

NIE NETWORK CONNECTIONS

# **DECISION PAPER ON DISTRIBUTION GENERATION PROCESS CHANGES AND INTRODUCTION OF MILESTONES**

SECTION 5 (NIE NETWORKS SPECIFIC SECTION) OF CONSULTATION  
ON CONNECTING FURTHER GENERATION IN NI, ISSUED 31<sup>ST</sup>  
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## 1. INTRODUCTION

On the 31st of January 2018, NIE Networks and SONI issued a joint consultation, 'Connecting Further Generation in Northern Ireland' (CCFGNI). Sections 5.2 to 5.4 of the document, addressing 'Distribution Imminent Process Changes and Introduction of Milestones' were relevant only to NIE Networks. These sections detailed the changes to queuing principles and presented a number of questions to stakeholders on the potential introduction of milestones to Distribution offer of terms for connection, for a **Generating Unit**.

This paper outlines the responses received from stakeholders in relation to these more immediate matters outlined in Section 5.2 to 5.4 and the rationale for NIE Networks' final decision regarding the milestones which will be introduced into any Distribution offer of terms for connection, of a **Generating Unit**, issued after the 18<sup>th</sup> of May 2018, with the updated approach formalised within the Distribution Generation Application and Offer Process Statement (DGAOPS).

Although this paper highlights the changes to queuing principles and rationale for final decisions regarding milestones, applicants wishing to connect to the **Distribution System** (i.e. up to and including 33kV) and operate a **Generating Unit** in parallel with the NIE Networks' **Distribution System** (other than micro generation), should refer to the 'Distribution Generation Application and Offer Process Statement'.

A decision paper addressing the remaining sections of the same consultation will be issued Q2 2018.

Unless otherwise defined in this Statement, terms in this Statement which are capitalised and in bold type are defined in the **Distribution Code**<sup>1</sup>.

## 2. QUEUEING PRINCIPLES

As detailed in the CCFGNI; without block extensions the queuing principles must change. From the Effective Date of the, 'Distribution Generation Application and Offer Process Statement', which is 18th May 2018 at 17:00, all new applicants seeking export capacity, zero export or over-installs will have their queue position determined by the date and time at which their application is deemed valid.

For the avoidance of doubt; for applications that are deemed valid when received by NIE Networks, the queue position will be based on the date and time of receipt of the application, whereas where an application is deemed not valid when received by NIE Networks, the queue position will be determined by the later date and time of receipt of the outstanding information and / or application fee.

In order to ensure that an export applicant who has applied before the Effective Date of this Statement (18<sup>th</sup> of May 2018 at 17:00) is not disadvantaged by the change in queuing principles, any existing export connection application received prior to the Effective Date will be "frozen" immediately prior to this Statement becoming effective. Such export applications that are in receipt of planning permission and have provided relevant proof of planning permission before the Effective Date will retain the queue position held before the Effective Date. Such export applications without planning permission before the Effective Date will be queued beneath those with a queue position at the time of the effective date and then ordered by application date (See Figure 1).

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<sup>1</sup> <http://www.nienetworks.co.uk/about-us/distribution-code>

A two week notice period has been provided between the issue of the, ‘Distribution Generation Application and Offer Process Statement’ and the Effective Date when the new queueing principles will commence. This two week period is to allow applicants already in the queue to decide if they wish to proceed, given the introduction of Milestones to offer of terms for connection. If an applicant does not wish to proceed they will receive a full refund of their application fee on condition that they notify NIE Networks of such decision before the Effective Date. The two week period will also allow any applicants with planning permission who have not yet applied to submit their application under the Phase 1 principles should they wish to do so.

