formal dispute resolution stage with the Authority.
- 4.5 A letter was provided by NIE on 12 February 2015 (**B14**) and summarising its position. This included the requirement for planning permission for the generation site to be provided with the grid connection application and recognised that SVL does not accept this position.

SVL's Complaint

- 4.6 SVL has referenced the 2010 Strategic Energy Framework document produced by the Department of Enterprise, Trade and Industry (DETI) which sets a target for Northern Ireland of 40% renewable generation by 2020.
- 4.7 SVL also reference the Renewable Energy Directive (Directive 2009/28/EC) (**A3**) which seeks to establish a common framework for the promotion of energy from renewable

sources. See Section 3.15. SVL states that it is in this formal legislative context that this complaint needs to be considered.

4.8 SVL believe there is no legislative basis for NIE to refuse SVL's connection application on the grounds that it does not have planning permission.

4.9 SVL reference Article 19(1)(a) of the Electricity Order (A1) which imposes a duty on an electricity distributor to make a connection between a distribution system of his and any premises, when required to do so.

4.10 SVL refer to Article 20 of the 1992 Order that

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

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

(b) the date on or by which the connection is to be made; and

(c) the maximum power at which electricity may be required to be conveyed through the connection.”

4.11 SVL also refer to Article 20(5) in that as soon as practicable after receiving the notice under Article 20(1) the electricity distributor shall give to the person requiring the connection a notice stating the extent to which the proposals specified in the other person's notice are acceptable to the distributor and specifying any counter proposals made by the distributor.

4.12 SVL believe it submitted a valid application to NIE for connection to the grid in accordance with Articles 19 and 20 of the 1992 Order (Appendix 1). SVL also believe there is no provision in the 1992 Order to allow NIE to refuse to accept a valid application made in accordance with the 1992 Order.

4.13 In addition, SVL believe there is no requirement under the 1992 Order for an applicant to have planning permission prior to submitting an application for connection to the

grid. SVL state that Article 21 of the 1992 Order sets out the “Exceptions from duty to connect” but believe none of these apply.

- 4.14 SVL state that NIE’s position that an applicant must have planning permission in order to obtain an offer for grid connection is not supported in legislation although it is recognised that NIE has adopted this policy to date.
- 4.15 SVL highlight that the Utility Regulator has not formally endorsed NIE’s position and refer to the Utility Regulator’s publication ‘Connection Arrangements for Offshore Generation: Next Steps Paper’ published on 23 December 2013(B5). SVL highlight paragraph 4.5 which states

“While there are no barriers stopping a developer from taking a risk and making a connection application before all of the variables associated with the development, e.g. capacity and configuration, have been finalised, in practice the risks associated with this course of action are very high and the TSO and DSO recommend that planning permission is obtained before making an application”.(emphasis added by SVL)

4.16 SVL further contend that the statement from the Utility Regulator’s Next Steps Paper:

“the TSO and DSO recommend that planning permission is obtained before making an application” is evidence that the Utility Regulator is aware that there is no legislative basis for NIE to require there to be a grant of planning permission before a connection application can be made. It is the developer’s choice whether to make an application for connection to the grid prior to obtaining planning permission and developers are aware of the associated risks.

- 4.17 A clarification paper was published on 17 January 2014 (B6) on the next steps paper. SVL again highlight paragraph Section 2 as further evidence that planning permission is not a legal requirement.

“None of the documentation that we approve obliges the applicant to obtain planning permission before submitting the application.”

- 4.18 SVL point out that although this was written in the context of offshore generation, it is clear from the context that planning permission is not a legal requirement.
- 4.19 SVL believes that the System Operator for Northern Ireland (SONI) also recognises that having planning permission prior to making a grid connection application is not a strict legal requirement.
- 4.20 SVL refer to NIE's letter dated 12 February 2015 (**B14**) where NIE referred to SONI's Decision Paper (resulting from SONI's consultation on "Generator Connection Process" in 2011). In its letter NIE stated that the Decision Paper confirmed that the date for generation queue sequencing is

"The date of receipt of connection application by either SONI or NIE subject to the conditions that the connection application in question is (i) fully complete and (2) supported by the prior grant of planning permission".

- 4.21 SVL believe that NIE's statement

"infers that the consultation responses received by SONI supported the position that the connection application must be accompanied by a prior grant of planning permission and consequently that their position was endorsed by SONI. The SONI consultation simply focused on the date that connecting generators were to be added to the ITC analysis list; not on a policy requirement on the part of SONI that an applicant must have formal planning consent before an application for grid connection will be accepted."

- 4.22 SVL refer to NIE's licence that places certain obligations on NIE with regard to the making of connection offers.
- 4.23 Condition 15 of the Licence (**A6**) requires NIE to ensure that in providing offers of connection to its distribution system it does not unduly discriminate between any persons, or any class or classes of person or persons. SVL believe that NIE's current position of only allowing applications for connections to the grid to be made once planning permission has been granted distorts competition between the energy sectors. SVL state that although it may be viable for a wind farm to seek to obtain planning permission prior to obtaining a connection to the grid it is not viable for a solar farm.

4.24 SVL also refer to Condition 30 of the Licence (A6) which requires NIE to offer terms for connection as soon as practicable and, except where the Authority consents to a longer period, in any event not more than 3 months after receipt by the Respondent of a connection application containing all the information that the Respondent may require for the purpose of preparing the connection offer.

4.25 SVL state that NIE is in breach of its Licence by having failed to offer terms for connection to SVL within 3 months of receipt of the SVL's valid connection application.

