DETERMINATION RBA/TR/A/DET/193

DETERMINATION BY THE GAS AND ELECTRICITY MARKETS AUTHORITY IS ON A DISPUTE REFERRED TO IT UNDER SECTION 23 OF THE ELECTRICITY ACT 1989

Final Decision

1. Introduction

1.1. This document represents our determination of the dispute referred to us under Section 23 of the Electricity Act 1989 between (redacted) Limited ("the Customer") and Western Power Distribution (South West) plc ("the Company"). The dispute concerns a proposed electricity connection between a distribution system and a gas-fired generating facility.

1.2. Prospect Law Limited referred a dispute under section 23(1) of the Electricity Act 1989 ("the Act") to the Gas and Electricity Markets Authority ("the Authority"[1]). The Customer asked us to determine whether Western Power Distribution (South West) plc ("the Company") had acted reasonably in relation to an agreement ("the Agreement") between the two parties.

1.3. The parties had entered into the Agreement for the making of an electricity connection between the Company's distribution system and the Customer's premises ("the Premises"). The Premises comprised a gas-fired generating station. The Customer subsequently notified the Company that it intended to move the site boundary to a different location about 150 meters away from its previous location whilst retaining the same point of connection (POC) with the Company's distribution network.

1.4. The Company informed the Customer that the revised site boundary constituted new Premises and that a new application for connection to its distribution system would be required. Company policy, aimed at managing competing applications in areas of distribution system constraint, meant that any such application would be placed at the back of a queue of applications. This would delay the connection of the Premises and have financial implications for the Customer.

1.5. The Customer claims that the Company has acted unreasonably in requiring a new application as the Company's interpretation of premises is not in accordance with the Act. The Company states that it has implemented its own published policy which it considers to be consistent with the Act. The Company argues that its policy ensures fair and consistent treatment of customers wishing to connect generating equipment where system capacity is constrained, and discourages the speculative applications for capacity by developers.

2. Determination process

2.1. On 12 August 2016, the Customer asked us to make a determination on its dispute with the Company. Consequently, we invited both parties to provide additional evidence and to comment to each other's arguments and submitted evidence.

[1] The terms "Ofgem", "the Authority", "we" and "us" are used interchangeably in this document.

2.2. On 12 December 2016 we issued our "minded to" decision to both parties to give them an opportunity to respond to our provisional views of the correct interpretation of the Act.

2.3. Neither party made substantive comments in response to our "minded to" decision.

3. Summary of our decision

3.1. We have determined that the Company's decision to require a new application to be submitted in respect of the revised site layout is not unreasonable and is consistent with section 16A(2) of the Act which places a duty on electricity distributors to connect premises which are specified in an application. The Customer specified the boundaries for the site to be connected in its original application. The parties subsequently confirmed this site as the relevant premises in the connection offer itself (see the defined term "Premises") which the Customer accepted without amendment.

3.2. We have given further consideration to the Company's procedure for managing competing applications in areas of constrained system capacity. According to the procedure, a re-application should be placed at the back of a queue of competing applications. We have determined that the Company's procedure is not unreasonable within the context of its obligations under Condition 19 of the Electricity Distribution Licence (which forbids an electricity distributor from discriminating between persons in carrying out works for the purpose of connection to its distribution system) and section 9 of the Act (which places a duty on electricity distributors to develop and maintain an efficient, coordinated and economical system of electricity distribution).

4. Jurisdiction

4.1. This dispute requires us to determine whether the company acted reasonably in requiring the Customer to submit a new application for the connection of the revised premises to the Company's distribution system.

4.2. It also requires us to determine the reasonableness of the Company's policy which would result in a re-application being placed at the back of a queue of competing applications.

4.3. Section 16 of the Act provides that an electricity distributor is under a duty to make a connection between his distribution system and any premises when required to do so by either the owner or occupier of those premises or an authorised agent acting with the consent of the owner/occupier of the premises.

4.4. Under section 16A(1) of the Act, where a person requires a connection to be made by an electricity distributor in pursuance of section 16(1), he must give the distributor a notice requiring him to offer terms for making the connection ("application").

4.5. Under section 16A(2) of the Act, the application must specify:

a) the premises[2] or distribution system to which a connection to the distributor's system is required;
b) the date on or by which the connection is to be made; and
c) the maximum power at which electricity may be required to be conveyed through the connection.

4.6. Under section 16A(5), as soon as practicable after receiving the application the distributor must give to the person requiring the connection a notice:

a) stating the extent (if any) to which his proposals are acceptable to the distributor and specifying any counter proposals made by him;
b) specifying any payment which that person will be required to make under section 19(1) or regulations under section 19(2);
c) specifying any security which that person will be required to give under section 20; and
d) stating any other terms which that person will be required to accept under section 21.

4.7. Under section 21(b), an electricity distributor may require any person who requires a connection in pursuance of section 16(1) of the Act to accept, in respect of the making of the connection, any terms which it is reasonable in all the circumstances for that person to be required to accept.

4.8. Any dispute arising under sections 16 to 21 of the Act between an electricity distributor and a person requiring a connection may be referred to us under section 23 of the Act for a determination.

4.9. In this dispute we have also given consideration to the Company's obligations as given in section 9 of the Act (General duties of licence holders) and in Condition 19 of the Standard conditions of the Electricity Distribution Licence (Prohibition of discrimination) in assessing whether the Company's actions were reasonable.

4.10. Section 9 of the Act provides that an electricity distributor is under a duty to develop and maintain an efficient, co-ordinated and economical system of electricity distribution.

4.11. Condition 19 of the Standard conditions of the Electricity Distribution Licence provides that an electricity distributor must not discriminate between any person or classes of persons in carrying out works for the purpose of connection to its distribution system.

5. Facts of the case

The application

5.1. On 30 April 2015 the Customer applied for a connection to the Company's distribution system ("the Application"). The Application was for the connection of a 20 MW gas-fired generating station at [redacted]. The Customer's request was limited to the provision of connection services. The Application was accompanied by: a map outlining the Customer's proposed site boundary and the connection point (Figure 1); a

[2] Section 64 of the Act states that, unless the context otherwise requires, premises includes any land, building or structure.

diagram showing the key components of the facility in relation to the Company's distribution system (Figure 2); a letter of authority from the Dainton Group Services Limited, the landowner (Figure 3).

The Offer

5.2. On 15 July 2015 the Company issued a connection offer ("the Connection Offer") for making a new electricity connection between its distribution system (the Point of Connection - "POC") and the Customer's Premises ("the Connection Point"). The Connection Offer comprised an Offer Letter and various associated documents, including a map which included the initial site boundary and proposed Point of Connection. The offer letter defined the Customer's premises as identified by the Customer in the layout submitted as part of the connection application. The Connection Offer was made pursuant to and in accordance with the provisions of the Company's Distribution Licence, as well as Specific Conditions for Connection Works and General Conditions for Connection Works, both of which were contained within the Offer Letter.

The Agreement

5.3. On 15 October 2015 the Customer accepted the Company's Connection Offer at which point it became the Agreement.

Application for planning permission submitted

5.4. On 6 August 2015 the Customer submitted a planning application to Torbay Council for a 20 MW generating facility. The facility was depicted in a different location to that shown in the Agreement, lying approximately 150 meters north west of the boundary of the original plot. Planning permission was granted on 6 April 2016.

Revision of the site boundary

5.5. According to the Company, on 18 April 2016 the Customer informed the Company that the proposed site boundary had moved. The initial evidence provided of the dialogue consists of an email correspondence dated 26 April 2016 in which the Customer asks for:

> *"...Point of Supply being within the area defined in our original Application with our Site being located north west within the same ownership boundary".*

5.6. On 27 April 2016 the Company responded via email stating:

> *"The development Boundary as indicated in the approved planning application is different from the site boundary defined in the connection application. Therefore a new connection application will be required for this connection".*

The dispute

5.7. On 5 July 2016 the Customer notified the Company that unless a reasonable agreement was reached between the two parties within four days, the Customer would write to us to request a determination. The company responded in 18 July 2016 and confirmed its position of not allowing the changes to the offer.

5.8. On 12 August 2016, the Customer asked us to make a determination on the case. The Customer claimed that the Company had acted unreasonably in requiring a new application to be submitted because the Company misinterpreted the definition of

premises and in so doing was acting inconsistently with the Act. Between October and December 2016, and at our request, both parties provided a statement of facts in which each set out its own account of the dispute. Both the Customer and the Company commented on the other's evidence and comments.

5.9. The Customer's position is that the revised site layout did not constitute a change of premises as both the POC and Connection Point would remain in the original location, meaning the Company's works would be unaffected as the Customer proposes to link the Connection Substation to the power station through a 33kV cable of its own. The connection substation would be within the red-line area as specified on the original application.

5.10. The Customer claims that at the time of the application there was neither a legal requirement nor any guidance regarding what constitute 'premises' with respect to applications for connections.

5.11. The Customer explains that section 64 provides a definition of premises as *"any land, building or structure"*. Whilst this requires applicants to specify what land, building or structure is being connected, the Customer believes it does not require applicants to:

> *"...define with exactitude the land, or each building or structure, potentially involved in a generation site beyond what is reasonably necessary to fulfil the requirements of s.16A(2)(a)[3]"*

5.12. The Customer argues that the Company's interpretation of premises means that connections applicants must *"show the entirety of the proposed development"* which is impractical with respect to grid connection as planning and grid connection processes run in tandem. Therefore the *"grid connection offer needs to be reasonably flexible with regards the final layout"*.

5.13. The Customer has stated that abandoning the project will result in in a loss of sunk costs, expose them to Capacity Market penalties and lead to a considerable loss of future income.

5.14. The Company's position is that the proposed relocation of the generator represented a change of premises and that the Company's policy was that a change of premises required a new application. This stems from the Company's policy as described in a document dated April 2016: "Allowable changes to applications and accepted offers for connection to WPD's distribution Statement". The diagram which the Customer submitted in its connection request showing the location of the generator falls under the definition of a Development Boundary. According to the Company's policy, changes to the Development Boundary are not allowed after the submission of an application or acceptance of an offer.

5.15. The Company claims that a reference to allowable changes to applications was in place in December 2014 as part of its "New Interactivity Process"[4]. This, it stated, was consistent with its interpretation of section 16 of the Act. Consequently, it believed it had

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[3] Connection applicants shall specify the premises or distribution system to which a connection to the distributor's system is required

[4] https://www.westernpower.co.uk/docs/connections/New-connections/New-Interactivity-process-09_12_2014-website.aspx

acted fairly in requiring a new application to be made for the connection of what it considered to be different premises.

5.16. The Company had introduced this policy as a means of preventing developers from reserving network capacity through speculative applications in constrained areas. In the Company's words, the policy:

> *"...prevents developers from securing an offer for capacity and then finding a different location and obtaining planning permission, or swapping connection offers between sites, or novating offers between developers across sites. This would in effect create a secondary market for generation capacity and enable developers to bank capacity. In order to meet the requirements of Standard Licence Condition 19, WPD applies its policy strictly to avoid undue discrimination".*

5.17. The company acknowledged that the Customer's application was not speculative but argued that an exception to this policy would be unfair to other customers.

