



Consultation on minded-to decision on request for changes to Condition 25(1) of SONI TSO Licence and related SONI connection and use of system documents: Cross-Border Framework for Connections

5 December 2023



About the Utility Regulator

Utility Regulator is the independent non-ministerial government department responsible for regulating Northern Ireland's electricity, gas, water and sewerage industries, to promote the short and long-term interests of consumers.

We are not a policy-making department of government, but we make sure that the energy and water utility industries in Northern Ireland are regulated and developed within ministerial policy as set out in our statutory duties.

We are governed by a Board of Directors and are accountable to the Northern Ireland Assembly through financial and annual reporting obligations.

We are based at Queens House in the centre of Belfast. The Chief Executive leads a management team of directors representing each of the key functional areas in the organisation: Corporate Affairs, Markets and Networks. The staff team includes economists, engineers, accountants, utility specialists, legal advisors and administration professionals.



Our mission

To protect the short- and long-term interests of consumers of electricity, gas and water.



Our vision

To ensure value and sustainability in energy and water.



Our values

- Be a best practice regulator: transparent, consistent, proportionate, accountable and targeted.
- Be professional – listening, explaining and acting with integrity.
- Be a collaborative, co-operative and learning team.
- Be motivated and empowered to make a difference.



Abstract

This document sets out and seeks representations on a minded-to decision on a request for changes to (i) Condition 25 of the SONI TSO licence and (ii) various standard connection and use of system documents used by SONI. The changes are requested to facilitate a connection to the Northern Ireland transmission system (**NITS**) in respect of generation taking place in the Republic of Ireland. In that sense the request involves discussion of what has been called the “cross-border framework” for connections, as reflected in Condition 27 of the SONI TSO licence. Mention is made of a potential Single Electricity Market (**SEM**)

Audience

We expect that those particularly interested in this document will (apart from the entity requesting the changes) include: DfE; SONI; NIE Networks Limited (**NIE**); EirGrid plc (**EirGrid**); the Commission for the Regulation of Utilities (**CRU**); and those with an interest in generator connections to the NITS. We also invite representations from other interested stakeholders and the public.

Consumer impact

The minded-to decision is not final and so has no definable consumer impact in and of itself. However, it is a (minded-to) decision informed by reference to our principal objective to act in the interests of consumers. Representations on any potential consumer benefit or disbenefit arising out of the changes requested are of interest.



PURPOSE OF THIS DOCUMENT

1. This document sets out and seeks representations on a minded-to decision on a request (“**the Request**”) made by Aught Windfarm Limited (**AWFL**) that the Utility Regulator¹ give effect to a “*principle proposed*” by immediately:

A. Modifying Condition 25(1) (**C25(1)**) of the SONI TSO Licence² by the introduction of the additional text (**the C25(1) Amendment Text**) shown bolded and underlined below

“Offer of terms for use of the All-Island Transmission Networks

1 On application by any eligible person, the Licensee shall (subject to paragraph 6) offer to enter into a Use of System Agreement:

(a) to accept into the All-Island Transmission Networks at such entry point or points on the transmission system, and in such quantities, as may be specified in the application, electricity to be provided by or on behalf of such person; and

(b) to deliver such quantities of electricity as are referred to in sub-paragraph (a) above (less any transmission losses on the All-Island Transmission Networks) to such exit point or points on the transmission system and to such person or persons as may be specified in the application; and

(c) specifying the use of system charges to be paid by the person seeking use of the All-Island Transmission Networks in respect of generation or supply in Northern Ireland, such charges (unless manifestly inappropriate) to be referable to the statement prepared in accordance with paragraph 1 (or, as the case may be, paragraph 7) of Condition 30 or any revision of such statement; and

(d) containing such further terms as are or may be appropriate for the purposes of the agreement.

In this paragraph references to “eligible person” shall be construed as references to

***(a)** persons licensed under Article 10 of the Order (or exempt from the requirement to be so licensed under Article 9 of the Order) or who have*

¹ In this document we use the words “us” “our” “we” “Utility Regulator” and “Authority” in each case to refer to *the Northern Ireland Authority for Utility Regulation*: see Article 3 of the Energy (NI) Order 2003 (**the Energy Order**).

² Granted to SONI on 3 July 2007 by the Department for the Economy (**DfE**) (then titled *Department for Enterprise Trade and Investment*) pursuant to Art 10(1)(b) of the Electricity (NI) Order 1992 (**the Electricity Order**) and published here: [2022-11-18 SONI TSO Consolidated.pdf \(uregni.gov.uk\)](#).



applied for a licence under Article 10 and whose application has not been withdrawn or rejected (including, for the avoidance of doubt, the Power Procurement Business in its capacity as such)

or

(b) a Republic of Ireland Generator.”

B. “Ensure” - should³ part “A” of the Request (above) be granted and modification to C25(1) proceed – that:

(a) the following suite of documents (**the SONI Standard Connection and Use Documents**) is amended to “align” with the modification made:

(i) the standard provisions of SONI’s offer of terms for a generator connection agreement under Condition 25(2) (**C25(2)**) of the SONI TSO Licence (**the Standard G-Connection Offer Terms**); with the necessary amendment to this document being submitted to involve the introduction of the following underlined and bolded text (**the Standard G-Connection Offer Terms Amendment Text**)

*“Should [AWFL] accept this Offer, then prior to the WFPS⁴ connecting and energising at the Connection Point [AWFL] shall provide evidence that it is authorised to generate electricity by virtue of a licence granted under Article 10(1)(a) of the Electricity (Northern Ireland) Order 1992 (the “Order”) **or section 14(1)(a) of the Electricity Regulation Act 1999** (or exempt from the requirement to be so licensed under such provisions) to the Connection Point’.*

(ii) the standard provisions of SONI’s published G-TUoS Agreement (**the Standard G-TUoS Agreement Terms**)⁵; with the necessary amendment to this document being submitted to involve amendment to the “Condition Precedent” at clause 2.1.⁶

(iii) the standard provisions of SONI’s published generator type (formal) Connection Agreement (**the Standard G-(formal) Connection**

³ AWFL confirms that the Amendment request part of the Request need only be considered should a positive response be made to the C25(1) request part of the Request.

⁴ An abbreviation for a windfarm power station.

⁵[Form-of-Standard-Terms-for-Transmission-Connected-Generator-TUoS-Agreement.pdf \(soni.ltd.uk\)](https://www.soni.ltd.uk/Form-of-Standard-Terms-for-Transmission-Connected-Generator-TUoS-Agreement.pdf)

⁶ AWFL has not volunteered the “necessary” amendment to the stated Condition Precedent.



Agreement Terms)⁷ entry into which is a “condition” of the Standard G-Connection Offer Terms; with the necessary amendment to this document being submitted to involve amendment to the “Condition Precedent” at clause 3.2.⁸

And

(b) the connection offer (**the SONI AWFL Connection Offer**) - made by SONI (under C25(2) of the SONI TSO Licence) to and accepted by AWFL for connection to the Northern Ireland (**NI**) transmission system (**NITS**) in relation to AWFL’s windfarm (**the AWFL windfarm**) at Aught, County Donegal, Ireland (**RoI**) - is amended to accord with/reflect the Standard G-Connection Offer Terms Amendment Text to “*facilitate the connection of the [AWFL windfarm]*”.

2. Part “A” and “B” of the Request shall be called the **C25(1) request** and the **Amendment request** respectively.
3. AWFL describes the “***principle proposed***” – as:

“ . . . an entity must be properly licensed (or exempt) in either jurisdiction of the SEM pursuant to the applicable laws”.
4. The reference to the “SEM” is a reference to the Single Electricity Market on the Island of Ireland. The “entity” referenced is an entity *generating electricity* and the reference to “*either jurisdiction*” of the SEM is a reference to either NI or RoI. The basic elements of the SEM are described here: [How the SEM works | SEM Committee](#).
5. The references in C25(1) (quoted above) to the “Order” are references to the Electricity Order.
6. The Electricity Regulation Act 1999 (**the ERA**) is RoI legislation providing for the regulation of activities concerning electricity.
7. A “*Republic of Ireland Generator*” is (as AWFL notes) defined (relevantly) as follows in the SONI TSO Licence:

⁷ [Drumkee CA version 2 draft \(soni.ltd.uk\)](#)

⁸ AWFL has not volunteered the “necessary” amendment to the stated Condition Precedent.



“Republic of Ireland Generator” means a person licensed to generate electricity under Section 14(1)(a) of the [ERA] . . .”⁹

8. AWFL is licensed to generate electricity – in RoI - under section 14(1)(a) of the ERA and is, accordingly, a *Republic of Ireland Generator* (as defined in the SONI TSO Licence).
9. AWFL does not hold a licence to generate electricity under Article 10 of the Electricity Order (**an Article 10 Generating Licence**). Nor does it hold an exemption from the requirement to be so licensed under Art 9 of the Electricity Order (**an Article 9 Exemption**).¹⁰ AWFL is, accordingly, absent any applicable waiver/variation from SONI which SONI has refused to offer¹¹, unable to meet the conditions set out in clauses 9.29 and 9.30 of the SONI AWFL Connection Offer.
10. AWFL describes this situation as a *“barrier to access to the SEM”* and contends that the Utility Regulator should take the steps outlined in the Request to (immediately) *“rectify”* that barrier in the *“ultimate interests of [NI] customers”*.
11. AWFL does not (now¹²) contend that the Utility Regulator is required to make the changes included in the Request in accordance with its duties under the Electricity (Single Wholesale Market) (NI) Order 2007 (**the SEM Order**).
12. Explanation as to how we have arrived at our description of the Request (above) is set out later in this document.

Representations

13. We emphasise that we are only at the *minged-to* decision stage of our decision making on the Request. We are publishing this document to seek out views on our minded-to decision from persons interested. We are especially interested (without limiting the general scope of invited responses) in learning whether respondents consider that there are any other wider impacts/considerations not mentioned in this document that argue either for or against the Request.
14. We expect that those particularly interested in this published minded-to document will (apart from AWFL itself) include: DfE; SONI; NIE Networks Limited (**NIE**);

⁹ See the definition included in paragraph 8 of Condition 22 of the SONI TSO licence.

¹⁰ Although, as will be explained, the decision of DfE to refuse an Article 9 Exemption to AWFL is being challenged in judicial review proceedings [JR1].

¹¹ See the letter from SONI to AWFL dated 5 August 2021 (**the 5 August 2021 SONI AWFL Letter**) set out in later parts of this document.

¹² It did do so originally, but this position was subsequently abandoned. The concluding part of this document will explain why the Request might – despite AWFL’s abandonment of the “SEM duties” part of its Request - end up being a matter for the determination of the SEM Committee (**SEM-C**) of the UR established under the SEM Order.



EirGrid plc (**EirGrid**)¹³; the Commission for the Regulation of Utilities (**CRU**)¹⁴; and those with an interest in generator connections to the NITS. We also invite representations from other interested stakeholders and the public.

15. Persons wishing to make representations can do so by sending them by close 23 January 2024 to;

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The Utility Regulator
Queens House
14 Queen Street
Belfast
BT1 6ED

Email: Jody.OBoyle@uregni.gov.uk

Tel: 028 9031 6334

Please also CC in Roisin.McLaughlin@uregni.gov.uk and
[Electricity Networks Responses@uregni.gov.uk](mailto:Electricity_Networks_Responses@uregni.gov.uk)

16. All responses to this (minded-to decision) document will be considered before moving to the next phase of our decision-making process on the Request.
17. Our intention is to publish a future decision on the Request alongside (non-confidential) responses received to this document. Any claim for confidentiality should be set out and explained in any response with the confidential part clearly identified (and separately provided if possible). Respondents are advised that a claim for confidentiality may not prevent the response from being disclosed pursuant to our legal duties under information access law (see: the Freedom of Information Act 2000; the Data Protection Act 1998; and the Environmental Information Regulations 2004).
18. Decision on the Request is required by the terms of a consent order dated 28 February 2022 (**the Consent Order**) in resolution of judicial review proceedings (**JR2**) brought against the Utility Regulator by AWFL on 21 October 2021 in respect of our first response dated 20 August 2021 (**the 20 August 2021 UR AWFL Letter**) to the Request (as then formulated) in a letter from AWFL to the UR dated 9 July 2021 (**the 9 July 2021 AWFL UR Letter**). The Consent Order obliges the Utility Regulator to make a “*fresh decision*” on the matters raised in the 9 July 2021 AWFL UR Letter.
19. The “*Introduction*” section of this document explains how AWFL developed/revised the Request (and the matters raised) as formulated in the 9 July 2021 AWFL UR Letter in its letter to the Utility Regulator dated 18 May 2022 (**the 18 May 2022 AWFL UR Letter**) and how we treat the (developed) Request in the context of Article 14 (**Art. 14**) of the Electricity Order. To confirm, the developed Request is that described at the beginning of this section of the document (above). The 18 May 2022 AWFL UR Letter is at Appendix 2.

¹³ As the licensed TSO in Ireland.

¹⁴ The Utility Regulator's counterpart in RoI as established by the ERA.



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1. INTRODUCTION

1. This part of the document explains:

- (i) background events leading up to the 18 May 2022 AWFL UR Letter.
- (ii) the 18 May 2022 AWFL UR Letter.
- (iii) how we interpret the Request (as set out in the foregoing “Purpose” section).
- (iv) the effect of Art 14 on how we proceed.

(i) **Background events leading up to the 18 May 2022 AWFL UR Letter**

2. AWFL is a company incorporated under the laws of RoI with a registration number 499239. It is developing the AWFL windfarm with a maximum (authorised) export capacity¹⁵ (**MEC**) of 32.2 MW.
3. AWFL is part owned by a Mr [REDACTED]. Mr [REDACTED] also owns a company called [REDACTED] (**WFL**). WFL is, like AWFL, a company registered in RoI. It is (or was) developing a windfarm (**the WFL windfarm**) with a MEC of 5MW in an area (in RoI) close to the site of the AWFL windfarm.
4. It appears that Mr [REDACTED] is an experienced developer of windfarm projects in RoI.¹⁶
5. AWFL’s overall project (**the Project**) envisages a link between a substation (**the AWFL windfarm substation**) - located within the site of the (planned) AWFL windfarm - and the planned connection point (**Connection Point**) to the NITS in a (planned) high voltage (**HV**) (i.e., transmission¹⁷ rated) substation compound (**the NI substation**) sited about 20 metres to the NI side of the RoI/NI border¹⁸ just north of 262 Culmore Road, L/Derry.
6. The Connection Point is the point at which AWFL’s plant and equipment joins or “connects” to the NITS operated by SONI (under the SONI TSO Licence) and

¹⁵ The MEC is the *maximum* amount of electrical power that can be generated by the ensemble of wind turbine generating units located at and within the AWFL windfarm presently authorised under a relevant planning permission (2013). The same limitation is applied under the authorisation to construct the AWFL windfarm “generating station” granted by the CRU.

¹⁶ See the presentation provided to the Utility Regulator by AWFL on 28 February 2020.

¹⁷ Transmission voltage is voltage at or above a level of 110 kV (see the definition section in Article 3 of the Electricity Order)

¹⁸ It follows that *all* the (HV) NI substation will be located within NI.



owned by NIE Networks Limited (**NIE**) (under licence¹⁹ (to participate in transmission) granted to NIE under Art 10 of the Electricity Order).

7. The “link” between the AWFL windfarm substation and the Connection Point is to be established by means of a HV (i.e., transmission rated) under-ground cable (**UGC**).
8. The Project - considered unique²⁰ in historical terms - is thus comprised of
 - (a) the AWFL windfarm containing the AWFL windfarm substation
 - (b) the NI substation (housing the Connection Point)
 - (c) the HV (transmission) trans-border assets (**the HVTBA**) making up the link between the AWFL windfarm substation and the Connection Point.
9. It follows that that part of the HVTBA (**the NI-HVTBA**) *located in NI* will be made up of the NI substation and the section of UGC that runs from the RoI/NI border into the NI substation (in which the Connection Point is to be housed). We shall call that (other) part of the HVTBA planned to be in RoI the **RoI-HVTBA**.
10. Utility Regulator staff met (virtually) with representatives of AWFL on 28 February 2020. AWFL presented an overview of the Project and asked initial questions about associated licensing requirements.
11. We wrote to AWFL on 30 April 2020 (**the 30 April 2020 UR AWFL Letter**) referring to our meeting of 28 February 2020 and noting that we were aware that AWFL was now in receipt of the SONI AWFL Connection Offer (dated 3 March 2020). It was confirmed that the Utility Regulator does not offer specific advice to commercial entities as to potential licensing requirements for planned projects. To be helpful, AWFL was, however, signposted to:
 - (a) Article 10 of the Electricity Order with specific mentions of the activity of generation and the participation in transmission.
 - (b) The potential requirement of certification (Art 10A -10L of the Electricity Order and the procedure in Regulation (EC) 714/2009 being referenced) and the relationship with the proposed activity of generation.
 - (c) The potential for enforcement action by the Utility Regulator in circumstances connected with AWFL’s proposed activities should a certain view be taken about AWFL participating in transmission.
12. Specifically, the 30 April 2020 UR AWFL Letter stated:

“Aught Wind Farm and SONI will no doubt wish to consider the general regulatory framework if and as the [AWFL] proposal proceeds, to include any future offer of

¹⁹ [NIE Networks Transmission Licence - effective 24 05 2023.pdf \(uregni.gov.uk\)](#)

²⁰ Reference will be made later in this document to the ROI located windfarm generating station at *Snugborough* but the electricity from this windfarm is exported onto the NI distribution system.



terms to use the NITS, rather than terms to simply establish a requisite connection to the NITS. During the February call we referred to Condition 25 of SONI's licence and recommended that you consider this.

...

The [AWFL] proposal is, to our knowledge, unprecedented within the NITS, and, as such, clearly not without its particular complexities. Accordingly, it is expected that [AWFL] will want to engage (if it has not already done so) specific expert consultancy/legal advice upon which it can rely in deciding (a) whether to proceed with the proposal, and, if so, (b) how best to best ensure that the proposal (if and as it proceeds) remains in full compliance with all relevant legal/regulatory requirements; both in NI and [RoI]. Plainly, it is for [AWFL] to satisfy all relevant legal/regulatory obligations arising from the proposal (in both NI and [RoI]).”

(underlining now added).

13. On 29 May 2020 AWFL accepted²¹ the SONI AWFL Connection Offer (dated 3 March 2020) in response to AWFL's application for a C25(2) offer of terms for a connection agreement SONI deemed valid on 4 September 2019. AWFL's C25(2) application for connection of the Project, and the responding SONI AWFL Connection Offer, each specified the connection of the Project at the Connection Point to the NITS.
14. The MEC for *export of electricity through the Connection Point* provided for in the SONI AWFL Connection Offer is 37.2 MW which is 5MW greater than the MEC of the ensemble of wind turbine generators (presently) authorised to be situate at and within the AWFL windfarm. We shall return to this issue later in this document.
15. The “LCTA²² Connection Arrangement” designed by SONI (in accordance with the Transmission System Security and Planning Standards (TSSPS)²³) for connection of the Project to the NITS involved connection works (**the SONI Connection Works**) between the Connection Point and the existing Coolkeeragh 110kV substation (**the Coolkeeragh substation**). The SONI Connection Works include a horizontally directionally drilled (**HDD**) cable *under* Lough Foyle and sections of UGC between the Connection Point and the Coolkeeragh substation. It is understood that the HDD cable element of the SONI Connection Works is unprecedented.
16. Clause 2.2 of the SONI AWFL Connection Offer referred to a requirement for AWFL to have relevant planning consents in place for the Project as a condition of

²¹ This is the date upon which SONI determines valid acceptance.

²² Lowest cost technically acceptable.

²³ [Regulatory Information \(soni.ltd.uk\)](http://soni.ltd.uk): Established in compliance with Condition 20 of the SONI TSO Licence.



accepting the SONI AWFL Connection Offer. Clause 2.3 notes that the AWFL WFPS Project has RoI planning consents in place.²⁴

17. Clause 3.4 of the SONI AWFL Connection Offer stated that:

“3.4 The WFPS is located in the Republic of Ireland, however the Connection Point is remote from the WFPS and will be the 110 kV busbar clamps on [AWFL]’s side of the TO’s²⁵ 110 kV disconnector at the connection substation site located north of 262 Culmore Road, Londonderry in Northern Ireland.”

18. Clause 4 of the SONI AWFL Connection Offer provides for SONI to conduct or arrange Pre-Construction Works (**SONI Pre-Construction Works**) to include:

- “
- Review of AWFL’s final design and site layout;
 - Route selection and cable design;
 - Environmental Impact Assessment or environmental report (if required);
 - Planning application and planning approval (if required);
 - Securing wayleaves and cable easement options (where necessary); and
 - Project management (including preparation for, and handover to the TO for, construction).”

19. Clause 6 of the SONI AWFL Connection Offer includes provision for **SONI Construction Works** to include Grid Code compliance testing.

20. Clause 9 of the SONI AWFL Connection Offer is (relevantly) as follows:

“9. Conditions Applicable to this Offer

“9.2 . . .

All transmission connected Generators being required to enter into a formal Connection Agreement with SONI for connection to the Transmission System. . .

[It is noted that AWFL cannot meet this requirement at present due to the Condition Precedent clause 3.2 of the Standard G - (formal) Connection Agreement Terms which SONI declines to vary for AWFL].

Should [AWFL] accept this Offer, SONI shall prepare a Connection Agreement and issue this to [AWFL]. This must be signed by both parties prior to the connection of the WFPS to the Transmission System at the Connection Point and prior to the issuing of any temporary compliance certificate to facilitate the Grid Code testing of the WFPS. [AWFL] shall provide any assistance or information to SONI as may be required to prepare the Connection Agreement.

²⁴ Footnote number 14 of clause 8.10 confirms that “as per Clause 2 of this Offer SONI note that the WFPS project for which this Offer is being made has the relevant consents in place.”

²⁵ NIE is the owner (or “TO”) of the designated NI transmission system.



[It is noted that SONI asserts that even were it *to sign* the Standard G - (formal) Connection Agreement Terms it would be of no practical benefit for AWFL as it would still be faced with the terms of clause 3.2 of the Standard G - (formal) Connection Agreement Terms].

“9.8 From the date that the WFPS connects to the Transmission System, SONI will issue [AWFL] with a temporary compliance certificate in accordance with Grid Code requirements to facilitate Grid Code compliance testing and the monitoring at the Connection Point of the WFPS in line with the procedures laid out in Grid Code and/or Wind Farm Power Station Settings Schedule. [AWFL] shall seek agreement with SONI in advance of connection as to what Grid Code compliance testing will need to take place and agree a programme for this. This must be agreed with SONI at least six (6) weeks prior to the WFPS project connecting and energising at the Connection Point.”

“9.12 SONI requires [AWFL] to submit dynamic, harmonic, election-magnetic transient and short circuit models for the proposed WFPS project as per Grid Code. These models should be submitted to SONI as soon as possible, but in any event no later than six (6) months prior to the connection and energisation of WFPS. The connection and energisation of WFPS shall be subject to the satisfactory outcome of dynamic studies (as appropriate), which must indicate the WFPS’s compliance with relevant sections of the Grid Code applicable to it.”

“9.28 If after twelve (12) months from the date that the WFPS is first connected to the Transmission System and energised at the Connection Point, [AWFL] is unable to utilise the full MEC (37.2 MW) as set out under this Offer, then SONI reserves the right to reduce the MEC for the WFPS under this Offer or any Connection Variation Offer or the Connection Agreement to the maximum MEC values as proven that the WFPS is capable of exporting via Grid Code compliance testing”

“9.29 Should [AWFL] accept this Offer, then prior to the WFPS connecting and energising at the Connection Point [AWFL] shall provide evidence that it is authorised to generate electricity by virtue of a licence granted under Article 10(1)(a) of the [Electricity Order] (or exempt from the requirement to be so licensed under Article 9 of the [Electricity Order] to the Connection Point.”

[This is the provision that AWFL asks to be amended by the introduction of the Standard G-Connection Offer Terms Amendment Text].

“9.30 Should [AWFL] accept this Offer, then prior to WFPS connecting and energising at the Connection Point and prior to the issuing of any temporary compliance certificate under the Grid Code to facilitate the Grid Code compliance testing of WFPS, [AWFL] shall apply for and enter into an agreement with SONI for the use of the Transmission System ([AWFL] Transmission Use of System Agreement (“GTUoSA”)) or enter into an amended and restated GTUoSA as may be the case if an existing GTUoSA is already in place.

To apply for a GTUoSA or to amend and restate an existing GTUoSA, [AWFL] should submit to SONI a completed relevant application form. The application form



is available on request or can be downloaded from the SONI website at www.soni.ltd.uk.”

[It is noted that AWFL is unable to meet this requirement at present because of the terms of clause 2.1. of the Standard G-TUoS Agreement Terms (which SONI declines to vary).]

21. Condition 11 is titled “**11. Grid Code and EU Network Code Compliance**” and includes the following:

“11.1 AWFL must comply with the EU Network Codes [[Network Codes Home \(entsoe.eu\)](http://entsoe.eu)] where relevant and the SONI Grid Code (including for the avoidance of doubt the Wind Farm Power Station Settings Schedule contained therein) insofar as it is applicable to it, subject to any derogation(s) granted by the Utility Regulator from the provisions thereof. The Grid Code is available to download on the SONI website at www.soni.ltd.uk.

11.2 [AWFL] agrees that it will not apply to the Utility Regulator for any derogation from the provisions of the Grid Code without first furnishing a copy of such application to SONI.

11.3 From the date that the WFPS is due to be connected and energised, SONI will issue [AWFL] with a temporary compliance certificate under Grid Code in order to facilitate Grid Code compliance testing and the monitoring at the Connection Point of the WFPS in line with the procedures laid out in the Grid Code and the Wind Farm Power Station Settings Schedule

11.4 As per the procedures in the Wind Farm Power Station Settings Schedule, the temporary compliance certificate will specify MEC cap at the WFPS which will remain in place until the controllability of the full 37.2 MW can be confirmed to SONI. On satisfactory completion of this controllability test, SONI will then issue [AWFL] with an operational certificate that authorises the full 37.2 MW MEC to be exported and any MEC cap to be removed.”

22. Clause 12 of the SONI AWFL Connection Offer is titled “**12. Access to the All-Island Transmission System**” and contains this:

“12.1 Information on the arrangements whereby SONI allocate transmission Firm Access Quantity (“**FAQ**”) to connecting Generators is published on the SONI website at www.soni.ltd.uk.

12.2 For [AWFL] to be assessed for FAQ allocation and the Associated Transmission Reinforcements (“**ATRs**”) identified that are required to provide firm access, [AWFL] is required to have in place the relevant consents for the project as specified in the ‘*Allocation of Transmission FAQ in Northern Ireland & ITC Methodology to determine FAQs Decision Paper*’ [[Generator-Connection-Process-Decision-Paper-July-2013.pdf \(soni.ltd.uk\)](#)]

As per Clause 2.3 of this offer, SONI notes that the WFPS project for which this Offer is being made has received Planning Permission (Planning Ref: 11/70191



and 14/51149). SONI shall provide details of the WFPS FAQ allocation and the ATRs that are required to provide firm access under separate cover as soon as possible after the issuing of this Offer.

12.3 For the avoidance of doubt, the 37.2 MW MEC at the WFPS will be assessed for FAQ based on the later of the connection application effective date of 4 September 2019 or the date relevant consents (Planning Permission) is granted.”

23. Clause 13 of the SONI AWFL Connection Offer is titled “**13. Trading & Settlement Code and Capacity Market Code**” and contains this:

“13.1 [AWFL] shall undertake to be bound by and to comply with the Trading and Settlement Code to the extent that the same is applicable to it. Further information on the Trading and Settlement Code is available on the Single Electricity Market Operator (“**SEMO**”)²⁶ .

24. Clause 15 of the SONI AWFL Connection Offer is titled “**15. Acceptance / Validity of this Offer**” and provides:

“15.1 To accept the terms and conditions as set out within this Offer, SONI would request that [AWFL] complete the Acceptance Form in Appendix 1 of this Offer and return it marked for the attention of the Connections and Contracts Manager at SONI’s registered office address.

15.2 The conditions precedents for Offer acceptance are that:

...

- Evidence that relevant consent(s) (including but not limited to Planning Permission in the case of an onshore wind farm) has been granted

...

15.4 . . .The conditions precedent must have been satisfied (unless otherwise agreed by SONI in writing, acting in its sole discretion) by this date and the Offer signed as set out above.

25. Clause 16 of the SONI AWFL Connection Offer provides for disputes.

“16. Determination of Disputes associated with this Offer

16.1 As detailed in Conditions 25 and 26 of SONI’s Transmission Licence, if AWFL is not satisfied with the terms and conditions as contained within this Offer, and agreement with SONI cannot be reached within the period that this Offer remains open for acceptance, You are entitled to raise a formal dispute with the Utility Regulator to request that the Utility Regulator issue a determination on any areas of disagreement regarding the terms or conditions of this Offer. Should You wish

²⁶ <http://www.sem-o.com/rules-and-modifications/balancing-market-modifications/market-rules/>”



to do this, AWFL can refer the matter to the Utility Regulator, Queens House, 14 Queen Street, Belfast BT1 6ED.”

26. SONI’s Standard G - (formal) Connection Agreement Terms (published on the SONI website²⁷) – understood to reflect what the SONI AWFL Connection Offer calls the “*formal Connection Agreement*” – starts off with a declaration that:

“WHEREAS:

A. SONI is the holder of the TSO Licence.

B. [The Generator]²⁸ is the holder of a Generation Licence under the [Electricity Order].

C. Generator’s Facility, as set out in Schedule 1, is at the date of this Agreement connected to the NI System at the Connection Point and SONI has agreed that it should remain so connected upon the terms of this Agreement.

(underlining added).

27. The definitions section includes this:

“Exemption Order” means the Electricity (Class Exemptions from the Requirement for a Licence) Order (Northern Ireland) [2013]

“Generation Licence” the generation licence held by the Generator under the [Electricity Order]

“Transmission System” has the meaning given to “transmission system” in the TSO Licence;

“Use of System” the use of the Transmission System for the transport of electricity provided by or for SONI or any other person;

“Use of System Agreement” an agreement between SONI and the Generator in respect of Generator’s Use of System;

“Use of System Charges” charges from time to time made or levied, or to be made or levied by SONI for Use of System in accordance with Condition 30 of the TSO Licence

28. Clause 3 of the Standard G - (formal) Connection Agreement Terms provides:

“3 CONDITIONS PRECEDENT

3.1 a Use of System Agreement and Connection Offer, having been agreed and entered into;

²⁷ [Regulatory Information \(soni.ltd.uk\)](http://www.soni.ltd.uk)

²⁸ The counterparty to the formal Connection Agreement.



3.2 Generator having a Generation Licence or being exempt from holding a Generation Licence under the Exemption Order throughout the term of this Agreement;

[It will be noted that SONI has declined to vary this term].

3.3 Generator having complied with any other obligations which are required to be satisfied prior to Connection as set out in the Connection Offer

...”

(underlining added)

29. The Standard G-TUoS Agreement Terms contains the following provisions:

“WHEREAS

(A) The User and SONI are parties to a connection agreement (the “**Connection Agreement**”) dealing with the connection of the User’s Connection Plant and Apparatus (which has the meaning given to the “Generator’s Connection Plant and Apparatus” in the Connection Agreement) to the Transmission System.

(B) The point at which the User’s Connection Plant and Apparatus is connected to the Transmission System is more particularly described in Schedule 1 (and is hereinafter referred to as “**Connection Point**”).

(C) The User is using the All-Island Transmission Networks and accordingly has applied to SONI to use the All-Island Transmission Networks on the terms of this Agreement.

... .

“2. CONDITIONS PRECEDENT

The obligation of SONI to ensure the transportation of energy from the Commencement Date on the All-Island Transmission Networks from the Connection Point is in each case subject to:

2.1 the User being authorised to generate electricity by virtue of a licence granted under Article 10(1)(a) of the [Electricity Order] (or exempt from the requirement to be so licensed under Article 9 of the [Electricity Order] to the Connection Point;

[It will be noted, again, that SONI has declined to vary this term for AWFL].

2.2 there being a subsisting Connection Agreement between the User and SONI in respect of the Connection Point;

2.3 the User being a party to the Trading and Settlement Code and remaining a party for the duration of this Agreement (or exempt from the requirement to be a party to the Trading and Settlement Code)

...”



(bolding in original but underlining added)

30. SONI's published²⁹ template application form for entry into a (C25(1)) G-TUoS Agreement states in an introductory part that an application for a G-TUoS Agreement:

"must be from an **Eligible Person** and must contain all information reasonably required by SONI in order to formulate the terms of the offer."

(our underlining)

31. Section 2 of the application form for a G-TUoS agreement asks the applicant to confirm:

"2. . . . that we are an Eligible Person and therefore are entitled to apply for an Offer of terms for use of the All-Island Transmission Networks."

(underlining added).

32. The application form also asks (underlining added):

<p>Is applicant an Eligible Person <u>and entitled to apply for</u> an Offer of terms for use of the All-Island Transmission Networks?</p>	<p>Yes / No * (If 'Yes', please provide <u>evidence of the license granted under Article 10 of the [Electricity Order] or evidence that the applicant has applied for a licence under Article 10 and that this application has not been withdrawn or rejected. If claiming an exemption from the requirement to be so licensed under Article 9 of the [Electricity Order] please advise that this is the case, and for information purposes only, the reasons for the exemption)</u></p>
--	--

33. The end of the application form includes the following definition of "*Eligible Person*":

Eligible Person Means persons licensed under Article 10 of the [Electricity Order] (or exempt from the requirement to be so licensed under Article 9 of the [Electricity Order] or who have applied for a licence under Article 10 and whose application has not been withdrawn or rejected (including, for the avoidance of doubt, the Power Procurement Business in its capacity as such).

(Underlining added)

²⁹ [Demand Customer \(soni.ltd.uk\)](http://soni.ltd.uk)



34. The introductory part of the application form also states:

“The following categories of persons should apply using this form for an offer of terms for a Transmission Use of System Agreement:

- a) Generators seeking a new or modified connection to the [NITS] and
- b) Generators with a Maximum Export Capacity of 5MW* [Footnote :2 Note that the threshold for Transmission Use of System (TUoS) charging is in accordance with SEM-11-078 (Generator Transmission Use of System Charging)].

This Application Form sets out the information which must be submitted in order for SONI to prepare and offer terms to enter into a Transmission Use of System agreement. The Transmission Use of System Agreement will specify:

- a) the quantities of electricity which may be provided by such Eligible Person at such entry point or points on the Transmission System;
- b) the Use of System charges to be paid by the person seeking use of the All-island Transmission Networks in respect of generation in Northern Ireland; and
- c) such further terms as are or may be appropriate for the purposes of the agreement.”

(underlining added)

35. The word “*Generator*” is defined in the application form as

Generator A person who generates electricity under a licence or exemption under the [Electricity Order] and who is subject to the Grid Code³⁰ either by virtue of a licence or exemption³¹ or pursuant to any agreement with the TSO or otherwise.

(underlining added).

36. SONI publishes³² a *SONI Connections Policy* and accompanying *Explanatory Note*. Together these documents provide guidance on the processes followed by SONI when it receives a C25(2) type application for a connection (demand³³ or generator type) to the NITS. The current (2021) version of the document contains the following:

³⁰ The Grid Code and information on it can be found here: [Grid Codes \(soni.ltd.uk\)](http://soni.ltd.uk) As will be explained later in this document, the Grid Code is a document required by Condition 16 of the SONI TSO Licence. EirGrid operates its own (RoI) Grid Code: [Grid Code \(eirgridgroup.com\)](http://eirgridgroup.com)

³¹ It is noted that this definition envisages that an applicant would be a person subject to the Grid Code or the conditions of an operable exemption granted by DfE.

³² [Demand Customer \(soni.ltd.uk\)](http://soni.ltd.uk)

³³ It should be noted that SONI is also responsible for connecting large demand users (like a Data Centre) to the NITS.



“Technical Compliance

Article 12 of the 1992 Order and the terms of the TSO Licence³ impose a general duty on SONI to develop and maintain an efficient, co-ordinated and economical electricity Transmission System, to contribute to security of supply through system reliability, and also to facilitate competition in the supply and generation of electricity. In complying with this duty, the following components of the application are considered:

Compliance with Grid Code and European Network Codes

Compliance with technical codes and standards is in the interests of electricity consumers as failure to comply can have a direct and adverse impact on the security and quality of electricity supplied and may have health and safety implications [Footnote 4: As per the Electricity Safety, Quality and Continuity Regulations (Northern Ireland) 2012]. Therefore, the applicant must commit to compliance with the SONI Grid Code (hereafter called the Grid Code), any relevant European Network Codes and the Northern Ireland Transmission System Security and Planning Standards (TSSPS),³⁴ insofar as they are applicable to the applicant’s project.

SONI’s offer process assumes that applicants will be compliant with all relevant codes and standards. It is plausible that an applicant may know at the connection application stage, or even before, that the plant or apparatus that they are seeking to connect as part of their project will not be fully compliant with the Grid Code, European Network Codes [Footnote 5: [Energy \(europa.eu\)](http://energy.europa.eu)] and/or the (TSSPS). If an applicant does not expect to be able to fully comply with these codes and/or TSSPS, SONI will require the applicant to obtain a generation licence from the Utility Regulator [Footnote 6: 6 Please note that a Generation Licence is required in order to apply for a derogation, as per the 17 February 2017 guidance document published by the Utility Regulator entitled “Derogations from Network Codes and Grid Codes / Standards in Electricity Generation, Distribution and Transmission Licences.” See <https://www.uregni.gov.uk/applying-licence>] (to the extent that it has not already done so) and derogation from the relevant code and/or TSSPS by the end of the 90 day offer acceptance period.

Planning Data and Use of Assumed Data

...

In addition, the planning permission must be relevant and accurately reflect the project that is described in the application form.”

(underlining added)

³⁴ [Northern-Ireland-TSSPS-September-2015.pdf \(soni.ltd.uk\)](#) The TSSPS is a document required by Condition 20 of the SONI TSO Licence. EirGrid has its own (RoI) TSSPS document.



37. Similar provisions were contained in the predecessor (2018) version of the document.³⁵ The 2018 document would have governed the September 2019 AWFL application for connection to the NITS up to the making and acceptance of the SONI AWFL Connection Offer on 29 May 2020.

38. We wrote to AWFL on 22 September 2020 (**the 22 September 2020 UR AWFL Letter**) mentioning that we had not heard from AWFL since our 30 April 2020 UR AWFL Letter. We said:

“Whist it for AWFL to satisfy itself that the Proposal is in full compliance with the applicable regulatory arrangements, we would ask you to note our continuing concern as to whether the Proposal will be able to exhibit full regulatory compliance. Reference would be made to the matters set out in our previous letter. Particular reference here would be made to the requirements in respect of participation in the transmission of electricity (as defined in the [Electricity Order]. Utilisation of electrical equipment rated above 110kv (to include such equipment comprised at a relevant sub-station) would need to be looked at carefully to ensure that it was authorised by an applicable licence. In our previous correspondence we referred to the need to consider “certification” issues. These issues may need to be considered whether any associated “generation” takes place within or out-with Northern Ireland.

Again, we are not to be taken to be offering AWFL legal advice. That is not our role. We expect you will be seeking out your own specialist advice. However, it is right that – as the designated appropriate regulator – we offer guidance as to areas of potential regulatory concern.”

39. By letter to AWFL dated 1 October 2020 (**the 1 October 2020 SONI AWFL Letter**) SONI wrote

“SONI Limited (**we, us or our**) are writing to you in reference to the connection offer issued to you on 3 March 2020, which was accepted by you on 29 May 2020 (**Connection Offer**). We also refer to the letters you have been sent by the Utility Regulator (UR) (most recently on 22 September 2020), regarding your route to obtaining an appropriate licence in Northern Ireland (NI) to facilitate the connection and energisation of AWFL, which were copied to us a notice party. As you are aware, under the terms of the Connection Offer, we are currently proceeding with the pre-construction activities associated with AWFL (the costs for which you are and continue to be legally responsible), however we would like to draw to your attention to the following matters:

1. As specified in clause 9.30 of the Connection Offer, entry into a valid transmission use of system (**TUoS**) agreement (TUoS Agreement) with us will be required as a pre-requisite to the connection, energisation and testing of AWFL at its connection point. It is a pre-requisite (or condition precedent) of/for entry into a TUoS Agreement¹ that you hold the necessary licence(s) issued by the UR or are legally exempt from holding same.

³⁵ [SONI-Connections-Policy-Effective-1-February-2018.pdf](#) at page 7.



2. As specified in clause 9.2 of the Connection Offer, entry into a formal connection agreement (Connection Agreement) will also be required as a pre-requisite for the connection of AWFL to the transmission system in NI. Similarly to the TUoS Agreement, a valid licence issued by the UR (or legal exemption from the requirement to hold same) is also a condition precedent for entry into a Connection Agreement.
3. A valid licence issued by the UR (or legal exemption from the requirement to hold same) is also required before you can register in the single electricity market (SEM).
4. As the UR's letters note, we understand it is an independent statutory requirement that you hold a relevant licence (or are legally exempt from the requirement to hold same) under the Electricity (Northern Ireland) Order 1992.
5. This requirement is also specifically highlighted, as a standalone point, in clause 9.29 of the Connection Offer.
6. As specified in (inter alia) clauses 9.5 and 10.11 of the Connection Offer, in the event that the Connection Offer is terminated (for any reason) prior to execution of the Connection Agreement, we shall be entitled to retain or recover all or part of the connection charges already paid to, inter alia, defray any expenses which may have been incurred at that point or to which we and/or NIE Networks Limited, in its capacity as transmission system owner (the TO), may have committed to with other third party contractors.

It is obviously not in neither our interest, nor your own, that the parties end up in a situation where you have paid for connection assets associated with AWFL but are unable to enter into a TUoS Agreement or Connection Agreement, are ineligible to use the transmission system and do not meet the criteria for registering in the SEM.

Therefore, although we have no legal obligation to do so, we are sending this letter to make it absolutely clear, for the avoidance of any doubt, that this risk has been communicated to you, so that you understand that any work undertaken to date or in future by SONI, the TO and/or our contractors will proceed entirely at your own risk. We recommend that you seek legal advice regarding the above should you require any further clarity.”

40. There then followed two memos (together, **the Memos**) presented to the Utility Regulator by AWFL. Each was prepared by AWFL's solicitors.
41. The first of the memos (**the First Memo**) was dated 23 October 2020.³⁶ It stated that AWFL proposed to change the location of the Connection Point identified in the SONI AWFL Connection Offer so that it would be situate right on the ROI/NI border.

³⁶ Submitted by email from AWFL dated 27 October 2020.



42. It was the “*initial licensing analysis*” conclusion of the First Memo that AWFL would in such circumstances (i.e., those involving the changed position of the Connection Point) not be *participating in transmission* within the meaning of Art 8(1)³⁷ of the Electricity Order because (in the author’s view) there would be no “transmission system” within the meaning of Art 8(1) of the Electricity Order as read with the definition of “transmission system” in Art 3 of the Electricity Order.³⁸

43. The First Memo included this:

“3.2 Note: We understand that the UR has advised AWFL that, to its knowledge, the Proposal is unprecedented within the NITS. The UR will be aware that there is a controllable unit known as Snugborough Wind Farm (a 13.5MW wind farm located in Cavan, RoI) that is connected to the distribution network in NI. From publicly available information, to the best of AWFL's knowledge, Snugborough appears to have been issued with a Connection Agreement from NIE Networks and a Transmission Use of System Agreement from SONI.1 Furthermore, Snugborough does not appear to be carrying on any licensable activities in NI as AWFL is not aware of Snugborough having to obtain any necessary licences from the UR.2

4.10 Note: AWFL is aware from publicly available information that Slieve Kirk Wind Farm (located in Londonderry, NI) constructed an 110kV OHL as part of its connection to the NITS, with such line then being subsequently adopted by the system. AWFL is not aware of SSE Renewables having to obtain a transmission licence in relation to such method of connection.

Test Two – Consist of high voltage lines and electrical plant

4.12 As discussed above, the UGC comprises an 110kV cable along the entire route length from the Project to the [newly proposed] point of connection.

4.13 A high voltage line is defined in the [Electricity Order] as “an electric line of a nominal voltage of or exceeding 110kV”. Therefore, this test would be passed.”

4.26 Article 2 of the [Electricity Order] states that the Interpretation Act (Northern Ireland) 1954 (Interpretation Act) applies to the provisions of the Order. Article 6 of the Interpretation Act states that enactments shall, “unless the contrary intention appears, apply to the whole of NI”. The geographical extent of the [Electricity Order] is limited to NI (i.e., the Order has no legal effect or application in RoI). Note: Similar analysis would apply to any requirement (or otherwise) for Article 39 consent under the [Electricity Order].

Conclusion – Generation is not taking place in NI

³⁷ As read with Art 8(4) of the Electricity Order.

³⁸ We shall set these provisions out in detail later in the document.



4.27 As noted at Section 3, the connection point and indeed the Project itself (where the generation will take place) will be situated in RoI³⁹. No generation will be carried out in NI and therefore we do not consider it necessary for AWFL to obtain a generation licence from the UR. **Note: AWFL is liaising with relevant stakeholders in RoI in relation to the licensing obligations and regulatory requirements applicable in that jurisdiction. As discussed in Section 3, we understand from publicly available information that Gortmullan Energy Limited (as the owner of Snugborough Wind Farm) does not hold a generation licence in NI but does hold a licence to generate in RoI. We consider that similar circumstances are likely to apply to the Project.”**

(Our underlining but bolded text in original).

44. By letter dated 3 December 2020 (**the 3 December 2020 SONI AWFL Letter**) SONI advised AWFL of issues were it to seek to proceed to move the Connection Point to the RoI/NI border. It said this:

“Dear Sirs,

AUGHT WINDFARM LIMITED (AWFL) - RISKS ASSOCIATED WITH LICENSING AND PROPOSED DEVIATION TO CONNECTION POINT LOCATION AND SITE DESIGN

SONI Limited (we, us or our) are writing to you in reference to the connection offer issued to you on 3 March 2020, which was accepted by you on 29 May 2020 (Connection Offer) further to the memo you sent to the Utility Regulator on 27 October 2020 which was provided to us by you via email on 16 November 2020 (the Memo), and to your proposal, discussed at the joint meeting between SONI, AWFL and NIE Networks on 22 October 2020 and further outlined in the layout plan issued to SONI on 2 November 2020, which raise the possibility of moving the point at which AWFL is to connect to the Northern Irish Transmission System to a point that sits exactly on the geographical border between Northern Ireland (NI) and the Republic of Ireland (ROI) (the Proposal).

We wanted to take this opportunity to write to you to address some of the points raised in the Memo (insofar as it relates to allegations made by you regarding our previous interactions), and to flag some potential issues regarding the Proposal for your consideration.