4.26 SVL refer to Schedule 2 of the Planning (Environmental Impact Assessment) Regulations 2015 (the 2015 Regulations) (A4) which requires installations for the production of electricity, steam and hot water where the area exceeds 0.5 hectares to carry out an Environmental Impact Assessment (EIA).

4.27 SVL states this creates significant difficulties as Council Directive 85/337/EEC (A5) requires that

“before the grant of planning permission, the planning authority needs to consider all the likely significant effects arising from the project in its entirety.”

4.28 SVL also refer to the court case of O’Griana v An Bord Pleanala [2014] IECH 632⁵. SVL state that

“The Court held that in ensuring compliance with the EIA Directive, the developer should not submit its application for planning until such time as the environmental impact of the grid connection works have been fully assessed.”

4.29 SVL contend that an application for planning permission cannot be applied for in advance of an application for the grid connection works. Without details of the grid connection, a proper EIA cannot be carried out.

4.30 SVL believe that

“because of the real risk of legal challenge in respect of every planning permission granted for an energy scheme where EIA is required by European law but cannot be

⁵ <http://courts.ie/Judgments.nsf/0/71409D20DF97079280257DDC004F8721>

carried out because of the Respondent's position on grid, proposers of larger schemes, which require EIA are being directly discriminated against"

4.31 SVL believes that waiting until planning permission is granted a risk to the developer if it is subsequently established that grid capacity for the connection is either not available or is not available at a reasonable cost. In this scenario significant time and expense incurred in securing planning permission will be rendered nugatory, resulting in the developer losing the money and time they have invested in obtaining planning permission for an abortive project.

4.32 SVL refer to a briefing note for the Enterprise Trade and Investment (ETI) Committee, Electricity Policy Review Part 3: Grid Connections (dated 24 April 2014) produced by the Northern Ireland Renewable Industry Group (NIRIG) (B7). This note detailed that 26 wind farms which have planning permission were still awaiting connection by the Respondent. Planning permission for many of these wind farms was obtained prior to 2010, they were still not connected to the grid by 2014 and they faced imminent planning permission expiry.

4.33 SVL state

"Resubmission of a planning application would represent considerable cost to developers (including breach of covenants, re-pricing of loans, renewal of option agreements, additional planning fees, fresh Environmental Impact Assessment), serious investor uncertainty and weaker investment cases due to increased levels of curtailment. This is clear evidence that the Respondent's position is not working successfully in Northern Ireland."

4.34 The expiry of planning permission is also referenced by SVL. SVL state that the delay in getting connected has distorted the evidence in respect of achieving the renewable energy target. SVL refer to the Minister for the Environment's answer during Question Time in the Northern Ireland Assembly on 14 April 2015⁶ where this was recognised

"The issue of grid connection has been raised, largely by the industry itself, as a major problem, as it slows down the development of wind farms and single wind

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<http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2015/04/14&docID=229889>

turbines.....It is very important. Quite a number of wind farms in the system have received planning approval but have not been able to secure a grid connection. That skews our figures when we talk about meeting renewable energy targets, because, although one has received planning approval, there may be no realistic prospect of its being connected”.

4.35 SVL also refer to Oral Answers to Questions - Environment - in the Northern Ireland Assembly at 2:45 pm on 14 April 2015⁷ where the Minister also recognised that the grid connection process was different in other jurisdictions and that it was something which needed to be addressed.

4.36 SVL believe that

“As grid capacity is utilised and grid saturation is being approached, this situation can only get worse in future years and it is therefore all the more critical that grid connection is dealt with at the outset of the proposal rather than incurring the significantly higher costs involved in the planning and Environmental Impact Assessment process which arises as a direct consequence of the Respondent’s position.”

4.37 SVL highlight examples of inconsistencies such as the Utility Regulator’s determination of a dispute for Dunmore Wind Farm brought against NIE by TCI Renewables **(B4)**.

4.38 SVL also refers to NIE’s position as being inconsistent with that in GB. SVL refer to the Electricity Act 1989 and the Electricity Order 1992 **(A1)** as having the same exceptions from duty to connect.

4.39 In GB developers may apply for connection to the grid prior to the grant of planning permission. The uncertainty caused by NIE’s position makes investment in GB a more attractive option for a developer than investment in Northern Ireland, and significantly NIE’s position is influencing investment decisions.

4.40 SVL highlight the possibility of investment which may be carried out over the next 3 years that is in jeopardy because of NIE’s position.

- 4.41 SVL believe a practical and commercially viable alternative to NIE's position would be for NIE to

“to make an offer for grid connection (prior to the grant of planning permission) with conditions that planning permission be applied for and granted within a specified period and if those conditions were not satisfied then the grid connection offer would expire and that capacity would return to the system.”

SVL believe this would

“ensure that the system was not saturated with developments which were unviable and/or which were not progressed within a reasonable period.”

- 4.42 SVL does not accept that there is no alternative for connection queue management. Any logjam created by the change in NIE's position would be short term but NIE's current position will in any case be forced to change due to investment in Northern Ireland being frustrated and inhibited by the current regime.
- 4.43 SVL maintain that NIE is in breach of its Licence conditions **(A6)** and its position is resulting in breaches of the EIA Directive **(A3)** and EIA Regulations **(A4)**.
- 4.44 SVL states that NIE has failed to establish why obtaining planning permission is regarded as the only evidence of a bona fide intention to proceed and that

“Obtaining grid connection with the associated costs is of equal evidence of a bona fide intention to proceed.”

- 4.45 SVL reiterates that

“An application without planning permission is valid and must be progressed.”

