

COMPLAINT TO THE UTILITY REGULATOR BY GAELECTRIC DEVELOPMENTS LIMITED (ON BEHALF OF SMULGEDON WINDFARM LTD) IN RELATION TO NORTHERN IRELAND ELECTRICITY NETWORK LIMITED'S CONNECTION OFFER FOR SMULGEDON WIND FARM.

Final Determination

20 January 2016

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 12 August 2015, a formal complaint from Gaelectric Developments Limited on behalf of Smulgedon Windfarm Ltd (SWFL) (B48) regarding a 'distribution connection' dispute between SWFL and Northern Ireland Electricity Networks Ltd (NIE Networks) (the **Dispute**).
- 1.2 The dispute relates to the terms of the connection offer made by NIE Networks for SWFL. SWFL submitted an application for grid connection on 25 January 2013 (B10) which was later amended and re-submitted on 21 July 2014 (B29). This application (B29) specified an amended point of connection for Smulgedon Wind Farm to NIE Networks' distribution system. NIE Networks issued an offer to connect to its electricity distribution system (for a connection point other than that specified by SWFL in the application) on 21 October 2014 (B38).
- 1.3 The dispute between SWFL and NIE Networks (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**).
- 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 (A4) (the **Procedure**).

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

- 1.5 Tanya Hedley, Director of Compliance and Network Operations and Roisin McLaughlin (Manager within the Utility Regulator) have been appointed 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.
- 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 various drafts of the Statement and the accompanying bundle of documents.
 - (d) The Parties' responses to the draft determination and the accompanying bundle of documents (B74 and B75).
- 1.8 This final determination adopts the following structure:
- (a) The Parties (at Section 2);
 - (b) The applicable legal framework (at Section 3);
 - (c) The general background to Clustering Approach (at Section 4),
 - (d) The factual background to the dispute and the respective views of the Parties throughout the connection process (at Section 5),
 - (e) The issues falling to be determined (at Section 6);

- (f) Our determination in relation to those issues (at Section 7);
- (g) Our concluding observations (at Section 8); and
- (h) Our draft Order (at Section 9).

1.9 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.

SMULGEDON WINDFARM LTD

- 2.1 SWFL is a 100% subsidiary of Gaelectric NIB Limited, a company incorporated in the Republic of Ireland. The ultimate holding company is Gaelectric Holdings Public Limited Company, also a company incorporated in the Republic of Ireland.
- 2.2 Gaelectric Developments Limited is a 100% subsidiary of Gaelectric Holdings Public Limited Company, a company incorporated in the Republic of Ireland.
- 2.3 The company's head office is based at

Smulgedon Windfarm Ltd
c/o Gaelectric Developments Ltd
2nd Floor Princes Dock,
14 Clarendon Road, Belfast,
BT1 3BG Northern Ireland

- 2.4 Correspondence submitted by both parties refer to SWFL and Gaelectric Developments Limited, however, all references are to SWFL where possible (rather than Gaelectric Developments Limited).
- 2.5 SWFL was granted a licence for the generation of electricity on 22 September 2014 (A3).

NIE NETWORKS LIMITED

- 2.6 NIE Networks is a subsidiary of ESBNI Limited which is a member of the ESB group of companies. It is the owner of the electricity transmission system in Northern Ireland, and the owner and operator of the electricity distribution system in Northern Ireland.
- 2.7 NIE Networks is licensed separately in relation to both activities.

- 2.8 It is licensed to undertake these activities and accordingly holds an electricity transmission licence and an electricity distribution licence (A2) granted or taken under Article 10(1)(b) and 10(1)(bb) of the Electricity Order (A1) respectively.
- 2.9 NIE Networks is the only party in Northern Ireland entitled to offer terms to connect, or to modify an existing connection, to the electricity distribution system.
- 2.10 NIE Networks' distribution licence (A2) (also known as the successor distribution licence) is the relevant licence for the purposes of this dispute (the Licence).
- 2.11 As from 22 September 2015 NIE Limited changed its name to NIE Networks Limited. Therefore, for ease of reference and for the purposes of this statement, all references are to NIE Networks.

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 Wind 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; or ..”

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.
- (5) As soon as practicable after receiving the notice under paragraph (1) and any information requested under paragraph (3) the distributor shall give to the person requiring the connection a notice -
 - (a) stating the extent to which the proposals specified in the other person's notice under paragraph (1) are acceptable to the distributor and specifying any counter proposals made by the distributor;
 - (d) specifying any other terms which that person will be required to accept under Article 24;

3.13 The provisions of Article 21 state that nothing in Article 19(1) requires an electricity distributor to make a connection if and to the extent that:

- (a) he is prevented from doing so by circumstances beyond his control;
- (b) circumstances exist by reason of which his doing so would or might involve his being in breach of regulations under Article 32, and he has taken all such steps as it was reasonable to take both to prevent the circumstances from occurring and to prevent them from having that effect; or
- (c) there is a lack of capacity or there are exceptional circumstances which render it impracticable for him to do so.

3.14 Article 21 of the Electricity Order further provides that without prejudice to the generality of paragraph (1), an electricity distributor is not required to make a connection if:

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

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

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

The Licence (A2)

3.16 Condition 31 of the Licence relates to the “Functions of the Authority - Distribution Disputes”.

3.17 Paragraph 1 of Condition 31 provides as follows -

- “1. If, after a period which appears to the Authority to be reasonable for the purpose, the Licensee has failed to enter into an agreement with any person entitled, or claiming to be entitled thereto pursuant to a request under Condition 30, the Authority may...on the application of that person or the Licensee, settle any terms of the agreement in dispute...in such manner as appears to the Authority to be reasonable having (insofar as relevant) regard in particular to the following considerations...”

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

3.19 More specifically, Condition 30 provides -

- "1. On application made by any person, the Licensee shall (subject to paragraph 5) offer to enter into an agreement for use of system:
 - (a) to accept into the Distribution System at such entry point or points and in such quantities as may be specified in the application,....
2. On application made by any person the Licensee shall (subject to paragraph 5) offer to enter into an agreement for connection to the Licensee's distribution system or for modification to an existing connection, and such offer shall make detailed provision regarding...
 - (a) the carrying out of works (if any) required to connect the Distribution System to any other system for the transmission or distribution of electricity and for the obtaining of any consents necessary....
 - (f) the connection charges to be paid to the Licensee, such charges (unless manifestly appropriate) (i) to be presented in such a way as to be referable to the statements prepared in accordance with paragraph 1 (or as the case may be, paragraph 7) of Condition 32 or any revision thereof; and (ii) to be set in conformity with the requirements of paragraph 4 of Condition 32 and (where relevant) of paragraph 3...
 - (h) any further matters as are or may be appropriate for the purposes of the agreement.
4. The Licensee shall offer terms for agreements in accordance with paragraphs 1 and 2 as soon as practicable and (save where the Authority consents to a longer period) in any event not more than the period specified in paragraph 6 after receipt by the Licensee of an application containing all such information as the Licensee may reasonably require for the purpose of formulating the terms of the offer.
6. For the purpose of paragraph 4, the period specified shall be:...(b) in the case of persons seeking connection...3 months."

3.20 The relevant provisions of Condition 32 (i.e. those referred to in Condition 30 and which the we have reviewed) are -

- (a) Paragraph 1 which reads -

- “1. The Licensee shall...prepare a statement approved by the Authority setting out the basis upon which charges will be made, as part of the Distribution Business, for...(b)connection to the Licensee’s distribution system...

Such statement to be in such form and to contain such detail as shall be necessary to enable any person to make a reasonable estimate of the charges to which it would become liable for the provision of such services, and (without prejudice to the foregoing) including such of the information set out in paragraphs 2 and 3 as is required by such paragraph to be included in the statement.”

