

Licence Modifications to NIE Network's Distribution Licence: Electricity connections review

Decision Paper

03 October 2017



About the Utility Regulator

The 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; Electricity; Gas; Retail and Social; and Water. The staff team includes economists, engineers, accountants, utility specialists, legal advisors and administration professionals.

Our Mission

Value and sustainability in energy and water.

Our Vision

We will make a difference for consumers by listening, innovating and leading.

Our Values

Be a best practice regulator: transparent, consistent, proportional, accountable, and targeted.

Be a united team.

Be collaborative and co-operative.

Be professional.

Listen and explain.

Make a difference.

Abstract

We are publishing a decision on licence modifications pursuant to our electricity connections review decisions.

Audience

The licensees affected, other regulated companies in the energy industry, government, other statutory bodies and consumer groups with an interest in the energy industry.

Consumer Impact

An improved connections process will increase transparency and certainty for connecting customers.

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1 Introduction

Purpose of this Document

- 1.1 This document sets out our decision on licence modifications under Article 14 of The Electricity (Northern Ireland) Order 1992 (The Order).
- 1.2 We are making modifications to Part II Condition 30 and 31 of the NIE Networks Distribution Licence.
- 1.3 The licence modifications in this document are required to comply with our legal and regulatory obligations a number of decisions we published in Chapter 1 of our *Review of Electricity Distribution and Transmission Connections Policy* decision ('31 May decision paper'). We consulted on these licence modifications in our statutory consultation on 31 May 2017.

Approach

- 1.4 We have consulted extensively with stakeholders on the decisions which underpin these proposed licence modifications. We thank stakeholders for their input and statutory consultation responses.
- 1.5 We have also provided NIE Networks with details on the proposed licence modifications, including advance sight of the proposed changes to its licence, at as early a stage as possible.

Remaining document structure

- 1.6 This consultation document is structured in a number of chapters as follows:
 - Chapter 2 details stakeholder responses, our consideration of these, the licence modification, as well as the associated reasons and effects.
 - Chapter 3 sets out next steps.
- 1.7 The document is also complemented by one appendix setting out the licence modifications.

2 Details of licence modifications

Overview

- 2.1 Licence modifications are required to bring into effect certain decisions from our 31 May decision paper.
- 2.2 In this section we present the proposed licence modifications, stakeholder responses and our response, along with the reasons and effects for required licence changes.

Summary of changes from May 2017 statutory consultation

- 2.3 We received two responses (SONI and NIE Networks) to our statutory consultation.
- 2.4 After considering stakeholder responses we have made the following changes:
- inserted new text within paragraph 6 c) of the current licence condition 30 to address comments made by NIE Networks in respect of Article 25 of the Order.
 - replaced the proposed paragraph 10 b) of licence condition 30 of the new licence to address comments made by NIE Networks.
 - added the word “*Distribution*” to the title of licence condition 31 in light of comments made by SONI.
- 2.5 We have also corrected two typos in the draft licence modification (Condition 30, paragraph 8 c)).¹
- 2.6 The remainder of the licence modifications remain as proposed in the 31 May statutory consultation.

Stakeholder responses

NIE Networks

- 2.7 NIE Networks considers that we have taken a selective approach in making Licence Condition 30 consistent with legislation. It asks that we further modify the licence to resolve the following inconsistencies:
- The obligation in Licence Condition 30 requiring NIE Networks to make an offer within 3 months should be made consistent with Article 20(5) of the 1992 Order requiring one to be offered “as soon as practicable”.
 - UR has not removed Licence Condition 30, paragraph 2 which is inconsistent with obligations in Article 20(5) of the 1992 Order regarding content of offers.
 - UR should make provision under its proposed modification to Licence Condition 30 paragraph 6(c) to enter into an agreement under Article 25 of the 1992 Order. It notes that as drafted paragraph 6(c) is prescriptive as it only refers to Article 20(5) of the Order, whereas

¹ We have removed the wording “*except to the extent included in any agreement entered into pursuant to Condition in Paragraph 8c)* and replaced wording in Paragraph 8c) B) with the text “*enabling the Licensee’s performance of any related service*”, from the licence modification.