NIE's Response

- 4.46 On 26 May 2015 **(B30)** NIE responded to the Utility Regulator's request for information on 12 May 2015 **(B24)**.

- 4.47 NIE points out that it has for a number of years adopted the policy that it will not make offers to connect new generation to its distribution network until the developer applicant has obtained planning permission for the proposed generation site (the "Connection Policy") (B9+17). NIE states that

"The adoption of this policy reflects the fact that there are more applicants for connection than there is capacity in the distribution network. Some form of queue management is therefore required in order to ensure the efficient and equitable allocation of a scarce resource."

and

"The Connection Policy operates to ensure that scarce available capacity is reserved only for developers that have a bona fide intention to proceed with the development."

- 4.48 NIE believes that obtaining planning permission for renewable generation represents a significant hurdle for developers and may not result in the efficient allocation of a scarce resource if developers were permitted to reserve capacity before that hurdle was overcome. The Connection Policy is designed to ensure that available network capacity is utilised to the greatest extent possible and not reserved for developments that may never be commissioned.
- 4.49 NIE state that this is an equitable policy that has been subject to industry consultation on a number of occasions and has broad support across the renewable generation sector.
- 4.50 NIE disagrees with SVL's statement of there being no statutory basis for the connection policy. NIE refers to its duty to make a connection on request under Article 19 of the Electricity (Northern Ireland) Order 1992 (A1). However, by virtue of paragraph (5) of Article 19, NIE's duty to make a connection is subject to the subsequent provisions of Part II of the Electricity Order. NIE states this includes the procedural requirements specified in Article 20, in which a person requiring a connection is required to give the distributor a notice requiring him to offer terms for making the connection.

"Paragraph (2) of Article 20 provides that the notice must specify:

- a) *The premises to which a connection is required;*
- b) *The date on or by which the connection is to be made; and*
- c) *The maximum power at which electricity may be required to be conveyed through the connection.*

Paragraph (3) further provides that the person seeking connection shall also give the distributor such other information in relation to the required connection as the distributor may reasonably request.”

- 4.51 NIE state that the reference in paragraph (2) of Article 20 to *"the date on or by which the connection is to be made"* is significant. NIE believes this makes it clear that it is entitled to be told when a connection is required; information which is relevant for system planning and other purposes.

- 4.52 NIE further states that

“A necessary implication of this requirement is that a purely open ended application for connection - one to which the connection date is not known and to which a considerable degree of uncertainty attaches - is not a notice that satisfies the requirements of Article 20. As such, NIE’s duty to make a connection, or to offer terms for a connection, is not triggered.”

And that

“It was on this basis that NIE advised Solar Ventures that its application for connection was not a valid application.”

- 4.53 NIE believes therefore that it is entitled to be provided with at least a reasonable degree of assurance as to the date on which a physical connection is required.
- 4.54 Without such assurances the date on which a connection is required is beyond the control of the applicant and may be unreasonably delayed and unless and until planning permission is granted the connection may not be required at all.
- 4.55 With regard to NIE’s licence obligations **(A6)** NIE maintain that its obligation to offer terms for connection under Condition 30 must be interpreted in a manner consistent with the statutory scheme for connections set out in the Electricity Order **(A1)**. As

such, NIE is under no obligation to offer terms for connection where the procedural requirements of Article 20 of the Electricity Order have not been satisfied.

- 4.56 NIE believes it has not contravened its duty under Condition 15 of its distribution licence (A6) not to unduly discriminate as between any persons, or any class or classes of person or persons in relation to the provision of offers of connection. NIE states

“the Connection Policy is necessary to ensure the equitable and efficient allocation of scarce resources (i.e. limited network capacity) and the even-handed application of that policy cannot be said to unduly discriminate as between applicants for connection.”

- 4.57 With regards to SVL’s reference to the decision of the Dublin High Court in the O’Griana case NIE understands that that decision requires that grid connections be taken into account when conducting an Environmental Impact Assessment for qualifying energy projects pursuant to Directive 85/337/EEC (A5). However NIE further states

“It is important to note that the O’Griana decision is not binding in Northern Ireland. To the extent that it involves the interpretation of the EIA Directive (rather than of Republic of Ireland legislation that implements the EIA Directive), it represents the views of a national court of a separate Member State. The courts of Northern Ireland will need to form their own views on the interpretation of the EIA Directive and its implementing legislation in Northern Ireland (the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015), in accordance with applicable EU jurisprudence.”

- 4.58 NIE states that SVL has not provided any evidence with regard to the difficulties this court case creates. In NIE’s experience planning authorities will seek evidence from NIE in relation to grid connection issues if such evidence is required in order to determine a planning application. NIE refers to its history of interaction with the planning authorities and states

“It is NIE’s understanding that no planning applications have been refused in Northern Ireland due to grid connection issues.”

- 4.59 Where SVL refers to the risk of undertaking potentially nugatory work on a planning application it has no visibility as to whether or not a grid connection may be available

NIE points out that this ignores the ability for a potential generator to access the NIE Heat Map and/or request a 'Feasibility Study'. NIE maintains these are useful tools for developers to understand the viability of potential projects.

- 4.60 NIE maintains that the primary objective of the Connection Policy (B9+17) is the allocation of scarce grid capacity. NIE refers to its letters to the Utility Regulator dated 28 August 2007 (B2) and to DETI on 27 March 2008 (B3) as examples of this. NIE believe this was also recognised by the Utility Regulator in its paper dated 17 January 2014 (B6) in relation to off shore generation connection. NIE states that

“In order to allocate grid capacity efficiently and equitably both NIE and SONI have concluded that the best approach is to do so when the generation project has a real prospect of proceeding (as evidenced by the grant of planning permission).”