- (b) Paragraph 4 which reads -

4. Connection charges for those items referred to in paragraph 3 shall be set at a level which will enable the Licensee to recover:

- (a) the appropriate proportion of the costs directly or indirectly incurred in carrying out any works, the extension or reinforcement of the Licensee’s distribution system and the provision and installation, maintenance and repair and, following disconnection, removal of any electric lines, electrical plant, meters, special metering, telemetry, data processing equipment or other items; and

- (b) a reasonable rate of return on the capital represented by such costs.

- (c) Paragraph 7 which requires the Licensee, where directed to do so by the Utility Regulator, to prepare a statement or statements approved by the Utility Regulator providing that charges for connection to the Licensee’s distribution system will be made on such basis as shall be specified in the direction. It also provides that each statement prepared in accordance with the requirements of the paragraph shall, from the date it is approved by the Utility Regulator or such later date specified by the Utility Regulator, replace the previous corresponding statement prepared by the Licensee.

- 3.21 We note that, in determining this dispute, the principal objective and general duties of the Utility Regulator under Article 12 of the Energy (Northern Ireland) Order 2003 (the Energy Order) do not apply (see Article 13(2) of the Energy Order for reference).

Practice and procedure (A7)³

³ http://www.uregni.gov.uk/uploads/publications/Appeals_Complaints_and_Disputes_Policy_-_June_13.pdf

- 3.22 The practice and procedure followed by us 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.
- 3.23 The Policy on the Resolution of Complaints, Disputes and Appeals and Guide for Applicants has been supplemented as required in order to ensure good governance and best practice.

4 Section Four - The general background to Clustering Approach

4.1 On 16 March 2010 (B2), NIE Networks issued a consultation paper entitled “Charges for Connecting Groups of Generators to the Northern Ireland Distribution System” (the 2010 Consultation).

4.2 The 2010 Consultation:

- outlined NIE Networks’ view that its distribution connection charging methodology as applicable for generation connections i.e. charges based on the ‘Least Cost Technically Acceptable’ (LCTA) connection, was -

‘impractical and inefficient when connecting a number of closely located projects to the system’

- set out its proposals for connecting groups, or ‘clusters’, of generation projects to the distribution system - hence reference to ‘clustering approach’; and
- invited views on the proposals by 28 April 2010.

4.3 On 15 October 2010 (B4), NIE Networks issued a consultation report on “Charges for Connecting Groups of Generators to the Northern Ireland Distribution System” (the 2010 Report).

4.4 The 2010 Report:

- discussed the views of respondents and points raised by them;
- set out the criteria which NIE Networks used to assess the responses and to develop a charging methodology proposal;
- set out NIE Networks’ recommendations for changes required in connection charging policy; and
- confirmed that NIE Networks intended to take forward the clustering approach (and more specifically the proposals for a hybrid model) in discussions with the

Utility Regulator with a view to incorporating it into the next distribution connection charging statement.

- 4.5 On 15 November 2010 (B5), the Utility Regulator issued a “Consultation on Electricity Connection Policy to the Northern Ireland Distribution System” (the **Connection Policy Consultation**).
- 4.6 Chapter 10 of the Connection Policy Consultation explained that NIE Networks had previously issued the 2010 Consultation and the 2010 Report, and invited respondents to make known any further views they may have, on NIE Networks’ recommendations, to the Utility Regulator.
- 4.7 The closing date for responses to the Connection Policy Consultation was 10 January 2011.
- 4.8 On 21 December 2010 (B6), approval was given to NIE Networks by the Utility Regulator for expenditure on pre-construction works for four wind farm clusters.
- 4.9 On 25 February 2011, the Utility Regulator submitted a ‘For Decision’ paper to the Board entitled “Charges for Connecting Groups of Generators (Clustering) to the Northern Ireland Distribution System” (the **Board Paper**).
- 4.10 More specifically the Board Paper explained:
- the obligation on NIE Networks (set out in Condition 32 of the Licence) to prepare a statement approved by the Utility Regulator setting out the basis upon which charges will be made for connection to the distribution system; and
 - that the Utility Regulator had approved in principle the concept of clustering and agreed a process specifically for the Magherakeel cluster. (With regard to Magherakeel, what had been approved related to funding and cost recovery matters for two wind farms being in a cluster).
- 4.11 It also:
- outlined the consultation and liaison with NIE Networks that had taken place to date;

- identified some of the risks involved with the hybrid model based on clustering proposed by NIE Networks;
- asked the Board to approve the development of a new connection charging methodology in line with the 'Option 3' Hybrid model (based on clustering approach) proposed by NIE Networks;
- stated that:

“While the charging methodology will be set within [NIE’s] Statement of Charges each cluster will be subject to individual approval from the Utility Regulator” ; and

- included the following paragraph:

“Any modification to the Statement of Charges for Connection to the Northern Ireland Distribution System requires Utility Regulator sign off. This is a final safety measure that will allow the Utility Regulator review [sic] all proposed methodologies.”

4.12 On 21 April 2011 (B7), the Utility Regulator issued its “Decision Paper on the Charges for Connecting Groups of Generators (Clustering) to the Northern Ireland Distribution System” (the Decision Paper).

4.13 In this respect, the Decision Paper:

- contained much of the information included in the Board Paper;
- communicated that the Utility Regulator’s decision was to approve the development of a new connection charging methodology in line with the ‘Option 3’ Hybrid model; and
- explained that the Utility Regulator would instruct NIE Networks to submit for approval its revised Statement of Charges for Connection to the Northern Ireland Distribution System.

4.14 On 10 August 2012 (B8) NIE Networks initiated a consultation entitled ‘Methodology for Connecting Groups of Generators to the Northern Ireland Distribution System using Cluster Substations’. The consultation requested interested parties to comment on NIE

Network's draft methodology that forms part of NIE Network's Statement of Charges for Connection to the Northern Ireland Electricity Distribution System and first approved and published on 9 May 2013 (B13). See Section 4.15 below.

Current Position on Clustering Methodology

- 4.15 The current Statement of Charges approved by the Utility Regulator and their predecessors including the dates on which they became effective are listed below.

| | |
|---|-----------------|
| Statement of Charges for Connection to the Northern Ireland Distribution System (B3) | March 2010 |
| Statement of Charges for Connection to the Northern Ireland Distribution System (B9) | 1 October 2012 |
| Statement of Charges for Connection to the Northern Ireland Electricity Distribution System (B13) | 9 May 2013 |
| Statement of Charges for Connection to the Northern Ireland Electricity Distribution System (B17) | 1 October 2013 |
| Statement of Charges for Connection to the Northern Ireland Electricity Distribution System (B37) | 13 October 2014 |
| Statement of Charges for Connection to the Northern Ireland Electricity Networks' Distribution System (B57) | 01 October 2015 |

- 4.16 At the time of this draft determination, the last Statement of Charges for Connection to the Northern Ireland Electricity Networks' Distribution System approved by the Utility Regulator and therefore in full force and effect, is the statement dated 01 October 2015 (B57).
- 4.17 The charging Statement dated 1 October 2012 (B9) included a section referred to as Annex 1 - Windfarm Clusters but was listed as for future use and was intentionally left blank.

- 4.18 On 9 May 2013 the Utility Regulator approved changes to the Statement of Charges for Connection to the Northern Ireland Electricity Distribution System dated 1 October 2012 (B9). The changes included:
- (a) Section 7 - Charging arrangements for Authorised Generators connecting to the network as part of a Generator Cluster; and
 - (b) Appendix 2 - Methodology for Connecting Groups of Generators to the Northern Ireland Distribution System using Cluster Substations.
- 4.19 The cluster methodology included in the Statement of Charges is underpinned by the principles agreed between the Utility Regulator and NIE Networks dated 13 March 2013 (B12).

