



COMPLAINT TO THE UTILITY REGULATOR

**BY BROCKAGHBOY WIND FARM LTD IN RELATION TO TRANSMISSION CONNECTION
CHARGES FOR CONNECTION OF THE WIND FARM TO THE NORTHERN IRELAND
TRANSMISSION SYSTEM**

DETERMINATION

16 OCTOBER 2018

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Annex One Gowling WLG Opinion – August 2018

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Appendix One – List of Bundle Documents

1. **SECTION ONE – INTRODUCTION**

- 1.1 On 29 March 2018 the Northern Ireland Authority for Utility Regulation (referred to hereafter as the **Utility Regulator**¹) received a formal complaint from Brockaghboy Wind Farm Ltd (**BWFL**).
- 1.2 The complaint concerns a dispute between BWFL and SONI Limited (**SONI**) relating to the amount of the connection charges payable by BWFL (the **Connection Charges**) under the connection agreement entered into between BWFL and SONI (the Parties) and dated 29 August 2017 (the **Connection Agreement**).
- 1.3 The Connection Agreement is in respect of the connection of Brockaghboy Wind Farm (the **Wind Farm**) to that part of the All-Island Transmission Network for electricity located in Northern Ireland (the **Transmission System**).
- 1.4 SONI is the transmission system operator (the **TSO**) for the Transmission System. It holds a licence – issued under Article 10(1)(b) of the Electricity (Northern Ireland) Order 1992 (the **Electricity Order**) authorising its activities in this regard (the **Licence**).
- 1.5 The dispute between the Parties relates to SONI's non-acceptance of a variation proposed by BWFL to the Connection Agreement for the amount of the Connection Charges to be of a lower amount to reflect the proportionate cost allocation principle to be applied to assets which are shared on the basis that users are connecting simultaneously to the Transmission System (the **Dispute**).
- 1.6 The Dispute falls to be determined by the Utility Regulator pursuant to paragraph 3 of Condition 26 of the Licence and Clause 6.2 of the Connection Agreement. The Utility Regulator has also confirmed that in making its determination it would also be satisfying the requirements of Article 31A of the Electricity Order.
- 1.7 The Utility Regulator has considered the Dispute in accordance with its Policy on the Resolution of Complaints, Disputes and Appeals and Guide for Applicants dated June 2013 (the **Complaints Policy**).²
- 1.8 Mr [REDACTED] of TCI Renewables Limited (**TCI**) has been accepted, pursuant to the Policy, as the duly appointed representative of BWFL for the purposes of the Dispute.³
- 1.9 The Utility Regulator has appointed us, Richard Rodgers (Board member of the Utility Regulator), Jon Carlton (Board member of the Utility Regulator) and Roisin McLaughlin (Director of the Utility Regulator) jointly to determine the Dispute (together the **Decision-Makers**). We do so as delegates of the Utility Regulator and on its behalf.
- 1.10 This document sets out our determination in respect of the Dispute. It also includes the costs order we make under Article 31A of the Electricity Order.

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

² A4 (Note that this was the Policy in effect on the date of BWFL's referral of the Dispute to the Utility Regulator for determination).

³ B53.

1.11 In making and writing this determination we have had the benefit of being able to consider the following materials –

- (a) A Statement of Case (the **Statement of Case**) prepared for us by the investigation team. The Statement of Case provides 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 that fall to be determined.
- (b) A bundle of documents which accompanied the Statement of Case (as listed in an appendix to the Statement of Case).
- (c) All further documents and correspondence sent to, and representations and submissions received from, the Parties. The full bundle of documents considered in the making of this determination are listed in Appendix One and have already been shared with the Parties (the **Bundle**).
- (d) Two legal opinions provided by our external legal advisors, Gowling WLG (UK) LLP which [REDACTED] at Annex One to this determination (the **First GWLG Opinion**) and at Annex Two to this determination (the **Second GWLG Opinion**).

1.12 The Parties were given the opportunity to comment on –

- (a) a draft of the Statement of Case and Bundle (and have had copies of the final Statement and Bundle),
- (b) a provisional determination dated 13 August 2018 (the **Provisional Determination**),
- (c) the First GWLG Opinion, and
- (d) additional documents disclosed by the Utility Regulator to the Parties following the issue of the Provisional Determination.

1.13 The additional documents disclosed (by the case management team to the Parties and to us the Decision-Makers at the same time) following the Provisional Determination are –

- (a) certain excerpts (i.e. those parts which relate to the matter of shared assets and simultaneous connection) from [REDACTED] to the Utility Regulator seeking approval (which was not given – see paragraphs 4.18 to 4.20 of Section Four for further information) for costs of pre-construction and construction works in relation to the Garvagh Cluster. These excerpts were disclosed to the Parties on 20 September 2018;⁴ and
- (b) a copy of [REDACTED] dated 7 December 2016, to the Utility Regulator seeking approval for costs of pre-construction works in relation to the

⁴ B118

Garvagh Cluster and the Utility Regulator's approval dated 15 December 2016. This correspondence was disclosed to the Parties on 3 October 2018.⁵

1.14 This determination adopts the following structure –

- (a) Details of the Parties (at [Section 2](#)),
- (b) The applicable legal framework (at [Section 3](#)),
- (c) The factual background to the Dispute (at [Section 4](#)),
- (d) The views of BWFL (at [Section 5](#)),
- (e) The views of SONI (at [Section 6](#))
- (f) The issues for determination (at [Section 7](#)),
- (g) Determination in relation to the issues for determination (at [Section 8](#));
- (h) Determination on recovery of Utility Regulator's costs (at [Section 9](#)); and
- (i) The Costs Order (at [Section 10](#)).

1.15 Where we use cross-references (e.g. A1) these are to documents in the Bundle (which accompanies this determination as sent to the Parties).

⁵ B121

2. SECTION TWO – THE PARTIES

BWFL

- 2.1 BWFL is a company involved in the generation of electricity – it is a subsidiary of Greencoat UK Wind PLC.
- 2.2 It is the owner and operator of the Wind Farm and is authorised to generate electricity at the Wind Farm by virtue of the generation licence granted to it by the Utility Regulator on 10 December 2014.
- 2.3 The Wind Farm has been connected, and exporting generated electricity, to the Transmission System from 29 August 2017.

SONI

- 2.4 SONI is the operator of the Transmission System and is authorised by the Licence to undertake this activity. It is a subsidiary of EirGrid plc.
- 2.5 Among other things, SONI is required under the Licence (Condition 25 refers), on application by any person, to offer to enter into a connection agreement for connection to the Transmission System.
- 2.6 The Transmission System operated by SONI is owned by Northern Ireland Electricity Networks Limited (**NIEN**) – NIEN also holds a transmission licence.
- 2.7 Accordingly, where any person applies for a connection to the Transmission System, liaison will be required between SONI and NIEN (in NIEN's capacity as the transmission owner) in respect of any works that may be needed to the Transmission System in order for that connection to be facilitated and made.
- 2.8 This is because while SONI, as the TSO, is responsible for carrying out activities which relate to planning the works that may be required (i.e. pre-construction activities), as the transmission owner, NIEN is responsible for the carrying out of such works (i.e. construction activities). The Transmission Interface Arrangements (**TIA**) entered into by SONI and NIEN, in accordance with their respective licence obligations, set out how SONI and NIEN will liaise with each other and fulfil their respective roles in this respect. The TIA is designed to facilitate, *inter alia*, the planning and development of the Transmission System on a co-ordinated basis.

3. **SECTION THREE – APPLICABLE LAW**

3.1 The legal framework applicable in determining the Dispute is summarised below.

The Electricity Order

3.2 The following provisions of the Electricity Order are relevant for the consideration and determination of the Dispute.

Article 3

3.3 Article 3 of the Electricity Order provides a definition of a 'transmission system' 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

3.4 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 purpose;*
 - (c)..."*

3.5 SONI is the holder of a licence under Article 10(1)(b) of the Electricity Order as the TSO for the Transmission System.

3.6 Conditions may be included in licences granted under Article 10 (1)(b) of the Electricity Order by Article 11 of the Electricity Order.

Article 31A

3.7 Article 31A of the Electricity Order⁶ provides as follows –

" **31A.**

(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) *A complaint shall be made in writing to the Authority and shall be accompanied by such information as is necessary or expedient to allow the Authority to make a determination in relation to the complaint.*

(3) *The Authority shall establish and publish such procedures as it thinks appropriate for the determination by it of a complaint.*

(4) *The procedures established under paragraph (3) shall provide for the determination of the complaint to be notified to the complainant within the requisite period or such longer period as the Authority may agree with the complainant.*

(5) *For the purposes of paragraph (4) the requisite period in any case means—*

(a) *the period of two months from the date when the complaint was received by the Authority; or*

⁶ Article 31A of the Electricity Order is one of the domestic law provisions which implements Article 37(11) of Directive 2009/72/EC of the European Parliament and of the Council concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC.

- (b) *where the information sent to the Authority under paragraph (2) was in its opinion insufficient to enable it to make a determination, the period of four months from the date the complaint was received by the Authority.*
- (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) *In this Article—*
- (a) *"distribution exemption holder" means a person who carries on the activity referred to in Article 8(1)(bb) under the authority of an exemption granted pursuant to Article 9; and*
- (b) *"supply exemption holder" means a person who carries on the activity referred to in Article 8(1)(c) under the authority of an exemption granted pursuant to Article 9."*

The Licence

- 3.8 The following conditions of the Licence are relevant with regard to the consideration and determination of the Dispute.

Condition 25

- 3.9 Condition 25 of the Licence relates to "Requirements to Offer Terms – Users and Connectees".
- 3.10 Paragraph 2 of Condition 25 requires SONI, on request, to offer terms of connection to the Transmission System.
- 3.11 Paragraph 2(g) of Condition 25 provides that the connection offer shall make provision regarding

"(g) the connection charges to be paid to the Licensee, such charges:

- (3) *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"

Condition 26

3.12 Condition 26 of the Licence relates to the "Functions of the Authority – Disputes with Users and Connectees."

3.13 Paragraph 3 of Condition 26 provides as follows –

"3. If either party to a Connection Agreement...entered into pursuant to Condition 25 or this Condition proposes to vary the contractual terms of such an 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 be reasonable."

Condition 30

3.14 Condition 30 of the Licence relates to "Charging Statements".

3.15 Paragraph 1(g) of Condition 30 requires SONI to prepare and obtain the Utility Regulator's approval to, among other things, a statement setting out –

"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".

3.16 This is essentially a connection charging statement.

3.17 Paragraph 3 of Condition 30 provides that the connection charging statement 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.

3.18 Paragraph 5 of Condition 30 sets out the items that shall be included in the connection charging statement. Paragraph 6 provides that the connection charges for these items –

"shall be set at a level which will enable the recovery of (a) the appropriate proportion of the costs directly 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."