With regards the content of the Memo generally, and AWFL’s connection to the Northern Ireland Transmission System on the basis allowed for in the Connection Offer, we would note that we again refer you to the letter issued by us to you on the 1 October 2020 (**Our Letter**) and the various points outlined therein. It is not our remit or responsibility to be involved in a consideration of the licensing

³⁹ We note that it is hard to square this with the earlier submission in the First Memo that the new position of the Connection was *right on the NI/RoI border*. It also hard to understand how AWFL could seek out a connection offer from SONI (as opposed to EirGrid) for a connection point in RoI.



requirements applicable to AWFL, save to the extent outlined in the Letter and in our Connection Offer.

However, we would note here that in Section 3.3 of the Memo, Pinsent Masons LLP, as your legal advisors have written the following: "The [Project] is located in the Republic of Ireland, however the Connection Point is remote from the WFPS and will be the 110 kV busbar clamps on [AWFL]'s side of the [Transmission Owner's] 110 kV disconnector at the connection substation site located north of 262 Culmore Road, Londonderry in Northern Ireland." Note: AWFL has advised us that no circumstances have changed since the issue and acceptance of the Connection Offer that may result in NIE Networks or SONI being unable to satisfy their obligations under the Connection Offer. AWFL was therefore somewhat surprised to receive correspondence from SONI dated 1 October 2020 (and copied to the UR) post-acceptance raising licensing issues which were not discussed and/or raised by SONI as part of the connection application process which SONI deemed effective on 4 September 2019".

SONI would dispute these allegations and would refer you to the meetings between SONI and AWFL on 3 October 2019 and 30 March 2020 and the associated minutes whereby SONI raised and discussed the need for you to ensure close liaison with both the Utility Regulator in NI and [CRU] for the Regulation of Utilities in ROI. These minutes were circulated to you after each of the meetings, and clearly note the above.

In any event, as our Letter makes clear, the requirements alluded to in the Letter were clearly highlighted in the Connection Offer which you accepted, and the template [G-TUoS agreement] published on our website.

...".

45. SONI referred to the "*division of statutory regimes and responsibility between us and EirGrid PLC as the respective Transmission System operators in NI and ROI*" before finishing with this:

"By final comment SONI would highlight that a framework for cross border connections was established in both SONI and EirGrid's licences in 2007. Condition 27 of SONI's licence obliges us to provide an Offer to EirGrid for connections in Ireland, noting that paragraph 7 of this condition provides exemptions from this duty."

(underlining added).

46. The second memo (**the Second Memo**) was dated 17 December 2020. It confirmed that AWFL now resolved (following the 3 December 2020 SONI to AWFL Letter) to revert to the original placing of the Connection Point as per the (accepted) SONI AWFL Connection Offer. Significantly, no separate licensing analysis was offered as to this original connection methodology, described as "unique". No separate view was expressed as to whether operation of the NI-HVTBA - in the context of the Connection Point reverting to its original position - would implicate participation in transmission within the meaning of Article 8 of the Electricity Order.



47. The Second Memo did confirm that AWFL was liaising with CRU as to licensing requirement and asked to liaise with the UR and SONI to “*ensure that the settled arrangements for the connection to and use of the NITS are in conformity with all applicable legal and regulatory requirements.*” (Our underlining).
48. We wrote to AWFL on 8 January 2021 (**8 January 2021 UR AWFL Letter**) saying this:

“The December Memo confirms that AWFL has arrived at a “settled” connection arrangement. That settled connection arrangement is, it seems, (effectively) the same arrangement as that proposed in the (accepted) March 2020 Connection Offer issued by SONI (the original connection arrangement): it being confirmed that the OHL part of the arrangement is to be substituted by an underground cable (at, we assume, transmission voltage).

On 30 April 2020 we wrote to AWFL making limited observations as to the potential licensing implications of the original connection arrangement, referring to the potential requirement for “certification”. [Footnote 1: 1 We also made reference to SONI’s regulatory obligations under Condition 25 of its Licence] In that same correspondence we affirmed that it was the responsibility of AWFL to satisfy itself that it was in full compliance with all legal/regulatory requirements associated with the proposed connection arrangement. [Footnote 2: Likewise, it is for SONI to satisfy itself that it is meeting its relevant legal/regulatory obligations]

Significantly, the December Memo makes clear that the revised connection arrangement analysed in the (original) memo from your solicitors (the October Memo) of 23 October 2020 is “no longer possible”. Reference is made to the letter from SONI to AWFL of 3 December 2020. No direct licensing analysis of the (now apparently settled) original connection arrangement is offered in the December Memo.

The December Memo includes the following request (at para. 2.2): “AWFL would therefore request an all-parties’ meeting with both SONI and the UR to ensure such alignment. AWFL appreciate that any such discussions would of course reflect (and be limited by) the fact that it is for each of the parties to satisfy itself that it is meeting all of its legal/regulatory obligations viz. the settled connection arrangements”.

Having reflected on the matter we do not consider that such a meeting would be appropriate. [Footnote 3: It is unclear what SONI’s demeanour is to the proposed meeting. We do note, however, that in its 3 December letter SONI confirmed its opinion that licensing matters (such as may affect AWFL) were the responsibility of AWFL]

As flagged, we have confirmed that it is for AWFL to satisfy itself that it is discharging its legal/regulatory obligations in matters arising out of the settled connection arrangement. We said so in our 30 April 2020 correspondence and repeated the same point in our letter of 13 November 2020.



Importantly, the settled connection arrangement has now been confirmed to be (essentially) the same arrangement already commented on in our 30 April 2020 correspondence. We do not consider that we can contribute anything further to the limited observations already recorded in that same correspondence; again, maintaining that it is for commercial developers, such as AWFL, to satisfy themselves that they are meeting the applicable legal/regulatory obligations associated with any proposed connection to the NITS. The October and December Memos demonstrate that AWFL has (rightly, it seems) [Footnote 4: For the avoidance of doubt, we confirm that we make no comment (either way) as to the merits of any advice relayed in the October/December Memos] sought professional advice on these matters.

We note that the December Memo confirms engagement with the CRU as to regulatory requirements applicable in the Republic of Ireland. Those are matters for the CRU. It appears that AWFL is to apply to the CRU for inter alia a licence to generate electricity. Should AWFL consider that it is required to hold a licence so as to authorise any of the activities described in Article 8 of the [Electricity Order] - in respect (or arising out) of the settled arrangement - then we should be pleased to process any such application in the normal way. Guidance as to licence applications is published on our website. We should also be pleased to process any related application for “certification”.

We are copying this letter to SONI in accordance with previous practice.”

(Underlining added).

49. AWFL wrote to SONI on 12 January 2021 (**the 12 January 2021 AWFL SONI Letter**) as follows:

“Dear Sirs,

We refer to the latest correspondence that we have been sent by the Utility Regulator (UR) on Friday 8 January 2021, which was copied to you as a notice party (UR Letter).

In the UR Letter, the UR notes that it was the responsibility of AWFL to satisfy itself that it is in full compliance with its regulatory obligations associated with the proposed connection arrangements. In the case of AWFL, we are satisfied that is the case.

The UR Letter (as per previous correspondence) makes reference to SONI's regulatory obligations under Condition 25 of the SONI transmission licence. It would be very helpful in the circumstances if SONI could confirm that it is satisfied that the settled connection arrangements which it has proposed for AWFL are in conformity with SONI's legal and regulatory obligations given the specific reference in the UR Letter (and indeed request that has been received from the UR in previous correspondence).

AWFL has been engaged in good faith discussions to date with SONI assuming this to be the case given that SONI deemed the grid connection offer application



effective from 4 September 2019 and subsequently issued AWFL with a grid connection offer (AWFL-030320) on 3 March 2020.

In the circumstances, could SONI please confirm as a matter of urgency that the settled connection arrangements which it has proposed for connection to, and use of, the electricity transmission system by AWFL are in full compliance with its regulatory obligations and that SONI will subsequently enter into the following with AWFL:

(1) a valid transmission use of system agreement prior to the connection, energisation and testing of AWFL; and

(2) a formal connection agreement for the connection of AWFL to the electricity transmission system,

on reasonable terms which reflect the settled connection arrangements proposed by it for AWFL.”

50. On 13 January 2021 AWFL submitted the first generating licence application to the Utility Regulator.

51. We wrote to AWFL on 22 January 2021 (**the 22 January 2021 UR AWFL Letter**) acknowledging receipt of the first generating licence application. We raised queries as to whether AWFL would be *generating electricity within the territory of NI*. We also said this:

“3. The potential requirement for a “transmission” licence and “certification”.

We understand that this is a matter that has been previously raised with (and by) the UR. Matters have now progressed with the making of the Application.

Our initial review of the Application indicates that there may well be a need for AWFL to obtain and hold a transmission licence (granted under Article 10(1)(b) of the [Electricity Order]) should it wish to operate the connection proposed in the Application. Should that be right, then AWFL may very well also have to apply to the UR for a requisite “certification”. Any application for “certification” would – it seems - be potentially complicated by the confirmation (in the Application) that the connection arrangement described in the Application involves AWFL carrying out the activity “generation” (at the Wind Farm in the ROI).

We understand that the October Memo set out an “initial licensing analysis” that disputed the need for a transmission licence (and presumably “certification”) in respect of a different set of connection arrangements to those now described in the Application.

Please now confirm whether it is accepted that operation of the connection arrangements set out in the Application would implicate the need for AWFL to hold a “transmission licence”. If this is not accepted, then please explain why that is so. [Foot note 5: A legal analysis in respect of the specific connection arrangement described in the application could prove useful].



If it is accepted that the connection arrangements described in the Application do implicate the need for AWFL to hold a “transmission” licence, then please confirm whether it is accepted that AWFL will (in those circumstances) need to make an associated application to the UR for requisite “certification”. If this is not accepted, then please explain why that is so.

If it is accepted that operation of the connection arrangement described in the Application would involve AWFL needing to hold a transmission licence and/or “certification” then please explain when the requisite applications will be made to the UR.

Responding to our initial queries

Issues as to licensing requirements and “certification” can be complicated. We have not yet reached any concluded view on these matters. We wish to hear from AWFL further and consider what it has to say. We would strongly recommend that AWFL seek professional advice in assembling its responses. Proceeding with the connection arrangement/project described in the Application in the absence of the requisite licence(s) could have very serious (adverse) consequences. Clearly, it is for AWFL to satisfy itself that its arrangements are and will be in full compliance with all relevant licensing requirements. We understand that that point has been made in previous correspondence with AWFL.”

(underling added).

52. SONI wrote to AWFL on 29 January 2021 (**the 29 January 2021 SONI AWFL Letter**) in response to the 12 January 2021 AWFL SONI Letter stating:

“ . . . [We] note that the Letter intimates that what are referred to as the “the settled connection arrangements which [SONI] has proposed for AWFL” must be “in conformity with [SONI’s] legal and regulatory obligations” on the basis that SONI issued the Connection Offer to AWFL on 3 March 2020.

This intimation in our view reveals AWFL’s misunderstanding of SONI’s role as transmission system operator, and the licence and policy framework under which SONI operates when formulating and making connection offers to applicants for connections to the electricity transmission system in Northern Ireland.

SONI issued the Connection Offer to AWFL, following its application of 4 September 2019, pursuant to Condition 25 of its transmission licence which obliges us to provide a connection offer to any party that applies (subject to certain limited exemptions which were not applicable to AWFL’s original application). The fact that the Connection Offer was issued to AWFL, did not and should not be taken as confirmation by SONI that all relevant obligations under the Connection Offer, or any future transmission use of system agreement (**TUOSA**) (where applicable) or relevant connection agreement (**CA**), were (or were capable of) being met by you.

As explained in our previous correspondence, including our letters of 3 December 2020 and 1 October 2020, it is not, and has never been, SONI’s remit or



responsibility to become involved in a consideration of the licensing requirements applicable to AWFL and AWF, save to the limited extent outlined in the Letter, in our Connection Offer, and outlined within the relevant CA and TUOSA (if applicable).

When formulating any connection offer, under SONI's connections policy and the terms of our transmission licence, SONI does not (nor would it be appropriate for SONI to) consider (other than at a high level) the licensing and consenting regime applicable to connection applicants.

However, given the complex nature of the [AWFL windfarm] connection, at our meetings with AWFL on 3 October 2019 and 30 March 2020 SONI raised the need for AWFL to liaise closely with both the Utility Regulator (**the UR**) in Northern Ireland (**NI**) in respect of matters pertaining to NI and [CRU] in respect of those matters applicable in Ireland (with a view to ensuring that no licensing issues arose regarding the connection of [AWFL Windfarm]). This included highlighting the requirement for AWFL to hold either an appropriate licence from the UR under the Electricity (Northern Ireland) Order 1992 (the Order) in NI, or a relevant exemption.

These minutes were circulated to you after each of the meetings, and clearly note the above.

While we took these steps to try to assist AWFL in understanding its obligations, the NI licensing/exemption requirements being a condition precedent to the contracts that SONI might need to enter into with AWFL, it is not our remit or responsibility to advise those seeking to connect to the transmission system in NI of all legal requirements that might potentially be applicable to them.

To specifically address the queries raised by AWFL in the Letter, SONI would only be able to confirm whether or not it will enter into a relevant transmission use of system agreement (TUOSA) and connection agreement (CA) at an appropriate point prior to connection / energisation of AWF, when it is clear that all requisite legal and technical requirements have been or are capable of being met (for example, relevant licence(s) or exemptions have been obtained, all works required on AWFL's part have been undertaken, appropriate testing has been conducted and all fees have been paid), and on the basis that those agreements would be legally appropriate.

In this context, we would note that we are only obliged to enter into a TUOSA with any "eligible person". Eligibility is defined by reference to the party holding a relevant licence under the Order or being exempt.

Even if SONI were able to confirm that it would enter into these agreements at this stage, or to enter into them, those agreements would not have legal effect until the relevant conditions precedent were satisfied. To do so would also be a departure from our standard working procedure and could be construed as undue discrimination in favour of AWFL, placing SONI at risk with regard to the obligations set out in Condition 15 of our transmission licence.



That said, as explained in detail in our letter of 3 December 2020, SONI would presently have concerns over its ability to enter into such agreements, AWFL's ability to satisfy certain of those conditions precedent (insofar as they relate to licensing) under the connection arrangements envisaged under the Connection Offer, and otherwise as to the lawfulness of the proposed connection arrangements if implemented without a requisite licence or exemption in NI. On that basis we cannot provide the assurance sought by AWFL.

These concerns on SONI's part have increased in light of the position taken by the UR in its earlier correspondence to AWFL (which were copied to us a notice party) regarding your route to obtaining an appropriate licence (or exemption) in Northern Ireland to facilitate the AWF connection.

To the extent that the UR and/or the Northern Ireland Department for the Economy, as the competent authorities responsible for enforcing and implementing the relevant provisions of the [Electricity Order] take the position that the connection arrangements proposed for AWF (if implemented without the requisite licence or exemption) under the Connection Offer would or are likely to result in unlawful unlicensed transmission in Northern Ireland, then SONI considers that it would, at the relevant point, be unable to connect / energise AWF and to give effect to the relevant CA and TUOSA without being at risk of breaching the terms of our own licence."

53. AWFL wrote to us on 3 February 2021 (**the 3 February 2021 AWFL UR Letter**) - in response to the 22 January 2021 UR AWFL Letter - as follows:

"AWFL Response

The UR will be aware that the method of grid connection proposed by SONI⁴⁰ to AWFL is unique and complex in nature.

. . .

As highlighted in the UR Letter, proceeding with the Project in the absence of the requisite licence(s) could of course have very serious (adverse) consequences. It is reasonable in the circumstances for AWFL as a reasonable and prudent operator to seek confirmation from the UR (in its capacity as licensing authority) as to what requisite licence(s) (if any) it is required to apply for and have in place for the Project.

The UR will note that AWFL is of the view that the Project aligns with its legal and regulatory obligations for the reasons discussed in previous correspondence⁴¹ with some of your colleagues. AWFL has however been left with no alternative but to

⁴⁰ It should be noted that AWFL seems to be suggesting that SONI devised the HVTBA part of the project. As will be seen, SONI denies this, asserting that it is only responsible for the design of the LCTA Connection Arrangement from the Connection Point to the Coolkeeragh substation.

⁴¹ It will be noted that the Memos from AWFL's solicitors did not offer a licensing analysis of the connection methodology recorded in the SONI AWFL Connection Offer.



make the Application nonetheless at this early stage given the lack of a definitive and conclusive view to date.

...

As detailed in the Application, AWFL will be participating in electricity generation, but such generation will be remote from the point of connection to the NITS. AWFL will however have some plant, equipment and apparatus related to the remote generation located within Northern Ireland (i.e., section of underground cable, etc. within Northern Ireland to the point of connection to the NITS and hereinafter described as the UGC).

As per previous correspondence with your colleagues at the UR, AWFL does not however believe that the activity of generation itself will be taking place within Northern Ireland for the purposes of the Electricity (Northern Ireland) Order (the Order). However, AWFL thought it prudent (and indeed necessary) to make the Application given (i) the presence of the UGC located within Northern Ireland and related to the generation as described above, (ii) the unique and complex method of connection proposed by SONI for the Project and (iii) the lack of a definitive and conclusive outcome in previous discussions.

...

AWFL would request that the UR considers its comments above in relation to the unique and complex method of connection proposed for the Project (which has been previously acknowledged by colleagues at both the UR and indeed SONI) and the presence of the UGC and apparatus within Northern Ireland and related to the generation when considering the Application.

AWFL has of course noted previously with your colleagues that, from publicly available information, Gortmullan Energy Limited (as the owner of Snugborough Wind Farm) does not appear to hold a generation licence (or indeed any other licence for that matter under the [Electricity Order] in NI despite it being connected to the electricity distribution system in Northern Ireland. AWFL therefore understand the basis of this initial query being raised by the UR and fully appreciate the passage of time that has passed since former colleagues at the UR (and indeed SONI) may have considered this previously in relation to Snugborough.

AWFL's view is that the only possible licensable activity it could be carrying out within Northern Ireland (actual, perceived or otherwise) is generation. AWFL is not aware of any other electricity generation project connected in Northern Ireland having to apply for any other type of licensable activities under the Order.

Furthermore, AWFL is also aware that colleagues in the UR have (rightly in AWFL's view) pointed out to SONI its regulatory obligations under Condition 25 of SONI's transmission licence. AWFL are also seeking confirmation from SONI separately that the method of connection that it has proposed will be in full compliance with its relevant licensing obligations and in particular that it will subsequently enter into a valid transmission use of system agreement prior to the connection, energisation



and testing of AWFL and a formal connection agreement for the connection of AWFL to the NITS. This has not been forthcoming.⁴²

The Application is of course relevant in this regard to ensure that such agreements (including satisfaction of any industry standard conditions precedent) referred to above can be entered into by AWFL. It is reasonable for AWFL to assume that there is full alignment across the legal and regulatory frameworks governing the proposed connection of the Project and that it shall not be discriminated against in relation to the treatment of the Project against other similar connections to the NITS.

This is particularly so when you consider the definition of "eligible person" in Condition 25 of SONI's transmission licence shall be construed as references to persons licensed under Article 10 of the Order (or exempt from the requirement to be so licensed under Article 9 of the Order) or who have applied for a licence under Article 10 and whose application has not been withdrawn or rejected.

Furthermore, AWFL note that SONI (who are subject to non-discrimination obligations under its transmission licence) appear to have entered into a transmission use of system agreement with Snugborough wind farm (as a controllable unit) notwithstanding that such project does not appear to be an "eligible person" under Condition 25 of SONI's transmission licence.

, , ,

It is not accepted by AWFL that the operation of the connection arrangements set out in the Application would implicate the need for AWFL to hold a "transmission licence". This is not accepted for the following principal reasons:

- through its ownership of the UGC within Northern Ireland and related to the generation as described above, AWFL will not be a person participating in transmission as it will not be co-ordinating, and directing, the flow of electricity onto and over a "transmission system". A single UGC cable related to the connection of a wind farm to the NITS could not (on any reasonable interpretation of the word and circumstances of the facts applying to the connection arrangements set out in the Application) constitute a system in AWFL's view and therefore transmission will not be taking place for the purposes of the [Electricity Order].
- the view of AWFL would appear to be supported in practice when you consider the authorised business of the entities licensed to participate in transmission under NI law to date. The only transmission licence holders in NI currently are NIE Networks (the transmission system owner), SONI (the transmission system operator) and Moyle Interconnector Limited (MIL) (which holds a licence in order to operate the Moyle Interconnector). The transmission licences of both NIE Networks and SONI relate to the entirety of the NITS. MIL's licence relates to the business of the Moyle

⁴² The 29 January 2021 SONI AWFL Letter set out that SONI would not offer the confirmation AWFL sought.



Interconnector. We are not aware of any wind farm projects being required to hold a transmission licence.

We note the reference in the UR Letter that a legal analysis in respect of the specific connection arrangement described in the Application could prove useful. We have provided such analysis to your colleagues previously prior to the Application (copies of which we understand are in your possession). An executive summary of that analysis as it applies to the connection arrangements described in the Application is provided above for ease of reference.⁴³

On the basis that it is not accepted by AWFL that the connection arrangements described in the Application do implicate the need for AWFL to hold a “transmission” licence, we have not sought to respond to the other initial queries you raised in this part of the UR Letter. If you think that it would be helpful to the UR however for us to provide any further specific information, please do let us know.”

54. We responded to AWFL with our letter of 4 February 2021 (**the 4 February 2021 UR AWFL Letter**) and said:

“In closing, we note the various points made in your letter in connection with the Application; not being points concerned with the procedural requirements affecting the Application. We shall return to these matters (as and if required) after the [11 February 2021] stipulated period, having considered your reply to this letter (should we receive one [by 11 February 2021]).”

55. On 10 March 2021 AWFL wrote to us (**the 10 March 2021 AWFL UR Letter**) referring to an offer (made in an email to the UR of 16 February 2021) to secure a legal opinion from a senior counsel on whether AWFL was entitled to a generation licence.

56. On 31 March 2021 AWFL was granted the following authorisations by CRU

(a) an authorisation (**the CRU Construction Authorisation**) under section 16 of the [ERA] (Criteria for the Determination of Authorisations) Order 1999 (SI 309 of 1999) *to construct* “a 32.2 MW generating station at Aught, Muff, County Donegal” subject to Conditions in Part II of the authorisation.

(Our underlining)

⁴³ It is noted that neither the First Memo nor the Second Memo did provide a direct licensing analysis as to or for the connection methodology set out on the first generating licence application/the accepted SONI AWFL Connection Offer. The First Memo developed an analysis in respect of a different connection methodology/re-situated Connection Point. The Second Memo stated that the Connection Point was to revert to the location as per the SONI AWFL Connection Offer.



(b) a licence (**the CRU Generating Licence**) under section 14(1)(a) of the ERA to *generate electricity* “from” and “at” a “generating station” described as “Aught Wind Farm, Aught, Muff, County Donegal”.⁴⁴

57. By decision letter dated 23 April 2021 (**the 2021 Licence Refusal Decision**) the Utility Regulator refused the first generating licence application on the grounds that AWFL exhibited no intention to generate electricity *within the territorial limits of NI* (the AWFL windfarm generating station (containing each of the wind turbine generating units) being - as explained above - located at Aught in County Donegal, RoI). The territorial limits of NI were explained to stand as the territorial limits of the Utility Regulator’s statutory jurisdiction.⁴⁵ It was confirmed that we would not be taking up the offer of an instruction to senior counsel.

58. AWFL has not challenged the 2021 Licence Refusal Decision. In fact, paragraph 9 of the first AWFL affidavit (**MD1**) filed by Mr ██████ in JR2 appears to recognise the correctness of the 2021 Licence Refusal Decision where it states:

“As [AWFL] does not generate electricity in NI it is not eligible for an [Article 10 Generating Licence] under the [Electricity Order]. [AWFL] is therefore in the position where it cannot satisfy the terms of the [Standard G-TUoS Agreement Terms] unless the SONI licence is modified so as to allow for a broader definition of “eligible person” or it benefits from an exemption under [Article] 9 of the [Electricity Order].”

59. On 28 May 2021 SONI wrote to AWFL (**the 28 May 2021 SONI AWFL Letter**) explaining that it noted our 2021 Licence Refusal Decision. SONI then

(a) referred to previous correspondence and stated that it was not part of its remit to become involved in consideration of AWFL’s licensing requirements save to the extent stated in previous correspondence and the SONI AWFL Connection Offer

(b) stated that the Licence Refusal Decision was not considered to represent an Article 9 Exemption.

(c) expressed concern - noting the 2021 Licence Refusal Decision and our previous correspondence on the transmission licensing issue - about AWFL being able to meet the “requirements” for connecting to the NITS and registering in the SEM.

60. SONI also said this:

“Therefore following the UR’s refusal of your application for a generation licence, and the UR’s previously articulated position around the licensable activities

⁴⁴ It will be noted that the construction of an electricity generating station or generation thereat without due authorisation under section 16 and section 14 of the ERA (respectively) is a criminal offence: Regulation 4(1)(a) of the (RoI) European Communities (Internal Market in Electricity) Regulations, 2000 (SI 445/2000).

⁴⁵ This remains our position.



potentially undertaken by AWFL in respect of AWF (if connected) SONI continues to have concerns around AWFL's ability to meet either the licencing or exemption conditions required to connect to the transmission system in Northern Ireland and to register in the wholesale market, as such requirements are further articulated in our previous letters, and on the basis of the concerns as articulated in our previous letters (including in light of the position taken by the UR regarding the potentially licensable activities carried on by AWFL in Northern Ireland).

To the extent that the UR and/or the Northern Ireland Department for the Economy, as the competent authorities responsible for enforcing and implementing the relevant provisions of the Electricity (Northern Ireland) Order 1992, take the position that the connection arrangements proposed for [AWFL] (if implemented without the requisite licence or exemption) under the Connection Offer would or are likely to result in unlawful unlicensed transmission in Northern Ireland, then SONI considers that it would, at the relevant point, be unable to connect / energise AWF and to give effect to the relevant CA and TUOSA without being at risk of breaching the terms of our own licence.”

61. DfE wrote to AWFL on 24 June 2021 communicating the Exemption Refusal Decision.
62. The Request - as originally formulated - was set out in the 9 July 2021 AWFL UR⁴⁶ Letter). The 9 July 2021 AWFL UR Letter is set out in full at **Appendix 1**.
63. The 9 July 2021 AWFL UR Letter
 - (a) referred to previous correspondence
 - (b) advised of letters of the same date sent to DfE (looking for an Article 9 Exemption) and SONI (asking SONI to voluntarily vary the terms of the SONI Standard Connection and Use Documents and it seems the accepted SONI AWFL Connection Offer)
 - (c) confirmed that AWFL now held the CRU Generating Licence
 - (d) stated that AWFL had made “every effort” to comply with paragraphs 9.29 and 9.30 of the (accepted) SONI AWFL Connection Offer which AWFL asserted appeared to relate to C25(2), making specific mention of the requirement to enter into a G-TUoS agreement.
 - (e) stated it was considered that AWFL was “[. . . being left in an impossible position whereby, unless [an article 9] exemption is granted [by DfE] or an amendment or waiver made to “SONI’s connection terms” and [TSO] Transmission Licence, we will be unable to meet these evidentiary requirements under the terms of the [SONI AWFL Connection Offer].”

⁴⁶ Again, we need to differentiate the 9 July 2021 AWFL UR Letter from the two other letters of the same date sent by AWFL to DfE and SONI. These other two letters will be explored in later sections of this letter.



(e) asserted that: “The net result of this is the inability of potential stakeholders to legitimately access and participate in the Single Electricity Market [SEM]. This in turn also means that the effective and efficient functioning of the SEM, as arising in particular (but without limitation) under *inter alia* “[the 2007 Order] and as detailed further below, is being stymied. We also note that SONI, The UR, and [DfE] each have a real and vested interest in promoting the effective and efficient functioning of the [SEM] under the NI Protocol and retained EU Legislation”.

(f) requested in “light of the above” that “the UR as the regulator in NI of the electricity market (and acting in the ultimate interests of NI customers) take immediate action to rectify this barrier to access to the SEM that rests within the NI legal framework by exercising its authority to

(i) modify C25(1) so that all references to “eligible person” are removed and replace with the “term “any person” so that C25(1) is “consistent with C25(2) [which provides for an offer of terms for a connection agreement] . . . where C25(2) stipulates only that “on application by any person, [SONI] shall (subject to paragraph 6) offer to enter into a Use of System Agreement . . .”⁴⁷

(ii) “direct SONI to amend the Condition Precedent set out in clause 2.1 of SONI’s [Standard G-TUoS Agreement Terms] . . . so that the User may be authorised to generate electricity pursuant to a licence granted in accordance with either Art 10(1) of the [Electricity Order] or section 14(1)(a) of the [ERA] or benefit from the relevant exemption from the requirement to hold such a licence. This is in light of the fact that the SEM operates on an all-island basis and that AWFL already holds [the CRU Generating Licence].”

(iii) “direct SONI to make the necessary amendments to its [Standard G-Connection Offer Terms] for Connection to the [NITS] and [NITS] [Standard G - (formal) Connection Agreement Terms] to give effect to the principle proposed in [the immediately preceding part of the Request (above)].”

64. AWFL (then)⁴⁸ asserted that its “proposals are consistent with and indeed required by the UR’s principal objective and duties in relation to the SEM arising under *inter alia* the [SEM Order] and in particular those identified at Art 9(1) to (5) [of the SEM Order].” AWFL then explained why it claimed this, explaining that:

(i) if the UR failed to take the steps outlined it would be failing to protect the interests of consumers of electricity in NI and promote effective competition

⁴⁷ It is noted here that AWFL appears to have misconfigured this part of the formulated Request considering that C25(2) refers to a *connection agreement* and not a *use of system agreement*. However, we understand AWFL to be (then) asking that C25(1) is modified so that “any person” and not just any “Eligible Person” (as there defined) – may make a valid application for a C25(1) use of system agreement so bringing alignment between C25(1) and C25(2) so far as qualifying applications/applicants are concerned. In this way AWFL’s last reference to C25(2) should have been a reference to C25(1). Nothing turns on this. We look at the matter pragmatically.

⁴⁸ AWFL specifically discounted reliance on the (SEM Order, Article 9(1)) SEM “duties” in the 18 May 2022 AWFL UR Letter.



between persons engaged in or commercial activities connected with the sale or purchase of electricity through the SEM (“Such commercial activities are precisely what AWFL is seeking to undertake and despite already having been granted the [CRU Generating Licence] as well as having accepted [the SONI AWFL Connection Offer], it is being prevented from doing so”).

(ii) the UR would be failing to perform its statutory obligations in failing to secure that the functions of DfE, the UR, and the Irish Minister and CRU are “exercised in a co-ordinated manner” (Art 9(2)(c)).

(iii) The would be “overlooking its obligation to carry out its functions in a way best calculated to promote efficiency and economy in the NI electricity market, secure an environmentally sustainable long-term energy supply in NI and have regard to the environment and promote renewable energy (Art 9(5)).

65. The 9 July 2021 AWFL UR Letter ended with a reservation of rights and a mention of alternative “recourse” should the UR fail to “take action” in “the present circumstances”.

66. By letter dated 9 July 2021 from AWFL to DfE (**the 9 July 2021 AWFL DfE Letter**) AWFL asked DfE to revisit its Exemption Refusal Decision. AWFL said this:

“ . . .

This is despite the following facts:

. . .

(b) electricity generated and directed into the transmission system at the Connection Point . . .

In the circumstances AWFL has applied to the [CRU] for an has obtained a generation licence for the Project.⁴⁹ Accordingly, AWFL is already authorised by licence to generate electricity.

5. AWFL must be facilitated in being put in a position to meet the terms of the [SONI AWFL Connection Offer], in turn so that SONI may discharge its duty under Condition 20 of the [SONI TSO Licence] to “plan, operate and . . . co-ordinate and direct the flow of electricity onto and over, the transmission system in an efficient, economic and coordinated manner.

6. The legal framework in [NI] including the [Electricity Order] as currently drafted does not contain any express prohibition on generators licensed in jurisdictions outside of [NI] from carrying out the activities proposed by AWFL. Neither, however, does it provide any alternative option for such generators such as AWFL to comply with all elements of the legal framework.”

⁴⁹ It is not clear that this is correct. The CRU Generating Licence covers generation from and at the AWFL windfarm (only).



(Our underlining added)

67. By further letter dated 9 July 2021 to SONI (**the 9 July 2021 AWFL SONI Letter**) AWFL said:

“In short, AWFL has been unable to satisfy certain conditions in [the SONI AWFL Connection Offer] and [Standard G-TUoS Agreement Terms] (“**TUoS**”) because of the positions that are being adopted by [DfE] and the Utility Regulator concerning the requirement for AWFL (as a RoI licensed generator) to hold a generation licence granted by the Utility Regulator pursuant to the [Electricity Order] and or its eligibility for an exemption from such requirement. . . Allied to that we are requesting that, in anticipation of a positive outcome to this unfortunate position, SONI considers and takes steps to vary the relevant requirements in its [Standard G-Connection Offer Terms], the [Standard G - (formal) Connection Agreement Terms and Standard G-TUoS Agreement Terms] (for generators) [i.e., the SONI Connection and Use Documents].⁵⁰

Please take note that failure of SONI to take action in the present circumstances may leave AWFL with no option but to be forced to seek recourse through the relevant means (including but not limited to a dispute procedure through the Utility Regulator”.

(our underlining).

68. By letter dated 5 August 2021 (**5 August 2021 SONI AWFL Letter**) SONI responded to the 9 July 2021 AWFL SONI Letter. SONI detailed why it would not vary the SONI Connection and Use Documents in the way requested by AWFL in the 9 July 2021 AWFL SONI Letter. It said this:

“Dear Sirs,

AUGHT WINDFARM (AWF) – CONNECTION ARRANGEMENTS

SONI Limited (**SONI, we, us or our**) is writing to you in response to your letter of 09 July 2021 in which AWF requested that SONI take steps to vary the relevant requirements in its Connection Offer, Connection Agreement and TUoS Agreement.

SONI is bound by Condition 15 of its licence to participate in the transmission of electricity¹ to not unduly discriminate between persons or classes of persons when undertaking the activities set out in its licence. By restricting use of the Transmission System to parties that are licenced or bound to certain behaviours by the conditions associated with an exemption, SONI is able to ensure that only parties that are obliged to comply with the Northern Ireland Grid Code, the Trading & Settlement Code, the NI Fuel Security Code, and other licence requirements, have access to the grid. This is a fundamental building block of the

⁵⁰ This essentially replicates the Amendment request part of the Request.



regulatory framework in Northern Ireland that helps to ensure a secure and stable electricity supply to customers in Northern Ireland.

Without this protection, and the potential for enforcement action by the Utility Regulator in the event of a party not complying with the relevant codes, SONI has no mechanism to ensure that windfarms connecting to the system in NI are obliged to comply with the NI Wind Farm Settings Schedule and other relevant parameters that are defined in the Northern Ireland Grid Code. In this regard it is important to note that only the Scheduling and Dispatch codes are harmonised across the island and that all other aspects of the Grid Codes remain under separate jurisdictional governance.

In the context of your request to both SONI and the Utility Regulator, we are not aware of any characteristic of the AWF connection that would be significant enough for us to forgo the requirement only to offer TUoS agreements to eligible parties. This is because SONI relies on assurances provided by users of the transmission system being bound to the wider Northern Ireland Statutory Framework.

Without such a reason, SONI would itself be at risk of licence enforcement action by the Utility Regulator, including action initiated by third parties complaining that they consider themselves placed at a disadvantage by a perception of, or actual, discrimination by SONI in favour of AWF.

We note that in your letter to the Utility Regulator of 9th July 2021 you ask the Utility Regulator to direct SONI to make changes to our Connection Offer, Connection Agreement and TUoS Agreement. SONI is not aware of any provision in the statutory framework in Northern Ireland that provides the Utility Regulator with this vires.

With regard to cross-border connections, a framework was put in place in 2007 whereby reciprocal obligations were added to the SONI and EirGrid licences to facilitate the connection into the transmission system in the other jurisdiction. We note that AWF did not avail of this route to connection, instead applying directly to SONI for a connection at a point in Northern Ireland. SONI has been clear throughout about the risks that were inherent in that approach, while respecting AWF's right to determine its own commercial direction.

We would also like to take this opportunity to remind you that SONI has not proceeded with any preconstruction activities on this connection and would require payment of the invoices issued on the 4.11.20 to enable the project to progress.”

(Our underlining)

69. Our 20 August 2021 UR AWFL Letter – in response to the 9 July 2021 AWFL UR Letter - did not contain agreement to the Request (as then formulated). Our letter said this:

“Dear Mr



RE: Aught Wind Farm: Connection Arrangements

We refer to our letter of 14 July 2021⁵¹, and the [5 August 2021 SONI AWFL Letter] (copied to us). Our 14 July Letter was in holding response to [the 9 July 2021 AWFL UR Letter July 2021 AWFL UR Letter].

[The 9 July 2021 AWFL UR Letter] claims that the Authority's rejection (by decision letter dated 23 April 2021) of the Aught Wind Farm Limited ("AWFL") application for a generation licence, and [DfE]'s subsequent refusal (by decision letter dated 25 June 2021) to grant AWFL an exemption from the requirement to hold a generation licence, operates so as to prevent AWFL from complying with the terms of [the SONI AWFL Connection Offer]. Particular reference is made to the provisions of paragraph 9.29 and 9.30 of the SONI AWFL Connection Offer ("the relevant terms"). The Authority is asked to take steps to address the situation AWFL finds itself in.

We consider the approach set out (or reflected) in the [9 July AWFL UR Letter] to be misguided. It is clear that the [SONI AWFL Connection Offer] provided AWFL with advance notice of the requirements of the relevant terms. AWFL appears to have made the informed decision to accept¹ the [SONI AWFL Connection Offer] - without (it seems) satisfying itself as to its ability to meet the requirement(s) of the relevant terms - and, having done so, now seeks to petition the Authority (and [DfE]) to make such changes to the settled regulatory framework as are apposite to address AWFL's inability to meet the relevant terms: terms that AWFL (appears to have) freely accepted. That approach looks misconceived.

In closing, we note that AWFL has been advised on at least two occasions by SONI – first, in SONI's letter to AWFL of 3 December 2020, and second, in SONI's 5 August Letter – as to the framework [the CBF] which was established some years ago for the purposes of facilitating cross-border connections. AWFL may now wish to consult with SONI as to the opportunities available to it to pursue its objectives under that framework."

70. A footnote to the 20 August 2021 UR AWFL Letter mentioned the dispute resolution provisions in clause 16 of the SONI AWFL Connection Offer.

71. AWFL sent a pre-action protocol letter to the UR dated 27 August 2021 (**the 27 August 2021 PAP Letter**) which included this;

"c. Third, the decision [set out in the 20 August 2021 UR AWFL Letter] was irrational, *inter alia* because it amounts to unequal and discriminatory treatment between [AWFL] and Gortmullan Energy Limited [as the operator of Snugborough windfarm] in materially similar circumstances and in the absence of any objective justification.

...

⁵¹ This was a holding letter.



Insofar as the Proposed Respondent says that it acts within the parameters of the [Electricity Order], the Applicant will say that the [Electricity Order] is unlawful as contrary to retained EU law and the Withdrawal Agreement, particularly the Protocol on Northern Ireland and Ireland forming part of the Withdrawal Agreement.”⁵²

72. The 9 July 2021 AWFL UR Letter had not mentioned *Snugborough* windfarm. It is accepted that the First Memo had. The First Memo had also mentioned *Slieve Kirk* windfarm. Neither the 9 July 2021 AWFL UR Letter nor the 27 August PAP Letter mentions *Slieve Kirk* windfarm.

73. The 27 August 2021 PAP Letter asked that the UR agree to:

“(1) modify Condition 25(1) of SONI’s Licence to remove all references to “any eligible person” so that it is consistent with Condition 25(2);
(2) direct SONI to amend the Condition Precedent as set out at clause 2.1 of its standard form template so that the Applicant may be authorised to generate electricity pursuant to a licence granted in accordance with Article 10(1)(a) of the [Electricity Order] or the [ERA]. This is in light of the fact that the Applicant already holds a licence to generate electricity which has been issued by the CRU; and
(3) direct SONI to make the consequent amendments to SONI’s Connection Offer and Agreement⁵³ to give effect to the above.”

74. A letter from SONI to the UR dated 6 October 2021 (**the 6 October 2021 SONI UR Letter**) explained SONI’s position on the operation of the CBF. This was in response to our letter to SONI (asking questions on the CBF) dated 22 September 2021 (**the 22 September 2021 UR SONI Letter**). SONI stated:

“As articulated in our letters to [AWFL] of 3 December 2020 and 5 August 2021, a framework for cross-border connection arrangements has been in place since 2007, as part of the broader framework to facilitate the all-island electricity network and implementation of the SEM. The System Operator Agreement [**the SOA**] between SONI and the ROI TSO <https://www.soni.ltd.uk/media/System-Operator-Agreement.pdf> was first entered into on 1 October 2007 partly to develop this framework in compliance with SONI’s licence obligations.

...

Accordingly, when any connection applicant, such as [AWFL] applies to SONI for connection to the All-Island Transmission Networks at entry or exit points on the transmission system (as defined in the TSO Licence), and their application does not fall within one of the exemptions set out in Condition 25(6) at the point at which

⁵² Neither the 9 July 2021 AWFL UR Letter nor the 18 May 2022 AWFL UR Letter mentions any alleged breach of EU law should the UR not make the regulatory changes requested.

⁵³ We understand this to be a reference to the Standard G-Connection Agreement.



their application is made, SONI's view is that under Condition 25 it has no grounds to refuse to issue a connection offer to such an applicant in such circumstances.

Query 1 – Which TSO receives applications for connections to the Northern Irish Transmission System and what is the process for operation of the Framework?

Under the current regulatory framework, the decision as to which TSO the applicant wishes to apply to is the applicant's own.

For the framework contained within Condition 27 to be engaged, in a situation such as AWF's, where the generation assets are proposed to be situated in the Republic of Ireland, the applicant needs to apply directly to the ROI TSO. Assuming that an application is made to the ROI TSO which has a cross-border impact (i.e. one made in respect of generation or supply in ROI or having an entry or exit point in ROI, which requires works to be done to the transmission system in Northern Ireland), Condition 27 provides that the ROI TSO may make a request to SONI for connection of that generating station to the transmission system in Northern Ireland. That request would then be processed by SONI in accordance with the provisions of Condition 27.

In setting out the above position, and generally replying to the Letter, we should note that Condition 27 (which sets out SONI's licence obligation with respect to cross-border connection applications) was first drafted by, and consulted on, by the regulatory authorities when Condition 27 was introduced as part of SONI's TSO Licence, and we appreciate that the UR may have its own views regarding the intended operation of Condition 27 in this context.

Query 2 – Which entity would own or operate the relevant assets in such a scenario?

Whilst SONI's connection offer would be issued to, and connection agreement entered into with, the ROI TSO as the entity applying for a connection to the Northern Irish transmission system on that party's behalf, any customer assets would be owned and operated by the entity which would otherwise own those assets in the ordinary course (i.e. AWF in this scenario, had it applied to the ROI TSO), as the person making the application to which the request envisaged by Condition 27(1) of SONI's TSO Licence related. We would envisage in such circumstances that the decisions relating to the scheduling and dispatch of any relevant assets (i.e., AWF in this scenario) would be in line with the relevant provisions of either or both of the NI or ROI Grid Code, as the regulatory authorities (RAs) determined to be applicable to that connection.

As regards any connection or transmission assets, we envisage that this would depend on the specifics of the application made by AWF to the ROI TSO, and by the ROI TSO to SONI, in such circumstances, and the applicable legal framework for ownership of such assets that would be engaged.

Query 3 – Does SONI consider that any of the exemptions specified in Condition 27(7) of SONI's TSO Licence would have applied to AWFL had it



applied to the ROI TSO for connection, and the ROI TSO made a request to SONI under Condition 27(1)?

We do not know if any of the exemptions would have applied, and we are unable to answer this question as it invites SONI to speculate on a hypothetical application that has not in fact been made.

For example, Condition 27(7)(b) provides SONI with a right to refuse to make an offer if the applicant⁵⁴ does not agree to comply with the relevant parts of the SONI Grid Code as the UR specifies in a direction issued to SONI for the purposes of applying that Condition. A generation licence issued in Ireland (such as that which we understand has now been issued to AWF) requires compliance with the EirGrid Grid Code. Both RAs have the ability to derogate against any contradictory provisions in the respect grid codes.

As SONI has not yet received any application under Condition 27(1) from the ROI TSO, presumably the two RAs have not held any discussions around the applicability of the respective grid codes to any such hypothetical connection (and their respective priority), and the UR has not yet issued any direction to SONI pursuant to Condition 27(7)(b), this is a hypothetical situation that we are unable to address.

Query 4 – How did SONI make clear to AWF the risks of its failure to follow the Framework in applying to SONI for connection?

By way of context, we should re-iterate the points made at the introduction to this letter in terms of SONI's having no capacity to refuse to issue a connection offer to any connection applicant, such as AWF, who applies to SONI for connection to the All-Island Transmission Networks at entry or exit points on the transmission system (where their application does not fall within one of the narrow exemptions set out in Condition 25(6)).

That stated, whilst no specific reference is made to the framework in the minutes of the initial meetings with SONI's connections team, SONI were clear with AWF as to the general risks of applying for a connection point in Northern Ireland in respect of a generation station which was proposed to be situated in the Republic of Ireland.

The minutes of a meeting held with AWF on 3 October 2019 from 11:30 – 12:30 at SONI's offices reflect that SONI noted as follows:

SONI are obliged under our licence to provide a connection offer to anyone who applies. SONI are only obliged to enter into a Transmission Use Of System Agreement (TUoSA) with eligible parties e.g., who require a generation licence. An eligible person under the SONI licence references being exempt under Article 9 of the [Electricity Order] in this type of scenario e.g., holding a RoI licence as opposed to a NI licence. AWF should provide evidence that they are exempt under Article 9

⁵⁴ This is the applicant to *EirGrid* for a connection to the RoI TS at a *Connection Point in RoI*.



of the Order. SONI to provide AWF with the relevant contract details within the Utility Regulator for such generation licences. Therefore, the commercial risk associated with this complex cross-border arrangement is with AWF. [SONI] advised AWF to contact both the Regulators in both NI and RoI regarding consent requirements for this project due to the cross jurisdictional nature and complexity of this project.

The minutes of a later meeting held on 30 March 2020 from 10:30 – 11:30, conducted remotely by conference call in light of the Covid-19 pandemic, reflect that SONI noted as follows:

SONI are obliged under our licence to provide a Connection Offer to anyone who applies. Therefore, the Connection Offer acceptance date is not directly impacted by the licence requirements.

