

DETERMINATION PURSUANT TO REGULATION 46 OF THE CONTRACTS FOR DIFFERENCE (ALLOCATION) REGULATIONS 2014 FOLLOWING AN APPEAL MADE TO THE AUTHORITY PURSUANT TO REGULATION 43

Introduction

1. This determination relates to an appeal made by O2N Energy (Teeside) Limited (O2N) against a non-qualification determination made by the delivery body (National Grid Electricity Transmission plc – “NGET”) in respect of the prospective O2N Energy (Teeside) Contracts for Difference Unit (the “CfD Unit”).

Appeal Background

2. On 15 May 2015, the Distribution Network Operator (DNO) Northern Powergrid, made O2N a grid connection offer for 15MW, which O2N accepted on 2 February 2016.
3. O2N subsequently requested an increase of 10MW, totaling 25MW, to this connection offer. Northern Powergrid made a grid connection offer for 25MW on 20 July 2016, which they specified would be “*subject to a new connection agreement being in place.*” O2N’s acceptance of this offer is dated 15 August 2016.
4. O2N submitted an eligibility qualification application for a CfD unit in order to participate in the 2017 CfD allocation round (the “CfD application”), dated 21 April 2017.
5. In a Notification of CfD Qualification Determination dated 15 May 2017 (the “non-qualification determination”), NGET determined that O2N’s CfD application had failed to meet the relevant qualification criteria. NGET rejected the CfD application on the following grounds:
 - a) The grid connection acceptance letter provided as part of the application is an acceptance of a connection offer from the distribution system operator permitting export of 15MW capacity. However the Provisional Capacity Estimate stated on the application is 25MW. The connection agreement provided with the application therefore permits only 60% of the stated Provisional Capacity Estimate, which is below the 75% threshold requirement for a direct connection as stated in the Contracts for Difference (Allocation) Regulations 2014 (Allocation Regulation) 25(2).
 - b) O2N also provided a revised connection offer for 25MW, which is 100 percent of their Provisional Capacity Estimate, as part of their application. However this connection offer

has not been countersigned by O2N and therefore does not meet the evidentiary requirements of a connection agreement required by Allocation Regulation 25(2).

6. O2N submitted a review notice dated 22 May 2017 to NGET, requesting a review of the non-qualification determination, in accordance with Allocation Regulation 20. As part of this review request, O2N submitted a signed form of acceptance with an export capacity of 25MW. O2N also submitted an email from the distribution network operator, Northern Powergrid, to O2N as part of the review request, which states that the revised connection offer was accepted on 22 August 2016. The acceptance form is actually dated 15 August 2016, however the date is immaterial to the dispute.
7. In their Non-qualification review notice for the 2017 CfD Allocation Round dated 6 June 2017, NGET upheld the non-qualification determination on the following grounds:
 - a) For the same reasons cited in their Notification of CfD Qualification Determination dated 15 May 2017; and
 - b) The signed form of acceptance with an export capacity of 25MW was not provided to NGET in support of the original application which is the subject of the non-qualification determination. As such, it is considered new documentary evidence and therefore the Review Notice does not comply with the requirements of Allocation Regulation 20(2)(c).
8. In their Response to Qualification Appeal (Tier 2 Dispute) dated 21 June 2017, NGET states that they uphold the non-qualification determination after review for the following reasons:
 - a) The revised quotation sent to O2N from Northern Powergrid for the 25MW grid connection dated 20 July 2016 states that it is subject to a new connection agreement being in place, and all other supporting documents could be considered new evidence which is unacceptable.
 - b) The signed form of acceptance with an export capacity of 25MW was not provided to NGET in support of the original application which is the subject of the non-qualification determination. As such, it is considered new documentary evidence and therefore the Review Notice does not comply with the requirements of Allocation Regulation 20(2)(c).

Appellant's reason for appeal

9. O2N has argued that *"In accordance with regulation 25 of the Regulations, the company provided a signed copy of the connection agreement and then supplied further evidence on appeal clarification that O2N (Teeside) has a grid connection offer of 25MW"*.

Our Findings

10. Allocation Regulation 25(2) states that: *"where a direct connection or a partial connection applies or is to apply to the relevant CFD unit, the applicant must provide a copy of each of the connection agreements applicable to the relevant CFD unit which allows such connection."*
11. Connection Agreement is defined in Allocation Regulation 25(6) as: *"an agreement (including a countersigned offer) to connect to...(b) the distribution system, entered into by the operator of the relevant system"*.
12. Allocation Regulation 25(5) states that: *"The allocation framework which applies to an allocation round may amend, add to or remove the requirements in any of paragraphs (2) to (4) and the general qualification requirements are so modified where such an amendment, addition or removal is made."*
13. Schedule 4 of the CfD Allocation Framework for the Second Allocation Round states in relation to Allocation Regulation 25 that: *"In the Application, an Applicant must explain whether – a Direct Connection applies or is to apply to the relevant CFD Unit and where the connection is or will be: (b) to the Distribution System, the Connection Agreement entered into permits (via either a firm or non-firm capacity agreement) at least 75% of the Provisional Capacity Estimate of the CFD Unit to connect to the Distribution System"*.
14. O2N submitted a countersigned offer with their original application which was for an export capacity of 15MW. This constitutes only 60 percent of the full Provisional Capacity Estimate stated in their application for 25MW and consequently did not meet the 75 percent threshold requirement stated in Schedule 4 of the CfD Allocation Framework for the Second Allocation Round. As a result their Application was not a Qualifying Application.
15. Allocation Regulation 20(2)(c) states that *"a review notice must not contain any documentary evidence which was not provided to the delivery body in support of the application which is the subject of the non-qualification determination."*

16. O2N submitted a review notice against NGET's Notification of CfD Qualification Determination for the 2017 CfD Allocation Round dated 15 May 2017. This review notice was submitted on 22 May 2017 and was accompanied by a revised connection offer permitting an export capacity of 25MW which matched the Provisional Capacity Estimate stated in O2N's original application. However, this subsequent connection agreement had not been submitted with their original application and we therefore consider that it qualifies in accordance with Allocation Regulation 20(2)(c) as "*documentary evidence which was not provided to the delivery body in support of the application which is the subject of the non-qualification determination.*"
17. The onus is on applicants to provide the correct documentary evidence as the Allocation Regulations and subsequent amendments clearly set out what must be submitted with the application and plainly state that NGET may only determine whether an Application is a Qualifying Application based on the evidence provided at the time the Application was made.

Conclusion

18. For the reasons set out in this decision letter the Authority hereby determines pursuant to Allocation Regulation 46 that NGET's non-qualification determination decision in relation to the CfD Unit be upheld.

Determination

19. For the reasons set out in this decision letter, the Authority hereby determines pursuant to Regulation 46 that the non-qualification determination made by NGET be upheld.



Mark Copley

For and on behalf of the Gas and Electricity Markets Authority

2 August 2017