3.19 The connection charging statement shall be published by SONI (paragraph 13 of Condition 30) and sent to any person requesting it (paragraph 14 of Condition 30).

The Connection Agreement

- 3.20 The Parties entered into the Connection Agreement on 29 August 2017.
- 3.21 The Connection Agreement relates to the connection of the Wind Farm to the Transmission System. The provisions of the Connection Agreement which are particularly applicable for the purposes of consideration and determination of the Dispute are noted below.
- 3.22 Clause 1 which, among others, includes the following definitions –

*“**Connection**” means connection of the Facility to the Transmission System in such way that subject to Energisation the Generator may make or receive a supply of electricity to or from the NI System at the Connection Point, and “Connected”; “Connecting” and “Unconnected” shall be construed accordingly;*

*“**Connection Charges**” the charges (other than Use of System Charges) calculated in accordance with SONI’s Transmission Connection Charging Methodology Statement;*

*“**Connection Offer**” means the offer for connection to the Transmission System made by SONI to the generator, a copy of which is set out at schedule 1 (B) of this Agreement and/or such replacement or variation thereto which is expressly permitted to be made by SONI without Generator consent in accordance with the terms of such offer, and/or any other such replacement, variation or additional offer(s) in relation to the Facility issued by SONI and accepted by the Generator;*

*“**Connection Point**” the point at which the Generators Connection Plant and Apparatus is connected to the NIE Connection Plant and Apparatus More particularly described in Schedule 1(A);*

*“**Facility**” means the Wind Farm Power Station (WFPS) situated at the Premises more detailed particulars of which are set out in Schedule 1(A);*

*“**Generator’s Connection Plant and Apparatus**” The Plant and Apparatus owned or operated by the Generator and used for the purpose of connecting the Generator’s Generator Unit(s) to the NIE Connection Plant and Apparatus as more particularly described in Schedule 3;*

*“**NIE Connection Plant and Apparatus**” The Plant and Apparatus owned by NIE and operated by SONI used for the purpose of connecting the Generators Connection Plant and Apparatus to the Transmission System as more particularly described in Schedule 4. For the avoidance of doubt, the NIE Connection Plant and Apparatus does not include 11kV equipment;*

*“**Transmission Connection Charging Methodology Statement**” or “**TCCMS**” means the document of this name published by SONI in accordance with Condition 30 of the TSO Licence which, for the avoidance of doubt, is the document dated December 2009, and approved by the Authority on 22 December 2010, insofar as it relates to Connection Charges that have arisen prior to energisation of the Facility;”.*

- 3.23 Clause 6 which relates to the payment of charges and more particularly –

(a) Clause 6.1 which has the heading 'Connection Charges' and provides –
"Subject to the provisions of this clause 6, the Generator shall pay to SONI any outstanding Connection Charges in relation to the Generator's Facility".

(b) Clause 6.2 which has the heading 'Variation to Connection Charges' and provides as follows –

"Any dispute as to the calculation of the Connection Charges shall be deemed to be a dispute over the terms for connection which the Generator may refer to the Authority for determination under Condition 26 of the TSO Licence (but without prejudice to any other right or remedy it may have hereunder or otherwise at law).

If upon the request of the Generator the Authority determines that the Connection Charges (including any variations thereof) payable by the Generator under this Agreement have not been calculated strictly in accordance with the terms of SONI's Statement of Connection Charges, SONI shall pay to the Generator an amount equal to the amount, if any, by which the Generator has been overcharged."

3.24 Schedule 1(A) which sets out the details of the Connection and, among other things,

(a) provides that the Connection Point is the "Bus bar clamps on the wind farm of the isolator MU99"; and

(b) includes the facility drawing with the title "Brockaghboy Wind Farm Power Station Site Layout As-Built Infrastructure".

3.25 Schedule 1(B) which includes the various connection offers made by SONI in response to applications made by BWFL and subsequently accepted by BWFL. In this respect Schedule 1(B) includes –

(a) A connection offer from SONI to BWFL dated 26 May 2014 and accepted by BWFL on 4 June 2014.

(b) A further (revised) connection offer from SONI to BWFL dated 17 August 2015 and accepted by BWFL on 15 September 2015.

(c) A further (revised) connection offer from SONI to BWFL dated 29 October 2015 and accepted by BWFL on 29 October 2015.

(d) A letter from SONI, dated 19 December 2016, which acknowledges BWFL's confirmation, given on 24 October 2016 that the MEC for the Wind Farm was to be

(e) A connection offer variation letter from SONI to BWFL dated 24 August 2017 and accepted by BWFL on 29 August 2017.

3.26 The Connection Agreement provides that the point at which the Wind Farm is connected to the Transmission System is the [REDACTED] situated within the site of the Wind Farm.

Transmission Connection Charging Methodology Statement

3.27 The definition of "Connection Charges" in Clause 1 of the Connection Agreement provides that they are charges calculated in accordance with SONI's Transmission Connection Charging Methodology Statement.

3.28 Clause 1 of the Connection Agreement defines "Transmission Connection Charging Methodology Statement"⁷ as –

"the document of this name published by SONI in accordance with Condition 30 of the TSO Licence which, for the avoidance of doubt, is the document dated December 2009, and approved by the Authority on 22 December 2010, insofar as it relates to Connection Charges that have arisen prior to energisation of the Facility".

3.29 Currently, the last Transmission Connection Charging Methodology Statement approved by the Utility Regulator, and therefore in full force and effect, is the statement dated 1 September 2016. This was also the statement that was in full force and effect on 29 August 2017 – the date the Connection Agreement was entered into between the Parties.

3.30 However, for all intents and purposes, the provisions which are applicable for the purposes of the Utility Regulator's consideration and determination of the Dispute are unchanged between the two iterations of the Transmission Connection Charging Methodology Statement.

3.31 For that reason, when referring to the charging statement, this determination refers to the provisions of the Transmission Connection Charging Methodology Statement dated December 2009 (the **Charging Statement**).

3.32 With regard to the issues which are in dispute between the Parties, the relevant provisions of the Charging Statement are –

(a) Section 3 entitled 'Connection Charging Methodology' and more particularly paragraphs 3.3.2 and 3.3.3 which read as follows –

"3.3 Any person wishing to enter into a **Connection Agreement** (or to 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** will be required to pay for:

3.3.1...

⁷ The definition also refers to this as "or TCCMS".

- 3.3.2 a proportion of the estimated or outturn cost of any new **Connection Assets** which are to be shared with others who are connecting simultaneously, if any;
- 3.3.3 a proportion of the cost of any existing **Connection Assets** to be shared with other Users who are already connected, if any;
- 3.3.4 ..."

(b) Section 4 entitled 'Connection Assets' and more particularly paragraph 4.1 which provides that –

"Connection Assets are:

- 4.1.1 those assets which are installed to enable the transfer of the **Maximum Export Capacity (MEC)** Or the **Maximum Import Capacity (MIC)** of the **User(s)** located at the **Connection Point**, to or from, as appropriate, the **All-Island Transmission Networks**, subject to sub-paragraph 4.2; and
- 4.1.2 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 any assets installed at any location other than the transmission node to which the **User** connects."

(c) Section 6 which is entitled 'Cost Allocation Rules for Shared Assets' and more particularly paragraphs 6.1 – 6.5 which read as follows –

- "6.1 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 6.3.
- 6.2 If the existing **User(s)** connected within the preceding ten years then the **User(s)** will be entitled to receive a partial rebate of the original connection charge from SONI, calculated in accordance with sub-paragraph 6.3
- 6.3 The charge to the new **User** and the rebate to the existing **User** will be derived using:
 - 6.3.1 the historic cost of the assets, including any decommissioning costs;
 - 6.3.2 the current cost accounting valuation of the assets, using **RPI**;
 - 6.3.3 any advanced contributions towards O&M charges in respect of the **Connection Assets**; and

6.3.4 *the per MW share of the utilisation of the shared assets.*

6.4 *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.*

6.5 *Where a number of **Users** connect simultaneously at a new **Connection Point** and jointly make use of **Connection Assets** each **User** will be charged a proportion of the estimated cost of the shared **Connection Assets**, calculated on a per MW share of the utilisation of the shared **Connection Assets**."*

(d) Section 12 entitled "Definitions" and which includes, among others, the following definitions relevant to the paragraphs outlined above –

*“**Connection Point**” means the point at which the **User’s** plant connects to the **All Island Transmission Networks**, normally the busbar clamp on the busbar side of the busbar isolators on the **User’s** circuits.*

*“**User**” means a person who has entered into an agreement with SONI in respect of connection to the **All Island Transmission Networks** at entry or exit points on the **Transmission System**.”*

Practice and procedure

- 3.33 The practice and procedure to be followed by us in determining the Dispute on behalf of the Utility Regulator is set out in the Complaints Policy.
- 3.34 The Complaints Policy will be supplemented or adapted as required in order to ensure good governance and best practice.
- 3.35 For completeness, we note that, in determining disputes, the principal objective and general duties of the Utility Regulator under Article 12 of the Energy (NI) Order 2003 (the **2003 Order**) do not apply (see Article 13(2) of the 2003 Order for reference).

4. **SECTION FOUR – FACTUAL BACKGROUND**

4.1 The factual background relating to the Dispute between the Parties is as follows.

4.2 On 27 February 2014, BWFL (through TCI, as its parent company at that time) applied to SONI for a transmission connection for the proposed Wind Farm with a Maximum Export Capacity (MEC) of [REDACTED]. SONI subsequently issued a connection offer on 28 May 2014⁸ for connection to the Transmission System of the proposed Wind Farm. The connection was to a proposed 110kV substation close to Rasharkin in Co Antrim via a single 110kV Over Head Line (OHL) that required planning consent.

4.3 BWFL accepted the connection offer on 4 June 2014⁹.

4.4 On 29 August 2014, [REDACTED] request to the Utility Regulator in respect of pre-construction activities associated with the establishment of 110/33kV cluster substation at Garvagh (now re-named Agivey) (the **Garvagh Cluster**)¹⁰. The Utility Regulator granted pre-construction investment approval for the Garvagh Cluster on 12 September 2014. This was confirmed to BWFL by the Utility Regulator in writing on 18 November 2014.

4.5 SONI stated in discussions at that time with BWFL on 22 September 2014¹¹ that –

"As SONI was not directly involved in the approval application there has been no consideration by SONI as to how this proposed cluster should be connected to the transmission network. Therefore there has been no decision made by SONI regarding the use by other parties of the proposed 110kV connection assets between Mid-Antrim and your wind farm at Brockaghboy."

4.6 It further stated that¹² –

"The SONI Charging Statement allows for the concept of rebates to parties connected / connecting to the transmission network. If a party has paid for transmission assets that are subsequently used by another transmission connecting party I believe there is scope for the initial party to be rebated."