- 4.61 NIE believes all generators would face an increased risk that applications for connection will be capacity constrained if it were not for its Connection Policy (B9+17). This, NIE believes, is a greater risk than the risk to a single generator of front loaded cost.
- 4.62 NIE accepts that grid connections have been delayed due to a number of factors associated with the scale of generation connection applications and recognises the frustration which this has caused.
- 4.63 With reference to the Dunmore Wind Farm Determination dated 17 January 2012 (B4), NIE state that the Utility Regulator recognised the delay in the process but determined that such delay was not sufficient to override the coordination of system development.
- 4.64 NIE submits that

“any delay in providing grid connection does not by itself point to a need for NIE to accept generation connection applications without planning permission.”

- 4.65 NIE believes that project timelines could be extended further if the developer had to wait for its connection offer before submitting a planning application particularly those requiring Transmission System works.

- 4.66 Both the position in Great Britain and the RoI is for developers apply for connection prior to the grant of planning permission. NIE refer to a CER and NIAER Decision Paper (AIP/SEM/114/06) dated September 2006 (B1) regarding generation connection policy in the Single Electricity Market. That paper identified the differences in approach between the two jurisdictions regarding the requirement for planning permission when making a connection. NIE believes that the comments from respondents regarding the merits of each approach were summarised but there was no consensus view that the approach in Northern Ireland was wrong. NIE state that the paper concluded that the connection offer processes in each jurisdiction did not require harmonisation.
- 4.67 NIE refer to the negative consequences of the approach adopted in the Republic of Ireland as highlighted in an article which appeared in Agenda NI Dec14/Jan 15 (B12).
- 4.68 NIE believes the arrangements in GB creates difficulties in that connection offers issued before the grant of planning permission have become tradable commodities whereby speculative developers sell on the connection offer to a second developer who then proceeds with the planning application. 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.
- 4.69 In relation to SVL's proposals whereby NIE would issue conditional offers upon the receipt of planning permission for the development thus ensuring the system is not saturated with unviable developments NIE believes this proposition fails to take account several points (5.69 - 5.72).

"In its Determination of 28 August 2014 (Brockaghboy Wind Farm) the Utility Regulator determined that a connection offer must be capable of being accepted which means that the applicant (and by implication NIE) must have certainty that the connection offered will be made and made on the terms set out in the offer. As the grant of planning permission for a proposed generation site is not within the control of the applicant or NIE it is unlikely that such a conditional offer would be a "certain" connection offer as required by the Brockaghboy Determination."

- 4.70 NIE believes that if the offer was accepted within the 90 day validity period of the offer NIE would have no certainty that the development would proceed as this would depend on the success or otherwise of the planning application submitted by the applicant. Having a time bound offer would also create difficulties should the planning process be delayed. It is for these reasons that NIE does not accept that SVL's proposal is a "practical and commercially viable alternative" to the NIE Connection Policy.
- 4.71 NIE also refer to the planning permission requirements under the Firm Access Quantity (FAQ) and Generator Output Reduction allocation arrangements governed by SONI. These require planning permission to be in place before the FAQ is confirmed by SONI. Any change to the planning permission requirements would therefore have a significant impact to the FAQ process.
- 4.72 With regard NIE's requirement under condition 30 of its distribution licence **(A6)** to issue a connection offer within 3 months of receipt of a request a proposed generation project will be based on a preliminary desk top assessment. This will not contain the level of detail that might be required to support a full assessment by the planning authorities of the connection works to be undertaken to connect the project. Under the current NIE Connection Policy a grid connection offer has a validity period for acceptance of 90 days. After this period a connection offer ceases to be valid and the applicant will lose their position in the connection queue. This is regardless of whether or not it provides the level of detail that an applicant may for require for a planning application or to assess the commercial viability of a project.
- 4.73 While SVL argues that NIE's approach is impeding 65MW of its projects NIE argues that its approach to date has enabled more than 750MW of large and small scale generation to be connected with a further c500MW committed. This does not include work in the earlier stages of the process. NIE has stated that its connected renewables total is the highest of the GB DNOs on a per customer basis.
- 4.74 Should a Determination require NIE to revise its Connection Policy or to make a connection offer to SVL, NIE would request that the time for revising the Connection Policy or making a connection offer is extended to allow for full stakeholder engagement regarding the principles to apply to generation connection. This should include an alternative capacity allocation mechanism and the issue of firm physical access in relation to a NIE connection offer. NIE further state that

“As part of that engagement the merits of requiring a per MW commitment bond when issuing a connection offer to a generation project without planning permission (as is done in the Republic of Ireland) would need to be assessed.”

SVL’s rejoinder to NIE’s response

4.75 SVL was given an opportunity to counter NIE’s response **(B30)** to SVL’s complaint documents. This submission was made on 10 June 2015 **(B37)**.

4.76 SVL maintains that NIE has failed to provide a legislative basis for their position. While NIE refers to Articles 19 and 20 of the Electricity (Northern Ireland) Order 1992 **(A1)** the articles do not state that an applicant must have planning permission before an application for connection to the grid can be accepted.

4.77 SVL state

“The sentence “The date on or by which the connection is to be made” [our emphasis] in Article 20(2)(b) is evidence that the Respondent has the power to make an offer for connection to the grid, which could be conditional on the grant of planning permission and which would expire at a future date if the condition was not satisfied, capacity would then be returned to the grid. This would ensure that developments were not able to reserve capacity beyond a reasonable time limit.”

