

## COMPLAINT TO THE UTILITY REGULATOR

BY [REDACTED] (TRADING AS GLENVIEW FOODS) IN RELATION TO NORTHERN IRELAND ELECTRICITY LTD'S CONNECTION ARRANGEMENTS FOR 68 MOYARGET ROAD, BALLYCASTLE

### DETERMINATION

12 June 2015

#### **1     Section One - Introduction**

- 1.1 The Northern Ireland Authority for Utility Regulation (referred to hereafter as the **Utility Regulator**)<sup>1</sup> received, by way of an e-mail dated 30 January 2015, a formal complaint from [REDACTED], trading as Glenview Foods (and hereinafter referred to as **Glenview Foods**) regarding a 'distribution connection' dispute between it and Northern Ireland Electricity Limited (**NIE**).
- 1.2 The dispute relates to the grid connection application submitted by Glenview Foods on 12 September 2012 to connect a wind turbine to NIE's electricity distribution system. A connection offer was made by NIE on 12 March 2014 and subsequently withdrawn on 20 August 2014.
- 1.3 Glenview Foods requests the Utility Regulator to make a determination on whether in the circumstances of the case NIE is required to make a connection offer.
- 1.4 The complaint referred by Glenview Foods is a dispute between Glenview Foods and NIE (together, the **Parties**) which falls to be determined by the Utility Regulator (the **Dispute**). The Dispute falls to be determined by the Utility Regulator under Article 26 of the Electricity (Northern Ireland) Order 1992 (**A1**) (the **Electricity Order**), and in accordance with Article 37(11) of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (**A2**) (the **Directive**).

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

- 1.5 On 20 May 2015 (**B105**), Glenview Foods submitted that, in addition, the Dispute should be determined by the Utility Regulator under Condition 31(1) of NIE's licence in relation to distribution activities (the **Licence**) (**A4**). NIE contends that the Utility Regulator should refuse to consider this submission (**B110**).
- 1.6 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 **Procedure**) (**A3**).
- 1.7 The Board of the Utility Regulator has appointed us, Tanya Hedley (Executive Director within the Utility Regulator) and Richard Rodgers (Board member within 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.
- 1.8 This document sets out our determination in relation to the Dispute and includes the order we make in determining the Dispute.
- 1.9 In making and writing this determination, we have had the benefit of being able to consider the following materials relevant to the factual and legal background to the Dispute:
- (a) A Statement of Case (the **Statement**) prepared for us by a small team of skilled staff of the Utility Regulator. The Statement provides an overview of the background to the Dispute, the views of the Parties, and the issues that fall to be determined.
  - (b) A bundle of documents which accompanied the Statement and contained the papers listed in an appendix to the Statement.
  - (c) All further documents and correspondence relating to the subject matter of the Dispute. The contents of the bundle of documents (the **Bundle**) considered in the making of this determination is listed in Appendix 1. These documents have already been shared with the Parties.
- 1.10 The Parties were given the opportunity to comment on a draft Statement (and have copies of the final Statement) and on a draft determination dated 7 May 2015 (the

**Draft Determination**). The Parties were also given the opportunity to comment on the bundle of documents which accompanied the Draft Determination. The Parties' comments on the draft Statement and on the Draft Determination have been taken into account in our determination of the Dispute.

1.11 In addition, in response to Glenview Foods' submission of 20 May 2015 that the Dispute should be determined by the Utility Regulator under Condition 31(1) of the Licence, the Parties were given a further opportunity to comment on this submission and further information was requested. The Parties' responses have been taken into account.

1.12 This determination adopts the following structure:

- (a) the Parties (at Section 2);
- (b) the applicable legal framework (at Section 3);
- (c) the factual background to the Dispute and other factual background of relevance to the Dispute (at Sections 4 and 5);
- (d) the respective views of the Parties (at Sections 6 and 7);
- (e) admissibility of the request for the Dispute to also be determined under Condition 31 of the Licence (at Section 8);
- (f) the issues falling to be determined (at Section 9);
- (g) our determination in relation to Issue 1 (at Section 10);
- (h) our determination in relation to Issue 2 (at Section 11);
- (i) our concluding observations (at Section 12); and
- (j) the order (at Section 13).

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

## **2     Section Two - The Parties**

- 2.1     The following summary as to the status of the Parties is predominantly derived from the Statement.

### ***Glenview Foods***

- 2.2     Glenview Foods is a family run business, established in 1994, which provides local produce to the food service market. In particular, Glenview Foods specialises in the processing of potatoes.
- 2.3     Glenview Foods is an unincorporated business and [REDACTED] is its principal. The business is based at 68 Moyarget Road, Ballycastle, at which it operates its processing facility.

### ***NIE***

- 2.4     NIE is a subsidiary of ESBNI Limited which is a member of the ESB Group of companies. It is the owner of the electricity transmission system in Northern Ireland, and the owner and operator of the electricity distribution system in Northern Ireland.
- 2.5     NIE holds the Licence (in relation to distribution activities) (A4) and also holds a separate licence in relation to transmission activities.
- 2.6     NIE is presently the only licensed distributor in Northern Ireland and is accordingly required on request, and subject to certain exceptions, to connect premises or other distribution systems to its distribution system.

### 3 Section Three - Applicable Law

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

#### ***The Electricity Order (A1)***

- 3.2 Article 3 of the Electricity Order establishes a legal definition of distribution.
- 3.3 Specifically, it defines:
- (a) a distribution system as *‘a system which consists (wholly or mainly) of low voltage lines and electrical plant and is used for conveying electricity to any premises or to any other distribution system’*; and
  - (b) a high voltage line as *‘an electric line of a nominal voltage of or exceeding 110 kilovolts’* with a low voltage line to *‘be construed accordingly’*.
- 3.4 The connection to Glenview Foods' premises would be a distribution connection.
- 3.5 Articles 19 to 24 of the Electricity Order make provision in respect of distribution connections. In particular, they establish:
- (a) a duty to connect on request and to maintain a connection (Article 19);
  - (b) a procedure for applicants to require a connection (Article 20);
  - (c) a number of exceptions from the duty to connect (Article 21);
  - (d) a right for an electricity distributor to recover the reasonable costs of making a connection to such extent as is reasonable in all the circumstances (Article 22);
  - (e) a right for an electricity distributor to require reasonable security for payment (Article 23); and

- (f) a right for an electricity distributor to impose certain additional terms of connection (Article 24).

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

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

3.8 Specifically, Article 26 of the Electricity Order provides:

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

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

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

*and, subject to paragraph (1A), the practice and procedure to be followed in connection with any such determination shall be such as the Authority may consider appropriate.*

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

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

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

*(b) where the information sent to the Authority under paragraph (1)(a) was in its opinion insufficient to enable it to make a determination, the period of*

*4 months from when the date when the dispute was referred to the Authority.*

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

3.9 In determining disputes, the principal objective and general duties of the Utility Regulator under Article 12 of the Energy (Northern Ireland) Order 2003 (the **Energy Order**) do not apply (see Article 13(2) of the Energy Order for reference).

3.10 Article 21 of the Electricity Order provides that:

- “(1) *Nothing in Article 19(1) requires an electricity distributor to make a connection if and to the extent that -
  - (a) *he is prevented from doing so by circumstances beyond his control;*
  - (b) *circumstances exist by reason of which his doing so would or might involve his being in breach of regulations under Article 32, and he has taken all such steps as it was reasonable to take both to prevent the circumstances from occurring and to prevent them from having that effect; or*
  - (c) *there is a lack of capacity or there are exceptional circumstances which render it impracticable for him to do so.**

(2) *Without prejudice to the generality of paragraph (1) an electricity distributor is not required to make a connection if–*

(a) *making the connection involves the distributor doing something which, without the consent of another person, would require the exercise of a power conferred on him by any provision of Schedule 3 or 4;*

(b) *those provisions do not have effect in relation to him; and*

(c) *any necessary consent has not, at the time the request is made, been given. ”*

3.11 Article 12(1) of the Electricity Order provides that:

*“It shall be the duty of an electricity distributor to–*

(a) *develop and maintain an efficient, coordinated and economical system of electricity distribution which has the long-term ability to meet reasonable demands for the distribution of electricity; and*

(b) *facilitate competition in the supply and generation of electricity ”.*

### ***The Directive (A2)***

3.12 The Utility Regulator also has the power to determine distribution connection charging (and other) complaints under the Directive. Article 37(11) of the Directive provides that:

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

### ***The Licence (A4)***

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



3.14 Paragraph 1 of Condition 31 provides as follows:

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

3.15 Condition 30 of the Licence requires NIE to offer terms for connection to and use of the Distribution System.

3.16 More specifically, Condition 30 provides as follows:

*“2. On application made by any person the Licensee shall (subject to paragraph 5) offer to enter into an agreement for connection to the Distribution System or for modification to an existing connection, and such offer shall make detailed provision regarding...*

- (a) the carrying out of works (if any) required to connect the Distribution System to any other system for the transmission or distribution of electricity and for the obtaining of any consents necessary for such purposes;*
- (b) the carrying out of works (if any) in connection with the extension or reinforcement of the Distribution System rendered necessary or appropriate by reason of making the connection or modification to an existing connection and for the obtaining of any consents necessary for such purposes...*
- (e) the date by which any works required so as to permit access to the Distribution System (including for this purpose any works to reinforce or extend the Distribution System) shall be completed and so that, unless otherwise agreed by the person making the application, a failure to complete such works by such date shall be a material breach of the agreement entitling the person to rescind the agreement;*
- (f) the connection charges to be paid to the Licensee, such charges (unless manifestly inappropriate): (i) to be presented in such a way as to be referable to the statements prepared in accordance with paragraph 1 (or as the case may be, paragraph 8) of Condition 32 or any revision thereof; and (ii) to be set in conformity with the requirements of paragraph 5 of Condition 32 and (where relevant) of paragraph 4...*

4. *The Licensee shall offer terms for agreements in accordance with paragraphs 1 and 2 as soon as practicable and (save where the Authority consents to a longer period) in any event not more than the period specified in paragraph 6 after receipt by the Licensee of an application containing all such information as the Licensee may reasonably require for the purpose of formulating the terms of the offer.*
5. *The Licensee shall not be obliged pursuant to this Condition to offer to enter or to enter into any agreement:*
  - (a) *if to do so would involve the Licensee: (i) in breach of its duties under Article 12 of the Order; or (ii) in breach of any regulations made under Article 32 of the Order or of any other enactment relating to safety or standards applicable in respect of the Distribution Business; or (iii) in breach of the Distribution Code; or*
  - (b) *if the person making the application does not undertake to be bound by such parts of the Distribution Code and to such extent as the Authority shall from time to time specify in directions issued to the Licensee for the purposes of this Condition.*
6. *For the purpose of paragraph 4, the period specified shall be:...(b) in the case of persons seeking connection... 3 months”.*

3.17 Condition 15 of the Licence provides that:

*“The Licensee shall not... unduly discriminate as between any persons, or any class or classes of person or persons, or unduly prefer itself (or any affiliate or related undertaking) over any other person or persons, or any class or classes of person or persons, in meeting its obligations under:...*

- (b) *Condition 19 (Distribution System Security and Planning Standards and Operation of the Distribution System); and*
- (c) *Condition 30 (Requirement to Offer Terms for Connection to and Use of the Distribution System)”.*

3.18 The relevant provisions of Condition 32 (i.e. those referred to in Condition 30) are:

- (a) Paragraph 1 which reads:

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

(Such a statement is referred to hereafter as a **Statement of Charges**).

(b) Paragraph 3 which reads:

*“The statements referred to in paragraphs 1 and 2 shall be in such form and to contain such detail as shall be necessary to enable any person to make a reasonable estimate of the charges to which it would become liable for the provision of such services, and (without prejudice to the foregoing) including such of the information set out in paragraphs 4 and 5 as is required by such paragraphs to be included in the statement”.*

(c) Paragraph 6 which reads:

*“6. Connection charges for those items referred to in paragraph 5 shall be set at a level which will enable the Licensee to recover:*

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

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

(d) Paragraph 9 which requires NIE, where directed to do so by the Utility Regulator, to prepare one or more Statements of Charges approved by the Utility Regulator providing that charges for connection to NIE’s distribution system will be made on such basis as shall be specified in the direction. It also provides that each Statement of Charges prepared in accordance with the requirements of the paragraph shall, from the date it is approved by the Utility Regulator or such later date specified by the Utility Regulator, replace the previous corresponding Statement of Charges prepared by NIE.