However, under condition 25 of the SONI licence you need to be an 'eligible person' to apply for and enter into a TUoS agreement. An eligible person is defined as "persons licensed under Article 10 of the Order (or exempt from the requirement to be so licensed under Article 9 of the Order) or who have applied for a licence under Article 10 and whose application has not been withdrawn or rejected. The Order referenced here being the [Electricity Order]. As the connection point is located in NI then the TUoS Agreement is between AWF and SONI.

██████████ [an official of AWFL] advised that he had been in contact with Jody O'Boyle from the UR within the last couple of weeks. They are reviewing and trying to understand the licence requirements for this connection project. ██████████ also advised they have been in contact with CRU regarding the licence requirements applicable in RoI e.g., Generation licence.

AH [an official of SONI] also pointed out that other licences (e.g., a TO licence) may be required in addition to the Generation licence for the 110kV cable but that AWF needs to discuss this further with the Regulators in both RoI and NI. This is not a decision made by SONI but will ultimately have an impact on the connection of the wind farm to the NI transmission system if the necessary licences are not in place. This will impact Agreements entered into with SONI e.g., TUoS and Connection Agreements.

Copies of both sets of minutes are attached. The UR should have copies of the other relevant correspondence shared by SONI with AWF, and indeed the UR refers to various letters sent by SONI to AWF (into which the UR was copied) in the Letter.

Further, in our letter of 3 December 2020 (to which the UR refers in the Letter) we did make reference to the framework contained within Condition 27, whilst consistently stating in all correspondence, and meetings, that it was not and is not for SONI to provide legal (or other) advice as to the application process that should be followed in any particular circumstance.



Generally, it is clear that AWF has sought specialist legal advice in respect of its application for some time and we understand it has also engaged on a preliminary basis with the ROI TSO, but has not, to date, made any application for connection to the ROI TSO.

It should also be noted that in practice, there has not yet been any application from the ROI TSO to SONI in respect of any cross-border connection (whether initiated by AWF or otherwise) since the framework for cross-border connections was first implemented in SONI's and the ROI TSO's respective licences.

We trust that this is of assistance in clarifying matters.”

75. The Utility Regulator sent its PAP Letter response on 11 October 2021.
76. There then followed the initiation of JR2 by proceedings dated 21 October 2021.
77. Following the leave hearing in JR2, at which the Judge expressed concerns about the summary nature of the 20 August 2021 UR AWFL Letter, the Utility Regulator agreed to take a fresh decision on the matters raised in the 9 July 2021 AWFL UR Letter; an agreement reflected in the Consent Order.
78. Initiation of the JR2 proceedings was preceded by the commencement of judicial review proceedings (**JR1**) by AWFL in respect of the Exemption Refusal Decision. JR1 has been stayed pending our fresh decision as per the Consent Order.
79. DfE's position on the Exemption Application - as maintained in the Exemption Refusal Decision and the JR1 proceedings (and further explained in the responding affidavit (**the DfE Affidavit**) filed by DfE) is that it has no legal power (or “vires”) to grant the Exemption Application because, in short summary, AWFL demonstrates no intention to carry on the activity of electricity generation *within the territory of NI*. AWFL maintains (in JR1) that DfE could and should grant it an Article 9 Exemption.
80. AWFL submitted a further application to the UR for an Article 10 generating licence on 23 November 2021 (**the second generating licence application**). The second generating licence application related to a proposal by AWFL to place a Battery Energy Storage System (**BESS**) at the site of the NI substation.
81. SONI wrote to AWFL on 9 December 2021 (**the 9 December 2021 SONI AWFL Letter**). In this correspondence SONI noted that there had been discussions as to whether AWFL would place a BESS system (in NI) at the NI substation site and with that be entitled to make a valid application for a G-TUoS agreement. SONI said this:

“For completeness, your query is below:

“Further to our MS Teams meeting on 30 September 2021, including our subsequent email exchanges, where you helpfully confirmed that upon receipt of a revised connection application from AWFL (on the basis of the battery modification proposal that we discussed) SONI would issue a revised connection variation offer, we have been discussing internally the requirements



of our subsequent TUoSA application to SONI based on any such modified connection offer.

Subject of course to receipt by SONI of a valid and complete application from AWFL as the user at the appropriate point in time, it would be very helpful if SONI could at this stage confirm for us that, in principle, it will enter into a TUoSA with AWFL on the basis of the full MEC (under any such modified offer and subsequent connection agreement) at the connection point. Assuming for this purpose that AWFL shall be an “eligible person” (i.e., properly licensed for any generation activities taking place within NI which we are discussing and will progress separately with the Utility Regulator) under the SONI licence, AWFL do not see any requirement, within or across any of the relevant industry documents, for its TUoSA to be limited to the capacity of generation that will be taking place within NI. Rather, on application by any such person, SONI shall accept into the all-island transmission network at such entry point and in such quantities as may be specified in the TUoSA application.

Can you confirm, for the purpose of the revised connection variation offer together with any subsequent connection agreement and TUoSA that will be required, that SONI shall allow passing of electricity up to the amount of the full MEC of the project and that all technical references to AWFL’s facility in the underlying grid connection documentation shall include both the BESS facility and remote generation from the wind turbines in ROI as part of the description of [AWFL]’s facility?”

Unfortunately, SONI is unable to provide the confirmation sought in bold above.

In general, SONI would not give such a confirmation to any connection applicant, as the connection of their facility would be subject to all relevant provisions of the relevant connection offer having been satisfied prior to the date of connection and energisation, together with the applicable conditions precedent to generator transmission and use of system agreement (TUOSA) and connection agreement having been satisfied, as well as the relevant licence conditions satisfied at that time to permit SONI to enter into such contracts. Such an assessment could only be made at the appropriate point in time based on the then prevailing circumstances.

In terms of the specifics, as AWFL will be aware of the view of the Utility Regulator for NI (UR) that on the basis of the proposed connection arrangements (i.e., AWF’s wind turbines being situated in ROI and supplying electricity through NI), AWFL would not be an eligible person with respect to its licensable activities taking place within NI under the proposed connection arrangements.

Whilst the licensing issues are, and remain, a matter for the UR and/or the NI Department for the Economy (as applicable), to the extent that AWFL did not have a valid licence for (all of) those activities, or an exemption from the requirement to be so licensed, SONI considers that the addition of the proposed BESS to those connection arrangements would not change the position as outlined above.



If AWFL are issued with a NI generation licence, we would assume this would be for the proposed BESS located in NI only and AWFL would be ineligible for the remainder of the connection (i.e., the windfarm).

The definition of the “User’s Connection Plant and Apparatus” within [AWFL] TUOSA covers all relevant plant and apparatus to be connected at the Connection Point (i.e., the entirety of the connection arrangements), and SONI considers AWFL would need to have a licence, or be exempt from the requirement to hold same, with respect to all of that plant and apparatus or the entirety of those connection arrangements.

Accordingly, we do not believe SONI could enter into a generator TUOSA with AWFL for a windfarm in ROI and the proposed (licensed) BESS facility located in NI, to the extent that the supply of electricity from the windfarm was unlicensed. However, we would stress that the licensing requirements for any proposed connection arrangement are a matter for the Utility Regulator to advise on.

Whilst we should re-iterate that SONI cannot provide advice to AWFL, and licensing issues are not primarily an issue for SONI, we should also note that it has come to our attention based on [CRU]’s published record of generation licences obtained in ROI that AWFL has obtained a generation licence for [AWFL] windfarm] in ROI. SONI’s understanding is that this generation licence obliges [AWFL] to comply with the requirements of the Irish Grid Code, but that under the proposed connection arrangements the BESS Facility would be located in NI, with the associated obligation to comply with the NI Grid Code.

We should highlight the requirement to comply with the NI Grid Code would also generally apply with respect to all relevant plant and apparatus to be connected at the Connection Point (i.e. the entirety of the connection arrangements) by virtue of the provisions of AWFL’s accepted Connection Offer (in particular clause 11 thereof) as well as any future TUOSA or connection agreement (this would be regardless of whether the Connection Offer is amended to accommodate the BESS).

Accordingly, given that AWF would be subject to different grid codes in two jurisdictions under any connection arrangements (given its CRU licence, and the requirement to comply with the NI Grid Code under, *inter alia*, its Connection Offer (including the BESS Facility if relevant)), any mechanism to connect [AWFL] to the transmission network in NI (whether pursuant to the Condition 27 framework, or some other route) may require work to be undertaken by the respective regulatory authorities to assess potentially conflicting provisions of the relevant grid codes and determine their respective priority and application to [AWFL]. The provisions of the Condition 27(7)(b) of the framework highlighted to AWFL touch upon this requirement.

It is not immediately obvious how AWFL would plan to satisfy these separate obligations behind one connection point, and we would welcome clarification as to AWFL’s or its legal advisors’ views in that regard.

Finally, we should note that it has been brought to our attention that AWFL has now made [the second generating licence application] for a generation licence with



respect to the proposed BESS. We should clarify for completeness that the current connection arrangements proposed under the Connection Offer do not incorporate the BESS, and SONI has not yet determined the least cost technically acceptable connection arrangements for same. You may wish to consider how this impacts your application for a generation licence (or any publications relating to same) and we would request that you please correct / clarify this for the record. For completeness, we have copied the UR into this reply to bring this to their attention.

We trust that this is of assistance in clarifying matters.”

82. AWFL responded to the 9 December 2021 SONI AWFL Letter by its letter of 19 January 2022 (**the 19 January 2022 AWFL SONI Letter**). AWFL stated:

“ . . [its view was that] it shall be an “eligible person” for the purpose of the SONI licence as it will [if granted a generating licence for the BESS] hold a generation licence on or before it shall apply for entry into a [G-TUoS agreement].

. . .

As regards paragraph (6)(b) [of Condition 25] AWFL will give the necessary undertaking to be bound by such parts of the [SONI] Grid Code and to such extent as the Authority shall from time to time specify in directions issued to [SONI] for the purposes of [C25].

As regards paragraph (6)(c) AWFL will comply when requested to do so by [SONI] the Transmission Owner [NIE] and or [EirGrid as] [RoI] TSO, offer to enter into an agreement for connection or extension works in respect of the Connection Agreement or Use of System Agreement in question.⁵⁵

Use of System Agreement

AWFL understands from the correspondence that SONI currently considers that it could not enter into a [G-TUoS agreement] with AWFL for a windfarm in [RoI].

AWFL does not agree with any such position as it is contrary to SONI’s legal obligations under the SONI licence. . . and one that is entirely inconsistent with the all-island [SEM].

Under a [G-TUoS agreement] SONI shall make available the All-Island Networks to a User for transportation of energy in relation to exports from a Connection Point.

Provided AWFL is an “eligible person” . . . and is a party to a connection agreement dealing with a connection of the Users Connection Plant and Apparatus . . . to the transmission system SONI shall (and indeed must) make available the All Island Transmission Networks to AWFL as the User for the transportation of energy in

⁵⁵ It will be noted that AWFL appears to misread the relevant provision. Nothing turns on this so far as our mind-to decision is concerned.



relation to exports from the connection point (i.e., the points at which the User's Connection Plant and Apparatus is connected to the transmission system . . .)

. . .

Grid Code

The method of connection proposed by SONI does not raise any grid code compliance issues. The project will be built to comply with the SONI and EirGrid grid codes and AWFL [is] prepared to be bound by both SONI and EirGrid code compliance."

(underlining added).

83. SONI responded to the 19 January 2022 AWFL SONI Letter with its letter of 8 March 2022 (**the 8 March 2022 SONI AWFL Letter**). SONI stated:

"Thank you for your Letter, which we will give further consideration. Our initial view, however, is that the Letter does not, unfortunately, satisfactorily deal with the potential issues raised in our letter dated 9 December 2021.

The Letter makes a series of assertions regarding SONI's Condition 25 licence obligations, dealing with, among other things, applicable transmission safety standards, to which SONI has not yet given detailed consideration. However, with respect to Condition 25(6)(a)(iv) in particular, we would note that simply stating that AWFL will comply with both EirGrid and SONI Grid Codes does not address the issues that we were attempting to assist by highlighting.

AWFL appears to have acknowledged SONI's view that by virtue of its ROI generation licence it will be required to comply with the provisions of the EirGrid Grid Code in its entirety. Equally, by virtue of any connection apparatus or equipment which is issued an NI generation licence, and by virtue of the provisions of SONI's TUoS agreement, connection offer and subsequent connection agreement, if connected directly to the NI transmission system, AWFL would be required to comply with the SONI Grid Code in its entirety.

The EirGrid Grid Code and the SONI Grid Code are prepared and implemented by EirGrid PLC and SONI Limited (in conjunction with and following approval from the respective regulators) separately and enforced separately by the respective regulators in Northern Ireland and Ireland. Whilst SONI has not undertaken a comprehensive technical analysis of potential inconsistencies in the respective Grid Codes, at the most basic practical level, to give an example, the disparate Grid Codes make disparate provisions for the entity responsible for testing, scheduling or dispatch of any assets to which they apply.

Under the terms of AWF's accepted connection offer, as AWFL would be connecting to the all-island transmission networks at a point of connection located in Northern Ireland, SONI's perspective is that it would be responsible for scheduling and dispatch of [the AWFL windfarm] and the technical interfaces between [AWFL windfarm] and the transmission system operator would need to be with SONI's control centre at Castlereagh House.



By extension, it would be impossible for AWFL to comply with the entirety of the EirGrid Grid Code, as there would be no direct technical interface between [AWFL] and EirGrid PLC.⁵⁶

To the extent this issue has not yet been considered by AWFL, we would recommend again that AWFL engages with the regulators in both Northern Ireland and Ireland to discuss the extent to which it will be able to secure derogations against the conflicting or disparate requirements of the Grid Codes on both sides of the border. This issue will need to be addressed regardless of AWF's ultimate method of connection.

In SONI's view, the framework for cross-border connections contemplated under Condition 27(7)(b) of SONI's Licence does touch upon those potential divergences, in that it envisages that a direction may be given by the Utility Regulator for Northern Ireland that the relevant connecting party may only be required to comply with the SONI Grid Code in part (presumably to the extent that a corresponding derogation would be issued against the corresponding requirement to comply with the EirGrid Grid Code by [CRU] for Utilities Regulation).

We would also note that SONI signing (or entering into) a Generator TUoS agreement, and such agreement having or continuing to have legal force are two different things. SONI might enter into terms with AWFL regarding AWF, but any conditions precedent thereto must be satisfied, and the terms thereof must be met, on an ongoing basis for AWFL to have, and continue to have, an ongoing right to use of the transmission system.

...”

84. By letter dated 14 April 2022 (**the 14 April 2022 UR AWFL Letter**) we asked AWFL to provide further information/clarification in respect of the matters raised in the 9 July 2021 AWFL UR Letter. AWFL's response was by way of the 18 May 2022 AWFL UR Letter.
85. The 14 April 2022 UR AWFL Letter confirmed that the information sought included information arising out of the 2nd affidavit filed by AWFL (**MD2**) in JR2. In MD2, AWFL confirmed that it had been in contact with EirGrid regarding a connection offer for the AWFL windfarm under the RoI Enduring Connection Policy 2.2 (**ECP 2.2**).⁵⁷ The ECP is a RoI specific connections policy aimed at ensuring the orderly connection of renewable energy source electricity generators (**RES-E**). ECP is issued under direction of CRU pursuant to section 34 of the ERA. It has no application in NI.

⁵⁶ This is because there is no planned *RoI located* connection point between AWFL and EirGrid. AWFL's connection design envisages no connection with a RoI SO. That is unique.

⁵⁷ See this CRU publication for a summary of connection policy developments (to include the ECP) in RoI: [Electricity Connection Policy | CRU.ie](https://www.cru.ie/publications/2022/03/22/electricity-connection-policy/)



86. The questions posed in the 14 April 2022 UR AWFL Letter will be included when we come to examine the 18 May 2022 AWFL UR Letter. We do that in the next section.

(ii) The 18 May 2022 AWFL UR Letter

87. As already mentioned, the 18 May 2022 AWFL UR Letter developed/revised the request made in the 9 July 2021 AWFL UR Letter. It also provided information on applications made by AWFL for connection of the AWFL windfarm made to EirGrid under the ROI⁵⁸ Enduring Connection Policy (ECP) 2.1 and 2.2. It did this by answers to the questions posed in the 14 April 2022 UR AWFL Letter.

88. We shall now set out the series of questions and answers (with questions italicised).

“First, we should be grateful for an update on the progress of AWFL’s application to EirGrid under ECP 2.2; including details of any decision(s) made by EirGrid in respect of the application and/or any applicable timetable going forward.

“Although AWFL is on the batch list under ECP 2.2 the application has not been progressed by EirGrid and therefore no applicable timetable has been issued to AWFL EirGrid has been unable to provide certainty on the cost and method of connection to AWFL so the application will not be progressed.”

Second, we should be grateful for an update as to whether there has been any response from EirGrid to the particular request made in AWFL’s letter of 13 January 2022 that EirGrid confirm the existence or otherwise of the “cross border connections framework” (“the Framework”) between EirGrid and SONI to facilitate the method of connection applied for in respect of the AWFL wind farm at Aught (ROI) (“the Aught Wind Farm”).

“AWFL requested a meeting with EirGrid to discuss the existence of Framework amongst other matters [relating to ECP 2.2 Application] on the 24 February 2022. AWFL requested that EirGrid advise AWFL of the practical procedural steps for implementation of the [CBF] to ensure that it was operable. AWFL [was] advised that the [CBF] was not supported by any underlying documentation. As a result, EirGrid are unable to facilitate AWFL’s method of connection as determined by SONI⁵⁹ as the least cost technically acceptable solution for the generation activities of AWFL.

EirGrid and AWFL have an agreed minute of the meeting of 24 February captured on email. [SONI] made the following comments on the [CBF]

“[EirGrid] commented that the [CBF] is not a singular policy/agreement stitched into a number of aspects such as but not limited to the [SEM] Policy. The System

⁵⁸ ECP is of no application in NI.

⁵⁹ Again, AWFL seems to be suggesting that SONI devised the overall connection methodology for the AWFL windfarm. SONI has disputed this.



Operators (SONI and EirGrid) Licensing legislation and reciprocal connection agreements between SONI and EirGrid. As a result, there is no one policy or relevant document which sets out the exact process to utilise the [CBF].

[EirGrid] stated that if AWFL wanted to pursue the ECP 2 process that EirGrid cannot offer grid connections connecting directly to the SONI Network.”

Third, we should be grateful for an update on whether any further discussions between AWFL and SONI have taken place in relation to the Framework and how it might be utilised in effecting the connection of the Aught Wind Farm to the NITS.

“No further discussions between AWFL and SONI have taken place. Indeed, SONI has not at any stage of the application process advised AWFL how such framework might be utilised in effecting the connection of the Aught Wind Farm to the NITS.”

Fourth, we should like to understand AWFL's reasons - with supporting evidence where available - for AWFL not pursuing, as its preferred means of connection, an application to EirGrid for the Aught Wind Farm to be directly connected to (and thereby export electricity onto) (i) the ROI/EirGrid transmission system, and/or (ii) an electricity distribution system in ROI.

We refer, in this regard, to the document titled 'Enduring Connection Policy – 2.1 (ECP – 2.1) 2020 Category A Batch' published jointly by EirGrid and ESB Networks in September 2021, which includes a table (starting at page 9 of the document) specifying ECP - 2.1 applications that were offered a place in the 2020 Batch before being subsequently withdrawn. We note that the applications so specified include an entry for AWFL and the Aught Wind Farm.

Accordingly, we request AWFL to provide the following information –

- a. The date it made its ECP – 2.1 application for the Aught Wind Farm.*
- b. The date that its application was accepted.*
- c. The date that it withdrew its application following its acceptance.*
- d. The electricity network to which the Wind Farm was to be connected had the accepted application not been withdrawn by AWFL.*
- e. AWFL's reasons, with supporting evidence where applicable, for withdrawing its accepted application.*

“Given the likely cost and timetable risks in relation to a method of connection (which would require significant upgrade works not under the contemplation of the system operators to facilitate a connection to either Some Hill or Trillick⁶⁰), SONI determined that the least cost technically acceptable solution for the Aught

⁶⁰ These are ESB substations in ROI.



Wind Farm would be a connection to the NITS.⁶¹ That is therefore what AWFL has been progressing with as the method of connection. This is the most economic, effective and co-ordinated manner in which to connect the Aught Wind Farm.

In terms of the specific information requested, we would respond as follows:

- (a) September 2020⁶²
- (b) October 2020 (i.e., being the date AWFL was listed on the initial batch list for ECP 2.1)
- (c) December 2020
- (d) The electricity network to which the Wind Farm was to be connected had the application not been withdrawn by AWFL was a matter for the network companies under the ECP ruleset (i.e., nodal assignment, etc.) which was not progressed so AWFL cannot comment any further
- (e) AWFL had, by this stage, accepted a connection offer from SONI and the Wind Farm had therefore withdrawn⁶³ from the ECP process as SONI had determined that the least cost technical solution was via a connection to the NITS and EirGrid had stated to AWFL that the Wind Farm could not maintain two connection offers from two separate system operators.

Fifth, we note that the 9 July Letter explains AWFL's position that unless the requested amendments to Condition 25 (1) of the TSO Licence and SONI's 'Connection Terms' are made, there will be a situation involving an "inability of potential stakeholders to legitimately access and participate in the all-island Single Electricity Market (SEM)" where the "the effective and efficient functioning of the SEM... is being stymied".

It is unclear to us whether AWFL is intending to refer us to the situation of other entities who may wish to access and participate in the market, or whether AWFL's concerns relate to its own position (which we are seeking to understand through the questions outlined above). If AWFL is seeking to express wider concerns, beyond those relating to its own attempt to participate in the SEM, we would ask AWFL to confirm what it means by 'potential stakeholders' and to please explain how or why such potential stakeholders are unable to access and participate in the SEM in the absence of the requested modification to Condition 25(1) and directed amendment to SONI's 'Connection Terms'

"AWFL's concerns relate to its own position."

Sixth, we note that in the 9 July Letter, AWFL states its position that the steps it requests of the UR are required by the UR's duties in relation to the SEM; in

⁶¹ SONI has disputed this.

⁶² It will be noted that AWFL has thus confirmed that it made an application to EirGrid (for connection to the ROI TS) several months after its May 2020 acceptance of the SONI AWFL Connection Offer for connection to the NITS.

⁶³ It is not clear how aligns with the AWFL application to EirGrid under ECP 2.1 having been made after the SONI AWFL was accepted by AWFL.



particular, those identified at Article 9(1) to (5) of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007.

Those provisions apply where the UR is giving effect to a decision of the SEM Committee. The 9 July Letter does not identify which decision/s of the SEM Committee is/are being referred to. The Order 53 Statement filed in [JR2] explains that the relevant decision was 21-027 “Proposed Decision on Treatment of New Renewable Units in the SEM/SEM Committee” here: [Proposed Decision on Treatment of New Renewable Units in the SEM | SEM Committee](#). Please confirm whether that is indeed the decision relied upon for the purpose of the requests made in the 9 July Letter and explain why it is said to support AWFL’s position in the 9 July Letter. We note the follow up decision of the SEM Committee here: [SEM-22-009 Decision Paper on Dispatch, Redispatch and Compensation Pursuant to Regulation EU 2019943.pdf \(semcommittee.com\)](#)

“6. AWFL no longer maintains the position that its requests of the UR are required by reason of the latter’s duties in relation to the SEM in particular those identified at Article 9(1) to 9(5) of the [SEM Order]. Accordingly, AWFL is not requesting the UR take into account the SEM-C decisions 2021-027 and 22-009.”

Seventh, we note that the 9 July Letter asks that we (*inter alia*):

(iii) direct SONI to make the necessary amendments to its standard form Offer for Connection to the NI Transmission System and Transmission Connection Agreement to give effect to the principle proposed in paragraph (ii) above

Please clarify the document or documents referred to in this excerpt. What is the “standard form Offer for Connection”? Is that a document separate to the referenced “Transmission Connection Agreement”? Or is there in fact only one document referred to; namely, SONI’s published form of Standard Terms of a Connection Agreement (for generators) as here: [Library \(soni.ltd.uk\)](#)¹

“The document or documents referred to in the excerpt are as follows:

(a) the standard form of grid connection offer that is prepared by SONI and issued to applicants in accordance with condition 25 of the SONI Licence prior to entering into a Connection Agreement. It is therefore separate and distinct from the referenced “Transmission Connection Agreement”. In the experience of AWFL, this document will typically include terms and conditions relevant to the requests made in the 9 July Letter. In particular, such offers typically include a condition which provides that should a generator such as AWFL accept the offer, then prior to the wind farm connecting and energising at the connection point [AWFL] shall provide evidence to SONI that it is authorised to generate electricity by virtue of a licence granted under Article 10(1)(a) of the [Electricity Order] or exempt from the requirement to be so licensed under Article 9 of the Order) to the connection point. Furthermore, such documents also typically include a condition which provides that a generator shall apply for and enter into an agreement with SONI for the use of the NITS (commonly referred to as a TUoS Agreement) which also contains this evidential requirement. In the case of AWFL, these provisions need amended.

(b) the referenced “Transmission Connection Agreement ” is indeed SONI’s



published form of Standard Terms of a Connection Agreement (for generators) as referred to in your letter dated 14 April 2022. As per (a) above, this document also includes a requirement for prospective generators to hold a "Generation Licence" (which is defined by reference to the Order only) or to be exempt from the requirement to be so licensed under Article 9 of the Electricity Order. Again, in the case of AWFL, these provisions need amended."

Eighth, and noting the clarification just sought, please

- confirm that the "principle proposed" refers to the principle that a User may be authorised to generate either by a licence granted in accordance Art 10 of the Electricity (NI) Order 1992 or section 14(1)(a) of the Irish Act or benefit from a relevant exemption under Article 9 of the 1992 Order

- identify the "necessary amendments"

"In relation to the clarifications sought . . . we confirm:

(f) that the "principle proposed" is as described, namely an entity must be properly licensed (or exempt) in either jurisdiction of the SEM pursuant to the applicable laws; and

(g) the "necessary amendments" can be described as follows across the documents referenced:

Grid Connection Offer

The underlined text⁶⁴ should be included:

"Should [AWFL] accept this Offer, then prior to the WFPS connecting and energising at the Connection Point [AWFL] shall provide evidence that it is authorised to generate electricity by virtue of a licence granted under Article 10(1)(a) of the Electricity (Northern Ireland) Order 1992 (the "Order") or section 14(1)(a) of the Electricity Regulation Act 1999 (or exempt from the requirement to be so licensed under such provisions) to the Connection Point'.

TUoS Agreement

The Condition Precedent in the TUoS Agreement needs to be amended to reflect the principle proposed.

Connection Agreement

The Condition Precedent in the Connection Agreement also needs to be amended to reflect the principle proposed."

Ninth, in respect of the request that we give directions to SONI in respect of certain matters - the amendment to the SONI standard form TUoSA and the document/s referenced in the Seventh and Eighth matters above - please identify the specific power (in either the TSO Licence and/or legislation) which AWFL is requesting the UR to exercise for these purposes.

⁶⁴ Again, we have called this the the Standard G-Connection Offer Terms Amendment Text



“The term “direct”⁶⁵ was not used in the context of a specific power of the Utility Regulator pursuant to a licence condition for example. It was used in a commercial context for the UR to take immediate action to rectify the barrier to access to the SEM that rests within the Northern Ireland legal framework. AWFL appreciate that any remediation of the issue identified by AWFL will need to be pursuant to a specific power that AWFL is asking the Utility Regulator to exercise. To that end, AWFL is requesting the UR to exercise its powers under Article 14(1) of the [Electricity Order] by the way of making of modifications of the conditions of the SONI Licence to give effect to the “principle proposed”.

This is likely to require minimal definitional changes only to the SONI Licence. By way of illustration:

The final paragraph of Condition 25(1) of the SONI Licence which sets out the definition of any “eligible person” could be amended to include the underlined text below.

...

“In this paragraph references to “eligible person” shall be construed as references to:

(a) persons licensed under Article 10 of the [Electricity Order] (or exempt from the requirement to be so licensed under Art 9 of the [Electricity Order] [or]⁶⁶ who have applied for a licence under Art 10 and whose application has not been withdrawn or rejected (including for the avoidance of doubt, the Power Procurement Business in its capacity as such) or

(a) a Republic of Ireland Generator”

We note that “*Republic of Ireland Generator*” is a defined term in the SONI Licence.

Should the making of such modifications proceed, it will also be necessary to ensure that the underlying industry documents align with the licence modification and are amended, in the case of AWFL, to facilitate the connection of the Wind Farm.

⁶⁵ AWFL – being apparently familiar with the regulatory regime in RoI – was perhaps thinking that the UR enjoyed the same power of direction set out in section 34 of the ERA. It does not.

⁶⁶ The word “or” is not included in the C25(1) Amendment Text but we assume that this is a simple typo. We correct it.



AWFL assume that it would not be participating in transmission in such circumstances and, therefore, is not eligible to apply for and/or be granted a transmission licence and would ask for your confirmation in reply.”

89. We note that the term “*Republic of Ireland Generator*” is defined in the SONI TSO Licence in this way:

“means a person licensed to generate electricity under Section 14(1)(a) of [ERA], or the Republic of Ireland Board acting in its capacity as the owner or operator of generation sets”.

90. We note that there is no reference to an “exemption” in this definition. The concept of an exemption is not known under the ERA. Small generators in ROI qualify for a type of deemed licence under orders made in exercise of the power under section 14(1A) of the ERA. We will explain this in more detail later in this document.

(iii) **How we interpret the Request**

91. We read the 9 July 2021 AWFL UR Letter and the 18 May 2022 AWFL UR Letter together to interpret the Request (as developed/revised).

92. We note that while:

(a) the 9 July 2021 AWFL UR Letter asked that C25(1) be modified by excising the words and definition of “eligible person” the 18 May 2022 AWFL UR Letter sets out the Standard G-Connection Offer Terms Amendment Text for modification to C25(1) which retains the words “eligible person” but enlarges the definition (also retained) of “eligible person” by including insertion of the words a “Republic of Ireland Generator”.

(b) the 9 July 2021 AWFL UR Letter asked that the Standard G-Connection Offer Terms be amended to give effect to the *principle proposed*, the 18 May 2022 AWFL UR Letter requested that the document be amended in a specified way to give effect to the *principle proposed*.

(c) the 9 July 2021 AWFL UR Letter asked the UR to “direct” changes to the SONI Standard Connection and Use Documents the 18 May 2022 AWFL UR Letter recognised that the UR could only exercise powers it had and did not point to any power to “direct” SONI to make the changes requested.

(d) the 9 July 2021 AWFL UR Letter requested the UR to “direct” changes to the SONI Standard Connection and Use Documents the 18 May 2022 AWFL UR Letter makes clear that the UR is asked to “ensure” that those changes are made **if** the modification to C25(1) takes place and that those changes should be made “in the case of AWFL so as to facilitate the connection of the [AWFL windfarm]”. This means that AWFL is asking the UR to ensure that the requested changes are made to the SONI Standard Connection and Use Documents and that the accepted SONI AWFL Connection Offer is changed too to facilitate AWFL’s connection to the NITS. AWFL does not explain how this is to be done, simply saying that the UR is to take “*immediate action to rectify the barrier to access to the SEM that rests within the NI legal framework.*”



(e) while the 9 July 2021 AWFL UR Letter didn't mention the "*principle proposed*" as grounding the C25(1) request – as then expressed – the 18 May 2022 AWFL UR Letter makes it clear that **all** the changes requested by AWFL are underpinned by the "*principle proposed*".

(f) the content of the "*principle proposed*" mentioned in the 9 July 2021 AWFL UR Letter was not specified it was described/clarified in the 18 May 2022 AWFL UR Letter as follows:

"an entity must be properly licensed (or exempt) in either jurisdiction of the SEM pursuant to the applicable laws."

93. The description of the "principle proposed" in the 18 May 2022 AWFL UR Letter must, we consider, be seen in context to give it practical content and meaning. That context is provided by the 9 July 2021 AWFL UR Letter and the 18 May 2022 AWFL UR Letter. Further context is provided by the fact that (as will be explained later in this document) there is no provision - like there is under Article 9 of the Electricity Order - for an "exemption" under the terms of the ERA: an entity generating electricity in RoI must be licensed.
94. Seen in context, we consider the "*principle proposed*" to mean that a *generating* entity must, in order to be entitled to a C25(2) type formal connection agreement or a C25(1) offer of terms (for a use of system agreement) be either (a) authorised to generate electricity by an Article 10 Generating Licence or Article 9 exemption **OR** (b) authorised to generate electricity by licence under the ERA.
95. Our description of the Request – as set out at the start of this document – is a result of reading the 9 July 2021 AWFL UR Letter alongside the 18 May 2022 AWFL UR Letter. The Request is advanced as a means of accepting and implementing the *principle proposed* (as we understand it).
96. It is right to observe that while neither the 9 July 2021 AWFL UR Letter nor the 18 May 2022 AWFL UR Letter refers to *Snugborough/Slieve Kirk* the 27 August 2021 PAP Letter does mention *Snugborough* and claims that the Utility Regulator would be engaging in improper discrimination should it refuse to agree to the Request having regard to the *Snugborough* circumstances. We shall discuss *Snugborough* and *Slieve Kirk* in later parts of this document.
97. It is also right to note that neither the 9 July 2021 AWFL UR Letter nor the 18 May 2022 AWFL UR Letter refer to any claim that a failure to accede to the Request would amount to a breach of EU law as alleged in the 27 August 2021 PAP Letter. We shall return to this issue later in the document.
98. We also note that AWFL has (in its 18 May 2022 AWFL UR Letter but not in the 9 July 2021 AWFL UR Letter) asked for confirmation as regards the *participating in transmission licensing* issue. We shall incorporate this issue into the minded-to decision part of this document.
99. It may be noted that the C25(1) request and the related C25(1) Amendment Text do not bring about total parity between applicants for authorisation to generate under the laws of NI and ROI in that if the C25(1) request is accepted and the



C25(1) Amendment Text introduced it is only an “applicant” for a licence under *Article 10 of the Electricity Order* (who will implicitly only be intending to place generating units (only) in NI) whose application has been withdrawn or rejected who will be treated as capable of making a valid C25(1) application for a GTUoS Offer: an applicant who applies to CRU for a generating licence under section 14(1)(a) of the ERA whose application is not withdrawn or refused will not be so treated.

100. That this is so springs from the way the “*principle proposed*” is described by AWFL; being focused on persons licensed (or exempt) in either jurisdiction. However, we do not think this consideration means that we cannot process the C25(1) request (or the Request more broadly).

101. We further note that the Request only offers up the C25(1) Amendment Text as illustrative of the requested change to C25(1). However, we consider that the C25(1) Amendment Text adequately and accurately reflects what acceptance and implementation of the *principle proposed* would look like so far as the terms of C25(1) are concerned. We proceed therefore to examine the C25(1) request through the lens of the C25(1) Amendment Text.

102. The C25(1) request is the critical part of the (revised/developed) Request⁶⁷. AWFL accepts this. It recognises in the 18 May 2022 AWFL UR Letter that the other part/s of the Request – the Amendment request – only comes into play **if** the Utility Regulator makes modification/s to C25(1) in answer to the C25(1) request. It follows that the C25(1) request falls to be addressed *first* in this minded-to decision document. This is what we do. We now explain the effect of Art 14 on our deliberations on the Request.

(iv) The effect of Article 14 on how we proceed

103. It is accepted that we enjoy the legal power to modify the conditions of the SONI TSO Licence – to include C25(1). Article 14 of the Electricity Order (**Art 14**) gives us that power.

104. However, we have notified AWFL that the statutory scheme for licence modifications set out in Art 14 means that we are unable (as the Request asks) to move “*immediately*” to any decision in positive answer to the C25(1) request.

105. Any decision to *make* modifications to a licence granted under Art 10 of the Electricity Order (like the SONI TSO Licence) must comply with the machinery set out in Art 14. That machinery obliges the Utility Regulator to publish a *notice* of any *proposed* licence modifications and consider any representations duly made in response to the statutory notice *before deciding* to *make* the modifications proposed in the notice and bring the modification *into effect*.

⁶⁷ We understand this to be common case.



106. A useful summary of the Art 14 scheme (and its importance) is set out in the *SONI JR Case*⁶⁸.
107. Art 14 also mandates a *minimum period* to elapse (56 days) *before* any decided-on modification (which, again, must follow consideration of representations in response to the statutory notice) can be brought *into effect*. Relevant persons (to include SONI in this case as the relevant licence holder) are afforded a statutory right to appeal any decision by the Utility Regulator to proceed with the *making* of a modification to the (specialist tribunal) Competition and Markets Authority (**CMA**).
108. It follows that any decision on the Condition 25(1) request part of the Request can only ever motivate (in the first instance) a *decision to propose* the licence modification sought in the C25(1) request which decision can only be followed by a further decision (if made) to bring the proposed licence modification into effect upon consideration of the responses received in response to the required statutory notice (in line with the statutory responsibilities set out in Article 12 of the Energy Order).⁶⁹
109. Accordingly, the minded-to decision set out in this document is (as it can only be in the context of Art 14) a provisional decision on *proposing* a licence modification of the type sought in the C25(1) request rather than (as the Request petitions) a decision *to make* such a modification (and to do so “immediately”).
110. Furthermore, we note that DfE is empowered by Art 14 to *direct* the Utility Regulator not to proceed with any modification it *proposes*. And it remains the case that any future decision to proceed with the making of any proposed modification is, again by the terms of Art 14, open to appeal by persons including SONI. It follows, therefore, that the Utility Regulator is not a unitary actor when it comes to licence modifications of the type sought in the Request. We consider this an important observation.
111. In the next section we set out information gathering in the period after the 18 May 2022 AWFL UR Letter before setting out some statutory and regulatory context.

⁶⁸<https://www.judiciaryni.uk/sites/judiciary/files/decisions/Soni%20Limited%27s%20Application%20%28Leave%20Stage%29.pdf>

⁶⁹ About which we say more later in this document.



2. INFORMATION GATHERING AFTER THE 18 MAY 2022 AWFL UR LETTER

112. On 1 June 2022 the UR wrote to SONI (**1 June 2022 UR SONI Letter**) thanking SONI for a meeting on 27 May 2022 at which SONI provided its thoughts on the working of the CBF. SONI was invited to comment on the 18 May 2022 AWFL UR Letter.

113. SONI wrote to the UR on 1 June 2022 (**the 10 June 2022 SONI UR Letter**).

114. The 10 June 2022 SONI UR Letter explained:

“Firstly, the ECP 2.2 batch information was published on 18 May 2022. This information is publicly available on the EirGrid website here [https://www.eirgridgroup.com/site-files/library/EirGrid/2021-Batch-\(ECP-2.2\)-Results-TSO-Publication_May-2022_Final.pdf](https://www.eirgridgroup.com/site-files/library/EirGrid/2021-Batch-(ECP-2.2)-Results-TSO-Publication_May-2022_Final.pdf)

1. This published document shows that AWFL are included in the final batch for ECP2.2 (see Page 5) and are scheduled to be progressed accordingly

Secondly, EirGrid is implementing the CRU decision, published <https://www.cru.ie/wp-content/uploads/2020/06/CRU20060-ECP-2-Decision.pdf>

here2. The timeline set by CRU for EirGrid to issue offers under ECP2.2 is set out on page 22 of this document. This requires EirGrid to issue an offer to Aught Windfarm before the end of December 2022

Thirdly, in point four of the 18 May letter, AWFL appears to suggest that SONI undertook the assessment of connection options for the windfarm via Sorne Hill or Trillick. This misrepresents the analyses undertaken. SONI assessed the Least Cost Technically Acceptable (LCTA) connection between the point specified in the connection application that we received and the transmission system. We were not asked to and did not make any assessment of options that included the cost of the assets between the windfarm itself and the point requested by AWFL. We therefore could not have reached any conclusion regarding the LCTA for the connection of the Aught Wind Farm itself.

We note that in the 18 May letter, AWFL has suggested a modification to SONI's Licence to Participate in Transmission. We would like to highlight that holders of a licence in Ireland are obliged to comply with the EirGrid Grid Code and to sell system services to EirGrid, therefore complying with the SONI Grid Code and selling system services to SONI would be inconsistent with those obligations. The ability to request information and any subsequent enforcement also rests with CRU and not the UR. These initial concerns with the proposal made by AWFL are obviously identified without prejudice to any future engagement around a more developed proposal made by the UR, and the rights provided to SONI by Article 14 of [Electricity Order].



115. We wrote to AWFL on 24 June 2022 (**24 June 2022 UR AWFL Letter**). We noted the way the Request had developed in the 18 May 2022 AWFL to UR Letter May 2022 AWFL UR Letter and referred to the 10 June 2022 SONI UR Letter. We mentioned the fact that AWFL had asked for the BESS licensing application to be put “on hold”.⁷⁰ We also said this:

The scenario with which we are presented is, however, novel, and requires the UR to ensure that it (i) has fully and properly identified and considered all relevant factors and (ii) understands the potential effect and impact of AWFL's requested changes on all market participants and stakeholders. We note here that we cannot rule out – at this stage - that the matter might be considered a SEM “matter”. [Footnote 4: See, for example, Article 6 of the SEM Order.] We note, too, the provisions of section 34 (3) of the Electricity Regulation Act 1999.

...

We now turn to that part of your 18 May Letter that asks us to provide confirmation on AWFL's assumptions as to AWFL's status as regards “transmission licensing”. We refer AWFL to our previous correspondence in this regard and confirm that we are unable to provide the confirmation sought in the 18 May Letter. Please return to us should you require any further information on this issue. We understand its potential significance to AWFL.”

116. We then asked certain questions as to the CRU Generating Licence and the CRU Authorisation to Construct. We also asked this question:

“6. Please provide comment on SONI's statement – in SONI's 10 June Letter - that the ECP 2.2 batch information published on 18 May 2022 shows that the Aught windfarm (AWFL) is “included in the final batch for ECP 2.2 and [is] scheduled to be progressed accordingly.” We should be grateful for your comments on this because the 18 May Letter indicates that the ECP 2.2 application made by AWFL was not going to be progressed. Please confirm the position in this regard.”

117. We wrote to AWFL on 5 July 2022 (**the 5 July 2022 UR AWFL Letter**) asking AWFL to provide information regarding any authorisation granted under section 16 of the ERA to include whether any section 16 application by AWFL had relied upon an application for connection made to EirGrid or SONI. We also asked for this:

“(d) Confirm whether AWFL has sought out or received a view from CRU as to whether the high voltage assets (“the high voltage transborder assets”) proposed for construction/installation between the Wind Farm (as authorised under section 16 of the Act) and the connection point designated in the relevant Offer for connection from SONI represent – in any part - a transmission system within the meaning of the [ERA]”.



118. A minute of the meeting between EirGrid and AWFL referenced in the 18 May 2022 AWFL UR Letter was also requested.
119. AWFL sent in two letters dated 9 August 2022. The first letter (**the First 9 August 2022 AWFL UR Letter**) was in response to the 24 June 2022 UR AWFL Letter. The second letter (**the Second 9 August 2022 AWFL UR Letter**) was in response to the 5 July 2022 UR AWFL Letter.
120. The First 9 August 2022 AWFL UR Letter contained the following:
- i. Please send us a copy of the generating licence issued by CRU to AWFL in respect of the wind farm at Aught (ROI) pursuant to section 14 of the 1999 Act. **This is now enclosed for your attention.**
 - ii. Please clarify the capacity allowed for by the licence as at A. We assume this is a reference to I above. **The licence does not contain any limitations as to MW volumes.**
 - iii. Please clarify whether there is any disparity between the capacity allowed for in the stated licence and the MEC permitted under the SONI Connection Offer/Connection Agreement. **The SONI connection offer is for 37.2MW and the CRU licence does not contain any restrictions as to capacity from the proposed generating station of AWFL.**
 - iv. Please clarify whether AWFL's application for the licence at A relied upon a connection application made to a ROI System Operator (EirGrid/ESB) or the March 2020 SONI Connection Offer (or prior application to SONI). **The application for a generation licence is separate and distinct from the grid connection process. AWFL applied for a generation licence to ensure it fully complies with applicable law. The grid connection process (whether with EirGrid/ESB or SONI) require generators to be properly authorised and licenced which is what AWFL have been seeking to do and clarify with you in an NI context for some considerable time now.**
 - v. Please confirm that we are right to understand that while AWFL has accepted the March 2020 SONI Connection Offer it has not yet signed any Connection Agreement with SONI. **Confirmed.**
 - vi. Please provide comment on SONI's statement – in SONI's 10 June Letter - that the ECP 2.2 batch information published on 18 May 2022 shows that the Aught windfarm (AWFL) is "included in the final batch for ECP 2.2 and [is] scheduled to be progressed accordingly." We should be grateful for your comments on this because the 18 May Letter indicates that the ECP 2.2 application made by AWFL was not going to be progressed. Please confirm the position in this regard. **AWFL has not accepted any ECP 2.2. connection offer. The reason this was progressed was that SONI advised AWFL to submit an ECP2.2 application in order to trigger the Cross Border Framework and this action was taken on the foot of this advice of SONI. In its ECP 2.2. application, AWFL has specified the same point of connection as determined by SONI.**



...

b. AWFL would also wish to refer the UR to page 173 of the Exhibit filed to the Affidavit of Mr Joe Reynolds, Director of Energy Strategy in the Department of the Economy, in the Departmental Judicial Review to which the UR is a notice party, dated 1 April 2022.

i. The relevant exhibit page is enclosed herewith for ease. It is an email from Alan Campbell to Joe Reynolds dated 23 September 2021 and states at paragraph 4, “..The need to further develop the cross border connection arrangement beyond the basic obligations has not arisen to date and therefore the contractual framework that would be required to give effect to it within the current circumstances would need to be established, were it to be triggered by AWFL. This contractual framework would touch on the roles and responsibilities of the four regulated entities that would be involved in effecting a cross border transmission connection: SONI; NIE Networks; EirGrid and ESB Networks.”

ii. Respectfully, it is clear in AWFL’s opinion that no action has been taken whatsoever to develop the Cross Border Framework (i.e., there are no operable arrangements and/or legal documents to properly underpin the licensing obligation) and it is therefore wholly unrealistic and unreasonable, to expect that in this matter, it will provide a satisfactory solution for AWFL, for the matters under consideration. We are therefore proposing, in our 18 May Letter 2022, requests for some changes or a derogation to be considered to the regulatory scheme to facilitate a connection in the absence of a functioning Cross Border Framework and would urge the UR to recognize this and work with us to bring this forward in a timely manner.