5.18. The Customer's view on the Company's arguments on its policies is that it had accepted the connection offer in April 2015, prior to the publication of its policy on allowable changes to applications. Consequently, the Company applied its policy retrospectively. Additionally, the Customer dismissed the Company's claim that it could have been informed by the policy put in place in 2014 and described in the document entitled New Interactivity Process. This described a similar policy to the one that was in place at the time of the application. In the Company's view, the policy refers to a situation where new connections become "interactive"[5]. The Customer stated that at no point was it notified that the area of the application is interactive and that at the time of the application the area was not interactive. Hence, it would be unreasonable to apply a policy which, from the name of the policy through to the specific contents of the guidance, is aimed at interactive connections.

The Company's procedures for getting a connection

5.19. The procedure for getting a connection to the Company's distribution system is given in its publication: "Statement of methodology and charges for connection to Western Power Distribution (South West) plc's Electricity Distribution System" ("the Statement of Methodology and Charges"). Here it states:

> *"We will offer terms for the making of a connection as soon as reasonably practicable, but in any event within three months once we have received your completed application. In addition to the terms for making the connection we will specify the proposed POC to our Distribution System, the location of the Entry/Exit Point on the Premises to be connected and details of the work to be carried out by us"*

5.20. Under the heading "Information Required", the Statement gives the details which are typically required when applying for a connection. These include the Premises' address,

[5] According to the Company, interactive connection applications *"arise where we [the Company] receive two or more applications for connection which make use of the same part of the Existing Network or Committed Network or otherwise have a material operational effect on that network such that there is or would be a material impact on the terms and conditions of any Connection Offer/ POC Offer / Alternative Connection Offers made in respect of such connections"*

a site location plan showing the site boundary, and a site layout plan, drawn to a suitable scale, indicating where the connection(s) are required.

Interactive Connection Applications

5.21. Under the heading "Interactive Connection Applications" the Statement of Methodology and Charges describes the process which is implemented when the Company receives two or more applications for connection which make use of the same part of the distribution system. The process identifies where the making and acceptance of a new connection offer would affect the terms of other unaccepted offers, and implements a queuing procedure which aims to "ensure fairness". It makes no exception for applications re-submitted following amendments. This is relevant in this case since the part of the distribution system which the Customer wished to connect to had become "interactive" in the time since the Agreement had been entered into. Consequently, any re-application made by the Customer would be subject to the Company's "interactivity" procedures. That is, it would be placed at the back of a queue of competing applications awaiting the availability of connection capacity. Any network capacity allocated to the original application would be forfeited and made available to the interactive queue in accordance with Company policy (i.e. on a first come, first served basis).

6. Discussion

Summary of the dispute

6.1. The dispute between the two parties relates to two matters. First, whether the Company acted reasonably in requiring the Customer to submit a new application for its revised site layout, and whether this requirement was consistent with its statutory obligations. Second, whether the Company's queue management procedure, which would result in a re-application, being placed at the back of a queue of competing applications, was reasonable and consistent with its statutory obligations.

6.2. The Customer maintains that its revised plans do not constitute a change in premises as the Act definition does not refer specifically to the generating unit (the only element in the application which was modified). In the Customer's view, the requirement of the Company to not permit a change in a generator's location does not align with the practical reality in which grid connection applications are submitted ahead of planning applications. On the other hand, the Company states that the reason that changes to premises are not allowed is to prevent customers from reserving capacity in constrained areas. In being consistent with its 2014 and 2016 policies, the Company claims it ensures that the Customer's modified specifications are treated like any other new application.

6.3. The Company states that these are policy decisions based on fairness to other applicants and are consistent with section 16 of the Act. The Customer contests this and states that the Company is in breach of its obligation to provide an energised grid connection as it misinterpreted the definition of premises according to the Act. As a result it is imposing impractical requirements on its customers.

Duty to connect premises

6.4. Section 64 of the Act states that, unless the context otherwise requires, premises include any land, building or structure. We are not aware of any reasons why the context

of section 16 (duty of a distributor to connect an applicant's premises on request) requires a more limited reading of 'premises'. It is also reasonable for an electricity distributor to give consideration to the physical, operational and locational aspects of the premises it is being requested to connect. The Company's Statement of Methodology and Charges reflects this in requesting that a site location plan showing the site boundary, and a site layout plan, are provided as part of an application for a new connection.

6.5. The Customer provided a site layout plan which specified the site it wished to be connected in its application. The Company's connection offer identified this site as "the Premises" for the purposes of the connection, which the Customer accepted without amendment. It is reasonable, therefore, for the Company to proceed on the basis that the relevant premises for the purposes of the connection offer constituted the site identified by the Customer in its application, and not any other site. In particular, we note that the Customer did not inform the Company at the time of its application that the location of its generation unit might change.

6.6. We agree with the Company that its statutory duty under section 16 of the Act relates to the connection of premises which have been specified in an application. This obligation is subject to reasonable terms as may be agreed under section 16A of the Act.

6.7. We are sympathetic to the difficulties involved in the planning process which mean that it may be difficult to specify with absolute accuracy the final location of a generation unit. However, we disagree that this alters the legal definition of what constituted the relevant premises in this instance, given the clear confirmation of their definition in the accepted connection offer. In the absence of notice from the Customer that the site location could change within a range of parameters, it is reasonable for the Company to rely on the definition of premises agreed within the connection offer.

6.8. Although the Act does not specify how an electricity distributor should manage a queue of applications for connection it does impose a number of obligations on a distributor which inform how it operates. In accordance with its interpretation of these obligations, and its interpretation of its duties under its distribution licence, the Company developed its Statement of Methodology and Charges and subsequent New Interactivity Process with the aim of specifying its policy on connections queues and outlining its rationale.

Managing competition in areas of capacity constraint

6.9. The Company's Statement of Methodology and Charges recognises that capacity constraints on its network could lead to conflict between competing applicants. It therefore implements a process termed "interactivity", whereby competing applications are managed on a first-come, first-served basis.

6.10. As the volume of distributed generation (DG) applications increased, the Company recognised that the interactivity process required review and in March 2014 undertook a consultation[6] on the matter. We note that the consultation document states:

> *"Of the prerequisites to develop DG (sourcing finance, land acquisition, planning consent and connection to the grid), seeking an offer for connection to the network is the cheapest as Distribution Network Operators (DNOs) are not allowed to charge*

[6] https://www.westernpower.co.uk/docs/About-us/Stakeholder-information/Connection-customer-engagement/WPD-Consultation-on-Connection-Interactivity-Accep.aspx

upfront for making a connection offer. As the developer will often seek planning consent after receiving a connection offer, this can lead to issues over acceptance validity, payment terms and reservation of capacity. If planning consent is not obtained and the connection does not go ahead, the delays may impact on other connections which are proceeding or could have proceeded".

6.11. The above statement highlights the conflicting priorities facing developers and electricity distributors who operate in regions of network constraint. For developers, it makes sense to pursue a grid connection agreement and planning permission for the premises in parallel – delaying an application for the former, whilst pursuing the latter, may result in a developer missing out on network capacity altogether. For electricity distributors, however, this approach can be problematic. Connections may be delayed whilst planning applications remain undecided, whilst other more advanced projects may have failed to secure an agreement in the interactivity process and find their progress blocked. Applicants who apply for a connection in the absence of planning permission are also more likely to request revisions to their application/agreement than those who secured planning permission in advance. Electricity distributors then need to decide whether any such revisions can be accommodated within the existing offer/agreement or if a new application is required.

6.12. Decisions such as these are not straightforward and must be made in accordance with relevant legislation and licence obligations. Electricity distributors have a duty under section 9 of the Act to develop and maintain an efficient, co-ordinated and economical system of electricity distribution. They also have a duty to treat similar system users consistently since Condition 19 of the Standard conditions of the Electricity Distribution Licence prohibits undue discrimination. It is therefore reasonable as well as necessary that they develop and implement procedures for managing applications and agreements which address these considerations whilst making the best use of often constrained network capacity.

6.13. The Company's consultation decision report and subsequent New Interactivity Process document purport to work towards this end. They state that the guiding principle to be applied is that any allowed change [to an application or agreement] should not be to the detriment of other applicants. Consequently, change requests are assessed against this principle.

6.14. We note that this policy update post-dates the Customer's original offer and that this offer was not an interactive offer at the time of the application. The interactivity process does, however, shed light on the Company's wider approach to the issue of competing offers.

6.15. The approach in the New Interactivity Process allows developers some flexibility to revise their plans, but prevents wholesale changes and revisions which might be to the detriment of other applicants.

6.16. We note also that the Company offers the service of feasibility studies which aim to establish the viability of making connections to its network. These studies are paid for, upfront, by the Customer and do not constitute a formal connection offer. We would not expect customers in effect to bypass processes such as these which support the consideration of a range of different options for the location of premises by instead

requesting a formal connection offer (which is not paid for upfront) and then, once they have secured their place in the queue, exploring the feasibility of alternative sites.

Queue position of resubmitted applications

6.17. We note that Company policy makes no distinction between new applications and those which have been resubmitted because the Customer requires different premises to be connected to those in the original application. We have given consideration to this arrangement and conclude that treating "re-applications" in the same manner as new applications is not unreasonable in the light of the Company's obligations under Standard Licence Condition 19 and section 9 of the Act. In this case, company policy dictates that a new application in respect of the revised generating facility would be placed at the back of a queue of competing applications.

6.18. Due to the fact that the Customer had changed the location of the generator, the offer became invalid and a new application was required. As a result, had the customer chosen to reapply for a connection for the new location it would have been subject to the interactivity process.

The Company's existing policies

6.19. As noted in paragraph 4.15, the Company provides guidance on the matter of allowable changes in its "New Interactivity Process" document. Here, various change scenarios are tabulated, with an indication provided of whether each would be permitted as an amendment to the existing agreement or if a new application would be required. The document, however, does not refer to premises. The particular scenario in dispute here is not included in the table of change scenarios. That is, it is neither explicitly permitted nor forbidden. Nevertheless, the Company maintains that since the revised site layout falls outside the site boundary provided in the original application, it represents different premises and a new application is therefore required.

6.20. We note that the Company published an additional policy in 2016 entitled "Allowable changes to applications and accepted offers for connection to WPD's distribution Statement"[7]. This document specifies under the definition of "development boundary" that an application for connection should include the following:

> *"site map showing the footprint of land on which the generation structure is to be situated"*

However, although we are satisfied that the Company seeks to provide more clarity on this area, we do not consider it in this determination as we agree with the Customer that this information had not been made available at the time it made the application and accepted the offer.

Mitigation of losses

6.21. We note that the Customer submitted its application for planning permission for the revised site location on 6 August 2015, less than one month after it entered into an agreement with the Company for a connection at the original site. We note that it then waited a further eight months before it informed the Company of the revision to the site

[7] https://www.westernpower.co.uk/docs/connections/New-connections/Budget-estimates,-feasibility-studies-formal-off/Allowable-changes-to-applications-Final-01_04_2016.aspx

layout. The Customer could have notified the Company of the revised site layout earlier than it did, potentially avoiding some or all of the delay to the connection that it is now experiencing.