***Practice and procedure (A3)***

- 3.19 The practice and procedure to be followed by the Decision-Makers in determining this dispute on behalf of the Utility Regulator is set out in the Procedure **(A3)**.
- 3.20 We understand that the Procedure may be supplemented as required in order to ensure good governance and best practice.

#### 4 Section Four - Factual Background to the Dispute

##### *Glenview Foods' Connection Application*

- 4.1 Glenview Foods has provided a report summarising the background to its project to erect a wind turbine **(B67)**. Since 2008, Glenview Foods has been evaluating its energy usage. Following the receipt of a report of the business's energy profile, it began considering options for reducing its energy costs.
- 4.2 It subsequently commenced a project to install a wind turbine on its premises, to provide a source of renewable energy to power its processing facility and export excess electricity onto NIE's distribution system, to be supplied to other consumers. An application for planning permission for the erection of a 250kW wind turbine was made in November 2010 and planning permission was granted in December 2011.
- 4.3 In September 2012, Glenview Foods made an application to NIE for the connection of a 250kW wind turbine at 66 Moyarget Road, Ballycastle to NIE's distribution system **(B5)**. The application was for a maximum export requirement of 250kW. The wind turbine would displace the existing site load and would allow Glenview Foods to export any excess generation to NIE's distribution system. The application was dated 4 September 2012.
- 4.4 The application was acknowledged by NIE in a letter dated 12 September 2012 **(B6)**.
- 4.5 It is Glenview Foods' understanding that the connection costs at this time in relation to its application would have been in the region of £60,000 - £80,000, on the basis that this was the average connection cost at the time.
- 4.6 However, NIE did not process Glenview Foods' application and make a connection offer at that time. The application was put on hold, no design work was carried out and Glenview Foods was not placed in the queue of applicants seeking export capacity at the relevant substation. This was because, due to circumstances outside the scope of the Dispute, the cheque provided by Glenview Foods with its application to cover the application fee was not honoured.
- 4.7 NIE notes **(B75)** that there were also other aspects of the initial application which were incomplete, in that evidence of the planning permission approval for the wind turbine and the site location map were missing. NIE stated that these were requested in a

letter dated 12 September 2012 and provided to NIE on 18 September 2012 (although we have not been provided with a copy of these documents).

- 4.8 Although we have not been provided with any written evidence of this communication, NIE submits **(B75)** that, on 25 September 2012, Glenview Foods was advised that its cheque had not been honoured and made aware of the importance of the generation queue and that its application would not be processed further pending receipt of the application fee. Further, it submits that Glenview Foods stated that it would provide a further cheque.
- 4.9 Glenview Foods disputes **(B81)** that it was made aware of the importance of the generation queue or that it was informed that its application would not continue to be processed. It submits **(B81)** that it attempted to contact NIE by telephone a number of times following its application being submitted for an update in relation to its application, but that it failed to make contact with the relevant NIE personnel.
- 4.10 Glenview Foods provided the application fee to NIE on 6 November 2013. No revisions to the information in the original application were sought by Glenview Foods when the application fee was re-submitted.
- 4.11 NIE used the date on which Glenview Foods resubmitted its application fee as the effective date for the application entering the queue of applicants seeking export capacity.
- 4.12 NIE subsequently identified the connection point in relation to the application as linking to a circuit fed from Ballycastle 33kV/11kV primary substation.
- 4.13 On 10 January 2014 **(B15)** Glenview Foods requested alternative indicative costs for a 150kW wind turbine, noting that it may have to reduce its expenditure on the project. Although we have seen no written evidence of this, NIE states that it provided these indicative costs to Glenview Foods in mid-January 2014. Glenview Foods ultimately decided not to proceed with this alternative.

#### ***Connection Offer***

- 4.14 On 12 March 2014, NIE made a connection offer to Glenview Foods in respect of its application **(B17)**. In the offer, the connection charge payable in respect of the connection was £230,520.38 (excluding VAT).

4.15 The letter making the connection offer **(B17)** stated that the offer reflected the work required to provide for the export of Glenview Foods' proposed generation onto its 11kV distribution network but that '*due to the high level of small scale generation in this geographical area*', the capacity of the associated 33kV distribution network could not safely accommodate the level of export capacity requested.

4.16 The letter stated that:

*"As a result, significant reinforcement works, in addition to the works detailed in this offer, are required in order to enable your proposed generator to export power onto the distribution system. We are in contact with the Utility Regulator with a view to seeking its agreement to the necessary reinforcement works and therefore your offer of connection is conditional on that agreement being provided and the necessary reinforcement works being undertaken".*

4.17 In an e-mail dated 13 March 2014 **(B18)**, NIE noted to Glenview Foods that it was considering allowing conditional offers to move forward, provided the generator could guarantee that no capacity would be exported. NIE noted that such plans were at an early stage.

4.18 On 20 May 2014 **(B22)** representatives from Glenview Foods, NIE and DETI met to discuss Glenview Foods' connection application. At this meeting, Glenview Foods expressed frustration at the level of the connection charge. NIE explained the queuing system which NIE used to progress applications and explained that the increased interest in renewables had led to increases in cost. There were further discussions in relation to the amount of capacity which would need to be exported from the site, the conditionality of the connection offer and the potential timescales for a connection.

4.19 On 5 June 2014 Glenview Foods accepted the connection offer.

#### ***Withdrawal of connection offer***

4.20 In a letter dated 20 August 2014 **(B26)**, NIE informed Glenview Foods that it was withdrawing the connection offer made on 12 March 2014 **(B17)**. This followed the issuing of a statement from NIE on the withdrawal of conditional offers **(B48)** (the background to which is set out further at Section 5). The letter stated that:

*"The withdrawal of this offer reflects the outcome of the recent Determination of a Renewable Generation Connection Dispute by the Utility Regulator (DET-522) along with the*

*final determination of the Competition Commission... in relation to NIE's RP5 price control (published in April 2014). Unfortunately, in light of these determinations NIE must now withdraw connection offers already issued which contain conditional terms relating to necessary reinforcement of the 33,000 volt (33kV) network.*

*Furthermore and regrettably at this time NIE will also be unable to issue further connection offers in locations where there is a lack of 33kV network capacity, as provided for in Article 21(1)(c) of the Electricity (NI) Order 1992 and, in respect of safety considerations, as provided for in Condition 30(5)(a) of NIE's Electricity Distribution Licence”.*

- 4.21 The letter gave Glenview Foods two options. It could elect to remain in the connection queue and be issued with a new connection offer when available or cancel its application and receive a refund of funds already paid.

#### ***Consideration of a zero export arrangement***

- 4.22 A further meeting was held, also on 20 August 2014, and the meeting was attended by representatives from Glenview Foods, B9 Solutions (technical consultants instructed by Glenview Foods), NIE, DETI, and the Utility Regulator. Glenview Foods produced a minute of this meeting (**B27**), although NIE disputes its accuracy (**B80**).
- 4.23 At this meeting, Glenview Foods raised the possibility of being provided with a connection to NIE's distribution system on the basis that it would install equipment on its site to prevent any export of electricity from its wind turbine onto NIE's distribution system (hereinafter referred to as a **Zero Export Arrangement**). The position could then be revisited at a future date once reinforcement works had been carried out and the network could support further export capacity.
- 4.24 Glenview Foods provided a revised Single Line Diagram for its application (**B41**). This diagram introduced an export control arrangement, utilising Reverse Power Protection to limit, to the extent required, the export of electricity from the site. Using this arrangement, it would be possible for Glenview Foods to prevent electricity being exported onto NIE's distribution network (and implement a Zero Export Arrangement).
- 4.25 NIE stated that it could carry out a survey of the site and then provide Glenview Foods with a quote for a connection charge on the basis of a Zero Export Arrangement. Glenview Foods requested that the quote also be made on the basis of a proposed alternative location for the wind turbine.



- 4.26 NIE submits **(B75)** that it confirmed at the meeting that this alternative would require further technical assessment and that it would need to ensure that the implementation of a Zero Export Arrangement did not discriminate against other connection applicants.
- 4.27 There was a further discussion around the possibility of a managed connection, whereby export capacity from Glenview Foods' site would be limited to a set amount and could be further limited if there were problems at the relevant substation. However, it was made clear that a managed connection would not be a solution for the short term.
- 4.28 Glenview Foods requested some further information about the available capacity at Ballycastle substation and NIE agreed to provide this further information.
- 4.29 On 12 September 2014, NIE conducted a survey of Glenview Foods' site. The survey was undertaken using the alternative location for the wind turbine and on the basis that the connection would be for a Zero Export Arrangement.
- 4.30 In an e-mail dated 3 October 2014 **(B32)**, NIE apologised for the delay in providing Glenview Foods with the quote for a connection charge on the basis of a Zero Export Arrangement. NIE also noted that its surveyor had confirmed that, on the basis that the wind turbine was to be moved to a slightly different location, the line diversion (included as part of the works required in the connection offer dated 12 March 2014 **(B17)**) would no longer be required and that this would be taken into account in preparing the quote.
- 4.31 In a telephone call on 17 October 2014, NIE updated Glenview Foods on the work that had been carried out in relation to the proposal for a Zero Export Arrangement. NIE confirmed its position in an e-mail dated 20 October 2014 **(B36)**. On the basis of a Zero Export Arrangement (meaning that line upgrade works were not required) and on the basis that no line diversion would be required, the connection charge for Glenview Foods' connection would be approximately £63,500 (excluding VAT).
- 4.32 However, NIE stated that it could not, at the time, offer such a connection to Glenview Foods, on the basis that:

*“Any increase in generation and the resultant load reduction, further exacerbates issues at our primary substation at Ballycastle...”*

and

*“NIE must consider the impact such connections could have for all customers - not just generators...”*.

- 4.33 The approximate connection charge was therefore provided on the basis that such an offer might be made *"at some point in the future"*. NIE noted that it would follow up with a formal written response.

***“Off grid” arrangement***

- 4.34 There followed a period of correspondence relating to the nature of the proposed arrangement which was being proposed by Glenview Foods. Following a telephone call from Glenview Foods ( [REDACTED] ) to the Utility Regulator (Jody O'Boyle), in an e-mail dated 23 October 2014 (B38), Glenview Foods noted that the wind turbine would be used to offset the energy which had previously been provided by a diesel generator and that the electricity used from NIE would be unlikely to change drastically.
- 4.35 In an e-mail dated 24 October 2014 (B39), the Utility Regulator passed on its understanding of Glenview Foods' proposal to NIE. This was that Glenview Foods would not be reducing the load taken from NIE's distribution system. The wind turbine would be generating electricity to power a new production line and, when the turbine was not generating, Glenview Foods would use a diesel generator to power it. The Utility Regulator requested that NIE consider this when replying to Glenview Foods.
- 4.36 NIE responded to Glenview Foods on the nature of the proposed arrangement in an e-mail dated 31 October 2014 (B41). NIE stated that Glenview Foods' discussions and correspondence with the Utility Regulator indicated that it was now proposing an “off grid” arrangement.
- 4.37 NIE clarified that its understanding of an “off grid” arrangement is an arrangement where the wind turbine would at no time run electrically linked and in parallel with its distribution system. NIE's position was that if Glenview Foods' could clearly demonstrate to NIE that its proposed generation arrangement was an “off grid” arrangement:

*"NIE need have no involvement whatsoever in the connection of your wind turbine and new production line - and no responsibility for any commercial, technical or safety aspects of this arrangement".*

- 4.38 However, NIE stated that the most recent Single Line Diagram of the arrangement (provided by Glenview Foods on 20 August 2014) clearly showed the wind turbine being connected to the existing factory load and to the new NIE transformer. This arrangement, on the basis of which NIE had carried out surveys in August 2014 and thereafter provided an estimate of costs, was therefore not an "off grid" arrangement.
- 4.39 On the basis that Glenview Foods wished to progress an "off grid" arrangement, NIE requested that it be provided with a further Single Line Diagram showing specified features of the arrangement.