The Garvagh Cluster Approval Process

- 4.20 On 29 August 2014 NIE Networks submitted a paper to the Utility Regulator seeking approval in respect of pre-construction activities associated with the establishment of 110/33kV wind farm cluster at Garvagh.
- 4.21 Approval for this cluster substation pre-construction work has not yet been given and SONI is still to issue a formal connection offer to NIE Networks for the Garvagh Cluster.
- 4.22 We note that documentation relating to the pre-construction activities associated with the establishment of 110/33kV wind farm cluster at Garvagh was not provided as part of the Utility Regulator's information request or the Parties' submissions. The detail surrounding this has only been given as part of the background to clustering.
- 4.23 NIE Networks has provided as part of its submission (B52) the following list of wind farms that have been identified as potentially connecting to the new Garvagh cluster substation. These have been listed by date of connection application to NIE Networks. Wind farms which are still to receive planning permission and so have not yet submitted a connection application are at the bottom of the list.

| Wind Farm | Potential Connection Requirement |
|-------------------------|--|
| Brockaghboy (TCI) | 45 MW - NIE Networks connection offer for connection to Garvagh cluster not accepted. Wind Farm has received a transmission connection offer from SONI for connection to Mid Antrim, which has been accepted and the project is now at the pre construction stage. |
| Smulgedon (Gaelectric) | 16.1 MW - NIE Networks connection offer issued October 2014 for connection to Garvagh cluster now expired. Wind Farm has made a transmission connection application for connection to Limavady. |
| Upper Ballyrogan (TCI) | 11.5 MW - NIE Networks connection offer issued 24 Oct 2015 for connection to Garvagh cluster now expired. TCI has proposed a transmission connection via an increased MEC at Brockaghboy. |
| Craiggore (RES) | 25 MW - NIE Networks connection offer applied for 16 Mar 2015 (information complete on 10 April), and connection offer issued. |
| Cam Burn (TCI) | 13.8 MW - Still in planning process. May propose a transmission connection via an increased MEC at Brockaghboy. |
| Evishagarran (ABO Wind) | 32.2 MW - Still to receive planning permission. In planning appeals process. No connection application received by NIE Networks. |

- 4.24 NIE Networks states that, since it submitted the request for pre-construction funding for Garvagh cluster, TCI and Gaelectric have submitted transmission connection applications to SONI. This has in NIE Network's view:

"cast doubt on the status (by reference to the cluster designation rules) of Garvagh cluster".

- 4.25 In applying the methodology in Appendix 2 of the NIE Networks Statement of Charges (B57), NIE Networks believes the proposed Garvagh cluster still meets the requirements for cluster designation in that at least 56MW of generation will connect.
- 4.26 NIE Networks further reference an existing NFFO site at Rigged Hill (in the vicinity of the proposed Garvagh cluster) which may replace their existing turbines in the near future with new turbines which would require substantially more network capacity.
- 4.27 In relation to this issue SWFL has stated:

"SWFL do not dispute NIE proposing its method of connection of SWFL's specified point of connection, being the control house located at Edenmore Road as set out in the July 2014 connection application. Rather, SWFL contend that the procedure followed by NIE in issuing a connection offer for a point of connection other than that specified in the July 2014 application, without the benefit of satisfying any of the statutory exceptions to its duty to connect on request, is in breach of its duties under both the Electricity Order and NIE's Distribution Licence. SWFL therefore contend that section 4 and reference to any proposed cluster connection methodology is irrelevant for the purpose of the determination of the questions posed by SWFL's complaint in Section 6."

5 Section Five - Factual Background to the dispute and the respective views of the Parties throughout the connection process

SWFL's Connection Application

- 5.1 SWFL was granted planning permission for the project on 2 October 2012 (B1).
- 5.2 SWFL applied to NIE Networks for a grid connection on 25 January 2013 (B10) for the connection of a 16.1MW wind farm to be sited Smulgedon, Legavallon Road, Drumsurn, Dungiven.
- 5.3 SWFL considers the following sets out the appropriate context of the paraphrased correspondence between the parties during which a method of connection for SWFL to Limavady Main was considered and pricing options for such method of connection provided:

"Following initial discussions between NIE and SWFL on possible methods of connection for Smulgedon wind farm throughout 2012 and early 2013, SWFL submitted the 25 January 2013 application for a connection offer to NIE's distribution system to the on-site substation. SWFL wrote to NIE on 10 May 2013 (B14) and 9 September 2013 (B15) requesting NIE to provide an update on the status of the connection offer which was due to be issued on 25 April 2013. Following further correspondence and discussions with NIE ... regarding the method of connection from the on-site substation and provision of pricing options for both an overhead line and an underground cable to be installed from the on-site substation directly to the Limavady Main substation, SWFL followed up such discussions on 1 October 2013 by confirming its desired method of connection and requested by email (B16) that the method of connection should be 100% underground cable:

We would like a connection offer for Smulgedon with the method of connection being 100% underground cable.

If we could progress this rapidly and receive the offer, we can then progress to the construction."

- 5.4 On 21 July 2014, SWFL submitted an updated connection application (B28+B29). In the covering email SWFL stated:

"You will note that we have now made the connection of this windfarm much easier for NIE as it is extremely close to Limavady main."

and

"all Planning permissions required to connect are approved and intact."

- 5.5 As part of the revised application, SWFL detailed the "premises supply point" as being the control house located behind 104 Edenmore Road, Limavady (a detail that SWFL considers necessary pursuant to Article 20 of the Electricity Order).
- 5.6 The investigation team noted that Article 20 of the Electricity Order only requires the applicant to specify the premises or distribution system to which a connection to NIE NETWORK's distribution system is required as it states as follows:

" (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;"

It is NIE Network's generator questionnaire which specifically requests the "premises supply point".

- 5.7 SWFL have also referred to a meeting on 30 July 2014 during which it contends that NIE Networks stated, for the first time, that it would not issue a connection offer to SWFL based on the point of connection specified in SWFL's amended application. SWFL also refer to the tripartite meeting between SWFL, NIE Networks the Utility Regulator and state that NIE Networks expressly confirmed, in response to a direct question from SWFL's legal adviser that (i) it considered the 21 July 2014 connection application (including the specified point of connection at the Edenmore Control House) to be complete and a valid connection application and (ii) in NIE Network's opinion there was no reason why it would not be considered to be a valid application. NIE Networks then

issued a connection offer for a connection point other than that specified by SWFL on 21 October 2014 (B38+39).

- 5.8 In providing a response to the re-issued Statement NIE Networks states

"NIE Networks has confirmed that the requirements for a valid connection application were met by SWFL only in so far as the basic requirements set out in Article 20(2) of the 1992 Order and Section 1 of its Statement of Charges, however NIE Networks is entirely within its rights to make a counter proposal regarding connection as permitted by Article 20(5) and Article 24. With respect to the meeting on 30 July 2014 NIE Networks contends that it was made clear to SFL that the remote connection point at Edenmore was unacceptable."

- 5.9 In its cover letter to SWFL dated 21 October 2014 (B39), NIE Networks stated:

"A clustered approach has been determined as the most suitable method of connecting groups of generators that are located in the same vicinity."

This is on the basis that the cluster methodology clearly refers to the distances from the generation location rather than a point of connection dictated by the applicant. Section 7.2 of the SOC confirms that once a cluster has been designated NIE shall not be obliged to offer a connection other than to the designated cluster."

- 5.10 SWFL has stated that following further unsuccessful discussions it was left with no alternative but to refer this matter to the Utility Regulator for determination.

SWFL's Complaint

- 5.11 SWFL state

"Given the on-going delays and non-compliance of the Respondent, the Applicant submitted an amended application to the Respondent on 21 July 2014 (the "Application"), specifying an amended point of connection, being the control house located behind 104 Edenmore Road, Limavady"

- 5.12 Planning permission was granted for the control house associated with the specified point of connection on 11 July 2014 (B27).