Pre Queue ‘Freeze’ Date -  
Prior to 18th May 2018 at 17:00

Post Queue ‘Freeze’ Date -  
After 18th May 2018 at 17:00

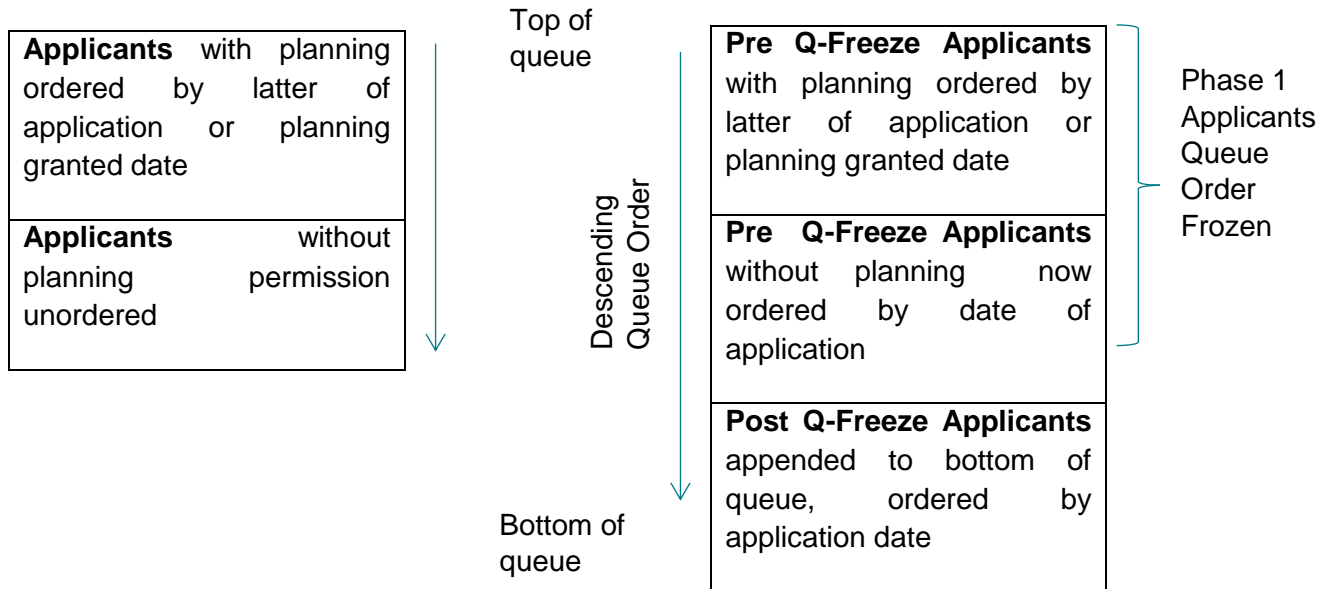


Figure 1: Queue Illustration

## 3. STAGE 1 MILESTONES

### 3.1 Responses to Stage 1 Milestones

NIE Networks and SONI received 15 responses to the CCFGNI. 14 respondents provided a response to the questions in the NIE Networks only sections. These respondents represented large scale developers with the exception of one who represented small scale developers.

The responses to the NIE Networks only sections of the CCFGNI regarding the introduction of milestones, for a **Generating Unit** seeking to connect to the **Distribution System**, provided a consistent industry view. With regard to our proposal for the introduction of a Planning Approval Milestone, 93% of respondents agreed, while one respondent wished for a multi criteria approach to be used to determine queue position at application stage. 69% of the 93% who agreed with the introduction of the milestone felt that the Planning Approval milestone should be brought forward to the point of acceptance of offer. None of the responses suggested that the Planning Approval Milestone should be more than 180 days from date of the Terms Letter.

There was a consensus that if the Planning Approval Milestone was not met, the offer should be terminated and capacity retracted. All but one respondent agreed that no extensions to this milestone should be given to take account of a planning appeal; with the respondent who did not agree suggesting that an extension should only be given to those who have had their planning appeal hearing and are awaiting a decision. It was noted by other respondents that due to the lengthy process of a planning appeal, providing extensions would potentially cause backlogs and capacity hoarding. There were no suggestions that the proof of planning permission or relevant consents should be different than that proposed.

### 3.2 Stage 1 Milestone Decision

#### 3.2.1 Timeline

As the majority of responses were in favour of the introduction of the Planning Approval Milestone, NIE Networks will be introducing a Planning Approval Milestone into any offer of terms for connection issued after the 18<sup>th</sup> of May 2018, for all **Generating Unit** applicants seeking new or modified Maximum Export Capacity (MEC) in receipt of an offer of terms for connection and will apply regardless whether Option 1 or Option 2 is accepted. For the avoidance of doubt, the Planning Approval Milestone will not be applicable to zero export applications or over-install applications.