4.7 On 17 October 2014, [REDACTED] to connect the Garvagh Cluster¹³. In its response to the complaint dated 11 May 2018¹⁴ (the **Response**), SONI states at paragraph 2.7 that –

[REDACTED]

4.8 By correspondence of 16 March 2015¹⁵ BWFL sought clarification on the treatment of shared assets and that –

⁸ B40 - Exhibit 1 at page 48.

⁹ B40 – Exhibit 1 at page 114.

¹⁰ The determination maintains consistency with the Parties' communications in the case by describing this sub-station as the 'Garvagh Cluster'. Any reference in a document to the Agivey substation or cluster is to be read as a reference to the Garvagh Cluster.

¹¹ B4.

¹² B4.

¹³ The [REDACTED] pursuant to the provisions of [REDACTED]

¹⁴ B63.

¹⁵ B5.

"the proposed Brockaghboy to Mid-Antrim line would be treated as a shared asset and charged/rebated on a per MW share basis."

4.9 In response SONI clarified in a letter dated 1 May 2015¹⁶ that -

"Section 6 of the current SONI Transmission Connection Charging Methodology Statement (TCCMS) deals with the "Cost Allocation Rules for Shared Assets". As stated in your letter this is a section of the TCCMS that has never been implemented or tested in Northern Ireland to date and so we understand your concerns and the need for this to be clarified.

.....SONI can confirm that we intend to apply Section 6 of [the Charging Statement] and therefore any potential shared asset would be charge/rebated in line with Section 6 of the [Charging Statement]".

4.10 On 17 August 2015, SONI provided an amended connection offer after BWFL sought an increase to its MEC from ██████████. This connection offer was accepted on 15 September 2015. A further amended connection offer was issued by SONI on 29 October 2015 which further increased BWFL's MEC to ██████████. This was accepted by BWFL on 29 October 2015.¹⁷

4.11 In June 2016 SONI prepared a paper entitled 'Garvagh Cluster and Brockaghboy Connections – Cost Allocation Principles'¹⁸ (the **CAP Paper**) in which it set out the issues associated with the allocation of the costs associated with the transmission assets involved in the connection of the Wind Farm and the proposed Garvagh Cluster to the Transmission System. The CAP Paper sets out SONI's (then) view as to the application of the Charging Statement in the particular circumstances.

4.12 Page 18 of the CAP Paper provides an analysis of the term "*simultaneous*" as contained in relevant provisions of the Charging Statement.

4.13 Among other things, the CAP Paper states that –

- (a) SONI has received and considered the applications for both the Wind Farm and the Garvagh Cluster together when planning additions to the network;
- (b) the network is being planned and developed to accommodate both connections;
- (c) the case of need in support of SONI's application for planning permission for the connection assets is based on both the Garvagh Cluster and the Wind Farm.

4.14 The CAP Paper further states that –

"Based on this, SONI is of the opinion that the connection arrangements for the Garvagh cluster and Brockaghboy fall within the scope of simultaneous connections...The circumstances being considered here differ significantly in that the LCTA is not being designed or installed, instead the

¹⁶ B6.

¹⁷ B40 – Exhibit 1 at page 120.

¹⁸ B10.

initial assets are being constructed for both the cluster and Brockaghboy, hence making the two projects 'simultaneous'."

And

"Should these two connection points be considered to be simultaneous, the costs of the shared assets should be allocated under Section 3.3.2 of the [Charging Statement]. If we consider the Garvagh cluster not to be a simultaneous connection then Section 3.3.3 will apply."

- 4.15 In order to alleviate planning issues BWFL proposed a 2km stretch of underground cable from the new 110/33kV Rasharkin substation on 7 June 2016. This was subsequently agreed by SONI, subject to certain terms, on 15 June 2016¹⁹. SONI stated in its agreement that –

"Any potential future rebate that may be applicable under the SONI Transmission Charging Methodology Statement . . . will be based only on the connection charge for the original LCTA overhead line connection design."

- 4.16 On 26 August 2016, [REDACTED] to the Utility Regulator seeking the approval of costs in respect of pre-construction and construction works for the proposed Garvagh Cluster [REDACTED]

- 4.17 [REDACTED] consisted of a cover letter and six other documents, including the CAP Paper. Some parts of these documents relate to the matter of shared assets and simultaneous connection – as disclosed to the Parties on 20 September 2018.²⁰

- 4.18 The Utility Regulator provided a letter of response on 4 October 2016²¹ stating *inter alia* that "In principle, we would be willing to approve the pre-construction and construction costs. However, having considered carefully the Submission and its accompanying documents, and in light of the present circumstances of the case and the information and evidence presented to us, we are not able at the present time to give the approval sought".

- 4.19 The Utility Regulator's letter confirmed that approval was not being given because [REDACTED] "technical case for the Garvagh Cluster proceeds from the premise that the three relevant windfarms which currently have planning permission will definitely proceed to be developed and therefore connected to [REDACTED] electricity distribution network. This depends on an assumption, built into the clustering methodology, that the past is a certain guide to the future. At the present time, however, the Utility Regulator has other information which suggests that this will not necessarily be the case..."

- 4.20 The letter concluded that "Given that the technical case for the proposed Garvagh Cluster is based on an assumption that may no longer be valid, the Utility Regulator is unable to provide the approval sought by [REDACTED] for pre-construction and construction works for the proposed Garvagh

¹⁹ B40 – Exhibit 1.

²⁰ B117.

²¹ B15

Cluster at this time". The Utility Regulator suggested [REDACTED] would need to take further steps in order for the Utility Regulator to grant approval.²²

- 4.21 By letter dated 24 October 2016²³, BWFL confirmed that the MEC for the Wind Farm was to be [REDACTED] MW, in variance to the [REDACTED] MW of export capacity secured and contracted with SONI.
- 4.22 On 2 November 2016 the Utility Regulator attended a meeting with [REDACTED] and SONI at which progress with the connection required by BWFL was discussed.
- 4.23 On 4 November 2016, [REDACTED] applied to the Utility Regulator for approval of the 'incremental funding' it required to develop the enhanced specification of the overhead transmission line developed for the connection to the Wind Farm.²⁴
- 4.24 Enclosed with this submission was a paper, dated 3 November 2016, produced by SONI and entitled "Brockaghboy Wind Farm System Operator Preferred Connection Method" (the **SOPM Paper**).²⁵
- 4.25 The SOPM Paper sets out *inter alia* –
- (a) the case of need for enhanced transmission infrastructure associated with the establishment of the Wind Farm connection,
 - (b) the charges applicable to BWFL in relation to the enhanced connection; and
 - (c) an estimate of the investment that is required to be approved by the Utility Regulator to deliver the enhanced connection.
- 4.26 The Wind Farm connection was considered in conjunction with the wider system need in the area. SONI concluded that the connection method should be delivered to a specification higher than would otherwise be required to service only BWFL. This is designated as the System Operator Preferred (**SOP**) connection method.
- 4.27 In the SOPM Paper SONI states *inter alia* that:
- "The additional investment between the charge that can be applied to Brockaghboy and the cost of delivering the SOP connection method for [the Wind Farm] will be funded by NIE Networks."*
- 4.28 The Utility Regulator gave approval for the 'incremental funding' in a letter dated 18 November 2016.²⁶

²² B15.

²³ B40 - Exhibit 1 at page 193.

²⁴ B18

²⁵ B17.

²⁶ B18 and B20.

- 4.37 SONI further confirmed that approval from the Utility Regulator for additional funding was required before construction of the Wind Farm connection could commence and apologised for not communicating this to BWFL sooner than their meeting dated 11 October 2016.
- 4.38 In the minutes provided for this meeting³⁴ BWFL states –
- "BWFL expressed grave concern at SONI's previously undisclosed requirement for any form of regulatory approval concerning its direct 110kV connection such that no construction works may be commenced in the absence of said revealed UR approval – particularly given the binding contractual agreement in place between the parties, where no form of UR approval was qualified in the accepted grid connection offer."*
- 4.39 SONI's e-mail dated 5 May 2017³⁵ also includes the following statements –
- "UR approval was on the basis of a system operator preferred connection method that enhanced the transmission infrastructure to facilitate potential future generation and demand in the area as well as potential future transmission network development."*
- "This UR approval was not specific to the Garvagh Cluster."*
- 4.40 BWFL wrote to the Utility Regulator on 11 May 2017³⁶ setting out what it believed to be the facts regarding the Wind Farm and Garvagh Cluster connections. This letter further sought the Utility Regulator's reasoning –
- "as to why it does not believe the proportionate sharing of costs between [the Wind Farm] and the Garvagh cluster, as provided for within the SONI charging statement is appropriate."*
- 4.41 On 15 May 2017³⁷ BWFL wrote to SONI stating that it did not believe that it was offered an LCTA connection, requesting that SONI provide the design policies used, and asserting that the Wind Farm connection and the Garvagh Cluster connection should be considered simultaneous.
- 4.42 The Utility Regulator provided on 2 June 2017³⁸ a response to BWFL's letter dated 11 May 2017. The Utility Regulator confirmed that it had engaged with SONI and [REDACTED] and that –
- "They have sought approval for certain costs to be passed onto consumer elements based on their methodology. Based upon the information provided to [the Utility Regulator] approval has been provided for these requested costs."*
- 4.43 In its letter of 7 July 2017³⁹ to BWFL, SONI reiterated its position that the LCTA was provided for the Wind Farm connection; the design approach for private generator 110kV connections; reasons behind the earthing requirements and that the level of detail provided to BWFL for the connection was in line with what is required in the Charging Statement.

³⁴ B100 – pages 89-95.

³⁵ B27.

³⁶ B28.

³⁷ B29.

³⁸ B30.

³⁹ B31.

- 4.44 SONI provided a restatement of costs for the LCTA and the BWFL requested cable costs by way of email on 24 July 2017⁴⁰. The total of those costs was stated to be £[REDACTED]m.
- 4.45 SONI's letter of 24 August 2017⁴¹ provided a Connection Offer variation for the restatement of the LCTA and confirmation of the costs associated with the requested underground cable attributable to BWFL. BWFL's final costs as outlined in that Connection Offer were £[REDACTED]m.
- 4.46 Following this, a Connection Agreement was signed between both SONI and BWFL on 29 August 2017⁴² for the connection of [REDACTED] turbines, a sub-station and other infrastructure at [REDACTED] (i.e. the Wind Farm premises), with an MEC of [REDACTED]VW.
- 4.47 BWFL has provided a breakdown into six categories of the £[REDACTED]million cost figure provided on 24 July 2017⁴³. By letter dated 11 July 2018, the Utility Regulator asked SONI to provide a breakdown of the £[REDACTED]m final costs into the same six categories⁴⁴. SONI responded on 18 July 2018 providing a breakdown of a total cost of [REDACTED]m⁴⁵. SONI stated that –
- "These values remain unchanged from the Connection Offer variation letter dated 24 August 2017. The slight difference in the total LCTA cost between the breakdown provided to BWFL on 24 July 2017 (attached) and the Connection Offer variation letter is attributable to rounding to a single decimal place in the spreadsheet."*
- 4.48 A 'Brockaghboy Windfarm Connection Report' was provided to the Utility Regulator by SONI on 5 October 2017⁴⁶.
- 4.49 On 14 February 2018 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- 4.50 The [REDACTED] has not been accepted [REDACTED] and the Garvagh Cluster is not presently connected to the transmission system.