3. AWFL’s status re ‘transmission licencing’ a. AWFL have been engaging in good faith to ensure it complies with all applicable legal and regulatory requirements. As the licensing authority for Northern Ireland, it is unacceptable at this stage in our exchanges that the UR cannot provide the clarification sought and AWFL would expect the UR to now arrive at a position, by return. We are in receipt of your letter dated 5 July 2022 and will reply under separate cover.

121. AWFL also indicated that the planning permission “for the project” was expiring on 3 October 2023 and indicated that it might wish to consider complaining to the “Complaints Officer of the [UR]” or the Public Service Ombudsman for NI.

122. The Second 9 August 2022 AWFL UR Letter [provided a copy of the CRU Construction Authorisation and said this:

b. “Confirm whether AWFL’s application for the section 16 authorisation (granted) for the Wind Farm relied upon (or cited) a connection agreement (or an application for same) – in respect of the Wind Farm – with (or to) either a ROI system operator (ESB or EirGrid) or SONI (as the NI TSO)?” **The SONI connection offer was referred to in the application.**



ii. the location of the relevant connection point to the grid (i.e. the (ROI) distribution system operated by ESB or the transmission system operated by EirGrid (ROI) or SONI (NI)) provided for in the relevant connection agreement entered into or applied for”. **The connection point is at [Coolkeeragh] as per the terms of the accepted SONI grid connection offer.**

d. “Confirm whether AWFL has sought out or received a view from CRU as to whether the high voltage assets (“the high voltage transborder assets”) proposed for construction/installation between the Wind Farm (as authorised under section 16 of the Act) and the connection point designated in the relevant Offer for connection from SONI represent – in any part - a transmission system within the meaning of the 1999 Act”. **As the high voltage assets from the remote generation to the point of connection (in NI) are considered to be part of the plant, equipment and apparatus of the generating station, AWFL has not sought out or received a view from CRU on such matters. This is particularly so given the point of connection is within NI.**

(our underlining)

e. “Confirm – if the answer to (d) is in the affirmative – the view offered by CRU”.
N/A

h. Provide the full minute of the conversation with EirGrid referenced in your letter of 18 May 2022” **Please see attached agreed minute of the meeting on 24 February 2022 on email dated 25 and 28 February 2022.**

123. We wrote to AWFL on 10 August 2022 (**the 10 August 2022 UR AWFL Letter**) noting that AWFL had not provided the documents it said it had. We also noted a reference to the letter of 20 July 2022 which letter the UR did not have.

124. AWFL subsequently provided the missing documents and clarified that the reference to a letter dated 20 July 2022 was a mistake.

125. The documents that the UR now had included the minute of the meeting between AWFL and EirGrid of 24 February 2022. It will be noted that the notes were prepared by AWFL and receipted by EirGrid. However, there is no note that EirGrid specifically agreed the notes. But EirGrid did comment on the SONI notes so nothing seems to turn on this.

126. The “agreed” minutes of 24 February 2022- states that EirGrid notes that the ECP 2.2 and the CBF were separate processes and were not dependent on one another. EirGrid also noted that if an ECP 2.2 Offer was to issue it may be conditional on AWFL surrendering its live SONI grid connection agreement as it may not be possible for one project to hold two grid connection agreements. EirGrid commented on that that it “raised this as a possibility but specifics would need to be worked out throughout the process for receiving the connection agreement.”



127. The minutes also record the following (with an EirGrid comment in red):
- [EirGrid] stated that if [AWFL] was to pursue the ECP 2 process that EirGrid cannot offer grid connections connecting directly to the SONI network. However, in the case where SONI has entered into a grid connection agreement with [AWFL] and the proposed [CBF] were to have effect, [EirGrid] was unclear if EirGrid would take ownership of the section of line between [the AWFL windfarm] substation and the NI [Border] which is stated as the SONI point of connection under the current grid connection agreement. **This would need to be assessed as part of the studies that would lead to the connection offer.**
128. We wrote to AWFL on 15 September 2022 (**the 15 September 2022 UR AWFL Letter**) confirming recent exchanges. We also said this:
- “We also note your request for a further statement of our position in relation to the transmission licensing requirement. We will correspond separately in relation to that.”
129. The Utility Regulator wrote to CRU on 27 October 2022 (**the 27 October 2022 UR CRU Letter**). This correspondence noted the Request and asked for information as the CRU Generating Licence and the CRU Construction Authorisation. We also asked various questions as to the effect of section 34 of the ERA. We detail some of the sections here:
- 3. Condition 2.2 of the Authorisation reads that "the generating station shall be situated at Aught, Muff, County Donegal, shown on the plan annexed hereto". However, in the copy of the Authorisation provided to us by AWFL there is no annexed plan. In providing a copy of the Authorisation to us, AWFL has confirmed that "no map/s are annexed to the CRU documentation".*
- 3.1 We should be assisted if CRU would please let us have a copy of the plan referred to in Condition 2.2 of the Authorisation (if available).*
- 4. We note that the CRU's published Guidance Notes, and the associated application forms, relating to applications for construction authorisations (or consents) and generation licences, appear to require the applicant for same to provide - for the proposed generating station - either (i) proof of a connection agreement or (ii) proof of the application for a connection agreement, with or to either the ROI transmission system operator (EirGrid) or the ROI distribution system operator (ESB).*
- AWFL has not confirmed that its relevant applications to CRU were supported by such documentation. AWFL has confirmed that its applications to CRU were supported by reference to the (accepted) SONI Connection Offer.*
- 4.2 If no ROI type connection application or agreement was proffered by AWFL in support of its applications to CRU (for the requisite grants) then can CRU please explain that it accepts that applications for a section 16 authorisation or section 14 licence to generate from an authorised ROI located generating station need not be supported by an associated connection*



agreement with the ROI TSO (EirGrid) or ROI distribution system operator (ESB) as seemingly indicated in the CRU Guidance.

5. We note that Condition 10 (c) of the Authorisation provides that the CRU may revoke the (section 16) Authorisation if AWFL fails to comply with a direction of the ROI minister under section 39 of the 1999 Act. Section 39 of the 1999 Act seems to us to provide for mandated operation of the generating station authorised for construction (by the CRU). It is not presently clear to us how AWFL could comply with a section 39 type direction when it seems that AWFL's section 16 authorised generating station is not the subject of a connection agreement with either EirGrid or ESB.

5.1 We should be pleased to receive clarification from the CRU as to the applicable ROI arrangements in circumstances where the relevant ROI located generating station in receipt of a section 16 consent/authorisation (and associated section 14 licence) is not supported by an associated connection agreement with either EirGrid or ESB and so is not connected to the ROI grid

6. We note that Condition 5 of Part II of the Authorisation states that the (authorised) generating station must (subject to Condition 6) be constructed so as to "be capable of providing the level of ancillary services specified in the EirGrid Grid Code". It is presently not clear to us how AWFL could meet this obligation when the present connection arrangements do not seem to involve an (accepted) offer from EirGrid (as ROI TSO) for connection to the ROI transmission system operated by EirGrid (as ROI TSO).

6.1 We should be grateful for the CRU's view/clarification on this issue.

7. We note that Condition 8 of the Authorisation provides that AWFL must comply with the EirGrid Grid Code and the (ROI) Distribution Code in so far as applicable to it. It is not presently clear to us how this works in circumstances where the AWFL section 16 authorised generating station is not – it seems – the subject of an (accepted) offer for connection to the ROI transmission system (owned by ESB) or the ROI distribution system (owned and operated by ESB).

7.1 We should be grateful for the CRU's view/clarification on this issue.

8 It seems that the arrangement envisaged by AWFL under the (accepted) Connection Offer with SONI (as NI TSO) comprehends a starting substation (transforming up to HV it seems) within or at the Aught Wind Farm (at Aught. ROI) leading to a HV compound (or substation) located in Northern Ireland (at Culmore Road, Derry) with interval substations and associated HV rated assets (which appear to include planned over-head lines and underground cables). All these assets (the "high voltage trans-border assets" or "HVTBA") look – as far as we can make out at present - intended for the ownership and operation of AWFL..

8.1 We should be grateful if CRU would provide its view as to whether that part of the HVTBA starting at the Aught Wind Farm substation and running through ROI (County Donegal) to the border with NI would be considered a transmission system and if so whether (a) the CRU expect ESB to own and EirGrid to operate that part of the HVTBA under the applicable ROI



arrangements (b) the CRU would expect AWFL to hold a transmission licence in respect of the (apparent) intended involvement of AWFL with the relevant part of the HVTBA (c) any requirement for AWFL to hold such a licence would introduce potential difficulties – under the applicable ROI arrangements - given the required separation generation and transmission activities

8.2 We should be grateful if CRU would clarify whether the ROI located HVTBA were considered as part of the application/s made by AWFL for the section 14 and section 16 permissions and if so whether CRU considered that there would need to be any relevant consent in place associated with that HVTBA element of AWFL's proposed connection arrangements (We note Condition 4 of Part II of the Authorisation).

10. We note the provisions of section 34 (3) of the 1999 Act which appears to provide that a (corporate) person applying for a connection to and or use of system agreement in respect of generation from a ROI located generating station requires a section 14 authorisation and section 16 licence granted by the CRU.

10.1 Are we correct in our present understanding of the general effect of section 34 (3) as it pertains to the limitation on granting offers of connection of use of system in respect of generating stations located in ROI.

10.2 Are the applicable ROI arrangements such that a person (like AWFL) generating from a ROI located generating station authorised under section 14 and section 16 (of the 1992 Act) would be expected/required to hold a related use of system agreement with EirGrid or ESB.

10.3 Are the applicable ROI arrangements such that a person (like AWFL) generating from a ROI located generating station authorised under section 14 and section 16 (of the 1999 Act) would be expected/required to hold a related connection agreement issued with EirGrid or ESB.

12. We are interested to gauge the position if the circumstances were (in essence) reversed) and we were dealing with a similar connection arrangement to that involved in the proposed connection of the Aught Wind Farm (relating to the Connection Offer) but with the relevant generator's wind farm being located in Northern Ireland with a ROI located Connection Point to the EirGrid ROI transmission system in ROI.

12.1 Would such a reverse "arrangement" – in the view of CRU - run into any particular difficulties given the current connections regime in ROI (we are thinking here of, in particular, the provisions of section 14; section 16; and section 34(3) of the 1999 Act).

13. We understand that the current ROI connection arrangements provide for an exemption where the applicable capacity is not more than 1MW.

13.1 Please confirm whether we are correct in our understanding (referencing the applicable legislation)

14. We have mentioned the so called "cross border framework" underpinned by the respective provisions of the TSO licences. We note.

- the definition of acting "in conjunction with the Republic of Ireland System Operator [EirGrid]" in Condition 1 (7) of the SONI Licence



- the provisions of Condition 24 of the SONI Licence in relation to a System Operator Agreement (SOA)
- the provisions of Condition 27 of the SONI Licence in respect of *inter alia* the “Requirement to Offer Terms to the ROI SO” (subject to the exceptions in Condition 27 (7)) in respect of a request from the ROI SO in respect of an application to the ROI TSO for connection to or use of the All Island Transmission Networks at entry or exits points on the ROI transmission system: to include the obligations regarding (i) a complaint SOA and (ii) the nature of a response to any envisaged request from the ROI SO (see Condition 27(4) and Condition 27(6))
- The provisions of Condition 28 of the SONI Licence concerning *inter alia* the requirement that the SOA provide for dispute resolution in respect of the obligations in Condition 27.

It seems that the provisions of Condition 27 and Condition 28 of the SONI Licence are mirrored in analogue provisions of the EirGrid TSO licence (see Condition 5(5) and 5(6) of the EirGrid TSO licence).

These matching provisions provide – it seems to us - for each TSO to co-operate with the other (TSO) so as to facilitate the other TSO in making an offer to an applicant to that other TSO for connection or use of the All-Island Transmission Networks at entry or exit points located on the other TSO’s transmission system. In that way, it seems to us, the matching licence provisions appear to underpin and reflect the so called “cross border framework”.

We have seen evidence adduced in related judicial review proceedings between AWFL and the Northern Ireland Department for the Economy (DfE) which suggests that the arrangements related to or associated with the cross-border framework are not as advanced or matured as they might be.

14.1 We should be grateful if CRU would (a) provide us with a “link” to an electronic version of the updated EirGrid TSO licence (b) confirm whether it shares our general view as to the effect of the matching provisions in the TSO licences (c) confirm whether there are any other EirGrid licence provisions; legislative provisions or CRU issued directions that potentially influence the contours of the cross border framework underpinned by the matching licence Conditions we have cited. We confirm that we have written to SONI asking to reflect on the obligations set out in Condition 27 and Condition 28 of the SONI Licence.

We have advised SONI that we would like to understand fully what – if any - further work is needed, by SONI and EirGrid, and any other stakeholders (to include NIE Networks as the owner of the NI Transmission System) to develop the cross-border framework apparently envisaged by the cited Conditions. We have also enquired as to how an entity which may wish to achieve a connection that might involve trans/cross border connection works is able to obtain information about (i) making such a connection and (ii) the costs which would be involved in such a connection.

14.2 We should be grateful if CRU would



(a) confirm its understanding viz. what steps have been taken by EirGrid to comply with the requirements provided for in the matching provisions of Condition 5 of the EirGrid TSO licence and/or develop the arrangements envisaged in the cross-border framework to include accessibility of related costs information to those whose application (for connection or use of system) to EirGrid might involve invocation of the cross border framework

...”

130. We wrote to SONI on 27 October 2022 (**the 27 October 2022 UR SONI Letter**). That letter included this:

“ . . .

8. On 31 March 2021 AWFL was granted the following authorisations by CRU (a) an authorisation (under section 16 of the Electricity Regulations (Act) 1999 (the 1999 Act) and the Electricity Regulation Act, 1999, (Criteria for the Determination of Authorisations) Order 1999 (SI 309 of 1999)) to construct “a 32.2 MW generating station at Aught, Muff, County Donegal” subject to Conditions in Part II of the authorisation. (b) a licence (under section 14 of the 1999 Act) to generate electricity “from” a “generating station” described as “Aught Wind Farm, Aught, Muff, County Donegal”. We pause to observe that

(i) Condition 2.1 of Part II of the section 16 authorisation states that the generating station shall comprise a Wind Farm of 32 MW so that the section 16 authorisation granted by CRU looks linked to an MEC that is less than that provided for in the (accepted) Connection Offer.

(ii) Condition 2.1 of Part II further provides that the generating station must be constructed (absent written consent) in accordance with the design set out in AWFL’s application for the section 16 authorisation dated 27 November 2020.

(iii) Condition 2.2 of Part II states that the generating station shall be situated at Aught, Muff, County Donegal as “shown on the map annexed hereto”. No map is presently available.

(iv) Condition 4 of Part II states that all relevant consents to include planning consents must be obtained for the generating station to be constructed.

(v) Condition 5 of Part II states that the generating station must (subject to Condition 8) be constructed so as to “be capable of providing the level of ancillary services specified in the EirGrid Grid Code”. It is not clear how AWFL could meet this obligation when the present connection arrangements do not seem involve an (accepted) offer from EirGrid for connection to the ROI transmission system operated by EirGrid as ROI TSO.

(vi) Condition 8 of Part II provides that AWFL must comply with the EirGrid Grid Code and the (ROI) Distribution Code in so far as applicable to it. Again, it is not clear how this works in circumstances where the AWFL section 16 authorised generating station is not – it seems – the subject of an (accepted) offer for connection to the ROI transmission system or the ROI distribution system (owned and operated by ESB).

(vii) Condition 10 (c) of Part II provides that the CRU may revoke the section 16 authorisation if AWFL fails to comply with a direction of the ROI minister



under section 39 of the 1999 Act. Section 39 of the 1999 Act provides for mandated operation of the generating station authorised for construction. It is not clear how AWFL could comply with a section 39 type direction when it does not seem that AWFL's section 16 authorised generating station is the subject of an accepted offer of connection to the NI transmission system.

We are writing to the CRU on these matters (and will copy in SONI).

...

We should observe and clarify that whilst AWFL has asked us to progress a modification to Condition 25(1) of the SONI Licence, we are not permitted to proceed with the making of any such modification absent compliance with the requirements/machinery set out in Art 14 of the Electricity Order. That statutory procedure starts off (if it is to commence) with the UR notifying a proposed modification. The UR is not empowered to move straight to an actioned modification. Engagement with relevant stakeholders will inform any motivated decision to commence the statutory procedure. Proper regard would need to be had to any responses received to an Art 14 "notice" of proposed modification.

The SONI letter of 1 June 2022 did not address what AWFL has described as the "necessary amendments" to: the "Grid Connection Offer"; the "conditions precedent" in the (standard form) GTUoS Agreement; and the "conditions precedent" in the (standard form) Connection Agreement.

131. There then followed a series of questions. Those questions and SONI's answers were set out in a letter from SONI to the UR dated 8 November 2022 (**the 8 November 2022 SONI UR Letter**).

132. The CRU emailed the UR on 7 November 2022 with a response to the 27 October 2022 UR CRU Letter. It included this:

"I can confirm that the CRU issued an Authorisation to Construct and a Licence to Generate for the referenced project on 31 March 2021. The CRU consents issued on that date remain valid.

You indicate that you are in discussions with the consent holders. In relation to the requests for the application documentation you have raised, I propose that the fastest route to same is via the consent holders. Alternatively, if the applicant expressly consents it, CRU can provide you with the information you have requested.

In response to your queries on the wider requirements on the project outside these specific two CRU consents, the CRU communicated the following to the applicant prior to their application: "*We recognise this is a unique project with it being cross border and consequently the team has carried out preliminary*



checks on the applicability of the CRU consents. We have not found reasons that CRU consents are not applicable and therefore we will accept a valid application when you resubmit. Unfortunately, as a single step in the consenting process for this non-standard application, we are not in a position to confirm whether our consents will meet the project requirements of subsequent authorising entities/teams so I urge your project team to double check and confirm this before proceeding.”

I can also note the following:

- I can confirm that the reference ‘*shown on the plan annexed hereto*’ is in error and should not have been included in the Authorisation text.
- In relation to compliance with the Grid or Distribution code, condition 8.1 of the Auth [sic] notes ‘*insofar as applicable to it*’.
- In relation to your request for information regarding the 1MW application threshold, please note this has recently been updated to 10MW. Please see [here](#) for the latest information.

In relation to you requests for documentation that is publicly available, regrettably due to resource constraints at present my team is not in a position to source these. If you are unable to source an individual item, please do come back to us and we’ll endeavour to support you.”

133. There then followed the 8 November 2022 SONI UR Letter which includes this:

“Holding more than one connection offer at a time

There seems to be a suggestion in the papers (see the letters from Aught of 18 May/9 August 2022) that EirGrid might hold the view that a person is not allowed to hold an offer for connection to the ROI transmission system at the same time as holding an offer for connection to the N Transmission system at the same time. Does SONI have a view on this? Would there be any bar on a (corporate) person such as AWFL seeking out an offer (or being offered or accepting an offer for connection to the ROI Transmission (or distribution) system at the same time as holding an accepted offer (from SONI) for connection to the NI Transmission system?

SONI Response

SONI’s licence obliges it to offer connection to the all-island transmission system to “any person”. The statutory framework allows SONI little space to refuse to make an offer, with the only grounds to refuse set out in paragraph 6 of Condition 25 of our TSO licence. However, there is a big difference between obtaining contractually binding information about costs for two options for connection and progressing with both offers. The modelling that underpinned SONI’s offer to AWFL did not include any modelling of a dual connection into Ireland. Therefore, whilst we had no grounds to refuse to offer connection, the offer we made would become void if AWFL attempted to progress pre-construction work on both alternatives. Condition 15 of our transmission licence also prohibits undue discrimination between persons or classes of persons.



Stage of the connection process We note the provisions of section 9.2 of the (accepted) Connection Offer. We further note the reference in the Connection Offer to SONI's published "Connections Policy" 2018 (since replaced by the version published in 2021). SONI is asked to confirm the stage that has been reached with AWFL concerning the relevant connection process. It appears that SONI is satisfied that AWFL has provided a valid acceptance of the Connection Offer. But, where does the process stand so far as next steps are concerned? In particular, where do things stand as regards the execution (or signature) of the (standard/formal) Connection Agreement (as referenced in the Connection Offer)? Has a Connection Agreement been signed and if so by whom? When did that occur?

SONI Response

The connection agreement sets out the enduring right to be connected. A connection agreement will only commence once all of the conditions precedent are met, as set out in clause 3 of the template published connection agreement (See link <https://www.soni.ltd.uk/media/documents/Form-of-Standard-Terms-of-Connection-Agreement.pdf>). SONI can confirm no connection agreement has been signed. The AWFL connection is currently at a much earlier stage in the process. We are currently waiting for AWFL to pay for the first phase of pre-construction works, and until such payment is received, SONI will not undertake any pre-construction activities.

The facility to which the (accepted) Connection Offer relates

Again, we note the terms of the Connection Offer. Various descriptions are given as to "Facility"; "Project"; "Connection Project"; and, the "Wind Farm Power Station Project "WFPS" or "Facility". The start of the Connection Offer refers to a (footnoted number 1) address for the "wind farm" as Glackmore Hill, Muff, County Donegal" and a seemingly separate (or "remote") "Connection Address" in Culmore Road, Derry, Northern Ireland. There is further reference to the Connection Point being the point of connection of the "WFPS to the Transmission System." The AWFL Windfarm – at least as apparently authorised and licensed by the CRU – is, it seems, located wholly in, and at, Aught, Muff, County Donegal, ROI. SONI is asked to provide:

- confirmation as to whether (as it seems) the Connection Offer was for the connection of the AWFL Wind Farm (located in the ROI) to the Northern Ireland transmission system; and
- if that was the case, whether, and if so how, SONI ascertained the boundary (e.g. curtilage) of the AWFL Windfarm for the purposes of making the Connection Offer To explain further, the UR would wish SONI to clarify whether the point of connection to the NI transmission system, as proposed by SONI in the (accepted) Connection Offer and defined as 'the Connection Point', is a point which SONI had determined (in making the Connection Offer) to be either:
 - a) within or at/on the boundary of the Aught Wind Farm in respect of which the address is given as Glackmore Hill, Muff, Co. Donegal, Republic of Ireland; or
 - b) at a site (e.g. on land) in Northern Ireland which is (or will be) owned or occupied by AWFL (clarifying the full postal address of this site).

SONI Response



SONI did not determine either of (a) or (b). AWFL applied for a connection point to the all-island transmission system located within Northern Ireland (as per b above). The application from AWFL was for a connection point at North of 262 Culmore Road, Londonderry, County Londonderry, BT48 8JL (Irish Grid Reference 246485, 423923). Condition 25 of its transmission licence obliges SONI to make an offer to "any person" who requests, with very limited ability to refuse to make an offer (see paragraph 6 of Condition 25).

Should it be the case that SONI had not determined either of (a) or (b) to be the case, can SONI please explain and confirm what type of "Facility" – again as that term is used and defined in the Connection Offer - is proposed to be connected to the NI transmission system at the defined Connection Point; which person owns/occupies this "Facility"; and the location of the "Facility"

SONI Response

SONI did not determine either of (a) or (b). The Connection Point was specified by AWFL. The Facility is defined under the Connection offer as "... the Aught Wind Farm Power Station project ("WFPS" / "Facility") connected at the Connection Address." The equipment at the site of the Connection Point in Northern Ireland is a 110kV GIS switching station (as proposed by AWFL). This site is owned by AWFL. The developer is responsible for anything behind the connection point including any required planning consent(s), land rights, and licence(s).

The MEC

We note that the Connection Offer references the MEC in numerous places. There appears to be a potential mismatch between first, the MEC linked to the CRU section 16 consent and the planning consent for the AWFL Wind Farm (i.e., 32.2 MW), and second, the MEC detailed in the (accepted) Connection Offer (i.e., 37.2 MW). Does this affect things from SONI's perspective, and if so how?

SONI Response

The connection application was for a total MEC of 37.2 MW. This included of 32.2 MW for the Aught Wind Farm (AWF) under ownership of Aught Wind Farm Limited (AWFL) and 5.0 MW for ██████████ (WFL) under the ownership of ██████████ (WFL). Mr. ██████████ consented (as owner of both AWFL and WFL) for the inclusion of WFL within the connection application. On offer acceptance AWFL provided evidence of planning consents for the Aught Wind Farm and the ██████████ Wind Farm. SONI was therefore satisfied that AWFL had the required relevant consents (as set out in the SONI Connection Policy and Connection Offer) for AWFL to accept the connection offer. The licencing of the generation facility/facilities is a matter for AWFL. The SONI Connection Offer at Clause 9.29 makes it clear that the generator is required prior to energisation to evidence that it is authorised to generate electricity or be exempt from the requirement to be licensed. This point was further emphasised to AWFL during formal meetings of the parties during the application process. As licensing (or evidence of exemption) is required prior to energisation (as opposed to at offer acceptance) then SONI would not delay pre-construction activity. SONI would expect AWFL to provide evidence of licencing prior to energisation. Furthermore, the SONI Connection Offer at 10.13 to 10.19 provides details of



the MEC Bond that AWFL is required to put in place at the time of acceptance of the Connection Offer which covers 37.2 MW. The Generator shall maintain the MEC Bond until the Generator has demonstrated to the satisfaction of SONI that the WFPS project has passed a capacity test relating to the MEC. SONI is entitled to draw down on this bond should the generator fail the capacity test.

Link to SONI Connections Policy –

<https://www.soni.ltd.uk/media/documents/Customers/Connections/SONI-Connections-Policy-Effective-1-February-2018.pdf>

The HVTBA [High Voltage Trans Border Assets]

Did (or has) SONI made any assessment of the HVTBA (or part thereof) as part of its Connection Offer process? The Connection Offer (e-document) makes it difficult to make out whether the Connection Offer Appendices contain a layout for the HVTBA or any part of them. We would ask SONI to confirm the position: providing a clear diagram that shows the HVTBA or any part of them considered in making the Connection Offer; to include any substation at the ROI located windfarm and any interval substation/s and or OHL/UGC involved in going from the ROI located AWFL Windfarm to the Connection Point. Please confirm –as the Connection Offer suggests – that SONI was satisfied that there was no relevant consent required in respect of the HVTBA element (or part thereof) in order to progress the Connection Offer

SONI Response

SONI did not make any assessment of the HVTBA as part of the Connection Offer process. As noted above, the application from AWFL was for connection point at Culmore Road. The developer is responsible for anything behind the connection point including any required planning consent(s), land rights, and licence(s). This point was emphasised to AWFL during formal meetings of the parties during the application process.

...

“Necessary Amendments” proposed by AWFL

The AWFL letter of 18 May 2022 refers to a suggested text for proposed modification to Condition 25(1) of the SONI Licence. The same letter – as mentioned above - also refers to what are termed “necessary amendments” to the (standard) Connection Agreement and the standard) GTUoS Agreement: amendment said to be necessary to give effect to the espoused “principle proposed”. There is also suggested text of an amendment to what is described as SONI’s “Grid Connection Offer”. SONI commented (at least “initially”) on the proposed modification to Condition 25(1) in its letter of 10 June 2022. We would ask SONI to confirm whether it has any (initial) thinking as to (i) the “necessary amendments” as described in AWFL’s letter of 18 May 2022 and (ii) the proposed textual change to the “Grid Connection Offer”. SONI is also asked to confirm whether consideration would need to be given to further consequential amendments to connection related documents (e.g. the terms of connection offers; the standard form Connection Agreement; and the standard GTUoS Agreement) were a modification to Condition 25(1) of the type proposed by AWFL be proceeded with; detailing the range of potential changes involved.



SONI Response

No consideration has been given to any suggested modifications at this time.

Effect of the making the changes proposed by AWFL

The changes proposed by AWFL are, again, set out in the letter from AWFL dated 18 May 2022. It appears that AWFL considers that those changes – if made – would allow AWFL to proceed to connection (and energisation) under the existing accepted Connection Offer. Does SONI consider this to be right; noting that any proceeded with modification to Condition 25 (1) would perhaps be considered to be of only prospective effect.

SONI Response

No further consideration has been given to any suggested modifications at this time. This would require detailed consideration by all stakeholders.

“Cross Border Framework”

We note

- the definition of acting “in conjunction with the Republic of Ireland System Operator [EirGrid]” in Condition 1 (7) of the SONI Licence
- the provisions of Condition 24 of the SONI Licence in relation to a System Operator Agreement (SOA)
- the provisions of Condition 27 of the SONI Licence in respect of inter alia the “Requirement to Offer Terms to the ROI SO” (subject to the exceptions in Condition 27 (7)) in respect of a request from the ROI SO in respect of an application to the ROI TSO for connection to or use of the All Island Transmission Networks at entry or exits points on the ROI transmission system: to include the obligations regarding (i) a complaint SOA and (ii) the nature of a response to any envisaged request from the ROI SO (see Condition 27(4) and Condition 27(6))
- The provisions of Condition 28 of the SONI Licence concerning inter alia the requirement that the SOA provide for dispute resolution in respect of the obligations in Condition 27.

It seems that the provisions of Condition 27 and Condition 28 of the SONI Licence are mirrored in analogue provisions of the EirGrid TSO licence (see Condition 5(5) and 5(6) of the EirGrid TSO licence). These matching provisions provide – it seems to us - for each TSO to co-operate with the other (TSO) so as to facilitate the other TSO in making an offer to an applicant to that other TSO for connection or use of the All-Island Transmission Networks at entry or exit points located on the other TSO’s transmission system. In that way, it seems to us, the matching licence provisions appear to underpin and reflect the so called “cross border framework”. We further note that the affidavit evidence adduced in the judicial review proceedings between AWFL and DfE includes reference to interactions between DfE and SONI that appear to suggest that the arrangements related to or associated with the cross-border framework are not as advanced or matured as they might be. SONI will be aware of this evidence.



We would like SONI to confirm; i. whether it considers that it is meeting its obligations under Condition 27 (and Condition 28) referencing the appropriate provisions of the SOA.

SONI Response

SONI considers that it is meeting its relevant licence obligations. Condition 27 requires SONI to make an offer to EirGrid, if EirGrid applies to us. We are used to making offers to NIE Networks as DNO and are of the opinion that this would follow a very similar process. To date no request has been received, however we see no reason why this would present any difficulty while noting that any application would need to be judged on its own merits. SONI and EirGrid keep potential cross border implications of connections under review in line with the SOA, however to date the relative weakness of both networks in the border areas mean that AWFL is the first connection that might possibly need to utilise the provisions of schedule 5 of the SOA in the 15 years that it has been in effect.

ii. what, if any, further work is needed, by SONI and/or EirGrid (as ROI TSO) and/or any other stakeholders (to include NIE Networks as the NI Transmission System Owner; noting the requirements of Condition 27(6)), to more fully develop the cross-border framework.

SONI Response

From a SONI perspective, we are confident that we would be able to process an application for a cross border application if one were received from EirGrid. The TIA (Section C) includes provision for applications from the RoI TSO. Furthermore, we have not identified any barriers to SONI applying to EirGrid should it be more efficient to connect an applicant in NI into the RoI portion of the all-island transmission network (however any application would need to be judged on its own merits) Given the connection processes in Ireland that have been directed by CRU, SONI could not deliver such an offer within 3 months and should UR not grant an extension, we would need to rely on the exemption provided in paragraph 6 (c) of licence condition 25 to refuse such a connection.

iii. how an entity which might wish to achieve a connection which might fall within the cross-border framework arrangements is able to obtain information about the potential arrangements, to include, importantly, the costs which would be involved in such a connection.

SONI Response SONI has a published set of connection application fees which apply to all potential connections. The costs of an individual connection would be determined on a case-by-case basis, as with all transmission connections. The context of the statement was approved by the SEM committee in March 2008⁷¹ in the explicit context of the implementation of cross-border harmonisation and delivery of the objectives of the SEM. This paper did not identify any outstanding issues that required further work to provide a harmonised cross-border set of arrangements.

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<https://www.semcommittee.com/sites/semcommittee.com/files/media-files/SEM-08-028%20Transmission%20Connections%20Charging%20Decision%20Paper%20-%2027.03.2008.pdf>



iv. that there has to date been no request for assistance from EirGrid pursuant to Condition 27.

SONI Response SONI can confirm that, to date, no request has been received from EirGrid.

v. whether it considers that any connection arrangement involving a Condition 27 type “commitment” from SONI to EirGrid would involve the establishment of a cross jurisdictional interconnector.

SONI Response

The term interconnector has a very specific meaning in EU and UK law. In the case of an electricity interconnector that would connect with the UK the definition that currently applies is set out in the Trade and Cooperation Agreement⁷² between the UK and EU which states: "electricity interconnector" means a transmission line: (i) between the Parties, excluding any such line wholly within the single electricity market in Ireland and Northern Ireland The line between the Aught windfarm and the connection point in NI would not be an interconnector in any legal sense because it is fully contained within the single electricity market.

134. We emailed Mr [REDACTED] on 15 November 2022 (the 15 November 2022 UR AWFL Email) and asked about the first mention of [REDACTED] (WFL) in the 8 November 2022 SONI CRU Letter).

“We should be further grateful if you could explain the background to the mention – for the first time it seems – of [REDACTED] (WFL) in the SONI letter of 8 November 2022. Are AWFL and [REDACTED] WFL connected? How is [REDACTED] WFL involved in the proposed cross border arrangement signalled by AWFL arising out of the (accepted) connection offer of March 2020? Is [REDACTED] WFL already connected to the ROI grid (distribution/transmission) and, if so in what way? Does [REDACTED] WFL hold a section 14 licence and section 16 authorisation from CRU? Are you able to produce those documents for our consideration?”

135. We emailed CRU on 15 November 2022 (the **15 November 2022 UR CRU Email**) in response to the 7 November 2022 CRU UR E Mail. In that email we asked for further information.

“More information

We are grateful for the information supplied in your 7 November email. We note that you have indicated that more information could be provided with more time. Not all of our requests for information are addressed in your (initial) emailed response of 7 November (see, for example, our request for information on the (so-called) “cross-border framework”). We are keen to make sure that we have a full suite of information *viz. all of* the queries set out in our letter of 27 October. As mentioned above, we are working in a litigation context and the changes proposed by AWFL do raise matters of some complexity. We should be particularly grateful for any further support CRU can offer. In those circumstances, could we trouble CRU to provide a further reply to our letter of

⁷² [eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22020A1231\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22020A1231(01))



27 October and ask that this reply *map responses* to the specific numbered information requests included in our letter of 27 October. We would find this very helpful indeed. It would allow us to make sure that we have the information we need in relation to such matters as the “cross border framework”.

136. AWFL sent is an emailed response to the 15 November 2022 UR AWFL Email on 18 November 2022 (**the 18 November 2022 AWFL to UR Email**)

“██████████ (██████████ WFL) is a company directly related to AWFL, ██████████.

██████████ WFL is a two-turbine project which is part of the wider AWFL project.

██████████ WFL is not connected to the RoI grid.

██████████ WFL has an export of 5MW and is located close to the AWFL site. The SONI grid connection application was sought for AWFL 32.2MW. plus ██████████ WFL 5MW, thus resulting the application and subsequent offer from SONI for 37.2MW.

██████████ WFL currently does not hold Section 14 licence and section 16 authorisation from CRU.

I hope this answers your queries regarding ██████████.”

137. CRU sent us an email on 21 November 2022 (**the 21 November 2022 CRU UR E Mail**). This includes the following:

“More information

My apologies, there appears to have been a mix up on our call. What I intended to clarify was that the response back was intended to be the complete CRU response and should be read as such. In relation to the specific queries you note below around the “cross-border framework” this is covered by the following element of the CRU response:

“In response to your queries on the wider requirements on the project outside these specific two CRU consents, the CRU communicated the following to the applicant prior to their application: “We recognise this is a unique project with it being cross border and consequently the team has carried out preliminary checks on the applicability of the CRU consents. We have not found reasons that CRU consents are not applicable and therefore we will accept a valid application when you resubmit. Unfortunately, as a single step in the consenting process for this non-standard application, we are not in a position to confirm whether our consents will meet the project requirements of subsequent authorising entities/teams so I urge your project team to double check and confirm this before proceeding.”



I hope this clears up any confusion.”

138. CRU sent us the application materials for the CRU Generating Licence and the CRU Construction Authorisation by email of 25 November 2022 (**the 25 November 2022 CRU UR Email**).

139. We wrote to CRU on 21 December 2021 (**the 21 December 2022 UR CRU Letter**) including this:

“The cross-border framework

Your 21 November email confirmed that your response to the queries raised in our 27 October letter – to include the queries raised as to the cross-border framework were complete. We are grateful for the information you have provided.

However, we wonder whether you would be able to help us better understand the CRU’s view on the cross-border framework by coming back to us further with specific regard to the points raised in sections 14.1 and section 14.2 of our letter of 27 October. We should be grateful for any further clarification you could provide. It would assist our current deliberations.

(b) The SONI offer of connection (March 2020)

The emails contained within the Application Materials reveal that CRU Licensing originally queried the acceptability of the SONI connection offer viz. the (dual) AWFL application. It appears that AWFL sought to address this concern by providing what it called an “Information Note” detailing the connection arrangements for the connection of the (Aught located) generating station to the NI Grid.⁷³

We do not see the Information Note within the Application Materials. We should be grateful if you could send that to us.

(c) The HVTBA

The Application Materials confirm that AWFL intended to run HVTBA from (the substation located within) the generating station site across ROI out towards and across the border with NI.⁷⁴ There is also mention of a specific inquiry from AWFL as to whether these assets required to be “covered” by an

⁷³ The connection arrangements are variously described in the interactions between AWFL and CRU licensing as “non-standard” and “unique” and CRU makes it clear that the grant of the “consents” sought might not prove sufficient to facilitate the practical completion of the AWFL project.

⁷⁴ Although the emails do say that the connection point would be at the “bord” (sic). We assume this is a mistake as the connection point for the March 2020 Connection Offer is for a connection point within NI.



interconnector licence. CRU did not consider that the requirements for an interconnector licence were met but did confirm that the HVTBA (where located in ROI) would need to be covered by section 47 and section 48 consents.⁷⁵

It seems that, at least ordinarily, a ROI located generating station would connect to the ROI grid (distribution or transmission) - from its substation - via a connection agreement with the relevant ROI grid company; be that ESB (as the Distribution SO) – where the connection voltage is at distribution level, or EirGrid (as the TSO) where the connection point was at HV level. That understanding appears to be supported by an email entry in the Application Materials within which CRU licensing states it is aware that AWFL has applied for a grid connection offer under the ROI ECP arrangements.

This conventional arrangement would (it seems to us) allow the HV assets running from a ROI located generating station (authorised by CRU) - connected at HV - to be owned and operated by ESB (as the licensed ROI transmission system owner) and EirGrid (as the licensed TSO) respectively. The “transmission” licences held by ESB and EirGrid would “cover” the HV assets running from the generating station substation.

However, the connection arrangement for the Aught Wind Farm is “non-standard”. There is neither a relevant connection agreement with ESB nor one with EirGrid. The HVTBA located within ROI are intended (so far as we know) to be owned and operated by AWFL. AWFL does not appear to hold a licence from the CRU authorising transmission.⁷⁶

We should, accordingly, be grateful for CRU’s (i) view as to whether ownership or operation of the HVTBA (within ROI) – to include the proposed OHL – implicates a requirement to hold a licence authorising the activity of transmission (within ROI) (ii) confirmation that neither the section 14 licence nor the section 16 authorisation “cover” the activity of transmission in so far as that activity is implicated in the ownership or operation of the HVTBA within ROI (to include the proposed OHL).

...”

140. We wrote to SONI on 21 December 2022 (**the 21 December 2022 UR SONI Letter**). The questions raised in that letter were addressed in a letter from SONI to the UR dated 4 January 2023 (**the 4 January 2023 SONI UR Letter**).

⁷⁵ These are statutory permissions to run lines over land.

⁷⁶ We note that the planning permission document contained within the Application Materials, whilst recording the presence of the substation at the Aught Wind Farm site, appears not to relate to any OHL part (or any other part) of the (seemingly) proposed HVTBA running from that substation. Indeed, the planning permission specifically includes a condition that all “cables” within the site of the permitted generating station are to be located *underground*. So, the planning permission does not authorise the ROI- HVTBA.



1. [REDACTED] (WFL)

SONI is asked to confirm:

(a) how the March 2020 offer of connection (the Connection Offer) can relate to capacity for [REDACTED] WFL when

(i) no mention of [REDACTED] WFL is made on the face of the Connection Offer - that offer, on its face, only relating to (and for) AWFL - and (ii) there has been no mention to date of any “acceptance” by [REDACTED] WFL of the Connection Offer

SONI Response

The connection application submitted to SONI in May 2019 was submitted by Aught Wind Farm Limited (AWFL). As AWFL was the applicant then it follows that the Connection Offer was issued to AWFL. The total number of generating units included in the connection application was 16 (14 wind turbines relating to Aught Wind Farm and 2 relating to [REDACTED] Wind Farm) with a total combined Maximum Export Capacity (MEC) of 37.2MW. The Connection Offer issued by SONI in March 2020 was based on the MEC of 37.2 MW which was included in the connection application. SONI queried the ownership of the 2 [REDACTED] wind turbines with the applicant and a letter was provided by a director of both AWFL and [REDACTED] (WFL), in response to the query. This letter confirmed that [REDACTED] WFL consented to the inclusion of the [REDACTED] Farm within the AWFL connection application resulting in the Connection Offer being addressed to AWFL.

(b) how it was satisfied that there was extant planning permission for the [REDACTED] WFL “project” (seemingly accommodated within the Connection Offer) when AWFL accepted the Connection Offer in (it seems) May 2020, given that there looks to be a concession within the Application Materials that the [REDACTED] WFL planning permission expired on 5 January 2020.

SONI Response

The applicant provided evidence that [REDACTED] WFL had been granted planning permission by the relevant authority. The conditions precedents for Offer acceptance is outlined in Clause 15.2 of the Connection Offer. One of the conditions precedents is “Evidence that relevant consent(s) (including but not limited to Planning Permission in the case of an onshore wind farm) has been granted”. Therefore, the applicant should ensure the relevant consents is in place before accepting the Offer.

(c) whether it considers that the full 37.2 MEC referred to in the Connection Offer is or can be utilisable by AWFL pursuant to a consummated Connection Agreement or GTUoS Agreement relating to the specified connection point referenced in the Connection Offer given the position regarding planning permission for [REDACTED] WFL.

SONI Response



The Connection Offer was issued based on a MEC of 37.2 MW in line with the connection application submitted. As outlined above it is the applicant's responsibility to ensure adequate planning permissions and other consents are in place to enable it to build out its project and provide the full MEC as applied for. Furthermore, Clause 9.28 of the Connection Offer states, "If after twelve (12) months from the date that the WFPS is first connected to the Transmission System and energised at the Connection Point, the Generator is unable to utilise the full MEC (37.2 MW) as set out under this Offer, then SONI reserves the right to reduce the MEC for the WFPS under this Offer or any Connection Variation Offer or the Connection Agreement to the maximum MEC values as proven that the WFPS is capable of exporting via Grid Code compliance testing."

2. The HVTBA

Can SONI please clarify why it does not appear to have considered AWFL obliged to provide evidence of the planning permission for the HVTBA - which sit behind the connection point and appear to form part of the project being connected at that connection point – as part of a valid Connection Offer acceptance, when it appears to have required AWFL to provide evidence of the planning permission for the generating station at Aught (on offer acceptance) which likewise appears to form part of the same project.

SONI Response

It is the customer's responsibility to provide evidence of any planning permission or other consent requirements in relation to their equipment on their side of the Connection Point as outlined in the SONI Connections Policy. The applicant provided evidence of planning permission of the AWF, the WF, and the substation on Culmore Road. As per SONI's letter dated 8 November 2022, SONI did not make any assessment of the HVTBA as part of the Connection Offer process.

3. Discrimination

We should be grateful if SONI would review its letter of 5 August 2021 and provide any further elaboration it can as to why it considers that it would be in jeopardy of a potentially adverse finding under Condition 15 of the TSO licence were it to proceed to offer a GTUoS Agreement to AWFL without AWFL presenting as a qualified eligible person (as per the current definition in Condition 25).

It would be useful if SONI could frame any further elaboration with reference to how (i) the relevant "person" or "class of person" (see the language of Condition 15 of the TSO licence) would be comparably situated (or not) and (ii) any objective justification would or may not be demonstrable in the circumstances.

SONI Response



Condition 25(1) of the TSO Licence states: "... On application by any eligible person, the Licensee shall (subject to paragraph 6) offer to enter into a Use of System Agreement:..." Condition 25(1) of the TSO Licence further defines an eligible person as: "In this paragraph references to "eligible person" shall be construed as references to persons licensed under Article 10 of the Order (or exempt from the requirement to be so licensed under Article 9 of the Order) or who have applied for a licence under Article 10 and whose application has not been withdrawn or rejected (including, for the avoidance of doubt, the Power Procurement Business in its capacity as such)."

SONI has no authority to issue any such offer to enter into a Use of System Agreement, other than as set out within Condition 25(1) of the TSO Licence.

SONI has reviewed its letter of 5 August 2021. SONI does not consider that it can elaborate further.

141. We wrote to AWFL on 1 March 2023 (**the 1 March 2023 UR AWFL Letter**). This letter included:

"We have, in the course of our continuing work, noted that it was explained in one of the letters from AWFL (to us) dated 9 August 2022 that the ECP 2.2 application (to EirGrid) would not be progressed. We further note from information supplied by SONI - by letter dated 10 June 2022 - that EirGrid was required, under the ECP 2.2. process, to make an offer to AWFL before the end of December 2022. Further still, we note the December 2022 publication from EirGrid² which indicates [Footnote 3: See the entry at age 119 of the document.] that AWFL is "due to connect" (apparently with EirGrid as ROI TSO with a MEC of 57.4MW [Footnote 4: It is noted that the Connection Offer from SONI is for 37.2 MW (32.2 MW of which is apparently directly attributable to the proposed AWF at Aught, County Donegal, Ireland)).

Drawing this all together, we should be grateful if AWFL would explain whether any ECP 2.2 (or other) offer for connection has, at any time, been made to AWFL by EirGrid and, if so, when the offer was made and the present status of any such offer. Alternatively, if no such offer has been made by EirGrid to AWFL, we would ask AWFL to confirm whether this is because AWFL has withdrawn its application to EirGrid and, if so, the date that AWFL withdrew its application and its reasons for doing so."

142. AWFL wrote to us on 2 March 2023 (**the 2 March 2023 AWFL UR Letter**) as follows:

"Thank you for your later dated 1st March 2023. In response to your question on the EirGrid ECP2.2 grid connection application. I can confirm this application has not progressed, as I have not had any correspondence from EirGrid on the application. I note the status on page 119 of the EirGrid area Constraints Report, stating the Aught is "due to connect", but this is new news to me as we have had no contact from EirGrid to date."