Treatment of reapplication

6.22. On the matter of the Company requiring a new application for the connection of the Customer's revised site layout, our view is that the Company's decision is within the range of what is reasonable and is consistent with the Act. Pursuant to section 16A(2) of the Act a person requiring a connection must provide the electricity distributor with a notice specifying "the premises or distribution system to which a connection to the distributor's system is required". Section 16A(5) places a duty on the distributor to offer terms for the connection of these premises. In this case, the Customer submitted an application for the connection of its Premises, and the Company duly offered terms for the connection of these Premises and the Customer accepted these terms. The Customer subsequently revised its Premises. Notwithstanding the fact that changing the location of the generator by roughly 150 metres did not appear to impact any other aspect of the connection, we note that, with the exception of the substation, the revised site layout lies wholly outside of the boundary of the Premises which were the subject of the Customer's initial application. Accordingly we agree with the Company that the revised site layout constitutes different premises and that it is therefore under no obligation to connect these different premises under the existing Agreement.

6.23. The Company's queue management procedure results in a re-application being placed at the back of a queue of competing applications. Our view on this is that its approach is within the range of what is reasonable, given its wider legal obligations not to discriminate and to develop and maintain an efficient, co-ordinated and economical system of electricity distribution.

7. Other observations

Company documentation/policies

7.1. As the operator of a distribution system facing unprecedented demand for connection of distributed generation, it was not unreasonable, in our view, for the Company to develop, through consultation, a process for managing a queue of connections applications. In doing so, the Company believed it would ensure fair treatment for all system users.

7.2. However, when electricity distributors take such action, it is important that their processes are clearly documented and signposted so that stakeholders can understand the effect that changes may have on their projects. During the course of this determination, we have identified one example where the Company could have improved the clarity of its documentation. One of the outputs from the Company's consultation on connections management was clarification of its policy on changes to applications and the effect on queue position. This policy was published in a document entitled "New Interactivity Process". This is not helpful since agreements (such as the initial one in this matter) exist outside of the "Interactivity" process – the interactivity process applies to queuing applications only. Consequently, parties which had entered into an agreement with the Company and were looking for guidance on the matter of "allowable changes" to their agreement may not have instinctively referred to this policy update. We note that the

Company has more recently split this document into two more appropriately entitled documents and we welcome this development.

Engagement between customers and network companies

7.3. We acknowledge that in practice Customers face uncertainty while having to apply in parallel for a planning permission and a connection application. To address this, we expect network companies and customers to engage with each other closely during the preparation of the connection offer, and indeed post-acceptance. This should result in the terms established in the connection agreement being sufficiently flexible to accommodate changes that could be anticipated to arise though the planning process, in so far as these have no detrimental impact on network efficiency and fairness to other customers seeking to connect.

7.4. We believe that collaboration between customers and network companies is an essential aspect of operating an efficient network while maintaining customer satisfaction. We note that both the Customer and Company could have benefitted from a more timely and open dialogue in this case. The Customer could have contacted the Company soon after it became aware that it would not be able to locate the generating facility in the originally proposed location and could have consulted with the Company on the necessity of a new application. The Company, in turn, could have notified the Customer as soon as the area became interactive and explain the potential impact that changes to its connection requirements might have.

7.5. We would expect the extent to which network companies are engaging with customers and providing them with sufficient flexibility in their connection offers to navigate the planning process to be reflected in the feedback we receive on each company through the Incentive on Connections Engagement[8] which is feature of the RIIO-ED1 price control framework. A network company that does not meet its customers' requirements may face financial penalties under this incentive.

[redacted]

Andrew Burgess
Associate Partner, Energy System Integration
Duly authorised on behalf of the Gas and Electricity Markets Authority

7 March 2017

[8] The Incentive on Connections Engagement Incentive (ICE) drives network companies to provide good customer service to larger connection customers. Under this incentive network companies will need to provide evidence that they have engaged with connection stakeholders and responded to their needs. If network companies fail to do this, they could incur a penalty.
For further information please refer to the following link: https://www.ofgem.gov.uk/ofgem-publications/93584/iceguidancedocrevisedformat-pdf

Appendices

I. Original (redacted) complaint

II. WPD questionnaire response

III. (redacted) questionnaire response

IV. WPD further response

V. (redacted) comments on WPD's response

VI. [redacted] connection application

VII. [redacted] Location Map submitted as part of the connection application

VIII. Landowner letter of authority

IX. [redacted] offer letter site plan

X. (redacted) offer acceptance

XI. [redacted] planning application

XII. [redacted] planning application map

XIII. [redacted] planning permission grant

XIV. Email correspondences between the Customer and Company

XV. Parties' responses to the minded to decision

OFGEM REF: _____

DETERMINATION UNDER S.23 ELECTRICITY ACT 1989 (AS AMENDED)

BETWEEN:

[redacted] Ltd

Complainant

- and -

Western Power Distribution (South West) PLC

Licensee

REQUEST FOR DETERMINATION BY THE AUTHORITY UNDER S.23 OF THE ELECTRICITY ACT 1989 (AS AMENDED)

RE: GRID CONNECTION TO PROPOSED STOR GENERATION, [redacted]

Introduction

1. **[redacted]** Limited (**"[redacted]"**) is a developer and operator of generation assets supported by the Capacity Market scheme, developed to ensure security of supply for the UK and to provide generation support at times of peak grid demand.

2. Western Power Distribution (South West) PLC ("WPD") is a licensed distribution network operator ("DNO") holding a distribution licence for the south west of England.

3. Prospect Law act for **[redacted]** in this matter.

4. **[redacted]** are developing a 20MW gas-fired short term operating reserve (STOR) generating station at the site on [redacted] (the "Project"). This Project is to be funded under the Capacity Market scheme. This Project is located in the WPD DNO area and, as such, **[redacted]** require a grid connection from WPD to connect the Project to the grid.

5. Following an application from (redacted), WPD made an offer of a grid connection (Appendix A), as required under the Electricity Act 1989 (as amended) (the "1989 Act"). (redacted) accepted this offer and paid the required deposit. WPD have refused the installation and energisation of the grid connection required by the Project. In defence of its refusal WPD has alleged that the plan supplied with the original application for connection did not comply with an internal WPD policy, entitled "Allowable changes to applications and accepted offers for connection to WPD's Distribution System" (the "2016 Policy"). The 2016 Policy was published on 01 April 2016, a date long after the grid connection offer had been accepted and the deposit paid. This internal WPD policy, and its rigid application, is the core of this dispute.

The Project

6. The Project has been in development for well over a year, with the application for a grid connection for the site having been submitted to WPD on 30 April 2015. A firm connection offer was made to (redacted) by WPD on 15 July 2015 and was accepted on 15 October 2015, with the deposit being paid on 16 December 2015.

7. At all material times the address of the Project has remained the same, as has the Project's grid connection capacity requirements.

8. Pursuant to, and in conformity with, s.16A of the 1989 Act, a request for a grid connection quotation was submitted to WPD on 30 April 2015. The request was made in writing on the standard ENA form (V2 – April 2011). Accompanying the form was a plan showing where the grid connection point and substation (the "Connection Substation") was required. A copy of this plan is attached at Appendix B. The land highlighted in red on this plan (the "Red-Line Area") showing the required connection point, as well as the land to the west and north on which the power generating station (the "Power Station") was to be built, is owned by Dainton Group Services Ltd ("Dainton"), which provided a letter of consent in relation to the grid connection application.

9. The Red-Line Area shows the location where (redacted) required the point of connection to be. The Red-Line Area did not purport to show the location of the Power Station itself, as this was still subject to the final lease arrangements with the land owner, which could not be finalised until the requirements of the local planning authority ("LPA") were known following an application for planning consent. (redacted) took this approach with its grid connection applications at the time, across the various DNOs it dealt with, because this adequately covered the "where, what and when" requirements of a grid connection application as set out in s.16A of the 1989 Act.

10. It should be noted that the land owned by Dainton covers, in full, both the Red-Line Area and the location in which the Power Station is now to be built. Had (redacted) known of the

requirement in the 2016 Policy to outline the whole of the potential development site on the submitted plan it could easily have done so.

11. Project development is a complicated and costly affair, requiring many different project requirements to be obtained and achieved before the project is viable. The order in which these are pursued is a function of cost, risk and practical reality. To have a project such as this in the shape it is in currently requires a secured grid connection offer, full planning consent and long term rights over the development site. Obtaining these three core requirements costs time, effort and money. As a simple overview, the process set out below is followed:

    1) A potential site for development is identified. The final layout and design is unknown at this point (being subject to planning).

    2) Meanwhile, the developer applies for a grid connection, begins discussions with the LPA about the development, and negotiates and agrees a general option agreement with the landowner. These processes run in tandem.

    3) The application to the DNO for a grid connection is designed to ascertain the exact situation in relation to local grid capacity and any required reinforcement works. At this point the final 'view' of the site is not yet available, as the planning authority must still be appeased.

    4) Once planning consent is granted, any changes required in relation to the initial view of the project are compared against the land rights and the grid connection positioning, and these are updated accordingly.

12. As can be seen, the practical reality is that the grid connection application is submitted before the planning consent and, as such, before the final layout of the site is ascertained. To do it any other way would require spending vast amounts of time and money on a project that could be a non-starter for want of local grid capacity. The practical reality is that a grid connection offer needs to be reasonably flexible with regards the final layout, so long as the electrical aspects remains the same, otherwise requiring precise and absolute site details at the point of an application for a grid connection would be a serious barrier to development and, in relation to schemes such as the Capacity Market, a serious frustration of the policy intent.

13. Now that the planning and land rights for the Project have been granted, the final position of the Power Station is known. This is approximately 100-150m westward into the industrial estate, with the LPA requiring the Power Station to be set back from the road and screened by the trees currently in situ close to the road (including a lot within the area marked red on the original grid connection application plan) to minimise the visual, noise and air quality impact for the domestic dwellings on the east side of the road.

14. In early 2016 (redacted), having finalised the details of the Power Station with both the LPA and Dainton, approached WPD with a proposed variation, to move the Connection Substation approximately 100m west (i.e. away from the road and closer to the final build location). An updated plan showing the location of the Power Station, the original Connection Substation and the requested new substation location is attached in Appendix C. This request was refused by WPD on the grounds that the new location for the Connection Substation would be outside of the Red-Line Area marked on the original plan. Further, and far more detrimental to the Project, WPD stated that an entirely new connection application would be required in any event because the Power Station would also not be contained within the Red-Line Area.

15. In these circumstances, (redacted) is willing and able to proceed on the basis of the Connection Substation being connected with the Red-Line Area, i.e. in accordance with the 30 April 2015 grid connection application and subsequent accepted offer. (redacted) is able to link the Connection Substation to the Power Station through a 33kV cable of its own. Under this arrangement the point of grid connection, and the Connection Substation, would be within the Red-Line Area as specified on the original application. WPD refused to connect even under this arrangement, again citing the 2016 Policy.