Article 25 of the Order allows for a 'special agreement' as an alternative to providing terms which meet the requirements of Article 20(5).

- 2.8 Since submitting its consultation response NIE Networks has submitted further comments concerning the proposed Licence Condition 30 paragraph 10 b). It believes that condition 30 paragraph 10(b) seeks to infer that a contract does exist through the use of language applicable to contracts. It contends that the proposed wording in Condition 30 paragraph 10(b) seeks to infer that a contract does exist through the use of language applicable to contracts such as the words 'offer', 'accepted', 'material breach' and 'rescind', It requests that Condition 30 paragraph 10(b) be revised to read:

“unless otherwise agreed by the person requesting the connection, a failure to complete such works by the date specified shall, where the applicant for connection has accepted the terms for connection issued by the Licensee, entitle the applicant for connection to withdraw their connection application.”

SONI

- 2.9 SONI says that it currently relies on the assurances provided in paragraph 8 of Licence Condition 30 to ensure that nothing in a connection agreement would compromise its ability to comply with the Grid Code.
- 2.10 It believes that paragraph 8 is not a potential exemption from issuing a connection offer, but instead believes it requires NIE Networks to maintain SONI's Grid Code compliance through the contents of the offers it issues. It said that proposed modification statement of effects, as consulted upon, did not account for removal of paragraph 8 from Licence Condition 30.
- 2.11 SONI also believes that Licence Condition 26(1) would not provide an implicit obligation for NIE Networks to refuse to make a connection offer if to do so would breach the Grid Code. It reasons that this is because SONI's role under the Grid Code is different from NIE Networks. It also says that an obligation on NIE Networks or the connecting party to comply with the Grid Code (LC 26(1)) is fundamentally different to an obligation on NIE Networks to ensure that the details contained within any offer that it issues does not compromise SONI's ability to comply with the Grid Code.
- 2.12 SONI also asks that the word 'distribution' is not removed from Condition 31 to prevent ambiguity, as NIE Networks obligations extend to only to the distribution system.

Our consideration of stakeholder responses

SONI

- 2.13 We note SONI's concerns about removing existing paragraph 8 of the Licence Condition.
- 2.14 SONI's main argument is its assertion that the existing paragraph 8 does not represent an exemption for issuing a connection offer.² If, as SONI believes, this was the case, then we agree that it would call into question why we are removing it to make the licence consistent with connection offer exemption obligations in legislation. However, this is not the case.

² SONI says instead that paragraph 8 requires NIE Networks to maintain compliance through the contents of the offers it issues.

- 2.15 This is because it is clear from the wording in paragraph 8 that this is a power in the licence to allow NIE Networks to refuse a connection where to otherwise grant it would place SONI in breach of the Grid Code. This is why we have considered whether the paragraph is consistent with similar provisions in the legislation.
- 2.16 In any case, it is unclear from SONI's reasoning why requiring NIE Networks to maintain Grid Code compliance through the contents of the offers which NIE Networks issues is different to requiring that NIE Networks does not issue an offer in order to maintain Grid Code compliance. This is because if NIE Networks were to issue an offer whose content does not breach the Grid Code then by definition it would have complied with paragraph 8 which requires that NIE Networks refuses to offer where it is in breach of the Grid code. Requiring the latter ensures the former.
- 2.17 Having explained why it is appropriate that we consider removing paragraph 8, it is worth summarising again why we then consider it is right to remove it; including what the associated effects are likely to be, as we set out in the May publications.
- 2.18 The proposed draft modification removes the existing grounds for refusal of a connection on the basis that including additional grounds for refusal (which are over and above the exceptions set out in Article 21 of the Electricity Order) is unnecessary and causes confusion as to NIEN's obligations. The removal is therefore to remove the unnecessary duplication, overlap and inconsistency with the legislation. Removing this will therefore potentially reduce confusion and improve certainty.
- 2.19 We have removed the paragraph 8 ground of refusal as it is not an exception within Article 21 of the Order for the above reasons and effects, as set out in our statutory consultation. We, therefore, also disagree with SONI that the effects have not been consulted on.
- 2.20 It is also worth noting that we have not received evidence of any circumstance where it would be possible for NIE Networks to refuse to make an individual connection on the basis that to do so would involve SONI being in breach of the Grid Code (nor have we for other licence exemptions we are removing).
- 2.21 However, notwithstanding this, should it be the case that making the connection would involve SONI being in breach of the Grid Code, we consider that one or more of the exceptions in Article 21(1) would come into play. Again, we have not received any evidence to contrary.
- 2.22 We note SONI's comment that we should add the word 'distribution' back into Licence Condition 31. We consider that the Condition is clear, but to avoid confusion we have further amended Condition 31 to take account of SONI's concern.

