

**COMPLAINT TO THE UTILITY REGULATOR BY DOOISH WIND FARM LTD IN RELATION
TO A TRANSMISSION CONNECTION OFFER DATED 29 AUGUST 2018 MADE BY SONI LIMITED**

DETERMINATION

5 OCTOBER 2020

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1 **SECTION ONE - INTRODUCTION**

- 1.1 On 17 July 2019, the Northern Ireland Authority for Utility Regulation (referred to hereafter as the **Utility Regulator**) received an application (**B1**) from Dooish Wind Farm Limited (**DWFL**)¹ requesting the Utility Regulator to determine a 'transmission connection' dispute (the **Dispute**) between DWFL and SONI Limited (**SONI**).
- 1.2 The Dispute relates to the terms of an offer made by SONI to DWFL, dated 29 August 2018, for the connection of a 42MW windfarm, being developed by DWFL at Dooish Road, Curraghamulkin, Drumquin (the **Wind Farm**), to the Northern Ireland electricity transmission system (the **Connection Offer**) (**B2**).
- 1.3 The Connection Offer was made in response to an application made by DWFL to SONI on 2 April 2018 requesting the connection of the Wind Farm (which was then known as Curraghamulkin Wind Farm but is now known as the Dooish Wind Farm) to the Northern Ireland transmission system.
- 1.4 SONI is the transmission system operator and in that role is responsible for offering and entering into transmission connection agreements. It deemed DWFL's application to be effective from 9 April 2018.
- 1.5 The Dispute between DWFL and SONI (each a **Party** and together the **Parties**) was referred to the Utility Regulator under Article 31A of the Electricity (Northern Ireland) Order 1992 (the **Electricity Order**) (**A1**).
- 1.6 The Utility Regulator has progressed its determination of the Dispute in accordance with its Policy on the Resolution of Complaints, Disputes and Appeals and Guide for Applicants dated August 2018 (**A2**) (the **Policy**) – as adapted to reflect the circumstances of the case.
- 1.7 The Dispute has been acknowledged and the Parties were informed on 26 July 2019 (**B3**) that the Utility Regulation has the jurisdiction to make a determination in respect of the Dispute under Article 31A of the Electricity Order.
- 1.8 The Utility Regulator has appointed us, Claire Williams (a member of the Authority) and Colin Broomfield (Director in Wholesale Markets) to determine jointly the Dispute (together, the **Decision-Makers**)². We do so as delegates of the Utility Regulator and on its behalf.
- 1.9 This document is our determination in respect of the Dispute. It also includes an order that we make under Article 31A(5A) of the Electricity Order.

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

² As confirmed to the Parties on 30 January 2020.

- 1.10 In making this determination, we have reviewed and considered the following materials and documents –
- (a) A Statement of Case (the **Statement**) prepared for us by the case management team – the Statement sets out an overview of the background to the Dispute, the applicable statutory and regulatory framework, the views of the Parties in respect of the Dispute and the issues to be determined.
 - (b) The documents which accompanied the Statement (and also copied to the Parties), which include all of the submissions of the Parties.
 - (c) Our determination on a preliminary matter as reflected in our Findings of Fact.
- 1.11 The Parties were afforded the opportunity to comment on a draft of the Statement of Case and the comments received were taken into account by the case management team in preparing the Statement (as also reflected within the relevant sections of this determination).
- 1.12 The Parties were also afforded the opportunity to comment on a provisional determination dated 4 August 2020 (the **Provisional Determination**). We have reviewed and considered the Parties' comments on the Provisional Determination in making this determination.
- 1.13 This determination is structured as follows:
- (a) Parties to the Dispute (at [Section 2](#)),
 - (b) Applicable legal framework (at [Section 3](#)),
 - (c) Background to the Dispute (at [Section 4](#)),
 - (d) Views of DWFL (at [Section 5](#)),
 - (e) Views of SONI (at [Section 6](#)),
 - (f) Information Requests and Findings of Fact (at [Section 7](#)),
 - (g) Issues for determination (at [Section 8](#));
 - (h) Determination in relation to those issues (at [Section 9](#)),
 - (i) Recovery of the Utility Regulator's Costs (at [Section 10](#)), and
 - (j) Costs Order (at [Section 11](#)).

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

2 **SECTION TWO - PARTIES TO THE DISPUTE**

DWFL

- 2.1 DWFL is a subsidiary of DWC.
- 2.2 DWC is a UK-based renewable energy business which develops, builds and operates wind projects across Northern Ireland and the Republic of Ireland.
- 2.3 DWFL will own and operate the Wind Farm – which is planned to be 42MW wind farm at Dooish Road, Curraghamulkin, Drumquin, Co. Tyrone, Northern Ireland.
- 2.4 DWFL's registered office is at:
- Forsyth House
Cromac Square
Belfast
Northern Ireland
BT2 8LA
- 2.5 DWC is acting on behalf of DWFL in the Dispute.

SONI

- 2.6 SONI is the operator of the electricity transmission system in Northern Ireland. It holds an electricity transmission licence authorising it to participate in the transmission of electricity (the **Transmission Licence**) (A3). SONI is a subsidiary of EirGrid Limited.
- 2.7 The electricity transmission system operated by SONI is owned by Northern Ireland Electricity Networks Limited (**NIE Networks**). NIE Networks also holds a transmission licence.
- 2.8 In its role as transmission system operator, SONI is responsible for planning, designing and operating the transmission system. In this capacity it is, among other things, responsible for offering terms (on request from an applicant), in accordance with and subject to the requirements of the Transmission Licence and relevant subsidiary documents, for a connection to the transmission system (where such terms are accepted by the applicant, a connection agreement is formed between SONI and the applicant).

3 SECTION THREE - APPLICABLE LEGAL FRAMEWORK

- 3.1 The legal framework applicable in determining the Dispute is summarised below.
- 3.2 The Utility Regulator confirmed on 26 July 2019 (**B3**) that it has valid jurisdiction under Article 31A of the Electricity Order (**A1**) to consider and to make a determination in this matter.

The Electricity Order

- 3.3 Article 3 of the Electricity Order establishes a legal definition of transmission, namely "*in relation to electricity, means transmission by means of a transmission system*".
- 3.4 A 'transmission system' is defined as:

"a system which -

- (a) consists (wholly or mainly) of high voltage lines and electrical plant; and*
- (b) is used for conveying electricity-*
 - (i) from a generating station to a substation;*
 - (ii) from one generating station to another;*
 - (iii) from one substation to another;*
 - (iv) to a substation in Northern Ireland from a place outside Northern Ireland; or*
 - (v) from a substation in Northern Ireland to a place outside Northern Ireland."*

Articles 10 and 11

- 3.5 Article 10(1)(b) of the Electricity Order provides for a transmission system operator to be licensed. It provides that:

"(1) The Authority may grant a licence authorising any person –

(a)...

(b) to participate in the transmission of electricity for that purpose³;

³ The purpose is giving a supply to any premises or enabling a supply to be so given.

3.6 Article 11(2)(2) of the Electricity Order provides that conditions included in a licence may "require the licence holder to enter into agreements with other persons for use of any electric lines and electrical plant owned, leased or operated [by the licence holder]..." and "may include provisions for determining the terms on which such agreements are to be entered into".

Article 31A

3.7 The relevant key provisions of Article 31A of the Electricity Order read as follows:

"(1) Any person may make a complaint under this Article (hereinafter referred to as "a complaint") if-

(a) The subject matter of the complaint constitutes a dispute between the complainant and-

(i) the holder of a transmission licence;

(ii) the holder of a distribution licence;

(iii) a distribution exemption holder;

(iv) a supply exemption holder;

(b) it is wholly or mainly a complaint against that holder regarding an obligation imposed upon him pursuant to the Directive; and

(c) the subject matter of the complaint—

(i) does not fall to be dealt with under Article 26 or Article 42A; and

(ii) is not capable of being determined pursuant to any other provision of this Order.

(2) ...

(3) ...

(4) ...

(5) ...

(5A) Where the Authority makes a determination under this Article, it may include in the determination an order requiring any party to the dispute to pay such sum in respect of the costs or expenses incurred by the Authority in making the determination as the

Authority considers appropriate and this order shall be final and shall be enforceable as if it were a judgement of the county court.

- (5B) *In making an order under paragraph (5A), the Authority shall have regard to the conduct and means of the parties and other relevant circumstances.*
- (6) *For the purposes of this Article "determination" in relation to any complaint means a determination about the exercise of any power or duty conferred or imposed on the Authority in relation to electricity under this Order or the Energy (Northern Ireland) Order 2003 insofar as that power or duty relates to the subject matter of the complaint.*
- (7) *..."*

The Transmission Licence

- 3.8 The Transmission Licence (**A3**) is applicable as it also contains certain conditions relating to connections to the transmission system.
- 3.9 The following conditions are particularly relevant with regard to transmission connections:
- (a) Condition 25 – which, among other things, obliges SONI to offer, on request, terms for connection to the transmission system.
- (b) Condition 26 – which, among other things, provides for the Utility Regulator to settle, upon a dispute referred to it by either party, the terms of any dispute relating to connection terms.
- (c) Condition 30 – which, among other things, requires SONI to prepare and obtain the Utility Regulator's approval to a statement setting out the basis upon which charges will be made for connection to the transmission system.

Condition 25

- 3.10 Paragraph 2 of Condition 25 requires SONI to offer to enter into a connection agreement on the application of any person. It also sets out the matters in respect of which the offer is to make detailed provision.
- 3.11 It reads as follows:

"2. On application by any person, the Licensee shall (subject to paragraph 6) offer to enter into a Connection Agreement (or amend an existing Connection Agreement) for connection (or modification of an existing connection) to the All Island Transmission Networks at entry or exit points on the transmission system, and such offer shall make detailed provision regarding:

- (a) *the carrying out of works (if any) required to connect the transmission system to any other system for the transmission of electricity and for the obtaining of any consents necessary for such purposes;*
- (b) *the carrying out of works (if any) in connection with the extension or reinforcement of the All-Island Networks rendered necessary or appropriate by reason of making the connection or modification to an existing connection and for the obtaining of any consents necessary for such purposes;*
- (c) *the installation of appropriate meters (if any) required to enable the Licensee to measure electricity being accepted into the All-Island Transmission Networks at the specified entry point or points or leaving such system at the specified exit point or points;*
- (d) *the carrying out of works (if any) in relation to the installation of such switchgear or other apparatus (if any) as may be required for the interruption of supply;*
- (e) *the date by which any works required so as to permit access to the All-Island Transmission Networks (including for this purpose any works to reinforce or extend any of the All-Island Networks) shall be completed and so that:*
 - (i) *where the application is for a Relevant Generation Connection, that date is within 24 months of the date the agreement is entered into (the 'relevant period'), unless it is not reasonably practicable for the works to be completed within the relevant period (in which case the licensee shall provide the applicant with the reasons why it is not reasonably practicable to complete the works within the relevant period); and*
 - (ii) *unless otherwise agreed by the person making the application, a failure to complete such works by such date shall be a material breach of the agreement entitling the person to rescind the agreement;*
- (f) *the installation of special metering, telemetry or data processing equipment (if any) for the purpose of enabling any person who is bound to comply with the Grid Code to comply with its obligations in respect to metering thereunder or the performance by the Licensee of any service in relation to such metering thereunder;*
- (g) *the connection charges to be paid to the Licensee, such charges:*
 - (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 30 or any revision of such statements; and*
 - (ii) *to be set in conformity with the requirements of paragraph 5 of Condition 30 and (where relevant) of paragraph 3; and*
- (h) *such further matters as are or may be appropriate for the purposes of the agreement."*