16. Owing to limitation in available capacity on the local grid, especially a problem in the south-west, it is not unusual for export grid capacity applications to be declared 'interactive', whereby applications outstrip available capacity, and whereby applications are held in a queue on a "first come, first served" basis. This requirement for an interactivity process has grown over the last 5 years following increases in distributed generation, and it is this requirement that has undoubtedly led to WPD developing policies around connection applications subject to this (which are discussed below). It should be noted that at the time of both application and acceptance (redacted) grid connection offer was not 'interactive' and, as such, at the time it was not competing for capacity with other developers (i.e. at the time of acceptance of the grid connection offer, and so the time of the formation of the grid connection contract, interactivity played no part).

17. In requiring (redacted) to reapply for a connection WPD are, as well as unilaterally cancelling an existing contractual agreement, essentially asking (redacted) to go to the back of the queue, which (redacted) believe now contains a number of other, subsequent, development projects. Given the local constraints and the implication by WPD that the local area is now subject to interactivity this is, in practical terms, fatal to this project.

18. To date (redacted) has expended large sums on this project in relation to planning costs, land rights, survey and design costs, as well as deposits for the grid connection. (redacted) have also, in relation to this site, had to sign up to a National Grid statement of works agreement which is subject to not inconsiderable break costs. Abandoning the Project at this point, on sunk

costs alone, is likely to cost (redacted) over £100k. When considering the wider implications, such as Capacity Market penalties, this cost could rise significantly. The total value of the Project to (redacted) over its lifetime runs into tens of millions.

19. Since early 2016 (redacted) have been in contact with WPD to attempt to negotiate an amicable solution to this dispute. Several meetings have been held with senior staff at WPD, however an e-mail from [redacted] Regulatory & Government Affairs Manager at WPD, dated 18 July 2016, has stated both that WPD are not willing to allow the connection to go ahead without a new application and that they "would stress that this is our final position". As such, this application to the Authority has become necessary.

The 2016 Policy (and the 2014 Interactive Applications Policy)

20. The 2016 Policy, published on 1 April 2016, sets out the circumstances in which WPD will allow changes to accepted grid connection offers to be made. A copy of the 1 April 2016 version can be found at Appendix D. The 2016 Policy is intended to reflect WPD's statutory responsibilities. It is accepted that WPD may require to define further the responsibilities imposed by statute in order to facilitate the delivery of grid connections as per their statutory duty and licence conditions. Nevertheless, the 2016 Policy is a gloss upon the statutory provisions, and cannot assume equal authority with those provisions. Any such policy should not seek to go beyond what Parliament has required. Further, any such policy should neither artificially or unnecessarily constrain nor frustrate the obligations placed upon WPD under law, and any such policy certainly should not be applied retrospectively. Government cannot implement retroactive policies pursuant to legislation unless that legislation expressly permits, so why should WPD have authority to apply rules derived from statute retrospectively? A vice of retroactive implementation is uncertainty. Uncertainty is the enemy of investment, and whilst clear and well communicated policies, applied in a forward-looking manner, can assist investor certainty, the opposite is true of policies that are badly communicated and retrospective in application.

21. In answer to the point that WPD had applied new criteria retrospectivity, [redacted] in her e-mail dated 18 June 2016, claimed that whilst the 2016 version of the policy is the latest version, a prior version from December 2014 had long been available on the website. A copy of this version (the "2014 Interactive Applications Policy") is attached in Appendix E.

22. The 2014 Interactive Applications Policy had no application to (redacted) grid connection application for the Project. The 2014 Interactive Applications Policy applies to "Interactive Connections" only. It deals with how applications that are subject to 'interactivity' should be dealt with. (redacted) grid connection application for the Project was not at any point an 'interactive' application. It was not 'interactive' at the time it was made. It was not 'interactive' at the time the grid connection offer was accepted. No notice of interactivity was ever received by (redacted). Given that (redacted) accepted the grid connection offer (resulting in

a binding agreement), it follows that it is not 'interactive' now. The fact that subsequent to the acceptance by (redacted) of the WPD grid connection offer other parties have shown an interest in grid connection capacity in the same area is no reason to change the terms, and does not act to permit WPD to change the terms, of an existing binding contract between the parties, either by way of introducing new requirements (i.e. terms), or by unilaterally terminating the existing agreement. The agreement was made, and, as such, it would be manifestly unreasonable to expect (redacted) to take the view that the 2014 Interactive Applications Policy had any application to their set of circumstances in relation to this Project.

23. The 2016 Policy was published in April 2016, after the grid connection application was made and accepted in 2015. The Policy has no application to the Project and simply cannot be applied retrospectively as WPD has done. WPD has tacitly conceded that it cannot seek to change its rules with retrospective effect, and has attempted to argue that the terms of the Policy were already in place pursuant to an earlier version published by WPD in December 2014. As per the paragraph above, we do not consider the 2014 Interactive Applications Policy to be applicable in the circumstances of this Project.

24. The 2016 Policy is stated, and seemingly implemented, as an absolute, with little to no discretion being allowed in its application. We are told this has been the unofficial internal policy at WPD prior to the publication of the Policy. In the circumstances, (redacted) was not made aware of the terms of WPD's internal policy prior to its submission of grid connection applications for this, or, other, projects. Certainly no mention of the 2014 Interactive Applications Policy or the 2016 Policy is made in any of the communications between (redacted) and WPD prior to acceptance of the grid connection offer.

25. The plan supplied with the grid connection application submitted in relation to the Project only highlighted, via the Red-Line Area, the area in which (redacted) required the grid connection to be made and the Connection Substation to be sited. It did not include the full potential development site because this was not a stated requirement prior to publication of the 2016 Policy. The Power Station itself will now sit outside the shaded area on this plan. It should be noted that the area shaded on the plan is simply not large enough for such a station to be constructed and is, in any event, too close to the road for the LPA. Had the 2016 Policy been published prior to the submission of the grid connection application, a plan could have been included in the grid connection application that encompassed the site of the generating asset, as the land concerned entirely belongs to Dainton.

26. (redacted) has requested a variation to the offer moving the Connection Substation location approximately 100m west into the site to be closer to the final Power Station build location, now the final location acceptable to the LPA is known. As this location is not within the area precisely identified in the Red-Line Area on the original connection application request, WPD

seeks to apply the, then, future Policy to defeat the application. Whilst it would be more convenient to move the grid Connection Substation, (redacted) has made arrangements so that the Connection Substation can be located within the Red-Line Area marked on the original submission, and so this issue is of less concern to (redacted). This would seem to meet any legitimate concern that WPD might have had. WPD, however, has refused to allow the Project to progress even with the Connection Substation located within the Red Line Area identified in the grid connection application.

27. WPD insist that a fresh application for a grid connection is now made. (redacted) have entered a new connection request as per WPDs suggestion, the only material change in which is that the attached plan shows the whole development site outlined in blue, and not just the connection area (Appendix F). This is pending with WPD, however (redacted) fully expect this application to be subject to interactivity and in a queue, engaging the issue of constrained capacity on the local grid system and the interactive grid connection process, matters that had no application to original binding grid connection offer for the Project accepted in 2015. Where developers in a local area wish to connect more assets to the grid that would cause the available capacity to be conceded, they are entered into a queue on a "first come, first served" basis. Submitting a new grid connection request would put (redacted) to the back of a queue, the size of which WPD is not willing to comment upon. This would significantly add to the risk of the project, because the Project might not be given the capacity it requires at a feasible cost or in a feasible timeframe. This risk renders the project unfeasible, and would result in the waste of the time and other resources that (redacted) (and to a degree the LPA) have expended on this Project to date, including the exit costs from the statement of works with National Grid.

28. The Project is materially the same in all respects, with WPD's only issue being that the area marked on the plan submitted to WPD (the Red-Line Area) does not meet the requirements of a 2016 Policy published after the date of the original application request, the date of the subsequent firm connection offer, the date of (redacted) acceptance of this offer, and the date that (redacted) paid the deposit for the connection works. (redacted) sees this as nothing other than seeking to apply retrospectively a policy published after a grid connection offer has been applied for, made, accepted and the deposit paid. This is in principle arbitrary and unfair. In the circumstances, the outcome results in substantial loss and is manifestly unfair.

29. WPD has argued that the 2016 Policy is intended to be "fair", as it is claimed the 2016 Policy treats all customers (and potential customers) the same. That argument can only be correct where a policy is published prior to its enforcement, and where it is not applied retrospectively, and in a way that fundamentally and adversely alters the status of a Project with an accepted grid connection offer to an 'interactive' project. Rather, WPD seeks to force (redacted) to assume the substantial risk of losing the connection capacity that it had understood it had secured and upon which it had relied in committing significant further

resources (including expenditure of hundreds of thousands of pounds) to the Project. These circumstances are not remotely comparable to those of potential customers, whose costs are far more likely to be opportunity costs.

30. In any event, the published policy document is dated 1 April 2016, long after development on this site began and long after the original grid connection request (and associated plan) was submitted to WPD. Being held to an internal policy, unpublished and unknown to (redacted) at the time of application, would be, in itself, manifestly unfair. WPD argue that a version was published in December 2014, however this clearly only applied to connections that had been declared 'interactive' and that had been served with an interactivity notice, circumstances that did not obtain in the case of the Project.

31. Since becoming aware of this requirement by WPD, (redacted) has submitted plans covering the whole of the potential development area for its other projects to mitigate this risk; however for connection requests submitted before this requirement was known, such as this Project, this was simply not possible.

32. It is (redacted) understanding that the mischief the Policy is intending to combat is the issue of 'capacity banking', whereby speculative grid connection requests are made to tie up local capacity, either to prevent other developments being carried out or to allow the value of such a banked asset to rise and be sold on at a profit; essentially grid capacity touting. (redacted) has sympathy for such a policy requirement, so long as it is correctly communicated and applied. In this case, the blanket application of the 2016 Policy clearly also captures developers which are not engaged even remotely in such practices, and prejudices their developments. The Project does not represent these apprehended evils. WPD slavishly adhering to its internal policy and refusing to exercise any discretion in relation to the case in hand can only be seen as irrational when it leads to manifestly unfair outcomes. It is (redacted) position that this particular case is such an example.

The requirement to provide a connection on request

33. WPD's role here is as a DNO, with statutory responsibility to ensure that plant and apparatus connected to the grid is not a threat to the stability and security of the electricity distribution system. The obligation to provide a grid connection, on request, in s.16 of the 1989 Act (subject to a number of exceptions not relevant here) is clear. The insistence, via this 2016 Policy, that developers provide definitive positioning information for plant that is going to be part of the infrastructure that WPD is going to adopt and be ultimately responsible for goes far beyond its remit in this regard, and could only be justified if it clearly addressed a specific mischief in an effective manner and, so, is absolutely required. Refusing to offer a grid connection without this extra requirement and with no consideration of the circumstances is an unjustified restriction of the obligation contained in s.16, especially when the requirement is retrospective.