NIE Networks

- 2.23 We note NIE Network's specific concerns that we have not been consistent and its suggested changes.
- 2.24 NIE Networks makes specific points about the 3 month timing for the making of a connection offer and its response with regard to the provisions relating to the content of a connection offer.
- 2.25 These particular licence provisions are not inconsistent with the legislation (the Electricity Order) but effectively supplement the legislative requirements

and provide particular clarification in respect of them. There is no inconsistency between the licence and the legislation.

- 2.26 However, we are minded to amend the licence condition to take account of NIE Network's comment in respect of Article 25 of the Order.
- 2.27 The amendment would not simply be to refer to Article 25 of the Order as NIE Network's suggests. Instead we set out the following drafting (with the additional text being that highlighted in bold and using the version that formed Appendix 1 of the consultation published on 31 May 2017) for an amended paragraph 6(c) of Licence Condition 30:

*".....offer terms for the making of the connection, which offer meets the requirements of Article 20(5) of the Order, **save where the applicant has, under and in accordance with Article 25 of the Order, agreed with the Licensee that the making of the connection may be on such terms as may be agreed between them, and paragraphs 7 to 11 below; or**"*

- 2.28 NIE Networks also asks that Condition 30 paragraph 10(b) of the proposed modified licence be revised.
- 2.29 We note that while it is of course right that connection agreements - other than those entered into under and in accordance with Article 25 of the Order – are not contracts, it does not follow that simply using words such as 'offer', 'accepted', 'material breach' mean, or seek to infer, that a contract exists. We do not therefore necessarily agree with NIE's contentions in full.
- 2.30 However, we do acknowledge that use of the word 'rescind' has a particular meaning in contract law and therefore applies primarily to contracts. In light of the above, we have replaced 10 b), as consulted on, with the following new text:

"unless otherwise agreed by the person requesting the connection (the 'applicant'), a failure to complete such works, within the control of the licensee, by the date specified shall, where the Licensee's terms for making the connection are accepted by the applicant, be considered to be a material breach of the agreement entered into between the parties such that the applicant is entitled to bring the agreement to an end."

Modifications

- 2.31 The Licence Condition has been restructured (existing wording moved within the Condition along with new headings where relevant).
- 2.32 In addition to these changes, we are modifying Condition 30 and 31 by adding new wording or whole paragraphs to the licence, or by removing an existing paragraph from the licence.³ These are highlighted as follows:

Condition 30

- Inserting new words - "*consistent*" - and - "*detailed*" - in new Part A Paragraph 2 a) and b) and in new Part B Paragraph 9 b) (with respect to word "*detailed*").
- Inserting Part A Paragraph 4 d) and Part B Paragraph 6 d).

³ We note that in some instances new whole paragraphs being proposed for addition, as referenced above in paragraph 2.4, contain some of the existing wording in the licence. So the use of the term 'new' above is used as a simplification to guide readers to aspects of the proposed licence which, in our view, has a material amount of new text (but may still contain some original wording which remains relevant).