Condition 26

3.12 Relevant extracts of Condition 26 are set out below:

- "1. *If, after a period which appears to the Authority to be reasonable for the purpose, the Licensee has failed to enter into a Connection Agreement or Use of System Agreement with any person entitled or claiming to be entitled thereto pursuant to a request under Condition 25, the Authority may, pursuant to Article 11(3)(c) of the Order and on the application of that person or the Licensee, settle any terms of the Connection Agreement or Use of System Agreement in dispute between the Licensee and that person in such manner as appears to the Authority to be reasonable having (insofar as relevant) regard in particular to the following considerations:*
- (a) *that such person should pay to the Licensee:*
 - (a) ...
 - (b) *in the case of provision of a connection (or a modification to an existing connection) to the All Island Transmission Networks at an entry or exit point on the transmission system, the whole or an appropriate proportion (as determined in accordance with paragraph 3 of Condition 25) of the costs referred to in paragraph 5 of Condition 30 together with a reasonable rate of return on the capital represented by such costs;*
 - (b) *that no such person should pay any charges such as are referred to in subparagraph (b) of paragraph 4 of Condition 30 in respect of any connection (or any modification of an existing connection) to the All-Island Transmission Networks at an entry or exit point on the transmission system made prior to such date as shall be specified in a direction issued by the Authority for the purposes of this Condition and that no such charges should be paid in respect of any such connection or modification made after such date unless the Authority is satisfied that the extension or reinforcement in respect of which the charges are to be paid was rendered necessary or appropriate by virtue of providing connection to or use of system to the person or making such a modification;*
 - (c) *that the performance by the Licensee of its obligations under the Connection Agreement or Use of System Agreement should not involve the Licensee in a breach such as is referred to in paragraph 6 of Condition 25;*
 - (d) *that the performance by the Transmission Owner of its obligations under any agreement necessitated in relation to the Connection Agreement or Use of System Agreement pursuant to paragraph 4 of Condition 25 should not involve the Transmission Owner in a breach such as is referred to in condition 20 of the Transmission Owner Licence;*
 - (e) ...
 - (f) ...
 - (g) *that the terms and conditions of the Connection Agreement or Use of System Agreement so settled by the Authority and of any other such agreements*

entered into by the Licensee pursuant to an application under Condition 25 should be, so far as circumstances allow, in as similar a form as is practicable.

2. ...

3 *If either party to a Connection Agreement or Use of System Agreement entered into pursuant to Condition 25 or this Condition proposes to vary the contractual terms of such agreement in any manner provided for under such agreement, the Authority may, at the request of the Licensee or other party to such agreement, settle any dispute relating to such variation in such manner as appears to the Authority to be reasonable."*

Condition 30

3.13 Condition 30 refers to charging statements and the key provisions relating to connection charging statements are set out below:

"1 *The Licensee shall, in co-operation with the Republic of Ireland System Operator, as soon as practicable after the date on which this Condition becomes effective (and, in any event, not later than such date as the Authority may direct) prepare (and obtain the Authority's approval to) statements setting out:*

(a) ...

(b) *the basis upon which charges will be made for connection to the All-Island Transmission Networks at entry or exit points on the transmission system;*

(c) ...

(d) ...

(e) ...

2 ...

3 *The statements prepared under paragraph 1 shall be in such form and 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 (or payments to which it would become entitled, as the context requires) for the provision of such services, including such of the information set out in paragraphs 4, 5, 6, 7 and 8 as is required by such paragraphs to be included in the relevant statement.*

4 ...

Connection

5 *Except to the extent that the Authority may otherwise direct, the statement referred to in paragraph 1(b) shall include:*

(a) *a schedule listing those items (including the carrying out of works and the provision and installation of electric lines or electrical plant or meters) of significant cost liable to be required for the purpose of connection (at entry or*

exit points on the transmission system) to the All-Island Transmission Networks for which connection charges may be made or levied and including (where practicable) indicative charges for each such item and (in other cases) an explanation of the methods by which and the principles on which such charges will be calculated;

- (b) the methods by which and the principles on which any charges will be made in respect of extension or reinforcement of the All-Island Transmission Networks rendered necessary or appropriate by virtue of providing such connection to the All-Island Transmission Networks (at entry or exit points on the transmission system) or associated use of the All-Island Transmission Networks in respect of supply or generation in Northern Ireland;*
- (c) the methods by which and the principles on which connection charges will be made in circumstances where the electric lines or electrical plant to be installed are of greater size or capacity than that required for use of system by the person seeking connection;*
- (d) the methods by which and the principles on which any charges (including any capitalised charge) will be made for maintenance and repair required of electric lines, electrical plant or meters provided and installed for making a connection to the All Island Transmission Networks at entry or exit points on the transmission system;*
- (e) the methods by which and the principles on which any charges will be made for the provision of special metering or telemetry or data processing equipment by the Licensee for the purposes of enabling any person which is bound to comply with the Grid Code to comply with its obligations in respect of metering thereunder, or for the performance by the Licensee of any service in relation thereto;*
- (f) the methods by which and principles on which any charges will be made for disconnection from the transmission system and the removal of electrical plant, electric lines and ancillary matters following disconnection; and*
- (g) such other matters as shall be specified in directions issued by the Authority from time to time for the purposes of this Condition.*

6 *Connection charges for those items referred to in paragraph 5 shall be set at a level which will enable the recovery of:*

- (a) the appropriate proportion of the costs directly or indirectly incurred (or to be incurred) in carrying out the works, extension or reinforcement in question and in providing, installing, maintaining and repairing (and, following disconnection, removing) the electrical lines, electrical plant, meters, special metering, telemetry, data processing equipment or other items in question; and*
- (b) a reasonable rate of return on the capital represented by such costs.*

Transmission Connection Charging Methodology Statement

- 3.14 SONI has, under and in accordance with Condition 30, prepared and obtained the Utility Regulator's approval to a connection charging statement – the Transmission Connection Charging Methodology Statement (the **TCCMS**).
- 3.15 The currently applicable TCCMS is dated 1 April 2019 (**A4**). Accordingly, this is the relevant TCCMS for the purposes of the Utility Regulator's determination of the Dispute.

Practice and procedure

- 3.16 The practice and procedure to be followed by us in determining the Dispute on behalf of the Utility Regulator is set out in the Policy. The Policy has been supplemented, as required, in respect of this Dispute in order to ensure good governance and best practice).
- 3.17 For completeness, we note that the principal objective and general duties of the Utility Regulator under Article 12 of the Energy (Northern Ireland) Order 2003⁴ (the **Energy Order**) do not apply in relation to the determination of the Dispute (see Article 13(2) of the Energy Order for reference).

⁴ Energy (Northern Ireland) Order 2003 - <https://www.legislation.gov.uk/nisi/2003/419/contents>

4 SECTION FOUR - BACKGROUND TO THE DISPUTE

4.1 DWFL is developing the Wind Farm - a 42MW windfarm near the town of Drumquin in Northern Ireland.

4.2 DWFL submitted an application on 2 April 2018 to SONI requesting a connection to the transmission system (as operated by SONI). The application was deemed effective by SONI on 9 April 2018 and SONI issued the Connection Offer on 29 August 2018 (B2).

4.3 The Connection Offer included, among others, terms:

- (a) confirming that the connection of the Wind Farm would be to the transmission system at the Drumquin Cluster;
- (b) levying a charge (as part of the overall connection charge), payable on energisation of the Wind Farm, relating to the use of 'shared connection assets' and estimated at ■■■■■ based on an assumed connection date of June 2022 for the connection of the Wind Farm to the transmission system (clause 10.3 and 1.4 of the Connection Offer). This particular element of the connection charge is referred to as the **Shared Connection Asset Charge**.

4.4 On 10 September 2018, DWFL wrote to SONI to raise a number of queries in relation to the terms of the Connection Offer (B4). With regard to the Shared Connection Asset Charge, DWFL contended that it should not be applied to the connection application/offer.

4.5 In support of this contention DWFL:

- (a) referred to the definition of User in clause 7.1 of the TCCMS and its (DWFL's) understanding that the three existing connectees to the Drumquin Cluster had entered into connection agreements with NIE Networks and not SONI and therefore cannot be considered to be a pre-existing User who may have funded the Connection Assets;
- (b) referred to clause 7.3 of the TCCMS and sought confirmation from SONI as to the policy through which SONI intended to rebate an existing User;
- (c) referred to Conditions 25 and 30 of the Transmission Licence and sought confirmation from SONI as to the costs incurred by SONI in carrying out works.

4.6 Within the same correspondence DWFL sought confirmation from SONI as to whether it was applying the charging policy "*consistent [sic] and without discrimination with regard to how it is applied in other connections involving distribution and transmission connected windfarms*". DWFL also asked for details of how the figure of ■■■■■ for the Shared Connection Asset Charge was calculated.

- 4.7 There followed some further discussions and exchanges of correspondence between the Parties in respect of the queries raised by DWFL (**B5 to B13**).
- 4.8 On 3 May 2019, DWFL sent a letter to SONI (**B14**) noting that although SONI had provided its response and clarification to most of the queries DWFL had raised in its correspondence of 10 September 2018, the queries relating to clause 10 of the Connection Offer were not addressed⁵.
- 4.9 In its letter of 3 May 2019 (**B14**) DWFL reiterated its initial queries and in addition sought further information from SONI on (i) the value of the 'existing Connection Assets' funded by NIE Networks and (ii) the proportion of this charge that was being charged to DWFL, and (iii) how the figure of ██████████ for the Shared Connection Asset Charge was calculated.
- 4.10 SONI responded on 5 June 2019 (**B15**) to DWFL's complaint to the Utility Regulator and its response is set out in paragraphs 4.11 to 4.14 below.
- 4.11 With regard to DWFL's request for the value of the shared connection assets funded by NIE Networks and the proportion being charged to DWFL, SONI response stated:
- (a) NIE Networks as the 'Distribution Network Operator' (**DNO**) is considered as the existing 'User'.
 - (b) The connection assets relating to a cluster are subject to the NIE Networks' charging arrangements for Authorised Generators connecting to the network as part of a Generator Cluster' as set out in NIE Networks "Statement of Charges for Connection to Northern Ireland Electricity Networks' Distribution System".
 - (c) The Shared Connection Asset Charge set out in the Connection Offer of an estimated amount of ██████████ relates to the portion of shared transmission connection assets established for the connection of the Drumquin Cluster and, in accordance with section 7.3 of the TCCMS, calculated to around 32% of the overall charge relating to the shared transmission connection assets.
- 4.12 With regard to the query as to through which policy SONI intends to rebate an existing User, SONI stated that it is applying section 7 of the TCCMS and NIE Networks (DNO) is considered as the 'existing User'.
- 4.13 In response to DWFL's queries, SONI responded to state that costs were incurred in establishing the transmission connection assets that allow the DNO to connect its distribution customers, that these costs will be passed through to the DNO and that SONI is applying the

⁵ The reason given by SONI for this was stated as "*the queries being associated with the implementation of section 7 of the TCCMS, which was a central issue being considered in an ongoing dispute with the Regulator*".