5.13 On 30 July 2014, SWFL met with NIE Networks regarding the amended application. At the meeting, SWFL contend that NIE Networks stated that it would not issue a connection offer to them on the terms of the application. SWFL further contend that NIE Networks did not, at this meeting or any time prior to this meeting, provide any counter proposals to the specified point of connection set out in the 21 July 2014 connection application. SWFL also contend that NIE Networks did not, at this point, present to SWFL any valid reason why NIE Networks would benefit from any of the exceptions from the duty to connect as set out in Articles 21(1) or 21(2) of the Electricity Order. In SWFL's view, this breaches NIE Networks' statutory duty pursuant to Article 19(1) of the Electricity Order namely, to make a connection between a distribution system of his and any premises, upon request (subject only to the specified exceptions from the duty to connect on request, in respect of which SWFL contends that NIE Networks did not in these circumstances benefit) and notwithstanding that a valid application, for a connection offer to a valid "premises", in compliance with the legal framework subsisting at that time had been submitted.

5.14 The Parties met with the Utility Regulator on 2 October 2014 in an attempt to resolve the dispute. SWFL state that:

"Such meeting and subsequent correspondence with both the Utility Regulator and the Respondent has been unsuccessful in resolving the same. As such the Applicant has been left with no alternative but to refer this matter to the Utility Regulator for determination."

5.15 SWFL contend that the terms of the connection offer issued by NIE Networks on 21 October 2014 (B38) were not in accordance with:

"(i) the connection applied for in the Application; and

(ii) the requirements of the Order and/or the Licence (other than in relation to the requirement to provide the same as soon as reasonably practicable and in any event within 3 months).

Rather the Respondent issued the Connection Offer for a connection point located at an alternative location to that applied for."

- 5.16 SWFL argues that NIE Networks cannot dictate where SWFL's point of connection, at its own premises, should be. SWFL contends that:

"this is an erroneous interpretation of the law and that the procedural requirements of Article 20 of the Order (please refer to paragraph 4.2.8 of this Complaint) clearly provides that it is for an applicant to specify a point of connection in their application"

- 5.17 SWFL further contends that Article 20(2)(a) of the Electricity Order requires the applicant to specify the required point of connection.

- 5.18 SWFL states that is not attempting to specify NIE Network's method of connection to its distribution system, or the entry point onto the distribution system at which the connection shall be made, only that NIE Networks provides SWFL with a connection offer for its specified point of connection, as detailed in its application.

- 5.19 Having considered that they have complied with the legislative procedure for making a connection application pursuant to Article 20 of the Electricity Order, SWFL contends that NIE Networks is in breach of Article 19 of the Order and Condition 30 of its Licence in that it has failed to issue a connection offer based on the application being properly submitted.

- 5.20 SWFL refers to the electricity generation licence which was granted on 22 September 2014 (A3) by the Utility Regulator in respect of the generation of electricity by Smulgedon wind farm. SWFL draws attention to its application for this licence which provides details, where requested at Part II 2(a) of the application to "provide particulars of [...] the distribution of that electricity, including details of lines to be constructed", of the control house to be located at Edenmore Road, Limavady forming part of the plant and apparatus of the proposed wind farm and of the single low voltage underground lines to be constructed, owned and operated by SWFL in order to accommodate the export of electricity from the wind farm to the distribution system:

"An underground Cable from Smulgedon Windfarm to Edenmore control house via a 33kV underground cable and then from Edenmore control house to the Northern Ireland grid connected at the 33kV bus bar"

- 5.21 SWFL highlights that its electricity generation licence grants it certain powers to carry out road works, etc and that it:

“confers upon a licensee the powers and rights set out in Schedule 4 of the Order which provide that a licensee (subject to the requirements of the Street Works (Northern Ireland) Order 1995) may carry out certain works in relation to the installation, inspection, maintenance, adjustment, repair, alteration, replacement and removal of electrical lines on, under or above ground, electrical plant associated with such lines and any structures for housing or covering such lines or plant.”

- 5.22 The Utility Regulator’s investigation team, however, confirmed the following in relation to the electricity generation licence for SWFL:

- no further details were requested or provided, including maps and drawings, as part of the licence application in respect of the Edenmore control house;
- the location of the Edenmore control house or its relative position in relation to Smulgedon Wind Farm could not have been ascertained from the licence application;
- the licence is area specific and the ‘Grant of the Licence’ only authorises SWFL to generate electricity at Smulgedon Windfarm, Smulgedon Townland, Legavallon Road, Limavady, BT49 0PY. No reference is made in the licence of the Edenmore control house;
- as per Condition 9 of the electricity generation licence, Paragraph 15 of Schedule 4 of the Electricity Order shall apply to the licensee (SWFL) if it obtains the consent of the Utility Regulator before exercising those rights. No consent has been sought from the Utility Regulator to date by SWFL.

- 5.23 In relation to the investigation team’s comments above SWFL has stated:

“However SWFL wish to highlight that, as per the application for the generation licence, SWFL noted that the purpose of the plant and apparatus of Smulgedon wind farm, comprising Edenmore control house, was for the “distribution of that electricity” generated by the wind farm which was to be located at Smulgedon Townland, Legavallon Road. In this respect, SWFL also took steps to confirm that SWFL would not be required to obtain a distribution licence to carry out, operate or maintain the proposed works (including the underground line and the Edenmore Control House). SWFL wrote to DETI in April 2015 (B47) seeking guidance on the application of the

Electricity (Class Exemptions from the Requirement for a Licence) Order (Northern Ireland) 2013. DETI responded on 24 April 2015 confirming that it is for generators to satisfy themselves that they fall within the exemption criteria(B41). SWFL intend to proceed on the basis, in relation to the construction, operation and maintenance of the proposed underground cable and the Edenmore Control House, that it forms part of the plant and apparatus of the Smulgedon wind farm”

SWFL also state:

“SWFL would also clarify that no further information was requested by the Utility Regulator in such regard, nor has the Utility Regulator ever queried the location and/or purpose of the Edenmore Control House and as such, it is understood that the Utility Regulator has accepted the Edenmore Control House as comprising plant and apparatus of Smulgedon Wind Farm, albeit that it is located remotely, for the purpose of the distribution of the electricity generated by the wind farm. SWFL would also highlight that the lack of request to date by SWFL for a derogation of consent from the Utility Regulator does not in any way constitute a refusal of such consent by the Utility Regulator, nor does it imply that such consent to build the requisite low voltage line between the wind farm and the Edenmore Control House shall not at any future date be requested. SWFL will seek to apply for such consent at the appropriate time in the development and construction of the wind farm.”

- 5.24 SWFL also refer to its consent obtained from the Department of Enterprise, Trade and Investment (DETI) pursuant to Article 39 of the Electricity Order to construct, own and operate a generation facility (B41).

- 5.25 SWFL state:

“The Utility Regulator should note that the Article 39 Consent also included the Specified Point of Connection as part of the plant and apparatus of the Project.”

- 5.26 The investigation team notes, however, that the above-mentioned Article 39 consent refers to a generating station located on land in Smulgedon Townland, Legavallon road, Limavady, BT49 0PY.

- 5.27 Part 1 ‘Consent to Construction’ is also subject to certain conditions. Specifically, paragraph (i) and (ii) which state:

“(i) the Generating Station shall be constructed on the land as shown on the map attached hereto; and

(ii) the Generating Station shall comprise the works specified in the schedule hereto.”

5.28 Part 4 ‘Schedule’ of the Article 39 consent, as detailed above, refers to an:

“electrical substation with control building”.

5.29 The investigation team confirms that no mention is made of the Edenmore control house either in the consent document or the attached map.

5.30 In relation to the Article 39 consent, SWFL state:

“SWFL would clarify that the substation located at the Edenmore control house was clearly specified in SWFL's application for consent pursuant to Article 39 of the Electricity Order as the substation for the generation station located at Smulgedon Townland, Legavallon Road. SWFL specified in its application under Article 39 that it proposed to construct “an underground line from Smulgedon Windfarm to Edenmore control house via a 33kV underground cable in the existing road infrastructure and then from Edenmore control house to the Northern Ireland Grid via underground cable in existing road infrastructure”. SWFL contend that during prolonged discussions with DETI in respect of the Article 39 consent applied for, at no stage did DETI query or raise any objections to the remote location of the Edenmore control house. As such it is understood that DETI has accepted the Edenmore Control House as comprising plant and apparatus of Smulgedon Wind Farm, albeit that it is located remotely, for the purpose of the distribution of the electricity generated by the wind farm.”