- Inserting Part B Paragraph 5.
- Inserting Part B Paragraph 6.
- Inserting Part B Paragraph 7.
- Inserting reference to “*Article 19 (1) of the Order*”, in new Part B, Paragraph 8.
- Inserting new wording - “*which in the opinion of the licensee*” – in new Part B, Paragraph 8 b).
- Inserting reference to “*Article 19 (1) of the Order*”, in new Part B, Paragraph 9.
- Removing Paragraph 5 of the current licence
- Removing Paragraph 8 of the current licence.
- Inserting wording - “*save where the applicant has, under and in accordance with Article 25 of the Order, agreed with the Licensee that the making of the connection may be on such terms as may be agreed between them*” to Part B, new paragraph 6c).
- Replace proposed wording in Paragraph 10 b) of proposed modification with - “*unless otherwise agreed by the person requesting the connection (the ‘applicant’), a failure to complete such works, within the control of the licensee, by the date specified shall, where the Licensee’s terms for making the connection are accepted by the applicant, be considered to be a material breach of the agreement entered into between the parties such that the applicant is entitled to bring the agreement to an end*”.

Condition 31

- Removing wording from current licence which relates to connections agreement disputes (but retaining that which relates to Use of System agreement disputes).

Reasons and effects

- 2.33 Our changes above remove inconsistencies and take account of any duplication between the legislative provisions and the current Condition 30 and 31. It reflects our proposals on connections policy as outlined in our 31 May decision paper. This will remove any associated confusion and provide certainty, in line with our policy objectives.
- 2.34 Our detailed reasons and effects are set out in paragraphs 1.1 to 1.62 of the 31 May decision paper, including our 3 April consultation paper and this document where relevant.

3 Next Steps

Timelines

- 3.1 This paper represents the Utility Regulator’s decision on modifications to NIE Network’s Distribution licence.
- 3.2 The modifications outlined in this decision paper will take effect from the 30 November 2017.
- 3.3 Table 1 summarises the next steps and associated timelines for the licence modification process.

Next Steps	Date
Effective date of licence modification decision	30 November 2017

Table 1: Next Steps

- 3.4 We note that this timetable allows for the effective date of the licence modifications to be at least 56 days after the publication of the licence modification decision, in line with the requirements of the Electricity (Northern Ireland) Order 1992.
- 3.5 This 56 day period provides an opportunity for the licence holder subject to the price control, any other licence holder materially affected by the decision, a qualifying body or association representing one of those licence holders, and/or the Consumer Council for Northern Ireland to appeal the decision on the proposed licence modifications to the CMA (Competition and Markets Authority).

Appendices

Appendix 1: Article 14 modifications to NIE Network's Distribution Licence

Condition 30. Requirement to Offer Terms for Connection to and Use of Distribution System

Part A – Use of System

Agreement for Use of System

1. Subject to paragraph 3, the Licensee shall, on receiving a request to do so from any person asking it to do so, offer to enter into an agreement for use of system under which it will:
 - (a) accept into the Distribution System, at such entry point or points and in such quantities as may be specified in the request, electricity to be provided by or on behalf of such person; and
 - (b) distribute by means of the Distribution System such quantities of electricity as are referred to in sub-paragraph (a) above (subject to any distribution losses) to such exit point or points on the Distribution System and to such person or persons as may be specified by the person making the request.

Charges and other terms for Use of System

2. Where the Licensee makes an offer to enter into an agreement for use of system under paragraph 1, it shall in that offer set out:
 - (a) the charges to be paid by the person seeking use of system, such charges (unless manifestly inappropriate) to be consistent with and referable to the statement prepared in accordance with paragraph 1(a) (or, as the case may be, paragraph 8) of Condition 32 or any revision thereof and to be in conformity with the requirements of paragraph 4 of Condition 32; and
 - (b) such other detailed terms as may be appropriate for the purposes of the agreement.