⁴⁰ B32.

⁴¹ B33.

⁴² B40 – Exhibit 1.

⁴³ B40 – Exhibit 6.

⁴⁴ B96.

⁴⁵ B99.

⁴⁶ B36.

⁴⁷ B37.

5. SECTION FIVE – VIEWS OF BWFL

5.1 BWFL's views are set out in –

- (a) the complaint referred to the Utility Regulator dated 28 March 2018⁴⁸;
- (b) its reply, dated 4 June 2018⁴⁹(the **Reply**) to SONI's submissions in respect of the complaint dated 11 May 2018⁵⁰;
- (c) its response dated 29 August 2018⁵¹ to the Provisional Determination, which response includes a legal opinion [REDACTED]
- (d) its response, dated 27 September 2018⁵², to excerpts of [REDACTED] [REDACTED] as disclosed to it by the Utility Regulator on 20 September 2018; and
- (e) its response, dated 8 October 2018⁵³, to the Utility Regulator's letter of 3 October 2018⁵⁴.

5.2 We have read the above documents in full and have had full and careful regard to all of the submissions. In doing so have borne in mind that our role is to determine only the issues for determination as set out in Section 7 of this determination.

5.3 The following is a summary of key elements of BWFL's submissions.

Summary

5.4 BWFL's principal argument is that SONI, by refusing to agree to vary the Connection Charges which BWFL is required to pay under, and in accordance with, the Connection Agreement, is failing to set the Connection Charges such that they are in conformity with the applicable provisions of the Charging Statement.

5.5 BWFL submits that this is contrary to the requirements of Condition 25(2)(g) of SONI's TSO Licence.

5.6 BWFL's view is that the Connection Charges have not been calculated on the basis that they:

- (a) are consistent with the requirements of paragraphs 3.3.2 and 6.5 of the Charging Statement;
- (b) reflect that the connections of the Wind Farm and of the Garvagh Cluster to the transmission network are 'simultaneous connections' because the transmission network was developed and planned from the outset to accommodate both

⁴⁸ B39 and B40.

⁴⁹ B73.

⁵⁰ B62 and B63.

⁵¹ B107 and B108.

⁵² B119 and B120.

⁵³ B126.

⁵⁴ B121.

connections – a position it contends is confirmed by SONI in the CAP Paper and in the relevant excerpts of [REDACTED] and

- (c) reflect BWFL bearing a proportionate share of the cost in respect of shared connection assets for simultaneous connections.

5.7 BWFL also submits that whilst it is clear that SONI and [REDACTED] should have sought to finalise any necessary funding approvals when they decided to design and develop the Project and the Garvagh Cluster as simultaneous connections; the fact that they did not is not the concern of BWFL.⁵⁵

Charging Statement

5.8 BWFL states that the Charging Statement provides for the principle of proportional allocation of costs where more than one connecting party are sharing connection infrastructure.⁵⁶

5.9 It is BWFL's position that as the 110 kV line/related infrastructure was designed and developed to accommodate both connections, SONI's costs attributable to (i) Pre-construction works, (ii) Rasharkin Substation works, and (iii) the 110kV overhead line, should be subject to the proportional charging methodology described in the Charging Statement.⁵⁷

5.10 In support of this position, BWFL refers to paragraphs 3.3.2 and 6.5 of the Charging Statement. For completeness, the relevant paragraphs are set out below –

"3.3 Any person wishing to enter into a Connection Agreement (or to amend an existing Connection Agreement) for connection (or modification of an existing connection) to the All-Island Transmission Networks at an entry or exit point on the Transmission System will be required to pay for:

3.3.1

3.3.2 a proportion of the estimated or outturn cost of any new Connection Assets which are to be shared with others who are connecting simultaneously, if any;"

"6.5 Where a number of Users connect simultaneously at a new Connection Point and jointly make use of Connection Assets each User will be charged a proportion of the estimated cost of the Shared Connection Assets, calculated on a per MW share of the utilisation of the shared Connection Assets."

5.11 BWFL submits that the Wind Farm and the Garvagh Cluster are connecting simultaneously, that paragraphs 3.3.2 and 6.5 are therefore engaged, and the Connection Charges - which it is liable to pay under the Connection Agreement - should therefore be of a lower amount than the amount currently set out in the Connection Agreement.

⁵⁵ B73 - page 8.

⁵⁶ B40 - para 3.20.

⁵⁷ B40 - para 3.14.

Meaning of Connecting Simultaneously/Simultaneous Connection

- 5.12 It is BWFL's contention that the Wind Farm and the Garvagh Cluster are connecting simultaneously because SONI determined to plan and develop the transmission network to accommodate both connections simultaneously.⁵⁸
- 5.13 That is, in order to accommodate the connection of the Garvagh Cluster, SONI adopted a "shared Connection Asset" approach by specifically designing the 110kV line/related infrastructure for the connection of the Wind Farm to a specification sufficient to accommodate both connections.⁵⁹
- 5.14 BWFL submits that SONI's analysis of the term 'simultaneous', and how it is to be applied in the circumstances of the connection of the Wind Farm and of the Garvagh Cluster, is set out at page 18 of the CAP Paper.
- 5.15 In this regard, BWFL states that the key factors in determining what is meant by connecting simultaneously are those which SONI has stated in the CAP Paper. These are –
- (a) SONI has considered both connection applications (i.e. BWFL's connection application for its wind farm and [REDACTED] together in planning the additions required to the network;
 - (b) The transmission network is being planned and developed to accommodate both the connection of the Wind Farm and the Garvagh Cluster; and
 - (c) SONI's application for planning permission for the connection assets is based on both the connection of the Wind Farm and the Garvagh Cluster.⁶⁰
- 5.16 In addition, BWFL states that SONI has, in the CAP Paper, in an email dated 8 May 2017 and in discussions with BWFL and other third parties throughout the period from June 2016 to August 2017, consistently stated that the connections for the Wind Farm and the Garvagh Cluster were to be developed as simultaneous connections.⁶¹
- 5.17 BWFL's also contends that the Wind Farm and the Garvagh Cluster are connecting simultaneously because –
- (a) of the close proximity of the Wind Farm and the Garvagh Cluster to each other – which reinforces the fact that the two projects must have been planned and developed together;
 - (b) the proposed connection point for the Garvagh Cluster is within the landowner boundary of BWFL;

⁵⁸ B40 - para 3.11.

⁵⁹ B40 - para 3.12.

⁶⁰ B40 - para 3.25.

⁶¹ B73 - page 6.

- (c) the purpose and intent of the Charging Statement provisions is that they would be used in circumstances where a simultaneous connection was the most efficient, co-ordinated and economic approach.⁶²

5.18 With regard to SONI's submissions in response to the complaint, it is BWFL's view that –

- (a) SONI's assertion that the Wind Farm and the Garvagh Cluster are not simultaneous connections because in fact "*no party was connected simultaneously...; [and] no connection was progressed contemporaneously let alone simultaneously*" is a very basic and literal interpretation of '*simultaneous*';⁶³
- (b) SONI's current interpretation of the words 'connecting simultaneously' means that provisions set out in the Charging Statement could never be utilised by SONI in calculating connection charges and prevents it from exercising its rights under the Charging Statement in relation to simultaneous connections;⁶⁴
- (c) SONI's acknowledgment that the "*design of the two grid connections [the Wind Farm and the Garvagh Cluster] were being considered concurrently in light of each other*", is a further indication that the two projects are connecting simultaneously.⁶⁵

5.19 BWFL also submits that the close proximity of the Wind Farm and of the Garvagh Cluster to each other is demonstrated from the maps which it has submitted⁶⁶ and this reinforces the fact that the two projects must have been planned and developed together.⁶⁷

5.20 In addition, BWFL submits that the following factors also highlight that SONI (and NIEN as transmission owner) designed and developed the connection to serve both the Wind Farm and the Garvagh Cluster connection –

- (a) BWFL was the only party providing funding for the additional network capacity until the Utility Regulator approved funding on 16 November 2016;
- (b) in a meeting on 2 February 2017, and in a later call on 22 March 2017, BWFL were informed that the costs had overrun and that BWFL would have to pay approximately an additional £ [REDACTED];
- (c) BWFL continued to debate with SONI and NIEN in respect of this additional £ [REDACTED] it was being asked to pay and it was not until 24 July 2017 that SONI advised BWFL that the total costs payable by BWFL were in line with the original connection offer (i.e. approximately [REDACTED] and that the additional £ [REDACTED] was no longer required.

5.21 BWFL also submits that if it had not challenged SONI to the extent that it did then it would have been required to pay all costs related to the additional network capacity.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ B73 - page 6 and Exhibit 4.

⁶⁶ B73 - Exhibit 4.

⁶⁷ B73 - page 6.

- 5.22 BWFL states that the key point in time as to whether a simultaneous connection applies is when the network is being planned and developed⁶⁸ and the fact that the network is not subsequently built in accordance with what was planned to be developed is irrelevant; as BWFL is entitled to be charged according to the charging methodology that SONI determined to be the most appropriate at that time – which BWFL states is on the basis of a simultaneous connection⁶⁹.
- 5.23 In the alternative, BWFL contends that even if it was deemed that the Wind Farm and the Garvagh Cluster were not connecting simultaneously, given that SONI and █████ considered the connections simultaneously when planning the additions to the network, the network was simultaneously developed to accommodate both connections, and SONI has considered the Wind Farm and the Garvagh Cluster simultaneously in deciding the most efficient, co-ordinated and economical connection solution, the LCTA connection requires SONI and BWFL to bear a proportionate share of the costs of the shared connection assets.⁷⁰

CAP Paper

- 5.24 BWFL further submits that the works were assessed, designed, consented and constructed by SONI to simultaneously accommodate both connections, and this was confirmed by SONI in the CAP Paper.⁷¹
- 5.25 Its view is that SONI very clearly concluded in the CAP Paper that both connections are connecting simultaneously and that therefore the costs of the shared connection assets should be shared proportionally between BWFL and the Garvagh Cluster.⁷²
- 5.26 With regard to the status of the CAP Paper - in response to SONI's submissions that the CAP Paper is not binding - BWFL notes that the CAP Paper does not include any express provisions which state that it is not intended to be legally binding or that it has no intention to create legal relations. BWFL therefore considers that SONI's position in this respect is unsustainable, especially in light of what it considers is detailed analysis in the CAP Paper.⁷³
- 5.27 In support of its position that the CAP Paper is legally binding BWFL refers to –
- (a) The purpose of the CAP Paper and quotes the following extract –
- "The purpose of this paper is to present the issues associated with the allocation of cost associated with the transmission assets...and to set out how SONI intends to apply the [Charging Statement] in these circumstances"*
- (b) An email sent from SONI to BWFL⁷⁴ on 22 June 2016 attaching the CAP Paper – from which BWFL extracts and quotes the following –

⁶⁸ B73 - page 7.