As detailed in Section 2.1 of the CCFGNI, NIE Networks had proposed that this milestone would be required to be met 180 days after the date of the Terms Letter. Although there was significant support to bring the Planning Approval Milestone to time of acceptance, NIE Networks considered it not appropriate to tie this milestone to exactly the same date as acceptance of terms, with there being benefit in the Planning Approval Milestone having its own unique milestone date. NIE Networks have further balanced this view with respondents' comments that 180 days is too long for viable projects and the timeline for hoarding capacity needs to be reduced further. NIE Networks have decided that applicants will be required to meet the Planning Approval Milestone within 120 days from the date of the Terms Letter.

As no objections to the evidence requirements was outlined in the responses, applicants will be required to provide a copy of their planning permission or relevant consents (see Appendix A for relevant consents) no later than 120 days from the date of the Terms Letter. For clarification the proof of this

milestone must have been received by NIE Networks no later than the 120 days from the date of the Terms Letter. The proof of planning permission or relevant consents must be relevant and accurately reflect the project that is described in the application form. The applicant may provide a link to the website that provides evidence of their proof of planning permission i.e. the planning portal.

NIE Networks' reserves the right to act as sole arbiter in determining whether any evidence of planning permission provided is sufficient. Generally, NIE Networks' role will be to assess whether there is 'prima facie evidence of sufficient planning permission' on the basis of documentation provided. Where it is unclear, NIE Networks may request further evidence and the Planning Approval Milestone will only be deemed valid when the appropriate evidence is provided, noting that if such evidence is not provided until after 120 days the offer of terms will be terminated. Where the development does not require planning permission, the applicant should confirm and provide proof of the reason for planning permission exemption in advance of the 120 day milestone deadline.

### 3.2.2 Enforcement Rules

Although one respondent suggested that an extension should be given to those who have completed their planning appeal hearing and are awaiting a decision, NIE Networks did not accept this approach given the strong response from the remaining respondents that failure to meet the Planning Approval Milestone should result in the offer of terms for connection being terminated and capacity retracted.

NIE Networks decision is that failure to meet this milestone will be deemed to be a breach of the terms for connection and therefore the applicant's offer of terms for connection will be terminated, and capacity will be reallocated to another applicant. For the avoidance of doubt, please note that no extensions of time will be given to applicants to meet this milestone, even where applicants wish to undergo, or are currently undergoing, a planning appeal process. It should be noted that where applicants fail to meet their Planning Approval Milestone, the applicant's deposit will be refunded less any monies committed.

Where an applicant has received planning permission, but it is subject to a Judicial Review application which seeks to challenge the grant of that planning permission, NIE Networks will deem the Planning Approval Milestone to be met and the application for connection will progress through to construction at the financial risk of the applicant. If the applicant does not wish to take this financial risk, the applicant will have the option to withdraw their application therefore giving up the associated capacity. The applicant's deposit will be refunded less any monies committed.

It should be noted that NIE Networks will not commence any pre-construction works until the Planning Approval Milestone (if applicable) has been met. If however the applicant wishes for pre-construction works to commence ahead of the applicant meeting the Planning Approval Milestone, NIE Networks may facilitate this at the request of the applicant. If the applicant fails to meet the Planning Approval Milestone, the applicant's deposit will be refunded less any monies committed.

## 4. STAGE 2 MILESTONES

### 4.1 Responses to Stage 2 Milestones

In total, 71% of respondents did not agree with the introduction of Stage 2 milestones, with these respondents indicating that such milestones were overly onerous and caused un-necessary risk to projects. In the main respondents stated that achieving planning permission, accepting a connection offer and payment of necessary deposit are a strong indicator of commitment, thus they do not see the

necessity for projects to be subject to onerous enforcement actions after Stage 1. Some also suggested that the Stage 2 milestones were not robust enough and evidence from other jurisdictions has shown those milestones are not working effectively. There were also concerns that they would be open to legal challenge and gaming which could result in capacity hoarding.

All but one of those who believed that Stage 2 milestones were too onerous proposed that Longstop dates should be adopted by NIE Networks as a means to deter capacity hoarding. 44% of the 71% suggested a longstop date of 36 months while others suggested different time periods or did put forward a specific suggestion. One applicant suggested that SONI have a clause which requires the project to be completed 5 years from date of acceptance of the connection offer. They believed that as **Transmission System** projects are more complex than **Distribution System** projects, 5 years is too long for NIE Networks to adopt. Another applicant suggested that projects with regional significance should get more time. A number of respondents who had suggested longstop milestones believe that there should be a facility to extend the longstop milestone, provided proof of material progress is provided.