34. Within the 2016 Policy the following justification is given for requiring this information:

> *"An application for supply must define the premises to be connected. The definition of premises under the 1989 Electricity Act is any land, building or structure, therefore an application for connection must include a site map showing the footprint of land on which the generation structure is to be situated. This is the 'development boundary' and should largely reflect that as submitted to the local authority for planning permission. This is not the same as the landownership boundary."*

35. This is a very selective interpretation of the obligation in s.16 of the 1989 Act, and appears to go further than the wording of the 1989 Act would otherwise reasonably suggest. It also assumes that an application for planning consent has already been submitted to the LPA, which does not match the commercial reality.

36. The requirement at s.16A(2)(a) states that the notice given when applying for a grid connection must specify "*the premises or distribution system to which a connection to the distributor's system is required*". This, in practical terms, is the "where" in relation to the connection request. Subsections (b) and (c) set out the "when" and "what", and are not relevant here. The information obligation in s.16A(2) does not set out the level of detail required, and simply ensures that a licensee is not expected to provide a grid connection offer unless it has been informed what is required, by when and, as *per* s.16A(2)(a), where it is required. It is (redacted) position that any policy requiring detail above these practical requirements would need to be both necessary and reasonable, lest they conflict with or impede the licensee's statutory obligations.

37. In response to WPD's assertion that the 1989 Act requires them to have full details of the site layout and the full development boundary to be supplied, this is simply not the case. The definition of "premises" in s.64 (aside from the fact that is says "unless the context otherwise requires") is simply stated as "*includes any land, building or structure*". The purpose of this definition is to define 'premises' for the purposes of the 1989 Act as a term capable of including land, buildings and structures. It is neither the evident purpose, and nor is it the effect of s.64, to require grid connection applicants to define with exactitude the land, or each building or structure, potentially involved in a generation site beyond what is reasonably necessary to fulfil the requirements of s.16A(2)(a). We struggle to see how a provision to define "premises" can be interpreted, in combination with s.16A(2)(a), as meaning that an application for a grid connection must show the entirety of the proposed development in order to be valid. This certainly is not a necessary or practical requirement, and is not a requirement that has been made by DNOs, including WPD, for many years.

38. This purported requirement to show the entire potential outline of the site is not required by statute and is not a consistent requirement on the part of other DNOs, which are bound by the same statutory rules. WPD has only recently introduced the requirement, first in the

2014 Interactive Applications Policy in relation to connection requests subject to interactivity and then, as a matter of general application, in the 2016 Policy. Given that the underlying legislation has not changed in this time frame, the argument by WPD that it is somehow required by the 1989 Act is not correct and makes little sense. If WPD was correct in this view, it would mean that WPD had failed to apply the requirements of the legislation for many years prior to the introduction of the Policy; the statutory requirements having remained unchanged. Further, all other DNOs who did not, or do not have, such a policy would have acted contrary to the requirements of the 1989, and/or continue to do so, as the case may be. WPD's rationale is clearly flawed and its statements concerning the requirements of the law are incorrect.

39. Had the 2016 Policy been published, or had (redacted) otherwise known that WPD would require the plan accompanying an application for a grid connection to cover the whole potential development site, this condition could have been satisfied. Now that it is aware of the 2016 Policy, (redacted) can and does ensure compliance with this requirement on projects going forwards. Dainton owns the whole site on which this Project is to be developed and it would have been possible for (redacted) to have marked the whole of the site on the plan submitted to WPD alongside their application for a grid connection, had WPD had and, if so, had disclosed, such a requirement. However, the internal policies of WPD, whatever they might have been at the material times, were not known to (redacted) and the 2016 Policy had yet to be published. In specifying only the location of where the Connection Substation would be required in its application, (redacted) was complying with the common practice of DNOs at the time.

40. WPD is disregarding its core obligations under the law and its licence conditions in slavishly adhering to its own internal policies and by holding these policies above its primary obligations. This stance is profoundly unjust and, in these circumstances, has lead to manifestly unfair outcomes. The viability of the Project is now under threat owing to an arbitrary decision to apply retrospectively a policy that itself represents an arbitrary interpretation of statute that can claim no legal basis.

41. Further, WPD is disregarding a binding agreement that crystallised upon (redacted) acceptance of the firm grid connection made on 15 October 2015. It is extraordinary that WPD considers that a subsequently published policy would somehow relieve it of its prior obligations to (redacted). Though the Authority is not concerned with the contractual implications of WPD's actions, the fact that WPD has acted unilaterally to repudiate an agreement entered into by (redacted) in good faith and relied upon by it, and has done so on grounds unrelated to the terms of that agreement, is illustrative of the stark unfairness and unreasonableness of WPD's actions.

The solution

42. WPD's refusal to deliver the grid connection in accordance with the accepted grid connection offer obliges (redacted) to seek a determination from the Authority as set out in s.23 of the 1989 Act. This is not a decision taken lightly and (redacted) remains keen for a timely and amicable solution.

43. This Project is not an abuse or 'gaming' of the grid connection system. An application was made for a specific project that was in a serious state of development at the time of application, and which included all of the required information as set out in s.16A of the 1989 Act – i.e. the where, when and what. (redacted) is clearly not involved in any form of 'capacity banking' and simply seeks to develop the Project that has been planned at this site since before the original grid connection application was made over a year ago and has spent considerable resources towards. (redacted) conduct in relation to this site is entirely legitimate.

44. (redacted) has engaged with WPD since the outset of this dispute. Prior to this application to the Authority, (redacted) had sought from WPD (1) acknowledgement that this Project was in development before the applicable Policy was fully published and (2) confirmation that allows the benefit of the existing accepted grid connection offer to be realised by (redacted) in relation to this development. To date (redacted) has been unsuccessful in this endeavour, with WPD citing internal policy not allowing such.

45. (redacted) has also repeatedly requested that WPD exercise its discretion in relation to the specific facts of the Project., To the extent that it may properly be said to have exercised its discretion at all, WPD has declined to take relevant matters into account, and has relied upon irrelevant considerations, in the exercise its discretion, In particular, it has not identified any substantive reason in support of its statutory obligations why matters must proceed by way of an entirely new application, and has wrongly relied upon the 2014 Interactive Applications Policy, which has no relevance to the Project.

46. (redacted) has requested WPD to quote for a variation to the original submission to move the Connection Substation approximately 100m west in line with the final station placement. Given that in all material respects this is the same project as was submitted in the original grid connection application (redacted) is of the view that requiring an entirely new submission in this regard is unreasonable or irrational. However, (redacted) have put together a project that allows the incoming Connection Substation to remain situated within the original Red-Line Area if this is what WPD deems is absolutely required. It is inconvenient, but (redacted) have made it work. WPD remain unwilling to install the connection as per the existing accepted grid connection contract.

47. Given that WPD operates under statutory authority and powers, and so arguably carries out a public function, we expect its decision making to conform to the accepted public law principles of lawfulness, rationality (including not fettering its discretion) and procedural correctness. In any event, in holding a licensed statutory monopoly for grid connections, it is reasonable to expect WPD to adhere to such standards, and we ask the Authority to intervene to ensure such conduct.

48. (redacted) requires WPD to install and energise the grid connection, as per the secured grid connection offer, within the Red-Line Area marked on the plan accompanying the connection request and to allow (redacted) to build the Power Station in the location now finalised with the LPA, with a private connection running the 100m to the Connection Substation. WPD's decision to enforce a requirement retrospectively that the Power Station, which WPD will not adopt, be constructed within the Red-Line Area (which is impossible owing to both space requirements and planning consent) renders the Project unviable. All the investment in the Project to date, which is considerable, would otherwise be wasted. This is clearly unacceptable conduct on the part of a DNO. In all the circumstances, such a decision is not necessary to address any legitimate concern WPD might have. The adverse impact upon the Project is disproportionate to any benefit WPD might anticipate.

49. (redacted) requests the Authority to order WPD to make the connection as per the accepted connection offer (the agreement between the parties) at the agreed location in the Red-Line Area as specified on the original grid connection application.

50. (redacted) feels this would be a reasonable order for the Authority to make owing to the fact that:

    a. The December 2014 published policy (Appendix E) was only addressed to, and applicable to, interactive grid connection only and, at all material times, the accepted grid connection offer for this Project was not subject to interactivity and no notice of interactivity was served on (redacted);

    b. The April 2016 published Policy (Appendix D) was published after the grid connection offer for this project was accepted and the deposit paid, and would otherwise be retrospectively applied;

    c. In any event, the Project remains materially the same as at the original time of application for a grid connect and, on the facts, is clearly not an attempt to 'game' the system or to engage in 'capacity banking', and so is, in any event, outside of the mischief the Policy attempts to address, and so, even if the Policy were to apply (which is refuted), WPD should exercise discretion in favour of granting the connection;

d. It would be unfair to compare the real and significant sunk costs of (redacted) in relation to this Project as the same as the predominantly opportunity costs of further applicants who would have been aware from an early stage that their connection requests were subject to interactivity, whereas (redacted) were given no such indication and have continued to invest on the basis of the secured grid connection;

51. In project developments such as with this Project, timing is crucial. Many aspects of the Project, including planning consent, land rights, finance requirements and procurement, as well as the Capacity Market scheme, have pressing time requirements. As such, a timely determination on this situation will be required to maintain feasibility of the Project.

52. (redacted) are open to the prospect of ADR if a suitable timeframe can be agreed. (redacted) would be looking for a resolution to this dispute before the end of October 2016.

12 August 2016

Prospect Law

OFGEM REF: _____

DETERMINATION UNDER S.23 ELECTRICITY ACT 1989 (AS AMENDED)

BETWEEN:

(redacted) Ltd

Complainant

- and -

Western Power Distribution (South West) PLC

Licensee

REQUEST FOR DETERMINATION BY THE AUTHORITY UNDER S.23 OF THE ELECTRICITY ACT 1989 (AS AMENDED)

RE: GRID CONNECTION TO PROPOSED STOR GENERATION, [redacted]

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Solicitors for the Claimant

COMPANY STATEMENT OF FACTS: WESTERN POWER DISTRIBUTION (SOUTH WEST) plc

Questions

1. **Please explain exactly what is in dispute in this case, attaching any relevant documentation to back up your argument.**

Summary

On 30th April 2015, an application for a connection (20MW STOR gas fired generation) was received from (rcdactcd) Ltd relating to land at [redacted] in Devon. This included a map showing an area highlighted in red with a red cross in one corner marked as the "Proposed Connection Point". ((rcdactcd) EvidenceB2)

It is WPD's policy to require applications for a new connection to be accompanied by a site plan showing the proposed location of the premises to be connected i.e the generating equipment. (See "Statement of methodology and charges for connection to Western Power Distribution (South West) plc's Electricity Distribution System" under the section "Information Required". Similar applications made by (rcdactcd) also include a site map showing an area highlighted in red showing the proposed location of the generating equipment and the proposed connection point.