#### ***Further correspondence***

- 4.40 In an e-mail dated 24 November 2014 (**B47**) NIE provide a more detailed explanation of why it considered that it could not modify Glenview Foods' connection to allow for onsite generation on the basis of a Zero Export Arrangement.
- 4.41 In particular, NIE noted that on many areas of its distribution network, including its Ballycastle substation, the aggregated small scale generation has the potential to exceed customer load on the local network. This can lead to the reversal of power flow at the primary substation and the equipment at the Ballycastle substation has not been designed to cater for "bi-directional" power flow and would need to be upgraded.
- 4.42 NIE stated that, in the absence of capital approval to carry out these necessary upgrades, no further generation will be able to connect unless a managed connection arrangement is put in place where the generation is controlled to avoid the risk of equipment failure and supply issues. It stated that NIE was actively considering such managed connection arrangements.
- 4.43 There was a period of further correspondence, attempting to reach a satisfactory outcome for Glenview Foods. This included James H Allister QC MLA writing to NIE on behalf of Glenview Foods in a letter dated 17 November 2014 (**B45**). NIE responded in a letter dated 25 November 2014 (**B48**), stating that the essential difficulty with Glenview Foods' application was the lack of upgrade at Ballycastle substation and that significant work was ongoing between NIE, the Utility Regulator and the wider renewables industry to resolve the issues. NIE stated that, on receipt of a full technical

description of Glenview Foods' proposed "off grid" arrangement, NIE would respond accordingly.

4.44 Mr Allister QC MLA also corresponded with the Utility Regulator on Glenview Foods' behalf and there was further correspondence between the Utility Regulator and NIE in which the Utility Regulator (Jenny Pyper) informed NIE (Nicholas Tarrant) of the background to the matter and was informed of NIE's position. In an e-mail dated 19 December 2014 (B50), the Utility Regulator conveyed to Mr Allister QC, MLA NIE's position that it did not consider that it was in a position to connect Glenview Foods "*in the foreseeable future*" and informed him that, as the Utility Regulator has a quasi-judicial role in relation to the determination of disputes, it could not make any further informal investigations at that stage.

4.45 Ultimately, none of this further correspondence led to an outcome which was satisfactory for Glenview Foods.

#### ***The Complaint***

4.46 Glenview Foods submitted an e-mail to the Utility Regulator in relation to the Dispute on 23 December 2014 (B51). It was not clear to the relevant officers of the Utility Regulator whether or not Glenview Foods was submitting a complaint to the Utility Regulator for its determination or making a complaint regarding regulatory non-compliance, in respect of which the Utility Regulator might take enforcement action. Following a period of correspondence on the issue, in an e-mail dated 30 January 2015 (B56) Glenview Foods confirmed that it wished the Utility Regulator to determine a complaint.

#### ***Additional information relevant to the Dispute***

4.47 Glenview Foods ( ) met with the Utility Regulator (Tanya Hedley and Jody O'Boyle) on 2 July 2014. At this meeting, Glenview Foods provided some background information in relation to its proposals to generate electricity on its site. The Utility Regulator informed Glenview Foods that it was not in a position to discuss the detail of individual connection applications.

4.48 On 7 October 2014, NIE (Michael Atkinson, Aiden Bradley and Caron Malone) met with the Utility Regulator (Jody O'Boyle and Colin Walker) to discuss issues concerning

connections to NIE's distribution system with onsite generation, made on the basis of a Zero Export Arrangement.

- 4.49 On 22 October 2014, a further meeting was held between NIE (Michael Atkinson, Aiden Bradley and Caron Malone) and the Utility Regulator (Jody O'Boyle, Colin Walker, Ronan Mckeown and Albert Shaw) to discuss similar issues.
- 4.50 The Utility Regulator does not have a record of having discussed the details of Glenview Foods' connection application with NIE at either of these meetings. In response to the Draft Determination NIE stated that its notes of the meeting on 22 October 2014 refer to the application being discussed. NIE did not submit a copy of these notes but as nothing turns on the point it is not an issue that we need to consider further.

## 5 Section Five - Other Factual Background of relevance to the Dispute

### *Withdrawal of conditional connection offers*

- 5.1 From March 2013 NIE made a number of connection offers which were conditional on the Utility Regulator approving additional funding for NIE to invest in the reinforcement of its 33kV distribution network.
- 5.2 In August 2014, the Utility Regulator made a determination (Determination DET-522)<sup>2</sup> in relation to a complaint which had been brought by a connection applicant in receipt of a conditional connection offer.
- 5.3 As part of its submissions in relation to the complaint, NIE requested that the Utility Regulator make provision for any connection offer it ordered to be made to be conditional on the Utility Regulator granting approval for the construction of the relevant substation.
- 5.4 In its determination, the Utility Regulator did not accede to NIE's request. It stated that the connection offer issued by NIE must have sufficient certainty that the connection offered will be made and on the terms set out in the offer. Including conditional terms in the offer, of the type sought by NIE, would not provide sufficient certainty to the connection applicant that accepting the offer would lead to a connection being made.
- 5.5 On 15 August 2014 NIE issued a statement (**B48**) on its position in relation to issuing conditional offers. In light of the determination, NIE stated that:

*“NIE must now withdraw connection offers with conditional terms relating to the 33kV network, which have already been issued to developers.*

*However, where NIE can demonstrate that there is a lack of 33kV network capacity, as provided for in Article 21(1) (c) of the Electricity (NI) Order 1992 and, in respect of safety considerations, as provided for in Condition 30(5) (a) of the NIE Electricity Distribution Licence, then NIE is under no obligation to make a connection offer.*

*Accordingly, where NIE withdraws (as noted above) a conditional connection offer, and the conditions noted in the above paragraph are met, NIE will also be unable to make any*

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<sup>2</sup>[http://www.uregni.gov.uk/uploads/publications/DET-522\\_Determination\\_-\\_23\\_June\\_2014\\_redacted.pdf](http://www.uregni.gov.uk/uploads/publications/DET-522_Determination_-_23_June_2014_redacted.pdf)

*further connection offer at this time. In addition, NIE will be unable to make connection offers for applicants seeking export capacity in such locations.”*

#### ***NIE's application for funding for substation investment***

- 5.6 In a letter dated 27 September 2013 (**B10**), NIE made a request to the Utility Regulator for approval for expenditure for:

*“some 40 network reinforcement projects required to enable further generation to connect in locations where conditional offers have either now been issued, or are imminent for any further connection applications - and which would (in each case) necessitate reinforcement works of up to £150,000.”*

- 5.7 Ballycastle substation was not included in the request for funding.
- 5.8 In a letter dated 21 October 2013 (**B14**), the Utility Regulator approved £2.3M of funding for work at the 40 specific sites detailed in NIE's request. The letter noted that the Utility Regulator considered this investment to be consistent with NIE's duties to develop and maintain an efficient, coordinated and economical system of electricity distribution which has the long-term ability to meet reasonable demands for the distribution of electricity and to facilitate competition in the supply and generation of electricity.

#### ***Current Statement of Charges***

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

|   |                |
|---|----------------|
| Statement of Charges for Connection to the Northern Ireland Distribution System ( <b>B1</b> )             | March 2010     |
| Statement of Charges for Connection to the Northern Ireland Distribution System ( <b>B8</b> )             | 1 October 2012 |
| Statement of Charges for Connection to the Northern Ireland Electricity Distribution System ( <b>B9</b> ) | 9 May 2013     |

|  |                 |
|--|-----------------|
| Statement of Charges for Connection to the Northern Ireland Electricity Distribution System <b>(B12)</b> | 1 October 2013  |
| Statement of Charges for Connection to the Northern Ireland Electricity Distribution System <b>(B34)</b> | 13 October 2014 |

- 5.10 The last Statement of Charges for Connection to the Northern Ireland Distribution System approved by the Utility Regulator and therefore in full force and effect is the statement dated 13 October 2014 **(B34)**.



## 6 Section Six - Views of Glenview Foods

6.1 The views of Glenview Foods are set out in:

- a) its e-mail to the Utility Regulator dated 23 December 2014 **(B51)**;
- b) its e-mail to the Utility Regulator dated 20 January 2015 **(B54)**;
- c) the complaint dated 30 January 2015 **(B56)**;
- d) its response to the Utility Regulator's request for information of 5 February 2015 **(B59)**, dated 16 February 2015 **(B65)**;
- e) its e-mail to the Utility Regulator dated 23 February 2015 **(B66)**;
- f) its response to the draft Statement (as sent to both parties on 18 March 2015), dated 27 March 2015 **(B81)**;
- g) its response to the Utility Regulator's request for information of 13 April 2015 **(B90)**, dated 21 April 2015 **(B98)**;
- h) its response dated 20 May 2015 to the Draft Determination (as sent to the Parties on 7 May 2015) **(B105)**; and
- i) its response to the Utility Regulator's request for information and comments of 27 May 2015 **(B109)**, dated 2 June 2015 **(B111)**.

6.2 We have read all the above documents in full and have had full regard to all of these submissions. We have also read the relevant section of the Statement. The following is a summary of the key elements of those submissions.

6.3 Glenview Foods' principal argument is that NIE's statutory and licence duties require it to provide Glenview Foods with the connection it requires and that NIE has not raised a valid argument as to why Glenview Foods should not be provided with a connection which allows it to generate electricity onsite using a wind turbine.

### ***Glenview Foods' Complaint***

6.4 Glenview Foods' complaint (as submitted formally on 30 January 2015) can be summarised as follows:

- a) Glenview Foods submits that NIE has '*failed in its duty of care towards [it] as a commercial customer*'.
- b) As a business seeking to expand and stay competitive, Glenview Foods has identified the onsite generation of electricity as key to its future viability. Without this, it is in danger of being forced out of business.
- c) After its initial connection application in September 2012, Glenview Foods was delayed from proceeding with the application for reasons outside the scope of the Dispute. When Glenview Foods returned to progress its application and was issued with a connection offer, that offer was not only conditional, but contained a connection charge which greatly exceeded average connection costs at the time of the application. The conditional offer was then withdrawn. In an attempt to progress things in the short term, Glenview Foods attempted to progress a connection on the basis of a Zero Export Arrangement. However, NIE has also refused to progress this alternative.
- d) NIE's main reason for refusing both arrangements is that they could only be adopted if Ballycastle substation is upgraded. Glenview Foods submits that NIE's duty to develop and maintain an efficient, coordinated and economical system (under Article 12 of the Electricity Order) requires NIE to address this deficiency.
- e) Finally, Glenview Foods submits that NIE has chosen to upgrade other substations and not the Ballycastle substation and this constitutes undue discrimination, in breach of Condition 15 of the Licence.

### ***Duty to develop and maintain an efficient, coordinated and economical system***

6.5 Glenview Foods points to NIE's duty (under Article 12 of the Electricity Order) to develop and maintain an efficient, coordinated and economical system of electricity distribution. It submits that NIE has chosen to upgrade other substations, but that it has chosen to neglect Ballycastle.

- 6.6 It submits that only relatively modest work needs to be done to the Ballycastle substation to allow Glenview Foods to have the connection it requires. In contrast, the losses to Glenview Foods which flow from NIE's failure to provide the connection are great. For example, it may lose DARD grant aid in relation to the planned upgrade of its production lines.
- 6.7 Further, Glenview Foods notes the importance of electricity to its business and of being able to come to an acceptable arrangement with NIE. It notes that it does not have an alternative energy source, such as gas, available.
- 6.8 Given the huge interest in renewable generation and the government incentives available for such generation, Glenview Foods submits that NIE's failure to upgrade Ballycastle substation shows a lack of foresight. The high demand for renewable generation, coupled with the high wind speeds in the area and their impact on generation, made it clear to NIE that saturation at the Ballycastle substation was imminent.
- 6.9 If NIE had developed the network in a coordinated manner, it would have taken a more strategic approach in its planning and this would have led to NIE taking any steps it was required to take to secure funding and Ballycastle substation being upgraded much sooner, as such upgrades were carried out at other substations.

### ***Discrimination***

- 6.10 Glenview Foods submits that by choosing to upgrade other substations, and not the Ballycastle substation, NIE is unduly discriminating between connection applicants, in breach of Condition 15 of the Licence.
- 6.11 It has chosen to upgrade 40 substations, and connection applicants in the vicinity of those substations have benefitted from those upgrades. But NIE has chosen not to upgrade Ballycastle.
- 6.12 In Glenview Foods' submission, this discrimination is all the more clear because of the impact on it of the failure to upgrade Ballycastle and it stresses the urgent need for its business to switch to a renewable source of energy. It has already missed a huge market opportunity which would have created many new jobs and generated further sums for the business. Instead, of being given this opportunity the business itself is now in danger.