5.31 Notwithstanding the above, SWFL maintain that

“The Specified Point of Connection is located at the controlhouse at 104 Edenmore Road, Limavady, being a 33kV or lower, low voltage underground line to be constructed, owned, operated and maintained by the Applicant pursuant to the terms of the Generation Licence and the Article 39 Consent.”

5.32 SWFL, therefore, contends that

"pursuant to the Edenmore Planning Permission, the Article 39 Consent, and Articles 19(1)(a) and 20 of the Order (as referred to in paragraph 4 of this Complaint, the Specified Point of Connection, as applied for, is a valid and legitimate point of connection."

NIE Networks' Response

- 5.33 On 1 September 2015 NIE Networks responded (B52) to the Utility Regulator's request for information dated 19 August 2015 (B51).
- 5.34 NIE Networks has confirmed that SWFL submitted an application for connection of Smulgedon Wind Farm on 25 January 2013 (B10).
- 5.35 NIE Networks refers to its revised Statement of Charges for Connection in May 2013 (B13) which contained a methodology (at Appendix 2 of that Statement of Charges) for the designation of a cluster where a number of generation sites in the same vicinity require a distribution connection.
- 5.36 NIE Networks states that it determined, in accordance with Appendix 2 of its Statement of Charges for Connection, a new cluster substation at Garvagh to connect a number of wind farms which might otherwise have expected a connection to Limavady Main substation.
- 5.37 In late 2013, NIE Networks informed SWFL that it would be proposing a connection to the new Garvagh cluster substation. This was following the discussions it had with SWFL regarding the method of connection of Smulgedon Wind Farm and the issues associated with a connection to Limavady Main.
- 5.38 NIE Networks refer to the Utility Regulator's determination on 28 August 2014 (B33) in relation to the Brockaghboy Wind Farm which NIE also proposed to connect to the new Garvagh cluster substation.
- 5.39 NIE Networks state this determination concluded:

"Adopting a clustering approach, in circumstances where it may be possible to do so, will allow more generation capacity to be connected to the distribution system. As a

matter of first principle, it is also likely to result in the maintenance of a more efficient, coordinated and economical system of electricity distribution."

- 5.40 On the basis of this determination, NIE Networks believed it was reasonable to design a connection for Brockaghboy Wind Farm on the basis of a cluster substation.
- 5.41 NIE Networks also refers to the Utility Regulator's determination on 26 August 2014 (B32) in relation to the Pigeon Top Wind Farm which NIE Networks proposed to connect to the new Drumquin cluster substation and that it reached the same conclusion as the Brockaghboy Determination.
- 5.42 NIE Networks issued a connection offer to SWFL on 21 October 2014 (B37) proposing to connect Smulgedon Wind Farm to the new Garvagh cluster as this was in NIE Networks' opinion:

"the only method of connection technically acceptable to NIE at that time."

- 5.43 NIE Networks states that:

"In January 2015 SWFL applied to SONI for a transmission connection for Smulgedon Wind Farm to its remote substation 1.3km from Limavady Main. This transmission connection would require works to the 110kV transmission network at Limavady Main."

- 5.44 No reference has been made in relation to this by SWFL and no documentation in relation to this application has been provided.

- 5.45 Further, NIE Networks states that:

"In June 2015 SWFL proposed to NIE that SWFL would pay for reinforcement works at Limavady Main substation as an alternative to being connected to Garvagh cluster substation."

and

"In June 2015 NIE confirmed that, whilst the cluster methodology must apply where the cluster criteria are met, NIE would consider alternative connection arrangements for those wind farms identified for connection into Garvagh cluster in the event that

proposals were submitted on behalf of those wind farms which would result in the proposed Garvagh cluster no longer meeting all the cluster designation criteria i.e. if the wind farms proposed a multiple transmission connection as opposed to individual distribution connections."

5.46 Again, no reference has been made in relation to this by SWFL and no documentation in relation to this proposal has been provided by the parties.

5.47 Given the development of the Garvagh cluster, NIE Networks states it has consistently maintained that such a connection in Limavady main is not technically acceptable. NIE Networks has written a number of letters to SWFL confirming its position and pointing to paragraph 7.2 of the NIE Statement of Charges (B36) which states:

"NIE shall not be obliged to offer an alternative connection location other than to the Designated Generation Cluster Infrastructure or Approved Generation Cluster Infrastructure or Constructed Generation Cluster Infrastructure identified by NIE."

5.48 NIE Networks maintain it has been mindful of the complaint made by Brockaghboy Wind Farm (TCI) (B33) to the Utility Regulator which also challenged the refusal by NIE Networks to connect that wind farm to Limavady Main substation. NIE Networks believes it is necessary to maintain consistency in approach.

5.49 NIE Networks further believes that:

"Acceding to the SWFL request would not be consistent with the NIE principle of developing cluster substations to facilitate generation connection."

5.50 NIE Networks highlight the consultation process undertaken in the development of Appendix 2 of the NIE Networks' Statement of Charges (B37).

5.51 NIE Networks further highlight paragraphs 11.40 and 10.12 in the Brockaghboy and Pigeon Top Determinations (B32+B33) respectively which state:

"The alternative [to a clustering approach] is a system based on individual connections carried out without reference to each other, even where they are closely proximate in time and location. This is unlikely to be the most efficient, economical or coordinated way to proceed..."

- 5.52 NIE Networks states it is also mindful of the potential of a complaint from TCI if SWFL were to be offered a connection to Limavady Main (albeit from a remote substation) when this was not offered to TCI (Brockaghboy Wind Farm). NIE Networks believes:

"Given that TCI have now sought a transmission connection for Brockaghboy Wind Farm and that this method of connection may also allow TCI to connect the other TCI wind farms at Upper Ballyrogan and Cam Burn to the transmission system via Brockaghboy it could be argued that they no longer have an interest in a distribution connection to Limavady. The relative merits of each method of connection, as they may affect the commercial interests of TCI, are primarily a matter for TCI but given that developers are concerned about the speed of connection any method of connection which ensures early connection to the network (transmission or distribution) will still be of interest to TCI."

- 5.53 Furthermore, NIE Networks is cognisant that should it offer a distribution connection from Limavady to SWFL's control house located at Edenmore Road, other parties including TCI (Brockaghboy, Upper Ballyrogan), RES (Craiggorr) or ABO (Evishagaran) may complain.

- 5.54 NIE Networks rejects SWFL's argument regarding a connection point specified by the customer. Regarding the complaint NIE states that it:

"primarily relies on an interpretation of Condition 30.1 of the NIE Licence to support the SWFL contention that it can specify an entry point into the Distribution System. In fact Condition 30.1 relates solely to use of that system and has no relevance to the terms for connection to that system as referred to in Condition 30.2."

NIE Networks further contend that:

"the fact that the premises to be connected and the point of connection in respect of those premises are different concepts and that while an applicant seeking connection can nominate the premises to be connected it is for NIE to determine the most appropriate point of connection for those premises. NIE does not accept that the concept of a "specified point of connection" as described by SWFL is a defined term or exists as a matter of law or indeed that the customer has any legal right to specify the point of connection in respect of the premises to be connected."

5.55 NIE Networks believes:

"It is disingenuous of SWFL to make this complaint while stating in clause 3.1.7 of the complaint that it "is not attempting to specify the Respondent's method of connection ... or the entry point onto the distribution system at which the connection shall be made". There is no technical or commercial reason for the premises identified as the 'Specified Point of Connection' to be 10.4km away from the source of generation other than to attempt to force a connection to Limavady Main. The complaint made by SWFL fails to address the wider issues associated with such a connection as referred to in this commentary."

5.56 NIE Networks further believes the purpose of SWFL's connection application is to:

"distance the point of connection from the source of generation and therefore from the proposed Garvagh cluster, so as to undermine the cluster methodology approved in the NIE Statement of Charges."