Exceptions

3. The Licensee shall not be obliged pursuant to paragraph 1 to offer to enter, or to enter into, a an agreement for use of system if to do so would involve the Licensee:
 - (a) in breach of any regulations made under Article 32 of the Order or of any other enactment relating to safety or standards applicable in respect of the Distribution Business;
 - (b) in breach of its duties under Article 12 of the Order;
 - (c) in breach of the Distribution Code; or

- (d) if the person making the application does not undertake to be bound by such parts of the Distribution Code and to such extent as the Authority shall from time to time specify in directions issued to the Licensee for the purposes of this Condition.

Responding to Use of System Requests – Timings

- 4. Where any person makes a request to the Licensee for use of system, the Licensee shall:
 - (a) as soon as practicable; and
 - (b) in any event no later than:
 - (i) where the request is for use of system only, 28 days; and
 - (ii) where the request is for both a connection to the Distribution System and use of system, 3 months,after receipt by the Licensee of all such information in relation to the request for use of system as the Licensee may reasonably require,
 - (c) offer terms for an agreement for use of system; or
 - (d) inform the person requesting use of system that the Licensee is unable to offer terms for by virtue of one or more of the exceptions set out in paragraph 3 above, together with the Licensee's reasons for the application of the relevant exception.

Part B – Distribution Connections

Treatment of Connection Requests

- 5. Where the Licensee receives a request from any person asking it to make a connection between (1) any premises or any other electricity distribution or transmission system, and (2) the Distribution System, the Licensee:
 - (a) shall not treat that request as anything other than a notice given under Article 20(1) of the Order requiring it to make a connection pursuant to Article 19(1) of the Order; and
 - (b) to the extent that the request does not comply with the requirements of Article 20 of the Order, shall take all reasonable steps, including by way of providing information and assistance to the person making the request, to ensure that it does so comply.

Responding to Connection Requests - Timings

- 6. Where the Licensee receives a request from any person for a connection to made to the Distribution System, the Licensee shall:
 - (a) as soon as practicable; and
 - (b) in any event no later than 3 months,

after receipt by the Licensee of an application containing all such information in relation to the required connection as the Licensee may reasonably request:

- (c) offer terms for the making of the connection, which offer meets the requirements of Article 20(5) of the Order, save where the applicant has, under and in accordance with Article 25 of the Order, agreed with the Licensee that the making of the connection may be on such terms as may be agreed between them, and paragraphs 7 to 11 below; or
- (d) inform the person requesting the connection that the Licensee is unable to offer terms for the making of the connection by virtue of one or more the exceptions available to the Licensee under Article 21 of the Order, together with the Licensee's reasons for the application of the relevant exception.

7. The Authority may on the application of:

- (a) the Licensee, following consultation by the Licensee with the person requesting the connection and such other persons as the Licensee considers may be affected or interested,

consent in writing that the period of 3 months specified in paragraph 6(b) shall, subject to such conditions as may be specified, be a longer period (including by reference to a specific date) as specified in the consent.

Provision of information about connection terms

8. Where the Licensee makes an offer to make a connection under Article 19(1) of the Order, it shall ensure that the offer makes detailed provision in relation to:

- (a) any works, and carrying out of any such works, that are required to connect the Distribution System to any other system for the transmission or distribution of electricity and for the obtaining of any consents necessary for such purposes;
- (b) any works, and the carrying out of any such works, required in respect of the extension or reinforcement of the Distribution System which in the opinion of the Licensee are necessary or appropriate by reason of making the connection and for the obtaining of any consents necessary for such purposes;
- (c) the installation of:
 - (i) any electricity meters required to enable the Licensee to measure the electricity being accepted into the Distribution System at the specified entry point or points or leaving the Distribution System at the specified exit point or points;
 - (ii) any special metering, telemetry or data processing equipment for the purpose of:
 - (A) enabling any person who is bound to comply with the Distribution Code to comply with its obligations in respect to metering; or

- (B) enabling the Licensee's performance of any related service;
- (d) the installation of such switchgear or other apparatus (if any) as may be required for the interruption of supply.