TCCMS as appropriate under the circumstances and consistently with the Utility Regulator's Final Determination on the dispute between NIE Networks and SONI⁶.

- 4.14 Finally, on the calculation of the £5 million Shared Connection Asset Charge, SONI responded to state that the calculation was based on clauses 7.3 and 7.4 of the TCCMS (noting also that it was subject to change as described in Clause 10.3 of the Connection Offer).
- 4.15 On 17 July 2019, DWFL properly referred the matter as a complaint to the Utility Regulator pursuant to Article 31A of the Electricity Order in respect of the dispute between it and SONI on the Shared Connection Asset Charge (**B1**).

⁶ This refers to the Utility Regulator's determination of a dispute arising between NIE Networks and SONI under the Transmission Interface Arrangements as entered into between these two parties pursuant to their respective licence obligations – published and available [here](#) and referred to in this determination as the '**Agivey Determination**'.

5 **SECTION FIVE – VIEWS OF DWFL**

5.1 The views of DWFL are set out in its letter of 17 July 2019 (**B1**) referring the complaint to the Utility Regulator.⁷

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

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

Summary

5.4 In summary, DWFL disputes the amount of the Shared Connection Asset Charge set out in the Connection Offer.

5.5 This is on the basis that:

- (a) the Shared Connection Asset Charge relates to costs of the transmission assets of the Drumquin Cluster; and
- (b) the value of the Shared Connection Asset Charge does not take account of –
 - (i) those costs of the Drumquin Cluster that have already been recovered by NIE Networks, the DNO, from the owners/operators of the three wind farms currently connected at distribution level to the Drumquin Cluster;
 - (ii) the costs of the Drumquin Cluster that NIE Networks, the DNO, is requesting (as a Cluster Charge) in its a distribution connection offer to Altgolan Wind Farm Limited (**AWFL**) – another subsidiary of DWC.

Shared Connection Asset Charge

5.6 In its letter of 17 July 2019, DWFL states that it disagrees with the fundamentals behind SONI's approach on charging the Shared Connection Asset Charge to DWFL and, upon receipt of the Shared Connection Asset Charge payment, passing it onto to NIE Networks for redistribution.

⁷ For completeness, we note that DWFL did not submit a response to the Provisional Determination but that it did submit additional correspondence (**B30**) in response to, and in respect of certain matters in, SONI's additional correspondence (as to which see footnote 11).

5.7 DWFL refers to section 7.1 of the TCCMS⁸ and notes that it reads as follows:

*'7.1 Where a new **User** connects to the **All-Island Transmission Networks** by making use of existing **Connection Assets** which have been funded by an existing User(s) who connected within the preceding ten years the new **User** will be charged a proportion of the value of the shared **Connection Assets**, calculated in accordance with sub-paragraph 7.3.'*

5.8 DWFL's position, as reflected in its 17 July 2019 letter, is that -

- (a) the 'existing Connection Assets' being referred to by SONI cost [REDACTED]
- (b) they have been funded to the value of around [REDACTED] by the three wind farms – being Cornavarrow wind farm, Sileveglass wind farm, and Castlecraig wind farm; and
- (c) the maximum amount that NIE Networks could have funded is the balance of around [REDACTED] and if NIE Networks has funded this balance amount SONI should calculate the proportional charge on this basis and not on the total figure of [REDACTED].

5.9 However, DWFL also refers to the fact that NIE Networks has issued a distribution connection offer to AWFL which includes a Cluster Charge of around [REDACTED] – which is the subject of a dispute referred to the Utility Regulator for determination. DWFL states that this has an impact on how SONI quantifies any 'shared connection asset charge' that is due.

5.10 DWFL also expresses the following views:

- (a) That while SONI has confirmed that it intends to pass on any Shared Connection Asset Charge recovered from DWFL to NIE Networks, NIE Networks has stated that there is no mechanism to re-distribute a '*shared connection asset charge applied by SONI to a transmission connectee*' and that there is no statutory requirement on NIE Networks to accept any monies from SONI as a '*shared connection asset charge or to pay a rebate to any wind farm connecting to a cluster substation at distribution level*'. It refers to this as the 'rebate policy'.
- (b) That there is another similar scenario where a transmission connected generator connected into an existing wind farm cluster substation and that generator was not charged a contribution towards the cluster assets.

⁸ DWFL refers to the TCCMS in effect as at 17 July 2019 but the relevant provisions are not changed in the currently in effect version of the TCCMS.

6 SECTION SIX – VIEWS OF SONI

- 6.1 The views of SONI⁹ are set out in:
- (a) its initial response dated 5 September 2019 (**B15**) to DWFL's complaint;
 - (b) its response to the Utility Regulator's second information request (**B24**);
 - (c) its response dated 13 December 2019 (**B16**) to a draft 'statement of facts'¹⁰;
 - (d) its response to the Utility Regulator's letter of 16 January 2020 requesting SONI to clarify in a number of respects its comments on the draft 'statement of facts' (**B17**), dated 23 January 2020 (**B18**);
 - (e) its response (dated 28 August 2020) to the Provisional Determination (**B29**)¹¹.
- 6.2 We have read the above documents in full and have had full regard to all of these submissions. In doing so we have borne in mind that our role is to determine the issues set out in Section Eight of this document.
- 6.3 The summary below, of the views which have been expressed by SONI as relevant to the issue for determination, is derived from the relevant section of the Statement – which we adopt as accurate for the purposes of this determination – and from SONI's response to the Provisional Determination.
- Summary**
- 6.4 In summary, SONI's position is that the Shared Connection Asset Charge, requested as a term of the Connection Offer, has been calculated fully in accordance with the TCCMS (**A4**)¹².
- 6.5 SONI also notes that the amount of the applicable charge cannot be finalised until NIE Networks in its role as transmission owner provides definitive figures relating to the transmission connection assets (in respect of which the Shared Connection Asset Charge is being levied) and the energisation date of the Dooish Wind Farm is known.

⁹ All of SONI's responses are made through its legal representatives A&L Goodbody.

¹⁰ As prepared by the Utility Regulator's case management team and sent to the Parties (with a view to the Parties agreeing on the facts) on 6 December 2019.

¹¹ SONI also submitted further correspondence (**B31 to B33**) following its response to the Provisional Determination which essentially (a) asked certain questions with regard to the dispute process – these have been separately responded to and are not a matter for this document, and (b) reiterated its views as expressed in its response to the Provisional Determination.

¹² SONI refers to the version approved by the Utility Regulator and dated 1 September 2016 but note that it has been subsequently updated on 1 April 2019.

Shared Connection Asset Charge

- 6.6 A&L Goodbody's letter of 5 September 2019 sets out SONI's views as follows.
- 6.7 SONI states that it has calculated the Shared Connection Asset Charge in accordance with clauses 7.1, 7.2, 7.3 and 7.4 of the TCCMS and notes that these read as follows:
- "7.1 Where a new User connects to the All-Island Transmission Networks by making use of existing Connection Assets which have been funded by an existing User(s) who connected within the preceding ten years the new User will be charged a proportion of the value of the shared Connection Assets, calculated in accordance with subparagraph 7.3.*
- 7.2 If the existing User(s) connected within the preceding ten years then the existing User(s) will be entitled to receive a partial rebate of the original connection charge from SONI, calculated in accordance with subparagraph 7.3.*
- 7.3 The charge to the new User and the rebate to the existing User will be derived using:*
- 7.3.1 the historic cost of the assets, including any decommissioning costs;*
- 7.3.2 the current cost accounting valuation of the assets, using the Retail Price Index;*
- 7.3.3 any advanced contributions towards O&M charges in respect of the Connection Assets; and*
- 7.3.4 the per MW share of the utilisation of the shared assets.*
- 7.4 In addition to the charges for use of the shared Connection Assets the new User will be required to make a payment to SONI in respect of reasonable administrative expenses."*
- 6.8 SONI states that under these provisions DWFL must be considered as the new User¹³. SONI also states that it has treated NIE Networks in its role as DNO (distribution network operator) as the existing User.
- 6.9 It is SONI's view that the designation of NIE Networks – in its role as DNO – as a User for the purposes of making the calculation is confirmed by the Agivey Determination.
- 6.10 More specifically SONI states that although it accepts that NIE Networks as the DNO is not a User under the TCCMS, SONI is required to treat it as it were for the purposes of calculating connection charges. It is SONI's view that if NIE Networks is, when it requests a connection to the transmission system in its role as a DNO, to be treated as if NIE Networks were either an Applicant or a User (as each term is defined in the TCCMS) then it follows that NIE Networks

¹³ That DWFL is a new User is accepted and not disputed by DWFL – see paragraph 5.6 in Section 5 above.

must also be treated as an existing User for the purposes of Section 7 of the TCCMS where NIE Networks, in its capacity as a DNO, has previously funded the shared connection Assets.

6.11 It also highlights that the amount of the Shared Connection Asset Charge set out in the Connection Offer is an indicative estimate and subject to a number of factors as referred to in Clause 10.3 of the Connection Offer.

6.12 SONI also states that as it has treated NIE Networks, in its role as DNO, as a User under the TCCMS, SONI believes that it is required to levy a Shared Connection Asset Charge on DWFL as the new User of the shared Connection Assets already funded by the existing User. SONI's position is that NIE Networks, in its role as DNO, has funded the transmission Connection Assets that are to be used for the making of the DWFL connection.

6.13 SONI also states that:

- (a) with regard to the transmission assets of the Drumquin Cluster –
 - (i) the connection charge directly incurred by SONI is [REDACTED]
 - (ii) the connection charge indirectly incurred by SONI is [REDACTED] and that this connection charge is applied to NIE Networks in its role as the DNO;
- (b) the Shared Connection Asset Charge is calculated to include the connection charges associated with the transmission assets of the Drumquin Cluster;
- (c) following SONI's liaison and engagement with NIE Networks in its role as Transmission Owner, NIE Networks confirmed that:
 - (i) the total costs for the Drumquin Cluster are [REDACTED]; and
 - (ii) the costs of the transmission assets of the Drumquin Cluster (which will be used by the DWFL connection) are [REDACTED] and that the Shared Connection Asset Charge is based on this figure.