5.57 NIE Networks considers that, "in these exceptional circumstances", it can rely on Article 21(1) of the Electricity Order to seek an exemption from providing such a connection. In doing so, NIE Networks has proposed a connection from Smulgedon Wind Farm to Garvagh cluster substation as per its connection offer of 21 October 2014 (B38).

5.58 NIE Networks also states in its submission that it has never been requested by SWFL to make a connection from the premises identified as the 'Specified Point of Connection' to Garvagh cluster substation. NIE Networks believes that while such a connection may be feasible it is unlikely to be the most efficient, economical or co-ordinated way in which to connect Smulgedon Wind Farm.

SWFL's Response to the draft Statement of Case issued 25 September 2015

5.59 The draft statement of case was provided to both parties for comment on 25 September 2015 (B56). SWFL responded on 19 October 2015 (B63) and commentary not provided within the main sections of the Statement have been provided here.

5.60 In relation to the transmission connection offer (B58) referred to by NIE Networks in its submission, SWFL state:

"As alluded to in the Complaint at paragraph 4.2.11, SWFL confirms NIE's statement that SWFL did apply to SONI for a transmission connection from the Specified Point of Connection and were issued a connection offer from the point of the connection at the Edenmore Control House to Limavady Main substation on 2 October 2015. SWFL request that the Utility Regulator take into consideration the SONI connection offer (the "SONI Offer") (B58). The SONI Offer sets out a method of connection from SWFL's specified point of connection at the control house at Edenmore Road to the Limavady Main substation. In order to issue such a connection offer, SONI was required to request an offer for the carrying out of construction works from NIE, such construction works being required to enable SWFL to be connected to the Limavady Main substation. Pursuant to the terms of the Transmission Interface Agreement between NIE (as Transmission System Owner) and SONI (as Transmission System Operator), "on receipt of a Construction Application from SONI, NIE shall notify SONI whether or not it intends to submit a Construction Offer [...] in any event, on or before ten Business Days after the Construction Application Date". Pursuant to Condition 20 of its Transmission Licence, NIE is obliged to follow the prescribed procedure in rejecting any application for such construction works or issuing such an offer. In accordance with the terms of Condition 20(3) of its Transmission Licence, NIE issued an offer for the carrying out of the construction works being required to enable SWFL to be connected to the Limavady Main substation. Such Construction Offer enabled SONI to issue the SONI Offer to SWFL for the connection of the control house at Edenmore Road to the Limavady Main substation via the transmission system. SWFL contend that NIE's issuing of an offer to SONI demonstrates that the limited exceptions to the duty to connect on request, which NIE have attempted to rely on in refusing to issue SWFL with a connection offer in accordance with the specified terms of its application of July 2014 are not satisfied, specifically for the following reasons: (1) NIE cannot demonstrate that there is a lack of capacity (2) NIE cannot demonstrate that exceptional circumstances are made out that would render it impracticable as clearly they made a Construction Offer to SONI for such a connection. Further, should NIE rely on the fact that extensive upgrade works would be required, SWFL confirm NIE's statement that they were willing to pay for same which renders cost an issue wholly a matter for SWFL, (3) at no point since the application, has NIE challenged the validity of the application, and (4) at no point since the submission by SWFL of the 21 July 2014 connection application to NIE have NIE ever stated that (i) it considered the 21 July 2014 connection application (including the specified point of connection at the Edenmore Control House) to be incomplete or invalid."

5.61 In response to the SWFL assertions in section 5.60 NIE Networks states:

"The connection offer made by NIE Networks as DNO in relation to the application made by SWFL for a distribution connection is independent of the obligation on NIE Networks as TSO to provide a construction offer to SONI under the TIA in relation to a transmission connection application made by SWFL to SONI for a transmission connection. The contention by SWFL that the actions of NIE Networks as TSO somehow override or render invalid the actions of NIE Networks as DNO has no foundation and ignores the regulatory structure in which NIE Networks (as both TSO and DNO) operates."

The Parties Response to the Draft Determination issued 15 December 2015

5.62 The Draft Determination was provided to both parties for comment on 15 December 2015 (B73). Comments were requested by 8 January 2016.

5.63 NIE responded on the 8 January to say that they had no comments on the Draft Determination (B74).

5.64 SWFL responded on 8 January with a number of comments (B75). SWFL's response disagreed with the conclusions of the Decision Makers but their representations in this respect largely reiterated arguments made in their original complaint that the 'specified point of connection' (i.e. 104 Edenmore Road) should be treated as the 'premises.' SWFL's response has been fully considered by the Decision Makers in arriving at the Final Determination set out in Section 7.

6 Section Six - Issues to be determined

- 6.1 The issues to be determined by the Utility Regulator were set out in the Statement. We agree with the issues as set out in the Statement. Accordingly the following are the issues to be determined by the Utility Regulator.

Issues for Determination

- 6.2 The issue for determination by the Decision-Makers, in respect of NIE Networks' refusal of a connection application for SWFL dated 21 July 2014 (B38) with the premises supply point being specified as a control house at lands adjacent to 104 Edenmore Road, Ardgarvan, Limavady is:
- whether the application for a connection made by SWFL on 21 July 2014 is a valid application pursuant to Article 20(2) of the Electricity Order which triggers NIE Networks' duty under Article 19(1) of the Electricity Order;
 - if it is a valid application, is SWFL entitled to specify the point of connection and to obtain a connection offer based on that connection point;
 - is NIE Networks obliged to treat the point of connection specified by SWFL in respect of Smulgedon Wind Farm as acceptable or can NIE Networks rely on Article 20(5) of the 1992 Order and provide a counter proposal namely to specify a different point of connection under; and
 - has NIE Networks issued a grid connection offer for the Wind Farm that contains terms which it is reasonable in all the circumstances of the case for that person to be required to accept?

Other items for consideration

- 6.3 We note that NIE Networks has requested a further item for consideration: the Article 39 consent obtained by SWFL for Smulgedon Wind Farm. In particular NIE Networks requests that:

"In the event that a Determination is made, which requires NIE Networks to connect the Edenmore control room, NIE Networks requests that DETI confirms that the Article 39 consent obtained by SWFL is valid for such a connection, prior to any revised connection offer having to be issued by NIE Networks.

In the event that the Article 39 consent is not valid for the Edenmore control room NIE Networks requests that it be under no obligation to issue a revised offer until SWFL provides a valid Article 39 consent."

6.4 Our views on this matter are set out in section 8 below.

7 Section Seven - Determination in relation to those issues

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

Issue 1:

Whether the application for a connection made by SWFL on 21 July 2014 is a valid application pursuant to Article 20(2) of the Electricity Order which triggers NIE Networks' duty under Article 19(1) of the Electricity Order

7.2 Article 20(2) sets out the content of the notice requiring the distributor to offer terms for making a connection. It has three elements:

- a) Premises or distribution system to which a connection to the distributors system is required
- b) The date on or by which the connection is to be made
- c) The maximum power at which electricity may be required to be conveyed through the connection

7.3 There is no suggestion that the application made by SWFL, either on 25 January 2013 or on 21 July 2014 does not meet the requirements of 20(2)(b) or (c).

7.4 The element of Article 20(2) which is at issue is 20(2)(a) as SWFL wish to specify the point of connection as being the control house located behind 104 Edenmore Road, Limavady (the premises supply point). NIE Networks, however, contend that the premises to be connected and the point of connection are two different things and that it is for NIE Networks to determine the appropriate point of connection for those premises.

7.5 Under Article 20(2)(a) in order for an application to be valid application it must specify the 'premises' to be connected.