143. We wrote to AWFL on 15 March 2023 (**the 15 March 2023 UR AWFL Letter**). This letter included the following:

“For the purposes of clarity, we should be grateful if you would provide a response to the specific questions raised in my letter of 1 March, which were:

1. Whether any ECP 2.2 (or other) offer for connection has at any time been made to AWFL by EirGrid and if so:

- (a) when the offer was made
- (b) the present status of any offer

2. Alternatively, if no such offer has been made by EirGrid to AWFL to confirm whether this is because AWFL has withdrawn its application to EirGrid and, if so

- (a) the date that AWFL withdrew its application and
- (b) the reasons for doing so.

We note that in your letter of 2 March you have expressed surprise at the statement on the 2022 Q4 document¹ that AWFL “was due to connect”. You also stated that the AWFL “application” had not been “progressed” as “we have not had any correspondence from EirGrid on the application”.

Our assumption is that you will by now have followed up with EirGrid. Accordingly, we should be grateful if you would confirm the position reached in your discussions with EirGrid as to the stated lack of correspondence from EirGrid on the application and the “due to connect” statement in the Q4 document.

...”

144. AWFL wrote back to us on 16 March 2023 (**the 16 March 2023 AWFL UR Letter**) as follows:

Query 1:

Whether any ECP2.2 (or other) offer for connection has at any time been made to AWFL by EirGrid and if so:

- (a) When the offer was made
- (b) the present status of any offer

AWFL response: AWFL confirm that no ECP2.2 or other offers have been made to AWFL by EirGrid.

Query 2:

Alternatively, if no such offer has been made by EirGrid to AWFL to confirm whether this is because AWFL has withdrawn its application to EirGrid and, if so,

- (a) the date that AWFL withdrew its application and
- (b) the reasons for doing so.



AWFL response:

AWFL confirms it has not withdrawn its application.

Finally, AWFL have (sic) not have had any correspondence with EirGrid regarding the ECP2.2 offer (or other). Therefore, we are unable to confirm why the EirGrid document referenced states that the application is “due to connect” in Q4.

(our underlining).

145. We wrote to AWFL on 27 March 2023 (**the 27 March 2023 UR AWFL Letter**) as follows:

“Your letter, when read in conjunction with your letter of 2 March 2023, seems to confirm the following:

(a) AWFL has made an application (the Application) to the ROI TSO (EirGrid) for connection in respect of the AWF.

(b) The Application has not been withdrawn by AWFL and so remains a “live” application (in the sense that it has yet been determined or withdrawn).

(c) No offer of connection (either an ECP 2.2 offer or any other) has been made by EirGrid in respect of the Application (or any other application made to EirGrid that concerns the AWF) with the Application not having “progressed” in circumstances where AWFL has “not had any correspondence” on the Application from EirGrid.

Our letter of 15 March included this:

“We note that in your letter of 2 March you have expressed surprise at the statement on the 2022 Q4 document [1] that AWFL “was due to connect”. You also stated that the AWFL “application” had not been “progressed” as “we have not had any correspondence from EirGrid on the application. Our assumption is that you will by now have followed up with EirGrid. Accordingly, we should be grateful if you would confirm the position reached in your discussions with EirGrid as to the stated lack of correspondence from EirGrid on the application and the “due to connect” statement in the Q4 document.”

Your letter of 16 March seemed to respond as follows:

“Finally, AWFL have (sic) not have had any correspondence with EirGrid regarding the ECP2.2 offer (or other). Therefore, we are unable to confirm why the EirGrid document referenced states that the application¹ is “due to connect” in Q4.”

Thus, AWFL seems to be saying that it has not had any correspondence with EirGrid on its “live” Application - for connection for the AWF – to include any correspondence concerning the statement from EirGrid (considered “news” by AWFL) that the AWF is “due to connect” with EirGrid (as ROI TSO) with an MEC of 57.4MW.

So, not only (it seems) has the Application not been progressed due to (apparently) a lack of any correspondence from EirGrid in response to the Application but AWFL has not corresponded (in any way) with EirGrid on its public statement confirming that the AWFL is “due to connect” with an MEC of



57.4MW; which said statement has come as a surprise to AWFL. It is difficult to follow what is (apparently) happening here.

We do not regulate EirGrid. However, our clear understanding is that EirGrid is (as the regulated ROI TSO responsible for making offers of connection to the ROI transmission system) obliged to respond (or “correspond”) on a “live” application for connection such as the Application. EirGrid’s (apparent) lack of response on the Application is therefore puzzling.

Further, we do not presently understand why AWFL would not contact (or “correspond”) with EirGrid in the face of the (apparent) lack of response on the Application particularly when (now) advised that EirGrid has made a public statement that the AWF is “due to connect” with EirGrid.

We have considered whether we should ask for a meeting, attended by EirGrid and AWFL, concerning the “status” or treatment of the Application with specific regard to (a) the stated lack of correspondence from EirGrid on the Application and (b) EirGrid’s published statement that AWF is “due to connect”. However, we are content, for now, to address matters directly with AWFL.

Accordingly, we should be grateful if you would come back to us to confirm (on behalf of AWFL):

1. Whether our understanding of matters – as described in this letter – is erroneous in any way; detailing why that is so (if it is).
2. Why AWFL has not (seemingly) contacted EirGrid to challenge EirGrid’s (apparent) failure to respond to the Application.
3. Why AWFL has not (apparently) contacted EirGrid to inquire as to why EirGrid has stated that the AWF is “due to connect “(with EirGrid) with an MEC of 57.4 MW when this statement has come as “news” to AWFL.
4. AWFL’s understanding of the status of the Application (confirmed as not withdrawn by AWFL).
5. Whether the Application identified/specified a connection point for the AWF and if so the location of that connection point.”

146. AWFL wrote to the UR on 3 April 2023 (**the 3 April 2023 AWFL UR Letter**) as follows:

“We refer to your letter of 27 March 2023 and respond (as requested) in relation to your queries at (a) – (e) as follows: -

(a) Whether our understanding of matters – as described in this letter – is erroneous in any way; detailing why that is so (if it is).

AWFL confirms that the UR’s understanding of matters as described in its letter of 27 March 2023 at (a) – (d) is correct in so far that AWFL has not had any correspondence with EirGrid informing it that it is due to connect or following its public statement that AWFL was “due to connect.” Indeed, AWFL was not aware of any such statement having been made until it was brought to its attention by the UR. The last correspondence that AWFL had with EirGrid in relation to its application was in June 2022, some 9 months ago, when EirGrid confirmed that it was still “processing a high volume of offers” and that they



“were not studying these projects yet”. EirGrid also confirmed that they did not require any further information or documentation from AWFL.

(b) Why AWFL has not (seemingly) contacted EirGrid to challenge EirGrid’s (apparent) failure to respond to the Application

As per the above, AWFL is of the understanding that EirGrid has not yet completed its full review of ECP2.2 grid connection offers at this point, with AWFL’s outstanding offer clearly being one of these. Moreover, EirGrid has said that they do not require any further information or documentation from AWFL at this time. Accordingly, AWFL expects that it will receive correspondence from EirGrid in relation to its application in due course.

(c) Why AWFL has not (apparently) contacted EirGrid to inquire as to why EirGrid has stated that the AWF is “due to connect “(with EirGrid) with an MEC of 57.4 MW when this statement has come as “news” to AWFL.

In light of the above, AWFL believes that this statement is clearly an error on the publication. AWFL would like to draw the UR’s attention to the list of EirGrid’s “Contracted and Connected Generators” <https://www.eirgridgroup.com/site-files/library/EirGrid/ContractedTSO-Wind-Farms.pdf> from 21/02/2023. As you will see, AWFL does not appear on this list.

(d) AWFL’s understanding of the status of the Application (confirmed as not withdrawn by AWFL)

AWFL’s current understanding of the status of the application is that it is being processed by EirGrid.

(e) Whether the Application identified/specified a connection point for the AWF and if so the location of that connection point.

In any application to EirGrid it is a requirement for the applicant to identify a proposed connection point, but the responsibility of EirGrid to specify the final grid connection point. Accordingly, AWFL (on the understanding that SONI and EirGrid will be working together) has requested that it connects to the SONI network at Coolkeeragh. Unfortunately, however as of the date of this letter, EirGrid has not confirmed the final grid connection point.

As a matter of clarification, AWFL would also like to make it clear that its only reason for making its application to EirGrid was on the guidance of SONI, whereby SONI indicated that that AWFL should apply to EirGrid for a connection offer and that once issued, SONI and EirGrid would interact providing all the required licences as part of a supposed “cross border framework”.

However, it would seem to AWFL that this advice (c.2021) has since been potentially superseded, given the more recent dialogue with the UR, SONI and the Department for the Economy whereby it has been indicated that there is no documentation whatsoever that sets out how the framework operates and what the policy is behind it. Indeed, it seems to AWFL that it is not clear by any of these bodies what that “framework” is and how it would actually operate in practice.



Moreover, AWFL is aware, from previous market experience that the costs and delay that would be involved in any such framework would be extraordinary and would be such that it would render the Project completely unviable.

As such, whilst AWFL (acting on the previous advice of SONI and being a prudent commercial operator) has applied for and seen no reason to withdraw its application with EirGrid, it is for these reasons (and of course, the fundamental fact that AWFL's entry and exit point is within Northern Ireland) that AWFL has sought and obtained a grid connection offer and connection with the SONI Network. Such method of connection remains the simplest and most cost-effective method of connection."

147. AWFL's solicitors (Pinsent Masons) wrote to the UR's solicitors (O'Reilly Stewart) on 4 April 2023 (**the 4 April 2023 PM ORS Letter**) and advised that the planning permission for the Project would expire in "November 2023". It will be recalled that AWFL previously advised October 2023 as the date of expiry of the planning permission.

148. The UR wrote to AWFL on 21 April 2023 (**the 21 April 2023 UR AWFL Letter**) as follows:

"I write further to your letter of 3 April 2023 (responding to my letter of 27 March 2023). Your letter is the most recent in a chain of correspondence relating to a query raised in my letter of 1 March 2023.

That query related to AWFL's application to EirGrid for a connection to the RoI network under ECP 2.2. In my letter I noted that:

(i) it had been stated in a previous letter from AWFL (to the UR) that the ECP 2.2 application (to EirGrid) "would not be progressed".

(ii) subsequent information supplied by SONI - by letter dated 10 June 2022 – indicated that EirGrid was required, under the ECP 2.2. process, to make an offer to AWFL before the end of December 2022.

(iii) the December 2022 (Q4) publication from EirGrid indicated that AWFL is "due to connect" (apparently with EirGrid as ROI TSO with a MEC of 57.4MW).

I asked you for an explanation, including whether any offer had been made by EirGrid to AWFL and, if so, the status of the offer and whether, if no such offer had been made, whether this was because AWFL has withdrawn its connection application to EirGrid.

A series of letters has now passed between us, with further clarifications having been required following the responses you provided on 2 March 2023 and 16 March 2023.

I now understand that AWFL's ECP 2.2 application to EirGrid has not been withdrawn by AWFL. You have explained in your most recent letter, "AWFL's current understanding of the application is that it is being processed by EirGrid".

I am grateful for your response and for the information which you have provided. However, I would like to take this opportunity to remind AWFL of the importance of ensuring that its responses to the UR's queries are clear.

In your letter of 18 May 2022, you stated - in relation to the ECP 2.2 application - that "EirGrid has been unable to provide certainty on the cost and method of



connection to AWFL so the application will not be progressed” (underlining added). A reasonable person reading this statement might well have understood that AWFL was no longer participating in the ECP 2.2 application process. However, it appears from the information you have now provided that such an understanding would not be correct: AWFL continues to have a live ECP 2.2 application, which (on AWFL’s understanding) has not yet been determined.

I also note that in your 3 April letter (to the UR) explains that the most recent correspondence had from EirGrid in relation to that application was in June 2022, in which EirGrid confirmed that it was still processing a high volume of offers and that it did not require any further information or documentation from AWFL.

I should be grateful if you would please provide me with a copy of the correspondence to which you refer. I note that this correspondence post-dates your letter to the UR of 18 May 2022.

In order for the UR’s reconsideration of AWFL’s July Request¹ to be progressed properly it is essential that the information which AWFL provides is clear and that the UR is kept updated in relation to matters on which it has requested information. Without this, it becomes more likely that additional requests and queries will be raised by the UR.

The following additional matters arise from your letter of 3 April.

First, we note your position that you consider the statement in EirGrid’s December 2022 publication, is an error because AWFL (or the Aught windfarm) does not appear on EirGrid’s list of “Contracted and Connected Generators” published on 21 February 2023. However, our understanding of the “Contracted and Connected Generators” list is such that it does not necessarily indicate that there is an error of the type suggested.

The December 2022 publication lists “Aught” as “due to connect” (rather than “connected”). The February 2023 publication lists only generators which are contracted and connected. Aught would therefore not appear on that list because (as we understand the position) it is not yet contracted or connected.

The approach you appear to be taking is that AWFL is going to operate on the assumption that the statement from EirGrid in December 2022 is an error and wait further to hear from EirGrid in relation to the outcome of your application for a connection. We consider, for the reasons we have outlined, that this leaves the position unclear. We would, therefore, suggest that you write to EirGrid asking whether the statement in its December 2022 publication is in fact an error and for an update on the status of AWFL’s connection application. We would ask that you please share EirGrid’s response with us so that we can have clarity on the position as part of our reconsideration of your July Request.

Second, you state that the advice of SONI that AWFL should apply to EirGrid has “since been potentially superseded, given the most recent dialogue with the UR, SONI and the Department for the Economy whereby it has been indicated that there is no documentation whatsoever that sets out how the framework operates and what the policy is behind it. Indeed, it seems to AWFL that it is not clear by any of these bodies what that “framework” is and how it would actually operate in practice”.



In this regard, I refer you to the letter of 8 November 2022 from SONI to the UR, to which you were copied, in which SONI explained that it was “confident that we would be able to process an application for a cross border application if one were received from EirGrid”. To the extent that you wish to make any comments on that letter from SONI, we would invite you to do so at the earliest opportunity in order that the UR can consider them in the course of the reconsideration of the July Request.

Third, you state “AWFL is aware, from previous market experience that the costs and delay that would be involved in any such framework would be extraordinary and would be such that it would render the Project completely unviable”. You do not give any particulars of this previous experience or the costs and delay which it is said would render the Project unviable. To the extent that you wish to provide any further particulars of these matters, we would invite you to do so at the earliest opportunity so that the UR can consider that information in the course of its reconsideration of the July Request.

We would ask that any further information (including, to the extent possible, a response from EirGrid) be sent through to us by close Tuesday 2 May 2023.”

149. AWFL wrote to us on 26 April 2023 (**the 26 April 2023 AWFL UR Letter**) as follows:

“I refer to your letter dated 21 April 2023 in which several further queries were raised by the UR. Please see below Aught Wind Farm Limited (“AWFL”)’s responses to each of these queries that are now addressed in the order that they appear in your correspondence of 21 April 2023.

We would add that AWFL has always endeavoured to provide the UR with clear and concise responses to all query’s (sic) raised. Given the length of time passed, it is not, and never has been in AWFL’s interest to provide unclear responses. As you are aware, the on-going delay in the UR coming to their decision on this matter is at the detriment to AWFL, as the grant of planning permission and value of the project is being eroded by the delays being incurred. As such, we hope the below responses assist the UR in coming to its decision in the near future.

Query 1:

“I also note that in your 3 April letter (to the UR) explains that the most recent correspondence had from EirGrid in relation to that application was in June 2022, in which EirGrid confirmed that it was still processing a high volume of offers and that it did not require any further information or documentation from AWFL. I should be grateful if you would please provide me with a copy of the correspondence to which you refer.”

AWFL Response

See appendix 1 for a copy for the email correspondence with EirGrid.

This appendix contains the following email from EirGrid dated 16 June 2022:

“That EirGrid are in fact processing the Aught Offer – Confirmed

When will the offer issue – we have published the schedule of offers for ECP 2.2 on this page of our website.



Do you require any further details from the customer Not at this time but we will be reaching out in due course for early engagement and connection method options.”

There is then an email from AWFL to EirGrid of 16 June 2022 which says:

“I note that Aught is scheduled for offer issue in Q1 2023. If at all possible, could this be brought back Q4 2022 in line with the Donegal nodal review . . .

EirGrid responded on 16 June 2022 as follows:

“Your request is noted. We are processing a high volume of offers which does not allow offers to issue concurrently but sequentially. Please bear in mind that an offer issuing late in a quarter may only have a short gap between the first offer in the next quarter. As we are not studying these projects yet we will be in touch for engagement later in this year.”

Query 2:

“. . . We would, therefore, suggest that you write to EirGrid asking whether the statement in its December 2022 publication is in fact an error and for an update on the status of AWFL’s connection application. We would ask that you please share EirGrid’s response with us so that we can have clarity on the position as part of our reconsideration of your July Request.”

AWFL Response

To address the URs request for additional clarity, it would obviously not be possible for a non-contracted generator to connect to the transmission network, as there would be no legal agreements in place to allow such a connection.

It would be a fair and reasonable position for AWFL to take the statement that EirGrid made a genuine error in their publications, or that reference was misinterpreted by the UR in the context of the referenced EirGrid “Enduring Connection Policy 2.2 Constraints Report for Area A Solar and Wind Q4 2022” report.

Having reviewed the EirGrid report again, the projects mentioned in the relevant study areas are defined as either “Connected” or “Due to Connect”. As a result, AWFL falls under the “Due to Connect” category. In the context of the report, this statement could be deemed as a genuine statement as the project is on the ECP2.2 list, is not a “Connected” project, therefore must be a deemed a “Due to Connect” project in the context of the specific report.

AWFL referenced the EirGrid List of Contracted and Connected Generators as this is the pertinent document to reference in the context of understanding the legal grid connection status of a generator’s connection, not a constraint report.

As a result, AWFL sees no reason to contact EirGrid to confirm the position of the Aught grid connection status as it is clearly published “ECP-2.2 –List of TSO Projects for Category A”.

Query 3:

. . . In this regard, I refer you to the letter of 8 November 2022 from SONI to the UR, to which you were copied, in which SONI explained that it was “confident that we would be able to process an application for a cross border application if one were received from EirGrid”. To the extent that you wish to make any



comments on that letter from SONI, we would invite you to do so at the earliest opportunity in order that the UR can consider them in the course of the reconsideration of the July Request.

AWFL Response

The response provided by SONI in its letter of 8 November 2022 indicates that AWFL would be the “first connection.....to utilise the provisions of schedule 5 of the SOA [System Operator Agreement] in the 15 years that it has been in effect”. Despite AWFL’s requests, no documentation or further information has been provided by SONI to show how in practical terms the cross-border framework would work. Further, from AWFL’s investigations to date, it would appear to AWFL that the time and costs that would be involved in facilitating a cross border application would be significantly more than facilitating the accepted grid connection that AWFL currently holds with SONI. Undoubtedly such costs would be passed on to end users. Further AWFL notes that SONI has not said in its letter of 8 November that such licence modifications suggested by AWFL would not be possible. In AWFL’s view such solutions as set out in our letters of 9 July and 18 May 2022 remain the most cost and time efficient solution.

Query 4

Third, you state “AWFL is aware, from previous market experience that the costs and delay that would be involved in any such framework would be extraordinary and would be such that it would render the Project completely unviable”. You do not give any particulars of this previous experience or the costs and delay which it is said would render the Project unviable. To the extent that you wish to provide any further particulars of these matters, we would invite you to do so at the earliest opportunity so that the UR can consider that information in the course of its reconsideration of the July Request.

AWFL Response

In respect of particulars, a sister company (██████████ Wind Limited) of AWFL received a grid connection for a 0.5MW wind turbine in May 2020 with a connection to the local network (screenshot enclosed). The only 110kV infrastructure from the Trillick 110kV Node is via the Trillick – Letterkenny 110kV line 34.7km x €350,000 = €12.145m for the line upgrade equipment works alone (screenshot of upgrade requirements illustrated in SLD below), this cost does not consider various other aspects of the connection method, which could in turn double or triple this line cost figure. Indeed, in order to conduct any works to upgrade the line would necessitate taking the 110kv line out of commission for a lengthy period of time (estimates are four to five years, as the outages can only be undertaken during the months of April to August) and in doing so would jeopardise the existing security of supply to the Inishowen Peninsula.

Finally, and in addition to the above, AWFL would like to reiterate that the matter in question relates to the live grid connection between AWFL and SONI. AWFL have answered the same questions several times and presented evidence to support the statements, however the UR appear to be continually focused on the ECP2.2 process rather than the matter at hand, i.e. the SONI



grid connection and the relevant actions required of the UR to conclude the SONI grid connection agreements.

AWFL notes that while the CRU has not addressed the queries put to the CRU by the UR, it should be noted that the CRU has fully licenced AWFL in its jurisdiction and therefore in AWFL's such correspondence from the CRU should not hold the UR to coming to their decision on the matter. The purpose of this matter is to deal with the licencing in the NI jurisdiction and AWFL is of the opinion that the CRU has nothing to add as they have already fulfilled their obligation.

AWFL has a live grid connection North of the border with SONI and respectfully requests that a solution to the matters rests in the options outlined in its letter of 9 July 2021 (and further clarified in our letter of 18 May 2022)."

(our underlining)

150. On 28 April 2023 CRU wrote to the UR (**the 28 April 2023 CRU UR Letter**) in response to the 21 December 2022 UR CRU Letter. CRU said this:

"In your letter, you have sought the CRU's views regarding the so called "cross border framework", with reference to specific questions set out in your earlier letter dated 27 October 2022, at sections 14.1 and 14.2.

The CRU issued the Authorisation and Licence to AWFL on 31 March 2021 pursuant to its powers under sections 16 and 14 of the Electronic Regulation Act 1999 ("the 1999 Act"), respectively. It is the CRU's position that there is nothing in the wording of either section 14 or 16 of the 1999 Act that precludes the CRU from having issued the Authorisation and the Licence to AWFL on the basis of a Connection Agreement between AWFL and SONI in respect of the proposed generating station.

During the application process, the CRU indicated to AWFL by way of email dated 26 November 2020 that it was not in a position to confirm whether the granting of the Authorisation and Licence would meet the project requirements of subsequent authorising entities.

In your letter, you have also sought the CRU's "view as to whether ownership or operation of the HVTBA (within ROI) — to include the proposed OHL — implicates a requirement to hold a licence authorising the activity of transmission (within ROI)".

It is the CRU's view that in relation to the AWFL project, ownership or operation of the proposed HVTBA (within ROI) would not necessarily implicate a requirement to hold a transmission licence (within ROI).

You have also sought "confirmation that neither the section 14 licence nor the section 16 authorisation "cover" the activity of transmission in so far as that activity is implicated in the ownership or operation of the HVTBA within ROI (to include the proposed OHL)." The Authorisation and Licence granted by the CRU to AWFL do not permit AWFL to engage in any activity that would require it to hold a transmission operator licence under section 14(1)(f) of the 1999 Act.



It is the CRU's position that the proposed HVTBA within ROI would not form part of the ROI transmission system.

Your letter also included a request for a copy of the "Information Note" provided by AWFL to the CRU in response to the CRU's question regarding the acceptability of the SONI connection offer. We have reviewed the materials received by AWFL during the application process and have concluded that no such information note was provided by AWFL to the CRU."

151. We wrote to SONI on 10 May 2023 (**the 10 May 2023 UR SONI Letter**).

" . . Drawing this together, SONI appears to be of the view that it may only - legally speaking - offer a GTUoSA to an "eligible" person (as defined in Condition 25) 2 and AWFL is not such a person, such that AWFL is considered unable to fulfil the requirements of the "condition" set out in clause 9.30 of the Offer. Please confirm whether we have properly understood SONI's position as to its legal obligations under Condition 25.

...

Our review of our files has turned up a copy of the GTUoSA (the SWF GTUoSA) between SONI and [REDACTED] Limited dated 31 October 2007, which relates to SWF. We note that clause 2.2(a) of the SWF GTUoSA provides that SONI's obligation to ensure the transportation of energy on the All-Island Transmission Network in relation to exports from a Point of Connection is in each case subject to "the User being authorised to generate electricity by virtue of a Generation Licence or being exempt from the requirement to hold such a licence under the Exemption Order".

Clause 2 of the SWF GTUoSA is titled "Conditions Precedent". Definition of the capitalised terms used in clause 2.2(a) is as follows: 'User' means [REDACTED] (and its permitted successors and assigns); 'Generation Licence' means a licence to generate electricity granted under the Order; 'Order' means the Electricity (Northern Ireland) Order 1992; and 'Exemption Order' means the Electricity (Class Exemptions from the Requirement for a Licence) Order (Northern Ireland) 1999."

152. We then asked a series of questions aimed at clarifying how the SWF GTUoSA and the Extant GTUoS Agreement – with GEL – came about in circumstances where there was (it seemed) no Article 10 generating licence or Article 9 Exemption covering the operation of *Snugborough*.

153. We wrote to AWFL on 22 May 2023 (**the 22 May 2023 UR AWFL Letter**) letting AWFL know of the fact that we had written to SONI on 10 May 2023 was not originally copied to AWFL. We also set out some anticipated programming for our minded to decision on the Request.

154. SONI wrote to us on 22 May 2023 (**the 22 May 2023 SONI UR Letter**). This letter wasn't copied to AWFL (or DfE) at the time, but it was – as will be explained – later.

155. The 22 May 2023 SONI UR Letter included the following:

"Information requested in relation to the signature of the original GTUoS Agreement between SONI and Snugborough



During the narrow timeframes provided to us to respond to this request for information we have endeavoured to undertake a high-level (non-exhaustive) review of our records related to the original (pre 2007) Snugborough use of system agreement and the 2007 SWF GTUOSA. We set out the results of that investigation below.

Snugborough windfarm connected to the Northern Ireland distribution system in 2003. At that time SONI had no role in use of system agreements and therefore played no part in granting access to the distribution or transmission systems to Snugborough upon its initial connection, and SONI holds no copies of any relevant records that may have been kept by what was then Northern Ireland Electricity PLC (NIE PLC).

As we appreciate the UR will be aware, responsibility for agreements for use of the transmission system was transferred to SONI as part of the implementation of the European Union's Second Package of legislation in Northern Ireland to strengthen the Internal Market in Electricity. This implementation was undertaken concurrently with the creation of the Single Electricity Market on the island of Ireland.

Consequently, all TUoS agreements between NIE PLC and market participants were (in effect)¹ novated to SONI, with effect from SEM Go-Live. This date for this transfer was determined by the Regulatory Authorities to be at 00:00 on 1 November 2007, as confirmed by the SEM Committee announcement that can be found here⁷⁷ on its website.

The process to effect the relevant novations was also (in effect) directed by the Utility Regulator. This obligation was provided in a licence condition (the "transition licence condition"), a copy of which is available on the SEM Committee website here⁷⁸, paragraph C(6) of which obliged SONI to have "regard to the provisions of any existing agreement between such relevant person and NIE"

We accept that there now appears to be a question mark over whether the SWF GTUOSA was entered into with a "relevant person", but SONI feel that this is important context.

The novation process was managed by the solicitors appointed by NIE PLC, who represented both SONI and our then parent company NIE PLC. This followed a process with which the Utility Regulator was familiar and communicated in October 2007. The Utility Regulator Information Notice can be found here⁷⁹.

SONI did not have separate legal representation for this exercise and given the passage of time, does not, as far as we have been able to determine in the

⁷⁷ <https://www.semcommittee.com/sites/semcommittee.com/files/media-files/AIP-SEM-07-571%20Go%20Live%20Announcement.pdf>

⁷⁸ <https://www.semcommittee.com/sites/semcommittee.com/files/media-files/AIP-SEM-07-305%20NI%20Transition%20TSO.pdf>

⁷⁹ <https://www.semcommittee.com/sites/semcommittee.com/files/media-files/AIP-SEM-07-514%20Information%20Notice%20-%20Designation%20Process.pdf>



time given to us, appear to hold any records related to this process (other than copies of the formal legal documents themselves)

1. The process, including all timelines and legally operative dates, by which the Extant GTUOSA came into effect, including, without limitation, the date it came into effect.

The Extant GTUOSA came into effect on 12 March 2014, on or around the time of the purchase of Snugborough Windfarm by Gortmullan Energy Limited from liquidators for [REDACTED]. Whilst the Extant GTUOSA was not formally novated or assigned by way of any discrete deed of novation or transfer, the net effect was the same in that the existing SWF TUOSA with the outgoing party was extinguished / terminated and the Extant TUOSA entered into with the incoming party. For this reason, the entry into force of the Extant GTUOSA was referred to as a novation in SONI's reply to the freedom of information request referenced in your letter of 10 May 2023.

2. If it should be the case that the process by which the Extant GTUOSA came into effect involved the transfer, novation or assignment of the SWF GTUOSA details (including without limitation all timelines and legally operative dates) of each and every transfer, novation or assignment of the SWF GTUOSA.

The original owner of the Snugborough Windfarm ([REDACTED]) was placed into administration on [REDACTED] and subsequently moved into creditors' voluntary liquidation on [REDACTED]. The liquidators sold Snugborough wind farm to Gortmullan Energy Limited. As noted above, as part of that process, SONI entered into a new TUoS agreement (the Extant GTUOSA) with the new owner. The TUoS agreement with the previous owner (the SWF GTUOSA) ceased to have effect at the time of the sale.

3. If it should be the case that the process by which the Extant GTUOSA came into effect involved a change in the legal name or identity of the User, details of each such change (including again without limitation all timelines and legally operative dates)

Not applicable, SONI entered into a new TUoS agreement that came into effect on or around the time of purchase.

4. The date (if any) on which clause 2.2(a) of the SWF GTUOSA was satisfied and how or the date upon which SONI offered any release compromise or waiver in respect of the said clause and how.

As set out above, the situation related to the SWF GTUOSA is complex. As we have noted, the transition licence condition obliged SONI to: "have regard to the provisions of any existing agreement between such relevant person and NIE".

In 2007, Snugborough wind farm had already connected and had been using the transmission system for circa four years.

Whilst SONI does not currently hold any records relating to the original entry into force of the SWF GTUOSA, or the satisfaction or waiver in respect of the said clause 2.2(a) under the original use of system agreement entered into by NIE PLC, it is natural to assume that it might have been considered by 2007 that any conditions precedent (which are conditions required to be satisfied in



advance of an agreement coming into effect) had been met prior to the date of energisation of the wind farm to NIE PLC's satisfaction.

For example, it may have been the case that [REDACTED] had been granted an exemption pursuant to Article 9 of the Electricity (Northern Ireland) Order 1992 by the Department for the Economy (or the Department for Enterprise Trade and Investment as it would have been then) (DFE).

Given the vast amounts of other work ongoing at that time, and the fact that SONI was entering into hundreds of connection or TUOS agreements in respect of live projects, we consider that it is unlikely that SONI personnel at that time (who will largely have retired or left SONI since, as noted above) would have been in a position to revisit the question of fulfilment of conditions precedent to contracts for customers that at that time were connected to (or using) the transmission system.

Additionally, as noted above, the process of effecting novations of existing transmission use of system and connection agreements to SONI (and any appropriate legal due diligence around that process) was managed by solicitors appointed by SONI's then parent company NIE PLC, [REDACTED], and SONI was not independently represented at that time.

This entire process was overseen by the Utility Regulator and therefore we can only assume that the approach taken by NIE PLC to the transition was to the satisfaction of the Regulatory Authorities or SEM Committee at that time.

5. If it should be the case that the process by which the Extant GTUOSA came into effect did not involve either the transfer, novation or assignment of the SWF GTUoSA or a change in the legal name or identity of the User whether the Extant GTUOSA includes a condition precedent which is similar or identical to clause 2.2(a) of the SWF GTUoSA and if so, the date (if any) that condition precedent was satisfied and how or the date upon which SONI offered any release or compromise or waiver in respect of such clause and how.

From reviewing our records, it appears that clause 2.2(a) of the SWF GTUOSA (or SONI's template GTUoSA), included a discrete / distinct clause within the Extant GTUoSA that only required the User to have / evidence existence of a generation licence under corresponding legislation within the Republic of Ireland. In hindsight, this may have been incorrect.

The relevant wording of clause 2.2(a) in the Extant GTUoSA is below:

“the User being a Generator authorised to generate electricity by virtue of a Generation Licence granted under Irish statutory instrument No. 60 of 2005”⁸⁰.

It is now apparent to SONI that whilst Gortmullan Energy Limited meets this (re-worded) condition precedent, there is a question mark over whether it satisfied or satisfies the condition precedent of the standard terms and conditions in the template GTUOSA.

⁸⁰ Here: ([S.I. No. 60/2005 - European Communities \(Internal Market in Electricity\) Regulations 2005 \(irishstatutebook.ie\)](http://www.irishstatutebook.ie)).



Whilst this fact has only recently come to SONI's attention, as has the potential that the incoming user does not have the benefit of an adequate licence or exemption under Article 10(1)(a) of the [Electricity Order] (a relevant qualification), SONI has received legal advice that it... [REDACTED]⁸¹

In noting the above, SONI is mindful of the ongoing work and legal proceedings between / involving AWFL and the DFE and Utility Regulator in terms of a potential route to connect AWF (through the appropriateness or otherwise of the DFE's refusal to issue an exemption to AWFL with respect to AWF), and SONI does not wish (at this stage) to second guess the outcome of that process / those legal proceedings. SONI would welcome a further conversation with the Utility Regulator to discuss the above."

156. We wrote to SONI on 5 June 2023 (**the 5 June 2023 UR SONI Letter**). This said:

"1. SONI's position on Condition 25(1)

Our Letter asked for confirmation as to our understanding of SONI's position on the meaning/effect of Condition 25(1) so far as it relates to an offer of terms for a GTUoSA to a person applying for such an offer. We indicated that we understood that AWFL had made an application for a GTUoSA. Your Letter helpfully confirms that no such application has been made by AWFL.

However, no response has been provided as regards our request for confirmation as to our understanding of SONI's position on Condition 25(1). Accordingly, we request that SONI confirm whether we have properly understood SONI's position on Condition 25(1). If the answer is "no" then SONI is requested to explain what SONI's (actual) position is.

Noting: (i) the confirmation (in your Letter) that AWFL has not yet applied for an offer of terms for a GTUoSA (ii) the contents of your Letter more generally so far as it describes the situation viz. the Extant GTUOSA for SWF (iii) previous references (to include in the letter from SONI to AWFL dated 5 August 2021) by SONI to its obligations (as to non-discrimination) in Condition 15 (iv) the inclusion of clause 2.2(a) in the standard (or template) GTUoSA, and (v) the statement in the letter of 5 August 2021 that SONI was "not aware of any characteristic of the AWF connection that would be significant enough for us to forgo the requirement only to offer TUoS agreements to eligible parties"⁸² please confirm:

A. whether any such application by AWFL for terms for a GTUOSA, if now made, would, in circumstances where AWFL did not present as satisfying the current definition of "eligible" person in Condition 25(1) - be met with a refusal by SONI of an offer of terms and, if so, why.

B. whether, if SONI were prepared to offer terms (in response to any such application by AWFL), it would do so on terms (which would seem to involve the waiver/alteration of the template/standard condition precedent clause 2.2(a)) that facilitated a GTUOSA or its continuance in circumstances where

⁸¹ This next section is purposely not included in this document.

⁸² Our underlining added



does not hold a NI licence or exemption but does hold a licence (to generate) granted by the CRU under section 14 of the Electricity Regulation Act 1999 (“the 1999 Act”), and, if not, why not.

2. Statements within Your Letter

...

Secondly, it is not clear or explained why, if Gortmullan Energy meets the condition precedent in clause 2.2(a) of its GTUOSA with SONI, namely the Extant GTUOSA, there is (or should be) a question mark over whether it satisfied/satisfies the conditions precedent of the standard terms and conditions in the template GTUOSA. We should be grateful if SONI would elaborate further on what it means.⁸³

3. Standard terms within an offer of terms for connection

AWFL’s letter of 18 May 2022 (which SONI has) refers to what it calls the “standard” terms of a SONI offer of (grid) connection as reflected in the March 2020 Offer. It sets out a case that these be amended in the way described.

Noting the contents of your Letter and the letter from SONI to AWFL of 5 August 2021, please confirm whether:

- (a) SONI operates to “standard” terms within an offer of terms for connection
- (b) Clause 9.29 and/or Clause of the March 2020 Offer (the Clauses) is/are parts of any standardised terms
- (c) SONI would agree to waive compliance with the requirements of the Clauses (or either of them) if AWFL made an application (or further application) for relevant waiver and, if not, why not.
- (d) SONI would agree to alter (or revise) the Clauses in the way described in AWFL’s letter of 18 May 2022 if AWFL made a relevant application (or further application) and, if not, why not.

4. Standard terms of the (Generator) Connection Agreement

AWFL’s letter of 18 May 2022 refers to the standard terms of a Connection Agreement. These terms are published on the SONI website in accordance with Condition 25. AWFL asks that these terms be amended to reflect the fact that it does not hold a NI licence (nor is it exempt) but it is authorised by licence issued by the CRU under section 14 of the 1999 Act.

Noting the contents of your Letter and SONI’s letter to AWFL of 5 August 2021, please confirm whether SONI would be prepared to waive/alter the standard condition precedent in (what appears to be clause 3.2 of) a Connection Agreement with AWFL which condition (without waiver/alteration) requires the other party (generator) to hold a NI licence to generate (or be exempt from the requirement to hold such a licence) to facilitate a Connection Agreement with AWFL or its continuance in circumstances where AWFL does not hold a NI licence or relevant exemption but does hold a licence (to generate) granted by the CRU under section 14 of the 1999 Act, and if not, why not.

⁸³ It appears that Gortmullan Energy Limited has neither held a NI licence nor a NI exemption.



5. SONI's letter to AWFL of 5 August 2021

We note that in the letter from SONI to AWFL dated 5 August 2021, SONI's position appeared to be that without the protection of the requirement that a person granted a use of system agreement be licensed under Northern Irish law⁸⁴, and without the potential for enforcement action by the UR, SONI has no mechanism to ensure that windfarms connecting to the system in NI are obliged to comply with the NI wind farm settings schedule and other relevant parameters that are defined in the Northern Ireland Grid Code. SONI noted that certain aspects of the Grid Code are not harmonised as between Ireland and Northern Ireland.

We would invite SONI's comments on whether this remains SONI's position.⁸⁵
4 We would also invite comment on the extent to which the potential issues referenced in the letter of 5 August 2021 have ever arisen with respect to SWF (or its responsible operator) and whether any particular arrangements have been made to protect against or manage such issues.⁸⁶

..."

157. SONI wrote to the UR on 14 June 2023 (**the 14 June 2023 SONI UR Letter**).

"... Before answering the questions posed in your letter, we reviewed previous correspondence. Consequently, we would like to draw your attention to your letters to AWFL of 30 April 2020, 22 September 2020 and 23 April 2021, which should provide context for our answers. We also note that before any of these hypothetical situations would materialise, AWFL would need to resolve the classification of the assets within Northern Ireland that it would need to construct and the associated authorisations. The existence of any consents issued by the DfE and equally importantly the Article under which any such consent might be granted could have a significant bearing on the situation.

Should the AWFL assets within Northern Ireland be classified as transmission assets, the legal framework applying to this situation, including the contractual arrangements that would need to be established, would be completely different to that currently in place for generation.

1. SONI's Position on Licence Condition 25(1)

In your letter of 10 May 2023 you asked about our understanding of our legal obligations under Condition 25 of our TSO licence. We acknowledge that our

⁸⁴ Noting that SONI also referenced conditions affecting any relevant exemption.

⁸⁵ Noting the contents of your Letter as regards SWF and its GTUOSA and the accepted differences between SWF and that affecting AWFL. AWFL is asking for a Connection Agreement with SONI. There is no such Connection Agreement with or for SWF. The electricity generated at SWF is exported at a connection point to the NI *distribution* (not *transmission*) system.

⁸⁶ Noting, again, that it does not appear that any relevant operator of SWF has held a relevant NI (Article 10) generating licence or Article 9 Exemption. .



response to this was incomplete in our previous letter dated 22 May 2022 and provide a fuller description of our interpretation here.

Our understanding of Article 8 of the Electricity (NI) Order 1992 is that participation in transmission and distribution of electricity is prohibited unless permitted by a licence (or exemption), and then, only to the extent permitted by that licence or the class exemption regulations. When read in this context, we interpret the explicit definition of “eligible person” as set out in Condition 25(1) of the SONI transmission licence as restricting our ability to provide access to the all-island transmission system to only those parties that meet the “eligible person” definition under Condition 25(1) of the SONI transmission licence. We note that the wording differs from the equivalent obligation set out in Condition 30 of the NIE Networks’ distribution licence, which obliges them to enter into a use of system agreement with “any person”. Our understanding is that this difference between the two licences was introduced in 2007 when the SONI TSO licence was created from the pre 2007 combined NIE T&D licence. While we cannot find any consultation papers that explain the intention behind this change, it appears to emphasise the significance of the definition because it consciously created a higher standard for access to the transmission system than for distribution.

Question 1A

In the circumstances set out in the hypothetical example, offering to enter into a TUoS agreement with AWFL would be inconsistent with our current policy. This is based on our interpretation of the statutory frameworks set out above, in particular the general prohibition to acting outside the scope of our transmission licence created by Article 8 of the Order. We note that for this hypothetical example to arise, AWFL would presumably first have had to obtain consent from the Department under either Article 39 or possibly Article 40 of the Order to be able to construct any assets within Northern Ireland to create a connection point in Northern Ireland.

Question 1B

As set out above, offering terms for use of the transmission system without AWFL first securing a licence in Northern Ireland would be inconsistent with our current interpretation of the statutory framework. Any offer also needs to be consistent with the classification of the assets within Northern Ireland. As your correspondence of 30 April 2021 and 22 September 2021 highlight, there is uncertainty around whether these assets would be defined as generation or transmission assets.

2. Question 2 – Statements within SONI’s 23 May letter

In the first paragraph of Section 5 we attempted to emphasise that the numbering of the relevant clause is identical in all of the GTUoS agreements that are discussed in the letter. With hindsight that may have introduced unnecessary complication. We hope the intention is now clear.

Our intention in the remaining paragraphs of that section was to provide transparency around how, although the bespoke condition precedent is not consistent with our current interpretation of the statutory framework . . .

3. Standard terms within an offer for connection



The UR asks four questions in relation to the standard terms within a connection offer, we answer each in turn below.

a) Yes, SONI bases all of its connection offers upon the standard terms, which are updated from time to time based on learning from the range of projects and technologies that request to be connected. Certain terms and conditions can vary depending on the technology and/or the Connection Assets required, however, the terms referred to by Aught in its letter dated 18 May 2022 (i.e. in respect of licencing requirements) is a standard term.³

b) Clause 9.29 and Clause 9.30 of the March 2020 Offer are in line with standard terms under connection offers which were in place at that time.

c) It is difficult to provide an answer to this hypothetical question without additional context. For example, it would depend on whether the AWFL assets within Northern Ireland are classed as generation or transmission. The letters from UR to AWFL of 30 April 2020 and 22 September 2020 are of relevance here. However, if the application was made on the same basis as before, we would not waive the requirement for the reasons set out under question 5 below.

d) As stated above, this would depend on the wider context of around any such application. However, if the application was made on the same basis as before, we would not alter the requirement for the reasons set out under question 5 below.

Question 4

As described above, even in this hypothetical situation, AWFL would need to resolve the classification of the assets and any associated permissions that it would need to construct and own to facilitate the physical aspects of the connection agreement (as shown in Appendix 5 and Appendix 8 of the connection offer). Therefore, the circumstances around any such authorisation and the associated classification of those assets within Northern Ireland would determine SONI's response. However, if the application was made on the same basis as before, we would not be prepared to waive or alter the standard conditions precedent for the reasons set out under question 5 below.

Question 5

It remains SONI's position that these protections are important tools that facilitate our compliance with the obligations placed upon us by the statutory framework in Northern Ireland. We would obviously review this position if the circumstances or definition of eligible person changed. Any change to the definition would need to consider issues such as the establishment of an alternative route via any generation licence granted by the relevant authority in another jurisdiction for enforcement of the Northern Ireland Grid Code and other Northern Ireland specific obligations that achieves the same ends.

We also note that if the AWFL assets in Northern Ireland were to be authorised by the DfE under Article 40 of the Order and/or the assets be classified as transmission assets, a different legal framework would probably apply to the enduring operation of those assets.



We are unaware of any issues arising around Snugborough's compliance, noting that the original testing took place while SONI was part of NIE Plc and that the windfarm is connected to the distribution system.

We remain available to assist with this complex situation.”

158. On 22 June 2023 we wrote to AWFL (**the 22 June 2023 UR AWFL**) explaining that we were not yet able to send AWFL a copy of recent interactions with SONI.

159. We wrote to AWFL 17 July 2023 (**the 17 July 2023 UR AWFL**) Letter with a further update on sharing correspondence.

160. We wrote to AWFL on 2 August 2023 (**the 2 August 2023 UR AWFL Letter**) confirming that we had received a relevant consent for disclosure from GEL and so were disclosing:

1. 10 May 2023 UR AWFL Letter
2. Redacted 22 May 2023 SONI UR Letter.
3. Redacted 5 June 2023 UR SONI Letter.
4. Redacted 14 June SONI UR Letter.



3. LEGISLATIVE AND REGULATORY FRAMEWORK

(i) EU Law (including transposition of the 2019 recast Electricity Directive by the Electricity (Internal Markets) Regulations (NI) 2020)

161. In papers filed in JR2⁸⁷ AWFL mentioned Regulation (EU 2019/943) of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (“**the Electricity Regulation**”)⁸⁸ and Directive (EU) 2019/944⁸⁹ of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (“**the Electricity Directive**”).

162. Section 7A of the European Union (Withdrawal) Act⁹⁰ gives legal effect to the NI Protocol.

163. Article 9 of the NI Protocol⁹¹ provides that listed “acts”:

“apply to and in the United Kingdom in respect of Northern Ireland insofar as they apply to the generation, transmission, distribution, and supply of electricity, trading in wholesale electricity or cross-border exchanges in electricity.”

164. Acts listed in Annex 4 include (i) Directive 2009/72 which has now been repealed and replaced by the Electricity Directive; and (ii) Regulation 714/2009 which has now been repealed and replaced by the Electricity Regulation.

165. Article 13 of the NI Protocol includes this:

“2. Notwithstanding Article 4(4) and (5) of the Withdrawal Agreement, the provisions of this Protocol referring to Union law or to concepts or provisions thereof shall in their implementation and application be interpreted in conformity with the relevant case law of the Court of Justice of the European Union.