6.14 In response to DWFL's views about the rebate policy, funding of cluster assets and other transmission cluster connected generators, SONI's position is that:

- (a) that there is no rebate provision within NIE Networks' distribution charging statement is not an issue for which it is appropriate for SONI to comment;
- (b) it does not have information about construction works and associated costs relating to clusters that were sufficiently advanced before May 2014 when it became responsible for the planning of the transmission system; and
- (c) the funding framework for the Drumquin Cluster is unclear to SONI.

- 6.15 SONI also states that it believes that it is not unduly discriminating against any parties or classes of parties in the current or any other context.
- 6.16 In its subsequent correspondence (i.e. when responding to the draft statement of facts) SONI reiterated and/or clarified its views (as outlined above) and also made a number of additional representations.
- 6.17 In summary, these are that:
- (a) If the correct process under Section S of the Transmission Interface Arrangements (TIA) had been followed there would have been a connection offer and agreement between SONI and NIE Networks. In this respect, SONI stated in its response to the draft statement of facts (**B16**) that no such process had been followed.
 - (b) Its later submissions (**B17**) are that:
 - (i) the process referred to in subparagraph (a) above must have been followed (either formally or informally) because the Drumquin Cluster is connected to the transmission system;
 - (ii) although there is no written connection agreement between NIE Networks as DNO and SONI, there is an agreement between the parties relating to the connection as the Drumquin Cluster has been constructed, connected and energised.
 - (iii) Although no payments have been made by NIE Networks as DNO to SONI, the fact that the Drumquin Cluster has been constructed, connected and energised means that NIE Networks as DNO has 'funded' the Drumquin Cluster.
 - (iv) It is immaterial whether money changed hands between NIE Networks and SONI as the requirement is only that the existing connection assets were "funded".
- 6.18 SONI also asserts that given that the transfer of planning functions (in relation to the transmission system) from NIE Networks (as the TO) to SONI (as the TSO) only occurred in the last six years, it cannot be right that a hypothetical 'existing User' would never be entitled to a rebate as NIE Networks as DNO would not have "paid" SONI for the Connection Asset (it would have "paid" NIE Networks as TO directly) (**B17**).

SONI's response to the Provisional Determination

- 6.19 In its response to the Provisional Determination, SONI reiterated a number of its previous submissions which are outlined above.

6.20 It also made the following submissions –

- (a) The transmission assets forming part of the Drumquin Cluster must be Connection Assets (in respect of the definition in the TCCMS) because otherwise (under the TCCMS) they are categorised as System Assets.
- (b) The transmission assets forming part of the Drumquin Cluster cannot be System Assets because –
 - (i) the manner in which System Assets are funded makes it impossible for them to be System Assets;
 - (ii) the assets were not constructed pursuant to instructions issued and agreements entered into (between SONI and NIE Networks) under Section C of the TIA;
- (c) SONI would have required the Utility Regulator's approval under the Licence to fund a Transmission Network Pre-Construction Project and it did not follow the processes specified under the Licence to secure funding for its work on the Drumquin Cluster.
- (d) NIE Networks (as DNO or TO) has no right to construct and connect transmission assets to the transmission system without the agreement of SONI. In particular NIE Networks (DNO or TO) is not permitted to plan, operate or configure the transmission system without the agreement of SONI.
- (e) SONI's letter of 12 September 2017 confirms that the Drumquin Cluster was planned, constructed and energised pursuant to Section S of the TIA and by paying an invoice relating to SONI's pre-construction works NIE Networks (in its role as DNO) has confirmed that Section S of the TIA was applied.
- (f) The purpose of paragraph 7.2 of the TCCMS is not so that a new User can repay SONI a cost that SONI has borne. It is to allow SONI to pass a rebate through to the person who funded the original cost.
- (g) The use of the word 'funded' means "financed" or "paid for" and does not mean "paid to SONI". The correct and simplest interpretation of "original connection charge" is that it is the amount someone paid for the construction of 'transmission connection assets' in the past.
- (h) The Decision Makers are taking an overly detailed analysis when considering who can be said to have "funded" the assets.

6.21 In addition, SONI made a number of comments and observations in respect of its assessment of the potential implications if the determination of the Dispute were to be the same as the Provisional Determination.

7 SECTION SEVEN – THE UTILITY REGULATOR'S INFORMATION REQUESTS AND OUR FINDINGS OF FACT

Information Requests

7.1 On 14 August 2019, the Utility Regulator requested the following from SONI:

- (a) A detailed line diagram (or similar) of all the lines and plant which form part of the transmission system to which the Dooish wind farm is proposed to be connected and in particular identifying on that line diagram:
 - (i) the proposed point of connection for the Dooish wind farm;
 - (ii) the point of connection between the transmission system (the part to which the Dooish wind farm is proposed to be connected) and the distribution system; and
 - (iii) the transmission system 'asset' in respect of which the Shared Connection Asset Charge is proposed in the transmission connection offer made to DWFL, i.e. the 'shared asset(s)'.

- (b) Details relating to the construction of the 'shared asset(s)', including:
 - (i) The reasons for construction of the 'shared asset(s)', e.g. whether to meet a request for a connection to the transmission system or for other reasons or a combination of both (and clarifying/specifying the other reasons if applicable).
 - (ii) A detailed breakdown of the costs incurred by SONI in relation to the construction of the 'shared asset(s)'.
 - (iii) If the 'shared asset' was constructed in response to a request for a connection to the transmission system, the total costs recovered by SONI from the connectee and the proportion of such costs that were costs incurred by NIE Networks as Transmission Owner and thereby paid by SONI to NIE Networks in that capacity.

- (c) Information relating to each legal entity whose premises and/or system is currently connected to, and which legal entity has therefore paid for, the transmission system 'asset' in respect of which the Shared Connection Asset Charge is proposed in the transmission connection offer made to DWFL. This information shall, without limitation, include:
 - (i) a copy of each connection agreement entered into by SONI in respect of the relevant connection to the 'shared asset(s)';

- (ii) the date on which the relevant connection to the 'shared asset(s)' was made;
 - (iii) the amount of the connection charge paid by each legal entity for connection by SONI to the 'shared asset(s)';
 - (iv) the amount (including nil returns) already rebated by SONI to any such legal entity; and
 - (v) confirmation as to which legal entity will receive a rebate equal to the amount of the Shared Connection Asset Charge which SONI seeks to recover from DWFL pursuant to the transmission connection offer.
- (d) Details of the costs associated with the 'shared asset' that had been added to either the transmission RAB and/or the distribution RAB.

(the **first information request**) (**B19**).

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

7.3 SONI was requested to respond to the first information request by 28 August 2019.

7.4 On 28 August 2019, SONI sent a letter (**B20**) to the Utility Regulator highlighting that it had not to date been given the opportunity to respond to the Dispute. The Utility Regulator confirmed on 29 August 2019 (**B21**) that SONI was invited to submit its substantive response to the complaint by 5 September 2019 but that it should nevertheless respond to the first information request within the relevant timescale.

7.5 SONI responded to the first information request on 29 August 2019 (**B22**) and:

- (a) submitted a line diagram of the Drumquin Cluster showing the point of connection of the Dooish wind farm and the transmission/distribution interface of the Drumquin Cluster;
- (b) stated the costs incurred by SONI (including SONI pre-construction and SONI construction costs) in relation to the construction of the 'shared asset(s)'; and
- (c) stated that it had no relevant information to provide in response to the request for costs allocated to either the transmission or distribution RAB.

- 7.6 However, SONI did not respond in full to the information request, noting that it would do so as part of its response to the Dispute¹⁴.
- 7.7 Having considered SONI's response to the first information request, on 8 November 2019, the Utility Regulator made a further information request to NIE Networks as follows:
- (a) Whether SONI has paid any monies to NIE Networks which relate to, or are in respect of the costs of, the Drumquin Cluster. A 'yes' or 'no' response was required to this question.
 - (b) If yes, details of –
 - (i) the amount of each payment made;
 - (ii) the date of each payment;
 - (iii) what the amount paid related to (i.e. for which costs of SONI); and
 - (iv) whether the amount(s) were paid by SONI to NIE Networks in relation to NIE Networks' capacity/role of electricity distribution licensee or of electricity transmission licensee.
 - (c) Where information is provided in response to (b):
 - (i) whether any or all of the total amount paid by SONI to NIE Networks has been recovered, or is due to be recovered, by SONI from another third party; and
 - (ii) if so, how much of the total amount paid by SONI to NIE Networks, has SONI recovered or is due to recover, from which third party, and the date, or likely date, of the payment from the third party.
 - (d) Whether SONI has received any monies from NIE Networks which relate to, or are in respect of, the costs of the Drumquin Cluster. A 'yes' or 'no' response is required to this question.
 - (e) If yes, SONI was requested to provide details of:
 - (i) the amount of each payment received;
 - (ii) the date each payment was received;
 - (iii) what the amount paid related to (i.e. for which costs of SONI); and

¹⁴ SONI responded on 5 September 2019 as outlined in section 6 above.

- (iv) whether the amount(s) were received by SONI from NIE Networks in NIE Networks' capacity/role as electricity distribution licensee or as electricity transmission licensee.
- (f) Where information is provided in response to (e), in respect of the amount(s) received from NIE Networks:
 - (i) whether any or all of the amount received by SONI from NIE Networks has been recovered, or is due to be recovered, by SONI from another third party; and
 - (ii) if so, how much of the amount(s) received by SONI from NIE Networks, has SONI recovered, or is due to recover, from which third party and the date or likely date of the payment from the third party.
- (g) A full and detailed breakdown of the costs relating to the amount of the use of Shared Connection Asset Charge – being the amount of [REDACTED] – proposed in the Connection Offer.

(the **second information request**) (B23).

7.8 SONI responded to the second information request on 15 November 2019 (B24).

7.9 SONI confirmed that:

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

7.10 SONI also provided a rough breakdown of the Shared Connection Asset Charge.

Findings of Fact

7.11 Having also made information requests to the parties in the AWFL/NIE Networks dispute and received responses to such requests, on 6 December 2019 the Utility Regulator sent a draft statement setting out the facts established from the responses provided by NIE Networks and SONI (**draft statement of facts**) (B25).

7.12 The Utility Regulator confirmed that if any one of the parties to either dispute disagreed with the facts set out in the draft statement of facts, the Decision-Makers would determine this as a preliminary matter and make a finding of facts which would apply for the purposes of the proceeding to determine the Dispute.

7.13 There was not unanimous agreement to the draft statement of facts.

- 7.14 On 24 March 2020, we determined the facts as a preliminary matter and made the Findings of Fact (**B26**).
- 7.15 Accordingly, the facts which apply for the purposes of our determination of the Dispute are those which are set out in the Findings of Fact.