### *The connection queue*

- 6.13 While NIE used the date on which Glenview Foods resubmitted its application fee as the effective date for the application entering the queue of applicants seeking export capacity, Glenview Foods submits that it was not informed by NIE of the importance of securing a place in that queue or that, by failing to resubmit the application fee, it might jeopardise the availability of a connection offer.
- 6.14 Glenview Foods submits that it attempted to make contact with NIE by telephone on several occasions between November 2012 and September 2013, but that it was not able to contact any relevant personnel at NIE.

### *Zero Export Arrangement*

- 6.15 Glenview Foods submits that, on many occasions, it was led to believe by NIE that a Zero Export Arrangement was a viable option in the short term. The possibility of such an arrangement was first raised in an e-mail from NIE (**B18**) and Glenview Foods points to many other occasions on which the arrangement was discussed.
- 6.16 In Glenview Foods' view, it is clear that it had requested to move forward with this alternative arrangement and NIE understood this.
- 6.17 NIE is now refusing to allow Glenview Foods to move forward with a Zero Export Arrangement on the basis that decreasing Glenview Foods' usage (when the wind turbine is operating) would cause further congestion at the Ballycastle substation. But Glenview Foods considers that this should not be its problem.
- 6.18 Further, Glenview Foods points out that if it ceased to trade, there would necessarily be a reduction in the electricity usage on its site in any case.
- 6.19 Glenview Foods submits that it should not be refused a Zero Export Arrangement on the basis that there are other applicants ahead of it in the generation queue. Its application should be decided on its own merit, taking into account the need an applicant has for a Zero Export Arrangement.

### ***Connection charge***

- 6.20 Glenview Foods submits that there was an unjustified increase in the connection charge from the average charge at the time of its application (in its submission £60,000 - £80,000) to the charge given in the connection offer dated 12 March 2014 **(B17)** (£230,520.38 (excluding VAT)).
- 6.21 Further, it submits that if the charge for overhead line reinforcement, included in the connection offer dated 12 March 2014, benefits other generators, the cost should be shared between all applicants that will receive a benefit.

### ***Additional Matters***

- 6.22 Glenview Foods submits that NIE's process has been tainted by a lack of transparency. From November 2012 to September 2013, it was unable to discuss its application with NIE, as it was unable to contact the relevant NIE personnel.
- 6.23 Glenview Foods also submits that NIE has failed to cooperate in offering alternative options to it to allow renewable generation onsite. Glenview Foods was never provided with the information on capacity at Ballycastle substation which was requested at the meeting dated 20 August 2014 and which the Utility Regulator requested NIE to provide.
- 6.24 Finally, Glenview Foods notes that it has invested tens of thousands since 2011 in its wind turbine project. This investment is deadlocked until the project can progress and it can further develop its business as planned. The future viability of Glenview Foods and the job security of its workforce depend upon the project moving forward.

### ***Draft Determination***

- 6.25 Glenview Foods provided a response to the Draft Determination on 20 May 2015 **(B105)**. Its further submissions are summarised as follows:
- a) The Draft Determination fails to properly address the failure to upgrade Ballycastle substation. The suggestion that NIE does not have sufficient money to fund the upgrade work required to be carried out at Ballycastle substation is untenable. It is clear that NIE has the necessary funds. NIE must comply with its licence obligations irrespective of the allowance given in the RP5 price control.

- b) Condition 30 of the Licence entitles Glenview Foods to export electricity onto NIE's distribution network, in accordance with its original application **(B5)**, within a reasonable timescale specified by NIE.
- c) The connection offer issued by NIE on 12 March 2014 **(B17)** was not made in accordance with Condition 30 of the Licence, because it did not specify the significant reinforcement works which it stated would be required for it to be able to make the connection and because it did not specify a timescale for completion of these works.
- d) Because of this, this matter should now be determined under Condition 31 of the Licence. As the Utility Regulator has confirmed in a previous determination (Determination DET-522)<sup>3</sup>, Condition 30 confirms and expands upon NIE's statutory duty in relation to connection offers.
- e) If a Zero Export Arrangement is to be ordered; this would be acceptable as an interim measure (pending a connection to allow for export), but a timescale should be given for such an arrangement to be put in place to avoid further delay.

6.26 In addition to its further submissions, in its response to the Draft Determination Glenview Foods requested further information from NIE on:

- a) the number of applicants in the connection queue at the Ballycastle substation; and
- b) the capacity at Ballycastle substation if NIE were to carry out the upgrade works referred to.

6.27 Finally, Glenview Foods also asks whether a connection on the basis of a Zero Export Arrangement could be modified if capacity to export becomes available.

#### ***Response to request for comments on Condition 30***

6.28 On 27 May 2015 **(B109)**, Glenview Foods was invited to provide any additional submissions or supporting evidence in relation to its submission (first raised in response

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<sup>3</sup>[http://www.uregni.gov.uk/uploads/publications/DET-522\\_Determination\\_-\\_23\\_June\\_2014\\_redacted.pdf](http://www.uregni.gov.uk/uploads/publications/DET-522_Determination_-_23_June_2014_redacted.pdf)

to the Draft Determination) that Condition 30 of the Licence entitles Glenview Foods to export electricity onto NIE's distribution network. Glenview Foods made further submissions on 2 June 2015 (**B111**).

6.29 In relation to Condition 30 of the Licence, as well as reiterating some points already made, Glenview Foods made the following further submissions:

- a) In relation to Glenview Foods raising Condition 30 of the Licence only in response to the Draft Determination, in a letter dated 22 January 2015 (**B55**) the Utility Regulator steered Glenview Foods towards the Dispute being determined under Article 26 of the Electricity Order. As the Utility Regulator is the expert in this area, Glenview Foods would have expected to be referred to all relevant provisions.
- b) Condition 30(2)(e) of the Licence obliges NIE to ensure that terms of connection include the date by which works required to permit access to its distribution system shall be completed. This includes works to reinforce the distribution system. It is clear from this that, even if there is a lack of capacity at the relevant substation, NIE is still required to make a connection offer (to connect at a later date once the works have been carried out).
- c) Condition 30(5) sets out some exemptions to the obligation to offer terms, but none of the exemptions is applicable in this case and NIE has not previously argued that any exemption applies. Condition 30(5)(a)(i) would exempt NIE if making the connection offer would involve NIE breaching its duty under Article 12 of the Electricity Order; the Utility Regulator agrees that this type of upgrade work is consistent with Article 12 (and the Competition Commission has not disagreed with this). Condition 30(5)(a)(ii) would exempt NIE if making the connection offer would lead to a breach of safety regulations or safety standards; Glenview Foods is aware of no such safety issues once the upgrade works at Ballycastle are carried out. Condition 30(5)(a)(iii) would exempt NIE if making the connection offer would be in breach of the Distribution Code; Glenview Foods cannot see how such a breach could be caused. Condition 30(5)(b) would exempt NIE if Glenview Foods was unwilling to comply with applicable parts of the Distribution Code; Glenview Foods is not unwilling to do so.

6.30 In addition, Glenview Foods elected to make the following further submissions:

- a) Glenview Foods does not agree with the statement, adopted in the Draft Determination, that where there is a lack of capacity and the exemption (contained in Article 21(1)(c) of the Electricity Order) applies, obliging NIE to carry out works under Article 12 of the Electricity Order would lead to the exception having little or no effect. To the contrary, the position adopted in the Draft Determination would mean that Article 12 of the Electricity Order would have little or no effect. NIE could always use lack of capacity as a reason not to develop its distribution system.
- b) The exception in Article 21(1)(c) of the Electricity Order relates only to the making of the connection. It exempts NIE from its obligation to make a connection, but NIE is still required to make a connection offer and then carry out the necessary upgrade works, so that the connection can be made at a later date.
- c) In its response to the Draft Determination (see below), NIE notes that the costs for works required to be carried out at Ballycastle substation are the same, irrespective of whether the connection is modified to allow Glenview Foods to export electricity onto NIE's distribution network or on the basis of a Zero Export Arrangement. The Draft Determination is that Glenview Foods is entitled to a connection on the basis of a Zero Export Arrangement. The carrying out the works to enable this type of connection will remove any lack of capacity (because NIE has said that the same work is in any event required). Why then can Glenview Foods not be permitted to export onto NIE's distribution network?
- d) If NIE does not carry out the works at Ballycastle substation, it is likely to be in breach of Article 12 of the Electricity Order. This is because NIE would not be meeting the reasonable demands for use of the distribution network; nor would it be facilitating competition or renewable generation.
- e) In the RP5 determination, the Competition Commission provided NIE with a fixed sum of money to allow NIE to comply with the requirements of the Licence. If NIE does not undertake the work which it is required to undertake under the Licence, in this case the upgrade works at Ballycastle substation, it will be able to avoid costs, to the detriment of the consumer.



- f) In accordance with a previous determination of the Utility Regulator (Determination DET-522)<sup>4</sup>, the timescale for NIE to carry out upgrade works at Ballycastle substation must be reasonable.

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<sup>4</sup>[http://www.uregni.gov.uk/uploads/publications/DET-522\\_Determination\\_-\\_23\\_June\\_2014\\_redacted.pdf](http://www.uregni.gov.uk/uploads/publications/DET-522_Determination_-_23_June_2014_redacted.pdf)

## 7 Section Seven - Views of NIE

7.1 The views of NIE are set out in:

- a) its response to the Utility Regulator's request for information dated 5 February 2015, dated 4 March 2015 (**B75 & B76**);
- b) its response to the draft Statement of Case (as sent to both parties on 18 March 2015), dated 27 March 2015 (**B80**);
- c) its response to the Utility Regulator's request for information dated 13 April 2015, dated 21 April 2015 (**B97**);
- d) its response to the Utility Regulator's request for information dated 7 May 2015, dated 13 May 2015 (**B103**);
- e) its response dated 19 May 2015 to the Draft Determination (as sent to the Parties on 7 May 2015) (**B104**); and
- f) its response to the Utility Regulator's request for information and comments of 27 May 2015 (**B108**), dated 2 June 2015 (**B110**).

7.2 We have read all the above documents in full and have had full regard to all of these submissions. The following is a summary of the key elements of those submissions.

7.3 NIE's principal argument is that works need to be carried out at Ballycastle substation before Glenview Foods can be provided with a connection which either:

- a) allows Glenview Foods to export electricity onto NIE's distribution system; or
- b) reduces the electricity imported by Glenview Foods (under a Zero Export Arrangement),

and, in the absence of approved funding, NIE's statutory and licence duties do not require it to carry out such works.

7.4 NIE submits that it has applied its procedures properly and that, if it were to provide Glenview Foods with the requested connection (either on an import/export basis or on

a zero export basis) it would open up itself to legitimate claims of discrimination against other connection applicants.

### *The connection queue*

- 7.5 NIE submits that the connection application made by Glenview Foods on 12 September 2012 (**B5**) was incomplete, because Glenview Foods failed to provide the connection application fee. Because the application was incomplete, NIE could not assign it with a position in the connection queue. The job was put on hold and no design work was carried out.
- 7.6 NIE submits that, on 25 September 2012, it made Glenview Foods aware of the importance of the generation queue and that its application would not be processed further pending receipt of the application fee.
- 7.7 Given the number of other connection applicants which had provided the requested application fee, NIE submits that it would have been discriminatory for NIE to continue to process Glenview Foods' application in the absence of the fee.
- 7.8 Once the connection application fee was provided, on 6 November 2013, NIE assigned it with a position in the connection queue and thereafter started the design work. However, in the period between 12 September 2012 and 6 November 2013:

*“the committed capacity on the Ballycastle network had changed considerably, due to applications from other customers seeking connection of renewable generation in the area. As a result, there was insufficient capacity at Ballycastle 33kV/11kV primary substation at the point where Glenview Foods’ application became valid on 6th November 2013, to connect Glenview Foods...”*

- 7.9 For this reason, the offer issued to Glenview Foods on 12 March 2014 (**B17**) was conditional. NIE notes that, based on Glenview Foods' queue position, it was not the first connection applicant to receive a connection offer which was conditional on works being carried out at the Ballycastle substation. Further, it notes that Glenview Foods was notified on 7 January 2014 (**B13**) of the date on which its application joined the connection queue and forewarned of the possibility that its connection offer would be conditional.