⁶⁹ Ibid.

⁷⁰ Ibid

⁷¹ B40 - paras 3.23 and 3.24.

⁷² B40 - para 3.26.

⁷³ B73 - page 7.

⁷⁴ B100 – page 20 (Exhibit 2.2.7).

"Please find attached paper [the CAP Paper] which...sets out how SONI intends to apply the Transmission Connection Charging Methodology Statement [Charging Statement] in these circumstances"

- (c) A letter from SONI dated 1 May 2015⁷⁵ in which BWFL notes that SONI confirms that it intends to apply Section 6 of the Charging Statement relating to shared connection assets.

Connection Charges

- 5.28 BWFL's position is that because SONI has not treated the connection of the Wind Farm and the connection of the Garvagh Cluster as simultaneous connections, BWFL has been over-charged for the Wind Farm connection. That is the Connection Charges levied by SONI on BWFL for the Wind Farm connection and set out in the Connection Agreement should be of a lower amount and the overpaid element should be refunded to BWFL by SONI.
- 5.29 The Connection Charges set out in the Connection Agreement are for a total amount of £ [REDACTED]. This includes an amount of £ [REDACTED] which is attributable to cable undergrounding work requested by BWFL. BWFL accepts that it is liable for the full amount of this cable undergrounding work.⁷⁶
- 5.30 It is the balance amount of £ [REDACTED] which BWFL states should be reduced in line with its contentions that the Wind Farm and the Garvagh Cluster are 'connecting simultaneously'.
- 5.31 BWFL also submits that although SONI has refused to provide BWFL with details of the total connection cost⁷⁷, it estimates that its share of the relevant amount should, on the basis of its contention that the Wind Farm and the Garvagh Cluster are connecting simultaneously, be approximately £ [REDACTED] – and therefore lead to a repayment to it of approximately £ [REDACTED]⁷⁸
- 5.32 It confirms⁷⁹ that this estimate is based on –
- (a) the provisions of the Charging Statement which provides that "*where a number of Users connect simultaneously...and jointly make use of Connection Assets each User will be charged a proportion of the estimated costs of the shared Connection Assets, calculated on a per MW share of the utilisation of the shared Connection Assets*";
 - (b) an allocated capacity for the Wind Farm connection of [REDACTED] MW; and
 - (c) an allocated capacity for the Garvagh Cluster connection of [REDACTED] MW.

⁷⁵ B6.

⁷⁶ B33 and B34,

⁷⁷ To confirm, the reference to 'total connection costs' is to include those costs of constructing connection infrastructure assets which are incurred by [REDACTED] and not recovered through connection charges (i.e. costs which are over and above LCTA). These costs are recovered through mechanisms available under [REDACTED] and not from BWFL.

⁷⁸ B40 - paras 3.33, 3.34 and Exhibit 6 (as based on an estimation of the total connection costs).

⁷⁹ B40 - para 3.33.

Submissions in response to the Provisional Determination

5.33 BWFL's submissions to the Provisional Determination focused entirely on the First GWLG Legal Opinion. Accordingly, its submissions to the Provisional Determination are summarised and responded to in the Second GWLG Opinion.

Submissions in response to excerpts of [REDACTED]

5.34 In its response⁸⁰ to the excerpts of [REDACTED] BWFL submissions⁸¹ on the excerpts are that they –

- (a) support its position that SONI, working in conjunction with [REDACTED] to design, develop and construct the assets required for the Wind Farm connection and for the Garvagh Cluster, has clearly concluded that the connections must be treated as simultaneous connections;
- (b) evidence that through their formal TIA responsibilities, SONI and [REDACTED] considered and agreed on a simultaneous connection for the Wind Farm and the Garvagh Cluster;
- (c) demonstrate that applying a literal interpretation to the meaning of "connecting simultaneously" (by the Utility Regulator and by SONI) is unsustainable as the chronology of the connection applications, acceptance of offers and timing of decisions associated with the network need to be considered in determining a "simultaneous connection";
- (d) show how SONI, with input from [REDACTED] determined that a "simultaneous connection" with BWFL was the "optimal transmission connection arrangement" for the Garvagh Cluster; and
- (e) make no reference to the final physical act of connection of either the Wind Farm or the Garvagh Cluster to the system and do not infer that SONI and [REDACTED] approach to the connection methodology and consequential costs allocation are subject to or conditional upon the date of physical connection of both assets.

5.35 BWFL also submits that –

- (a) the delay to the progress of the Garvagh Cluster appears to be the basis upon which SONI claims that the connections are not 'simultaneous' (because the date of the final physical connection will no longer occur "on the same day or within the same week");
- (b) SONI's change of position from August 2016 is astounding and is not sustainable or credible;

⁸⁰ B120.

⁸¹ The Utility Regulator's letter of 20 September 2018 enclosing the excerpts and providing the opportunity for the Parties to make submissions was very clear in inviting "*submissions (if any) ... arising out of the materials now provided*". BWFL sought to use the opportunity to repeat and/or expand on their previous submissions and/or to make new submissions not arising from the materials being provided. Accordingly, any such submissions are not within scope and we do not refer to them within this section.

- (c) the CAP Paper did not, as contended by SONI, leave an open question as to whether the Wind Farm and Garvagh Cluster connections were determined to be 'simultaneous'; and
- (d) one of the reasons stated by SONI and [REDACTED] for concluding that a 'simultaneous connection' with the Wind Farm was the optimal connection method for the Garvagh Cluster was that it the least cost technically acceptable (LCTA) solution, and as it stands, neither the Garvagh Cluster nor the Wind Farm have received an LCTA connection (because the LCTA for both requires the 'per MW' proportionate cost share to be applied to the shared connection assets).

5.36 BWFL also reiterates –

- (a) a number of its submissions on the First GWLG Opinion; and
- (b) its contention that it was only after the Utility Regulator's letter of 4 October 2016 that SONI notified BWFL that "*the cost allocation under the simultaneous connections methodology is no longer applicable*".

Submissions in response to Utility Regulator Letter of 3 October 2018

5.37 In its response to the Utility Regulator's Letter of 3 October 2018, the submissions made by BWFL (that are within scope and relate to the subject matter of the Dispute⁸²) are that the correspondence of December 2016⁸³ demonstrates the continued viability of the Garvagh Cluster and therefore the appropriateness that the connection for the Garvagh Cluster and the Wind Farm should remain 'simultaneous' in respect of the shared connection assets as determined by NIEN and SONI in [REDACTED]

⁸² The Utility Regulator's letter of 3 October 2018 confirmed that the opportunity to make any representations was limited to the contents of the letter and the documents attached to it. BWFL sought to use the opportunity to repeat or enhance previous submissions and/or to make new submissions on other documents already forming part of the Bundle (and therefore disclosed at earlier stage of the process). Accordingly, any such submissions are not within scope and we do not refer to them within this section.

⁸³ B121.

6. **SECTION SIX – VIEWS OF SONI**

6.1 The views of SONI are set out in –

- (a) its response to the complaint, dated 11 May 2018⁸⁴ (the **Response**);
- (b) its response to BWFL's response to the excerpts from NIEN's August 2016 Submission.⁸⁵

6.2 SONI did not submit a substantive response to the Provisional Determination or the First GWLG Opinion.

6.3 We have read the above documents in full and have had full and careful regard to all of the submissions. In doing so have borne in mind that our role is to determine only the issues for determination as set out in Section 7 of this determination.

6.4 The following is a summary of key elements of SONI's submissions.

Summary

6.5 SONI's principal argument is that BWFL has not set out a credible basis for a proposed variation to the Connection Charges set out in the Connection Agreement as no party was connected simultaneously with the connection of the Wind Farm.⁸⁶

6.6 SONI's also submits that no connection was even progressed contemporaneously and that [REDACTED] [REDACTED] to progress with a connection which utilises the connection assets that BWFL contends are shared with another party connecting simultaneously to it.⁸⁷

6.7 SONI states that it has applied the Connection Charges in respect of the Wind Farm connection in line with the Charging Statement⁸⁸ and strongly disagrees that it has not entered into a Connection Agreement in accordance with the Licence.⁸⁹

Charging Statement

6.8 It is SONI's view that the circumstances of the Wind Farm connection do not engage paragraph 3.3.2 or paragraph 6.5 of the Charging Statement and that it considers it difficult to see how the connection of the Wind Farm and the proposed connection of the Garvagh Cluster could be considered simultaneous.⁹⁰

⁸⁴ B62 and B63.

⁸⁵ B122

⁸⁶ B63 - para 1.3(d).

⁸⁷ B63 - para 1.3(d).

⁸⁸ B63 - Appendix 4, page 14.

⁸⁹ B63 - Appendix 4, page 15.

⁹⁰ B63 - para 3.7.

6.9 It says that this is obvious, on the basis that the connecting Wind Farm has been constructed and was energised in 2017, whereas the Garvagh Cluster [REDACTED] and it [SONI] has not yet submitted a planning permission application.⁹¹

6.10 SONI agrees and acknowledges that the word simultaneously is not defined in the Charging Statement⁹² but does not accept that the Wind Farm and the Garvagh Cluster are connecting simultaneously.⁹³

Meaning of Connecting Simultaneously/Simultaneous Connection

6.11 SONI's position is that as the word 'simultaneously' is not defined in the Charging Statement, the term has to be given its natural meaning. SONI's view is that the natural meaning of 'simultaneously' is "at the same time".⁹⁴

6.12 SONI submits that it is clear that the Wind Farm and the Garvagh Cluster are not connecting at the same time given that (a) the Wind Farm is already connected to the network and has been operational since the autumn of 2017 and, (b) its planning application for works to be undertaken for the connection of the Garvagh Cluster has not yet been made.