A formal connection offer was issued on 15TH July 2015. This offer included a plan showing WPD's distribution system, the Point of Connection location and the Premises. The location (development boundary) of the premises was based on the red area highlighted on the site plan submitted by (rcdactcd) with their application. (WPD01)

This offer was accepted by (rcdactcd) Ltd on 15th October 2015. ((rcdactcd) Evidence B8).

At a meeting on 25th April 2016 (redacted) advised WPD that planning permission had been granted for the generation equipment to be sited at a different premises location to that specified in the Offer letter. This is approximately 100m west ((redacted) application for determination, para 14) of the
original site location. The planning application had been made for a different premises location due to the requirements of the landlord of the Industrial Estate. ((redacted) EvidenceP7 – copy of Planning Permission dated 14th October 2015, granted 6th April 2016). (WPD02 and WPD03)

(rcdactcd) did not advise WPD that they had submitted a planning application for a different premises location, until after planning permission was granted in April 2016. We note that (rcdactcd) Statement of Facts states
that (redacted) ***"submitted a planning application on 7 August 2015 which was validated by the local planning authority on 14 October 2015".***

Summary Timeline:

30th April 2015 – application for connection submitted to WPD (*original premises location marked on plan*)
15th July 2015 – connection Offer Letter issued by WPD (*original premises location marked on plan*)
7th August 2015 – planning application submitted (*new location of generating equipment marked on plan*)
14th October 2015 – planning permission validated by the local authority
15th October 2015 – connection Offer accepted (*original premises location marked on plan*)
6th April 2016 – planning permission granted (*new location of generating equipment marked on plan*)
18th April 2016 [redacted]email to WPD to indicate that changes had been made to the location of the generation equipment
25th April 2016 – meeting betwee[redacted]nd WPD to discuss changes to the site location
26th April 2016 – WPD indicates by email that a new application will be required as the location of the generation equipment has moved outside site boundary in the original application

Matters under dispute

On 27th April 2016, WPD advised (redacted) that as the proposed new site (development boundary) was not within the curtilage of the original site (specified on the site plan submitted with the application and subsequently on the Offer letter), WPD considers it to be a different premises requiring a new application. **The dispute between WPD and the customer is WPD's policy that a change to the premises/site location requires a new application, and thus we are not prepared to vary the connection offer.**

Paragraph 9 of (redacted) Request for Determination dated 12 August states:

The Red-Line Area shows the location where (redacted) required the point of connection to be. The Red-Line Area did not purport to show the location of the Power Station itself, as this was still subject to the final lease

arrangements with the land owner, which could not be finalised until the requirements of the local planning authority ("LPA") were known following an application for planning consent. (redacted) took this approach with its grid connection applications at the time, across the various DNOs it dealt with, because this adequately covered the "where, what and when" requirements of a grid connection application as set out in s.16A of the 1989 Act.

The location of the gas generation equipment is the site location or premises. In accordance with Section 16 of the Electricity Act, a valid application must be made in relation to a specified premises. As defined under the 1989 Electricity Act *"premises includes any land, building or structure"*. As part of the standard industry application process WPD requires a site plan showing the location of the premises to be connected, namely the land on which such building or structure is to be located. WPD does not consider a common land

ownership to be relevant to the definition of site premises.

If the application did not show the location of the generating equipment then it was not a valid application.

However in good faith WPD believed that the application was valid and that the site plan submitted with the application did show the required premises i.e. the proposed location of the generating equipment. Thus WPD made a Connection Offer on that basis.

In accordance with the Electricity Act, WPD treats any change of premises as a new application. The location of the gas generation equipment was moved due to the requirements of the landlord of the Industrial

Estate, and therefore planning permission was sought for a different premises to that specified in the application and subsequent Offer Letter. WPD has refused the request to vary the connection offer signed by the customer that shows the original premises location. WPD requires a new application and will issue a new Connection Offer. That Connection Offer will contain clauses relating to the capacity restrictions in the South West and the customer will be further down the queue due to the later date of the new application.

WPD's policy is applied to all connection applications. Under normal circumstances if a customer submits a new site plan, we would treat this as a new application and provide a new quote, unless the new site was within the boundary of the original site plan. This generally causes no issue with the customer, unless there are network capacity restrictions and there is a queue of offered generation connections utilising that available capacity.

Due to the number of applications for a connection to the South West network received during 2014 and 2015, and the resulting capacity constraints, a new application will be subject significant export constraints along with fault level reinforcement works which will delay connection.

WPD applies this policy to all changes of premises of location in order to meet the requirement under Standard Licence Condition 19 not to discriminate when offering terms for connection.

In summary;

(1) It is reasonable for WPD to consider the change of site location to be a change of premises requiring a new application (1989 Electricity Act).

WPD's approach to capacity management

The matter under dispute does not relate to the engineering arrangements of this connection. It is a wider commercial issue relating to WPD's capacity management policy aimed at preventing developers from capacity banking. Ofgem has recognised the need for DNOs to reduce the need for reinforcement by managing connection offers in its consultation "Quicker and more efficient connections". Due to the severe capacity constraints on WPD's network in the South West, WPD has applied rules relating to both the location of premises and delivery milestones.

WPD has experienced a large volume of speculative multiple applications which have the effect of reserving capacity on the network. As a result we have adopted a strict policy of requiring the applicant to specify the location of the premises, i.e. the land on which the generation equipment is to be installed. This prevents developers from securing an offer for capacity and then finding a different location and obtaining planning permission, or swapping connection offers between sites, or novating offers between developers across sites. This would in effect create a secondary market for generation capacity and enable developers to bank capacity. In order to meet the requirements of Standard Licence Condition 19, WPD applies its policy strictly to avoid undue discrimination.

We have been unwilling to adopt arbitrary rules such as allowing premises/site locations to move by say 100m or 500m. Instead we have adopted a policy that is consistent with the Electricity Act Section 16 requirements relating to a connection offers.

The customer is not asking to change the position of their Point of Connection. However to allow a private cable to be run from the customers metering connection point to a new site/premises is not consistent with Section 16 of the Electricity Act. As long as a customer obtained a letter of authority from another landowner/ landlord, they would be able to relocate to any other site. In addition once a customer has a connection offer, this can then be novated to pass to another developer.

In summary;

(2) It is reasonable to apply a strict queue management policy to ensure that all applicants are treated on a non-discriminatory basis where there are capacity constraints (Standard Licence Condition 19).

2. **Where applicable, please provide a description of the works this dispute relates to attaching any relevant documentation.**

   A Connection offer has been made for a 20MW STOR export generation site. No works have been undertaken.

3. **Please provide details of the quote you provided to (redacted), attaching any relevant documentation.**

   A formal connection Offer was issued on 15th July 2015. This offer included a plan showing WPD's distribution system, the Point of Connection location and the Premises. The location (development boundary) of the premises was based on the red area highlighted on the site plan submitted by (redacted) with their application. (WPD01)

   This offer was accepted by (redacted) Ltd on 15th October 2015. ((redacted) Evidence B8).

4. **Please provide us with a copy of the correspondence between (redacted) and WPD, from the time at which (redacted) made their initial change request.**

(redacted) EvidenceB2 - application for a connection received from (redacted) Ltd, dated 30th April 2015

Evidence 00 – WPD Guidance on Allowable Changes to applications and accepted offers, dated 1 April 2016.

Evidence 01 –Connection Offer issued 15th July 2015 showing site plan

Evidence 02 – Initial contact from (redacted) to advise of new site location & response from WPD 26/27th April 2016.

Evidence 03 – Proposed new site location requested by (redacted) – showing comparison to original site location

Evidence 04 – Email Final Review by Regulatory & Government Affairs Manager - 11th July & 18th July 2016.

We agree with (redacted) that WPD's Complaints procedure has been exhausted.

5. **In what way is your decision not to accept the change request by (redacted) which is the subject of this dispute consistent with your connections policy? If you consider it to be justified by the policy described in your document called New Interactivity Process, dated 9 December 2014, how do you justify applying the policy to a connection which is not interactive?**

<u>WPD Connections Policy</u>

It is WPD's policy to require applications for a new connection to be accompanied by a site plan showing the proposed location of the premises to be connected i.e the generating equipment. (See "Statement of methodology and charges for connection to Western Power Distribution (South West) plc's Electricity Distribution System" under the section "Information Required". Connection Offers are made on the basis of the site location (premises) shown on a plan attached to that Connection Offer.

WPD's policy is applied to all connection applications in order to meet the requirement under Standard Licence Condition 19 not to discriminate when offering terms for connection. Under normal circumstances if a customer submits a new site plan, we would treat this as a new application and provide a new quote, unless the new site was within the boundary of the original site plan. This generally causes no issue with the customer, unless there are network capacity restrictions and there is a queue of offered generation connections utilising that available capacity.

Interactivity is one aspect of capacity management. The document New Interactivity Process, dated 9 December 2014 covered the 3 main issues that WPD faces in dealing with connection applications - interactivity, acceptance validity and changes to applications. We apply these policies to all connections where there are capacity constraints. To make this

clearer in April 2016 we split this into two separate documents. Evidence 00 – WPD Guidance on Allowable Changes to applications and accepted offers, dated 1 April 2016.

WPD's Consultation on Connection Interactivity, Acceptance Validity and Reservation of Capacity

In some areas of the distribution network, there is limited capacity to connect new customers. Once that capacity is used up, network reinforcement may be required to create new capacity, this has both cost and time implications for connecting customers. In assessing any new connections, DNOs need to take into account any customers that have accepted connection offers but not yet connected. These "contracted but not yet connected" customers (often referred to as the 'queue') can have an impact on any subsequent customers wishing to connect to the network. "Interactivity" is one aspect of capacity management.

In April 2014, WPD held a public consultation on "*Connection Interactivity, Acceptance Validity and Reservation of Capacity*". This consultation highlighted the 3 main issues that WPD was facing in dealing with connection applications (Interactivity, Acceptance validity and changes to applications) and sought views on a fair way to manage these issues. On pages 16/17, the section "Changes to application and effect on queue position" discussed the question of changes to the site of the connection and asked the following questions.

1) Do you think we should allow applicants to be able to alter their requirements both during the application and post acceptance without losing their position in the interactive queues?
2) In particular do you think that a change of capacity or a change to the site of the connection should be allowable without altering the position in the queue?

We published the results of the consultation in June 2014 as a Decision Document and then as our new Interactivity Process in December 2014. The section entitled "Changes to application and effect on queue position" outlined the principles to be applied where an applicant requests a change to their connection application or where a change is required due to circumstances outside the control of the applicant or WPD. This states clearly that WPD will require a new application if a request is made to change the position of the position of supply or site of connection outside of the land/development boundary identified in the original application. The document was intended to cover all connection offers affected by capacity constraints not just those subject to a formal interactivity queue.

These documents can be found at www.westernpower.co.uk/About-us/Stakeholder-information/Connection-Customer-Engagement.aspx under the headings "Consultation" and "Decision Document".