- 7.10 NIE notes that, at the meeting on 20 May 2014 **(B22)**, Glenview Foods requested that the conditional status of the offer be removed so that the application could proceed. NIE submits that it could not agree to this request, as to do so would have been discriminatory to other connection applicants.
- 7.11 As part of its response **(B75)** NIE provided information on the generation queue for Ballycastle substation as at 18 September 2012, 6 November 2013 and 26 February 2015. This information shows an increase in committed capacity between these dates.
- 7.12 In summary, NIE submits that as a direct result of the delay in resubmitting the connection application fee, the committed generation capacity on the Ballycastle network had changed considerably, due to other applications received in the interim.

#### ***Lack of Capacity & safety issues***

- 7.13 As intimated in its letter to Glenview Foods dated 20 August 2014 **(B26)**, NIE's position is that it is not required to issue a further connection offer to Glenview Foods to provide for the export of electricity from the site, because there is a lack of 33kV network capacity and so the exemption set out in Article 21(1)(c) of the Electricity Order applies. Further, there are safety considerations involved, engaging the exception to connect set out at Condition 30(5)(a) of the Licence.
- 7.14 NIE submits that the connected and committed generation capacity ahead of Glenview Foods in the connection queue in respect of Ballycastle substation was already in excess of the capacity available. For this reason, conditional offers were issued to some connection applicants which were ahead of Glenview Foods in the queue.
- 7.15 NIE has stated that to remove the lack of capacity in respect of Ballycastle substation and accommodate more renewable generation, Ballycastle substation requires an upgrade to the voltage control system and the installation of SuperTapp relays on both transformers at the substation.
- 7.16 NIE estimates the budget costs for the associated works at £40,000.

#### ***Funding***

- 7.17 NIE's position is that it is not required to upgrade Ballycastle substation in circumstances where it has not been provided with funding to carry out the upgrade.

- 7.18 The Ballycastle substation was not included in the £2.3m of investment approved by the Utility Regulator on 21 October 2013 (B14) for upgrades at 40 specified substations. The Utility Regulator's letter stated that:

*“No precedent is set by this approval. It is also important to note that, any further assessments will be considered in the context of the Competition Commission determination for RP5”.*

- 7.19 Further, in an e-mail to NIE dated on 28 October 2013 (B11), the Utility Regulator confirmed that:

*“For the avoidance of doubt, we are not in a position to be able to consider any other investments at present. The mechanism under which further investments would be assessed will be determined by the Competition Commission.”*

- 7.20 NIE submits that, in its submission to the Competition Commission determination for RP5, NIE:

*“was very clear that the situation continues to evolve as further approvals would be required over the coming months for additional “smaller scale” projects to address emerging constraints in offering connections on further substations in light of continued connection applications.”*

- 7.21 NIE submits that it was clear that it could not proceed with further similar low level investments as those approved by the Utility Regulator in October 2013 (B14), to resolve future issues at other substations, including Ballycastle.

- 7.22 NIE notes that, in its final determination on the RP5 price control<sup>5</sup>, the Competition Commission decided that levying further costs of 33kV investment on the general customer base to support small scale renewables was not in the public interest. Therefore NIE submits that:

*“other than those 33kV reinforcement costs approved by the Utility Regulator in October 2013 (as part of the £2.3m approval), which did not include for investment at Ballycastle primary substation, there is no provision in RP5 to carry out these necessary works at Ballycastle substation”.*

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<sup>5</sup> Section 10.303 - 10.319 [https://assets.digital.cabinet-office.gov.uk/media/535a5768ed915d0fdb000003/NIE\\_Final\\_determination.pdf](https://assets.digital.cabinet-office.gov.uk/media/535a5768ed915d0fdb000003/NIE_Final_determination.pdf)

- 7.23 In the absence of funding in the RP5 price control and given that NIE is not able under its current Statement of Charges to recover the costs of such investment from connection applicants, NIE considers that it is therefore not required to carry out the upgrade. It could only gain such funding under the Dt term of the Licence.
- 7.24 NIE submits that this will continue until either an alternative charging methodology or an alternative connection methodology is implemented, which will resolve this issue. NIE highlights that work to consider these options is ongoing within its Project 40 but that this will take considerable time to implement.

***Duty to develop and maintain an efficient, coordinated and economical system***

- 7.25 NIE does not accept that its general duty to develop and maintain an efficient, coordinated and economical system of electricity distribution or any other obligation arising under Article 12(1) of the Electricity Order or Condition 19 of the Licence operates, without more, to require it to carry out the installation of SuperTapp relays and associated works at Ballycastle substation.
- 7.26 NIE notes that discussions between it and the Utility Regulator in relation to the need for reinforcement of its 33kV distribution network have been ongoing since early 2013. By June 2013, a decision had been taken that applying limited funding across all substations in Northern Ireland could potentially result in nugatory expenditure, so it was necessary to identify a group of substations that would most benefit from funding. This group of substations evolved over time and changed prior to NIE's request for funding (B11).

***Discrimination***

- 7.27 NIE submits that there is no basis for suggesting that its upgrading of other substations, but not Ballycastle, constitutes undue discrimination. It submits that this argument does not recognise the evolving nature of connection applications and acceptances of connection offers over time.
- 7.28 In NIE's submission, while it is correct to say that Ballycastle substation was not included in its request to the Utility Regulator for approval to carry out upgrade works, this was because substations which were included were for locations where conditional offers had either already been issued, or were imminent. Ballycastle substation had not yet reached that position.

- 7.29 NIE submits that the list of substations submitted in the request to the Utility Regulator was not intended to address all future applications at all primary substations across Northern Ireland. Seeking approval for funding to cover this would have been purely speculative and potentially nugatory.
- 7.30 Further, NIE submits that its request to the Utility Regulator clearly set out funding criteria for substations in need of reinforcement and that these criteria were objective and non-discriminatory.
- 7.31 NIE was aware that the number of substations requiring investment would potentially increase as further applications were received. Such applications and the substation capacity to cater for them would then be subject to further assessment and approval at the time, to be determined through the outcome of the Competition Commission's determination of the RP5 price control.
- 7.32 NIE submits that its request to the Utility Regulator was effectively an interim arrangement, pending further consideration within, and completion of, the Competition Commission's determination. As noted above, the Competition Commission decided that levying further costs of 33kV investment on the general customer base to support small scale renewables was not in the public interest.
- 7.33 In summary, NIE submits that it has acted in an entirely consistent and non-discriminatory manner as matters of substation capacity have arisen.
- 7.34 Further, the absence of funding for the Ballycastle works, despite (in NIE's submission) its best efforts to establish a mechanism to secure such funding, provides an objective justification for the difference of approach.

#### ***Zero Export Arrangement***

- 7.35 NIE submits that, at no stage during the period between the making of the connection offer on 12 March 2014 (**B17**) and the acceptance of that offer on 5 June 2014 was there any request for a Zero Export Arrangement. This was only considered after the connection offer was withdrawn.
- 7.36 At the meeting on 20 August 2014 (**B27**), Glenview Foods requested that a Zero Export Arrangement be considered and NIE submits that it made clear that such an

arrangement would require further technical assessment and could only be allowed if it did not discriminate against other connection applicants.

- 7.37 NIE's key reason for submitting that Glenview Foods is not entitled to a zero export arrangement is as follows:

*“the aggregated impact of small scale generation has potential to exceed customer load on the local network. If not managed appropriately, continued connection of additional generation, or the reduction of existing customer load as a result of on-site generation such as the proposed “Zero Export” connection have the same impact of reducing remaining capacity, and can introduce significant risk of supply interruption and power quality issues for all customers connected to the distribution network.”*

- 7.38 As in relation to an import/export arrangement, NIE's position is that it is not required to provide Glenview Foods with a Zero Export Arrangement, in circumstances in which it has not been provided with the funding to carry out works at Ballycastle substation to address these technical issues.

- 7.39 Further, NIE submits that:

*“if the requested “Zero Export” connection were to proceed, this could increase the potential future curtailment of other applicants ahead of Glenview Foods in the generation queue who have also already advised that they wish to remain in the queue and await the possibility of an alternative connection method if / when available. Therefore, regardless of the technical issues at Ballycastle substation, if Glenview Foods requested Zero Export connection was allowed to proceed, then this could lead to legitimate claims of discrimination from other applicants.”*

#### ***Withdrawal of the connection offer***

- 7.40 Glenview Foods was issued with a conditional offer (**B17**). Following the issue of its statement on the withdrawal of such offers (**B48**), NIE withdrew the conditional offer issued to Glenview Foods.
- 7.41 NIE notes that this was in accordance with the Utility Regulator's determination given in August 2014 and that, as set out in its statement, the Utility Regulator agreed that the approach outlined in the statement represents the viable way forward at this stage.



### ***"Off grid" solution***

- 7.42 NIE submits that at no stage during the entire application or acceptance period did Glenview Foods formally or informally request an "Off Grid" solution.
- 7.43 NIE's position on an off grid arrangement is as set out in its e-mail to Glenview Foods dated 31 October 2014 (B41), namely that:

*"provided that you can clearly demonstrate the "off-grid" nature of your proposed wind turbine connection to NIE's satisfaction, NIE need have no involvement whatsoever in the connection of your wind turbine and new production line - and no responsibility for any commercial, technical or safety aspects of this arrangement."*

- 7.44 NIE notes that it requested further information from Glenview Foods on a proposed off grid proposal arrangement as part of that e-mail, but that Glenview Foods has not as yet responded to this request.

### ***Draft Determination***

- 7.45 NIE provided a response to the Draft Determination on 19 May 2015 (B104). NIE's further submissions are summarised as follows:
- a) NIE welcomes the Draft Determination insofar as it did not require it to modify Glenview Foods' connection to allow Glenview Foods to export electricity (on the basis that there is a lack of capacity and that Article 21(1)(c) of the Electricity Order applies).
  - b) However, the Draft Determination reaches a very different conclusion in relation to the modification of Glenview Foods' connection to implement a Zero Export Arrangement. The difference in these two conclusions is inexplicable, given that the two issues are essentially the same. In particular, both scenarios involve an application for a modification to Glenview Foods' connection (requiring the installation of electrical lines and electrical plant) and both modifications would enable the connection of new renewable generation so that it is electrically parallel with NIE's distribution network. In both cases, NIE is unable to make the connection without first undertaking reinforcement work at the Ballycastle substation to avoid overloading and safety concerns. The work required in each case would be identical.

- c) On this basis, the Draft Determination reflects inconsistent decision making. Its position in relation to modification of the connection to allow for export is directly at odds with its position in relation to modification of the connection to implement a Zero Export Arrangement. The final determination should correct this inconsistency.
- d) NIE accepts that the difference between the two scenarios is that, in the first, Glenview Foods would be able to export electricity onto NIE's distribution network and, in the second, it would not. However, this difference is marginal as regards the consequences for the operation and planning of NIE's distribution system and the network capacity issues that arise from modifying the connection. In both cases, by virtue of the new generation connected to NIE's distribution system, the electricity load connected to the system would be reduced. NIE would need to take into account the generation capacity in its planning of the network and, in either case, upgrade works at Ballycastle substation would be required.
- e) The Draft Determination is based on an artificially narrow interpretation of '*lack of capacity*', as that term is used in Article 21(1)(c) of the Electricity Order. There is no support in the Electricity Order for such an interpretation and it ignores basic physics. Adopting this restrictive interpretation represents a leap of logic, for which there is no justification or support.
- f) The Draft Determination fails to properly consider alternative interpretations of Article 21(1)(c) of the Electricity Order, which fit more naturally with the ordinary meaning of the words and with the reality of physics and electrical engineering.
- g) The fact that reinforcement work is required at Ballycastle substation if a Zero Export Arrangement were to be implemented at Glenview Foods' connection demonstrates conclusively that NIE's distribution system lacks the capacity which it requires to modify the connection.
- h) Consequently, NIE should be able to rely on Article 21(1)(c) of the Electricity Order in relation to this proposal and wherever substations have reached their capacity limit. For substations that have not yet reached their capacity limit, Zero Export Arrangements will be permitted by NIE, but their impact in terms of

the reduction of load will be factored into available remaining capacity for future applicants.