⁸⁷ The AWFL Position Paper

⁸⁸ [Regulation \(EU\) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity \(recast\) \(Text with EEA relevance\) \(legislation.gov.uk\)](#)

⁸⁹ [EUR-Lex - 32019L0944 - EN - EUR-Lex \(europa.eu\)](#)

⁹⁰ [European Union \(Withdrawal\) Act 2018 \(legislation.gov.uk\)](#)

⁹¹ [Revised Protocol to the Withdrawal Agreement.pdf \(publishing.service.gov.uk\)](#)



3. *Notwithstanding Article 6(1) of the Withdrawal Agreement, and unless otherwise provided, where this Protocol makes reference to a Union act, that reference shall be read as referring to that Union act as amended or replaced.*"

(our underlining)

166. The effect of Article 13(3) and Article 9 of the NI Protocol is that the Electricity Regulation and the Electricity Directive apply in NI.

167. AWFL cites Article 3(c), (f), (h), (i), (n) and (q) of the Electricity Regulation.

Article 3

Principles regarding the operation of electricity markets

Member States, regulatory authorities, transmission system operators, distribution system operators, market operators and delegated operators shall ensure that electricity markets are operated in accordance with the following principles:

(c) market rules shall facilitate the development of more flexible generation, sustainable low carbon generation, and more flexible demand;

(f) market rules shall enable the decarbonisation of the electricity system and thus the economy, including by enabling the integration of electricity from renewable energy sources and by providing incentives for energy efficiency;

(h) barriers to cross-border electricity flows between bidding zones or Member States and cross-border transactions on electricity markets and related services markets shall be progressively removed;

(i) market rules shall provide for regional cooperation where effective;

(n) market rules shall allow for entry and exit of electricity generation, energy storage and electricity supply undertakings based on those undertakings' assessment of the economic and financial viability of their operations;



(q) market participants shall have a right to obtain access to the transmission networks and distribution networks on objective, transparent and non-discriminatory terms.

168. AWFL contends that the UR has offended against these provisions because:

“[a]t a general level, [the UR] has singularly failed to provide access to [the electricity market in Northern Ireland] by refusing to modify the SONI licence, and seemingly not engaging with its regulatory counterpart in the Republic of Ireland.”

169. AWFL does not cite any particular provision of the Electricity Directive, but we note that Art 3(4) of the Electricity Directive provides:

“Member States shall ensure a level playing field where electricity undertakings are subject to transparent, proportionate and non-discriminatory rules, fees and treatment, in particular with respect to balancing responsibility, access to wholesale markets, access to data, switching processes and billing regimes and, where applicable, licensing.”

170. Parts of the Electricity Directive has been transposed into NI domestic law (following a consultation by DfE) by the Electricity (Internal markets) Regulations (NI) 2020 (**the 2020 Regulations**). The consultation and the 2020 Regulations can be found here: [Transposition of 2019 Electricity \(Recast\) Directive | Department for the Economy \(economy-ni.gov.uk\)](https://www.economy-ni.gov.uk/transposition-of-2019-electricity-recast-directive)

(ii) The NI legislative framework and the functions of the Utility Regulator

171. The Utility Regulator is a body established by statute. It regulates *inter alia* persons (companies) involved in the generation, distribution, transmission, and supply of electricity in NI. The territorial extent of NI represents the limit of our powers.

172. Article 12 of the Energy Order (**Art 12**) sets out our statutory responsibilities when exercising our *electricity functions*.⁹² The Art 14 power to effect licence modifications of the type sought in the C 25(1) request is part of our electricity functions.

173. Art 12 starts by explaining our principal objective before going on to describe our general duties. It provides:

⁹² These are the functions that are most relevant to our decision in fresh consideration of the Request (as clarified in the 18 May 2022 AWFL UR Letter).



12.— The principal objective and general duties of the Department and the Authority in relation to electricity

(1) The principal objective of the Department and the Authority in carrying out their respective electricity functions is to protect the interests of consumers⁹³ of electricity supplied by authorised suppliers, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the generation, transmission distribution or supply of electricity.

(1A) The interests of consumers include their interests in the fulfilment by the Authority, when carrying out its functions as designated regulatory authority for Northern Ireland, of the objectives set out in Article 58 (a) to (c), (d) (except insofar as it relates to heat) and (e) to (h) of the Electricity Directive.

(2) The Department and the Authority shall carry out those functions in the manner which it considers is best calculated to further the principal objective, having regard to—

- (a) the need to secure that all reasonable demands in Northern Ireland or Ireland for electricity are met; and
- (b) the need to secure that licence holders are able to finance the activities which are the subject of obligations imposed by or under Part II of the Electricity Order or this Order
- (c) [...]

(3) In performing that duty, the Department or the Authority shall have regard to the need to protect the interests of—

- (a) individuals who are disabled or chronically sick;
- (b) individuals of pensionable age;
- (c) individuals with low incomes; and
- (d) individuals residing in rural areas; but that is not to be taken as implying that regard may not be had to the interests of other descriptions of consumer

(4) The Department and the Authority may, in carrying out any electricity functions, have regard to the interests of consumers in relation to gas and in relation to water or sewerage services.

(5) Subject to paragraph (2), the Department and the Authority shall carry out their respective electricity functions in the manner which it considers is best calculated—

- (a) to promote the efficient use of electricity and efficiency and economy in the generation, distribution, transmission and supply of electricity
- (b) to protect the public from dangers arising from the generation, transmission, distribution or supply of electricity

(c) to secure a diverse, viable and environmentally sustainable long-term energy supply;

⁹³ Which is confirmed by the interpretation part of the Energy Order to involve existing and future consumers.



(d) to promote research into, and the development and use of, new techniques by or on behalf of persons authorised by a licence to generate, supply, distribute or participate in the transmission of electricity; and

(e) to secure the establishment and maintenance of machinery for promoting the health and safety of persons employed in the generation, transmission, distribution or supply of electricity; and

shall have regard, in carrying out those functions, to the effect on the environment of activities connected with the generation, transmission, distribution or supply of electricity.

(5A) The duties under paragraph (5) shall, in particular, include—

(a) ensuring the provision of the incentives referred to in Article 15(1) of the Energy Efficiency Directive, where appropriate and having taken into account the costs and benefits, and ensuring that no incentives are provided contrary to Article 15(4) of that Directive

(b) [...]

5B Before 30 June 2015, the Authority shall deliver to the Department— (a) an assessment of the electricity infrastructure which complies with the requirements of Article 15(2)(a) of the Energy Efficiency Directive; and (b) a list identifying concrete measures and investments which complies with the requirements of Article 15(2)(b) of that Directive.

5C For the purpose of paragraph (5B), the Authority may, by notice given to the holder of any electricity licence or any exemption holder, require that person to provide such information, assistance and advice as may be specified in the notice and that holder shall comply with that requirement.

(6) In carrying out their respective electricity functions the Department or the Authority shall not discriminate between persons whose activities consist of or include generating, supplying distributing or transmitting electricity as regards either rights or obligations

(7) In this Article — “electricity functions” means—

(a) functions under Part II of the Electricity Order and functions under this Order relating to electricity;

(b) . . .

. . .

“environmental sustainability” includes the need to guard against climate change.

174. Article 2 of the Energy Order specifies that the Interpretation Act (NI) 1954 (**the Interpretation Act**) applies to the 2003 Order provisions.

175. An important part of the functions of the Utility Regulator in oversight of those persons subject to its regulation – to include SONI - is the enforcement function.

176. The enforcement function is described in Part IV of the Energy Order starting at Art 41.



177. Art 41 confirms the power of the Utility Regulator to take enforcement action against a “regulated person”. Art 41 defines a “regulated person” to include the holder of an Article 10 licence or an Article 9 exemption.
178. Art 41 confirms that the Utility Regulator can “enforce” in respect of a “relevant condition” or a “relevant requirement”. A relevant condition is a condition included in a licence granted under Art 10 (to include an Art 10 Generating Licence) or a condition included in an Art 9 exemption. A relevant requirement is defined (by operation of Art 41A) as including a contravention of the general duty set out in Article 12(2) of the Electricity Order and *certification* related requirements.
179. Article 42 provides for the making of enforcement orders to secure compliance against regulated persons for contravention or likely contravention of a relevant condition or relevant requirement. Art 42(5A) obliges the Utility Regulator to consider potential competition law enforcement before making any final enforcement order. The Utility Regulator is a concurrent competition law enforcer alongside the CMA.
180. The terms of revocation of a licence issued under Article 10 of the Electricity Order include (as a matter of convention) reference to a failure to comply with an enforcement order.⁹⁴
181. Article 44 provides for the High Court to hear challenges by a regulated person to the making of an enforcement order.
182. Article 45 provides for the imposition of financial penalties on regulated persons for contravention of a relevant requirement or condition or breach of Community Regulation. Again, the Utility Regulator is obliged before imposing a financial penalty to consider potential action under competition law.
183. The financial penalty – for a single contravention - that may be imposed under Article 45 might go up to but not (subject to an exception for a vertically integrated undertaking) above 10% of *the turnover* (not profit) of the regulated person.
184. Article 46 requires the Utility Regulator to prepare and publish a statement with respect to the imposition of penalties and the determination of their amount. The Utility Regulator has published such a policy.⁹⁵
185. Article 48 provides that financial penalties carry interest.
186. Article 49 provides for an appeal by a person to the High Court by a person aggrieved by the imposition of a financial penalty.

⁹⁴ See the Article 10 generating licences published on the UR website: [Electricity licences | Utility Regulator \(uregni.gov.uk\)](https://www.uregni.gov.uk/electricity-licences)

⁹⁵ [Financial penalties policy 280618 | Utility Regulator \(uregni.gov.uk\)](https://www.uregni.gov.uk/financial-penalties-policy-280618)



187. Article 50 provides that financial penalties are recoverable as civil debts. Schedules to licences provide for revocation cannot pay its debts.

188. Article 51 provides a power for the Utility Regulator to seek information from a regulated person. This power is back up by criminal sanction for non-compliance (without reasonable excuse). Art 51(6) empowers the High Court to make any remedial order it thinks fit.

189. Part II of the Electricity Order contains provisions relating to the licensing of the activity of electricity generation, distribution, transmission, and supply. Those provisions start off with an interpretation provision at Art 3 which (like Art 2 of the Energy Order) provides that the Interpretation Act applies.

190. Article 3 of the Electricity Order sets out the following definitions:

"the Directive" means Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU.

"electrical plant" means any plant, equipment, apparatus or appliance used for, or for purposes connected with, the generation, transmission, distribution or supply of electricity, other than— (a) an electric line; (b) a meter used for ascertaining the quantity of electricity supplied to any premises; or (c) an electrical appliance under the control of a consumer;

"electric line" means any line which is used for carrying electricity for any purpose and includes— (a) any support for any such line, that is to say, any structure, pole or other thing in, on, by or from which any such line is or may be supported, carried or suspended; (b) any apparatus connected to any such line for the purpose of carrying electricity; and (c) any wire, cable, tube, pipe or other similar thing (including its casing or coating) which surrounds or supports, or is surrounded or supported by, or is installed in close proximity to, or is supported, carried or suspended in association with, any such line;

"the Electricity Regulation" means Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast)

"exemption" means an exemption under Article 9 [of the Electricity Order]

"high voltage line" means an electric line of a nominal voltage [of or] 16 exceeding 110 kilovolts ; and "low voltage line" shall be construed accordingly

"the SEM", "the SEM Committee", "the Irish Minister" and "CER" have the same meanings as in the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (**the SEM Order**);

"licence" means a licence granted under Article 10.



“transmission”, in relation to electricity, means transmission by means of a transmission system.

“transmission licence” means a licence under Article 10(1)(b);

“transmission system” means a system which—

(a) consists (wholly or mainly) of high voltage lines and electrical plant; and
(b) is used for conveying electricity—

- (i) from a generating station to a substation;
- (ii) from one generating station to another;
- (iii) from one substation to another;
- (iv) to a substation in Northern Ireland from a place outside Northern Ireland;
or
- (v) from a substation in Northern Ireland to a place outside Northern Ireland;

191. Article 8 provides:

8.— Prohibition on unlicensed supply, etc.

(1) A person who—

- (a) generates electricity for the purpose of giving a supply to any premises or enabling a supply to be so given;
- (b) participates in the transmission of electricity for that purpose;
- (bb) distributes electricity for that purpose;
- (c) supplies electricity to any premises
- (d) acts as SEM operator,

shall be guilty of an offence unless he is authorised to do so by a licence or exemption.

(4) For the purposes of this Part, a person participates in the transmission of electricity if—

- (a) he co-ordinates, and directs, the flow of electricity onto and over a transmission system by means of which the transmission of electricity takes place; or
- (b) he makes available for use for the purposes of such a transmission system anything which forms part of it

(5) Where different people have different interests in anything which forms part of a transmission system, only the person in actual possession of the thing may be regarded for the purposes of paragraph (4) as making it available for use.

192. Article 9 provides that:

9.— Exemptions from Article 8

(1) [DfE] may, after consultation with the [Utility Regulator], by order grant exemption from [sub-paragraph (a), (bb), (c) or (d) of Article 8(1)]



(2) An exemption granted to persons of a particular class shall be published in such manner as [DfE] considers appropriate for bringing it to the attention of persons of that class

(3) An exemption granted under paragraph (1)—

(a) shall, if the order under paragraph (1) so provides, have effect for such period as may be specified in or determined under the order;

(aa) may be granted subject to such conditions as appear to the [DfE] to be requisite or expedient to ensure that the activity authorised by the exemption is carried out in compliance with the relevant requirements and prohibitions laid down by the Directive; and 3 (b) may be revoked or amended by a subsequent order under that paragraph.

...

(5) If any condition pursuant to paragraph 3(aa) of an exemption granted to persons of a class is not complied with by any person of that class, [DfE] may give to that person a direction declaring that the exemption is revoked, so far as relating to that person, to such extent and as from such date as may be specified in the direction.

193. DfE has made regulations providing for an exemption from the requirement to hold a generating licence under Art 10 of the 1992 Order. They are the Electricity (Class Exemptions from the Requirement for a Licence) Order (NI) 2013⁹⁶ (**the Exemption Order**).

194. Article 10 provides that:

10.— Licences authorising supply, etc.

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

(a) to generate electricity for the purpose of giving a supply to any premises or enabling a supply to be so given;

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

(bb) to distribute electricity for that purpose;

(c) to supply electricity to any premises

d) to act as SEM operator.

...

(6) A licence shall be in writing and, unless previously revoked in accordance with any term contained in the licence, shall continue in force for such period as may be specified in or determined by or under the licence

195. Article 10B deals with certification of the holder of a transmission licence

10B.— Electricity transmission: requirement for participants to be certified as independent

...

⁹⁶ [Electricity \(Class Exemptions from the Requirement for a Licence\) Order \(Northern Ireland\) 2013 \(legislation.gov.uk\)](http://legislation.gov.uk)



(2) Any person who intends to participate in the transmission of electricity within the meaning of Article 8(4)(b) and who is granted a transmission licence after the coming into operation of the 2011 Regulations must ensure that he is certified at all times when he acts under the authority of the licence.

10E.— Certification

...

(5) Article 51 of the Electricity Regulation sets out the obligation to make a final decision, together with related processes, time limits, matters to be taken into account and conditions

196. Article 10F sets out grounds for certification (**the certification grounds**). The certification grounds include that specified at Art 10F(3) – the ownership unbundling requirement – which gives effect to what is commonly known as the requirement for “unbundling” whereby the interests of generation and supply and transmission are to be kept sufficiently independent.

197. Article 10G sets out various tests for meeting the unbundling requirement. Those tests evidence a policy of separating the activity of generation and transmission.

198. Article 11A sets out required conditions to be included in any licence granted under Art 10 to include the requirements of a transmission licence in respect of “certification”. These obligations are included to match the obligations laid down by Directive.

199. Article 11A(2) includes the following

(2) The conditions included in a licence in accordance with paragraph (1) must, in particular— (a) require the licence holder to give to the Authority, in each year it is required by the Authority to do so, a report containing such information as the Authority may require in relation to—

(i) the present and likely future balance between supply of and demand for electricity in Northern Ireland and Ireland;

(ii) additional generating capacity under construction or being planned in Northern Ireland and Ireland;

(iii) the quality and level of maintenance of the generating plant and equipment and of the transmission, distribution and supply systems in Northern Ireland and Ireland;

(iv) measures taken and planned to ensure that peak demand for electricity is met and to deal with shortfalls in electricity supply in Northern Ireland and Ireland, and to give a copy of that report to the Department



200. Article 11ABA sets out conditions as to priority despatch of certain classes of “generating installations” that must be included in a transmission or distribution licence reference being made to the decision of SEM-C in SEM-20-072.⁹⁷

201. Article 12 sets out the general duties of electricity distributors and transmission licence holders.

12.— General duties of electricity distributors and transmission licence holders

(1) 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.

(2) It shall be the duty of the holder of a licence under Article 10(1)(b), as appropriate having regard to the activities authorised by the licence, to—

(a) take such steps as are reasonably practicable to—

(i) ensure the development and maintenance of an efficient, co-ordinated and economical system of electricity transmission which has the long-term ability to meet reasonable demands for the transmission of electricity; and

(ii) contribute to security of supply through adequate transmission capacity and system reliability; and

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

202. Article 37(4) of the Electricity Order provides that DFE may issue directions to generators (in NI) to which Art 37 applies as follows:

(4) In respect of any generating station to which this Article applies, the Department may give a direction— (a) authorising or requiring the person who operates it to make such use as may be specified of any stocks held at or near that generating station; and (b) requiring that person to operate, or not to operate, that generating station for specified periods, at specified levels of capacity or using specified fuels.

203. Article 37(1) states that it applies as follows:

⁹⁷ The UR is aware of a court challenge in RoI to the decision/s of SEM-C in respect of priority dispatch arrangements. Judgement has now been delivered. [pdf \(courts.ie\)](https://courts.ie). Respondents are invited to consider whether they wish to make any related submission as part of a response to this document. The UR will reflect on any judgement of the RoI Court in further progression of its consideration of the Request.



(1) This Article applies to any generating station which— (a) is of a capacity not less than 10 megawatts⁹⁸; and (b) is fuelled otherwise than by waste or manufactured gases; and in this paragraph “waste” has the same meaning as in Article 36(1) of the Pollution Control and Local Government (Northern Ireland) Order 1978.

204. DfE has published a Fuel Security Code to complement and explain the working of Art 37(4): [Modification of Northern Ireland Fuel Security Code | Department for the Economy \(economy-ni.gov.uk\)](#)

205. The SEM Order provides for the operation of the SEM. The relevant arrangements are summarised in the *SONI JR Case*.

206. Article 39⁹⁹ of the Electricity Order provides for DfE to give consent for the construction or reconstruction of generating stations.

207. Article 40¹⁰⁰ of the Electricity Order provides for DfE to give consent for the placement of overhead lines.

(iii) NI Regulatory Provisions

208. The following licence conditions are of relevance.

209. The Grant terms of the SONI licence state:

1. Terms of the Licence

[DfE] (the “Department”), in exercise of the powers conferred by Article 10(1)(b) of the Electricity (Northern Ireland) Order 1992 (the “Order”), hereby grants to SONI Limited (a body corporate registered in Northern Ireland under company number NI038715) (the “Licensee”) a licence (the “Licence”) authorising it to participate in the transmission of electricity for the purpose of giving a supply to any premises or enabling a supply to be so given:

(a) in Northern Ireland

...

(our underlining added)

⁹⁸ It can be noted that this is the same *de-minimis* threshold use in the 2013 (Class Exemptions) Order.

⁹⁹ [Consents relating to a generating station \(Article 39\) | Department for the Economy \(economy-ni.gov.uk\)](#)

¹⁰⁰ [Consents for overhead electric lines \(Article 40\) | Department for the Economy \(economy-ni.gov.uk\)](#)



210. Condition 1 provides:

Construction

1. Unless the contrary intention appears, in the conditions of the Licence:

- (a) words and expressions, and references to legislation, shall be construed as if they were in an enactment and the Interpretation Act (Northern Ireland) 1954 applied to them; and
- (b) words and expressions defined in the [Electricity Order], the Energy Order or the SEM Order shall have the same meaning.

3. The heading or title of any Condition or paragraph thereof shall not affect its construction

Acting in conjunction

7 Where any Condition of the Licence requires the Licensee to act “in conjunction with the [RoI] System Operator” [EirGrid] in the fulfilment of an obligation, the Licensee shall:

- (a) to the extent the Licensee is reasonably capable of fulfilling that obligation without the assistance of the Republic of Ireland System Operator, be obliged to fulfil that obligation and shall use all reasonable endeavours to work together with the Republic of Ireland System Operator in so doing
- (b) to the extent the Licensee is not reasonably capable of fulfilling that obligation without the assistance of the Republic of Ireland System Operator:
 - (i) ensure that the System Operator Agreement requires the Republic of Ireland System Operator to provide the assistance in question, and, where it does not, seek to amend the System Operator Agreement so that it does;
 - (ii) exercise all rights available to the Licensee (including under the System Operator Agreement) in order to obtain the assistance in question; and
 - (iii) on obtaining the assistance in question, be obliged to fulfil that obligation and shall use all reasonable endeavours to work together with the Republic of Ireland System Operator in so doing; and
- (c) to the extent the Republic of Ireland System Operator is obliged (by the laws or licence obligations applicable to it) to act in conjunction with the Licensee in the fulfilment of an equivalent obligation, be obliged to provide such assistance as the Republic of Ireland System Operator reasonably requests in order to enable it to fulfil that obligation.

“All-Island Transmission Networks” means the transmission system and the Republic of Ireland transmission system taken together.

“Connection Agreement” means an agreement between the Licensee and any person in respect of connection to the All-Island Transmission Networks at entry or exit points on the transmission system.

“generation set” means any plant or apparatus for the production of electricity.



“Grid Code” means the code of that name to be prepared and approved in accordance with Condition 16.

“Northern Ireland Fuel Security Code” means the document of that title designated as such by the [DfE] dealing with the co-operation of licence holders in strategic contingency planning in respect of fuel stocks, the modification of the merit order and certain other systems and procedures under the Grid Code during periods when the Department has given (and there is in force) one or more directions under Article 37(4) of the [Electricity Order], the entitlement of the Licensee and authorised electricity operators to and the collection of certain payments in anticipation of, during and after the expiry of any such periods, and connected matters.

“North/South Circuits” means the electric lines and electrical plant and meters used for conveying electricity only directly to or from a substation or converter station within Northern Ireland directly to or from a substation or converter station within the Republic of Ireland.

“Republic of Ireland Generator” means a person licensed to generate electricity under Section 14(1)(a) of the Republic of Ireland Electricity Act, or the Republic of Ireland Board acting in its capacity as the owner or operator of generation sets

“total system” means the transmission system and the distribution system taken together.

“Northern Ireland Fuel Security Code” means the document of that title designated as such by the Department, dealing with the co-operation of licence holders in strategic contingency planning in respect of fuel stocks, the modification of the merit order and certain other systems and procedures under the Grid Code during periods when the Department has given (and there is in force) one or more directions under Article 37(4) of the [Electricity Order], the entitlement of the Licensee and authorised electricity operators to and the collection of certain payments in anticipation of, during and after the expiry of any such periods, and connected matters.

211. Condition 14 provides for the Fuel Security Code as follows:

Condition 14. Security Arrangements

1 The Licensee shall comply with the provisions of the Northern Ireland Fuel Security Code in so far as relevant to it and such provisions shall have effect as if they were set out in the Licence.

2 The Northern Ireland Fuel Security Code may be amended in accordance with its provisions.

212. Condition 16 provides for the establishment and arrangements in relation to a SONI Grid Code.¹⁰¹

¹⁰¹ The current SONI Grid Code is here: [Regulatory Information \(soni.ltd.uk\)](http://www.soni.ltd.uk/Regulatory-Information)



Condition 16. Grid Code

Establishment of the Grid Code

1 The Licensee shall prepare and at all times have in force, and shall (subject to paragraph 12) implement and comply with, a Grid Code:

(a) covering all material technical aspects relating to connections to and the operation and use of the total system or (insofar as relevant to the operation and use of the total system) the operation of electric lines and electrical plant within Northern Ireland connected to the total system or any other system in Northern Ireland for the transmission or distribution of electricity and (without prejudice to the foregoing) making express provision as to the matters referred to in paragraph 6; and

(b) which is, in respect of the transmission system, designed so as to:

(a) permit the development, maintenance and operation of an efficient, coordinated and economical system for the transmission of electricity in Northern Ireland as part of efficient, co-ordinated and economical systems for the transmission of electricity on the Island of Ireland;

(b) facilitate the transmission system being made available to persons authorised to supply or generate electricity in Northern Ireland, on terms which neither prevent nor restrict competition in the supply or generation of electricity on the Island of Ireland; and

(c) subject to sub-paragraphs (i) and (ii), promote the security and efficiency of the electricity generation, transmission and distribution system in Northern Ireland as a whole.

(c) which is, in respect of the distribution system, designed so as to:

(a) permit the development, maintenance and operation of an efficient, co-ordinated and economical system for the distribution of electricity; and

(b) neither prevent nor restrict competition in the generation and supply of electricity in Northern Ireland, or, to the extent that the Grid Code, in respect of the distribution system, may have such effect, on the Island of Ireland

Reviews of the Code

2 The Grid Code in force at the date on which this Condition becomes effective shall be the document approved as such by the Authority. Subsequently, the Licensee shall (in consultation with electricity undertakings and the Republic of Ireland System Operator, to the extent such persons are liable to be materially affected thereby) periodically review (including upon the



request of the Authority) the Grid Code and its implementation. Following any such review, the Licensee, shall send to the Authority:

- (a) a report on the outcome of such review

- (b) any proposed revisions to the Grid Code from time to time as the Licensee (having regard to the outcome of such review) reasonably thinks fit for the achievement of the objectives referred to in paragraphs 1(b) and (c); and

- (c) any written representations or objections from any electricity undertakings or the Republic of Ireland System Operator (including any proposals by such persons for revisions to the Grid Code not accepted by the Licensee in the course of the review) arising during the consultation process and subsequently maintained.

Revision of the Code

3 Revisions to the Grid Code proposed by the Licensee and sent to the Authority pursuant to paragraph 2 shall require the Authority's approval before they may be made

4 Having regard to any written representations or objections referred to in subparagraph 2(c) and following such further consultation (if any) as the Authority may consider appropriate, the Authority may issue directions requiring the Licensee to revise the Grid Code in such manner as may be specified in the directions, and the Licensee shall forthwith comply with any such directions.

...

Content of the Code

6 The Grid Code shall include:

- a) connection conditions specifying the technical, design and operational criteria to be complied with in respect of any connection or proposed connection at an entry or exit point on the total system;

- (b) a set of operating codes specifying conditions and procedures under or in accordance with which the Licensee shall operate the transmission system,



and under or in accordance with which other persons shall operate their plant and/or systems for the distribution of electricity in relation to the transmission system (including procedures and conditions relating to outages of generation sets and associated power station equipment), insofar as is necessary to protect the security and quality of supply and to ensure the proper and safe operation of the transmission system under both normal and abnormal operating conditions or in order to give effect to paragraph 2 of Condition 22;

(c) a planning code specifying the requirements for the supply of information by persons connected (or seeking connection) at an entry point or an exit point on the total system, or in respect of the applications envisaged by Condition 27, (in each case) in order for the planning and development of the total system to be undertaken, and specifying the technical and design criteria and procedures to be applied in the planning and development of the total system and to be complied with by other persons connected or seeking connection at an entry point or an exit point on the total system in the planning and development of their own plant and systems;

(d) a set of scheduling and dispatch codes specifying conditions and procedures for the scheduling and dispatch of generation sets connected at an entry point or exit point on the total system which are either:

(a) required to be subject to central dispatch instructions under the terms of any exemption granted under Article 9 of the Order or any licence granted under Article 10 of the Order; or

(b) are agreed by the operator of that generation set to be subject to central dispatch;

and which may include provisions relating to the management of emissions; and

(e) a metering code setting out requirements and procedures for metering

Non-Discrimination

10 In preparing, implementing and complying with the Grid Code the Licensee shall not:



(a) unduly discriminate against or unduly prefer any person or class or classes of persons in favour of or as against any other person or class or classes of persons; or

(b) restrict or prevent competition in generation or supply on the Island of Ireland

11 The Licensee shall keep and maintain such records concerning its implementation of and compliance with the Grid Code as are in accordance with such guidelines as the Authority shall from time to time have given to the Licensee and are, in the opinion of the Authority, sufficient to enable the Authority to assess whether the Licensee is performing the obligation imposed upon it under paragraph 10 concerning these matters and the Licensee shall furnish to the Authority such records (or such of these as the Authority may require) in such manner and at such times as the Authority may require.

Derogations

12 The Authority may from time to time (following consultation with the Licensee) issue directions relieving the Licensee of its obligations to implement or comply with, or to enforce against any other person any provision of, the Grid Code in respect of such parts of the transmission system and/or the distribution system to such extent as may be specified in the directions

213. Condition 18 provides for the establishment of Transmission Interface Arrangements between SONI and NIE as the “Transmission Owner”. The TIA¹⁰² are to include

(iv) matters to enable responses to (and to progress any works necessitated by) applications received for use of the All-Island Transmission Networks and/or new connections (or modifications of existing connections) to the All-Island Transmission Networks (at an entry or exit point on the transmission system or the Republic of Ireland transmission system);

(v) the arrangements whereby:

(A) the transmission system is to be developed and maintained (by the Transmission Owner) and planned and operated (by the Licensee); and

¹⁰² Here: [Regulatory Information \(soni.ltd.uk\)](http://soni.ltd.uk)



(B) the respective responsibilities of, and activities undertaken by, the Licensee and the Transmission Owner are to be co-ordinated;

(vi) the arrangements, as between the Licensee and the Transmission Owner, for the planning and development of the transmission system in co-ordination with the other parts of the All-Island Transmission Networks

214. Condition 20 provides:

Condition 20. Operation of the Transmission System and the System Security and Planning Standards

1 The Licensee shall plan, operate, and shall co-ordinate and direct the flow of electricity onto and over, the transmission system in an efficient, economic and coordinated manner.

2 In complying with its obligation under paragraph 1, the Licensee shall at all times do so in accordance with the Transmission System Security and Planning Standards,¹⁰³ the Distribution System Security and Planning Standards, the Grid Code and the Transmission Interface Arrangements, as appropriate to the purpose under consideration, and in accordance with its role under the Transmission Interface Arrangements, and taking into account the Transmission Owner's obligations in relation to developing and maintaining the transmission system in accordance with the Transmission Owner Licence.

215. Condition 25(1) provides:

"Offer of terms for use of the All-Island Transmission Networks

1. On application by any eligible person, the Licensee shall (subject to paragraph 6) offer to enter into a Use of System Agreement: to accept into the All-Island Transmission Networks at such entry point or points on the transmission system, and in such quantities, as may be specified in the application, electricity to be provided by or on behalf of such person; and to deliver such quantities of electricity as are referred to in sub-paragraph (a) above (less any transmission losses on the All-Island Transmission Networks) to such exit point or points on the transmission system and to such person or persons as may be specified in the application; and specifying the use of system charges to be paid by the person seeking use of the All-Island Transmission Networks in respect of generation or supply in Northern Ireland, such charges (unless manifestly inappropriate) to be referable to the statement prepared in accordance with paragraph 1 (or, as the case may be, paragraph 7) of Condition 30 or any revision of such statement; and containing such further terms as are or may be appropriate for the purposes of the agreement.

In this paragraph references to "eligible person" shall be construed as references to persons licensed under Article 10 of the Order (or exempt from the requirement to be so licensed under Article 9 of the Order) or who have applied for a licence under Article

¹⁰³ Here: [Regulatory Information \(soni.ltd.uk\)](http://soni.ltd.uk)



10 and whose application has not been withdrawn or rejected (including, for the avoidance of doubt, the Power Procurement Business in its capacity as such).

(underlining added)

216. Condition 25(2) provides:

Offer of terms for connection to the All-Island Transmission Networks

2 On application by any person, the Licensee shall (subject to paragraph 6) offer to enter into a Connection Agreement (or amend an existing Connection Agreement)

...

217. Condition 25(4) provides:

4 The Licensee shall, as soon as practicable after it receives an application in accordance with paragraph 1 or 2, request (to the extent necessary) an offer from the Transmission Owner and/or the Republic of Ireland System Operator (in accordance with the Transmission Interface Arrangements and/or the System Operator Agreement as appropriate) in respect of that application and the works (if any) necessitated by that application

(our underlining)

218. Condition 25(6) provides

6 The Licensee shall not be obliged pursuant to this Condition to offer to enter or to enter into any Connection Agreement or any Use of System 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 transmission system; or

(iii) in breach of the Conditions of the Licence;



(iv) in breach of the Grid Code; or

(b) if the person making the application does not undertake to be bound by such parts of the Grid 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; or

(c) if, when requested to do so by the Licensee, [NIE] and or [EirGrid] does not offer to enter into an agreement for connection/extension works in respect of the Connection Agreement or Use of System Agreement in question

219. Condition 25(8) provides that

8. The Licensee shall, within 28 days following receipt of a request from any person, give or send to such person such information in the possession of the Licensee as may be reasonably required by such person for the purpose of completing the information required by that person in relation to its application for a licence under Article 10 of the Order.

220. Condition 26 provides for dispute resolution between the TSO and those applying for a C25(2) connection agreement and/or C25(1) use of system agreement.

Condition 26. Functions of the Authority – Disputes with Users and Connectees

1 If, after a period which appears to the Authority to be reasonable for the purpose, the Licensee has failed to enter into a Connection Agreement or Use of System Agreement with any person entitled or claiming to be entitled thereto pursuant to a request under Condition 25, the Authority may, pursuant to Article 11(3)(c) of the Order and on the application of that person or the Licensee, settle any terms of the Connection Agreement or Use of System Agreement in dispute between the Licensee and that person in such manner as appears to the Authority to be reasonable having (insofar as relevant) regard in particular to the following considerations:

(a) that such person should pay to the Licensee:



(a) in the case of provision of use of the All-Island Transmission Networks in respect of generation or supply in Northern Ireland, the use of system charges determined in accordance with paragraph 1 or 7 of Condition 30; and

(b) in the case of provision of a connection (or a modification to an existing connection) to the All-Island Transmission Networks at an entry or exit point on the transmission system, the whole or an appropriate proportion (as determined in accordance with paragraph 3 of Condition 25) of the costs referred to in paragraph 5 of Condition 30 together with a reasonable rate of return on the capital represented by such costs

(b) that no such person should pay any charges such as are referred to in subparagraph (b) of paragraph 4 of Condition 30 in respect of any connection (or any modification of an existing connection) to the All-Island Transmission Networks at an entry or exit point on the transmission system made prior to such date as shall be specified in a direction issued by the Authority for the purposes of this Condition and that no such charges should be paid in respect of any such connection or modification made after such date unless the Authority is satisfied that the extension or reinforcement in respect of which the charges are to be paid was rendered necessary or appropriate by virtue of providing connection to or use of system to the person or making such a modification;

(c) that the performance by the Licensee of its obligations under the Connection Agreement or Use of System Agreement should not involve the Licensee in a breach such as is referred to in paragraph 6 of Condition 25;

(d) that the performance by the Transmission Owner of its obligations under any agreement necessitated in relation to the Connection Agreement or Use of System Agreement pursuant to paragraph 4 of Condition 25 should not involve the Transmission Owner in a breach such as is referred to in condition 20 of the Transmission Owner Licence;

(e) that the performance by the Republic of Ireland System Operator of its obligations under any agreement necessitated in relation to the Connection Agreement or Use of System Agreement pursuant to paragraph 4 of Condition 25 should not involve the Republic of Ireland System Operator in a breach of the Republic of Ireland System Operator Licence;

(f) that any methods by which the transmission system is connected to any other system for the transmission or distribution of electricity accord (insofar as applicable to the Licensee) with the Grid Code and with the Distribution Code; and



g) that the terms and conditions of the Connection Agreement or Use of System Agreement so settled by the Authority and of any other such agreements entered into by the Licensee pursuant to an application under Condition 25 should be, so far as circumstances allow, in as similar a form as is practicable

2. If the person wishes to proceed on the basis of the Connection Agreement or Use of System Agreement as settled by the Authority, the Licensee shall forthwith:

(a) notify the Transmission Owner and the Republic of Ireland System Operator in order that the Licensee can obtain the necessary agreement envisaged by paragraph 4 of Condition 25;

(b) forthwith on obtaining those agreements, enter into and implement a Connection Agreement or Use of System Agreement as so settled.

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

221. Condition 27 provides:

Condition 27. Requirement to Offer Terms – Republic of Ireland System Operator

1 At the request of the Republic of Ireland System Operator in respect of an application to the Republic of Ireland System Operator for use of the All-Island Transmission Networks in respect of generation or supply in the Republic of Ireland or connection to (or modification of an existing connection to) the All-Island Transmission Networks at an entry or exit point on the Republic of Ireland transmission system, the Licensee shall (subject to paragraph 7) provide the Republic of Ireland System Operator with an offer that makes detailed provisions regarding:

(a) the carrying out of the works to the transmission system (if any) necessary to enable such use, connection or modification; and the obtaining of the consents (if any) necessary for such purposes; and



(b) the carrying out of the works to the transmission system (if any) necessary in connection with the extension or reinforcement of the All-Island Networks rendered necessary or appropriate by reason of such use, connection or modification; and the obtaining of the consents (if any) necessary for such purposes

by a stated date.

System Operator Agreement¹⁰⁴

2 The Licensee shall ensure that the System Operator Agreement provides for the manner in which the requests for use of system and connection or modification, such as are envisaged by paragraph 1, are to be made, and also for:

(a) any payments between the Licensee and the Republic of Ireland System Operator in respect of such use of system; and

(b) the payments between the Licensee and the Republic of Ireland System Operator in respect of such connection or modification, the amount of such payments

(a) to be presented in such a way as to be referable to the statements prepared in accordance with paragraph 1 (or, as the case may be, paragraph 7) of Condition 30 or any revision of such statements; and

(b) to be set in conformity with the requirements of paragraph 5 of Condition 30 and (where relevant) of paragraph 2

...

4 The Licensee shall, and shall ensure that the System Operator Agreement requires the Licensee to, respond to requests such as are envisaged by paragraph 1 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 5 after receipt by the Licensee of a request that complies with the relevant requirements of the System Operator Agreement

¹⁰⁴ The SOA is here: [System-Operator-Agreement.pdf \(soni.ltd.uk\)](http://soni.ltd.uk/System-Operator-Agreement.pdf)



5 For the purpose of paragraph 4, the period specified shall be:

(a) in the case of persons seeking use of system, 28 days; and

(b) in the case of persons seeking connection (or modification to an existing connection) or seeking use of system in conjunction with connection, 3 months.

[It is noted that Schedule 5 to the SOA contains provisions relating to “Applications for Connection”. Sch 5.3 contains provisions relating to cooperation between the two TSOs in respect of matters that underpin the CBF].

Transmission Interface Arrangements¹⁰⁵

6 The Licensee shall, as soon as practicable after it receives a request such as is envisaged by paragraph 1, request an offer from the Transmission Owner (in accordance with the Transmission Interface Arrangements) in respect of that request and the works (if any) necessitated by that request.

[It is noted that SONI has pointed to Section C of the TIA as providing a basis for dealing with applications from SONI under the CBF. It seems that the relevant section of the currently approved TIA (November 2021) might be Section D. Section D refers to RoI TSO Applications defined in the TIA as

“RoI TSO Application”: an application made by the RoI TSO to SONI in respect of a connection in the RoI or for use of the All-Island Transmission Networks;]

Circumstances where no obligation exists.

7 The Licensee shall not be obliged (and the System Operator Agreement will provide that the Licensee shall not be obliged) to make an offer such as is envisaged by paragraph 1:

(a) if to do so would involve the Licensee:

¹⁰⁵ The TIA are here: [TIA-18-November-2021-approved.pdf \(soni.ltd.uk\)](#)



(a) in breach of its duties under Article 12 of the Order; or

(b) 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 transmission system; or

(c) in breach of the Conditions of the Licence;

(d) in breach of the Grid Code; or

(b) if the person making the application to which the request envisaged by paragraph 1 relates does not undertake to be bound by such parts of the Grid 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; or

(c) if, when requested to do so by the Licensee, the Transmission Owner does not offer to enter into an agreement for connection/extension works in respect of the request in question.

222. Condition 28 provides:

Condition 28. Functions of the Authority – Disputes with the Republic of Ireland System Operator

1 The Licensee shall ensure that the System Operator Agreement provides that, if after a period which appears to the Authority to be reasonable for the purpose, the Licensee and the Republic of Ireland System Operator have not entered into a binding commitment pursuant to such a request as is envisaged under paragraph 1 of Condition 27, the Authority may, on the application of the Licensee or the Republic of Ireland System Operator, settle the terms of the offer envisaged pursuant to paragraph 1 of Condition 27 in such manner as appears to the Authority to be reasonable having (insofar as relevant) regard in particular to the following considerations:

(a) that the Licensee should be able to recover the whole or an appropriate proportion (as determined in accordance with paragraph 3 of Condition 27) of the costs referred to in paragraph 5 of Condition 30 together with a reasonable rate of return on the capital represented by such costs;

(b) that the performance by the Licensee of its obligations under the agreement in question should not involve the Licensee in a breach such as is referred to in paragraph 7 of Condition 27;



(c) that the performance by the Transmission Owner of its obligations under any agreement necessitated in relation to the agreement in question pursuant to paragraph 6 of Condition 27 should not involve the Transmission Owner in a breach such as is referred to in condition 20 of the Transmission Owner Licence;

(d) that any methods by which the transmission system is connected to any other system for the transmission or distribution of electricity accord (insofar as applicable to the Licensee) with the Grid Code and with the Distribution Code; and

(e) that the terms and conditions of the agreement so settled by the Authority and of any other such agreements entered into by the Licensee pursuant to an application under Condition 27 should be, so far as circumstances allow, in as similar a form as is practicable

2 If the Republic of Ireland System Operator wishes to proceed on the basis of the offer so settled by the Authority, the Licensee shall forthwith:

(a) notify the Transmission Owner in order that the Licensee can obtain the necessary agreement envisaged by paragraph 6 of Condition 27;

(b) on obtaining that agreement, enter into and implement the agreement so settled as so settled.

3 If the Licensee or the Republic of Ireland System Operator wishes to vary the terms of the arrangements entered into pursuant to such an offer as is envisaged by paragraph 1 of Condition 27 or such an offer as is settled in accordance with this Condition 28, the Authority may, at the request of the Licensee or the Republic of Ireland System Operator, settle any dispute relating to such variation in such manner as appears to the Authority to be reasonable

223. Condition 29 provides:

Condition 29. Economic Purchasing of System Support Services

1 The Licensee shall contract for the provision of such quantities and types of System Support Services at any time available as may be appropriate to enable it to discharge its obligations under the Order, the Energy Order, the SEM Order and the Licence (including Conditions 20 and 21). Where appropriate, taking into account the quantity, nature and cost of the System Support Services in question, the Licensee shall make arrangements for such contracting in co-operation with the Republic of Ireland System Operator



2 In contracting for the provision of System Support Services pursuant to paragraph 1, the Licensee shall purchase or otherwise acquire System Support Services:

(a) from the most economical sources available to it, or available to the Republic of Ireland System Operator, having regard to:

(i) the quantity and nature of the System Support Services required to enable discharge of its obligations under the Order, the Energy Order, the SEM Order and the Licence (including Conditions 20 and 21); and

(ii) the diversity, number and reliability of such System Support Services at that time available for purchase or other acquisition;

224. Condition 30 provides for charging statement of the type referenced in the Standard G-TUoS Agreement Terms

Condition 30 Charging Statements

Statements of Charges

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

(a) the basis upon which persons licensed under Article 10 of the Order (or exempt from the requirement to be so licensed under Article 9 of the Order) will be charged for use of the All-Island Transmission Networks in respect of generation or supply in Northern Ireland

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

(c) any charges for System Support Services;

(d) any Other System Charges or the basis upon which such charges will be made; and

(e) payments and charges for Ancillary Services

...



3 The statements prepared under paragraph 1 shall be in such form and contain such detail as shall be necessary to enable any person to make a reasonable estimate of the charges to which it would become liable (or payments to which it would become entitled, as the context requires) for the provision of such services, including such of the information set out in paragraphs 4, 5, 6, 7 and 8 as is required by such paragraphs to be included in the relevant statement.

Use of System

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

- (a) a schedule of charges for transport of electricity under use of the All-Island Transmission Networks in respect of generation or supply in Northern Ireland;
- (b) the methods by which and the principles on which charges (if any) for availability of transmission capacity on the All-Island Transmission Networks will be made;
- (c) a schedule of the charges (if any) which may be made for the provision and installation of any meters or electrical plant at entry or exit points on the transmission system, the provision and installation of which is ancillary to the grant of use of the All-Island Transmission Networks in respect of generation or supply in Northern Ireland, and for the maintenance of meters or electrical plant;
- (d) the methods by which and the principles on which entry and exit charges for connections in operation before the date on which this Condition became effective will be calculated; and
- (e) such other matters as shall be specified in directions issued by the Authority from time to time for the purposes of this Condition

...

System Support Service Charges

7 The statement referred to in paragraph 1(c) shall identify any charges levied in respect of System Support Services



Other System Charges¹⁰⁶

8 The statement referred to in paragraph 1(d) shall identify any Other System Charges and the rates and parameters to be used for the calculation of such charges. The statement shall either contain or refer to a separate statement (which separate statement shall be treated as forming part of the statement referred to in paragraph 1(d)) to be published on the Licensee's website setting out the basis for the calculation of such charges

9 The Licensee shall at least once in every year that this Licence is in force revise the statement referred to in paragraph 1(d) but any such revision shall only take effect provided that:

(a) the Licensee has (in consultation with authorised electricity undertakings and the Republic of Ireland System Operator, to the extent that such persons are liable to be materially affected thereby), reviewed the Other System Charges and their effect;

(b) following any such review, the Licensee has sent to the Authority:

(i) a report on the outcome of such consultation;

(ii) any proposed revisions (having regard to the outcome of the consultation) as the Licensee reasonably thinks fit; and

(iii) any written representations or objections from any electricity undertaking (including any suggested changes to the proposed revisions not accepted by the Licensee in the course of the consultation) arising during the consultation and subsequently maintained; and

(c) the Authority has approved the revision to the statement, subject to (where there were written representations or objections and the Authority considers it appropriate) any direction by the Authority requiring a change as set out in that direction.

¹⁰⁶ <https://www.eirgridgroup.com/site-files/library/EirGrid/Harmonised-Other-System-Charges-Methodology-Statement-2023.pdf>



10 The Licensee shall publish (prior to its entry into force) a copy of the statement prepared in accordance with paragraph 1(d) (and of each revision of such statement in accordance with paragraph 9) on its website and shall send a copy to the Authority and the Republic of Ireland System Operator.

