

DETERMINATION PURSUANT TO REGULATION 46 OF THE CONTRACTS FOR DIFFERENCE (ALLOCATION) REGULATIONS 2014 (AS AMENDED) FOLLOWING APPEALS MADE TO THE AUTHORITY¹ PURSUANT TO REGULATION 43

Introduction

1. This determination relates to appeals made by Renewable Thermal Systems Ltd (“RTSL”) against the reconsidered decisions made by the EMR delivery body (National Grid Electricity Transmission plc (“NGET”) in respect of the following Contracts for Difference (“CFD”) Units:
 - (1) Gentec WaTS UK
2. Pursuant to Regulation 46 of the Contracts for Difference (Allocation) Regulations 2014 (as Amended) (the "Regulations"), where the Authority receives an appeal notice that complies with Regulations 43 and 44, the Authority must review a reconsidered decision made by NGET.

Appeal Background

3. RTSL submitted an application pursuant to Allocation Regulation 16 on 19 April 2017 for the CFD Unit identified in paragraph 1 in respect of the 2016 CFD Allocation Round.
4. The CMU was determined by NGET pursuant to Allocation Regulation 17 to be non-qualifying in the first instance on 15 May 2017.
5. NGET provided two reasons to justify its determination:

In cell E1 of your CFD Application form you have selected that your CFD Unit has a “Direct” connection. Pursuant to Allocation Regulation 25(2), where a direct connection applies or is to apply to the relevant CFD unit, you must provide a copy of the

¹ References to the “Authority”, “Ofgem”, “we” and “our” are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day-to-day work.

connection agreement applicable to the relevant CFD Unit and either (a) where connection is to the national transmission system for Great Britain, that agreement must secure transmission entry capacity for the CFD unit of at least 75% of the provisional capacity estimate of the CFD unit, or (b) where connection is to the distribution system, that agreement must provide for the export of at least 75% of the provisional capacity estimate of the CFD unit to the distribution system.

“connection agreement” is defined in Allocation Regulation 25(6) as “an agreement (including a countersigned offer) to connect to (a) the national transmission system for Great Britain; or (b) the distribution system, entered into by the operator of the relevant system. However, the document you have provided in cell E7 of your CFD Application form is not a connection agreement and therefore does not meet the provisions of Allocation Regulation 25(2).

Further, pursuant to Allocation Regulation 14(10)(b) no application may be made in respect of a CFD unit in relation to which a capacity agreement applies. Under Allocation Framework Schedule 4 (Nonreceipt of funds under other Government support schemes) we are required to confirm that your Application is not an excluded Application under Regulation 14. We checked against the public register listing sites in relation to which a capacity agreement applies and the location of the CFD Unit as you have specified in cells B1 to B1e and B2 of your CFD Application is the same as a site that already holds a capacity agreement. As such it is an excluded application pursuant to Allocation Regulation 14(10)(b).

6. Pursuant to Allocation Regulation 20, RTSL requested a review of NGET’s non-qualification decision on 22 May 2017. NGET, in accordance with Allocation Regulation 20, upheld its initial decision to not qualify the CFD Unit in a Non-Qualification Review Letter dated 6 June 2017.
7. NGET justified its decision on the following grounds:

The email sent to Ben Smith (CFD team) dated 22nd May does not address any of the

specific reasons why the application was non qualifying and therefore does not meet the qualification requirements set out in the CFD Allocation Regulations. The email does not meet the requirements as to the information that a review notice should contain, as set out in Regulation 20(3).

8. NGET also reiterated the reasons for Non-qualification as described in paragraph 5 above.
9. On 13 June 2017, RTSL appealed NGET's decision to the Authority in accordance with Allocation Regulation 43.

RTSL's Grounds for Appeal

10. RTSL has submitted three main grounds of appeal. These are specified in turn below.

Ground 1

11. The first ground argues that the *"whole EMR system has been designed to exclude newcomers with innovative ideas."* In particular, the applicant contends that *"The delivery body is bound to reject anything that falls outside the strict guidelines that have been fed to the BEIS and others as part of the this protection racket"*, that the appeals form is *"asking for stuff that is too much for a sole trader"*, and that the submitted document *"does not comply with the parameters [sic] of racketeering"* and so will *"no doubt be rejected despite you now knowing that all green electricity is consumed by the Grid."*

Ground 2

12. RTSL contends that:

ROCs and CfDs are paid on what is recorded on the export meters so for a export meter to record anything power MUST be consumed so all so called 'green electricity' is consumed by the National Grid which is seen as a load. Not one green electron ever

gets to our consumer units because it has already been consumed and given off as heat by the high tension conductors. It may keep perching bird toes a little warmer but that is all it does. You have been duped by a morally bankrupt renewable energy industry into believing that its intermittent junk electricity is 'reducing CO2 emissions – the reverse is true.

My system, which I am prepared to gift to the nation will generate very cheap thermal electricity @ 50GW capacity 24-7-52 without burning anything at all for ever more in our existing thermal power stations by simply changing their heat sources.