8 SECTION EIGHT – ISSUES TO BE DETERMINED

- 8.1 The Statement sets out the issues for determination. We agree with the issues as set out in the Statement.
- 8.2 The first determination we need to make, under Article 31A of the Electricity Order, is whether there is any power or duty conferred or imposed the Utility Regulator that relates to the subject matter of the complaint and which can and should be exercised to determine the Dispute.
- 8.3 This is because the Dispute has been referred to the Utility Regulator by DWFL under Article 31A of the Electricity Order.
- 8.4 Article 31A(6) confirms that for the purposes of Article 31A a determination in relation to any complaint means "*a determination about the exercise of any power or duty conferred or imposed on the [Utility Regulator] in relation to electricity under the [Electricity Order] or the [Energy Order] insofar as that power or duty relates to the subject matter of the complaint*".
- 8.5 However, the making of a determination under Article 31A would not be a determination of the Dispute but a determination about whether or not the Utility Regulator could and/or should exercise an existing power or duty that was conferred on it and related to the subject matter.
- 8.6 We therefore agree that given the progress of the Dispute to date and the applicable timings, if we determine under Article 31A of the Electricity Order that there is a power or duty that could and should be exercised in respect of the Dispute, we should proceed to exercise that power or duty.
- 8.7 Accordingly, if there is a power or duty that can be exercised by us to determine the Dispute, the second issue for determination by us is whether SONI is entitled to recover from DWFL a Shared Connection Asset Charge which relates to the costs of the transmission assets that form part of the Drumquin Cluster.

9 **SECTION NINE – DETERMINATION**

Article 31A of the Electricity Order

- 9.1 The first issue for determination by us is whether there is any power or duty conferred on the Utility Regulator that relates to the subject matter of the complaint which can and should be exercised by us to determine the Dispute.
- 9.2 In considering this first issue we note from section 3 of this document that Condition 26 of the Transmission Licence confers a power on the Utility Regulator with regard to the determination of disputes relating to, among other things, transmission system connections.
- 9.3 More particularly, paragraph 1 of Condition 26 provides that where SONI has, following a request made to it by a person entitled or claiming to be entitled to a connection (e.g. the applicant), failed to enter into a connection agreement, the Utility Regulator may settle the terms of the connection agreement that are in dispute between SONI and the applicant.
- 9.4 DWFL has applied for a connection to the transmission system. SONI has made the Connection Offer but a connection agreement has not been entered into because there is a dispute between SONI and DWFL as to the terms of the proposed connection agreement.
- 9.5 DWFL has referred the dispute to the Utility Regulator for a determination under Article 31A of the Electricity Order.
- 9.6 Our determination on the first question is that Condition 26 of the Transmission Licence confers a power on the Utility Regulator which relates to the subject matter of the complaint and which can and should be exercised by us to determine the Dispute.

Determination of the Dispute

- 9.7 Having determined that the Utility Regulator can and should exercise its dispute determination power under Condition 26 of the Transmission Licence, the second issue for determination by us is whether SONI is entitled to recover from DWFL as part of the connection charges, the Shared Connection Asset Charge set out in the Connection Offer - which charge relates to the costs of the transmission assets that form part of the Drumquin Cluster.
- 9.8 SONI's primary contention in the Dispute is that:
- (a) in connecting to the transmission system, DWFL is/will be making use of existing Connection Assets, namely the transmission assets which form part of the Drumquin Cluster; and
 - (b) these assets have been funded by an 'existing User', namely NIE Networks (DNO), who connected pursuant to a connection made within the preceding ten years.

- 9.9 DWFL's primary contention is that SONI is not entitled to impose a 'shared connection asset charge' in circumstances where the full costs of the Drumquin Cluster (including the costs of the transmission assets) are being recovered by NIE Networks (either through distribution connection charges or through an amount on the Transmission RAB) as that would lead to an over-recovery of the costs of the Drumquin Cluster.
- 9.10 We are required to determine the Dispute by reference to the applicable legal framework and apply the law to the facts and circumstances of the case.
- 9.11 In this regard it is relevant to highlight that we made a Findings of Fact and that these are the facts which apply to the case and for the purposes of our determination of the Dispute.

Connection Offer – Terms in Dispute

- 9.12 The terms of the Connection Offer which is the basis of the Dispute between the Parties are those at clause 10.3 of the Connection Offer and that part of the Connection Charge which is referred to in the table at clause 10.4 of the Connection Offer and referred to as the Shared Connection Asset Charge.
- 9.13 We note that the Connection Offer itself does not specify or clarify to which particular transmission system assets the Shared Connection Asset Charge relates.
- 9.14 However, SONI has clarified, including in its response dated 23 January 2020 (B18) to the Utility Regulator's letter of 16 January 2020 (B17), that the Shared Connection Asset Charge relates to the costs of that transmission system infrastructure¹⁵ which forms part of the Drumquin Cluster.

The Drumquin Cluster

- 9.15 The Drumquin Cluster comprises of electricity network infrastructure which has been constructed by virtue of it having been approved by the Utility Regulator as being required for the purposes of connecting a cluster of authorised generators to the distribution network.
- 9.16 The Utility Regulator's approval to 'cluster infrastructure' is required and given pursuant to the connection charging statement prepared by NIE Networks' under and in accordance with Condition 32 of its electricity distribution licence (which connection charging statement also has to be approved by the Utility Regulator).
- 9.17 The required infrastructure, referred to as 'cluster infrastructure', can, and in respect of the Drumquin Cluster did, constitute both distribution and transmission infrastructure.

¹⁵ The Shared Connection Asset Charge relates to most (but not all) of this transmission system infrastructure.

- 9.18 The cluster infrastructure (comprising of both distribution and transmission infrastructure (or 'assets' which is the terminology used by SONI) which constitutes the Drumquin Cluster is shown at each of Appendix A (which was provided by NIE Networks) and Appendix L (which was provided by SONI) of our Findings of Fact.

The TCCMS

- 9.19 Condition 30 of the Transmission Licence places an obligation on SONI to prepare (and obtain the Authority's approval to) a statement setting out the basis upon which SONI may charge third parties for connection to the All-Island Transmission Networks. The TCCMS is therefore the statement prepared under and in accordance with Condition 30 of the Transmission Licence.
- 9.20 The purpose of the TCCMS is to provide parties wishing to connect to the transmission system with clarity on the basis and the methodology of charges which SONI will levy in relation to such a connection.
- 9.21 As confirmed by previous determinations made by the Utility Regulator on connection disputes, in reaching our determination we are required to consider the charging statement that is in force at the time of the determination, not at the time that the application or offer was made.
- 9.22 As at the time of this determination, the TCCMS which has been prepared by SONI and approved by the Utility Regulator is the version dated 1 April 2019. However, there are no material or substantive differences in section 7 of the latest version and the version that applied when the Connection Offer was made by SONI.
- 9.23 SONI's contention is that it is entitled and required to levy the Shared Connection Asset Charge by virtue of section 7 of the TCCMS.
- 9.24 The provision under which SONI has included the disputed terms (clause 10.3 and in part clause 10.4) of the Connection Offer is section 7 (entitled "Cost Allocation Rules for Shared Assets") of the TCCMS.
- 9.25 In this respect it is relevant to refer to and consider paragraphs 7.1 to 7.3 of the TCCMS which read as follows:
- "7.1 Where a new **User** connects to the **All-Island Transmission Networks** by making use of existing **Connection Assets** which have been funded by an existing **User(s)** who connected within the preceding ten years the new **User** will be charged a proportion of the value of the shared **Connection Assets**, calculated in accordance with sub-paragraph 7.3*

7.2 *If the existing **User(s)** connected within the preceding ten years then the existing **User(s)** will be entitled to receive a partial rebate of the original connection charge from SONI, calculated in accordance with sub-paragraph 7.3.*

7.3 *The charge to the new **User** and the rebate to the existing **User** will be derived using...".*

(bold in original and denotes defined terms).

9.26 Accordingly, the purpose of Section 7 of the TCCMS is to enable SONI to recover from a new User an appropriate proportion of the costs that were incurred (directly or indirectly) by SONI in establishing any existing transmission assets that have been paid for by an existing User so as to enable SONI to give back to that existing User (i.e. the person upon whom SONI previously levied a connection charge in respect of the costs of the existing transmission assets) a partial rebate of the connection charge that was paid by that existing User.

9.27 The TCCMS:

- (a) defines, at section 12, the term User as "*a person who has entered into an agreement with SONI in respect of a connection at entry or exit points on the transmission system*";
- (b) provides, at section 5, that 'Connection Assets' are "*those assets which are installed to enable the transfer of the Maximum Export Capacity (MEC) or the Maximum Import Capacity (MIC) of the User located at the Connection Point, to or from, as appropriate the [transmission system]*" and "*those assets which are installed as a result of the User's effect on fault current levels on the Transmission System, but does not include assets installed at any location other than the transmission node to which the User connects*".

9.28 SONI's contends that the transmission assets forming part of the Drumquin Cluster are therefore Connection Assets, as that term is defined in the TCCMS. The definition of Connection Assets is as set out in paragraph 9.27(b) above.

9.29 In order for the transmission assets forming part of the Drumquin Cluster to be Connection Assets (as defined in the TCCMS), they must be assets installed to enable the transfer of the MEC or MIC of '*the User...*'. The definition of User is as set out in paragraph 9.27(a) above.

9.30 Accordingly, in order for the transmission assets forming part of the Drumquin Cluster to be Connection Assets, NIE Networks (DNO) needs to have entered into an agreement with SONI in respect of a connection at an entry point or an exit point on the transmission system.

Connection Agreement

- 9.31 We have already made a Findings of Fact that NIE Networks has not entered into an agreement with SONI in respect of a connection relating to the Drumquin Cluster. This Findings of Fact was agreed to by NIE Networks (DNO) – the purported counter party to the agreement that SONI contends exists in respect of a connection relating to the Drumquin Cluster.
- 9.32 NIE Networks (DNO) is therefore not a User – it has not entered into an agreement with SONI in respect of a connection relating to the Drumquin Cluster.
- 9.33 In the circumstances of this case, the transmission assets for which SONI propose to levy the Shared Connection Asset Charge do not therefore constitute Connection Assets (within the definition of such term in the TCCMS). They were not installed either to enable the transfer of the MEC or MIC of a User or as a result of a User's effect on fault current levels on the transmission system.
- 9.34 We note SONI's view that it has treated NIE Networks (as DNO) as an existing "User" and that this is in line with the Agivey Determination. However, the Agivey Determination is of no relevance or assistance in this respect. It did not decide that NIE Networks (DNO) must constitute a "User" for the purposes of the TCCMS. Neither did it determine that SONI can or is required to treat the DNO as a "User" in circumstances where NIE Networks (DNO) has neither applied for a connection nor entered into a connection agreement with SONI. We also note that with regard to that case, NIE Networks had applied for a connection and SONI had made a connection offer and it was the terms of that connection offer that were the subject of that dispute.
- 9.35 The transmission assets forming part of the Drumquin Cluster were not planned, developed, or constructed pursuant to an application made by NIE Network as the DNO for a connection to the transmission system.
- 9.36 Indeed, SONI has confirmed that there was no such application. That SONI was not responsible for the planning aspects of the transmission system until 2014 is irrelevant and has no bearing in this respect. Any request for a connection to the transmission system would nevertheless have been (needed to be) made to SONI.
- 9.37 In its response to the Provisional Determination SONI reiterated its view that NIE Networks and SONI must have entered into an agreement because the Drumquin Cluster is connected to the transmission system.
- 9.38 As noted above, a Findings of Fact has already been made on the evidence that there is no connection agreement between NIE Networks and SONI (a fact which is agreed to by NIE Networks).