Charges and other terms for connection

9. Where the Licensee offers to make a connection under Article 19(1) of the Order, it shall in that offer set out:
 - (a) the connection charges to be paid to the Licensee, such charges (unless manifestly inappropriate):
 - (i) to be presented in such a way as to be consistent with and referable to the statements prepared in accordance with paragraph 1(b) (or, as the case may be, paragraph 8) of Condition 32, or any revision thereof; and
 - (ii) to be set in conformity with the requirements of paragraphs 6 and 7 of Condition 32;
 - (b) such other detailed terms as may be appropriate for the purposes of making the connection; and
 - (c) taking account of paragraph 10 below, the date by which any works required for the making of the connection (including for this purpose any works to reinforce or extend the Distribution System) shall be completed.
10. Where the Licensee receives a connection request which relates to a Relevant Generation Connection:
 - (a) the date referred to in paragraph 9(c) shall be no later than 24 months of the date the connection offer is accepted (the 'relevant period'), unless it is not reasonably practicable for the works to be completed within the relevant period (in which case the licensee shall provide the person requesting the connection with the reasons why it is not reasonably practicable for the works to be completed within the relevant period); and
 - (b) unless otherwise agreed by the person requesting the connection (the 'applicant'), a failure to complete such works, within the control of the licensee, by the date specified shall, where the Licensee's terms for making the connection are accepted by the applicant, be considered to be a material breach of the agreement entered into between the parties such that the applicant is entitled to bring the agreement to an end.
11. For the purpose of determining an appropriate proportion of the costs directly or indirectly incurred in carrying out works (or in relation to any of the other matters referred to in paragraph 6 of Condition 32) under an agreement for making a connection or modification to an existing connection the Licensee shall have regard to:
 - (a) the benefit (if any) to be obtained or likely in the future to be obtained by the Licensee or any other person as a result of the carrying out of such works (or of such other matters) whether by reason of the reinforcement or

extension of the Distribution System or the provision of additional entry or exit points on such system or otherwise; and

- (b) the ability or likely future ability of the Licensee to recoup a proportion of such costs from third parties.

Works on the transmission system

12. Where, in response to a request for a connection to the Distribution System, the Licensee is, following consultation, advised by the Transmission System Operator that works are also required on the transmission system, the references in paragraph 8 to works on the Distribution System shall apply equally to works on the transmission system.

Part C – Definitions and Interpretation

Definitions

13. In this Condition:

"high efficiency cogeneration"

has the meaning given to it in Directive 2012/72/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency.

"Relevant Generation Connection"

means a connection between the Distribution System and a high efficiency cogeneration generating installation (the 'relevant premises') the purpose of which is to enable the Distribution System to receive a supply of electricity from the relevant premises.

Condition 31. Functions of the Authority – Distribution Use of System Agreement Disputes

1. Paragraph 2 applies where the Licensee:
 - (a) receives a request pursuant to paragraph 1 of Condition 30; and :
 - (b) in response to that request:
 - (i) informs a person requesting use of system that the Licensee is unable to offer terms for such use of system by virtue of one or more the exceptions set out in paragraph 3 of Condition 30; or
 - (ii) offers terms to enter into an agreement for use of system which terms are not accepted by the person requesting use of system.
2. Where this paragraph applies, the Authority may, pursuant to Article 11(3)(c) of the Order and on the application of either the person requesting use of system or the Licensee, settle any dispute between the Licensee and that person in respect of the agreement for use of system 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 the use of system charges determined in accordance with paragraph 3 of Condition 32;
 - (b) that the performance by the Licensee of its obligations under the agreement should not involve the Licensee in a breach such as is referred to in paragraph 3 of Condition 30;
 - (c) that the terms and conditions of the agreement so settled by the Authority and of any other agreements entered into by the Licensee pursuant to an application under paragraph 1 of Condition 30 should be, so far as circumstances allow, in as similar a form as is practicable.
3. Where the person requesting use of system wishes to proceed on the basis of the agreement as settled by the Authority, the Licensee shall forthwith enter into and implement such agreement in accordance with its terms.
4. If either party to an agreement for use of system entered into pursuant to Condition 30 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.