6.13 SONI confirms that in 2016 there was a possibility that the Wind Farm connection and the Garvagh Cluster connection could potentially have been considered 'simultaneous' if they had been constructed concurrently but that it subsequently became clear that this was not the case.⁹⁵

6.14 It is also SONI's submission that the Wind Farm and the Garvagh Cluster will not both connect at the single new connection point, i.e. at the Rasharkin Main substation – at the same time, which it submits would need to be necessary for connection charging on a simultaneous basis to be applicable. Its reasoning is that the Wind Farm is already connected at this point and by the time the Garvagh Cluster is to be connected, the connection point is an existing connection point and not a new connection point such that sections 6.1 to 6.4 of the Charging Statement apply.⁹⁶

6.15 In response to BWFL's contention that the connection works were assessed, designed, consented and constructed by SONI to simultaneously connect the Garvagh Cluster, SONI contends that is not the case. It submits that the enhanced specification of the connection was to facilitate potential future generation and demand as well as potential future transmission network development and reinforcement, so not solely to accommodate the Garvagh Cluster.⁹⁷ In this respect SONI submits that BWFL has not been charged for the cost of constructing the connection to this enhanced specification which provides the additional network capacity⁹⁸.

⁹¹ B63 - para 3.8.

⁹² B63 - para 3.10.

⁹³ B63 - para 3.9.

⁹⁴ B63 - paras 3.12 and 3.31(a).

⁹⁵ B63 - paras 3.11 and 3.12.

⁹⁶ B63 - paras 3.14 and 3.15.

⁹⁷ B63 - para 3.17.

⁹⁸ B63- para 1.3(b).

- 6.16 SONI is also of the view that the Utility Regulator's response of 4 October 2016 to [REDACTED] application supports the final position arrived at by SONI that the Wind Farm connection and the Garvagh Cluster connection are not 'simultaneous'.⁹⁹

CAP Paper

- 6.17 SONI submits that BWFL's contention that the CAP Paper constitutes an acceptance by SONI that both connections should be treated as simultaneous, for the purposes of the Charging Statement, is a misrepresentation of the CAP Paper. This is because the CAP Paper is exploratory and formed part of an ongoing review of how the proposed connections could be dealt with under the Charging Statement. In support of this submission SONI also refers to the following extract of the CAP Paper –

*"should these two connection points be considered to be simultaneous, the costs of the shared assets should be allocated under Section 3.3.2 of the [Charging Statement]. If we consider the Garvagh cluster not to be a simultaneous connection then Section 3.3.3 will apply."*¹⁰⁰

- 6.18 SONI also submits that BWFL acknowledged, in its email of 23 June 2016¹⁰¹, that SONI was exploring all charging options of which simultaneous connection was only one option.¹⁰²
- 6.19 SONI's position is that the CAP Paper (a) merely indicated SONI's then current analysis and does not and cannot supersede the Utility Regulator approved Charging Statement, and (b) does not bind SONI in the application of the Charging Statement, as it was based on a different factual analysis.¹⁰³
- 6.20 It is SONI's position that charging on the basis of there being simultaneous connections of the Wind Farm and of the Garvagh Cluster is not appropriate or factually accurate in this case.¹⁰⁴

Connection Charges

- 6.21 SONI did not make any submissions in response to BWFL's contentions on the amount of the Connection Charges that it should be liable for on the basis of the connections being considered simultaneous connections.

Submissions in response to BWFL's Submissions on the excerpts of [REDACTED]

- 6.22 SONI's submissions¹⁰⁵ (as within scope and relating to the subject matter of the Dispute¹⁰⁶) on BWFL's submissions on the documents disclosed by the Utility Regulator on 20 September 2018, can be summarised as follows –

⁹⁹ B63 - para 3.20.

¹⁰⁰ B63 - paras 3.22 and 3.23.

¹⁰¹ B63 - Exhibit 3.

¹⁰² B63 - para 3.24 and Appendix 1, Document 3.

¹⁰³ B63 - para 3.30.

¹⁰⁴ B63 - paras 3.31 – 3.33.

¹⁰⁵ B122.

¹⁰⁶ The Utility Regulator's letter of 3 October 2018 confirmed that the opportunity to make any representations was limited to the contents of the letter and the documents attached to it. SONI sought to use the opportunity to make submissions on other aspects and matters. Accordingly, any such submissions are not within scope and we do not refer to them within this section.

- (a) BWFL is wrong in arguing, by reference to the excerpts of [REDACTED] [REDACTED] that by considering the BWFL connection together with the Garvagh Cluster connection SONI has clearly concluded that the BWFL connection must be treated as simultaneous;
- (b) the fact that in 2016 SONI considered the possibility that the two projects may connect simultaneously is irrelevant to the facts which unfolded;
- (c) SONI reiterates that BWFL has only paid for the LCTA connection.

7. SECTION SEVEN – ISSUES FOR DETERMINATION

7.1 The issues falling to be determined by us in respect of the Dispute are as follows.

Issue One

7.2 The first issue to be determined by us is whether the Wind Farm and the Garvagh Cluster are 'connecting simultaneously' within the meaning of the Charging Statement.

Issue Two

7.3 The second issue will only need to be determined by us where our determination on Issue One is that the Wind Farm and the Garvagh Cluster are connecting simultaneously.

7.4 If required, the second issue for determination by us is whether the Connection Charges set out in the Connection Agreement have been calculated in accordance with the terms of the Charging Statement which apply when parties are connecting simultaneously.

Issue Three

7.5 The third issue will only need to be determined by us where (i) our determination on Issue One is that the Wind Farm and the Garvagh Cluster are connecting simultaneously; and (ii) our determination on Issue Two is that the Connection Charges set out in the Connection Agreement have not been calculated in accordance with the applicable terms of the Charging Statement.

7.6 If required, the third issue for determination by us is determining the variation that shall be made to the Connection Agreement with regard to the amount of Connection Charges that BWFL is liable to pay under the Connection Agreement.

8. SECTION EIGHT – DETERMINATION

Issue One

- 8.1 The first issue for determination by us is whether the Wind Farm and the Garvagh Cluster are connecting 'simultaneously' within the meaning of the Charging Statement.
- 8.2 In order to determine this first issue we first need to determine what is meant by 'connecting simultaneously' in the context of its use in the Charging Statement and then apply that meaning to the facts of the case before us.
- 8.3 Accordingly, following receipt of the BWFL's submissions to the Provisional Determination, the First GWLG Opinion, and excerpts of [REDACTED] (which included legal opinions from its [REDACTED]) we sought further legal advice (the Second GWLG Opinion) in respect of BWFL's submissions on the meaning of 'connecting simultaneously' as used in the Charging Statement.

Determination on Issue One

- 8.4 We, the Decision-Makers, have thoroughly and fully reviewed and considered –
- (a) all of the submissions made by the Parties in the course of the dispute process;
 - (b) both the First GWLG Opinion and the Second GWLG Opinion; and
 - (c) the circumstances of the case before us, to include that (a) the Wind Farm is connected to the Transmission System and has been so connected since August 2017, and (b) the Garvagh Cluster is not at present connected to the Transmission System.
- 8.5 Having done so, and having applied the facts of the case to the legal meaning of 'connecting simultaneously', our determination on Issue One is that the Wind Farm and the Garvagh Cluster are not 'connecting simultaneously' within the meaning of the Charging Statement.

Issues Two and Three

- 8.6 Section 7 confirms that Issues Two and Three would only need to be determined by us where our determination on Issue One is that the Wind Farm and the Garvagh Cluster are connecting simultaneously.
- 8.7 Our determination on Issue One is that the Wind Farm and the Garvagh Cluster are not connecting simultaneously.
- 8.8 Accordingly, we do not need to, and do not make, a determination on Issues Two and Three.

9. SECTION NINE – RECOVERY OF UTILITY REGULATOR'S COSTS

Making a Costs Order

- 9.1 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.
- 9.2 In its letter of 11 April 2018¹⁰⁷, the Utility Regulator –
- (a) confirmed to the Parties that it had accepted BWFL's application as a complaint for the purposes of Article 31A of the Electricity Order;
 - (b) in accordance with the Complaints Policy¹⁰⁸, 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.
- 9.3 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.
- 9.4 The Complaints Policy¹⁰⁹ 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
- 9.5 Also, on 10 November 2017 the Utility Regulator published an Information Note setting out and confirming its policy on cost recovery in respect of its dispute settlement role¹¹⁰ (the **Costs Recovery Policy**).
- 9.6 Among other things, the Costs Recovery Policy, confirms –

¹⁰⁷ B48.

¹⁰⁸ A4 - Section D; para 9.

¹⁰⁹ A4 - Section D; para 24.

¹¹⁰ A7.

- (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 Costs Order

9.7 The Utility Regulator's provisional conclusions, including its reasons, on the recovery of its costs, as set out in section 9 of the Provisional Determination, were that it would seek to recover all of its external costs incurred in determining the Dispute from BWFL.

Parties' Submissions on the provisional conclusions

9.8 SONI did not make any submissions on the provisional costs order.

9.9 BWFL submitted that –

- (a) the Utility Regulator had not acted in a consistent, transparent or proportionate manner in adopting the Costs Recovery Policy because it was adopted without regard to the approach adopted by other sector regulators and/or the view of the industry;
- (b) the Utility Regulator had not acted in accordance with the approach set out in the Costs Recovery Policy because, contrary to paragraph 24 of Section D of the Complaints Policy it has not considered, and given equal weight to, all of the matters set out in that paragraph 24;
- (c) BWFL has, both prior to the Dispute, and throughout the Dispute process, acted diligently and responsibly in seeking to obtain an efficient and timely resolution and has not caused any delays or additional costs to the Utility Regulator;
- (d) even if the Costs Recovery Policy is used to determine the appropriate allocation of costs, given the nature and complexity of the Dispute, BWFL's good faith conduct throughout and the overall fairness and proportionality of the circumstances of the case ought to be given due weight; and
- (e) the Utility Regulator should bear its own costs and BWFL should not be liable for any of the costs.

9.10 We have given careful consideration to BWFL's submissions and make the following points, comments and observations –

- (a) The Utility Regulator is entitled to adopt, and has adopted, a costs recovery policy which it considers to be right and suitable in relation to its dispute settlement role, subject only to the powers conferred on it under the applicable statutory provisions. It is not required to follow, or to have regard to, the policies of other sector regulators, or to take views from the industry for this purpose. In any event, the Utility Regulator has

followed best practice and acted in a consistent, transparent and proportionate manner by stating clearly its approach to the recovery of costs: publishing its policy, giving its reasons for adopting the policy and drawing the Parties' attention to it at the outset of the Dispute process.