9.39 In this regard we have also noted that –

- (a) There is no evidence before us as to the terms of any such agreement – noting here that a connection agreement necessarily needs to provide details on a range of matters including, without limitation, technical matters (such as the type and nature of the connection), operational matters (such as circumstances in which the connection can be disconnected), legal matters (such as the liabilities of the parties to the agreement), the applicable charges, and all of the matters referred to in Condition 25 of the Transmission Licence.
- (b) The evidence that is before us supports the position that transmission assets forming part of the Drumquin Cluster were planned, developed and constructed as network infrastructure required for the purposes of connecting a cluster of generators to the distribution network. That is that they were installed for the purposes of developing 'cluster infrastructure' pursuant to the arrangements approved by the Utility Regulator for connections to the electricity distribution system and not for the purposes of a connection requested by NIE Networks (DNO).

9.40 In support of its contentions, in its response to the Provisional Determination, SONI –

- (a) refers to a letter dated 12 September 2017 (**B1A**) sent by SONI to NIE Networks which states that it is being "issued by SONI to the DNO under Section S of the TIA" and "that SONI can invoice the DNO now under Section S of the TIA"; and
- (b) submits by way of new evidence an invoice dated 25 November 2019 which is described as being for "*SONI pre-construction works and SCADA costs in relation to the Drumquin Cluster*" and which it states has been paid by NIE Networks (DNO),

as evidence of there being a connection agreement between NIE Networks (DNO) and SONI.

9.41 With regard to the letter of 12 September 2017 we note that –

- (a) it responds to a letter from NIE Networks which requested SONI to issue an invoice under Section N of the TIA; and
- (b) the effect of the SONI letter does not mean or provide evidence that the process set out in Section S of the TIA was followed such that an application for a connection was made by NIE Networks and/or that a connection agreement was entered into or concluded between NIE Networks and SONI.

9.42 The 12 September 2017 letter does not evidence the existence of a connection agreement between NIE Networks and SONI.

- 9.43 With regard to the November 2019 invoice, this is new evidence submitted by SONI¹⁶ and the Provisional Determination confirmed at paragraph 1.15 that we would not be accepting or taking into consideration any new or fresh evidence from the Parties.
- 9.44 The November 2019 invoice is therefore inadmissible.
- 9.45 However, even if it were admissible, that SONI submitted an invoice to NIE Networks in respect of SONI's pre-construction and SCADA costs of the transmission assets forming part of the Drumquin Cluster does not change the fact that there is no agreement entered into between NIE Networks (DNO) and SONI in respect of a connection relating to the Drumquin Cluster.
- 9.46 Furthermore, neither the invoice (nor, assuming this to be the case, that there was a payment thereof by NIE Networks) constitutes evidence of or means that a connection agreement was, or must have been entered, into between NIE Networks and SONI. Finally, we also note that the invoice itself makes no reference to the amount being a (or part of a) connection charge due from NIE Networks to SONI.
- 9.47 For completeness, we also note that SONI –
- (a) acknowledges and recognises that in order for a connection to be made there must be an application by the party requiring any such connection; and
 - (b) continues to confuse and conflate the position between connections to the distribution system and connections to the transmission system as evidenced by its statement that "*Section S of the TIA and the TCCMS are the only mechanisms by which NIE Networks can connect distribution customers to the transmission system.*". This is because NIE Networks does not connect distribution customers to the transmission system. It is also noted that SONI refers to an application for connection being able to be made by NIE Networks under the TCCMS. However, the TCCMS is a charging methodology relating to applications for connection, and does not itself constitute the authority under which or the process by which applications for connection are made.

Connection Assets

- 9.48 In the Provisional Determination, we provisionally concluded that as NIE Networks (DNO) had not entered into a connection agreement with SONI (a matter on which we had already made a Findings of Fact) and was not therefore a User as defined in the TCCMS (for the purposes of this Dispute), the transmission assets forming part of the Drumquin Cluster were not 'Connection Assets' as defined in the TCCMS.

¹⁶ We also note that it was not the case that SONI was not in a position to be able to submit this new evidence at any earlier point in the dispute process.

9.49 In responding to the Provisional Determination SONI submitted that –

- (a) if the transmission assets forming part of the Drumquin Cluster are not Connection Assets (as defined in the TCCMS) then, because of paragraph 5.3 of the TCCMS, they must be categorised as System Assets (as defined in the TCCMS); and
- (b) the assets could not be System Assets because -
 - (i) SONI would have been required to seek the Utility Regulator's approval to fund a Transmission Network Pre-Construction Project and it did not make a submission under the relevant provisions of its Transmission Licence to secure funding for its work on the Drumquin Cluster as a Transmission Network Pre-Construction Project;
 - (ii) this would be inconsistent with the cluster policy that is applied to connection charging of cluster connectees at distribution level and because the Provisional Determination acknowledged that the transmission assets were funded as 'Connection Assets';
 - (iii) the sole purpose of the transmission assets of the Drumquin Cluster was to facilitate the connection of the DNO's distribution assets forming part of the Drumquin Cluster;
 - (iv) DWFL has accepted that they are Connection Assets; and
 - (v) there is no Transmission Project Instruction or Transmission Project Agreement under Section C of the TIA.

Categorisation as System Assets

9.50 We note that although Section 14 of the TCCMS states that the term 'System Assets' is "as defined in Section 5 of this statement", there is no formal definition of 'System Assets' in section 5 of the statement.

9.51 In this respect, paragraph 5.3 of the TCCMS does not –

- (a) define the term 'System Assets' but states only that assets which are not 'Connection Assets' are 'System Assets' and that 'the costs of these System Assets are recovered through use of system charges'.
- (b) confirm that the costs of 'these System Assets' are recovered only through use of system charges.

9.52 Indeed given that TCCMS provides –

- (a) at paragraph 4.2, that a "*new User may connect to either 'Connection Assets' or to 'System Assets', and the connection charge payable will vary in each circumstance*", and
- (b) in the third paragraph of paragraph 4.8, that an Applicant can "*be liable to pay for any incremental costs...whether for Connection Assets or System Assets...*",

it does not appear to be the case that the TCCMS provides that the costs of System Assets are recoverable only through use of system charges.

9.53 However, and notwithstanding our comments in paragraphs 9.50 to 9.52 above, we confirm that the Dispute is not concerned with whether or not transmission assets necessarily have to, or can only, fall into the two categories referred to in the TCCMS or whether or not the costs of 'System Assets' are recoverable only through use of system charges.

9.54 Accordingly, these are not matters or issues on which we can, or do, make any determination.

Transmission Network Pre-Construction Projects

9.55 That SONI did not make a submission to secure funding for its work on the Drumquin Cluster as a Transmission Network Pre-Construction Project has no bearing on our assessment of whether the transmission assets forming part of the Drumquin Cluster are, in the circumstances of this case, Connection Assets for the purposes of the TCCMS.

9.56 There is nothing in the TCCMS which supports this contention or indeed refers to Transmission Network Pre-Construction Projects (TNPCP).

9.57 In any event, while we are not making any formal conclusions on whether or not assets are or can only be 'System Assets' where SONI has made a 'TNPCP submission' – as these are not matters on which we can or do make any determination – we would only note that -

- (a) the licence provisions relating to TNPCPs did not take effect until May 2017 and it would appear that pre-construction activities in relation to the Drumquin Cluster may have been taking place prior to this date; and
- (b) in its response (**B15**) to DWFL's complaint, SONI (i) submitted e-mail correspondence exchanged between SONI and the Utility Regulator which refers to 'SONI pre-construction project submissions', and (ii) refers to the Utility Regulator's draft letter sent to SONI on 25 August 2015 which SONI describes as "*requesting information about SONI's costs related to the Drumquin Cluster, on the basis that it will be included in its determination of SONI's price control*". This correspondence also supports the factual position that SONI was not carrying out pre-construction works relating to the

Drumquin Cluster pursuant to an agreement with NIE Networks (DNO) relating to a connection.

Cluster Policy

- 9.58 There is no inconsistency between our conclusions that the transmission assets forming part of the Drumquin Cluster are not 'Connection Assets' for the purposes of this Dispute and the cluster policy applicable to connection charging of cluster connectees at distribution level.
- 9.59 The cluster policy applicable to connection charging of cluster connectees at distribution level does not apply or inform the definition of 'Connection Assets' in the TCCMS.
- 9.60 We also note that in making its representations to the Provisional Determination SONI –
- (a) confuses and conflates terminology by failing to recognise the difference between (a) the definition of 'Connection Assets' in NIE Networks (DNO)'s Statement of Charges for Connection to Northern Ireland Electricity Networks' Distribution System, and (b) the definition of 'Connection Assets' in the TCCMS; and
 - (b) errs in stating that the Provisional Determination acknowledged that the transmission assets were funded as 'Connection Assets' as defined in the TCCMS.

Purpose of the transmission assets of the Drumquin Cluster

- 9.61 The evidence before us does not support SONI's contention that the sole purpose of the construction of the transmission assets forming part of the Drumquin Cluster was to facilitate connection of NIE Networks (DNO)'s distribution assets forming part of the Drumquin Cluster.
- 9.62 The evidence before us is that the purpose of the construction of the transmission assets was to facilitate the cluster infrastructure required to facilitate connections to the electricity distribution system.
- 9.63 In support of its contention as to the purpose of the construction of the transmission assets, SONI essentially reiterates its view that NIE Networks (DNO) is a User or to be treated as a User under the TCCMS for the purposes of this Dispute.
- 9.64 We have explained above the reasons for our conclusion that NIE Networks (DNO) is not a User and cannot be treated as a User for the purposes of this Dispute.

Inconsistency with DWFL's position

- 9.65 A conclusion that the transmission assets forming part of the Drumquin Cluster are not, for the purposes of this Dispute, Connection Assets as defined in TCCMS is not inconsistent with DWFL's position.
- 9.66 It is right that DWFL's letter of 17 July 2019 refers to it being the new User and making use of existing Connection Assets. However, it is clear that in doing so, DWFL was not making representations that the transmission assets forming part of the Drumquin Cluster were Connection Assets as defined in the TCCMS.
- 9.67 We do not accept SONI's contention that the Parties have agreed that the transmission assets forming part of the Drumquin Assets are, for the purposes of this Dispute, [existing] 'Connection Assets' as defined in the TCCMS.
- 9.68 For all the reasons given above, we conclude that the transmission assets forming part of the Drumquin Cluster do not, for the purposes of this Dispute, fall within the scope of being 'Connection Assets' as defined in the TCCMS.
- 9.69 The transmission assets for which SONI propose to levy the Shared Connection Asset Charge do not therefore constitute Connection Assets. They were not installed either to enable the transfer of the MEC or MIC of a User or as a result of a User's effect on fault current levels on the transmission system.
- 9.70 They were installed for the purposes of developing 'cluster infrastructure' pursuant to the arrangements approved by the Utility Regulator for connections to the electricity distribution system.