4.78 SVL claim NIE can provide an indicative date by which the connection is to be made and refer to (Department of Climate and Energy Change: Call for Evidence on the implementation of the Contract for Difference (CFD) scheme in Northern Ireland dated 23 March 2015). SVL believed the provision of an indicative date accords with their argument that an offer for grid connection could be made with a long stop date attached.

4.79 SVL is aware of the issues relating to grid constraints but does not believe that NIE insisting upon a customer obtaining planning permission in advance of obtaining a grid connection offer will reduce this constraint.

4.80 SVL believe queue management will exist regardless as to whether planning permission has been granted. SVL is equally concerned that they as funders and developers may be

expending considerable resources in obtaining planning permission for which there may be no grid connection available.

- 4.81 Given the above SVL firmly contends that a valid application was submitted in accordance with the Electricity Order (A1).
- 4.82 SVL also contends that NIE remains in breach of its Distribution Licence (A6). SVL believes it submitted a valid application in accordance with the Electricity Order for connection to the grid and that an offer for connection should have been made by NIE not more than 3 months after receipt by NIE of the application.
- 4.83 With regards to the impact NIE's position causes SVL believes NIE has failed to address its contravention of the EIA Directive (A4). SVL state

“Compliance with Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (as amended) (the “EIA Directive”) is required by all Member States. In O’Griana v An Bord Pleanala [2014] IECH 632 the Dublin High Court held that in ensuring compliance with the EIA Directive the developer should not submit its application for planning until such time as the environmental impact of the grid connection works have been fully assessed.”

- 4.84 SVL contend that

“O’Griana is “persuasive authority” and will be taken into consideration in decisions in Northern Ireland”

And that

“this is a well established principle.”

- 4.85 Unless NIE changes its position objectors to a planning permission will be able to take advantage of the decision in O’Griana to strengthen their position.
- 4.86 SVL further states that

“Following the decision in O’Griana, the Planning Appeals Commission and planning authorities will no longer be able to ignore the position which the Applicant and other

renewable energy providers have been pushed into in Northern Ireland over the past few years.”

- 4.87 SVL believes NIE has failed to address its concerns regarding the impact on investment and feasibility. SVL refer to the point NIE make where its states

“NIE accepts that grid connections have been delayed due to a number of factors associated with the scale of generation connection applications and recognises the frustration which this has caused.”

- 4.88 SVL highlight that this is NIE conceding that the current system is not effective.

- 4.89 SVL refers to NIE’s comments that the information about grid connection works to planning authorities and the Planning Appeals Commission when assessing and determining a planning application is limited and that the information provided by the Respondent is at an insufficient level to inform the decision maker to make a lawful decision.

- 4.90 SVL contends that a consequence of this practice is that planning permission may be granted on the basis of information provided by NIE to planning authorities yet when a developer submits an application for connection to the grid they are informed by NIE that the network has reached capacity and connection to the grid is not available. SVL refer to NIE’s statement that proves the scenario outlined above is very much a reality.

“once the network has reached capacity (as has happened in certain parts of Northern Ireland)”

- 4.91 With regard to the NIE Heat Map and/or a Feasibility Study SVL contends that these only provide guidance on connection to the grid and provide no firm assurance to a developer that should they submit a planning application. SVL state that a significant amount of time and money can be spent on submitting a planning application and

“Access to the NIE Heat Map and/or a Feasibility Study is not a viable alternative to the Respondent making a firm offer for connection to the grid.”

- 4.92 SVL maintains that

“a more practical and commercially viable alternative to the Respondent’s current position would be for NIE to make an offer for grid connection (prior to the grant of planning permission) with conditions attached that planning permission be applied for and granted within a specified period and if those conditions were not satisfied then the grid connection offer would expire and that capacity would return to the system.”

- 4.93 SVL believes this would ensure that the system was not saturated with developments which were unviable and/or were not progressed within a reasonable period of time.
- 4.94 SVL also reiterate that planning and grid applications can be undertaken in parallel in GB, reducing timescales and minimising the impact of ROC banding reductions. The issue will continue in Northern Ireland with the introduction of Feed-in Tariff with Contracts for Difference (FIT CfD) for large scale renewable electricity generation (greater than 5 MW) from 2016 as projects are only eligible to compete for CFDs if they have planning permission and a grid connection agreement prior to application to a CFD allocation round. (Department of Enterprise Trade and Investment: “Discussion Paper: CFD Implementation in NI Strategic Issues” dated 27 March 2015.

5 Section Five - Issues to be Determined

5.1 In its letter dated 7 May 2015 (B17), SVL clearly states the complaint is

“submitted in accordance with Article 26 of The Electricity (Northern Ireland) Order 1992 and the Authority’s “Policy on the Resolution of Complaints, Disputes and Appeals and Guide for Applicants” dated June 2013.”

5.2 The following are the issues to be determined by the Utility Regulator.

Issue for Determination

5.3 The issue for determination by the Decision-Makers, in respect of NIE’s refusal of a connection application at Edwin Calvin Farm, Macosquin, Coleraine is -

Whether the application for a connection made by Solar Ventures is a valid application pursuant to Article 20(2) of the Electricity Order which triggers NIE’s duty under Article 19(1) of the Electricity Order.

6 Section Six - Determination

- 6.1 The issue to be determined by us is whether the application for a connection made by SVL is a valid application pursuant to Article 20(2) of the Electricity Order, which triggers NIE's duty under Article 19(1) of the Electricity Order.