Alternative Statement

11 In addition to, and without prejudice to, the Licensee's obligations under paragraph 1, the Licensee shall, upon being required to do so in directions issued by the Authority (and within such period as the Authority may specify), prepare a statement or statements approved by the Authority providing that charges for use of (in respect of generation or supply in Northern Ireland), and/or connection to (at entry or exit points on the transmission system), the All-Island Transmission Networks will be made on such basis as shall be specified in the directions. Such statement or statements shall be in such form and contain such detail as shall be necessary to enable any person to make a reasonable estimate of the charges to which it would become liable for the provision of such services and (without prejudice to the foregoing) including such information as shall be specified in the effect from the date on which it is approved by the Authority or such later date as the Authority shall specify, replace the corresponding statement prepared by the Licensee in accordance with paragraph 1 or, as the case may be, this paragraph (as from time to time revised in accordance with paragraph 12) which is in force at such date and the Licensee shall, with effect from such date make charges in accordance with the statement (as from time to time revised in accordance with paragraph 12) which has replaced such corresponding statement.

Revision and Publication of Statements

12 The Licensee may, in co-operation with the Republic of Ireland System Operator, periodically revise the information set out in and, with the approval of the Authority, alter the form of the statements prepared in accordance with paragraph 1(a), 1(b), 1(c) or 11 and shall, at least once in every year the Licence is in force, revise such statements, in co-operation with the Republic of Ireland System Operator, in order that the information set out in the statements shall continue to be accurate in all material respects.

13 The Licensee shall publish (prior to its entry into force) a copy of the statements prepared in accordance with paragraph 1(a), 1(b), 1(c) or 11 (and of each revision of such statements in accordance with paragraph 12) on its website and shall send a copy to the Authority and the Republic of Ireland System Operator. Each such revision shall require to be approved by the Authority and shall not become effective until approved by the Authority



14 The Licensee shall give or send a copy of the statements prepared in accordance with paragraphs 1(a), 1(b), 1(c) or 11 or (as the case may be) of the latest version of such statements in accordance with paragraph 12 approved by the Authority pursuant to such paragraph to any persons who requests a copy of such statement or statements.

15 The Licensee may make a charge for any statement given or sent pursuant to paragraph 15 of an amount reflecting the Licensee's reasonable costs of providing such a statement which shall not exceed the maximum amount specified in directions issued by the Authority from time to time for the purposes of this Condition.

Definitions

16 In this Condition, unless the context otherwise requires:

"Ancillary Services" has the meaning given to that term in the Grid Code

"Generator Performance Incentive Charges" means charges levied by the Licensee on the operators of generation sets for certain redeclarations of the technical capabilities of such generation sets under the Grid Code

"Other System Charges" means any charges, other than as referred to in paragraphs 1(a), (b) and (c), levied from time to time (with the approval of the Authority) by the Licensee in carrying on the Transmission System Operator Business, for the avoidance of doubt including Generator Performance Incentive Charges, Trip Charges and SND Charges.

"SND Charges" means charges levied by the Licensee on the operators of generation sets for certain redeclarations of available capacity of such generation sets under the Grid Code.

"Trip Charges" means charges levied by the Licensee on the operators of generation sets for unplanned outages of such generation sets.

225. A standard condition of Art 10 *generating licences* provides for compliance with the DfE Fuel Security Code as follows:



Condition 5: Security Arrangements

1. The Licensee shall comply with the provisions of the Northern Ireland Fuel Security Code¹⁰⁷ and such provisions shall have effect as if they were set out in this licence.

2. The Northern Ireland Fuel Security Code may be amended in accordance with its provisions.

226. The methodology for C30 type charges is harmonised on an all-island basis under relevant SEM-C decisions. Background can be found here:

[Regulatory Information \(soni.ltd.uk\)](http://soni.ltd.uk) [The part under Condition 30 Charging Statements]

GTUoS charges Methodology: [SEM-11-079 Generator TUoS Methodology Statement.pdf \(semcommittee.com\)](http://semcommittee.com)

TLAFs Methodology: TLAF-Methodology-Explanatory-Paper-v1.0 2012.pdf

[Further updated link relating to Other Charges to be provided on publication of the minded-to decision document]

(iv) Legislation in ROI

227. This is necessarily a brief outline of some of the more relevant provisions in ROI.

¹⁰⁷ Again, here: [Modification of Northern Ireland Fuel Security Code | Department for the Economy \(economy-ni.gov.uk\)](http://economy-ni.gov.uk)



228. Section 9 of the ERA provides the powers and functions of the CRU to include the SEM functions (see section 9BC).

229. Section 14 provides that the CRU may grant licences. It says that:

LICENCES AND AUTHORISATIONS

14.— (1) The [CRU] grant or refuse to grant to any person who is an electricity undertaking or who intends to carry out a function of an electricity undertaking a licence—

(a) to generate electricity

(e) to discharge the functions of the transmission system operator

(f) to discharge the functions of the transmission system owner,

(g) to discharge the functions of the distribution system operator.

230. Carrying on any of these licensable activities without a licence is a criminal offence. See section 4(1) of the European Community (Internal Market) Regulations 2000, SI 445 200.

231. Section 14 makes clear that it is only EirGrid plc (**EirGrid**) that can hold the TSO licence under section 14(1)(e).

232. The phrase “electricity undertaking” is defined in section 2 of the ERA

“electricity undertaking” means any person engaged in generation, transmission, distribution, aggregation, demand response, energy storage, supply or purchase of electricity, and who is responsible for the commercial, technical or maintenance tasks related to those functions, including a holder of a licence or authorisation under this Act or a person who has been granted a permit under section 37 of the Principal Act, but does not include final customers.”

“generate”, in relation to electricity, means to produce electricity

generating station” means a station for the generation of electricity

“grid code” means a code in respect of all technical aspects relating to connection to and operation of the transmission system prepared by the transmission system operator under section 33

“ancillary service”, in relation to electricity, means a service necessary for the operation of a transmission or distribution system, including balancing and non-frequency ancillary services, but not including congestion management



“transmission”, [subject to section 2A,] in relation to electricity, means the transport of electricity by means of a transmission system, in the State or offshore, or both, that is to say, a system which consists, wholly or mainly, of high voltage lines and electric plant and which is used for conveying electricity from a generating station to a substation, from one generating station to another, from one substation to another or to or from any interconnector or to final customers but shall not include any such lines which [ESB] may, from time to time, with the approval of [CRU], specify as being part of the distribution system but shall include any interconnector owned by [ESB].

“transmission system operator” means the holder of a licence under section 14(1)(e)

233. Section 14(1A) provides that:

“14(1A) [CRU] may by order provide that a person generating electricity by means of a specified class or classes of generating station shall stand licensed to generate electricity subject to such terms and conditions as may be specified in such order.”

234. The current Order under section 14(1A) is the Electricity Regulation Act 1999 (section 14(1a)) Order 2022, SI 460 of 2022 (**the 2022 Order**). The 2022 Order’s purpose is to provide for the licensing of persons to generate electricity from generating stations located within a Generator Site with an installed capacity not exceeding **10 MW** made pursuant to Order as facilitated under Section 14(1A) of the Act.”

235. It will be seen that the 2022 Order provides a light touch licensing regime for persons in a way analogous to the 10 MW level of the 2013 Order. However, the 2022 Order does provide for conditions automatically applying to the licences deemed granted under it. There is also a requirement for a person wishing to hold a deemed licence to generate under the 2022 Order to notify the CRU of its proposed generation. There is no “notification” requirement under the 2013 Order.

236. Section 16 of the ERA provides for the CRU to grant authorisations for the construction of reconstruction of generating stations. It provides that any authorisation may be attended by conditions.

237. Section 16(3A) provides for a relaxed authorisation for generators generating not more than 10MW. An order under section 16(3)(A) was made by the ELECTRICITY REGULATION ACT 1999 (SECTION 16(3A)) ORDER 2022.



238. Section 18 of the ERA provides for “criteria” for judging applications for section 16 authorisation. It says this:

18.— (1) The Minister shall specify by order the criteria in accordance with which an application for an authorisation to construct or reconstruct a generating station may be determined by [CRU].

239. The section 18 power was exercised by the following Order: Electricity Regulation Act, 1999 (Criteria For Determination of Authorisations) Order 1999 (S.I. No. 309 of 1999).

240. Section 33 of the ERA provides for the establishment of a EirGrid Grid Code and for the power of the CRU to give binding directions as to the contents of the Grid Code.

241. Section 34 provides for “*Terms for connection to and use of transmission or distribution system*”.

34.—(1) Subject to subsection (4), where an application is made to [EirGrid] by any person, [EirGrid] shall offer to enter into an agreement for connection to or use of the transmission . . . , subject to terms and conditions specified in accordance with directions given to [EirGrid] by [CRU] under this section from time to time.

[(1A) An offer under subsection (1) may, on request of the applicant, be on the basis that the applicant constructs, or that either or both the applicant and [EirGrid] arranges to have constructed, the connection to the transmission system, and any such connection constructed or arranged to be constructed by the applicant shall be the property of the person with whom the agreement is made, and shall, for the purposes of [section 37(4)], be deemed to be a direct line.]

...

[(1C) [CRU] shall publish directions that are given by it to [EirGrid] under this section.]

(2) Without prejudice to the generality of subsection (1), directions given by [CRU] under this section may provide for:

(a) the matters to be specified in an agreement for connection to and use of the transmission . . . system;

(b) the matters to be specified in an agreement for use of the transmission . . . system;

(c) the terms and conditions upon which an offer for connection to the transmission . . . system is made;

(d) the methods for determining the proportion of the costs to be borne by the person making the application for connection to the transmission . . . to be borne by [EirGrid] being costs which are directly or indirectly incurred in carrying out works under an agreement or making a connection or modifying an existing connection;



(e) the terms and conditions upon which applications for an agreement are to be made and the period of time within which an offer or refusal pursuant to an application is to be made by [EirGrid]; and

(f) any other matters which [CRU] considers necessary or expedient for the purpose of making an offer for connection to or use of the transmission . . . system,

and [EirGrid] shall comply with directions given by [CRU] under this section within such time period as may be specified by [CRU]

(3) An offer made under subsection (1) to a person who is not the holder of a licence under section 14 or an authorisation under section 16 or a registration granted under Part IIIA or an eligible customer shall be subject to the grant of a licence or authorisation or registration to that person or to that person becoming an eligible customer or to that person being a relevant market participant of a class specified by order under section 28AC(2)(a)(i) or engaging in a class of electricity activity specified by order under 28AC(2)(a)(ii).

(4) [EirGrid] shall not be required under subsection (1) to enter into an agreement where—

(a) it has demonstrated to the satisfaction of [CRU] that it is not in the public interest to provide additional capacity to meet the requirements to be imposed by that agreement,

(b) to enter into an agreement under this section would be likely to involve [EirGrid]:

(i) in a breach of this Act;

(ii) in a breach of regulations made under this Act;

(iii) in a breach of the grid code or distribution code; or

(iv) in a breach of the conditions of any licence or authorisation granted to [EirGrid] under this Act, or

(c) the person making the application does not undertake to be bound by the terms of the grid code or distribution code in so far as those terms are applicable to that person.

. . .

(8) Where providing for use of the transmission or distribution system or where offering terms for the carrying out of works for the purpose of connection to the transmission . . . system of [ESB], [EirGrid] shall not discriminate unfairly as between any persons or classes of persons.

34B. Arrangements and agreements relating to transmission system and All-Island Transmission Networks.

34B.— (1) Where the Single Electricity Market is in operation [CRU] may direct the transmission system operator to seek to enter into and maintain in force such arrangements as are necessary to—

(a) enable the transmission system operator, subject to such terms and conditions as may be specified by [CRU] in any direction, to offer any person who makes an



application pursuant to section 34(1), an agreement for connection to the transmission system or use of the All-Island Transmission Networks,

(b) enable the Northern Ireland System Operator to offer any person who makes an application to the Northern Ireland System Operator, an agreement for connection to the Northern Ireland Transmission System or use of the All-Island Transmission Networks.

(2) [CRU] may make regulations for the purposes of subsection (1).

(3) Without prejudice to the generality of subsection (2), regulations under subsection (2) may—

(a) prescribe those matters in respect of which [CRU] may make directions including, without limitation, directions in relation to

(i) the basis upon which payments are to be made by the transmission system operator to the Northern Ireland System Operator and by the Northern Ireland System Operator to the transmission system operator, in each case in relation to connection to the transmission system, connection to the Northern Ireland Transmission System and use of the All-Island Transmission Networks, and

(ii) the method for determining the proportion of the costs to be borne by the person making an application for connection to the transmission system and the proportion to be borne by the transmission system operator

(b) prescribe the circumstances in which the transmission system operator can refuse to make an offer to an applicant to enter into an agreement for connection to the transmission system or use of the All-Island Transmission Networks

(c) prescribe the circumstances in which the transmission system operator can refuse to make an offer to enter into an arrangement with the Northern Ireland System Operator pursuant to subsection (1),

(d) provide for the resolution of disputes between the transmission system operator and any applicant for an offer to enter into an agreement for connection to the transmission system or use of the All-Island Transmission Networks or any person who has entered into an agreement with the transmission system operator for connection to the transmission system or use of the All-Island Transmission Networks

(e) provide for the resolution of disputes between the transmission system operator and the Northern Ireland System Operator in connection with any arrangement entered into or sought to be entered into pursuant to subsection (1),

(f) provide for the basis upon which charges are determined for connection to the transmission system and for use of the All-Island Transmission Networks, and



(g) prescribe the circumstances (if any) in which the transmission system operator shall continue to be obliged to make an offer to enter into an agreement for connection to or use of the transmission system pursuant to section 34(1).

(4) In this section—

“All-Island Transmission Networks” means the transmission system together with the Northern Ireland Transmission System;

“Northern Ireland System Operator” means the holder of a transmission licence granted under Article 10(1)(b) of the Electricity (Northern Ireland) Order 1992 and who is, from time to time, designated by the Authority as the transmission system operator for Northern Ireland;

“Northern Ireland Transmission System” shall have the meaning given to the term “transmission system” in the licence granted to the Northern Ireland System Operator under Article 10(1)(b) of the Electricity (Northern Ireland) Order 1992.]

242. Condition 35 provides for Charges for connection to and use of transmission or distribution system.

35.—(1) Subject to subsection (2), within such time as [CRU] may direct, [ESB] shall prepare a statement for the approval of [CRU] setting out the basis upon which charges are imposed—

(a) for use of the transmission . . . system and

(b) for connection to the transmission . . .

243. Section 36 provides for the CRU to approve the section 35 statement of charges.

244. Section 39 provides for public service obligations. It states:

39.—(1) The Minister, following consultation with the Minister for the Environment and Local Government, shall by order direct [CRU] to impose on [ESB] and holders of licences or authorisations, or holders of a permit under section 37 of the Principal Act, public service obligations which may include obligations in relation to—

(a) security of supply

(b) regularity, quality and price of supplies,

(c) environmental protection, including energy efficiency and climate protection, and

(d) use of indigenous energy sources.

. . .



(11) For the purposes of orders made under this section, “public service obligation” means an obligation placed on electricity undertakings which takes account of general social, economic and environmental factors.

(v) ROI Regulatory provisions

245. The following is a basic summary of relevant provisions.

246. The EirGrid standard Transmission Connection Agreement is here: [Connection Agreement June 2012.docx \(eirgridgroup.com\)](#)

247. It is noted that the above document also provides for use of system when read in conjunction with the General Conditions of Connection and Transmission Use of System (The General Conditions”) [General Conditions June 2012.docx \(eirgridgroup.com\)](#) which contains the following definitions.

“Transmission System Operator” or “TSO” means the entity licensed as such pursuant to Section 14 of the Act;

“Transmission Use of System” or “TUoS” means use of the Transmission System for the passing of electricity through the Transmission System and for the transportation of such electricity to Network Connection Points;

“Transmission Use of System Charges” or “TUoS Charges” means the charges payable in respect of Transmission Use of System in accordance with the Company’s published Transmission Use of System Tariff Schedules and Statement of Charges, as amended from time to time and approved by the CER, in respect of demand and/or generation utilisation of the Transmission System;

“Use of System Agreement” means the Agreement setting out the terms and conditions for use of the Transmission System;

“Final Customer” means a final customer as defined in the Act to whom the User proposes to supply or for the time being supplies electricity through a Network Connection Point. For the avoidance of doubt Generation Users and Autoproducer Users are considered Final Customers for the purposes of applying demand related charges under Tariff Schedules GTS-T, GTS-D, ATST and ATS-D;



“Generation User” means a person who, in addition to being a User as defined herein is the owner of a Generation Unit whereby the generated electricity produced by the Unit is under a licence by CER and the person has and continues to maintain a valid Transmission Connection Agreement or Distribution Connection Agreement at one or more Network Connection Points

“Network Connection Point” means the physical point or points at which the Final Customer’s Installation is joined to the Transmission System or the Distribution System through which electricity flows to and or from the Final Customer’s Installation

“User” means a Customer who is licensed under Section 14 of the [ERS] and is eligible to use the Transmission System and therefore liable to pay for usage thereof by entering into a Use of System Agreement or Connection Agreement;

26.5 Generation User & Autoproducer User Obligations The provision of Transmission Use of System by the Company to a Generation User or Autoproducer User is subject to fulfilling the following obligations:

26.5.1 the Generation User or Autoproducer User holding a valid licence to generate electricity issued by the CER through one or more Network Connection Points;

248. There is an EirGrid Use of System Agreement for generators connected to the distribution system in Rol here: [TUoS Agreement for Dx Gens and APs June 2012.docx \(eirgridgroup.com\)](#)

249. This agreement includes the following:

WHEREAS:

(A) The User has applied to the Company for use of the Transmission System as a person licensed to generate electricity under section 14 (1) of the [ERA].

(B) In accordance with section 34 of the Act, 1999 the Company is required, subject to certain exceptions, to enter into an agreement for use of the Transmission System with any person applying to use the Transmission System.

2 CONDITIONS PRECEDENT

2.1 Conditions Precedent to a Valid and Enforceable Agreement



2.1.1 This Agreement is conditional upon the following conditions precedent being fulfilled (or waived by the Company, acting reasonably):

2.1.1.1 the User holding a Generation Licence issued by the [CRU]

2.1.1.2 the User being a party to the Trading and Settlement Code

A description of the connections policy in RoI to include the ECP is found in a recently published “Call for Evidence” here: [Electricity Connection Policy | CRU.ie](#)



4. CASE LAW

250. The *SONI JR Case* provides a recent explanation of the statutory regime for licence modification under Art 14 [of the Electricity Order] and how it interacts with the SEM Order.

251. The *SONI JR Case* contains approval for statements made in the decision of the High Court in *RoI in Re Viridian*. The decision in *Re Viridian* includes the following important consideration about the operation of “the” SEM-C.

“3.9 Thus, in substance, the SEM is, as pointed out, in theory, two separate committees of, respectively, [CRU] and the Utility Regulator, but consists of the same personnel and operates as a single body.”



5. PROVISIONS OF THE CRU AUTHORISATION TO CONSTRUCT AND THE CRU GENERATING LICENCE

252. We now set out some provisions of the CRU Authorisation to Construct and the CRU Generating Licence.

(i) The CRU Authorisation to Construct

253. **Condition 10 (c) of Part II** provides that the CRU may revoke the CRU Authorisation to Construct if AWFL fails to comply with a direction of the ROI minister under section 39 of the ERA.

Section 39 of the ERA – as set out above - provides (it seems) for the mandated operation of the generating station authorised for construction (by the CRU).¹⁰⁸

254. **Condition 5 of Part II** states that the (authorised) AWFL windfarm generating station must (subject to Condition 6) be constructed to “*be capable of providing the level of ancillary services specified in the EirGrid Grid Code*”.¹⁰⁹

255. **Condition 8 of Part 11** provides that AWFL must comply with the EirGrid Grid Code and the (ROI) Distribution Code in so far as applicable to it.

(ii) CRU Generating Licence

¹⁰⁸ It is not presently clear to us how AWFL could comply with a section 39 type direction from an ROI Minister in circumstances where the (AWFL) authorised generating station is not the subject of a connection agreement with either EirGrid or ESB as ROI systems operators (**SOs**).

¹⁰⁹ It is not clear how AWFL could meet this obligation when the present connection arrangements do not seem to involve an (accepted) offer from EirGrid (as ROI TSO) for connection to the ROI transmission system operated by EirGrid (as ROI TSO).



256. Part I “Terms of the Licence” contains the following:

1. the [CRU] in exercise of the powers conferred by Section 14(1)(a) of the [ERA] hereby grants to [AWFL] a licence to generate electricity at the generating stations [identified in schedule 1] . . . subject to the Conditions . . . set out in Part II.”

257. Section C: “Conditions to apply after SEM GO Live [1 November 2007]” contains the following:

“Ancillary Services”	has the meaning given in the Grid Code
“generation unit”	means any plant or apparatus for the production of electricity
“Grid Code”	means the Grid Code required to be prepared [by EirGrid] pursuant to section 33 of the [ERA].
“North/South Circuits”	means the electric lines and electrical plant and meters used for conveying electricity directly to or from a substation or converter station within [RoI] directly to or from a substation or converter station within [NI] and not for conveying electricity elsewhere.
“transmission system”	means the system of electric lines comprising wholly or mainly the Transmission System Owners high voltage lines and electric plant and which is used for conveying electricity from a generating station to a substation, from one generating station to another, from one substation to another or to or from any interconnector or to final customers (including such part of the North/South Circuits as is owned by the Board.

Condition 4 Compliance with the Grid Code, Metering Code and where applicable, Distribution Code



1. The licensee shall comply with the provision of the Grid Code. insofar as applicable to it.

Condition 8

The Licensee shall from time to time if required by the [EirGrid] and in accordance with the provisions of the Grid Code offer terms for the provision of the Licensee of Ancillary Services from any generation unit of the Licensee which the generation unit is capable of providing in accordance with its authorisation.”

258. **Schedule 1** provides as follows:

“Generating Stations to which the Licence applies

This Licence applies to the generation of electricity from the following generating stations:

Station

Aught Wind Farm
Aught
Muff
County Donegal

259. **Schedule 2** provides as follows

The CRU may revoke [the CRU Generating Licence] if

...

“d) if the Licensee fails to comply with any order made by the Minister under section 39 or 40 of the [ERA].



6. 2017 DELETION OF THE “ANY PERSON” DEFINITION TEXT FROM CONDITION 30(1) OF THE NIE DSO LICENCE

260. SONI has – as explained in earlier sections of this document – alluded to the terms of Condition 30(1) (**C30(1)**) in support of its interpretation of C25(1). It calls C30(1) part of the relevant “*statutory context*”.

261. In recap, SONI explains that the wording of C25(1) – particularly the definition text for an “eligible person” - can be compared with the terms of C30(1) which refers to terms being offered to “any person” who applies. The published version of the NIE DSO Licence¹¹⁰ indicates that the provision “any person” is not limited by definition.

262. The terms of C30(1) were modified as part of a licence modification process in 2017 (**the 2017 process**).

263. The 2017 process documents are here

3 April 2017 <https://www.uregni.gov.uk/files/uregni/media-files/Electricity%20Connections%20next%20steps%20consultation%20FINAL.PDF>

31 May 2017 <https://www.uregni.gov.uk/publications/electricity-connections-review-decision-paper>

3 October 2017 <https://www.uregni.gov.uk/news-centre/electricity-connections-review-licence-modification-decisions>

264. These documents appear to show that the previous definition for “any person” in C30(1) was being deleted as part of the 2017 process. The 2017 process modifications were not tracked changed but the apparent change to C30(1) – by deletion of the definition of “any person” – can be discerned from a comparison of the text of C30(1) as it is on the pre 2017 process version of C30(1) here: [The Northern Ireland Authority for Utility Regulation \(uregni.gov.uk\)](http://www.uregni.gov.uk)

¹¹⁰ [Electricity licences | Utility Regulator \(uregni.gov.uk\)](http://www.uregni.gov.uk)



265. The pre 2017 process terms for C30(1) included a definition for “any person” as follows

“In this paragraph references to “any person” shall be construed as references to any authorised electricity operator or person who shall have applied for a licence under Article 10 of the Order and whose application has not been withdrawn or rejected.”

266. An “authorised electricity operator” was and is defined as

“authorised electricity operator” means any person (other than the Licensee in its capacity as the holder of the Licence) who holds a licence granted pursuant to Article 10 of the Order or whose activities are exempt pursuant to Article 9 of the Order, and any person transferring electricity across a Northern Ireland Interconnector or who has made application for use of a Northern Ireland Interconnector which has not been refused;”

267. Accordingly, the definition of “any person” prior to the 2017 process was in large measure synonymous with the existing definition of “eligible person” in C25(1).

268. It now appears that there was no intention on the part of the UR to modify C30(1) by deletion of the definition of “any person” as part of the 2017 process. The 2017 process documents do not describe any thinking as to the reasons for or effects of any such change. Art 14 requires such things to be contained in the Art 14 notices for a licence modification. It appears that there was an administrative oversight. This oversight has only been detected on our recent (close) examination of C30(1) in the context of the Request.

269. We are presently considering whether we need to take any action to correct the mistake made in 2017. However, for present purposes we proceed on the basis that there was a mistake then made and no intention to delete the “any person” text from C30(1). If we need to take action to restore the position, then we are minded to. We intend to discuss the matter further with NIE Networks.



7. OBSERVATIONS ON THE DIFFERENCE BETWEEN USE OF AND CONNECTION TO THE TRANSMISSION SYSTEM

270. We consider that it is right to note the difference between the concepts of *connection to* and *use of* a transmission system. This difference applies in both NI and Rol.

271. Basically, an offer of *connection to* a transmission system provides for *physical connection to* the transmission system. An offer of *use of* system provides for the use of the transmission system for the transport of electricity to or from a particular connected facility at a connection point.

272. Thus, in the case of a *generator* (like AWFL):

(i) an offer of *connection to* a transmission system will provide for the physical connection of the generator's relevant electricity equipment/facility to the transmission system at a Connection Point.

(ii) an offer for *use of* a transmission system will provide for the transmission of the electricity over the transmission system of the electricity provided by the generator at and through the Connection Point.



8. OBSERVATIONS ON “CONNECTION POINT”

273. It is important to recognise the significance of a “Connection Point”. A Connection Point is the point of interface between an entity’s electricity equipment/facility and the network to which the entity is connecting/connected.
274. The Connection Point is described in the offer of terms for connection to a transmission system offered by the relevant system operator; be that SONI (for a NI located Connection Point) or EirGrid (for a RoI located Connection Point). It is described by the entity in making its application for connection to the relevant system operator. So, in the case of AWFL, the application for connection made by AWFL to SONI in September 2019 specified a Connection Point (in NI).
275. It will be noted that whilst the applicant for an offer of terms for connection can specify a location for a Connection Point, the TSO will – commensurate with its legal responsibilities *viz.* the operation and planning of the relevant transmission system - be the final decider of where the Connection Point can (and is to) be located.

How the location of the Connection Point determines to whom an application for connection and use of system is made.

276. We consider that the Connection Point is key to understanding to whom an entity applies when making an application for connection to or use of system.
277. Where the Connection Point *for a generator* is specified as situate *in NI* then it is to SONI that the generating entity looks to for an offer of terms for connection and use of the transmission system.
278. Where the Connection Point *for a generator* is specified as situate *in RoI* then it is to EirGrid that the entity looks to for connection to and use of the transmission system.
279. It is important to note that both SONI and EirGrid, when offering terms for use of their respective transmission system, also permit and facilitate use of the All-Island Networks, composed of both the NITS and the RoI TS together. This has been the situation since the inception of the SEM in 2007.
280. So, if a generator with a Connection Point in NI applies to SONI for a (C25(1) type) generation type use of system agreement then SONI - if satisfied with the application - will grant a G-TUoS agreement that will permit use of the All-Island Transmission Networks (to include the RoI TS operated by EirGrid).
281. Equally, if a generator with a Connection Point in RoI applies to EirGrid for a generation type use of system agreement, then EirGrid - if satisfied with the application - will grant a G-TUoS agreement that will permit use of the All-Island Transmission Networks (to include the NITS operated by EirGrid).
282. But do the current arrangements provide for a generator generating in one jurisdiction of the SEM to obtain a use of system agreement from a related



Connection Point situate in the other jurisdiction of the SEM? We turn to this in the next section.



9. OBSERVATIONS ON USE OF SYSTEM WHERE THE CONNECTION POINT IS ON ONE JURISDICTION BUT THE ACTIVITY OF GENERATION IS IN THE OTHER

283. It seems to us that the *present arrangements* on both sides of the border proceed on the basis that a generator generating in one jurisdiction will not connect at or seek use of system from a Connection Point located in the other jurisdiction by application to the other jurisdiction's TSO.

284. All the legal and regulatory provisions so far examined seem to align with that understanding.

285. As we have set out above, section 34 of the ERA requires that an offer of connection and use of system (from EirGrid) be linked to the possession of a licence to generate under the ERA. Such a licence can only be obtained in respect of generation *in Rol*. The EirGrid Use of System documents seem to align with this requirement. We see no facility for a person generating and licensed or exempt *in NI* to obtain a connection and use of system from EirGrid for a related Connection point *in Rol*.

286. Similarly, the situation in NI is – as AWFL has found – that a use of system agreement (or formal connection agreement) cannot be obtained from SONI in the absence of an authorisation to generate under the Electricity Order (by Article 10 generating licence or Article 9 Exemption). As *things stand* a licence under the ERA will not suffice.

287. C25 itself envisages a use of system agreement being offered in “respect of generation in Northern Ireland”. It says this:

(c) specifying the use of system charges to be paid by the person seeking use of the All-Island Transmission Networks in respect of generation or supply in Northern Ireland, such charges (unless manifestly inappropriate) to be referable to the statement prepared in accordance with paragraph 1 (or, as the case may be, paragraph 7) of Condition 30 or any revision of such statement.

(underlining added)

288. Further, SONI's Condition 30 charging statement is also required to set out charges for use of system in respect of “generation in Northern Ireland”.

289. As such it seems to us that there is in the present arrangements a sort of parity in each jurisdiction when it comes to obtaining a use of system agreement.

290. These provisions also raise a question as to how AWFL would be compelled to pay C30 type use of system (UoS) charges in relation to the use of system from the Connection Point set out in the SONI AWFL Connection Offer.

291. The Standard G-TUoS Agreement Terms provide that UoS charges are payable under the C30 statement. The Condition 30 Statement envisages



payment in respect of use of system for *generation in NI*. AWFL confirms that it will have no generation in NI. So, there would, on present arrangements, be no G-TUOS charges payable by AWFL under any G-TUoSA with SONI.

292. Further, it does not appear that there would be any G-TUoS charges payable in RoI either, as AWFL does not plan to obtain a use of system agreement with EirGrid given that (uniquely) AWFL's position is that it plans no Connection Point in RoI and/or connection to the RoI TS in respect of the electricity it produces at its (CRU) authorised generating station at Aught.
293. The Request does not address these issues relating to G-TUoS charges. Nor does AWFL indicate whether the Request would impact the balance of arrangements in either jurisdiction. It has not (yet) engaged on the provisions of the SONI TSO licence which link use of system under C25(1) to "*generation in Northern Ireland*". It has not (yet) offered a view as to the corresponding arrangements in RoI. Nor has AWFL expressed any view as to whether the "*principle proposed*" is aligned to or would introduce imbalance in respect for the use of system arrangements in RoI and NI. We shall return to this matter at the end of this document.
294. To clarify, we do not consider that the CBF alters our understanding of the basic position regarding use of system in either jurisdiction. We now set out our understanding of the CBF.



10. OUR UNDERSTANDING OF THE CBF

295. We consider that the CBF is underpinned by existing regulatory provisions. We set this out in the 27 October 2022 UR CRU Letter.

296. The key provisions are found in the TSO licences. They are Condition 27 (**C27**) of the SONI TSO licence and Condition 5 (**C5**) of the EirGrid TSO Licence (see above). These are backed by the SOA as required by Condition 24 of the SONI TSO licence and section 34B of the ERA.¹¹¹ There is also related provision made in the TIA.

297. Further underpinning of the CBF can be found in the dispute resolution provisions of Condition 28 of the SONI TSO Licence.

298. It is right to repeat the opening part of C27:

“1 At the request of the Republic of Ireland System Operator in respect of an application to the Republic of Ireland System Operator for use of the All-Island Transmission Networks in respect of generation or supply in the Republic of Ireland or connection to (or modification of an existing connection to) the All-Island Transmission Networks at an entry or exit point on the Republic of Ireland transmission system, the Licensee shall (subject to paragraph 7) provide the Republic of Ireland System Operator with an offer that makes detailed provisions regarding . . .”

(Our underlining).

299. If we look at *connection* for generation first, we can see that C27 envisages SONI responding to a call for assistance from EirGrid in respect of an application for generation connection made to EirGrid in respect of a connection point (i.e., an “entry point”) situated in Rol to the Rol transmission system.

300. If we then consider *use of system*, we can see that C27 makes it clear that what is envisaged is a request from EirGrid to SONI in respect of an application to EirGrid for *use of* the All-Island Transmission Networks in respect of generation (or supply) in Rol.

301. These provisions align with our understanding of the applicable arrangements as regards the type of applications for connection and use of system that each TSO can be expected to receive (see the previous section above).

302. To trigger C27 there is required a platform application to EirGrid for connection to or use of system.

¹¹¹ [System-Operator-Agreement.pdf \(soni.ltd.uk\)](#)



303. C27 operates by obliging SONI to provide EirGrid with assistance to enable EirGrid to meet its legal responsibilities in respect of an application to EirGrid for connection to or use of system.
304. C5 (of the EirGrid TSO Licence) sets out mirror provisions;

5. *The Licensee shall:*

(a) upon receipt of a request from the Northern Ireland System Operator, insofar as any matter is within the control of the Licensee, ensure that the Northern Ireland System Operator can fulfil the conditions of the Northern Ireland System Operator Licence in relation to connection to the Northern Ireland Transmission System and use of the All-Island Transmission Networks.

...

305. C5 therefore obliges EirGrid to assist SONI in fulfilling its (i.e., SONI's) obligations as regards applications *to SONI* for connection and use of system (including those received from generators).
306. A generator applicant to EirGrid for a *connection* to the ROI transmission system will have to nominate a connection point within RoI. That will be the point at which the generators' equipment/facility will connect to the RoI TS owned by ESB and operated by EirGrid.
307. If EirGrid considers that meeting its legal obligations in respect of this application means that it needs to make an application to SONI under C27 then it can do so. No such application has been made to date in respect of any application by AWFL.
308. In present circumstances SONI has not felt obliged to apply to EirGrid for a C5 type offer in respect of the application for connection (to the NITS) received from AWFL. It has considered itself able to meet the AWFL application (and fulfil the conditions of its licence) by making the SONI AWFL Connection Offer. That offer does not involve any C5 type connection type works in RoI. The Connection Point is, on AWFL's preferred arrangements, to be in NI.
309. However, following the various requests for further information (outlined above), it seems that AWFL has asked *EirGrid* to progress the SONI AWFL Connection Offer and related Connection Point in an application *to EirGrid* for connection (under ECP 2.2). We do not see how EirGrid could make an offer for connection relating to the connection point in NI. EirGrid offers (and only offers) connection to the RoI TS (or more correctly perhaps connection to the All-Island Networks at connection points on the RoI TS).
310. Applications to EirGrid for connection to the transmission system are applications for connection at a Connection Point in RoI to the ROI TS. EirGrid doesn't process Connection Points in NI to the NITS. If AWFL wants to progress connection with an application *to EirGrid* then it will need to specify a Connection Point in RoI. The Connection Point under the accepted SONI AWFL Connection offer is in NI. The CBF can't be utilised to progress the SONI AWFL Connection Offer.



311. The scenario in which there might be a role for the CBF in progressing an application by AWFL to EirGrid under the ECP 2.2 application would be were EirGrid to decide (and the decision is EirGrid's in line with its legal obligations) to suggest a connection methodology (with the assistance of SONI and NIE for the NI portion of the design) that involves a Connection Point in RoI but also related works in NI (say through to the Coolkeeragh substation (or another transmission node on the NITS)).
312. Any such decision would, as we say, be a decision for EirGrid, although we accept that it could be prompted by AWFL expressing a preferred connection methodology from a ROI (located) Connection Point (likely at a transformer at the windfarm substation).
313. Importantly, such an arrangement would not be in fulfilment of the SONI AWFL Connection Offer. It would relate to a wholly separate connection offer *from EirGrid for a different Connection Point*. AWFL would be entitled (in principle) to a use of system agreement (holding the requisite ERA licence and CRU authorisation to construct the AWFL windfarm) and would pay UoS type charges to EirGrid in respect of *the generation in RoI*.
314. This arrangement would involve a request by EirGrid to SONI for assistance under C27. Again, there has been no request made to SONI by EirGrid for CBF type assistance.
315. We note that SONI has confirmed that it considers itself placed to meet any call for assistance from EirGrid under C27. It has referred to the TIA experience. We consider this a useful confirmation.



11. OBSERVATIONS ON SNUGBOROUGH

316. We have, as set out above, had extensive correspondence on the issue of *Snugborough*. SONI now confirms that it introduced a specific term into the GTUoS Agreement for GEL (for *Snugborough*) which required it to have an Article 10 generating licence or Article 9 Exemption or an ERA licence. It did this in 2014. The circumstances in which this came about are not yet clear.
317. SONI has also confirmed a view that it does not have authority to enter into a (C25(1) type) G-TUoS Agreement with a person not defined as an “eligible person” within the meaning of C25(1). It is not clear how SONI’s action in offering a bespoke arrangement to GEL sits with this explanation of its regulatory obligations.
318. The Utility Regulator is to examine what if any action can and should be taken in respect of the bespoke arrangement offered to GEL. We confirm that GEL is not and has never been a person licensed under Article 10 of the Electricity Order. Nor does it seem to have ever benefited from an Article 9 Exemption.



12. OBSERVATIONS ON SLIEVE KIRK

319. The circumstances of the connection of *Slieve Kirk* are not entirely clear (given the passage of time). However, it appears that AWFL is right to note that *Slieve Kirk* constructed some connection assets and then these were “adopted” by NIE.
320. This is a different arrangement to that envisaged in the (AWFL) Project.
321. Adoption of the assets before they are operated means that the relevant HV (transmission rated) assets would have been owned and operated by persons duly authorised to participate in transmission (i.e., NIE and SONI respectively). That can be compared to a situation where AWFL confirms that it plans to own and operate the NI-HVTBA.
322. We see no parallel between *Slieve Kirk* and the AWFL Project. The operators of *Slieve Kirk* are generating electricity in NI and are authorised to do so under an Article 10 generating licence.



13. MINDED-TO DECISION

323. This section of the document is structured under the following headings:

- (i) A recap of the Request and the reasons for it
- (ii) Our interpretation of Condition 25(1)
- (iii) The policy rationale behind the “*eligible person*” limitation in C25(1)
- (iv) Examination of AWFL’s reasons for the C25(1) request
- (v) Overall minded-to decision on the C25(1) request
- (vi) Minded-to decision on the Amendment Request
- (vii) Further complications should we grant the Request: the participation in transmission issue.

(i) A recap of the Request and the reasons for it

324. We set out our understanding of the Request in the “purpose” section of this document. The “introduction” section included an explanation as to how we reached that understanding.

325. To recap, there are two parts of the Request. The first part is the C25(1) request. The other part is the Amendment request.

326. We have explained how and why we propose to deal with the C25(1) request first.

327. Each part of the Request is founded on the *principle proposed*. We have summarised our understanding of the principle proposed as follows:

“Seen in context, we consider the “*principle proposed*” to mean that a *generating* entity must, in order to be entitled to a C25(2) type formal connection agreement or a C25(1) offer of terms (for a use of system agreement) be either (a) authorised to generate electricity by an Article 10 Generating Licence or Article 9 Exemption **OR** (b) authorised to generate electricity by licence under the ERA.”

328. AWFL offers the following reasons as to why the Request should be acceded to

(a) there is a “*barrier to access to the SEM that rests within the NI legal framework*”

(b) the identified barrier should be “*rectified*” immediately in the “*interests of NI customers*”



(c) not to remove the barrier would be an act of discrimination by the Utility Regulator given the *Snugborough* circumstances

(d) removal of the barrier is required under EU law provisions

329. As explained already AWFL no longer says that agreement to the Request is required by reference to the UR's duties under the SEM Order (the so called "SEM duties").

330. We note that AWFL refers to the "*NI legal framework*". We do not understand AWFL to be asking the UR to bring about legislative change. We have no power to do so. We operate within the existing legal framework. Instead, we understand that AWFL is using "legal framework" (at least in so far as it makes the Request to the Utility Regulator)¹¹² in a broader way to refer to the regulatory framework presented by the existing language of C25(1) and the Standard SONI Connection and Use Documents.

331. AWFL says that its concerns "relate to its own position". We understand that. There is nothing wrong in that. However, we are obliged when considering the Request to look through a wider lens. Art 12 (of the Energy Order) obliges us to be guided by the principal objective and the associated statutory duties. That will be how we proceed here. The changes proposed in the Request would bring about changes that would affect not just AWFL.¹¹³

332. We have stated that we understand the *principle proposed* to be reflected in and implemented by the C25(1) request. So, rather than start with an assessment of the *principle proposed* in the abstract we propose to examine the C25(1) request and in so doing reveal our assessment of the *principle proposed*.

(ii) Our interpretation of C25(1)

333. SONI correspondence in this matter has indicated potentially varying interpretations of C25(1).

334. For instance, the 5 August 2021 SONI AWFL letter indicated that SONI could be prepared to vary/waive the eligibility criterion set out in C25(1) if it were satisfied that the circumstances justified such a departure.

335. However, the 14 June 2023 SONI UR Letter suggests a different approach. SONI there suggests that C25(1) is to be interpreted - in what SONI calls the applicable statutory "context" - as *prohibiting* SONI from offering terms to a person not defined as "eligible". The statutory "context" mentioned includes reference to the terms of C30(1) of the NIE Distribution Licence (as they now appear).

¹¹² Different considerations might apply in respect of the Exemption Refusal Decision and JR1.

¹¹³ The C25(1) request would bring about a significant change to C25(1) of the SONI TSO Licence. C25(1) is of general application.



336. We have already discussed how the terms of C30(1) were part of an administrative oversight during the 2017 process. That mistake involved the apparent deletion of the words in definition of “*any person*”. The definition of “any person” in Condition 30(1) prior to the 2017 process was essentially synonymous with the definition of “*eligible person*” in C25(1) (as it stands). There was no intention to delete the specified definitional text as part of the 2017 process.
337. We construe C25(1) as providing a qualified “right” to an *offer of terms* for entry into a G-TUoS agreement to applicants presenting as “eligible” as there defined. Others do not have that right. We consider, further, that C25(1) is to be interpreted so that it is only persons presenting as eligible who might make a *valid* application to SONI for “terms” so that SONI is considered prohibited from accepting as valid a request for C25(1) terms from or offering said terms to an entity that does not present as “eligible” as defined.
338. In construing C25(1) this way we look to the language of C25(1) itself, not including the “heading” part (noting the injunction against doing so in the interpretation parts of the SONI TSO licence set out in earlier parts of this decision document).
339. The text of C25(1) does not say in terms that SONI shall not offer terms for use of system agreements to persons who do not present as “eligible”. It says that SONI shall offer terms to those who present as “eligible.”
340. However, we consider that the word “eligible” in C25(1) is itself instructive. The notion of being “eligible” for an offer of “terms” (subject to C25(6)) carries with it, we consider, the opposite notion that there are those who will present as *in-eligible* for an offer of terms. This causes us to prefer the interpretation of C25(1) that we have set out above.
341. We find further support for our preferred interpretation of C25(1) – to the extent that it is required - in the terms of Condition 25(6) of the SONI TSO Licence.
342. Condition 25(6) specifies the circumstances in which SONI would not be obliged to offer “terms” for a G-TUoS agreement to a person presenting as “eligible”. If C25(1) is to be interpreted as investing a *discretion* in SONI to offer G-TUoS terms to persons not presenting as “eligible” then how is SONI to judge when to legitimately decide when to (properly) exercise such a discretion? And how is SONI to judge whether, and if so how, the factors presently listed in C25(6) might inform any *discretionary* decision to offer terms. Furthermore, how is SONI to protect itself from the all too apparent risk of being found to have acted contrary to the non-discrimination obligation in Condition 15 of the SONI TSO Licence in such circumstances? We see no good answer to these questions. We are driven back to our preferred interpretation of C25(1).
343. We do not consider that our clarified understanding of C30(1) changes things. SONI’s preferred view of C25(1) set out in the 23 June 2023 SONI UR Letter does, we accept, rely on the difference in text between C25(1) (which



contains the definition of “eligible person”) and the text in the present version of C30(1) of the published NIE Distribution Licence (which contains no limitation/definition on the words “any person”). However, we prefer to ground our interpretation in the text of C25 itself. We note that the SONI TSO Licence is a public document. We consider it too much to expect a person examining C25(1) to look to the words in C30(1) of the (separate) NIE Distribution Licence to divine the meaning of C25(1). Examination of the terms of the SONI TSO Licence is sufficient (in our view) to inform the meaning of C25(1).

344. Even if we are wrong in that and we should interpret C25(1) alongside C30(1) then we consider the result is the same. The present text of C30(1) looks to be a mistake. It should it appears include words for a definition of “any person” that broadly correspond to the definition of “eligible person” in C25(1). We consider that this consideration supports our preferred construction of C25(1) in suggesting a consistency between the two licence conditions.

345. We note that AWFL has not made an argument that C25(1) – as properly interpreted - permits SONI to offer G-TUoS “terms” to a person – like AWFL - who is not “eligible”, or at least has not done so directly. It did ask SONI to waive applicable terms in the 9 July 2021 AWFL SONI Letter, but SONI declined to do so in the 5 August 2021 SONI AWFL Letter. AWFL’s Request focuses on its case for modification to C25(1): the C25(1) request.

346. To some extent AWFL is, we accept, likely not overly interested in whether C25(1) is to be interpreted as affording SONI a “discretion” to offer G-TUoS terms to a person not presenting as an “eligible person”. AWFL asks for the licence to be modified so that it has a (qualified) “right” to a G-TUoS agreement under an enlarged C25(1) definition of “eligible person” (i.e., a definition that includes a *Republic of Ireland Generator* as per the language of the C25(1) Amendment Text). We understand AWFL to ask for the modification worked by the C25(1) Amendment Text to compel SONI (subject to C25(6)) to offer the terms for a G-TUoS agreement and provide a platform for a positive answer to the Amendment request. It wants any application it makes for use of system terms to be considered valid by enlarging the constituency of “eligible persons” within the language of C25(1).

347. But as we have explained, we have to view the matter through a wider lens, and it is right to start off by clarifying our understanding of what C25(1) means. We now move to look at the policy rationale behind the present wording of C25(1). As explained below, we consider that this policy rationale is consistent with the interpretation which we have adopted based on the language of C25(1).