On 1 April 2016, we published an updated version as a separate document highlighting allowable changes to applications and accepted offers at www.westernpower.co.uk/Connections/New-Connection/Budget-Estimates-and-Feasibility-Studies.aspx (Evidence00). This policy outlined in the April 2016 document did not change from that in the December 2014 document. The April 2016 document provides clarity on the process for requesting a change to the original application.

In summary;

(1) It is reasonable for WPD to consider the change of site location to be a change of premises requiring a new application (1989 Electricity Act).

(2) It is reasonable to apply a strict queue management policy to ensure that all applicants are treated on a non-discriminatory basis where there are capacity constraints (Standard Licence Condition 19).

6. **Please include any other facts you believe are relevant to the case, for example whether the Company has offered any compensation, etc and attach any relevant correspondence.**

Compensation has not been discussed.

Dated 21/10/2016

Appendix: (redacted) Submission of Facts and Reasons

Questions

1. **Please explain exactly what is in dispute in this case, attaching any relevant paperwork to back up your argument.**

   This is covered in detail in the determination request. The relevant paperwork was also attached to the determination request.

   In summary, although (redacted) has an accepted connection agreement (accepted 15 October 2015) for a 20MW generation connection to its [redacted] STOR generation facility, WPD now refuses to install and energise the connection as the generating equipment itself is not within the precise area marked on the plan submitted with the connection request, despite the fact that (redacted) has made arrangements to locate the entirety of WPD's adoptable assets within the precise area marked.

   The marked area was for the location of the connection point and incoming substation, as the final facility location was still subject to agreement with the landlord and approval of planning. Following final agreement with the landlord and planning approval, the generation facility itself is now located approximately 100m to the west of the connection point (and on land covered by the same land agreement and owned entirely by the same landlord).

   WPD's position is that an internal policy prevents WPD from installing and energising the connection, as the generation station is not going to be located within the precise area marked on the plan originally submitted. This internal policy was published in 2016, long after the connection was accepted. A similar earlier policy was in existence, but only covered 'interactive' connections. At no point before acceptance was this grid connection request in any way 'interactive'.

   (redacted) has asked if the connection point could be moved closer to the location of the generating facility. This request was refused under the same policy. (redacted) is willing to proceed on the basis that the connection point remains within the original marked area, and has communicated this to WPD.

   As requested by WPD (redacted) has submitted an entirely new application (on the express basis that this DOES NOT invalidate the existing connection agreement). This is pending consideration by WPD, but given previous indications from WPD this area is now seriously interactive, and so will almost certainly have moved (redacted) to the back of the 'interactive' queue and will mean that the project cannot be connected in time and/or at a reasonable cost. As such, this is not a viable option.

2. **Please provide a description of the works this dispute relates to, attaching any relevant paperwork.**

The works are for a 20MW generation connection. The details are contained within the determination request, and the connection agreement and plans were submitted alongside this.

3. **Please explain how you have escalated your complaint with the Company. Please provide your complaint ID (if you have one) and details of any correspondence attaching any relevant documentation.** ***(Note: Ofgem expects that any dispute has been escalated through the Company's formal dispute resolution procedure and that this avenue has been exhausted prior to it being referred to Ofgem for determination.)***

After first trying to resolve this matter through project engineers and managers, (redacted) Senior Development Manager then met with [redacted] and another person at WPD on 27 June 2016, but a solution could not be found. At this point (redacted) were directed to escalate the dispute to [redacted] (WPD Primary System Design Manager) and [redacted] (WPD Regulatory & Government Affairs Manager) (email chain attached in full).

On 11 July 2016 [redacted] and [redacted] of (redacted) met with [redacted] and [redacted] from WPD to discuss the matter. At this meeting [redacted] promised a final answer within 7 days.

(redacted) received an e-mail from [redacted] on 18 July 2016 (attached in full), in which the following was stated:

"I am sorry that this is not the answer that you would have hoped for but as the complaint has now been escalated through to myself, I would stress that this is our final position. I understand that you may now escalate the complaint to Ofgem for determination and I would be happy to provide you with more information on this course of action if helpful to you." (*emphasis added*)

The indication from WPD has been that [redacted] is the highest level of escalation available, and so, on the basis of this, (redacted) is of the view that the WPD complaints process has been exhausted.

4. **Please explain which other avenues you have exhausted in seeking a resolution to this dispute. Please attach any relevant paperwork and correspondence including correspondence with the dispute resolution body and with the Company.** ***(Note: Ofgem expects that other avenues to dispute resolution will have been exhausted prior to referral of the dispute to Ofgem for determination.)***

Time is very much a factor in this project, and a resolution is required quickly if this project is to remain viable.

(redacted) is of the view that WPD is in breach of its obligation to provide an energised grid connection, and so has escalated the matter to OFGEM for prompt determination.

A separate dispute resolution process before escalation to OFGEM would almost certainly result in a situation where any resolution in (redacted) favour would be pyrrhic at best as, by that point, the required milestones on the project would have been missed and the project would no longer be viable in any event.

5. **Please provide details of the connection offer provided to you by the Company, attaching any relevant documentation.**

   The connection documentation was provided with the original determination request (appendix A). We have also now attached the documents submitted with the application request, the signed letter of acceptance and the PoC info letter in case this is of assistance.

6. **On what date did (redacted) make the request to WPD for the change of grid connection position?**

   The request for a change of grid connection position is no longer of importance to UKPR and in the interests of a speedy resolution is no longer something UKPR are pursuing. UKPR has planned the project to work with the connection position within the originally submitted boundary to reduce the scope of matters in dispute (as per para 15 of the original determination request), and has since received planning consent for the incoming connection substation to be located within the original marked area.

7. **On what date did (redacted) submit their planning application, and on what date was planning permission granted? Please submit a copy of the documents relating to the planning application process, including the planning application itself and the document granting permission.**

   (redacted) submitted a planning application on 7 August 2015 which was validated by the local planning authority on 14 October 2015. Consent was granted on 6 April 2016. The pertinent application documents, officer's report and decision notice are attached.

   The full planning application documents are all available to the public on the Torbay planning portal under reference P/2015/0786:

   http://www.torbay.gov.uk/newpublicaccess/applicationDetails.do?activeTab=summary&keyVal=NSP8S5QIGBP00

Since the onset of this dispute (redacted) has applied for, and received consent from the local planning authority for, the incoming substation to be located within the area originally specified on the grid connection request. This is under Torbay Planning Portal reference P/2016/0611. The application, decision notice and plan are attached.

8. **Please provide us with a copy of the correspondence between (redacted) and WPD, from the time at which (redacted) made their initial change request.**

As per paragraph 7 above, (redacted) is no longer pursuing a change of connection position. However, of OFGEM feel this remains relevant, copies of the correspondence between (redacted) and WPD can be made available.

Correspondence in relation to the later stages of the dispute is attached.

9. **Please include any other facts relevant to the case and attach any relevant correspondence.**

None applicable.

WPD Further Response - November 2016
(redacted) comments re: WPD's questionnaire responses (the "WPD Response").

1. (redacted) Comment 3)

It is WPD policy to require a site location plan showing the site boundary and a site layout plan showing where the connections are required. The site location plan is expected to show where the premises is or will be sited. This is the fourth and fifth bullet points in the list of "information Required". (redacted) have only chosen to comment on the fifth bullet point which is required to locate the precise location of the metering/exit point within the premise/site boundary.

We argue that this is reasonable within the requirements of Section 16 of the Electricity Act. In order to make a connection offer, we need to know the location of the premises to be connected.

The duty on a distributor under Section 16(1) is to make an offer to *make a connection between a distribution system of his and any premises* when required to do so by the owner or occupier of the premises. The request for a connection must specify the premises to be connected. The distributor then makes an offer to connect the specified premises.

See Appendix 1 extract from the Electricity Act.

2. (redacted) Comment 4)

As (redacted) has previously submitted site location plans showing the generation equipment to be connected, it appeared that (redacted) was aware of WPD's process of requiring a site
location plan.

3. (redacted) Comment 5) & 8)

It is WPD's position that an application is required to show the location of the generation assets requiring a connection (the premises), and all of these generation assets must be located within the submitted site boundary, as WPD's connection Offer was made on this basis. **We agree that this is the matter under dispute, upon which Ofgem has been asked to determine. We argue that it is reasonable for us to require a site location plan to define the premises specified in our connection Offer.**

Furthermore, if the applicant changes the location of the premises to be connected (the generation equipment) to outside of the area indicated on the connection Offer, then it is reasonable for us to require a new application.

4. (redacted) Comment 6)

The 1989 Electricity Act defined "premises" such that a person can seek an electricity connection to any "land, building or structure" that they specified. The broader definition was to provide for a range of connections such as street lighting and street furniture, generation equipment, pumping stations, temporary builders supplies. This definition has been flexible enough to allow for developments in technology such as broadband cabinets, electric vehicle charging points, PV solar farms etc.

5. (redacted) Comments 6), 7) and 8)

Section 16 requires that those premises are specified by the owner or occupier. It is industry practice to require the location of the premises to be specified by reference to the address and a site location plan. For example a local authority installing a street light or electric car charging point sends us a detailed plan showing the intended location of the streetlight or EV charging point. We provide a connection Offer with reference to that location.

If an applicant is unable to specify the location of the premises to be connected, we are not able to provide a connection Offer, until they provide a site plan. One of the most common requests made by our teams for missing pieces of minimum information, is when customers have not provided their site map.

In this instance (redacted) did provide a site location map, and we provided a connection Offer on that basis, in the belief that the red area was the intended location of the generation equipment. (redacted) **now wishes to site its generation equipment at a different location, outside of the red area indicated on the original site location plan provided with the application. We are not willing to vary the connection Offer. Therefore this requires a new connection Offer for a different site location plan.**

We have explained that due to the large volume of speculative multiple applications which have the effect of reserving capacity on the network, we adopted a strict policy of requiring the applicant to specify the location of the premises, i.e. the land on which the generation equipment is to be installed, **and requiring a new Offer to be made if the location of the generation equipment is moved outside of the specified site location.** This prevents developers from securing an offer for capacity and then finding a different location and obtaining planning permission, or swapping connection offers between sites, or novating offers between developers across sites.

We argue that it is reasonable to adopt this policy in order to manage capacity restrictions in a non-discriminatory manner, and in accordance with Standard Licence Condition 19.

6. (redacted) Comments 10) and 11)

We have previously set out our reasons as to why we adopted our queue management policy. In this case (redacted) could have mitigated its risk by advising WPD in August 2015 (when the planning application was made) or in October 2015 (when the connection Offer including the attached site plan was signed by (redacted)) that it was seeking planning permission for the generating equipment to be sited at a different location following discussions with the
landowner, instead of April 2016.

7. (redacted) Comments 12) – 16)

Our policy relating to changes of site location applies to all customers. In 2014 the impact was on customers subject to interactivity queues, which is why our consultation and published policy referenced interactivity. During early 2015 capacity restrictions in the South West became more severe which meant a wide range of generation applicants became subject to capacity queues, outside of just those subject to interactivity. On 1 April 2016 we reissued our policy to make it clear that it applied to any customer. It is not a retrospective policy. The policy was applied in a non-discriminatory manner across all generation applications where there were queues for capacity. However WPD acknowledges accepts that it should have clarified its policy at an earlier stage to reflect the wider capacity restrictions in the South West.