## 4.2 Stage 2 Milestones Decision

Taking account of all the strong arguments presented in the responses as to why Stage 2 milestones should not be introduced, NIE Networks has decided that the wider range of Stage 2 milestones proposed in the consultation will not be implemented. NIE Networks will instead introduce a single Longstop Milestone and, in addition, a post works completion Utilisation Milestone.

### 4.2.1 Longstop Milestone

The offer of terms for connection provided by NIE Networks will detail a Scheduled Completion Date along with a Longstop Milestone Date. These will be included in the Terms Letter for applicants seeking export, zero export or over-install and will apply regardless whether Option 1 or Option 2 is accepted.

NIE Networks have decided that a Longstop Milestone should also apply to zero export and over-installs offers as, although they do not hoard export capacity, they do impact on other network limitations including fault level. Having a Longstop Milestone will also discourage applicants from applying for zero export and over-install connections well in advance of actually needing the connection. By discouraging early applications, NIE Networks will help to ensure that the connection method used to connect the **Generating Unit** meets the relevant standards and codes in place at that time.

The Scheduled Completion Date is the date by which NIE Networks expects the construction works relating to the connection to be completed, at the time of issuing the offer of terms for connection.

The Longstop Milestone Date will be the date which is 24 months after the Scheduled Completion Date. I.e. If the Scheduled Completion Date for an applicant's project is 31<sup>st</sup> January 2019, their Longstop Milestone Date, and the date on which capacity can be retracted will be 31<sup>st</sup> January 2021.

NIE Networks has decided on a 24 month period for the Longstop Milestone for the following reasons;

A 36 month longstop period, as suggested by some respondents, is excessive and would allow typical **Distribution System** projects to hoard capacity for longer than typical **Transmission System** projects, even though **Transmission System** projects are more complex and require longer delivery timelines. The 24 month longstop milestone brings the timeline for **Distribution System** connections into line with **Transmission System** projects. This provides the right balance for allowing a project time to evolve and allowing NIE Networks to efficiently withdraw capacity from applicants who do not utilise capacity. In



addition to this, taking account of other jurisdictions, CRU have recently announced that they are reducing their Longstop period from 36 months to 24months<sup>2</sup>

It should be noted that the Scheduled Completion Date and Longstop Milestone Date detailed in the offer of terms for connection are established based on NIE Networks carrying out the Full Works for connections. A high level work programme will be included within the offer of terms for connection to provide clarity on how this Scheduled Completion Date has been derived. NIE Networks believes that basing the Scheduled Completion Date and Longstop Milestone Date on NIE Networks carrying out the Full Works, provides a pragmatic equivalence between Option 1 and Option 2. NIE Networks has decided on the Scheduled Completion Date being based on the construction works relating to the connection being completed rather than including works associated with the **Generating Unit** plant. This will enable NIE Networks to solely determine the Schedule Completion Date.

If the connection works are not completed by the Longstop Milestone Date, NIE Networks will be at liberty to terminate the applicant's offer of terms for connection and retract the capacity unless NIE Networks has approved an extension to this Longstop Milestone Date. It should be noted that NIE Networks will only extend the Longstop Milestone Date in circumstances where the applicant can prove that the delay in achieving the Longstop Milestone Date was due to a "Force Majeure Event".

For the purposes of this Statement "Force Majeure Event" means any event or circumstance, or series of events or circumstances beyond the reasonable control of the applicant which could not have been avoided by the applicant and which has the result that that the applicant is unable to achieve the Longstop Milestone Date, including war, public demonstration or other civil commotion, acts of terrorism, criminal damage, any effect of the natural elements, including unusually heavy or prolonged rain or accumulation of snow or ice, strikes and other labour disputes, the mechanical or electrical breakdown or failure of plant and/or apparatus owned or operated by the applicant, which has been operated in accordance with manufacture's recommendations, a delay by a supplier in the production or delivery of plant, materials or other components, an electrical system emergency or a delay on the part of NIE Networks or the TSO; provided however that lack of funds shall not be interpreted as an event or circumstance beyond the reasonable control of the applicant.