- (b) BWFL is mistaken in contending that the Utility Regulator did not consider all of the matters listed in paragraph 24 of the Complaints Policy. The Utility Regulator had regard to all of the matters listed in paragraph 24 which apply in respect of the Dispute.
- (c) With regard to these matters –
 - (i) there is nothing in the nature and complexity of the Dispute, the resources of the Parties, or the conduct of the Parties which effects or has any bearing on which Party should be liable for the Utility Regulator's costs.
 - (ii) The Utility Regulator does not consider the circumstances of the case to be such that it is an exceptional case such that no costs order should be made.
 - (iii) The Utility Regulator considers that the circumstances of the case are such that it is fair and proportionate for the Utility Regulator to recover its total external legal costs.
 - (iv) The outcome of the Dispute is fully in favour of SONI.

Determination on Costs Order

- 9.11 Taking all of the above into consideration we have determined to make the costs order set out at section 10 of this determination (the **Costs Order**).
- 9.12 Our determination is for BWFL to pay a sum in respect of the total external legal costs the Utility Regulator has incurred in making this determination. The total external legal costs of the Utility Regulator for this purpose amount to £ [REDACTED] (excluding VAT).
- 9.13 Accordingly, the Order is that BWFL shall pay £ [REDACTED] (plus VAT at the prevailing rate).
- 9.14 The Utility Regulator will inform BWFL, by way of separate correspondence, on the method for making the payment.

10. SECTION TEN – COSTS ORDER

10.1 We order that, by no later than 28 days from the date of this determination, Brockaghboy Windfarm Limited makes a payment to the Northern Ireland Authority for Utility Regulation (the Utility Regulator) of £ [REDACTED] (plus VAT at the prevailing rate).

**Jon Carlton
Richard Rodgers
Roisin McLaughlin
16 OCTOBER 2018**

Authorised on behalf of the Northern Ireland Authority for Utility Regulation



Confidential to the Authority and the Parties

NORTHERN IRELAND AUTHORITY FOR UTILITY REGULATION

Brockaghboy Wind Farm Ltd Complaint

1 INTRODUCTION

1.1 [REDACTED]
[REDACTED] (the Authority).

1.2 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

1.3 [REDACTED]
[REDACTED]
[REDACTED]

1.4 [REDACTED]
[REDACTED]
[REDACTED]

1.5 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

1.6 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

2 INSTRUCTIONS

2.1 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

1 [REDACTED]

2 [REDACTED]
[REDACTED]
[REDACTED]



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3.2 [Redacted text block]

³ [Redacted footnote text]



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3.3 [REDACTED]

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3.4 [REDACTED]

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⁴ [REDACTED]



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Advice

- 3.11 [Redacted]
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- 3.13 [Redacted]
- 3.14 [Redacted]
- 3.15 [Redacted]
- 3.16 [Redacted]



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⁶ [Redacted footnote text]



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Gowling WLG (UK) LLP
August 2018



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[REDACTED]
[REDACTED]

John Cooper
Partner
Gowling WLG (UK) LLP

October 2018

Appendix One – List of Bundle Documents

Appendix One – List of Bundle Documents

Bundle ref	From	To	Date	Document title/description
A1			11/02/1992	Electricity (Northern Ireland) Order 1992 - http://www.legislation.gov.uk/nisi/1992/231/contents
A2			09/11/1998	Competition Act 1998 - http://www.legislation.gov.uk/ukpga/1998/41/contents
A3	SONI		Dec-09	SONI Transmission Connection Charging Methodology Statement (Exhibit 3 to the BWFL complaint dated 28 March 2018 and referenced herein as B39 and B40 (This document is no longer available as an e-resource))
A4	Utility Regulator		01/06/2013	Policy on the Resolution of Complaints, Disputes and Appeals and Guide for Applicants - http://www.uregni.gov.uk/uploads/publications/Appeals_Complaints_and_Disputes_Policy_-_June_13.pdf
A5	SONI		Sep-16	SONI Transmission Connection Charging Methodology Statement - http://www.soni.ltd.uk/media/documents/Archive/SONI%20Charging%20Methodology%20Statement%20December%202009%20-%20Approved%202022%20December%202010.pdf
A6	Utility Regulator	SONI	May 2018	SONI Transmission Licence - https://www.uregni.gov.uk/sites/uregni/files/media-files/SONI%20TSO%20Consolidated%20May%202018.pdf
A7	Utility Regulator		10 November 2017	UR Policy on Costs Recovery for Dispute Settlement Role (Information Note)
B1	SONI	TCI (For BWFL)	28/05/2014	Revised Connection Offer (forms part of Connection Agreement, Exhibit to B40 at page 48)
B2	TCI (For BWFL)	SONI	04/06/2014	Letter enclosing acceptance of Connection offer dated 28 May 2014 (forms part of Connection Agreement, Exhibit 1 to B40 at page 114)
B3				Not used
B4	SONI	TCI (For BWFL)	23/09/2014	Email correspondence regarding [REDACTED] pre-construction application

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B5	TCI (for BWFL)	SONI	16/03/2015	Letter regarding utilisation of 110kV OHL
B6	SONI	TCI (For BWFL)	01/05/2015	Letter clarifying proposed connection assets
B7	SONI	TCI (for BWFL)	17/08/2015	Connection Offer (increased [REDACTED]) (forms part of Connection Agreement, Exhibit 1 to B40 at page 75)
B8	TCI (for BWFL)	SONI	15/09/2015	Letter enclosing acceptance of Connection offer dated 17 August 2014 (forms part of Connection Agreement; Exhibit 1 to B40 at page 119)
B9	SONI	TCI (for BWFL)	29/10/2015	Connection offer [REDACTED] (forms part of Connection Agreement, Exhibit 1 to B40 at page 120)
B10	SONI		Jun-16	Garvagh Cluster and Brockaghboy Connections - Cost Allocation Paper (Exhibit 2 to rear of B40)
B11	TCI (for BWFL)	SONI	07/06/2016	Letter regarding planning issues and proposal to underground a portion of SONI's overhead route (forms part of Exhibit 1 to B40 at page 184)
B12	SONI	TCI (for BWFL)	15/06/2016	Letter agreeing to underground a portion of SONI's overhead route (forms part of Exhibit 1 to B40 at page 186)
B13	TCI (for BWFL)	SONI	21/06/2016	Letter regarding LCTA (forms part of Exhibit 1 to B40 at page 189)
B14	SONI	TCI (BWFL)	04/07/2016	Letter regarding acceptance of terms (forms part of Exhibit 1 to B40 at page 191)
B15	Utility Regulator	NIE Networks	04/10/2016	Letter regarding pre-construction work at Garvagh (redacted)
B16	TCI (for BWFL)	SONI	24/10/2016	Letter confirming MEC (forms part of Exhibit 1 to B40 at page 193)
B17	SONI	NIEN	03/11/2016	System Operator Preferred Connection Method for Brockaghboy
B18	NIE Networks	Utility Regulator	04/11/2016	Letter seeking funding for enhanced specification of 110kV OHL

Appendix One – List of Bundle Documents

B19					Not Used
B20	Utility Regulator	NIEN	18/11/2016		Letter regarding Brockaghboy Wind Farm Connection
B21	SONI	TCI (for BWFL)	21/11/2016		Letter regarding Connection Offer and Associated Connection Costs (forms part of Exhibit 1 to B40 at page 194)
B22	SONI	TCI (for BWFL)	04/11/2016 to 24/11/2016		Email correspondence regarding updates
B23	SONI	TCI (for BWFL)	19/12/2016		Letter regarding confirmation of MEC (forms part of Exhibit 1 to B40 at page 197)
B24	SONI	TCI (for BWFL)	11/11/2016 to 27/01/2017		Email correspondence regarding updates
B25	TCI (for BWFL)	SONI	27/03/2017		Letter regarding costing
B26	SONI	TCI (for BWFL)	14/04/2017		Letter regarding LCTA
B27	TCI (for BWFL)/SONI		27/03/2017 to 05/05/2017		Email exchange between TCI and SONI between 27 March and 8 May 2017 (also forms part of Exhibit 4 to B40)
B28	TCI (for BWFL)	Utility Regulator	11/05/2017		Letter regarding Brockaghboy Wind Farm and Garvagh cluster (forms part of Exhibit 4 to B40, at page 2)
B29	TCI (for BWFL)	SONI	15/05/2017		Letter regarding Brockaghboy Wind Farm and Garvagh cluster 110kV Grid Connections (forms part of Exhibit 4 to B40, at page 6)
B30	Utility Regulator	TCI (for BWFL)	02/06/2017		Letter regarding Brockaghboy/Garvagh connections (forms part of Exhibit 4 to B40 at page 5)
B31	SONI	TCI (for BWFL)	07/07/2017		Letter regarding Brockaghboy Wind Farm (forms part of Exhibit 4 to B40 at page 10)

Appendix One – List of Bundle Documents

B32	SONI	TCI (for BWFL)	25/05/2017 to 24/07/2017	Email correspondence regarding costs
B33	SONI	TCI (for BWFL)	24/08/2017	Letter regarding restatement of LCTA (forms part of Exhibit 1 to B40 at page 198)
B34	TCI (for BWFL)/SONI		29/08/2017	Connection agreement (included as Exhibit 1 to B40 at page 2)
B35	SONI	TCI (for BWFL)	02/10/2017	Letter regarding payment profiles
B36	SONI	Utility Regulator	05/10/2017	Brockaghboy Windfarm Connection Report
B37	SONI	NIE Networks	14/02/2018	████████████████████
B38	Utility Regulator	TCI (for BWFL)	09/03/2018	Response to dispute submitted on 6 February 2018
B39	TCI (for BWFL)	Utility Regulator	28/03/2018	Complaint/Dispute cover letter
B40	TCI (for BWFL)	Utility Regulator	28/03/2018	Brockaghboy Wind Farm Grid Connection dispute - Appendix and Exhibits 1 to 6
B41	Utility Regulator	TCI (for BWFL)	29/03/2018	Email from Utility Regulator to TCI
B42	Utility Regulator	TCI (for BWFL)	29/03/2018	Email from Utility Regulator to TCI
B43	Pinsent Masons	Utility Regulator	29/03/2018	Email re Exhibit 6
B44	TCI	Pinsent Masons	02/04/2018	Email re Exhibit 6
B45	Pinsent Masons	TCI (for BWFL)	03/04/2018	Email re Exhibit 6