- i) NIE accepts that Glenview Foods is not required to import a specified amount of electricity and that there are other circumstances in which it may reduce its load. However, this does not justify the conclusion that NIE should be required to implement a Zero Export Arrangement without regard to whether or not NIE would be required to reinforce its distribution system.
- j) In particular, NIE relies on assumptions as to import and export demands at existing connections for the purpose of planning its distribution system. The impact on NIE's planning assumptions would be very significant if it had no control over the number of connections on the system with Zero Export Arrangements. In the case of such connections for wind and PV generation, these connections may vary very quickly from zero to 100% of the maximum import demand. This is very different to where, for example, a customer ceases to trade.
- k) It is essential that NIE remains in control of the number of connections on the basis of Zero Export Arrangements on its system, given the consequences for system planning which they involve. Account must be taken of the large number of small scale generators seeking to connect to NIE's network, which might be interested in implementing a Zero Export Arrangement.
- l) The legislature intended that Article 21(1)(c) of the Electricity Order would provide protection in this scenario against unrestricted connections to its distribution system.
- m) The Decision-Makers should have regard to the consequences in the event that the final determination follows the Draft Determination. NIE would expect to receive requests for connections on the basis of a Zero Export Arrangement from a proportion of the 400 outstanding applications awaiting the outcome of Project 40, as well as new applications on this basis right across Northern Ireland. This would create a requirement for very significant multimillion pound investments to resolve power flow issues at many substations. The increase in generation onsite would increase the potential curtailment of a renewable generator waiting for a managed connection which is higher up in the connection queue and this could lead to claims of discrimination.

- n) NIE would also be forced to re-evaluate its planning assumptions as to the level of continuing demand across its network and may be required to decline applications for connection on the grounds of a lack of capacity, even where under current capacity allocation assumptions, NIE would not regard the system as capacity constrained.
- o) NIE would need to factor in a considerably wider margin of headroom into its current capacity allocation assumptions than it does at present, which could have an adverse impact on the ability of future generators to obtain a connection.
- p) As capacity limits have already been reached at many substations, such a final determination is also likely to have very significant cost implications, which would have to be borne by all customers over the longer term.

7.46 In addition to these points, in response to Glenview Foods' submission that it attempted to make contact with NIE on several occasions, but that it was not able to contact any relevant personnel at NIE, NIE notes that it has checked the records from its call centre which takes messages from customers. NIE notes that the only recorded interaction with Glenview Foods prior to September 2013 was a request for an application pack (in May 2012).

***Response to request for comments on Condition 30***

7.47 On 27 May 2015 (**B108**), NIE was invited to provide any submissions or supporting evidence in relation to Glenview Foods' new submission that Condition 30 of the Licence entitles Glenview Foods to export electricity onto NIE's distribution system.

7.48 NIE made submissions on Condition 30 on 2 June 2015 (**B111**). NIE's submissions are summarised as follows:

- a) The Draft Determination noted that the Decision-Makers would not expect any new grounds of dispute to be advanced at this stage. On this basis, the Decision-Makers should refuse to consider Glenview Food's submission in relation to Condition 30 of the Licence. Further, it would be a breach of due process for the Decision-Makers to consider this submission as NIE should be informed of the case being made against it and a have reasonable opportunity to respond. NIE submits that it has not been given a reasonable opportunity.

- b) Further, paragraph 3(c)(ii) of Section A of the Procedure requires that a complaint involving a matter of law must be accompanied by '*detailed legal submissions*'. No such submissions have been provided here and so it would be inconsistent with the Procedure for the Decision-Makers to consider this submission.
- c) In any event, Condition 30 of the Licence does not entitle Glenview Foods to export electricity onto NIE's distribution system. This is primarily because Condition 30 of the Licence must be interpreted in a manner that is consistent with the provisions of the Electricity Order relating to connections, in particular the exceptions to the duty to connect (which are set out in Article 21). NIE's licence cannot operate to deprive NIE of the benefit of the exceptions. Consequently where, as here, the statutory duty to connect does not apply by reason of the application of an exception, Condition 30 does not apply.
- d) Condition 30 of the Licence expands upon the statutory regime and should not be read as creating independent obligations.
- e) In any case, NIE is not required to offer terms of connection to Glenview Foods under Condition 30 of the Licence, because there are exceptions in Condition 30(5) which apply. In particular, providing terms of connection to Glenview Foods would not be consistent with NIE's duties under Article 12 of the Electricity Order.
- f) Further, providing terms of connection would breach the relevant safety standards that would apply in the event that Glenview Foods' connection was modified and capacity on NIE's distribution system was exceeded. This would be the case irrespective of whether the connection was modified for Glenview Foods to export electricity onto NIE's system or if the modification was on the basis of a Zero Export Arrangement.

**8      Section Eight - admissibility of the request for the Dispute to also be determined under Condition 31 of the Licence**

- 8.1      As noted in Section One, on 20 May 2015 (**B105**), Glenview Foods submitted that, in addition to making a determination under Article 26 of the Electricity Order, the Utility Regulator should determine the Dispute under Condition 31(1) of the Licence. This was on the basis that, irrespective of the position under the Electricity Order, Glenview Foods submits that it is entitled to have its connection modified to enable it to export electricity onto NIE's distribution system, by virtue of Condition 30 of the Licence.
- 8.2      As set out further above, NIE contends that the Utility Regulator should refuse to consider this submission (**B110**), on the basis that Glenview Foods should not be permitted to raise a new ground of dispute at this late stage, that Glenview Foods has failed to provide detailed legal submissions, as required by the Procedure, and that NIE has been given insufficient opportunity to respond.
- 8.3      Our understanding of Glenview Foods' position is that it considers that the Utility Regulator should have informed it that it should also have requested to make the determination under Condition 31 of the Licence. We do not agree. As was stated to Glenview Foods in the Utility Regulator's letter dated 22 January 2015 (**B55**), it is essentially for the complainant to provide the basis for any complaint and what it is they are requesting of the Utility Regulator.
- 8.4      We agree that Glenview Foods has raised this submission at a very late stage in the Utility Regulator's consideration of the Dispute and that it had ample opportunity to raise it at an earlier stage. However, we also note the following points:
- a)      While Glenview Foods has not made lengthy submissions, it has identified the relevant issue of law and explained why Glenview Foods considers that the issue should be determined in its favour, sufficient for us to understand the submission and for it to be understood by NIE.
  - b)      NIE has been given the opportunity to make representations in relation to this new submission and has done so in its letter dated 2 June 2015 (**B110**). We note that NIE did not raise the issue of the sufficiency of the time period prior to making its representations, nor did it ask for further time to respond. In the particular context of the new submissions and the Dispute, we consider that it

has been given a reasonable opportunity to respond to the issues relating to Condition 30.

- 8.5 In addition, if Glenview Foods' request for us to determine the Dispute under Condition 31(1) of the Licence is declined, it would be entitled to refer the issue to the Utility Regulator as a further complaint. We do not consider it to be in the interests of either of the Parties (or the Utility Regulator) to spend further time and resources on a further complaint, when the matter can fairly be considered at this stage.
- 8.6 For these reasons, we consider that it is appropriate for us to consider the Dispute under Condition 31(1) of the Licence as well as under Article 26 of the Electricity Order.

## 9 Section Nine - Issues to be Determined

- 9.1 The following are the issues to be determined by the Utility Regulator. We have made changes to the issues as set out in the Statement following our consideration of the Dispute.
- 9.2 The issues for determination by the Decision-Makers, in relation to Glenview Foods' request for a modification to its connection at 68 Moyarget Road, Ballycastle are as follows.

### *Issue 1*

- 9.3 The first issue to be determined by us is whether Glenview Foods is entitled to a modification to its connection on the basis of its connection application dated 12 September 2012 **(B5)** and on the basis that it may export electricity generated from its wind turbine (and not used onsite) onto NIE's distribution system.

### *Issue 2*

- 9.4 The second issue to be determined by us is whether Glenview Foods is entitled to a modification to its connection on the basis of its connection application dated 12 September 2012 **(B5)** (as modified on 20 August 2014 **(B41)**), but with the limitation that the connection shall be configured so as to prevent Glenview Foods from exporting electricity onto NIE's distribution system (a Zero Export Arrangement).



10     **Section Ten - Determination in relation to Issue 1**

10.1    The first issue to be determined by us is whether Glenview Foods is entitled to a modification to its connection on the basis of its connection application dated 12 September 2012 (**B5**) and on the basis that it may export electricity generated from its wind turbine (and not used onsite) onto NIE's distribution system.

10.2    Glenview Foods' application dated 12 September 2012 requested that NIE make a modification to its connection, to allow it to export excess electricity generated by a wind turbine on its site onto NIE's distribution system.

***Duty to modify the connection***

10.3    In determining the Dispute we are required to consider the relevant legal obligations of the Parties and how they apply to the particular facts of the Dispute. Under Article 19 of the Electricity Order, NIE has a duty to make the modification requested by Glenview Foods to electrical lines and plant associated with its connection, unless a statutory exception applies to relieve it of this duty.

***Article 21(1)(c) of the Electricity Order***

10.4    NIE relies on the statutory exception at Article 21(1)(c) of the Electricity Order, in that there is a lack of capacity on its distribution system to allow the modification to Glenview Foods' connection. In other words, there is insufficient capacity to allow Glenview Foods to export electricity onto its system.

10.5    As part of its response to the Utility Regulator's initial request for information in relation to the Dispute (**B75**), NIE provided information on the generators which had been connected to export electricity to the Ballycastle substation or which had applied for such a connection.

10.6    In particular, the information provided is that:

- a)     As at 18 September 2012, shortly after Glenview Foods made its initial application, there were generators connected to NIE's distribution system and exporting electricity to Ballycastle substation and there was further committed capacity in relation to generation which had not yet been connected. It is

stated that, at this time, there was not a lack of capacity at Ballycastle substation and there was capacity for Glenview Foods to export to it.

- b) As at 6 November 2013, when NIE placed Glenview Foods in the connection queue, there continued to be generators connected to NIE's distribution system and exporting electricity to Ballycastle substation, but the amount of committed capacity for applicants yet to be connected had increased substantially. As a result of this increase, there was a lack of capacity to commit any further generators to Ballycastle substation and there was no capacity for Glenview Foods to export to it.
- c) As at 26 February 2015, there continued to be generators connected to NIE's distribution system and exporting electricity to Ballycastle substation and also a further amount of committed capacity. There are also several applicants awaiting a connection offer.

10.7 We are required to determine the Dispute on the basis of the factual circumstances existing at the time of the determination. From the evidence submitted by NIE which is summarised above, in conjunction with other background evidence in the Bundle, we are satisfied that there is currently a lack of capacity at Ballycastle substation which precludes Glenview Foods to export electricity to it. Glenview Foods has not disputed this.

10.8 Our understanding is that there is no alternative substation to which Glenview Foods could export electricity generated on its site. There is therefore a lack of capacity on NIE's distribution system which precludes NIE from making the modification to Glenview Foods' connection which was requested in the application dated 12 September 2012.

10.9 Consequently, we conclude that Article 21(1)(c) of the Electricity Order is currently applicable and NIE is relieved from its duty to make the modification requested for Glenview Foods to export electricity onto its distribution system.

10.10 Glenview Foods submits that this Article 21(1)(c) relates only to the making of the connection and that, to the extent there is currently a lack of capacity, Article 21(1)(c) does not exempt NIE from the obligation to make a connection offer, carry out the upgrade works at Ballycastle substation (to resolve the lack of capacity) and then modify its connection.

10.11 Where, as we have concluded to be the case here, Article 21(1)(c) of the Electricity Order applies, NIE is not required to make a connection offer under the Electricity Order; it is clear from Article 20 of the Electricity Order that NIE may respond to a request for a modification to a connection by stating that the proposal is not acceptable (because the exception applies). Whether or not NIE is subject to a separate duty to make a connection offer or to carry out upgrade works at Ballycastle substation is considered further below.

### ***Article 12 of the Electricity Order***

10.12 Glenview Foods considers that NIE's duty to develop and maintain an efficient, coordinated and economical system of electricity distribution (under Article 12 of the Electricity Order) requires it to carry out upgrading works at Ballycastle substation. It further submits that its demand to export electricity onto NIE's distribution system is reasonable and that, if the work is not carried out, the system will not be meeting reasonable demands for the distribution of electricity and that NIE would not be facilitating competition in the supply and generation of electricity. Glenview Foods considers that NIE has the necessary funds to carry out the work.

10.13 NIE submits that this general duty should not, without more, operate to require NIE to carry out the upgrade. We agree with this submission. Article 12 of the Electricity Order is a general duty, which obliges NIE to ensure that its distribution system meets certain goals and to facilitate competition.