An applicant wishing to extend their Longstop Milestone Date must formally write to NIE Networks as soon as possible once they become aware of a delay to the Longstop Milestone Date due to a Force Majeure Event. The applicant must identify the nature of the Force Majeure Event and its expected duration and provide evidence to support their application for an extension to the Longstop Milestone Date. Whether or not the Longstop Milestone Date is extended will be determined by NIE Networks at its sole discretion taking into account the following factors:

- *The nature of the Force Majeure Event*
- *Is it expected that the Force Majeure Event will be resolved within a short period of time*
- *Has proof of material progress towards completion of the connection been provided*
- *Is there evidence of other project(s) seeking the same capacity*

#### 4.2.2 Utilisation Milestone

NIE Networks offer of terms for connection for larger **Generating Units** have an utilisation clause already within them, which in its nature is effectively a milestone. With the introduction of the Planning Approval

<sup>2</sup> <https://www.cru.ie/wp-content/uploads/2017/04/CRU18058-ECP-1-decision-FINAL-27.03.2018.pdf>



Milestone and Longstop Milestone, NIE Networks have decided to formally make the terms of this clause into a Utilisation Milestone.

NIE Networks have decided that the Utilisation Milestone will apply to all Generating Unit applicants in receipt of an offer of terms for connection and will apply regardless whether Option 1 or Option 2 is accepted. For the avoidance of doubt, the Utilisation Milestone will be applicable to applicants seeking new/modified MEC, zero export, or over-install.

For applicants seeking new/modified MEC, the Utilisation Milestone will ensure that the capacity available to the applicant can be reduced in the case where an applicant does not fully use the capacity assigned to it within its offer of terms for connection or connection agreement but has completed the connection works i.e. it has met the Longstop Milestone Date but is not using the capacity assigned within its offer or connection agreement to the application.

For applicants seeking zero export and over-install, while they would not hoard export capacity, they do impact on other network limitations including fault level. The Utilisation milestone will ensure that the connection method used to connect the **Generating Unit** meets the relevant standards and codes in place at that time, it will also ensure timely progression of applicants who receive an offer of terms for connection which states that no connection works are required as the Longstop Milestone will not apply.

For applicants seeking new/modified MEC, where the MEC is not fully utilised within 24 months of the completion of the connection works NIE Networks reserve the right to reduce the MEC for the installation to the sum of the MW name plate ratings of the **Generating Units** actually connected and commissioned. This will ensure that the capacity available to the applicant can be reduced in the case where an applicant does not use the capacity assigned to it within its offer or connection agreement fully but has completed the connection works i.e. it has met the Longstop Milestone Date but is not using the capacity assigned within its offer or connection agreement to the application.

For applicants seeking zero export or over-install applicants, the applicant must have the **Generating Unit**, as referred to in the offer of terms for connection, fully commissioned and evidence provided to NIE Networks within 24 months of the completion of the connection works otherwise NIE Networks' reserves the right to terminate the offer of terms for connection. In the event where no connections works are required, the applicant must have the **Generating Unit** as referred to in the offer of terms for connection, fully commissioned within 24 months of the date of the Terms Letter otherwise NIE Networks' reserves the right to terminate the offer of terms for connection.

## Appendix A Relevant Consents

In keeping with the relevant consents that were consulted upon with industry in 2014, the following specifies the relevant consent evidence required for different type of projects. This evidence will be used by NIE Networks in determining achievement of the Planning Approval Milestone<sup>3</sup>

- The required level of consent for onshore projects<sup>4</sup> is full Planning Permission;
- The required level of consent for a Compressed Air Energy Storage (CAES) plant that requires a Mineral Prospecting **Licence** is obtaining that licence;
- The required level of consent for offshore projects is either an Exclusivity Agreement or an Agreement for Lease from The Crown Estate.

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<sup>3</sup> Agreed consenting requirements can be found in the October 2014 Decision Paper at the following link:

<http://www.soni.ltd.uk/media/documents/Consultations/OffshoreConsentingRequirements/SONI-NIE%20Decision%20Paper%20on%20consenting%20requirements%20for%20offshore%20generation.pdf>

<sup>4</sup> Onshore projects include generation projects such as conventional generators, wind farms, solar parks, biomass plants, energy from waste plants amongst others.