Duty to connect and Procedure for requiring a connection

- 6.2 In determining the Dispute we are required to consider the relevant legal obligations of the Parties and how they apply to the particular facts of the Dispute. We note that the Parties have made various submissions relating to the practical merits of NIE accepting applications in respect of sites where planning permission has not been granted and relating to the practical merits of NIE accepting applications only where planning permission has been granted.
- 6.3 However, ultimately, the issue to be determined depends upon the legal question of whether or not NIE's duty to connect requires it to accept SVL's application (and proceed to make a connection offer).
- 6.4 Article 19(1) of the Electricity Order requires NIE to make a connection between an applicant's premises and NIE's distribution system. As stated in Article 19(5) of the Electricity Order, that duty is subject to various other provisions in the Electricity Order and this includes the procedure for requiring a connection (contained in Article 20 of the Electricity Order).
- 6.5 NIE's duty is also subject to a number of statutory exceptions (contained in Article 21 of the Electricity Order).
- 6.6 NIE is only required to make a connection offer to an applicant where the applicant has followed the specified procedure for requiring a connection. In summary, an applicant must give NIE a notice requiring NIE to make a connection offer. That notice must specify:
- (a) the applicant's premises;
 - (b) the date on or by which the connection is to be made; and

- (c) the maximum power at which electricity may be required to be conveyed.
- 6.7 The applicant must also give NIE such other information in relation to the required connection as NIE may reasonably request.
- 6.8 SVL submits that it has provided NIE with a notice in accordance with Article 20 of the Electricity Order and that NIE is required to provide it with a connection offer. NIE submits that the notice which SVL has provided is not compliant with the legislation, meaning that its duty under Article 19 of the Electricity Order is not engaged.
- 6.9 In particular, NIE submits that SVL has not specified '*the date on or by which the connection is to be made*' (for the purposes of the legislation). NIE submits that this is the case even though the connection application dated 30 October 2014 (**B10**) stated that SVL expected to begin generation in March 2015.
- 6.10 This is because NIE submits that it is a necessary implication of the above provision that an application for which the connection date is not known and to which a considerable degree of uncertainty attaches cannot satisfy the statutory requirement to specify a connection date.
- 6.11 NIE submits that the statutory scheme contemplates that it is entitled to be provided with at least a reasonable degree of assurance as to the date on which a physical connection is required and that no such assurance exists for an application where the site has not been granted planning permission.
- 6.12 In our understanding, NIE's submission is that there cannot exist a date on which the connection is to be made (for the purposes of Article 20(2)(b) of the Electricity Order) unless and until planning permission for the site has been granted (on the basis that there then exists a reasonable assurance as to the date on which a physical connection is required).
- 6.13 As NIE accepts, its position relies upon the requirement for planning permission being implied into Article 20 of the Electricity Order. The issue is whether such an implication accords with the wording of, and intention behind, the legislation.
- 6.14 We do not consider that such an implication can properly be made. In relation to the wording used in the legislation, we note that in Article 20(5)(a) of the Electricity Order

(which relates to the subsequent notice which NIE must provide) the matters specified in the notice provided by the applicant are described as '*proposals*'. The matters specified, including the date on which a connection is to be made, are proposals made by the applicant, which NIE may respond to.

- 6.15 Article 20(1) provides that an applicant shall provide the specified notice where the applicant '*requires a connection*'. This wording suggests that an applicant may make such a request at any time, rather than only after it has taken particular steps (such as obtaining planning permission).
- 6.16 In addition, we note that the Electricity Order refers expressly to planning permission in a number of other provisions (such as, for example, Article 15 which relates to the exploration of land). This suggests that if the legislator had intended that the grant of planning permission should have a particular impact in relation to whether or not a notice was valid, this would have been stated expressly in Article 20.
- 6.17 In relation to the intention behind the legislation, it appears to us that the purpose of Article 20 is to ensure that a connection applicant has provided an electricity distributor with sufficient information to enable the distributor to respond and either accept the applicant's proposal or make a counterproposal.
- 6.18 We do not consider that the policy intention behind Article 20 is to limit connection applicants to those which have met particular conditions (such as having planning permission granted for the site in question). We do not see any basis in the legislation to agree with NIE's submission that the legislation contemplates that NIE is entitled to be provided with a reasonable degree of assurance as to the date on which physical connection is required.
- 6.19 Finally, NIE submits that the grant of planning permission would lead to a reasonable degree of assurance as to the date on which a physical connection is required. The grant of planning permission may make it more likely that physical connection will be required by a stated date, because the risk that delay will be caused in the planning process is removed. However, many other factors will impact on when a connection is required.
- 6.20 We do not accept that a notice can only be given under Article 20(2) where the applicant's project which is to be connected has reached a particular stage of

completion. But, even if we did, we are not at all convinced why planning permission in particular would be the stage to be the subject of an implied requirement.

- 6.21 It follows from the above that we do not agree with NIE that an application for a connection is only valid where the applicant can show evidence that planning permission has been granted for the relevant site.
- 6.22 SVL submits that its application (dated 30 October 2014 (**B10**)) was a valid application. Our understanding is that NIE contests this solely on the basis that planning permission has not been granted for the site. On this basis, we consider that SVL's application was valid and that NIE is obliged to provide it with a connection offer (in accordance with Articles 19 and 20(5) of the Electricity Order).