Ground 3

13. As its final ground of appeal, RTSL argues that.

The only reason that newcomers have to have a 'connection agreement' in place which can take up to 6 years is because the 'big six' have told BEIS that it takes 6 years when in reality it may take up to six days! The whole system is a sophisticated 'protection racket' designed to keep new SMEs from even contemplating applying for CfD accreditation because no investor is going to wait for 6 years for a generation certificate which may or may not be granted – only established companies with very deep pockets are invited to apply.

The Statutory Framework

14. The Contracts for Difference (Allocation) Regulations 2014 were enacted by the Secretary of State under the provisions of s6 of the Energy Act 2013. The CFD Allocation Framework 2017 was issued made by the Secretary of State pursuant to powers set out in s13 of the Energy Act 2013.
15. The Regulations set out the duties of the Delivery Body (NGET) when it determines eligibility. Allocation Regulation 17 specifies that each application must be determined in accordance with the eligibility criteria and qualification requirements set out in the Regulations and Allocation Framework.

16. Allocation Regulations 43 to 48 set out the process and powers in relation to Dispute Resolution and Appeals.
17. Allocation Regulation 25 describes the requirements regarding Connection Agreements to be submitted with applications and particularly sets out that a valid Connection Agreement or accepted offer for a Connection Agreement must be submitted with the Application:

(2) Where a direct connection applies or is to apply to the relevant CFD unit, the applicant must provide a copy of the connection agreement applicable to the relevant CFD unit, and—

- (a) where connection is to the national transmission system for Great Britain, that agreement must secure transmission entry capacity for the CFD unit of at least 75% of the provisional capacity estimate of the CFD unit; or*
- (b) where connection is to the distribution system, that agreement must provide for the export of at least 75% of the provisional capacity estimate of the CFD unit to the distribution system.*

(3) Where a direct connection or a partial connection does not apply or is not to apply to the relevant CFD unit, the applicant must provide either—

- (a) a statement that the applicant is or is to be the operator of the private network to which the relevant CFD unit exports or is to export electricity; or*
- (b) a copy of a private network use agreement applicable to the relevant CFD unit.*

(4) Where a partial connection applies or is to apply to the relevant CFD unit, the applicant must provide—

- (a) copies of—*
 - (i) either –*

- (aa) *a statement that the applicant is or is to be the operator of the private network to which the relevant CFD unit exports or is to export electricity ; or*
 - (bb) *a copy of the private network use agreement applicable to the relevant CFD unit; and*
 - (ii) *the connection agreement applicable to the relevant CFD unit; or*
- (b) *copies of—*
 - (i) *the private network use agreement applicable to the relevant CFD unit that allows the CFD unit to access a connection to the national transmission system for Great Britain or the distribution system; and*
 - (ii) *the connection agreement between the operator of the private network and the national system operator or the distribution system.*

Our Findings

18. We have assessed each of RTSL's grounds for appeal. These are set out below.

Ground 1

19. RTSL's first ground of appeal is that the CFD scheme has been designed to exclude market entrants and that the Regulations do not appropriately take account of such applicants. This does not address either of NGET's two reasons for its Non-qualification determination. The Regulations contain explicit requirements for Applicants and, in this case, these were not met.

Ground 2

20. RTSL's second ground of appeal is that existing RO and CFD generators produce electricity that "*is consumed by the National Grid*". The applicant further stresses that the CFD Unit in question is an innovative technology.
21. The arguments presented by the applicant are not relevant to NGET's reasons for its

Non-qualification determination. The applicant did not meet the eligibility criteria for participation in the CFD Allocation Round and also did not provide necessary evidence with its application as required by the Regulations. The innovativeness of its technology and allegations regarding electricity generated by existing RO and CFD generators has no bearing on its Qualification status.

Ground 3

22. RTSL's third and final ground of appeal is that new CFD units should not be required to submit a connection agreement or evidence of an accepted offer of a connection agreement six years in advance of commissioning.
23. The submission of a connection agreement, as required by Allocation Regulation 25, is a requirement of the application for qualification. Without a valid connection agreement, it is not possible for NGET to issue a positive qualification determination. Because RTSL did not submit a valid connection agreement for the Gentec WaTS UK CFD Unit, the CFD Unit did not meet this condition for qualification. On this ground, therefore, NGET's Non-qualification determination was correct.

Conclusion

24. The CFD Unit did not qualify because it did not meet several conditions for qualification. The Authority finds that the Applicant did not submit any arguments that challenge either NGET's decision not to qualify the CFD Unit, or the reasons NGET gave. The original decision to not qualify the CFD Unit is upheld.
25. In view of this, the Authority finds that NGET's decision to uphold its initial Non-qualification decision on review was correct.

Determination

26. For the reasons set out in this determination, the Authority hereby determines pursuant to Allocation Regulation 46 that NGET's decisions to uphold its Non-

qualification determination was correct.

A handwritten signature in black ink, appearing to read 'Mark Copley', with a stylized flourish at the end.

Mark Copley

Associate Partner, Wholesale Markets

For and on behalf of the Gas and Electricity Markets Authority

2 August 2017