7.6 The term 'premises' is defined in The Electricity (Northern Ireland) Order 1992, section 3 as:

'includes any land , building or structure'

- 7.7 The Generator questionnaire which NIE Networks uses to facilitate the preparation of a Generator Connection Agreement asks, at 1.4, for the address of the generator to be connected. In both the application of 25 January 2013 and of 21 July 2014 the address of the generator to be connected is stated (see section 1.4 of each Generator Questionnaire).
- 7.8 We consider that the information sought in 1.4 is consistent with Article 20(2)(a) as it indicates the site of the proposed windfarm for which the connection is being sought. Therefore we conclude that this information constitutes the 'premises' for the purpose of Article 20(2).
- 7.9 We note that the information supplied by SWFL in 1.4 remains unchanged in the applications dated 25 January 2013 and of 21 July 2014. We would reasonably expect this to be the case unless the location of the proposed wind farm had changed, which it has not. The fact that 1.4 is the location for the wind farm is reinforced by the fact that the related Article 39 consent (B41) states that:
- 'the Generating Station shall be constructed on the land as shown on the map attached hereto.'*
- 7.10 The map clearly indicates land in Smulgedon Townland, Legavallon Road, Limavady. Also the planning permission granted to Gaelectric Developments Ltd. (B1) relates to the construction of a windfarm on land at Smulgedon Hill, south of Legavallon Road.
- 7.11 Therefore the application of 21 July 2014 meets the requirement of 20(2)(a) by virtue of the fact that it specifies the 'premises'.
- 7.12 SWFL's response to the Draft Determination contends that the Decision Makers have incorrectly interpreted Article 20(2) of the Order as to the definition of 'premises.' In particular they contend that the 'premises' to be connected need not be the same site or location as the wind farm and that 'Specified Point of Connection' is a defined term which means the 'premises.'
- 7.13 SWFL's response to the Draft Determination makes it clear that 'specified point of connection' means 104 Edenmore Road. However, the purpose of the SWFL application

is to connect a windfarm to the network and it is in this context that the 'premises' is identified.

- 7.14 We note that 'Specified Point of Connection' is not a defined term in the legislation. Therefore it would be erroneous for the Decision Makers to treat it as such and to interpret 'premises' by reference to SWFL's term 'Specified Point of Connection.'
- 7.15 For these reasons we consider that there is no reason set out in SWFL's response to change the Draft determination on Issue 1.

Issue 2:

If it is a valid application, is SWFL entitled to specify the point of connection and obtain a connection offer based on that point of connection.

- 7.16 SWFL are entitled to specify, as per Article 20(2)(a), the 'premises' to be connected.
- 7.17 NIE Networks is permitted consistent with Art. 20(3) to request such other information relating to the required connection as it reasonably requires but this is at the discretion of NIE Networks.
- 7.18 The Generator Questionnaire also asks for the Premises Supply Point number (section 1.5).
- 7.19 We consider that the information requested at 1.5 is further information relating to the required connection and that it is reasonable for NIE Networks to request this under Article 20(3).
- 7.20 Accordingly, SWFL is entitled to provide this information.
- 7.21 However, we conclude that under Article 20(2)(a) SWFL is entitled only to specify the 'premises' to be connected.
- 7.22 SWFL's response to the Draft Determination on issue 2 reiterates that the 'specified point of connection' is the 'premises.' Accordingly, we see no reason in SWFL's response to change our Determination on issue 2.

Issue 3:

Is NIE Networks obliged to treat the point of connection specified by SWFL in respect of Smulgedon wind farm as acceptable or can NIE Networks rely on Article 20(5) of the 1992 Order and provide a counter proposal namely to specify a different point of connection.

- 7.22 NIE Networks' duty to connect on request in Article 19(1) is a duty to connect 'premises'. Article 19(1)(a) explicitly references a connection between the distribution system and 'any premises.'
- 7.23 Accordingly SWFL is only entitled to obtain a connection offer based on the premises specified in its application.
- 7.24 In relation to any notice received by NIE Networks under Article 20 of the Order, NIE Networks may specify a counter proposal and this is clearly set out in Article 20(5)(a).
- 7.25 NIE Networks is therefore entitled to rely on Article 20(5)(a) to specify a counter proposal to the proposal set out in the notice.
- 7.26 We note SWFL's views on our Draft Determination in respect of issue 3. However, we see no reason in SWFL's response to change our Determination on issue 3.

Issue 4:

Has NIE Networks issued a grid connection offer for the wind Farm that contains terms which it is reasonable in all the circumstances of the case for that person to be required to accept?

- 7.27 We consider that the connection offer issued by NIE Networks on 21 October 2014 is in accordance with the application made by SWFL - both the original application dated 25 January 2013 and the amended application submitted on 21 July 2014. Both of these documents request a connection for the same premises as set out above. Therefore on that basis there is no material change to the nature of the application from January 2013 to July 2014.

7.28 Secondly, and for the reasons set out above, we consider that the connection offer issued by NIE Networks on 21 October 2014 is in accordance with the requirements of the Order, in particular Articles 19 and 20.

7.29 Thirdly, NIE Networks has applied the clustering methodology as set out its Statement of Charges. We note SWFL's contention that

'..reference to any proposed cluster connection methodology is irrelevant for the purpose of the determination of the questions posed by SWFL's complaint..'

7.30 We do not agree with SWFL that this is the case - NIE Networks have applied the cluster methodology and that has impacted on the connection offer made by NIE Networks on 21 October 2014. Therefore the application of the cluster methodology is relevant to our consideration of issue 4.

7.31 NIE Networks has a statutory duty under Article 12(1)(a) of the Order to:

'develop and maintain an efficient, coordinated and economical system of electricity distribution.'

7.32 We consider that adopting a clustering approach, in circumstances where it may be possible to do so, will allow more generation capacity to be connected to the system and therefore is likely to be consistent with the discharge of the duty on NIE Networks in article 12(1)(a).

7.33 In relation to Smulgedon wind Farm NIE Networks' proposal to base the connection on a clustering methodology appears to us to be consistent with the discharge of its duties under Article 12(1)(a) of the Order. It is also consistent with NIE Networks' Statement of Charges which clearly makes provision for clustering as the connection methodology.

7.34 For these reasons we consider that NIE Networks has issued a connection offer which is reasonable in all the circumstances of the case.

7.35 We note SWFL's views on our Draft Determination in respect of issue 4. However, we see no reason in SWFL's response to change our Determination on issue 4.

8 Section Eight - Concluding observations

- 8.1 Under the Order consent is required for the construction, extension and operation of a generating station (Article 39(1)) and also for the installation of an overhead line (Article 40). We note that SWFL are proposing to build an underground cable and an additional sub-station. Based on the legislative requirements above DETI consent is not required for this equipment.
- 8.2 We consider that an amendment to the Generator Questionnaire identifying where in the Questionnaire an applicant must specify the premises to be connected would provide greater clarity.

9 **Section Nine - Draft Order**

- 9.1 It is ordered that the issues for determination are determined in accordance with section 7.

 

Tanya Hedley
Roisin McLaughlin

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 | | | 04/02/2015 | NIE Networks' Distribution licence |
| A3 | | | 22/09/2014 | SWFL Generation licence |
| A4 | | | June 2013 | Policy on the Resolution of Complaints, Disputes and Appeals and Guide for Applicants |
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| B1 | DOE Planning Service | SWFL | 02/10/2012 | Planning approval for SWF |
| B2 | NIE Networks | | 16/03/2010 | NIE Networks consultation paper Charges for Connecting Groups of Generators to the Northern Ireland Distribution System |
| B3 | NIE Networks | | March 2010 | Statement of Charges for Connection to the Northern Ireland Distribution System |
| B4 | NIE Networks | | 15/10/2010 | NIE Networks consultation report Charges for Connecting Groups of Generators to the Northern Ireland Distribution System |
| B5 | Utility Regulator | | 15/11/2010 | Utility Regulator Consultation on Electricity Connection Policy to the Northern Ireland Distribution System |
| B6 | Utility Regulator | NIE Networks | 21/12/2010 | Approval letter for pre construction work on four clusters |
| B7 | Utility Regulator | | 21/04/2011 | Decision Paper on the Charges for Connecting Groups of Generators (Clustering) to the Northern Ireland Distribution System |
| B8 | NIE Networks | | 10/08/2012 | Consultation paper re cluster methodology |
| B9 | NIE Networks | | 01/10/2012 | Statement of Charges for Connection to the Northern Ireland Distribution System |
| B10 | SWFL | NIE Networks | 25/01/2013 | SWFL Grid connection application dated 25/01/2013 |
| B11 | SWFL | NIE Networks | 28/01/2013 | Email attaching SWFL connection application |
| B12 | NIE Networks /Utility Regulator | | 13/03/2013 | Cluster methodology principles |
| B13 | NIE Networks | | 09/05/2013 | Statement of Charges for Connection to the Northern Ireland Distribution System |
| B14 | SWFL | NIE Networks | 10/05/2013 | Chaser email re SWFL |
| B15 | SWFL | NIE Networks | 09/09/2013 | Chaser email re SWFL |
| B16 | SWFL | NIE Networks | 01/10/2013 | Email advising SWFL would like a |