Objective of NIE's Connection Policy

- 6.23 NIE submits that the adoption of its Connection Policy reflects the fact that there are more applicants for connection than there is capacity on its distribution network and that some form of queue management is required in order to ensure the efficient and equitable allocation of a scarce resource.
- 6.24 We appreciate that, in practice, NIE will operate a system to allocate capacity in this way. However, it must do so in accordance with (and its policies must be consistent with) its statutory duties and licence obligations.
- 6.25 It follows from our conclusion above that NIE is under a statutory duty to provide SVL with a connection offer. This statutory duty cannot be overridden by NIE's Connection Policy.

Impact on investment and feasibility

- 6.26 The Parties have made a number of submissions in relation to the impact and feasibility of rejecting connection applications where planning permission has not been granted and in relation to the impact and feasibility of accepting such applications.
- 6.27 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. On this basis, it is not necessary for us to consider these submissions further.

Environmental Impact Assessments

- 6.28 SVL submits that NIE's position of refusing to consider a connection application solely on the basis that planning permission has not been granted in relation to the relevant site should be reconsidered on the basis of European legislation around environmental impact assessments (as interpreted in a recent Irish court judgment).
- 6.29 We consider that there is merit in a number of submissions made by NIE that SVL has not provided us with sufficient evidence for us to determine that such a practice by NIE of itself leads to a failure to comply with such legislation. However, given our above conclusions, it is not necessary for us to come to a determination on this point.

Timing for connection offer

- 6.30 Having 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, it falls to us to determine the date by which NIE is required to make a connection offer in this matter.
- 6.31 In a number of recent determinations made under Article 26 of the Electricity Order where the making of a connection offer has been ordered, the Utility Regulator has ordered that the electricity distributor shall make such an offer within 21 working days of the date of the Order.
- 6.32 NIE has requested that, if it is required to make a connection offer to SVL, the time period before it is required to do so allows for full stakeholder engagement regarding the principles to apply to generation connection, including an alternative capacity allocation mechanism and the issue of firm physical access in relation to a NIE connection offer. We do not consider that these issues should lead to a the connection offer to be made to SVL being delayed.
- 6.33 However, we appreciate that NIE's current policy of requiring connection applicants to obtain planning permission for a site before making a connection application has been in place for a number of years. We acknowledge that NIE may need to consider whether

the terms on which it makes a connection offer should differ in this matter (where planning permission has not yet been granted for the site). We consider that NIE should have some further time to consider this issue. We are also aware that in earlier determinations work had been carried out by NIE in relation to the design of the connection. For this connection this work has not been carried out.

- 6.34 On this basis, we consider that NIE should be required to make a connection offer within 50 working days of the date of this final determination.

7 Section Seven - Concluding Observations

7.1 This Section Seven is not part of our formal determination.

Compliance by NIE with the Licence

7.2 We note some of the issues raised for our consideration included past compliance by NIE with its licence obligations. The investigation team has not investigated in detail and we have not considered in detail the question of whether or not NIE was or is in breach of any statutory or licence obligation.

7.3 These are matters relating to the Utility Regulator's enforcement functions and the Utility Regulator will consider separately whether it is necessary or appropriate for it to investigate these issues further.

7.4 To the extent SVL has submitted that it is entitled to a connection offer by virtue of provisions contained in the Licence, we note that SVL has referred the Dispute to be determined under Article 26 of the Electricity Order. Our role in such a determination is to determine matters on the basis of the provisions of the Electricity Order and not on the basis of provisions contained in the Licence.

NIE's Connection Policy

7.5 It follows from our determination that NIE will be required to make changes to its Connection Policy, to remove the current inconsistency with the provisions of the Electricity Order.

7.6 How NIE chooses to do so is outside the scope of this final determination. Any changes made should ensure that NIE is able to comply with its statutory duties and its licence obligations. In the meantime, NIE must comply with those statutory duties and licence obligations in relation to any further connection applications which it receives.

7.7 In response to NIE's comments on the draft determination, dated 27 July, to clarify, in circumstances where there is no licence provision which dictates that the licensee requires approval from the Utility Regulator then it is up to the licensee to be satisfied itself that it is acting in accordance with its licence and meeting its licence obligations. It is not our role to confirm whether we concur or not with the proposal outlined in

NIE's correspondence but should any licensee be deemed to not be acting in accordance with their licence we would take appropriate enforcement action.

Planning permission in other contexts

- 7.8 For the avoidance of doubt, our determination relates to the application of Articles 19 and 20 of the Electricity Order. Our determination should not be taken to have a bearing on other industry processes or procedures which provide that something may only occur where planning permission has been granted in relation to a particular site. To take an example, our determination has no bearing on the application of the provisions in NIE's Charging Statement (B9) which refer to the calculation of an overall 'weighted' potential cluster capacity (such calculation taking planning consent into account).

8 Section Eight - Order

8.1 SVL has effectively asked us to make an order under Article 26(1) of the Electricity Order to the effect that SVL's application for a connection dated 30 October 2014 (**B10**) is a valid application and that SVL is accordingly entitled to a connection on the basis of its application.

8.2 For the reasons given in Section Six, we make the following order:

8.3 We order that NIE:

8.3.1 gives to SVL a notice under Article 20(5) of the Electricity Order which, subject to any applicable exception under Article 21 of the Electricity Order, makes a connection offer to SVL which offer:

8.3.1.1 shall be in response to SVL's connection application dated 30 October 2014 (B10);

8.3.1.2 shall otherwise include terms which are capable of being accepted by SVL should it wish to accept; and

8.3.1.3 shall be made such that it is capable of being accepted by SVL, should it wish to accept, without further delay.

8.3.2 gives the notice referred to in paragraph (a) as soon as practicable and in any event by no later than 50 working days from the date of this determination.