Rights for NIE Networks to plan, operate or configure the transmission system

- 9.71 In its response to the Provisional Determination, SONI submits that the Provisional Determination effectively concluded that NIE Networks was permitted to plan, operate or configure the transmission system without the agreement of SONI.
- 9.72 SONI is wrong in this respect. The Provisional Determination did not make any such conclusions.
- 9.73 We would also note that the evidence before us does not support the position that NIE Networks was planning, operating or configuring the transmission system or, if it were, that it was doing so without any input or involvement from SONI. Rather the evidence supports the position that SONI was undertaking these activities in respect of the transmission assets of the Drumquin Cluster – and was doing so for the purposes of establishing the cluster infrastructure required in respect of that cluster.

- 9.74 Our conclusion that the transmission assets forming part of the Drumquin Cluster are not 'Connection Assets' as defined in the TCCMS for the purposes of this Dispute, does not –
- (a) impact or effect the separation of responsibilities between NIE Networks and SONI; or
 - (b) affect or impact on SONI's certification as a transmission system operator pursuant to applicable EU law¹⁷ and Article 10E of the Electricity Order.

Section C of the TIA

9.75 In its response to the Provisional Determination, SONI submits that if the transmission assets forming part of the Drumquin Cluster are not Connection Assets, there should have been a Transmission Project Instruction (TPI) and a Transmission Project Agreement (TPA) under Section C of the TIA and that no such TPI or TPA exists.

9.76 We are not required to and make no conclusions or determination on whether or not there should have been a TPI and/or a TPA under Section C of the TIA.

9.77 We only note that –

- (a) on the one hand SONI is contending that the absence of (i) an application for a connection by NIE Networks (DNO), (ii) a connection offer to NIE Networks by SONI, (iii) a connection agreement between NIE Networks (DNO) and SONI, and (iv) a construction agreement between NIE Networks (TO) and SONI – all of which would have been required in order for the transmission assets forming part of the Drumquin Cluster to be [existing] Connection Assets for the purpose of this Dispute – does not mean that the transmission assets cannot be 'Connection Assets'; and
- (b) on the other hand SONI is contending that the absence of a TPI and/or a TPA means that the assets must be categorised as 'Connection Assets' as defined in the TCCMS.

9.78 SONI's position in this respect is inconsistent and untenable.

Cost Allocation Rules and Funding of Assets

9.79 It is clear from the provisions of Section 7 of the TCCMS that –

- (a) Any 'shared connection asset charge' which is recovered from a new User pursuant to paragraph 7.1 of the TCCMS is for the purposes of entitling the existing User to receive a partial rebate of the "*original connection charge*".

¹⁷ Article 3 of Regulation (EU) 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity – which is to be construed as a reference to Article 51 of Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity.

- (b) The reference to "*original connection charge*" in paragraph 7.2 of the TCCMS is, and can only be, a reference to the connection charge that was originally paid by the existing User to SONI.
- 9.80 We have concluded above that, for the purposes of this Dispute, NIE Networks (DNO) is not a User – as defined in the TCCMS – in respect of the transmission assets forming part of the Drumquin Cluster.
- 9.81 Accordingly, NIE Networks (DNO) is not an 'existing User' for the purposes of this Dispute and it follows that the transmission assets forming part of the Drumquin Cluster cannot have been funded by an 'existing User' for the purposes of the application of paragraph 7.1 of the TCCMS.
- 9.82 This means that where DWFL connects to the transmission system it is not doing so "*by making use of existing Connection Assets which have been funded by an existing User*".
- 9.83 In any event, and without prejudice to any of the above, both SONI and NIE Networks have confirmed that NIE Networks (DNO) has not paid any monies to SONI in respect of the making of a connection between the distribution assets and the transmission assets of the Drumquin Cluster. NIE Networks (DNO) has not paid a charge to SONI for a connection to the transmission assets forming part of the Drumquin Cluster (i.e. a connection charge).
- 9.84 In its response to the Provisional Determination, SONI submits that –
- (a) our provisional conclusion on the meaning of "original connection charge" is incorrect and an overly narrow interpretation because –
- (i) it fails to give the ordinary and natural meaning to the words "original connection charge" which SONI contends is "*the amount of the Connection Assets funded by the existing User*" i.e. *the connection cost to the existing User*;
- (ii) it assumes the "original connection charge" can only be amount of cash previously paid by someone to SONI.
- (b) the purpose of the Shared Connection Asset Charge is to provide a mechanism for SONI to "*collect money from a new User and pay it back to the existing User*";
- (c) NIE Networks (DNO and TO) and SONI have agreed to set off the costs of the transmission assets forming part of the Drumquin Cluster between NIE Networks (DNO) and NIE Networks (DNO).
- 9.85 In summary, SONI submits that the correct and simplest interpretation of "original connection charge" is the amount someone paid for the construction of the assets in question in the past

and that once a new party connects to those assets SONI has to levy a 'shared connection asset charge'.

9.86 Given that for the purposes of this Dispute there is no 'existing User' it follows that the criteria which must be satisfied before SONI can levy the relevant "Shared Asset Connection Charge" on a new User has not, in the circumstances of this case, been met (i.e. there is no existing User who has funded the assets in question). Nevertheless, for completeness only we respond as follows to SONI's submissions –

- (a) Our provisional conclusion gave the words "original connection charge" their ordinary and natural meaning, namely that it is the amount of money, i.e. the 'charge', that SONI has required an existing User to pay and that the 'existing User' paid for their connection, i.e. the 'original connection'.
- (a) In order for a partial rebate to be given to an existing User, that existing User must have been charged by SONI and paid an amount, the 'original connection charge' in the first place and the only person by whom such an amount can be charged and to whom such an amount is or can be paid is SONI.
- (b) SONI confirms that the mechanism is for '*SONI to collect money from a new User and to pay it back to the existing User*'. SONI can only be paying back money to the existing User if the existing User has been charged and paid at least an equivalent amount to SONI in the first place.
- (c) We note that Section N (paragraph 4.7) of the TIA does not permit payments to be set off unless NIE Networks and SONI have agreed to set off such payments. There is no evidence that NIE Networks and SONI have agreed to any set off in the present case. We further note that Section S (paragraph 2.5) permits the set off of charges. However, these set off arrangements under Section S can only apply where charges are levied in the first place under the process set out in Section S and the relevant agreement has been entered into between NIE Networks and SONI. This did not occur in the present case.

Determination of the issue in dispute between the Parties

9.87 Our determination on the issue in dispute between the Parties is that SONI is not entitled to recover from DWFL, as part of the connection charges for the connection of DWFL's Wind Farm to the electricity transmission system, the Shared Connection Asset Charge set out in the Connection Offer (which charge relates to the costs of the transmission assets forming part of the Drumquin Cluster).

10 **SECTION TEN – SOME CONCLUDING OBSERVATIONS**

- 10.1 In responding to the Provisional Determination and in submitting additional correspondence following its response to the Provisional Determination, SONI made a number of submissions in respect of certain matters with regard to inconsistencies it considers result across the industry structure if the Provisional Determination were to be upheld.
- 10.2 These matters are not for our formal determination.
- 10.3 As confirmed in paragraph 9.10 above, we are required to determine the Dispute by reference to the applicable legal framework and apply the law to the facts and circumstances of the case.
- 10.4 However, we agree that it may be helpful and appropriate for us to provide some observations which we hope will be of assistance to SONI, NIE Networks and the Utility Regulator in taking forward any lessons that may be learned from the facts of this dispute.
- 10.5 This Section Ten is not therefore part of our formal determination.

Getting the Basics Right

- 10.6 The facts of this case support the proposition that SONI, either alone or together with NIE Networks, did not manage to get the basics right in respect of various matters and processes relating to the transmission assets forming part of the Drumquin Cluster.
- 10.7 This includes in particular the absence of any agreements and documentation that are required with regard to matters relating to the planning, development, and construction of transmission assets that form part of cluster infrastructure.

Regulatory Documents

- 10.8 In this respect, we would suggest that SONI and/or NIE Networks may wish to ensure that the regulatory documents for which they are responsible, including their respective charging statements and the TIA, properly and fully set out the end-to-end process for matters relating to the development (etc.) of cluster infrastructure and their respective roles in relation to such cluster infrastructure.
- 10.9 Furthermore, while the issue relating to potential over or double recovery of cluster infrastructure played no part in informing our determination of this Dispute (as confirmed above we have applied the applicable law to the facts and circumstances of the case), it would be helpful for there to be a review in respect of the interaction of the relevant regulatory documents to ensure that there is no potential for over or double recovery of cluster infrastructure costs.
- 10.10 We would therefore encourage SONI, to work together with NIE Networks (with input as required from the Utility Regulator) to review the suite of regulatory documents that presently

govern or inform matters relating to the development of cluster infrastructure and the mechanisms by which costs of cluster infrastructure are recovered or recoverable (including by whom and from whom).

10.11 In particular, we encourage –

- (a) SONI, working together with NIE Networks, to review the drafting of the TIA to ensure that it properly and fully clarifies where any reference to NIE Networks is to be read as a reference to (a) NIE Networks in its capacity as the transmission system owner, and (b) NIE Networks in its capacity as the distribution system owner and/or operator.
- (b) SONI to review the drafting of the TCCMS to ensure that the terms used within it and the definitions of such terms properly and adequately reflect the applicable regulatory framework and other regulatory documents.
- (c) SONI to liaise and work together with NIE Networks to ensure that the suite of regulatory documents applicable to network development and cost recovery all dovetail together to provide a clear and coherent set of rules as to their respective roles and responsibility and obligations (which are then followed through and documented).

Effect of our determination

10.12 In its response to the Provisional Determination, SONI also submitted certain views held by it on the potential effect of the determination (if the second issue for determination were to be as the Provisional Determination).

10.13 We have addressed and responded to SONI's submissions within Section Nine above.

10.14 However, for completeness we respond as follows to those aspects of SONI's response which did not concern or relate to the circumstances of this Dispute.

10.15 Firstly, SONI contends that our determination of this Dispute means that it and/or NIE Networks need to revisit the position of other connectees to other cluster infrastructure.

10.16 In this respect, we simply confirm that our determination applies only in respect of and for the purposes of this Dispute and the matters before us for determination.

10.17 It cannot, and does not, apply in respect any existing connection agreement entered into between NIE Networks and any other third party or between SONI and any other third party.

10.18 Secondly, SONI refers to the effect of our determination is that a Wind Farm connecting to transmission assets forming part of cluster infrastructure would have a substantial competitive advantage in the Single Electricity Market over a Wind Farm connecting to distribution assets forming part of that same cluster infrastructure.