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B46	Utility Regulator	TCI (for BWFL)	06/04/2018	Email from UR to TCI re contacts
B47	TCI	Utility Regulator	06/04/2018	Email from TCI to UR re contacts
B48	Utility Regulator	TCI (for BWFL)/SONI	11/04/2018	Dispute Response Letter to Parties
B49	BWFL	Utility Regulator	12/04/2018	Letter of Authority
B50	TCI (for BWFL)	Utility Regulator	12/04/2018	Email from TCI to UR re complaint
B51	TCI (for BWFL)	Utility Regulator	12/04/2018	Letter from TCI to UR re complaint
B52	SONI	Utility Regulator	20/04/2018	Letter re Jurisdiction
B53	Utility Regulator	TCI (for BWFL)/SONI	23/04/2018	Letter to Parties re Jurisdiction and next steps
B54	SONI	Utility Regulator	25/04/2018	Letter re timelines
B55	Utility Regulator	SONI	30/04/2018	Response to SONI letter of 25 April 2018
B56	Utility Regulator	TCI (for BWFL)/SONI	09/05/2018	Email re confidential information
B57	A&G Solicitors (for SONI) (A&LG)	Utility Regulator	10/05/2018	Letter regarding issues for determination
B58	Utility Regulator	A&LG	10/05/2018	Email response to letter of 10 May 2018

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B59	SONI	NIEN/Utility Regulator	10/05/2018	Email regarding confidential information
B60	NIEN	SONI/Utility Regulator	10/05/2018	Email regarding confidential information
B61	Utility Regulator	SONI/NIEN	10/05/2018	Email regarding confidential information
B62	SONI/A&LG	Utility Regulator	11/05/2018	Response cover letter
B63	SONI/A&LG	Utility Regulator	11/05/2018	██████████
B64	A&LG	Utility Regulator	11/05/2018	Letter regarding complaints process
B65	SONI	NIE Networks	15/05/2018	Letter granting extension to acceptance period for ██████████
B66	Utility Regulator	TCI (for BWFL)/SONI	16/05/2018	Letter to Parties re decision makers
B67	Utility Regulator	A&LG	16/05/2018	Letter to A&L in response to letter dated 10 May 2018
B68	Utility Regulator	TCI (for BWFL)	16/05/2018	Letter regarding correspondence
B69	TCI (for BWFL)	Utility Regulator	17/05/2018	Letter regarding Decision Makers
B70	Utility Regulator	TCI (for BWFL)/SONI	25/05/2018	Information request to Parties with timetable
B71	TCI (for BWFL)	Utility Regulator	25/05/2018	Email regarding submissions
B72	A&LG	Utility Regulator	04/06/2018	Letter regarding DM, information, timetable and enclosing exhibits

Appendix One – List of Bundle Documents

B73	TCI (for BWFL)	Utility Regulator	04/06/2018	Letter in response to SONI's submission
B74	TCI (for BWFL)	Utility Regulator	05/06/2018	Letter regarding SONI submission
B75	Utility Regulator	TCI (for BWFL)	13/06/2018	Email regarding draft Statement of Case delay
B76	Utility Regulator	TCI (for BWFL)	21/06/2018	Letter regarding extension of time
B77	TCI (for BWFL)	Utility Regulator	21/06/2018	Email regarding extension of time
B78	Utility Regulator	TCI (for BWFL)	22/06/2018	Email regarding indicative revised time-table
B79	Utility Regulator	SONI	22/06/2018	Email regarding indicative revised time-table
B80	TCI (for BWFL)	Utility Regulator	25/06/2018	Email regarding indicative revised time-table
B81	A&LG	Utility Regulator	25/06/2018	Email regarding indicative revised time-table
B82	Utility Regulator	TCI (for BWFL)/SONI	25/06/2018	Email regarding indicative revised time-table
B83	Utility Regulator	TCI (for BWFL)/SONI	25/06/2018	Letter regarding information received
B84	TCI (for BWFL)	Utility Regulator	26/06/2018	Letter in response to Utility Regulator's letter dated 25 June 2018 inc Exhibit 6
B85	Utility	BWFL/SONI	27/06/2018	E mail enclosing Draft of Statement of Case

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	Regulator				
B86	Utility Regulator	BWFL/SONI	27/06/2018		Draft statement of Case (attachment to e mail at B85)
B87	Utility Regulator	BWFL/SONI	28/06/2018		E Mail to Parties enclosing documents
B88	Utility Regulator	BWFL/SONI	28/06/2018		E Mail to Parties enclosing documents
B89	BWFL	Utility Regulator	28/06/2018		E Mail regarding copying in [REDACTED]
B90	Utility Regulator	[REDACTED] (BWFL)	29/06/2018		Letter replying to letter of [REDACTED] (BWFL) of 26 June 2018
B91	[REDACTED] (BWFL)	Utility Regulator	04/07/2018		E Mail concerning the draft Statement of Case
B92	[REDACTED] (BWFL)	Utility Regulator	04/07/2018		E Mail attaching BWFL representations as to draft Statement of Case
B93	[REDACTED] (BWFL)	Utility Regulator	04/07/2018		Cover letter for BWFL representation of draft Statement of Case
B94	[REDACTED] (BWFL)	Utility Regulator	04/07/2018		BWFL representation on draft Statement of Case
B95	A&L (SONI)	Utility Regulator	04/07/2018		Letter regarding e mails of [REDACTED] at B91 and B92)
B96	Utility Regulator	BWFL/SONI	11/07/2018		Letter to Parties with regard to [REDACTED] letter of 26 June 2018 (B84), e Mails from [REDACTED] (B91 and B92) and A&L solicitor letter (for SONI) of 4 July 2018 (B95)

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B97	A&LG (SONI)	Utility Regulator	16/07/2018	E Mail cover for A&LG Letter of 16 July 2018 making representations on the draft Statement of Case
B98	A&LG (SONI)	Utility Regulator	16/07/2018	Letter from A&LG solicitors with attached Table presenting SONI submissions on the draft Statement of Case
B99	A&LG (SONI)	Utility Regulator	18/07/2018	Letter from A&LG Solicitors (for SONI) responding to letter of Utility Regulator of 11 July 2018 (B96)
B100	A&LG (SONI)	Utility Regulator	04/06/2018	Cover letter from A&L Goodbody (as at B72 above) with exhibits
B101	(SONI) (BWFL)	Utility Regulator	24/07/2018	Letter from (SONI) (for BWFL) to Utility Regulator responding to Letter of Utility regulator dated 11 July 2018 (B96)
B102	Utility Regulator	BWFL	27/07/2018	Letter from Utility Regulator to (SONI) (BWFL) cc'd to SONI responding to Letter from (SONI) of 24 July 2018 (B101)
B103	Utility Regulator	BWFL/SONI	13/08/2018	Provisional Determination - issued to Parties
B104	Utility Regulator	BWFL/SONI	15/08/2018	Letter from Utility Regulator to (SONI) (for BWFL) and (SONI) enclosing GWLG legal advice
B105	GWLG	Utility Regulator, BWFL, SONI	Enclosed with B104	(SONI)
B106	(SONI) (BWFL)	Utility Regulator	29/08/2018	Email cover from (SONI) to Utility Regulator attaching BWFL response to the Utility Regulators provisional determination and appendix: (SONI) on GWLG legal advice (B105)
B107	Pinsent Masons (BWFL)	Utility Regulator	29/08/2018	BWFL response to the Utility Regulator's Provisional Determination
B108	Pinsent Masons (BWFL)	Utility Regulator	29/08/2018	Appendix: (SONI) on GWLG legal advice (B105) – enclosed in BWFL letter of 29 August 2018

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B109	Utility Regulator	BWFL/SONI	30/08/2018	Letter from Utility Regulator to Parties requesting extension of time table to provide final determination
B110	(b) (6) (BWFL)	Utility Regulator	31/08/2018	Letter from (b) (6) (for BWFL) to Utility Regulator responding to Utility Regulator letter dated 30 August 2018 (B109) conditionally granting extension of the time table
B111	Utility Regulator	BWFL/SONI	31/08/2018	Letter from Utility Regulator to (b) (6) (for BWFL) cc'd to SONI responding to Letter from (b) (6) of 31 August 2018 (B110) requesting unconditional agreement to the extension of the time table
B112	(b) (6) (BWFL)	Utility Regulator	03/09/2018	Letter from (b) (6) (for BWFL) to Utility Regulator responding to Utility Regulator letter of 31 August 2018 (B111)
B113	Utility Regulator	BWFL/SONI	03/09/2018	Letter from Utility Regulator to Parties confirming date of final determination
B114	A&L (SONI)	Utility Regulator	13/09/2018	Letter from A&L Solicitors (for SONI) referring to Utility Regulator letter of 30 August 2018 (B109) and email from (b) (6) of 29 August 2018 (B106) re GWLG "connecting simultaneously" legal advice
B115	Utility Regulator	BWFL/SONI	19/09/2018	Letter from Utility Regulator to Parties proposing indicative timetable for the provision of documents from the (b) (6) and rejecting submissions from SONI letter of 13 September 2018 (B114)
B116	(b) (6) (BWFL)	Utility Regulator	20/09/2018	Letter from (b) (6) (for BWFL) to Utility Regulator response to Utility Regulator letter of 19 September 2018 (B115)
B117	Utility Regulator	BWFL/SONI	20/09/2018	Email cover from Utility Regulator attaching Utility Regulator letter to Parties attaching 5 redacted excerpts from the (b) (6)
B118	Utility Regulator	BWFL/SONI	20/09/2018	Utility Regulator letter to Parties enclosing 5 redacted excerpts from the (b) (6)
B119	(b) (6) (BWFL)	Utility Regulator	27/09/2018	Email cover from (b) (6) (for BWFL) to Utility Regulator attaching BWFL response to Utility Regulator letter of 20 September 2018 (B117)
B120	Pinsent Masons (BWFL)	Utility Regulator	27/09/2018	BWFL response to Utility Regulator letter of 20 September 2018 (B117) – excerpts from the (b) (6)

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B121	Utility Regulator	BWFL/SONI	03/10/2018	Utility Regulator letter to parties responding to [REDACTED] (for BWFL) letter of 20 September 2018 (B116) attaching [REDACTED] letter to UR of 7 December 2016 and UR letter to [REDACTED] of 15 December 2016 approving Garvagh Cluster
B122	A&LG (SONI)	Utility Regulator	04/10/2018	Letter from A&LG Solicitors (for SONI) to Utility Regulator referring to Utility Regulator letter of 20 September 2018 (B117) response to BWFL comments on [REDACTED]
B123	A&LG (SONI)	Utility Regulator	05/10/2018	Email cover from A&LG Solicitors (for SONI) attaching A&LG letter to Utility Regulator referring to Utility Regulator letter of 3 October 2018 (B121)
B124	A&LG (SONI)	Utility Regulator	05/10/2018	A&LG Solicitors (for SONI) letter to Utility Regulator referring to Utility Regulator letter of 3 October 2018 (B121) response to redacted letters
B125	[REDACTED] (BWFL)	Utility Regulator	08/10/2018	Email cover from [REDACTED] (for BWFL) to Utility Regulator attaching BWFL representations in response to Utility Regulator letter of 3 October 2018 (B121)
B126	Pinsent Masons (BWFL)	Utility Regulator	08/10/2018	BWFL representations in response to Utility Regulator letter of 3 October 2018 (B121)