Costs

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

8.5 Having had regard to the matters referred to in Article 26(8) of the Electricity Order, in this particular case we exercise our discretion not to make a costs order. However, this should not be regarded as setting any precedent as to the future.

8.6 The Utility Regulator expressly reserves the right to order the payment of costs in any other dispute and will consider each case on its own merits and circumstances.

Tanya Hedley

Bill Cargo

Authorised on behalf of the Utility Regulator

Appendix 1 - Bundle of Documents

Doc ref	From	To	Date	Document title
A1				Electricity (Northern Ireland) Order 1992
A2				Directive 2009/72/EC
A3				Directive 2009/28/EC
A4				The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015
A5				Council Directive (85/337/EEC)
A6				NIE's Distribution licence
A7			June 2013	Policy on the Resolution of Complaints, Disputes and Appeals and Guide for Applicants
B1	CER/Utility Regulator		Sep-06	The Single Electricity Market: Generation Connection Policy Decision Paper AIP/SEM/114/06
B2	NIE	Utility Regulator	28/08/2007	Letter regarding the clustering of wind farms
B3	NIE	DETI	27/03/2008	Letter regarding an overview of wind power connections and infrastructure capacity
B4	Utility Regulator		17/01/2012	Determination of a complaint made by TCI Renewables Ltd in relation to NIE's connection arrangements for Dunmore Wind Farm
B5	Utility Regulator		23/12/2013	Connection Arrangements for Offshore Generation Next Steps Paper
B6	Utility Regulator		17/01/2014	Connection arrangements for offshore generation update
B7	NIRIG	ETI Committee	24/04/2014	NIRIG briefing note for ETI Committee Electricity Policy Review Part 3: Grid Connections
B8	Utility Regulator		28/08/2014	Determination of a complaint made by TCI Renewables Ltd in relation to NIE's connection arrangements for Brockaghboy Wind Farm
B9	NIE		13/10/2014	Statement of Charges for Connection to the Northern Ireland Distribution System
B10	SVL	NIE	30/10/2014	Connection application
B11	NIE	SVL	18/11/2014	Email regarding planning approval
B12	Agenda NI		Dec-14	Article titled 'Barriers for community energy'
B13	NIA Committee		29/01/2015	Report on its Inquiry into Wind Energy

	for the Environment			
B14	NIE	SVL	12/02/2015	Letter regarding planning approval
B15	Planning Policy Division	Utility Regulator	01/04/2015	Letter regarding the Environment Committee's report
B16	Utility Regulator	Planning Policy Division	20/04/2015	Letter regarding the Environment Committee's report
B17	NIE		May-15	Large Scale Generation Grid Connection Information Pack
B18	SVL	Utility Regulator	07/05/2015	Dispute cover letter
B19	SVL	Utility Regulator	07/05/2015	Dispute document
B20	Utility Regulator	SVL	08/05/2015	Email regarding complaint
B21	Utility Regulator	SVL	12/05/2015	Email regarding confidential information
B22	SVL	Utility Regulator	12/05/2015	Response to email regarding confidential information
B23	Utility Regulator	SVL	12/05/2015	Dispute acknowledgement
B24	Utility Regulator	NIE	12/05/2015	Dispute acknowledgement
B25	SVL	Utility Regulator	13/05/2015	Email regarding information request
B26	NIE	Utility Regulator	14/05/2015	Email regarding information request deadline
B27	Utility Regulator	NIE	15/05/2015	Email confirming information request response deadline
B28	Utility Regulator	SVL	15/05/2015	Email confirming information request response deadline
B29	SVL	Utility Regulator	15/05/2015	Email regarding information request response
B30	NIE	Utility Regulator	26/05/2015	Information request response
B31	Utility Regulator	SVL	27/05/2015	Email regarding information request response
B32	Utility Regulator	SVL	29/05/2015	Letter regarding proposed timetable
B33	Utility Regulator	NIE	29/05/2015	Letter regarding proposed timetable
B34	Utility Regulator	NIE	02/06/2015	Email regarding information request response
B35	Utility Regulator	SVL	02/06/2015	Email regarding information request response
B36	Utility Regulator	SVL	04/06/2015	Email requesting extension of time
B37	SVL	Utility Regulator	10/06/2015	Email approving extension of time

B38	SVL	Utility Regulator	10/06/2015	Response to NIE's comments on SVL's complaint docs
B39	Utility Regulator	SVL	23/06/2015	Letter regarding proposed timetable
B40	Utility Regulator	NIE	23/06/15	Letter regarding proposed timetable
B41	Utility Regulator	SVL	23/06/15	Letter regarding draft Statement of Case
B42	Utility Regulator	NIE	23/06/15	Letter regarding draft Statement of Case
B43	Utility Regulator	SVL/NIE	23/06/15	Draft Statement of Case
B44	Utility Regulator	SVL/NIE	24/06/15	Email regarding provision of technical advice
B45	NIE	Utility Regulator	26/06/15	Email requesting clarification on provision of technical advice
B46	Utility Regulator	SVL/NIE	29/06/15	Email providing clarification on provision of technical advice
B47	NIE	Utility Regulator	29/06/15	Email confirming NIE has no representation on technical adviser
B48	NIE	Utility Regulator	01/07/2015	Response to Draft Statement of Case
B49	SVL	Utility Regulator	02/07/15	Response to Draft Statement of Case
B50	Utility Regulator	SVL/NIE	22/07/2015	Draft Determination
B51	SVL	Utility Regulator	27/07/2015	Response to Draft Determination
B52	NIE	Utility Regulator	28/07/2015	Response to Draft Determination