10.14 There may well be particular circumstances where a failure to carry out works will breach Article 12, for example where a failure to carry them out will be detrimental to the system as a whole. However, we do not consider (as we understand to be Glenview Foods' submission) that wherever there is demand for upgrade works to increase the capacity on part of NIE's distribution system, Article 12 requires that they be carried out in every case.

10.15 We note that NIE's obligation in relation to demand is to ensure that its system has the '*long-term ability*' to meet reasonable demands. We do not consider that this equates to an obligation on NIE to ensure that its system meets all current reasonable demands in areas where there is a lack of capacity.

10.16 In contrast to Article 12, Article 21(1)(c) is a statutory exception which is clearly intended to be applied in a particular case, following a particular application for a

connection (or modification to a connection). If Article 12 were to operate so as to oblige NIE to carry out in every case where it receives an application for a connection upgrade works to remove any lack of capacity that exists, NIE would be required to offer terms for the connection even though there was a lack of capacity and Article 21(1)(c) would have little or no effect. This cannot be the intention of the legislation.

- 10.17 In response to the Draft Determination, Glenview Foods submits that if Article 12 did not require NIE to carry out the upgrade works, Article 12 would have little or no effect because NIE could use lack of capacity as a reason to always refuse to upgrade its network. We do not agree that this is the effect of our determination.
- 10.18 NIE is required to consider the upgrades that should or will need to be carried out to ensure that it develops and maintains its system in the manner required by Article 12 and that it facilitates competition. The Utility Regulator will consider whether or not NIE is complying with this duty as it undertakes its monitoring activities. Furthermore, any dispute referred to the Utility Regulator will be considered on its particular facts and the circumstances of the case.
- 10.19 Having considered how Article 12 should be applied, we have considered whether there are any particular circumstances in this case which might give rise to an obligation on NIE under Article 12 to carry out works at Ballycastle substation to allow for export onto its distribution system. We do not consider that the evidence before us gives rise to such particular circumstances which operates to require NIE to carry out the works in this particular case.
- 10.20 NIE could decide to fund and undertake the works at Ballycastle substation if it wished to; the works are estimated to cost £40,000. However, that NIE has the funds available does not mean that it is required to expend them on the works at Ballycastle substation in particular. It must choose whether or not to do so, in accordance with its statutory duties and licence obligations.
- 10.21 In conclusion, we do not consider that Article 12 of the Electricity Order operates to require NIE specifically to upgrade Ballycastle substation to allow for the export of electricity onto its distribution system by Glenview Foods.

### ***Discrimination***

- 10.22 Glenview Foods submits that by choosing to upgrade other substations rather than Ballycastle, NIE is unduly discriminating between connection applicants, in breach of Condition 15 of the Licence.
- 10.23 In September 2013 (**B10**), NIE applied for specific funding in relation to the upgrade of a number of substations, but it did not make an application for Ballycastle. The letter made clear that the applications related to locations where connection offers (albeit conditional offers) had either been issued or were imminent. Ballycastle was not such a location at that time.
- 10.24 It appears to us that NIE was entitled to focus its application to secure specific funding on specified locations. Further, we agree with NIE that it applied objective and non-discriminatory criteria to select locations for the application. On the basis that Ballycastle did not meet the criteria at the time of the application, we do not consider that it was discriminatory that Ballycastle was not included at the time.

***Condition 30 of the Licence***

- 10.25 Glenview Foods submits that, irrespective of the position under the Electricity Order, it is entitled to have its connection modified to enable it to export electricity onto NIE's distribution system, by virtue of Condition 30 of the Licence.
- 10.26 Condition 30(2) of the Licence requires NIE to offer to enter into an agreement for modification to a connection to its distribution system, where an application is made for such a modification. Condition 30(5) of the Licence contains a number of exceptions to this requirement.
- 10.27 NIE submits that Condition 30(5) exempts it from the requirement to offer to enter into an agreement in respect of the modification of Glenview Foods' connection. We note that this is not a newly adopted position by NIE. NIE's letter to Glenview Foods on 20 August 2014 (**B26**) (withdrawing the connection offer dated 12 March 2014 (**B17**)) referred to both a lack of capacity and '*safety considerations, as provided for in Condition 30(5)(a) of [the Licence]*'.
- 10.28 NIE now expands on this to state that, given the lack of capacity referred to above, it would not be consistent with its duty under Article 12 of the Electricity Order for it to offer terms of connection to Glenview Foods and doing so would lead it to breach the relevant safety standards.

- 10.29 Glenview Foods' submits that this cannot be the case, because (as the Utility Regulator has stated) it is entirely consistent with Article 12 of the Electricity Order for NIE to carry out works to upgrade a substation. NIE has requested funding for such works to other substations and has not raised issues of safety.
- 10.30 However, irrespective of whether or not Condition 30(5) of the Licence applies in this case, on the information known to us, Condition 30 of the Licence does not currently require NIE to offer to enter into an agreement.
- 10.31 This is because Conditions 30(6) and 30(4) of the Licence provide that such an offer shall be made as soon as practicable and within three months, save where the Utility Regulator agrees to a longer period.
- 10.32 In its letter to Glenview Foods dated 20 August 2014 (**B26**), NIE gave Glenview Foods the option of *'remain[ing] in the process and being offered with a new connection offer when available'*. It stated that, if this option was taken, NIE would request that the Utility Regulator agree to an extension to the period to issue Glenview Foods with an offer.
- 10.33 NIE has stated in its submissions (**B75**) that Glenview Foods elected for this option on 1 October 2014. We have not received a copy of this correspondence but it is the case that Glenview Foods has not disputed this part of NIE's submission.
- 10.34 NIE subsequently made an application to the Utility Regulator for its agreement to extend the three month period in relation to a number of connection applications (including Glenview Foods' application). The Utility Regulator agreed to this request and has since agreed to further extensions of the time period. The time period runs to 2 October 2015 as currently extended.
- 10.35 Given that NIE has obtained an extension to the normal time period in which it is required to make an offer at the date of this determination NIE is not required to make such an offer and the provisions of provisions of Condition 30 do not apply.
- 10.36 On this basis there is no dispute for us to determine pursuant to Condition 31.

### ***Impact of entitlement to a Zero Export Arrangement***

- 10.37 In submissions made following the Draft Determination, Glenview Foods highlights NIE's statement **(B105)** that the upgrade works required to be undertaken at Ballycastle substation are identical, irrespective of whether the connection is modified to allow Glenview Foods to export electricity onto NIE's distribution network or is modified on the basis of a Zero Export Arrangement.
- 10.38 The Draft Determination provided that Glenview Foods is entitled to a connection on the basis of a Zero Export Arrangement and carrying out the works to enable this will remove any lack of capacity. Since there will then be no lack of capacity, Glenview Foods submits that it should be entitled to a connection which allows it to export electricity at the outset.
- 10.39 While this submission may appear attractive in practical terms, we must make our determination on the basis of the relevant legal obligations of the Parties as they apply to the particular facts of the Dispute at the point in time that the determination is made. Our determination is that there is currently a lack of capacity, and that the applicability of the exemption enables NIE to refuse to modify Glenview Foods' connection to allow it to export electricity. That this situation may change following our determination will be a matter for NIE to consider going forward, in accordance with its statutory duties and licence obligations. There is nothing in our determination which prevents NIE from offering to make/modify the connection such that it enables export should it decide that it is able to do so.
- 10.40 Glenview Foods has also made a number of submissions to the effect that, if our determination is that it is entitled to have its connection modified on the basis of a Zero Export Arrangement, such an arrangement should be implemented with an opportunity to export electricity within a reasonable timeframe. NIE has stated that it may not be feasible for an applicant receiving a connection modified on the basis of a Zero Export Arrangement to maintain its position in the generation connection queue for a subsequent modification to allow export at a later date.
- 10.41 Where NIE makes a connection offer to Glenview Foods for the modification of Glenview Foods' connection on the basis of a Zero Export Arrangement, it is open to Glenview Foods whether it wishes to accept such an offer. If Glenview Foods chooses to do so and NIE modifies the connection accordingly, Glenview Foods has made an application for a modification to its connection and that modification has been made.

10.42 In these circumstances if Glenview Foods wishes to pursue a further modification to its connection to allow it to export electricity onto NIE's distribution system, it will need to make a new application for this purpose. NIE may choose how this application should be handled, provided it does so in accordance with its statutory duties and licence obligations.

10.43 For these reasons, we do not make provision in our determination in relation to this issue.

### ***Conclusion***

10.44 Accordingly our determination on the first issue is that NIE is entitled to refuse to modify Glenview Foods' connection to allow Glenview Foods to export electricity generated from its wind turbine (and not used onsite) onto NIE's distribution system.

10.45 Given this conclusion, it is unnecessary for us to consider Glenview Foods' submissions in relation to the level of the connection charge included in the connection offer dated 12 March 2014 **(B17)** and whether the connection charge proposed by NIE was appropriate.



## 11 Section Eleven - Determination in relation to Issue 2

- 11.1 The second issue to be determined by us is whether Glenview Foods is entitled to a modification to its connection on the basis of its connection application dated 12 September 2012 (B5), but with the limitation that the connection shall be configured so as to prevent Glenview Foods from exporting electricity onto NIE's distribution system (a Zero Export Arrangement).
- 11.2 By the revised Single Line Diagram provided in August 2014 (B41) Glenview Foods modified its application dated 12 September 2012 in a way which would enable it to generate electricity from its wind turbine without exporting electricity onto NIE's distribution system. To implement this request, NIE would still require a modification to be made to Glenview Foods' connection.

### *Duty to modify the connection*

- 11.3 As noted above, in determining the Dispute we are required to consider the relevant legal obligations of the Parties and how they apply to the particular facts of the Dispute. Under Article 19 of the Electricity Order, NIE has a duty to make that modification to electrical lines and plant associated with the connection, unless a statutory exception applies to relieve it of this duty.

### *Application of Article 21(1)(c)*

- 11.4 NIE again relies on the statutory exception at Article 21(1)(c) of the Electricity Order, in that there is a lack of capacity on its distribution system to allow the modification to Glenview Foods' connection. This is because the aggregated impact of small scale generation has the potential to exceed customer load on the network, leading to "reverse" power flow. A reduction in Glenview Foods' load could introduce significant risk of "reverse" power flow, leading to supply interruption and power quality issues for customers.
- 11.5 In other words, it is NIE's submission that the issues on the system mean that Glenview Foods is not entitled to reduce its load by generating electricity onsite.
- 11.6 In the Draft Determination, we stated that Article 21(1)(c) of the Electricity Order applies only where there is a 'lack of capacity', which may be:

- a) where a generator applies for a connection to export onto NIE's distribution system and there is a lack of capacity which prevents that export onto the system; or
  - b) where a customer applies for a connection to import electricity from NIE's distribution system and there is a lack of capacity which prevents that import from the system.
- 11.7 Our Draft Determination was that Article 21(1)(c) of the Electricity Order could not apply in this case, which does not fall within either of these two scenarios.
- 11.8 NIE submits that this is a restrictive interpretation of the meaning of '*lack of capacity*', which is without justification and that a broader interpretation should be adopted. It points to the similarities between a modification of Glenview Foods' connection to allow for export and a modification on the basis of a Zero Export Arrangement, describing the two issues as essentially the same. In particular, both cases involve new generation which is in parallel with NIE's network and in both cases NIE will need to upgrade Ballycastle substation before the modification to the connection can be made. The work required at Ballycastle substation will be identical in each case.
- 11.9 While there may be some similarities, in terms of the works that NIE needs to undertake, between the two types of modification to Glenview Foods' connection, we consider there to be a key and fundamental difference:
- a) Where NIE modifies the connection to allow Glenview Foods to export electricity onto its distribution system, it is that modification which will cause the flow of electricity onto the system for which there is currently a lack of capacity. There is a direct link between the modification which NIE would make and the lack of capacity which exempts it from making that modification.
  - b) Where NIE modifies the connection on the basis of a Zero Export Arrangement, that modification does not cause any flow of electricity onto the system for which there is a lack of capacity. The modification to the connection does not allow Glenview Foods to export electricity and Glenview Foods retains its ability to import electricity.
- 11.10 We consider this difference to be key in how Article 21(1)(c) of the Electricity Order should be applied. We have determined that there is a lack of capacity on the relevant

part of NIE's system to allow for further export of electricity onto it. NIE is not required to make a modification which would enable such export to take place because Article 21(1)(c) applies. In contrast, where NIE modifies a connection on the basis of a Zero Export Arrangement, there is no lack of capacity which inhibits the modification of the connection. In this situation, we do not consider that Article 21(1)(c) applies.

