



**COMPLAINT TO THE UTILITY REGULATOR BY QUINN BUILDING
PRODUCTS LIMITED IN RELATION TO NIE PLC'S DECISION IN
RESPECT OF A REBATE OF CONNECTION CHARGES**

Determination

10 April 2009

CONTENTS

<u>Part</u>	<u>Page</u>
Section 1. Introduction	1
Section 2. The Parties	4
Section 3. The factual background to the dispute	6
Section 4. The applicable legal framework	34
Section 5. The Complaint procedure	40
Section 6. The views of the Quinn Group	43
Section 7. The views of NIE	46
Section 8. The issues falling to be determined	50
Section 9. Some conclusions of fact	52
Section 10. Determination in relation to Issue 1	56
Section 11. Determination in relation to Issue 2	60
Section 12. Concluding observations	62
Section 13. Order	65
Annex 1. External Legal Advice on Article 26 of the Electricity (Northern Ireland) Order 1992	67
Annex 2. External Legal Advice on Treatment of Connection Application as if it were a Series of Applications	74
Annex 3. External Legal Advice on Legitimate Expectation	88
Annex 4. Index of further documentation	102

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CHARGES**

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1 Section One – Introduction

- 1.1 The Northern Ireland Authority for Utility Regulation (the **Authority**) received, by way of a letter dated 15 December 2008, a formal complaint from Quinn Building Products Limited (**Quinn Building Products**) regarding a connection charging dispute between it and NIE plc (**NIE**) (the **Complaint**).
- 1.2 The dispute between Quinn Building Products and NIE (together, the **Parties**) relates to monies paid for the construction of a new 110kV line and upgrade of network connections at Derrylin, Co. Fermanagh.
- 1.3 The dispute falls to be determined by the Authority under Article 26 of the Electricity (Northern Ireland) Order 1992 (the **Electricity Order**), and in accordance with Article 23(5) of Directive 2003/54/EC (the **Directive**).
- 1.4 The Authority has considered the Complaint in accordance with its Dispute Resolution Procedure dated April 2007, which has been supplemented as appropriate for reasons of good governance and fair process.
- 1.5 The Board of the Authority has appointed us – Christopher Le Fevre (a Non-Executive Member of the Board) and Donald Henry (Director of Corporate Affairs) – jointly to determine the dispute. We do so as delegates of the Authority and on its behalf.
- 1.6 The Parties were informed of our appointment before we commenced our work in relation to the dispute, and they confirmed that they had no objection to it.
- 1.7 This document sets out our determination in relation to this dispute.
- 1.8 In 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 Complaint –

- (i) A Statement of Case (the **Statement**) prepared for us by a small team of skilled staff of the Authority. The Statement provides an overview of the background to the Complaint, the views of the Parties, and the issues that fall to be determined.
 - (ii) A number of maps provided as an appendix to the Statement.
 - (iii) Three volumes of documents (together, the **Bundle**) which accompanied the Statement and contained the papers listed in an appendix to the Statement. In broad terms, Volume A contains relevant legislation and background documents, Volume B contains contractual documents and relevant correspondence, and Volume C contains the Complaint and copies of all subsequent correspondence between the Parties and the Authority.
 - (iv) A Glossary of terms relevant to the Complaint.
 - (v) Three legal advices written by our external legal advisers, Wragge & Co LLP, and provided as Annexes 1 to 3 to this Determination.
- 1.9 The Parties have seen all of these documents and had the opportunity to comment on them. They also saw a copy of a draft determination produced by us and dated 27 March 2009.
- 1.10 Neither Party has suggested that the Statement contained any inaccuracies, that the maps were incorrect, or that the Bundle either failed to contain any relevant, or contained any irrelevant, documents. However, Quinn Building Products provided us, after the draft determination, with some further documents in the form of invoices. We have considered these.
- 1.11 Both Parties made written submissions to us both prior to and in response to the draft determination. An index to all of the submissions and other documents we have seen following the initial compilation of the Bundle has been prepared in the form of Volume D of the Bundle and is attached to this determination as Annex 4. We have fully considered all of the submissions made.
- 1.12 Finally, we had the benefit of hearing from the representatives of both Parties at the offices of the Authority on 20 March 2009, and of being able to ask them questions as to certain aspects of their submissions.

1.13 This determination adopts the following structure –

- (i) the Parties (at Section 2),
- (ii) the factual background to the dispute (at Section 3),
- (iii) the applicable legal framework (at Section 4),
- (iv) the complaint procedure (at Section 5),
- (v) the respective views of the Parties (at Sections 6 and 7),
- (vi) the issues falling to be determined (at Section 8),
- (vii) some conclusions of fact (at Section 9),
- (viii) our determination in relation to Issue 1 (at Section 10),
- (ix) our determination in relation to Issue 2 (at Section 11),
- (x) our concluding observations (at Section 12),
- (xi) our order (at Section 13).

1.14 Where we use cross-references (e.g. Volume A, Tab 1) these are to documents in the Bundle or to the documents made available to us after the Bundle was compiled (as now listed at Annex 4).

2 Section Two – The Parties

2.1 The following summary as to the status of the parties is predominantly derived from the Statement. Since no objection was taken to it by either Party, we take it to be accurate and adopt it for the purposes of this determination. However, we have also noted statements made to us at the hearing on 20 March 2009.

Quinn Building Products

- 2.2 Quinn Building Products is a member of the Quinn Group of companies (**the Quinn Group**). The Quinn Group is a privately owned group of companies headquartered in Derrylin, Co. Fermanagh. It is active across a diverse range of sectors including cement and concrete products, container glass, general and health insurance, radiators, plastics, hospitality and real estate.
- 2.3 At the hearing, it was emphasised to us that the Quinn Group is a significant operation, and constitutes the largest employer in Co. Fermanagh with a current workforce of over 600 people.
- 2.4 Of particular relevance to the Complaint are the following members of the Quinn Group –
- (i) Quinn Cement Limited (**Quinn Cement**), which produces a range of bulk and packaged cement products for the construction industry,
 - (ii) Quinn Glass Limited (**Quinn Glass**), which manufactures glass containers for the food and beverage industries, and
 - (iii) Mantlin Limited (**Mantlin**), which operates wind farms at Slieve Rushen and Snugborough.
- 2.5 Quinn Cement and Quinn Glass are both under the immediate ownership of Quinn Building Products. Quinn Building Products was formerly known as Quinn Manufacturing Limited (**Quinn Manufacturing**), a name which sometimes occurs in the papers.
- 2.6 Mantlin is under the immediate ownership of Quinn Windfarm Holding Limited.

2.7 A corporate structure chart provided by Quinn Building Products is included in the Bundle (Volume C, Tab 69). However, this structure chart does not provide details of all companies within the Quinn Group, or information as to their ownership and precise relationship to each other.

NIE

2.8 NIE is a subsidiary of the Viridian Group Ltd. 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.

2.9 NIE is licensed in relation to the former activity, and the same licence regulates the latter activity (although it is not a licensable activity in its own right) (Volume A, Tab 5). At the time at which it contracted with Quinn Building Products in respect of the disputed connections, NIE was regulated by a different form of licence (Volume A, Tab 4).

2.10 NIE is the only party in Northern Ireland entitled to offer terms to connect, or to modify an existing connection, to the electricity distribution system.

2.11 For completeness, we note that SONI Ltd (**SONI**) is the operator of the electricity transmission system in Northern Ireland.

2.12 SONI is licensed in relation to this activity (Volume A, Tab 9), and is the only party in Northern Ireland entitled to offer terms to connect, or modify an existing connection, to the electricity transmission system.