- 10.19 SONI has not given any details as to the nature of the competitive advantage that arises in the SEM in circumstances where there are connections to the same cluster substation at distribution and transmission level.
- 10.20 Notwithstanding this, we reiterate the position noted earlier and throughout this document which is that we are only required to determine, and have determined, the Dispute before us and by reference to the applicable law and facts of the case.

11 **SECTION ELEVEN – RECOVER OF THE UTILITY REGULATOR'S COSTS**

Making a Costs Order

- 11.1 Paragraph 5A of Article 31A of the Electricity Order provides that the Utility Regulator may include in the determination an order requiring any person to the dispute to pay such sum in respect of the costs or expenses of the Utility Regulator in making the determination as the Utility Regulator considers appropriate.
- 11.2 In its letter of 26 July 2019 (**B3**), the Utility Regulator:
- (a) confirmed to the Parties that it had accepted the Dispute as a complaint under Article 31A of the Electricity Order;
 - (b) in accordance with the Complaints Policy¹⁸, drew the Parties' attention to Article 31A(5A) of the Electricity Order; and
 - (c) informed the Parties that it was likely that a costs order would be made.
- 11.3 Paragraph 5B of Article 31A of the Electricity Order provides that in making an order under paragraph 5A the Utility Regulator shall have regard to the conduct and means of the parties and other relevant circumstances.
- 11.4 The Policy¹⁹ states that where the Utility Regulator is considering whether to make a provision for payment of the Utility Regulator's costs, it will have regard to:
- (a) the nature and complexity of the complaint or dispute;
 - (b) the resources of the parties;
 - (c) the conduct of the parties in relation to the complaint or dispute (whether before or after the date of the application);
 - (d) the outcome of the complaint or dispute; and
 - (e) what is fair and proportionate in all the circumstances of the case
- 11.5 The Utility Regulator's letter of 26 July 2019 (**B3**) also referred the Parties to a published Information Note setting out and confirming its policy on cost recovery in respect of its dispute settlement role.
- 11.6 Among other things, the Information Note confirms:

¹⁸ Paragraph 9 of Section D of the Policy.

¹⁹ At paragraph 24 of Section D of the Policy

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

Provisional Conclusion on Recovery of Costs

- 11.7 Our provisional conclusions on the recovery of the costs and expenses incurred by the Utility Regulator, as set out in the Provisional Determination, were that it would be appropriate to make an order under Article 31A of the Electricity Order requiring SONI to pay a sum amounting to the full amount of the expenses, namely its external costs, incurred by the Utility Regulator in determining the Dispute.
- 11.8 The reasons for these provisional conclusions were set out in the Provisional Determination, namely that (a) the starting point was for SONI to make a payment in respect of the costs incurred by the Utility Regulator, and (b) having considered the circumstances of the case we did not identify any reasons which led us to move away from that starting point.

Parties submissions on the provisional conclusions

- 11.9 DWFL did not make any submissions on the provisional conclusions relating to costs and the provisional costs order.
- 11.10 Prior to submitting its detailed representations to the Provisional Determination, SONI submitted a letter (dated 6 August 2020 – **B27**) requesting, among other things, a breakdown of the costs incurred by the Utility Regulator's external legal advisors, including timesheets and narratives and copies of any legal opinion(s) provided to the Decision Makers.
- 11.11 The Utility Regulator did not accede to SONI's request – setting out its reasons for not acceding in its letter of 17 August 2020 (**B28**).
- 11.12 In its letter of 6 August 2020, SONI made the following submissions in respect of our provisional conclusions on costs, namely that –
- (a) the anticipated external costs of the Utility Regulator “are likely several times the combined legal costs of the Parties”;
 - (b) we, the Decision Makers, had not fully considered what was “fair and proportionate in this case”;
 - (c) the Utility Regulator had held the view that dispute is not a complex dispute;

- (d) the length of time taken to determine dispute and the costs accrued by the Utility Regulator cannot be solely attributed to SONI;
- (e) SONI had on a number of occasions pointed out certain errors in the Utility Regulator's correspondence and these interactions resulted in SONI having to accrue costs to ensure that the issues were remedied or clarified; and
- (f) a 100% costs allocation on the basis of the minor 'SONI conduct' issues the Utility Regulator identified appears wholly disproportionate.

11.13 We have given careful consideration to SONI's submissions and make the following points and observations –

- (a) The level or extent of external costs that the Parties may or may have not incurred is not relevant to or determinative of the level of costs that the Utility Regulator can or has incurred in respect of the Dispute. The Utility Regulator's role as the dispute settlement authority is completely different to and cannot be considered to be or treated as commensurate to the role of the Parties.
- (b) We have fully considered what was 'fair and appropriate' taking into account all the circumstances of the case, the dispute process, the conduct of the Parties and the outcome of the Dispute.
- (c) That the Utility Regulator confirmed (in its response of 6 November 2019 – **B15A**) that the "*nature of the dispute is clear enough*" does not equate to the Utility Regulator holding the view that the dispute was not a complex one. Furthermore, some of the complexities relating to the issues in the Dispute and the extended dispute process arose as a consequence of the vague, unclear and changing submissions from SONI.
- (d) The Utility Regulator is not recovering its internal costs in respect of the determination of the Dispute.
- (e) We are not making a 100% costs allocation basis solely on the basis of SONI's conduct. SONI's conduct is one of the relevant factors but not the only factor.

Conclusions on Recovery Costs

11.14 Having regard to all of the above we see no reason to and do not depart from our provisional conclusions with regard to the recovery of costs.

11.15 Accordingly, we have determined to make an Order under Article 31A of the Electricity Order for SONI to pay a sum which represents 100% of the Utility Regulator's expenses, namely its external costs, incurred in determining this Dispute.

- 11.16 The Utility Regulator's total external costs on this matter are approximately (just over) £62,000 exclusive of VAT. Accordingly, the effect of our Order is that SONI shall pay a sum of £62,000 exclusive of VAT in respect of the expenses the Utility Regulator has incurred in making this determination.
- 11.17 The Utility Regulator will inform SONI by way of separate correspondence on the method for making the payment.

12 SECTION TWELVE - COSTS ORDER

12.1 We make the following order under and in accordance with Article 31A(5A) of the Electricity Order.

The Order

12.2 We order that by no later than 28 days from the date of this determination SONI makes a payment to the Utility Regulator of £62,000 exclusive of VAT which reflects an amount relating to the external legal costs incurred by Utility Regulator's in determining the Dispute.

Claire Williams and Colin Broomfield

Authorised on behalf of the Northern Ireland Authority for Utility Regulation

APPENDIX 1- INDEX OF DOCUMENTS

Doc ref	From	To	Date	Document title
A1			11/02/1992	Electricity (Northern Ireland) Order 1992 - http://www.legislation.gov.uk/nisi/1992/231/contents
A2	Utility Regulator		20/08/2018	Policy on the Resolution of Complaints, Disputes and Appeals and Guide for Applicants - https://www.uregni.gov.uk/publications/resolution-complaints-disputes-and-appeals-policy-and-guide-applicants
A3	Utility Regulator	SONI	Feb 2019	Licence to Participate in the Transmission of Electricity - https://www.uregni.gov.uk/sites/uregni/files/media-files/SONI%20TSO%20Consolidated%20Feb%202019.pdf
A4	SONI		01/04/2019	SONI Transmission Connection Charging Methodology Statement - http://www.soni.ltd.uk/media/documents/SONI-TCCMS-1-April-2019.pdf
B1	DWFL	Utility Regulator	17/07/2019	Complaint from DWFL under Article 31A of the Electricity Order
B1A	SONI	NIE Networks	12/09/2017	Letter confirms SONI can invoice NIE Networks under Section S of TIA for the SONI pre-construction costs incurred to date.
B2	SONI	DWFL	29/08/2018	Transmission Connection Offer from SONI to DWFL for connection of DWFL's wind farm to the electricity transmission system
B3	Utility Regulator	DWFL and SONI	26/07/2019	Utility Regulator's letter to the Parties confirming acceptance, etc.
B4	DWFL	SONI	10/09/2018	DWFL (DWC) letter to SONI raising queries with the Connection Offer
B5	SONI	DWFL	10/10/2018	SONI letter responding to DWFL/DWC queries
B6	SONI	DWFL	25/10/2018	SONI email responding to DWFL queries
B7	SONI	DWFL	25/10/2018	SONI Clarification Letter

B8	DWFL	SONI	05/11/2018	DWFL request for an extension of time to the acceptance period
B9	SONI	DWFL	20/11/2018	SONI letter extending acceptance period to 25.02.19
B10	DWFL	SONI	03/01/2019	DWFL request for an extension of time to the acceptance period
B11	SONI	DWFL	06/02/2019	SONI letter extending acceptance period to 26.05.19
B12	DWFL	SONI	01/05/2019	DWFL request for an extension of time to the acceptance period
B13	SONI	DWFL	03/05/2019	SONI letter extending acceptance period to 17.07.19
B14	DWFL	SONI	03/05/2019	DWC /DWFL letter to SONI raising queries with connection offer
B15	SONI	Utility Regulator	05/09/2019	SONI's response to DWFL's complaint
B15A	Utility Regulator	SONI	06/11/2019	Letter to SONI from Utility Regulator
B16	SONI	Utility Regulator	13/12/2019	SONI's response to a draft 'statement of facts'
B17	Utility Regulator	SONI	16/01/2020	Letter from Utility Regulator requesting SONI to clarify its comments on the draft 'statement of facts'
B18	SONI	Utility Regulator	23/01/2020	SONI's response to Utility Regulator's letter of 16 January 2020
B19	Utility Regulator	DWFL and SONI	14/08/2019	Information request from the Utility Regulator to SONI (first information request)
B20	SONI	Utility Regulator	28/08/2019	SONI's initial response to first information request querying certain process matters
B21	Utility Regulator	DWFL and SONI	29/08/2019	Letter responding to SONI's letter of 28 August 2019
B22	SONI	Utility Regulator	29/08/2019	SONI's response to the first information request
B23	Utility Regulator	DWFL and SONI	08/11/2019	Information request from the Utility Regulator to SONI (second information request)
B24	SONI	Utility Regulator	15/11/2019	SONI's response to the second information request
B25	Utility Regulator	DWFL and SONI	06/12/2019	Draft statement of facts (with covering letter)

B26	Utility Regulator	DWFL and SONI	24/03/2020	Determination of Preliminary Matter - Findings of Fact (including cover letter and appendices)
B27	SONI	Utility Regulator	06/08/2020	Letter from SONI
B28	Utility Regulator	DWFL/SONI	17/08/2020	Letter from Utility Regulator acceding to request made by SONI for an extension of time to respond to the Provisional Determination.
B29	SONI	Utility Regulator	28/08/2020	SONI response to the Provisional Determination
B30	DWFL	Utility Regulator	17/09/2020	DWFL consent to extension request
B31	SONI	Utility Regulator	11/09/2020	SONI Letter dispute process
B32	SONI	Utility Regulator	24/09/2020	SONI Letter dispute process
B33	SONI	Utility Regulator	28/09/2020	SONI Letter dispute process