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| | | | | connection with 100% underground cable. |
| B17 | NIE Networks | | 01/10/2013 | Statement of Charges for Connection to the Northern Ireland Distribution System |
| B18 | SWFL | NIE Networks | 01/11/2013 | Chaser email re SWFL |
| B19 | SWFL | NIE Networks | 18/11/2013 | Chaser email re SWFL |
| B20 | SWFL | NIE Networks | 02/12/2013 | Chaser email re SWFL |
| B21 | NIE Networks | Utility Regulator | 12/12/2013 | Presentation to Utility Regulator on options for Limavady Main and Increasing wind generation |
| B22 | SWFL | NIE Networks | 14/01/2014 | Email enclosing document "Smulgedon Connection Offer Delay" |
| B23 | SWFL | NIE Networks | 14/01/2014 | Document "Smulgedon Connection Offer Delay" |
| B24 | SWFL/NIE Networks | | 24/01/2014 | Email exchange regarding a meeting between Gaelectric and NIE Networks on 16/01/2014 |
| B25 | SWFL | Utility Regulator | 04/03/2014 | Meeting request and background information re SWF |
| B26 | SWFL | Utility Regulator | 03/07/2014 | Smulgedon Generation licence application |
| B27 | DOE Planning Service | SWFL | 11/07/2014 | Planning approval for the construction of an electrical control house at lands adjacent to 104 Edenmore Road |
| B28 | SWFL | NIE Networks | 21/07/2014 | Email attaching SWFL updated grid connection application |
| B29 | SWFL | NIE Networks | 21/07/2014 | SWFL updated grid connection application |
| B30 | NIE Networks | SWFL | 21/07/2014 | Receipt of connection application acknowledgement |
| B31 | SWFL | NIE Networks | 24/07/2014 | Email requesting meeting |
| B32 | Utility Regulator | | 26/08/2014 | Pigeon Top Wind Farm Determination |
| B33 | Utility Regulator | | 28/08/2014 | Brockaghboy Wind Farm Determination |
| B34 | SWFL | Utility Regulator | 02/09/2014 | Email setting out issues with SWFL's connection offer |
| B35 | SWFL/NIE Networks/ Utility Regulator | | 17/09/2014 | Email exchange regarding a tri-partite meeting between Gaelectric, NIE Networks and the UR, to discuss SWFL connection |
| B36 | SWFL | NIE Networks/ Utility Regulator | 08/10/2014 | Letter regarding refusal by NIE Networks to issue a connection offer to SWFL |
| B37 | NIE Networks | | 13/10/2014 | Statement of Charges for Connection to the Northern Ireland Distribution System |
| B38 | NIE Networks | SWFL | 21/10/2014 | Connection offer for SWFL |
| B39 | NIE Networks | SWFL | 21/10/2014 | Connection offer cover letter |

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| B40 | NIE Networks | SWFL | 24/10/2014 | Letter regarding NIE Networks timeline to issue connection offers |
| B41 | DETI | SWFL | 12/01/2015 | Article 39 Consent |
| B42 | SWFL | NIE Networks | 21/01/2015 | Email setting out issues/matters of disagreement with NIE Networks' connection offer of 21 October 2014 |
| B43 | NIE Networks | SWFL | 18/02/2015 | Letter responding to SWFL's email dated 21/01/2015 |
| B44 | SWFL | NIE Networks | 25/02/2015 | Response to NIE Networks' letter dated 18/02/2015 |
| B45 | NIE Networks | SWFL | 13/03/2015 | Response to SWFL's letter dated 25/02/2015 |
| B46 | DOE Planning Service | SWFL | 17/04/2015 | Planning approval for 104 Edenmore Road, Ardgarvan |
| B47 | SWFL | DETI | 24/04/2015 | Email exchange regarding Distribution License Exemption |
| B48 | SWFL | Utility Regulator | 12/08/2015 | SWFL formal request for the Utility Regulator to make a determination |
| B49 | Utility Regulator | SWFL | 13/08/2015 | Receipt of formal complaint |
| B50 | Utility Regulator | SWFL | 19/08/2015 | Dispute acknowledgement |
| B51 | Utility Regulator | NIE Networks | 19/08/2015 | Dispute acknowledgement |
| B52 | NIE Networks | Utility Regulator | 01/09/2015 | NIE Networks Commentary on SWFL Submission |
| B53 | Utility Regulator | SWFL | 11/09/2015 | Letter regarding timetable and decision makers |
| B54 | Utility Regulator | SWFL | 25/09/2015 | Letter regarding draft Statement of Case |
| B55 | Utility Regulator | NIE Networks | 25/09/2015 | Letter regarding draft Statement of Case |
| B56 | Utility Regulator | SWFL/NIE Networks | 25/09/2015 | Draft Statement of Case |
| B57 | NIE Networks | | 01/10/2015 | Statement of Charges for Connection to the Northern Ireland Distribution System |
| B58 | SONI | SWFL | 02/10/2015 | Connection offer for SWFL |
| B59 | NIE Networks | Utility Regulator | 08/10/2015 | Response to draft Statement of Case |
| B60 | SWFL | Utility Regulator | 09/10/2015 | Email regarding dispute process and responses |
| B61 | Utility Regulator | SWFL | 15/10/2015 | Letter regarding revisions to dispute timetable |
| B62 | SWFL | Utility Regulator | 19/10/2015 | Email regarding draft Statement of Case |
| B63 | SWFL | Utility Regulator | 19/10/2015 | Response to draft Statement of Case |
| B64 | Utility Regulator | SWFL | 27/10/2015 | Letter regarding re-issue of draft Statement of Case |

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|------------|-------------------|---------------------|------------|---|
| B65 | Utility Regulator | NIE Networks | 27/10/2015 | Letter regarding re-issue of draft Statement of Case |
| B66 | Utility Regulator | SWFL/NIE Networks | 27/10/2015 | Re-issued draft Statement of Case |
| B67 | Utility Regulator | SWFL/NIE Networks | 27/10/2015 | Re-issued draft Statement of Case redline version |
| B68 | NIE Networks | Utility Regulator | 06/11/2015 | Response to re-issued draft Statement of Case |
| B69 | SWFL | Utility Regulator | 06/11/2015 | Response to re-issued draft Statement of Case |
| B70 | Utility Regulator | SWFL/NIE | 13/11/2015 | Final Statement of Case |
| B71 | Utility Regulator | SWFL | 13/11/2015 | Utility Regulator comments on SWFL's response dated 19/10/2015 |
| B72 | Utility Regulator | SWFL/Pinsent Masons | 16/11/2015 | Letter regarding SWFL/Pinsent Mason's response to re-issued draft Statement of Case |
| B73 | Utility Regulator | SWFL/NIE | 15/12/2015 | Draft Determination |
| B74 | NIE | Utility Regulator | 08/01/2016 | Response to Draft Determination |
| B75 | SWFL | Utility Regulator | 08/01/2016 | Response to Draft Determination |