(iii) The policy rationale behind the “eligible person” limitation in C25(1)

348. We have not been able to find material from the time of the grant of the SONI TSO Licence (in 2007) that reveals the (real time) policy thinking underpinning C25(1) as originally incepted (and as it now stands). Our



interpretation of C25(1) (above) is reached without reference to any such material.

349. That said, we consider that we are still able to reach a view as to the policy rationale underpinning the text of C25(1) as it concerns the “eligible person” limitation.
350. Again, we construe (as set out in the section above) C25(1) to mean that SONI can only accept as valid an application for G-TUoS agreement “terms” from and offer terms to an “eligible person” (as defined).
351. We note the part of the “eligible person” definition that relates to an application from a person that has made an Article 10 licence application to the UR that has not been withdrawn or refused. We consider that this provision contemplates a situation where a person has an outstanding Article 10 licence application awaiting determination by the UR and wishes to commence the G-TUoS agreement application process pending that determination. The provision means that the fact that the Article 10 application has not yet been refused (or withdrawn) means that SONI can accept the application for terms as valid under C25(1).¹¹⁴
352. We further consider that the “terms” offered for the G-TUoS agreement would - for any “eligible person” who has made a (valid) C25(1) application granted by SONI (i.e., as not subsequently refused by exercise of the C25(6) exception) - be expected to include a “condition” that required the person who applied to hold and continue to hold either an Article 10 licence or an Article 9 Exemption. That expectation is matched by the terms of the *published* SONI G-TUoS agreement. In that way a person who has made an application for an Article 10 generating licence can make a valid application for G-TUoS agreement terms (provided the application for an Article 10 generating licence has not been refused/withdrawn) but must obtain an Article 10 generating licence (or an Article 9 Exemption) in order to meet the conditions of any resultant G-TUoS agreement (with SONI).
353. But why restrict an offer of terms to an “eligible person” (as defined) in this way (with a matching expectation that those terms would include a condition that only persons exempt (under Article 9) or (by then) licenced (under Article 10) could oblige SONI to provide use of system rights under the relevant G-TUoS agreement)? What is the policy rationale for this?
354. We consider that there are (apart from the licences for the TO and the TSO (both Article 10 licensed to participate in transmission)) two categories of persons who can be expected to need and apply for a G-TUoS agreement. These are suppliers and generators.
355. *Suppliers* of persons to be supplied electricity will not need a connection agreement but they will need use of the NITS to convey the electricity they purchase from others to those whom they supply in NI.
356. The activity of “supply” in NI requires a licence or an exemption. Otherwise, it is unlawful. It seems only right therefore – as a matter of policy –

¹¹⁴ It does not appear that a valid application can be made by a person who has not yet obtained an actual exemption from DfE under Article 9 of the Electricity Order.



that the right to use the NITS - afforded by a SONI TUoS agreement (for suppliers) - is limited to those supplier entities *legally* supplying persons in NI with electricity conveyed on the NITS be that via holding an Article 10 supply licence or a relevant Article 9 Exemption.

357. Suppliers using the NITS pay for that “use” via the UR approved TUoS charges for suppliers (approved under C30 of the SONI TSO Licence).
358. But the C25(1) request (and the Request more broadly) focuses on the position of *generators*? What of them?
359. We consider that the policy underpinning the “eligible person” definition (or limitation) in C25(1) is one that holds that only those *generating in NI* should be entitled to make a valid C25(1) use of system application (to SONI as NI TSO) because it is considered appropriate that those seeking use of system from a Connection Point in NI should be subject to (necessary) regulatory control in NI and that type of control is only exercisable (under the current statutory framework) in relation to either an Article 9 Exemption (with conditions) or an Article 10 generating licence (with conditions)¹¹⁵ both of which might only be granted to an entity *generating in NI* under the Electricity Order.
360. Under this policy, entities *generating in Rol* – and thus not able to seek out terms for/hold a G-TUoS agreement from/with SONI (as NI TSO) - can be expected to seek out and obtain a (transmission) use of system agreement from *EirGrid* (as Rol TSO). They are in principle entitled to an offer of terms for a G-TUoS Agreement from *EirGrid* (as Rol TSO) *provided* they hold the requisite statutory authorisations *applicable in Rol* (see section 34(3) of the ERA) which includes an Rol (ERA) licence to generate. In this way the position in Rol mirrors the current position in NI.¹¹⁶
361. This policy seems to be entirely consistent with our understanding of the territorial limitation of statutory functions of (i) the UR (and DfE) and (ii) the CRU. Generation of electricity is an activity that needs to be overseen and controlled. The safe and secure supply of electricity is an essential societal requirement. That applies to NI and Rol. Statutory provisions provide the framework for the necessary oversight and regulation in each jurisdiction.
362. In NI the activity of generation (in NI) is controlled/regulated (under statute) by the DfE and the Utility Regulator. Generation in ROI is controlled/regulated by the government department in Rol and the CRU as regulator. The jurisdictional and regulatory competences are separate and distinct. The SEM arrangements do not undermine that basic proposition.¹¹⁷

¹¹⁵ An earlier part of this document set out the powers of the Utility Regulator in relation to the breach (or anticipated) breach of a condition of an Article 10 licence or Article 9 Exemption.

¹¹⁶ It seems that if the position were reversed and AWFL were generating *in NI* under an Art 10 generating licence or and Art 9 exemption it could at best achieve a use of system agreement (from a Rol SO) for a Connection Point *in Rol* conditional upon being licensed under the ERA (see section 34 of the ERA). It seems to us that AWFL could not achieve any such licence as there would be no activity of generation (in those circumstances) in Rol (the territorial limit of the ERA being Rol).

¹¹⁷ Note here can be made of the statement in *Re Viridian* (approved in the *SONI JR Case*) that there is a SEM-C for each separate regulatory authority (see paragraph 251 above).



Neither the UR nor the DfE has any existing statutory power to regulate those generating electricity on RoI. Likewise, neither the RoI government nor the CRU has a statutory power to regulate electricity generation in NI.

363. Looking at the example of a generator with AWFL's export profile/characteristics will suffice to further demonstrate the policy rationale.
364. AWFL proposes a use of system with a MEC of 37.2 MW. This is a type of (direct) export onto the NITS system (at the Connection Point (in NI) that could carry risks to the security/reliability of the NITS unless the behavioural characteristics of export are kept within defined parameters. A generator with an MEC of 37.2 MW is not a small/*de-minimis* generator.
365. It is right from a policy perspective that this type of risk is properly controlled. That control is exercised – in NI - through the UR's enforcement functions and related information gathering powers.
366. But AWFL is not subject to the UR's enforcement powers if it doesn't have an Article 10 generating licence or a relevant Article 9 Exemption (with conditions)¹¹⁸. That this is so is explained in the section of this document that sets out our powers.
367. From this we can see the practical demonstration of the thinking behind a policy that requires a generator looking for a use of system agreement from SONI to be licensed or exempt under the provisions of the Electricity Order. Because only a person generating in NI can obtain an Article 10 generating licence or Article 9 Exemption it follows that it makes policy sense that only those type of generators should be able to achieve a use of system from the NI TSO for direct export onto the NITS at a Connection Point in NI (provided they are duly licensed or exempt under the Electricity Order).
368. One can look here too to the critical importance of the SONI Grid Code to the maintenance of the security/reliability of the NITS.
369. The NI Grid Code acts as the rule book for those interfacing directly with the NITS. Incentivising significant exporters of electricity on to the NITS to comply with the Grid Code, under threat of the UR's statutory enforcement powers, is an important protection for NI consumers and so aligns with the (Article 12) principal objective.
370. Allowing significant direct exports to interact with and use the NITS without any regulatory oversight at all in NI is on the face of it difficult to align with our Article 12 principal objective. We note the special emphasis placed within Article 12 on the need to ensure security of supply.
371. We also find ourselves returning to the text of the SONI Connections Policy set out in paragraph 36 above. That text emphasises SONI's special legal responsibility to act as day-to-day guardian of the security and reliability of the NITS in the interests of consumers. SONI refers to its statutory duty

¹¹⁸ We recognise that the 2013 Order provides for small (*de-minimis*) generation in NI to qualify for an exemption. Generation above the (10MW MEC) threshold requires an Article 10 generating licence or a specific Article 9 exemption from DfE with (we assume) conditions.



under Article 12 of the Electricity Order. That duty is reflected in the terms of Condition 20 of the SONI TSO licence.

372. The security and reliability of the NITS is of critical importance to NI consumers. It is sometimes said that the transmission system is the “backbone” of an electricity system. It is no different in NI.
373. Consumers (both existing and future) need to be assured that all proportionate measures will be taken to ensure that the integrity of the Grid is protected.
374. We consider that the UR should support SONI in the discharge of its very important role of ensuring the security/reliability of the NITS through compliance with the Grid Code. It is difficult to see how facilitating significant export directly onto the NITS (through a NI (located) Connection point), where the relevant exporter is not subject to (statutory) regulatory compliance mechanisms, is consistent with that aim.¹¹⁹
375. We consider that these considerations are also reflected in the 5 August 2021 SONI AWFL Letter.¹²⁰
376. We consider that our thinking here is consistent with our understanding of the CBF (set out above) in enabling connections to the All-Island Transmission Networks on one side of the border (with a Connection Point and activity of generation in that jurisdiction) which involve associated works on the other side of the border.
377. So far, we have dealt with security of supply type considerations and set out how there is a substantial policy justification (in the protection of NI consumers) for the present wording of C25(1). We have alluded to the potential adverse consequences should we accede to the C25(1) request (which, again, will result in a modified licence condition of general application).
378. There is additional aspect to think about. We consider that if we agree to the C25(1) request there will present a scenario in which AWFL is not liable to any use of system charges under any G-TUoS agreement with SONI. It also seems that AWFL would not be liable for UoS charges payable to EirGrid.
379. This is so because the current wording of C25(1) – as we have explained - refers to *generation in NI*. So too does the related C30 of the SONI TSO licence (as set out above).
380. Again, AWFL accepts that it would not be generating in NI. So, even if AWFL obtained a G-TUoS Agreement with SONI, it would not – on current arrangements – be liable to pay G-TUoS charges under that GTUoS Agreement. And there seems no other mechanism for AWFL to be made liable

¹¹⁹ The CRU has no regulatory enforcement powers in respect of activity in NI.

¹²⁰ There SONI mentions matters such as the Fuel Security Code. That is not to say that we endorse all that SONI says in the 5 August 2021 SONI AWFL Letter. We have already explained our preferred interpretation of C25(1) and so do not align with SONI’s then suggested view of C25(1) allowing SONI to consider as valid (if the circumstances warranted it) an application for C25(1) (use of system) terms from a person who did *not* present as an “eligible person” (as defined).



to use of system charges under a UoS agreement with SONI. AWFL does not engage (yet) with this consideration.

381. AWFL would likewise not be liable to UoS charges payable to EirGrid because there is (uniquely)¹²¹ to be no G-TUoS agreement with EirGrid in respect of the AWFL *generation in Rol*.

382. This situation would, we consider, introduce an inequitable and beneficial arrangement for AWFL. It is not clear how this arrangement could be considered consistent with promoting effective competition between those engaged in generation (noting the Article 12 scheme in this regard).

383. There is a further consideration still. This concerns so called *Other System Charges*. These charges are also payable under a G-TUoS agreement. Other System Charges (as set out in the regulatory provisions section of this document) include what are called *Generator Performance Incentives (GPI)*. These GPI act as a further incentive for compliance with the Grid Code. So, a generator with a G-TUoS agreement with SONI can expect to be financially penalised for failing to meet certain Grid Code performance requirements. The GPI are approved under the regulatory oversight of the respective regulators.

384. It is not clear how AWFL would be subject to GPI under a SONI G-TUoS agreement if it is not generating in NI. That would not seem to be promotive of effective competition in generation.

385. In summary, therefore, we view there to be a strong policy case for upholding the present wording of C25(1) as regards the “eligible person” limitation. That strong *prima facie* case emanates from the security of supply considerations and the critical importance of incentivising compliance (through the prospect of regulatory enforcement) with the SONI Grid Code when one is looking at Connection Points in NI. The other C30 “charging” considerations provide additional support for a *prima facie* case in favour of retention of the current arrangements set out in C25(1).

386. We turn now to examine each of AWFL’s advanced reasons as to why the UR should accede to the C25(1) Request.

(iv) Examination of AWFL’s reasons for the C25(1) request.

(a) barrier to the SEM

387. AWFL contends that there is a “barrier” to access to the SEM in the current regulatory framework to include the terms of C25(1).

388. We accept that if a grid level/type generator can’t get a connection to a Grid, then there is an indirect barrier to participation in the SEM. There can be an indirect relationship between the two things. A large-scale generator who cannot achieve a connection will find it very difficult if not impossible to “sell”

¹²¹ So far as understood.



any electricity it produces. But we do not consider that AWFL has adduced convincing evidence of any such “barrier”.

389. We have rehearsed the interactions with AWFL on the issue of ECP 2.1 and ECP 2.2 connection applications it has made to EirGrid. AWFL confirmed that it “withdrew” an ongoing ECP 2.1 application in December 2020. That application had been made in September 2020, a few months after AWFL accepted the SONI AWFL Connection Offer.

390. As to the ECP 2.2 application, we have found AWFL to be unclear in its correspondence on this matter. AWFL originally claimed that its ECP 2.2 application would not be progressed and had been “withdrawn”. Subsequently, it confirmed that the ECP 2.2 application was still “live”.

391. AWFL also confirmed that it last heard from EirGrid – as to its outstanding ECP 2.2 application in June 2022. When invited by the UR to contact EirGrid to seek clarification AWFL declined. This was despite the UR advising AWFL that EirGrid had published a document that stated that AWFL was “due to connect” with an MEC of more than 50MW. We consider this a strange position to adopt.

392. AWFL has stated that the connection under the SONI AWFL Connection Offer is the most economical for AWFL. It has also confirmed that the Project will likely be abandoned if it must connect (in Rol) via EirGrid. No substantial detail has been offered to substantiate that position.

393. It might well be the case that AWFL prefers to connect via the SONI AWFL Connection Offer. That might well be in what it determines to be its commercial interests. It is entirely legitimate for AWFL to be driven by commercial considerations. It is (or will) be a commercial actor involved in producing and selling RES-E. However, we look at the matter more broadly. Here there is no indication that AWFL could not connect to the Rol transmission system.

394. All told we do not consider that there is a “barrier” to participation in (or “access” to) the SEM.

395. Even if we are wrong, and there is a barrier to the connection of the AWFL Project (and with that a barrier to AWFL access to the SEM) and we assume that the AWFL Project will be abandoned if we do not accede to the C25(1) request, we do not consider that such considerations inhere with sufficient weight to come close to displacing the strong *prima facie* case we have set out in favour of the retention of the current wording of C25(1). Again, our concerns about security of supply are key. Our assessment becomes clearer still when we factor in the “charging” issues we have set out.

(b) *the interests of NI customers*

396. AWFL says we need to “rectify” the “barrier” in the “interest of customers in NI”. It doesn’t set out why the interest of NI consumers are best served by acceding to the C25(1) request (or the request more broadly).

397. It is noted (again) that AWFL has abandoned its case on (the so-called) “SEM duties”. AWFL’s abandoned case on *SEM duties* did include reference to the “effective competition” between persons engaged in generation *in the interests of consumers of electricity in NI*. We recognise that our Article 12



duties require us to consider the aspect of promotion of competition where appropriate.

398. We have considered the competition aspect. We accept that AWFL's participation in the SEM could, in principle, increase competition in the generation of electricity. However, we are still driven back to our concerns about security of supply should we accede to the C25(1) request (which would result in a change not limited to AWFL). That is a critical aspect of the interests of NI consumers. We also weigh our separate concerns about the (C30) charging statement component; a concern that itself relates to the potential for an adverse impact on competition were we to accede to AWFL's C25(1) request without also putting in place mechanisms to secure appropriate charging arrangements.
399. We do not see how the addition of AWFL (37.2 MEC) to the pool of SEM generators (assuming for this purpose that AWFL will be substantially frustrated in SEM participation if it doesn't go through the SONI AWFL Connection Offer route; which, as explained above, we do not accept) is such as to cause us to run the security/reliability risks involved in acceding to the C25(1) request. We do not see how this balance is in the interest of consumers. Factoring in the additional C30 concerns further adds to the case against the C25(1) request.
400. In making our assessments we have paid full regard to the fact that AWFL is (or would be) a RES-E generator and it is in the interests of consumers that new RES-E generators connect in an orderly way. That is a consideration in both NI and RoI. However, we do not consider that the fact that AWFL would be an RES-E type generator shifts the fundamentals of our analysis. The system security concerns still loom large in our judgement as to what is in the interest of consumers in NI; a judgement that finds additional support in our consideration of the C30 "charging" elements.

(c) AWFL undertaking to comply with the Grid Code

401. AWFL has indicated in some of the correspondence¹²² on this matter that it will voluntarily undertake to comply with the SONI Grid Code.
402. We in no way question AWFL's intentions here, but it is enough to observe that the UR cannot use its enforcement powers in respect of a voluntary undertaking. The Utility Regulator is not able to enforce against any such undertaking, as it would were there to be a binding condition¹²³ under the usual regulatory regime. Thus, the prospect of a voluntary undertaking does not appear to weigh in favour of the C25(1) request when we balance it against the considerations outlined above in founding the strong *prima facie* case for retention of the current wording of C25(1).

¹²² See the correspondence with SONI when AWFL was considering placing a new BESS at the NI substation.

¹²³ I.e., a licence condition in an Article 10 generating licence or a condition in an Article 9 Exemption.



403. We also note SONI's observation that the SONI Grid Code and EirGrid Grid Code are not facsimiles. We consider that SONI's reference to the different TSSPS¹²⁴ is apposite as an example of the jurisdictionally distinct approach of the respective TSOs. The Grid in Rol is not the same as the Grid in NI. The TSOs are obliged to reflect material differences in their respective Grid Codes.
404. Furthermore, the two Grid Codes can also be expected to evolve in the future. They are dynamic documents responding to specific considerations applying to the separate (albeit physically synchronised) transmission systems. Even sections of the respective Grid Codes that exhibit parity today – allowing AWFL to comply with each Grid Code - might well diverge in the years to come, noting that a windfarm can be expected to have an operational lifespan of 20-30 years. One might legitimately ask how AWFL can sensibly commit to full compliance in respect of two jurisdictionally separate Grid Codes where it cannot be predicted how those Grid Code might diverge in future.
405. The considerations that might arise in assessing the utility of a general undertaking of the type apparently considered by AWFL are different to those that might apply when considering the terms of C27(7)(b) of the SONI TSO Licence. In that circumstance (which as we have explained doesn't arise in this case¹²⁵) the undertaking is an additional means by which SONI might legitimately refuse to make an offer to *EirGrid* for C27 type assistance under the CBF. That is a different circumstance to one where AWFL says – if it does - that it should obtain a C25(1) offer of terms for use of system from SONI because it will “undertake”¹²⁶ to comply with all aspects of the SONI Grid Code (and the EirGrid Grid Code) even (somehow) where those provisions are in current or future conflict.
406. We have not conducted an analysis to see which parts of the respective Grid Codes differ and whether or how AWFL might not be able to comply with the provisions of each Grid Code at the same time. We consider that the issue of key relevance is the fact that there is no statutory route for the UR to enforce, using its enforcement powers, against any breach of “undertaking” (offered presumably to SONI).¹²⁷ There must, we think, be appropriate regulatory oversight.

(d) *Snugborough and discrimination*

407. We have already explained the situation with *Snugborough*. It is entirely legitimate for AWFL to raise the issue.

¹²⁴ See the 5 August 2021 SONI AWFL Letter.

¹²⁵ As has been explained neither SONI nor EirGrid has invoked the CBF arrangements in this case. Each apparently considers itself able to discharge its legal responsibilities without recourse to the CBF.

¹²⁶ It is not clear to whom a Condition 27(7)(b) undertaking would be offered. It seems the candidates are either SONI or EirGrid. The UR is not, it seems, the intended recipient of any undertaking.

¹²⁷ We see no statutory function for the UR to deal with “undertakings” from generators in Rol (or NI).



408. AWFL was initially unsuccessful (through a EIR request) in obtaining relevant information from SONI about the terms of the GEL G-TUoS Agreement. That information was secured by the UR with the co-operation of GEL. GEL is to be commended in how it dealt with the UR's request for information.

409. The relevant correspondence explains that the Utility Regulator had no role in the way that GEL was offered bespoke G-TUoS agreement terms in 2014. There is no different treatment for AWFL in such circumstances.

410. As already outlined, we are presently considering whether there are potential grounds for any regulatory action in respect of the *Snugborough* matter. The UR shall deal with that matter in separate correspondence with SONI.

411. We consider that there are no grounds to any claim that AWFL would be a victim of discrimination should the UR not agree to accede to the C25(1) request (or the Request more generally).

412. To clarify, we consider the *Snugborough* arrangements to appear anomalous. We do not consider that they provide any support for the C25(1) request (or the Request more broadly).

(e) *Slieve Kirk*

413. We have outlined (above) our understanding of the situation in *Slieve Kirk*. We have explained how there is no real comparison between the situation in *Slieve Kirk* and the AWFL Project.

(f) *EU Law*

414. We do not consider that we are required to accede to the C25(1) request (or the Request more broadly) to show compliance with EU law. As explained above, AWFL did not explain in the 9 July 2021 AWFL UR Letter nor the 18 May 2022 AWFL UR Letter why a failure to accede to the Request would amount to a breach of EU law. However, in JR2, AWFL's position was that the Request should be granted because of the requirements of the Regulation and the Directive. Specifically, in a Skeleton Argument filed by AWFL in its application for leave to bring JR2, AWFL relied upon Article 3 of the Regulation and the principles set out in sub-articles (c), (f), (h), (i), (n) and (q). We have set out those provisions in the section above relating to EU law. It is not immediately apparent to us why AWFL relies on a number of those principles.

415. By way of preliminary, those principles relate to the operation of electricity markets, as defined (see Article 2(40) of the Regulation, referring to Article 2(9) of the Directive) as "markets for electricity, including over-the-counter markets and electricity exchanges, markets for the trading of energy, capacity, balancing and ancillary services in all timeframes, including forward, day-ahead and intraday markets". The present scenario does not relate directly



to the operation of an electricity market, but rather connection of a generator to a transmission system.

416. In any event, even were the principles to be engaged, it is hard to see how they indicate that the UR is obliged to/should grant the C25(1) Request.
- a. Principles (c) and (f) are perhaps relied upon by reason of the encouragement of low carbon generation. However, as explained above, we do not consider that there is a barrier to AWFL connecting to the All-Island Transmission Networks. To the extent that it is more expensive to connect by means of a Connection Point in RoI (under an agreement for connection with EirGrid), or less suitable to AWFL's business plan (which in any event we do not consider has been demonstrated, on the basis of the high level information which has been provided to us), it is far from clear to us that the regulatory position is one which means that the system is not facilitating or enabling low carbon generation.
 - b. Principle (h) relates to trading in electricity (again, coming back to the fact that these principles relate to the electricity market). It is not clear why AWFL considers that barriers to cross-border transactions on the market for electricity would not be being "progressively removed" (or would be created) by maintaining the regulatory regime in its current form.
 - c. Principle (i) relates to regional cooperation. Again, we note that this is cooperation in relation to electricity markets. It relates to the approach to regional coordination set out in the Regulation (see, in particular, Article 16). It is unclear why this is thought to be relevant. However, even if the cooperation were to relate to matters of connection and were NI and RoI to be considered different regions, it seems to the UR that the design of the CBF is such as to involve a significant degree of regional cooperation to enable connections on one side of the Border to be facilitated where they involve works on the other side of the Border.
 - d. Principle (n) relates to entry and exit into the electricity market. We do not consider that this principle is one which requires that generators are entitled to connect in whichever way they prefer, irrespective of other considerations (in particular, the security considerations which are set out above).
 - e. Principle (q) relates to non-discrimination, which we have addressed elsewhere in relation to the issues pertaining to *Smulgedon*. Principle (q) also refers to transparency. We consider that the present position is transparent, including the operations of the CBF (were AWFL to wish to engage with it).

Although we note that parts of the DfE Affidavit in JR1 record that SONI has indicated that further work would need to be done once a request had been made (by a TSO) under the CBF we also note that SONI has more recently (in response to questions from the UR) indicated in the 8 November 2022 SONI UR Letter – that it was "confident" (having referred



to Section C ¹²⁸ of the TIA) that it would be able to process an application under the CBF. SONI also indicated that saw “no barrier” to it making an application to EirGrid under the CBF.

Further, while EirGrid is outside our jurisdictional competence, we note that there is nothing in the correspondence to suggest that EirGrid considers itself unable to utilise the CBF.

417. For these reasons, we do not consider that EU law requires the UR to accede to the C25(1) request (or the Request more broadly).

(v) Overall minded-to decision on the C25(1) request

418. It is our judgement¹²⁹ – for the reasons outlined above – that we should not accede to the C25(1) request.¹³⁰ We do not consider that to do so would be in line with our Article 12 responsibilities. Most particularly, it would not, we judge, be in line with our principal objective to protect the interest of NI consumers. AWFL has provided no good reason to displace the strong *prima facie* case for retention of the current definition of the “eligible person” definition in C25(1). We consider the security of supply considerations to be paramount. The “charging” considerations provide an additional reason for our overall judgement.

419. To be clear, given that we approach the C25(1) request as a proxy for the *principle proposed*, it follows from our rejection of the C25(1) that we also reject the *principle proposed*.

¹²⁸ Paragraph 221 of this document describes how SONI’s reference to Section C might be a reference to Section D. We have looked at section D and can see that the TIA makes provision for what are called RoI TSO Applications and those applications are understood to be applications in relation to the CBF. SONI will be able to clarify any misunderstanding in its response to this document.

¹²⁹ Again, for the avoidance of doubt, all the positions set out in this document reflect a minded-to decision.

¹³⁰ Noting that we have already discussed how Art. 14 constrains how we might react to the C25(1) request.



(vi) **Minded-to decision on the Amendment request.**

420. Again, AWFL accepts that the Amendment request only falls for consideration should we be persuaded to answer the C25(1) request in a positive way and agree to make the modification as per the C25(1) Amendment Text in acceptance of the “*principle proposed*”. Our minded-to decision is not to accede to the C25(1) request. By that we signal a refusal to accept and implement the *principle proposed*. However, that does not absolve us of the need to make a minded-to decision on the Amendment request.
421. We propose to give a minded-to decision on the Amendment request on the basis that we might (having considered the representations on this document) decide to change course and answer the C25(1) request in the affirmative in acceptance and implementation of the *principle proposed*. We retain an open mind.
422. We note that AWFL does not specify in its 18 May 2022 AWFL UR Letter how we could “ensure” that the amendments requested in the Amendment request are made. Nor does it specify the textual changes to the Condition Precedents in the Standard G-TUoS Agreement Terms and the Standard G - (formal) Connection Agreement Terms requested. That said, the general configuration of the stated “necessary amendments” – to bring alignment with the C25(1) request change - is not too difficult to gauge. It would likely involve adding the C25(1) Amendment Text to each of the Condition Precedent parts.
423. Our minded-to decision on the Amendment request is that the best course would be to defer any consideration as to if and how the amendments involved in the Amendment request could be actioned until *after* any decision is taken to propose modification to C25(1) as per the C25(1) request. We consider that we would need to have detailed discussions with SONI as to the applicable arrangements. It might be that SONI would want to consult on any proposed changes to the SONI Standard Connection and Use Documents. NIE Networks might need to be involved in discussions to ensure that there are no unintended consequences so far as it is concerned.
424. It could be that SONI would agree to make the changes to the Standard Connection and Use Documents voluntarily. Absent that we would have to consider further amendments to the form of Condition 25.
425. Things might be different when it comes to that part of the Amendment request that concerns proposed changes to the *accepted SONI AWFL Connection Offer*. It is not clear how we could “ensure” that SONI change the terms of clause 9.29 of the accepted SONI AWFL Connection Offer. Again, AWFL doesn’t say.
426. Any licence modification has only *prospective* effect so it is not clear how the C25(1) licence modification (if it were to take place) could impel any *immediate* change to Clause 9.29 of the accepted SONI AWFL Connection Offer even if it could somehow prompt a change to clause 9.29 as a template condition used by SONI. It might be that SONI would agree a variation to clause 9.29 (so far refused) of the SONI AWFL Connection Offer in any new context of changes or proposed changes to C25(1) and/or the SONI Standard Connection and Use Documents.



427. We do have power to settle the terms of a disputed C25 offer (see C26(1) of the SONI TSO Licence) or vary the terms of a connection agreement where its terms provide for variation (see C26(3)). It does not seem that the first facility is in play given that AWFL has accepted the terms of the SONI AWFL Connection Offer. And neither party has referred to the facility in C26(3) so that it is unclear whether either party considers it might be utilised in this case.
428. It would seem beneficial for SONI and AWFL (and other respondents) to consider these observations in responding to this document. We need to chart the way ahead if we do ultimately decide to accede to the C25(1) request.

(vii) Further complications should we grant the Request (the participation in transmission issue).

429. As explained above, there have been discussions between the UR and AWFL relating to the issue of whether an Article 10 *transmission* licence would be required by AWFL's proposed connection arrangements. The relevant correspondence is rehearsed in the "introductory" section (above).
430. Although the analysis which we have set out above is unaffected by this issue, we consider it worth noting that even should the UR accede to the Request (and, ultimately, following the proper Article 14 licence modification process - to include any appeal to the CMA - modifications to C25(1) and SONI Standard Connection and Use Documents and/or the SONI AWFL Connection Offer made) AWFL's planned Project may not in fact be achievable because it may well be participating in transmission within the meaning of Article 10 of the Electricity Order¹³¹ which activity would require to be licenced, and as a matter of EU law, there are regulatory complications where an entity engages in both transmission and generation.

¹³¹ As explained, in relation to the NI-HVTBA.



14. POTENTIAL INVOLVEMENT OF SEM-C

431. We note that AWFL abandoned the (so called) *SEM duties* part of its Request in the 18 May 2022 AWFL UR Letter.
432. However, we consider that we are still obliged to keep under consideration whether this matter might end up being determined to be a SEM “matter” under Article 6 of the SEM Order. As the *SONI JR Case* explains, the SEM-C has full jurisdiction over such matters. We have previously advised that AWFL of the potential for SEM-C involvement in this matter.
433. This minded-to decision does not cause us to refer the matter to SEM-C at this stage, SEM-C has been previously advised¹³² of the *Aught* case/matter and has made no determination that it presented as a SEM matter. We do not consider that this minded-to decision could cause the SEM-C to make a SEM matter determination. Our minded-to decision cannot, we consider, have a freestanding *effect* on the SEM. Furthermore, our minded-to decision on the primary C25(1) request is not to make any change.
434. However, should consideration of the representations made in response to this document cause us to venture a change of course then it would seem then that the matter would have to be referred for SEM-C consideration being a matter that could well be considered a SEM matter (within the meaning of Art 6 of the SEM Order).
435. We note here the provisions in RoI (section 34(3) of the ERA) which require a person connecting to the RoI TS to hold an ERA licence before it can obtain a use of system agreement; no provision being made for a person with an Article 10 Generating licence (or Art 9 exemption) to obtain an effective¹³³ use of system agreement with EirGrid (or the other RoI system operator (ESB)).¹³⁴ As already noted, agreeing to the C25(1) request could introduce some “imbalance” between the arrangements for use of system in each of the jurisdictions. SEMC might well wish to consider this feature.
436. Furthermore, we note that the calculation of G-TUoS charges is harmonised on an all-island basis under decision/s of the SEM-C. If we were to accede to the C25(1) request, then it might be that there would need to be consideration of applicable changes to the all-island charging methodologies. That consideration might involve public consultation.

¹³² In September 2021 and again on 26 January 2023.

¹³³ Section 34(3) of the ERA provides that any offer of use of system shall be “subject” to the person seeking a use of system agreement holding an ERA licence authorising generation *in RoI*.

¹³⁴ Seemingly meaning that an entity generating *in NI* (under Art 10 generating licence or Art 9 exemption) could not achieve an effective use of system agreement from an RoI SO (EirGrid/ESB) in respect of a Connection Point *situate in RoI*: see section 34(3) of the ERA.



437. We shall keep all closely involved participants updated as to any SEM-C deliberations.



15. APPENDIX 1 – 09 July 2021 AWFL letter to UR



BY EMAIL ONLY to [REDACTED]
[REDACTED]
[REDACTED]

FAO: [REDACTED]

Director Wholesale Markets
Utility Regulator (“UR”)
Queens House
14 Queen Street
Belfast
BT1 6ED

PRIVATE AND CONFIDENTIAL

9 July 2021

Dear Sirs

Aught Wind Farm (“AWFL”) – CONNECTION ARRANGEMENTS

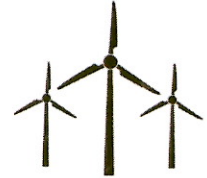
We refer to our previous correspondence with [REDACTED] and [REDACTED], and our correspondence resting with your letter of 23 April 2021 wherein the UR refused our application for a Generation Licence.

We have today also copied you into letters sent to both the Department for the Economy (“Department”) and SONI Limited (“SONI”).

Our view is that as a result of the UR’s rejection of our application for a generation licence, and the Department’s current refusal to provide an exemption under Article 9 of The Electricity (Northern Ireland) Order 1992 (the “Order”), AWFL is placed in a position where it cannot comply with the proposed terms in SONI’s Connection Offer. Accordingly, we are requesting the Department, in the first instance, to re-consider our application for an exemption for the reasons set out in our letter to them.

By way of starting point, we emphasise that AWFL already holds a licence to generate electricity which has been issued by the Commission for Regulation of Utilities (“CRU”) pursuant to section 14(1)(a) of the Electricity Regulation Act 1999 (as amended), which is the relevant statutory provision under which the CRU issues such licences in Irish law (the “Irish Act”).

To recall, AWFL has been provided with (and accepted) a Connection Offer from SONI and has made every effort possible to comply with paragraphs 9.29 and 9.30 of the Connection Offer,



AUGHT WINDFARM LIMITED

which appear to be required pursuant to Condition 25 of SONI's Licence (including the requirement of entry into a Transmission Use of System ("TUoS") Agreement)¹. AWFL has done so by seeking to ascertain the need for a generation licence from the UR and seeking an exemption from the Department under Article 9 of the Order. To repeat, we consider that AWFL is being left in an impossible position whereby, unless an exemption is granted or an amendment or waiver made to SONI's Connection terms (see below) and Transmission Licence, we will be unable to meet these evidentiary requirements under the terms of the Connection Offer. The net result of this is the inability of potential stakeholders to legitimately access and participate in the all-Island Single Electricity Market ("SEM"). This, in turn also means that the effective and efficient functioning of the SEM, as arising in particular (but without limitation) under *inter alia* The Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 ("the 2007 Order"), and as detailed further below, is being stymied. We note also that SONI, the UR and the Department each have a real vested interest in promoting the effective and efficient functioning of the all-Island SEM under the Northern Ireland Protocol and retained EU legislation.

In light of the above, we would respectfully request that the UR, as the regulator in Northern Ireland of the electricity market (and acting in the ultimate interests of Northern Irish customers), takes immediate action to rectify this barrier to access to the SEM that rests within the NI legal framework by exercising its authority to:

- (i) modify Condition 25(1) of SONI's Licence to remove all references to "any eligible person" (together with the full definition of "eligible person" which requires that such applicant is a licensee or licence applicant), and replace with the term "any person" so that it is consistent with Condition 25(2) of the Transmission Licence where Condition 25(2) stipulates only that "*On application by any person, the Licensee shall (subject to paragraph 6) offer to enter into a Use of System Agreement [...]*";
- (ii) direct SONI to amend the Condition Precedent set out in clause 2.1 of SONI's standard form TUoS Agreement (for electricity generators) so that the User may be authorised to generate electricity pursuant to a licence granted in accordance with either Article 10(1)(a) of the Order or Section 14(1)(a) of the Irish Act, or benefit from the relevant exemption from the requirement to hold such a licence. This is in light of the fact that the SEM operates on an all-Island basis and that AWFL already holds a licence to generate electricity which has been issued by the CRU; and
- (iii) direct SONI to make the necessary amendments to its standard form Offer for Connection to the NI Transmission System and Transmission Connection Agreement to give effect to the principle proposed in sub-paragraph (ii) above.

¹ In which, in order to enter into a TuoS Agreement you must meet the definition of an "eligible person" pursuant to Condition 25 of SONI's Licence and also the Condition Precedent under clause 2.1 of the TuoS agreement itself that a "*User must be authorised to generate electricity by virtue of a licence under Article 10 (1) of the Order (or to be exempt from being licensed under Article 9 of the Order)*".



Our proposals are consistent with, and indeed required by, the UR's principal objective and duties in relation to the SEM arising under *inter alia* the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007, and in particular those identified at Article 9(1) to (5):

- a. notably, by failing to take any of the above requested action, the UR would be in breach of its duty to fulfil its principal objective under Article 9(1), being to protect the interests of consumers of electricity in Northern Ireland and promote effective competition between persons engaged in, or commercial activities connected with, the sale or purchase of electricity through the SEM. Such commercial activities are precisely what AWFL is seeking to undertake and, despite already having been granted a licence to generate electricity from CRU, as well as having accepted a Connection Offer from SONI, it is being prevented from so doing;
- b. further, the UR would also be failing to perform its statutory obligations by not giving proper regard to those objectives arising under Article 9(2), including securing that the functions of the Department, the UR, the Irish Minister and CRU are exercised in a co-ordinated manner (Article 9(2)(c)); and
- c. further again, the UR is overlooking its obligation to carry out its functions in a way best calculated to promote efficiency and economy in the NI electricity market, secure an environmentally sustainable long-term energy supply in Northern Ireland (Article 9(4)(a) and (b)), and have further regard to the environment and promote renewable energy (Article 9(5)).

Please take note that failure by the UR to take action in the present circumstances may leave AWFL with no option but to be forced seek recourse through the relevant means. All of our rights are reserved in this regard.

Given the commercial urgency of this matter, we would be grateful for a response to this letter within the next 14 days i.e. on or before **5pm on 23 July 2021**. We look forward to hearing from you.

Thank you in advance for help and co-operation with considering our correspondence.

Yours faithfully

[Redacted signature block]

Aught Wind Farm Limited



Copy to:

UR

[REDACTED]

SONI

[REDACTED]

The Department

[REDACTED]



16. APPENDIX 2 - 18 May 2022 AWFL UR Letter



Aught Wind Farm Limited
12 Milltown Business Park
Buncrana
County Donegal

BY EMAIL ONLY to [REDACTED]

and [REDACTED]

FAO: [REDACTED]
Director Wholesale Markets
Utility Regulator ("UR")
Queens House
14 Queen Street
Belfast
BT1 6ED

PRIVATE AND CONFIDENTIAL

18 May 2022

Dear Sir/Madam

Aught Wind Farm ("AWFL") – CONNECTION ARRANGEMENTS

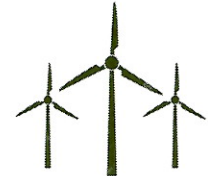
Your reference WM – 020 – 1116

We refer to the above matter and acknowledge receipt of your correspondence dated 14 April 2022, received by email. Any defined term used in this letter shall have the meaning ascribed to such term in your correspondence unless stated otherwise.

We note that you are reconsidering the request/s made in our correspondence of 9 July 2021 and require some further information and clarification from AWFL to do so.

Taking each of your questions in turn:

1. Although AWFL is on the batch list under ECP 2.2, the application has not been progressed by EirGrid and therefore no applicable timetable has been issued to AWFL. EirGrid has been unable to provide certainty on the cost and method of connection to AWFL so the application will not be progressed.
2. AWFL requested a meeting with EirGrid to discuss the existence of Framework amongst other matters [relating to its ECP 2.2. application] on the 24 February 2022. In attendance at that meeting was [REDACTED] and [REDACTED] of EirGrid. AWFL requested that EirGrid advise AWFL of the practical procedural steps for implementation of the cross-border framework to ensure that it was operable. AWFL were advised that the framework was not supported by any underlying enabling documentation. As a result, EirGrid are unable to facilitate AWFL's method of



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connection as determined by SONI as the least cost technically acceptable solution for the generation activities of AWFL.

AWFL and EirGrid have an agreed minute of the meeting on 24 February 2022 captured on email. Mr [REDACTED] made the following comments on the framework:

“BF confirmed that the Cross Border Framework is not a singular policy/agreement, but stitched into a number of aspects, such as, but not limited to, the Single Electricity Market Policy, the System Operators (SONI & EirGrid) Licensing legislation and reciprocal connection agreements between SONI & EirGrid. As a result, there is no one policy or relevant document which sets out the exact process to utilise the Cross Border Framework”.

“BF stated that if Aught WF was to pursue the ECP-2 process, that EirGrid can not offer grid connections connecting directly to the SONI network”.

3. No further discussions between AWFL and SONI have taken place. Indeed, SONI has not at any stage of the application process advised AWFL how such framework might be utilised in effecting the connection of the Aught Wind Farm to the NITS.
4. Given the likely cost and timetable risks in relation to a method of connection (which would require significant upgrade works not under the contemplation of the system operators to facilitate a connection to either Sorne Hill or Trillick), SONI determined that the least cost technically acceptable solution for the Aught Wind Farm would be a connection to the NITS. That is therefore what AWFL has been progressing with as the method of connection. This is the most economic, effective and co-ordinated manner in which to connect the Aught Wind Farm.

In terms of the specific information requested, we would respond as follows:

- (a) September 2020
 - (b) October 2020 (i.e. being the date AWFL was listed on the initial batch list for ECP 2.1.)
 - (c) December 2020
 - (d) The electricity network to which the Wind Farm was to be connected had the application not been withdrawn by AWFL was a matter for the network companies under the ECP ruleset (i.e. nodal assignment, etc.) which was not progressed so AWFL cannot comment any further
 - (e) AWFL had, by this stage, accepted a connection offer from SONI and the Wind Farm had therefore withdrawn from the ECP process as SONI had determined that the least cost technical solution was via a connection to the NITS and EirGrid had stated to AWFL that the Wind Farm could not maintain two connection offers from two separate system operators.
5. AWFL’s concerns relate to its own position.
 6. AWFL no longer maintains the position that its requests of the UR are required by reason of the latter’s duties in relation to the SEM, in particular those identified at Article 9(1) to (5) of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007. Accordingly, AWFL is not requesting that the UR take into account the SEMC decisions 21-027 and 22-009.



7. The document or documents referred to in the excerpt are as follows:
- (a) the standard form of grid connection offer that is prepared by SONI and issued to applicants in accordance with condition 25 of the SONI Licence prior to entering into a Connection Agreement. It is therefore separate and distinct from the referenced "*Transmission Connection Agreement*". In the experience of AWFL, this document will typically include terms and conditions relevant to the requests made in the 9 July Letter. In particular, such offers typically include a condition which provides that should a generator such as AWFL accept the offer, then prior to the wind farm connecting and energising at the connection point the generator shall provide evidence to SONI that it is authorised to generate electricity by virtue of a licence granted under Article 10(1)(a) of the Electricity (Northern Ireland) Order 1992 ("**the Order**") (or exempt from the requirement to be so licensed under Article 9 of the Order) to the connection point. Furthermore, such documents also typically include a condition which provides that a generator shall apply for and enter into an agreement with SONI for the use of the NITS (commonly referred to as a TUoS Agreement) which also contains this evidential requirement. In the case of AWFL, these provisions need amended.
 - (b) the referenced "*Transmission Connection Agreement*" is indeed SONI's published form of Standard Terms of a Connection Agreement (for generators) as referred to in your letter dated 14 April 2022. As per (a) above, this document also includes a requirement for prospective generators to hold a "Generation Licence" (which is defined by reference to the Order only) or to be exempt from the requirement to be so licensed under Article 9 of the Order. Again, in the case of AWFL, these provisions need amended.
8. In relation to the clarifications sought at paragraph 7 above, we confirm:
- (a) that the "*principle proposed*" is as described, namely an entity must be properly licensed (or exempt) in either jurisdiction of the SEM pursuant to the applicable laws; and
 - (b) the "necessary amendments" can be described as follows across the documents referenced:

Grid Connection Offer

The underlined text should be included:

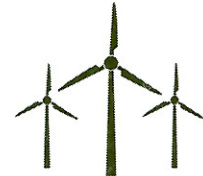
"Should the Generator accept this Offer, then prior to the WFPS connecting and energising at the Connection Point the Generator shall provide evidence that it is authorised to generate electricity by virtue of a licence granted under Article 10(1)(a) of the Electricity (Northern Ireland) Order 1992 (the "Order") or section 14(1)(a) of the Electricity Regulation Act 1999 (or exempt from the requirement to be so licensed under such provisions) to the Connection Point".

TUoS Agreement

The Condition Precedent in the TUoS Agreement needs to be amended to reflect the principle proposed.

Connection Agreement

The Condition Precedent in the Connection Agreement also needs to be amended to reflect the principle proposed.



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9. The term "direct" was not used in the context of a specific power of the Utility Regulator pursuant to a licence condition for example. It was used in a commercial context for the UR to take immediate action to rectify the barrier to access to the SEM that rests within the Northern Ireland legal framework. AWFL appreciate that any remediation of the issue identified by AWFL will need to be pursuant to a specific power that AWFL is asking the Utility Regulator to exercise. To that end, AWFL is requesting the UR to exercise its powers under Article 14(1) of the Electricity (Northern Ireland) Order 1992 by the way of making of modifications of the conditions of the SONI Licence to give effect to the "*principle proposed*"

This is likely to require minimal definitional changes only to the SONI Licence. By way of illustration:

The final paragraph of Condition 25(1) of the SONI Licence which sets out the definition of any "eligible person" could be amended to include the underlined text below:

"In this paragraph references to "eligible person" shall be construed as references to:

- (a) *persons licensed under Article 10 of the Order (or exempt from the requirement to be so licensed under Article 9 of the Order) who have applied for a licence under Article 10 and whose application has not been withdrawn or rejected (including, for the avoidance of doubt, the Power Procurement Business in its capacity as such); or*

- (b) *a Republic of Ireland Generator.*

We note that "Republic of Ireland Generator" is a defined term in the SONI Licence.

Should the making of such modifications proceed, it will also be necessary to ensure that the underlying industry documents align with the licence modification and are amended, in the case of AWFL, to facilitate the connection of the Wind Farm.

AWFL assume that it would not be participating in transmission in such circumstances and, therefore, is not eligible to apply for and/or be granted a transmission licence and would ask for your confirmation in reply.

Given the commercial urgency with this matter we request that you respond within 7 days.

Yours faithfully

[Redacted Signature]

Director

[Redacted Name]

Aught Wind Farm Limited





Copy to:

SONI

[REDACTED]
[REDACTED]

The Department

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