11.11 On this basis, Article 21(1)(c) applies in the two scenarios identified above. We consider this to be logical and consistent with the intention of the legislation.

11.12 Moreover, we consider this to be consistent with the natural meaning of the words '*lack of capacity*'. NIE's submission is that there is a lack of capacity which precludes Glenview Foods' from adopting a Zero Export Arrangement and thereby reducing its load. As a matter of logic, we do not consider that a lack of capacity can prevent Glenview Foods from reducing its import of electricity. This would be inconsistent with the natural meaning of the wording in the legislation.

11.13 It appears to us that NIE seeks to interpret '*lack of capacity*' in Article 21(1)(c) as including any system management issue. We do not agree that such an interpretation should be adopted.

11.14 NIE states that the work required at Ballycastle substation will be identical in each case. We do not consider that this similarity can impact on the proper application of the legislation. In any case, the similarity is particular to the circumstances on the relevant part of NIE's system.

11.15 It is clear that the configuration of NIE's distribution system means that it is reliant on Glenview Foods importing a specified amount of electricity and that, if it does not do so, there are likely to be management issues on the system unless upgrade works are carried out at Ballycastle substation. We note that Glenview Foods is not under an obligation to import a specified amount of electricity from NIE's distribution system, even if failure to do so may lead to system management issues. In this sense, we agree with Glenview Foods' submission that such issues are not its problem.

11.16 If Glenview Foods were to implement an "off grid" arrangement (as referred to above) there could still be a reduction in Glenview Foods import of electricity from NIE's distribution system, with its processing facility being powered by a wind turbine. The system issues would still arise. Similarly, as noted by Glenview Foods, in the event that its processing facility ceased to operate for any reason, its load would be reduced. To

the extent that this would cause system management issues, NIE would need to address these.

- 11.17 NIE accepts that there may be other scenarios such as these where Glenview Foods would reduce its load, but states that this does not justify NIE being required to modify Glenview Foods connection on the basis of a Zero Export Arrangement. In particular, it notes that (as any distributor) it is required to rely on assumptions as to import and export demand for the purposes of system planning. It submits that the impact on NIE's planning assumptions as to demand would be very significant if it had no control on the number of connections made on the basis of a Zero Export Arrangement, because these connections involve a large variation of demand within a relatively short period. NIE submits that it is essential that it remains in control of the number of connections that are made on such a basis.
- 11.18 We do not agree that Article 21(1)(c) of the Electricity Order is intended to allow NIE to control the number of connections made on the basis of a Zero Export Arrangement (or, indeed, to control any number of connections). Article 21(1)(c) provides an exception to NIE's duty to make or modify a connection where there is a lack of capacity.
- 11.19 We have determined that Article 21(1)(c), properly interpreted, does not apply where NIE is modifying a connection on the basis of a Zero Export Arrangement. We accept that an increase in the number of such connections may well have consequences for NIE's planning assumptions. However, we do not consider that this is a matter which can alter our conclusion on the application of the statutory exception relating to lack of capacity.
- 11.20 NIE notes that there may be a number of consequences if we reach the same conclusion on the second issue as was reached in the Draft Determination. In particular, NIE expects that it would receive a large number of applications for modifications to connections on the basis of a Zero Export Arrangement and that this would require significant multimillion pound investments to reverse power flow issues at multiple substations. Again, while we accept that there may be possible consequences, we do not consider that these consequences can alter our conclusion on the application of the exception. NIE should consider any future applications for such modifications to a connection in accordance with its statutory duties and licence obligations (including the exceptions which are applicable). In conclusion, we do not consider that Article 21(1)(c) of the Electricity Order applies to exempt NIE from its duty to modify Glenview

Foods connection to implement a Zero Export Arrangement and we consider that NIE's duty under Article 19 of the Electricity Order requires it to make that modification.

### ***Discrimination***

- 11.21 NIE submits allowing such an arrangement could curtail the availability of capacity for other applicants ahead of Glenview Foods in the connection queue and could lead to legitimate claims of discrimination.
- 11.22 NIE must offer to make or modify connections in accordance with its statutory duties and licence obligations. Our determination is that NIE has a statutory duty to modify Glenview Foods' connection to implement a Zero Export Arrangement. This is an objective justification to treat Glenview Foods differently to applicants which have applied for a connection to export electricity onto NIE's distribution system, but where NIE has no statutory duty to make that connection because of a lack of capacity.
- 11.23 NIE has not provided evidence that there are other applicants ahead of Glenview Foods in the connection queue that have also modified their connection applications to allow them to implement a Zero Export Arrangement. If there are no such applicants, this provides a further basis for NIE to treat Glenview Foods differently.
- 11.24 In any case, the Utility Regulator is required to determine the dispute before it. In circumstances in which we have determined that NIE has a statutory duty to modify Glenview Foods' connection, we would only order that that modification should be delayed if we were provided with clear evidence of undue discrimination (in particular noting that Glenview Foods has applied to the Utility Regulator for a determination and other applicants have not). We have not seen any such clear evidence.

### ***Conclusion***

- 11.25 Accordingly our determination on the second issue is that Glenview Foods is entitled to a modification to its connection on the basis of its connection application dated 12 September 2012 **(B5)** (as modified on 20 August 2014 **(B41)**), but with the limitation that the connection shall be configured so as to prevent Glenview Foods from exporting electricity onto NIE's distribution system (a Zero Export Arrangement).

- 11.26 It is not necessary for the purpose of this determination to consider whether or not Glenview Foods is also entitled to such a connection by virtue of Condition 30 of the Licence.
- 11.27 In its response to the Draft Determination, Glenview Foods requests that we should order a specific timescale within which such a modification must be made. On the information before us, we do not consider that we are able to order that the works are completed within a specific timescale. However, NIE should make a connection offer to Glenview Foods including terms which are capable of being accepted. We would expect those terms to oblige NIE to make the modification as soon as reasonably practicable. We see no reason why the modification could not be made within twelve months from the date of acceptance of the offer (at the latest).

## 12 Section Twelve - Concluding Observations

12.1 This Section Twelve is not part of our formal determination.

### *Requests for information*

12.2 We note that, in response to the Draft Determination (**B105**), Glenview Foods made a number of requests for information. The purpose of this process has been for the Utility Regulator to determine the complaint which has been made by Glenview Foods. Should Glenview Foods have further questions for NIE, these should be addressed to NIE. NIE should respond to such requests openly and in line with its statutory duties and licence obligations.

### *Potential breaches of statutory and/or licence obligations*

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

12.4 Similarly, in response to the Draft Determination, Glenview Foods has alleged that NIE's connection offer made on 12 March 2014 (**B17**) was not made in accordance with Condition 30 of the Licence. This submission does not relate to the Dispute and we have not considered it in detail.

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

### *NIE's processes*

12.6 In previous determinations made by the Utility Regulator in relation to connection applications, the Utility Regulator has commented on the transparency of NIE's processes. We consider that transparency has also been an issue in relation to the progression of Glenview Foods' application. In particular, we consider that NIE should give detailed consideration to the following:

- a) Providing to the applicant the technical studies carried out by NIE on its distribution system to determine the available capacity with any connection offer or refusal to make a connection offer (along with the methodologies it has used and the assumptions it has made).
- b) Ensuring that the detail provided along with any connection offer provides a detailed breakdown of associated costs, in line with the costs identified within the Statement of Charges. This breakdown should include activity, description, factor, unit and cost, to a level that will allow parties to cross reference the connection offer with the schedules within the Statement of Charges.

### ***The development of NIE's distribution system***

- 12.7 As part of its response to the Utility Regulator's initial request for information in relation to the Dispute (B75), we understand NIE to be saying that, without further funding:

*'...NIE could not proceed with similar low level investments to resolve future issues at other substations, including Ballycastle'.*

- 12.8 We note that, while funding issues may be relevant, NIE needs to consider the application of its statutory duties and licence obligations in each case.

- 12.9 NIE also made reference to the approach set out in the statement it made in relation to conditional offers (B48), noting (as set out in that statement) that:

*'the Utility Regulator agrees that the approach outlined above, which reflects the circumstances in which NIE is unable to make connection offers, represents the viable way forward at this stage'.*

- 12.10 The approach set out in NIE's statement was that, on withdrawing a conditional connection offer, where NIE could demonstrate that it was not under a duty to make a further (unconditional) connection offer, it would not do so. Our determination in relation to the Dispute is consistent with this approach.

- 12.11 However, we also note that the Utility Regulator is required to determine the Dispute which has arisen between the Parties. The Parties should not consider that general comments made by the Utility Regulator previously in any way fetter the discretion of



the Decision-Makers to make a determination in relation to the Dispute on the particular facts.

### ***Planning assumptions***

- 12.12 As part of its response to the Draft Determination, NIE has stated that it may be required to re-evaluate its planning assumptions as to the level of demand across its network, on the basis that there may be many more connections on the basis of a Zero Export Arrangement. Any changes made to these planning assumptions should be carried out in a transparent and open manner, allowing interested parties to comment on proposals for change.

### ***Onsite generation***

- 12.13 Finally, we note that our determination in relation to the Dispute is to the effect that Glenview Foods should be permitted to generate electricity using a wind turbine on its site, importing electricity from NIE's distribution system when required, but that NIE is not required to allow Glenview Foods to export electricity onto its distribution system.
- 12.14 While not determinative in relation to the Dispute, given the application of the relevant legislative provisions, we are mindful of the desirability (in accordance with UK and EU law and policy) of facilitating small scale onsite generation from renewable sources and of the reduction of demand of the import of electricity in favour of self-sustainability.
- 12.15 In particular, we note that our determination serves to facilitate new generation from renewable sources, promotes a system which is consumer orientated and allows for small scale production and facilitates energy efficiency.

### 13 Section Thirteen - The Order

#### Issue 1

- 13.1 Glenview Foods has effectively asked us to make an order under Article 26(1) of the Electricity Order (or alternatively under Condition 31(1) of the Licence) to the effect that Glenview Foods should receive a connection offer on the basis of its connection application dated 12 September 2012 **(B5)** and on the basis that it may export electricity generated from its wind turbine (and not used onsite) onto NIE's distribution system.
- 13.2 For the reasons given in Section Ten, we decline to make the order requested.

#### Issue 2

- 13.3 Glenview Foods has effectively asked us to make an order under Article 26(1) of the Electricity Order to the effect that Glenview Foods is entitled to a modification to its connection on the basis of its connection application dated 12 September 2012 **(B5)** (as modified on 20 August 2014 **(B41)**), but with the limitation that the connection shall be configured so as to prevent Glenview Foods from exporting electricity onto NIE's distribution system (a Zero Export Arrangement).
- 13.4 For the reasons given in Section Eleven, we agree to make the order requested.
- 13.5 We therefore order that NIE:
- a) makes a connection offer to Glenview Foods which offer:
    - (i) shall be in accordance with its connection application dated 12 September 2012 **(B5)** (as modified on 20 August 2014 **(B41)**), but with the limitation that the connection shall be configured so as to prevent Glenview Foods from exporting electricity onto NIE's distribution system;
    - (ii) shall otherwise include terms which are capable of being accepted by Glenview Foods, should it wish to accept; and
  - b) makes such a connection offer to Glenview Foods such that it is:

- (i) received by Glenview Foods no later than 21 working days from the date of this determination; and
- (ii) capable of being accepted by Glenview Foods, should it wish to accept, without further delay.

### **Costs**

- 13.6 The Procedure refers to the possibility of a costs order and therefore the Parties have been on notice to this effect. We also believe it unlikely that either of the Parties would be precluded by limited means from meeting any costs order that may be made.
- 13.7 Having had regard to the matters referred to in Article 26(8) of the Electricity Order, in this particular case we exercise our discretion not to make a costs order. However, this should not be regarded as setting any precedent as to the future.
- 13.8 The Utility Regulator expressly reserves the right to order the payment of costs in any other dispute and will consider each case on its own merits and circumstances.

**Tanya Hedley**  
**Richard Rodgers**

**Authorised on behalf of the Utility Regulator**