We argue that it is reasonable to adopt a strict policy on changes to site location in order to manage capacity restrictions in a non-discriminatory manner, and in accordance with Standard Licence Condition 19.

Appendix 1

Electricity Act 1989 (Amended by S44 of the Utilities Act 2000)

16 Duty to supply on request **[16 Duty to connect on request]**

(1) An electricity distributor is under a duty—

(a) to make a connection between a distribution system of his and any premises, when required to do so by—

(i) the owner or occupier of the premises; or

(ii) an authorised supplier acting with the consent of the owner or occupier of the premises,

for the purpose of enabling electricity to be conveyed to or from the premises;

(b) to make a connection between a distribution system of his and any distribution system of another authorised distributor, when required to do so by that authorised distributor for the purpose of enabling electricity to be conveyed to or from that other system.

(2) Any duty under subsection (1) includes a duty to provide such electric lines or electrical plant as may be necessary to enable the connection to be used for the purpose for which it is required.

(3) The duties under this section shall be performed subject to such terms as may be agreed under section 16A for so long as the connection is required.

(4) In this section and sections 16A to 23—

(a) any reference to making a connection includes a reference to maintaining the connection (and continuing to provide the necessary electric lines or electrical plant);

(b) any reference to requiring a connection includes a reference to requiring the connection to be maintained (and the continued provision of the necessary electric lines and electrical plant); and

(c) any reference to the provision of any electric line or electrical plant is a reference to the provision of such a line or an item of electrical plant either by the installation of a new one or by the modification of an existing one.

(5) The duties under this section are subject to the following provisions of this Part and any regulations made under those provisions.]

16A Procedure for requiring a connection]

[(1) Where a person requires a connection to be made by an electricity distributor in pursuance of section 16(1), he shall give the distributor a notice requiring him to offer terms for making the connection.

(2) That notice must specify—

(a) the premises or distribution system to which a connection to the distributor's system is required;

(b) the date on or by which the connection is to be made; and

(c) the maximum power at which electricity may be required to be conveyed through the connection.

(3) The person requiring a connection shall also give the distributor such other information in relation to the required connection as the distributor may reasonably request.

(4) A request under subsection (3) shall be made as soon as practicable after the notice under subsection (1) is given (if not made before that time).

(5) As soon as practicable after receiving the notice under subsection (1) and any information requested under subsection (3) the distributor shall give to the person requiring the connection a notice—

(a) stating the extent (if any) to which his proposals are acceptable to the distributor and specifying any counter proposals made by him;

(b) specifying any payment which that person will be required to make under section 19(1) or regulations under section 19(2);

(c) specifying any security which that person will be required to give under section 20; and

(d) stating any other terms which that person will be required to accept under section 21.

(6) A notice under subsection (5) shall also contain a statement of the effect of section 23.]

64 Interpretation etc of Part I

"premises" includes any land, building or structure;

(redacted) comments re: WPD's questionnaire responses (the "WPD Response").

1) It is our view that WPD's position, as advanced within the WPD Response, remains fundamentally the same as that set out in (redacted) initial request for determination. As such we shall keep these comments as short as possible.

"It is reasonable for WPD to consider the change of site location to be a change of premises requiring a new application (1989 Electricity Act)."

2) In the second paragraph of the summary, on p1 of the WPD Response, it is indicated that the requirement to submit a site plan showing all the generating equipment is set out in the "information required" section of "Statement of methodology and charges for connection to Western Power Distribution (South West) plc's Electricity Distribution System". That section of the June 2016 version of the document (which does not appear to have changed at least since 2013) states:

"Information Required

2.6 When you make your application to us **you should provide the information set out below.** In some cases, it is possible that additional information will be required and we will notify you of this when we have assessed your requirements.

2.7 If you do not provide the information we need it will prevent us from dealing with your enquiry as quickly as we would like, so please provide the information indicated on our application form. The information we require will vary depending on the nature of your connection request. Typically we require the following details:

☐ Your name and correspondence address and other contact details.

☐ The Premises address.

☐ Whether you require a Budget Estimate or a formal Connection Offer. A formal Connection Offer is a contractual document and more appropriate once you are in a position to decide whether the project can proceed to the construction phase.

☐ A site location plan showing the site boundary.

☐ **A site layout plan, drawn to a suitable scale, indicating where the connection(s) are required.**

☐ The number of connections you require.

☐ The Required Capacity for each connection.

☐ Details of the heating to be installed.

☐ The date by which you require the connection to be made.

☐ Whether the connection is required for a fixed period or indefinitely.

☐ The type of connection required, e.g. demand, generator or for a licensed, embedded network. Further information on generation connections can be found in our Distributed Generation Connections Guide which can be accessed from our website.

☐ Any information you have in respect of equipment which may interfere with our Distribution System or the supply of electricity to others (e.g. apparatus which can cause voltage fluctuations, such as large motors associated with air conditioning systems, lifts, cranes, hoists and other similar plant; or apparatus which can produce harmonics, such as uninterruptible power supplies or electronic control systems)." (emphasis added)

Source: https://www.westernpower.co.uk/docs/connections/Charging-Statements/Connections-South-West-Nov-2014.aspx (South West, June 2016 Edition)

3) At no point in the above is any indication given that a submitted site plan must show anything other that "where the connection(s) are required". What it asks for is the "what, where and when" as indicated in the initial request for determination and any information about loads which may have a material effect on the point of connection.

4) Next WPD stated that as (redacted) have submitted more detailed plans in other applications this indicates that (redacted) must agree with WPD's position. This is simply not the case. Different development projects progress at different rates and sometimes by the time (redacted) submitted a grid connection request the site layout was at a more advanced stage. (redacted), on these occasions, would have submitted the latest plans it had produced. To infer that because it had produced more advanced plans for other projects it agrees with WPD's position on this project simply does not follow.

5) WPD state on a number of occasions in the WPD Response that (redacted) sought, and obtained, planning consent for "different premises". (redacted) do not agree with this, and this is somewhat of a disingenuous misstatement of the nature of the dispute. The grid connection location remains within the area submitted and all assets that WPD will adopt following installation of the connection will be within this area (or along the route of connection outside (redacted) control). **WPD's submission that (redacted) has changed the premises/site location is simply not the case – (redacted) wants the grid connection to be sited where it was originally stated when the offer was accepted.** The REAL question is whether the original application needed to have shown the location of all the generation assets and whether all of these generation assets must be located within the submitted site boundary.

6) WPD continues to misinterpret the meaning of "premises" in relation to its obligations under the Electricity Act 1989 (as amended), relying on a convenient mis-application of the widening definition at s.64 which indicates that "premises" should be construed widely ("premises includes any land, building or structure"). See paragraph 37 of the (redacted) request for determination.

7) Perhaps the most telling statement in the whole WPD Response is the view that "*If the application did not show the location of the generating equipment then it was not a valid application.*" This is in no way supported by the Electricity Act 1989 or the

Distribution Licence conditions. This is also not how a number of other DNOs operate, or how WPD has operated in the recent past. Most critically, this is not a statement of legal requirement, as WPD would suggest, but simply a statement of current WPD policy. (redacted) **are of the view that such a policy, as applied in this situation, is manifestly unfair for one simple reason: since the policy was demonstrably not in effect when the connection was secured by** (redacted)**, the policy is being applied retrospectively by WPD. The document which ultimately established this policy is dated April 2016, half a year after this non-interactive connection offer was accepted.**

8) WPD state "It is reasonable for WPD to consider the change of site location to be a change of premises requiring a new application (1989 Electricity Act)." This is not accurately what the dispute is about though, and flows from WPD's skewed view that the generation assets must be comprehensively shown on the original application and are required (they would say by law, although this clearly is not the case) to be within the area submitted as part of the application. This skewed view also fails to recognise that the precise site layout may reasonably change as the site development progresses.

"It is reasonable to apply a strict queue management policy to ensure that all applicants are treated on a non-discriminatory basis where there are capacity constraints (Standard Licence Condition 19)."

9) (redacted) are not disputing that a strict queue management policy may be required, and has stated in the original request for determination that it understands the issue of capacity banking and the need to mitigate such a risk.

10) The WPD view on the concept of discrimination is, however, similarly skewed. Given that (redacted) have an accepted grid connection offer, and has continued to invest significantly in the [redacted] project on the basis of this, it would not be fair or right to consider the (redacted) as being identical to other, later, applicants in the area who will not have incurred such investment costs in the knowledge that they did not have secure connection capacity.

11) (redacted) are not saying that WPD should discriminate, just that aiming to treat everyone entirely the same, without any consideration of circumstances and without the consideration or exercise of any discretion whatsoever is an overly simplistic view of "fairness" and can lead to perverse outcomes. Other developers suffer opportunity costs by being later in the queue in this area, whereas, owing to possessing an accepted grid connection and the investment this has induced, (redacted) costs would be very real capital costs.

"how do you justify applying the policy to a connection which is not interactive?"

12) This is a very pertinent question, and we note that WPD do not answer it.

13) WPD simply state that "*The document New Interactivity Process, dated 9 December 2014 covered the 3 main issues that WPD faces in dealing with connection*

applications - interactivity, acceptance validity and changes to applications. ***We apply these policies to all connections where there are capacity constraints. To make this clearer in April 2016 we split this into two separate documents.***" (emphasis added)

14) OFGEM will see that the 2014 document is clearly aimed at interactive connections – from the name of the policy through to the specific contents of the guidance. To say that this is applied to all connections where there are capacity constraints (which, given that capacity is a finite resource, are ALL connections) is not acceptable, especially when you consider that only WPD will know the full extent of any local capacity constraints.

15) (redacted) position remains that the 2014 policy did not apply to its non-interactive accepted connection offer, and that the retroactive application of the 2016 policy to its 2015 accepted connection offer is manifestly unfair. WPD acknowledge in the WPD Response that that it was not clear that the 2014 policy was intended to apply to the non-interactive connection process.

16) WPD state that the policy did not change from 2014 to 2016, and that the document was simply a clarification. (redacted) disagree. The 2014 policy was clearly only to apply to connection request subject to interactivity, with this scope being expanded in the 2016 document. This is a material change, and it would be unfair for such a change to be able to be applied retrospectively.

Conclusion

17) WPD has a statutory obligation to offer a grid connection on request and to install a grid connection where such an offer is accepted. The information submitted by (redacted) at the time was sufficient to allow WPD to make such an offer, as they did.

18) (redacted) has NOT changed the premises for the connection since the original application.

19) It is not a requirement of the underlying law that a connection request is accompanied by a full and comprehensive layout of generating assets that are on the customer side of the point of connection, and an application that does not give all these details IS a valid connection application.

20) WPD is wrong to refuse to exercise any discretion in relation to combatting capacity banking, and its approach to non-discrimination is overly simplistic and, as in this case, can lead to perverse outcomes.

21) The 2014 policy document only applied to interactive connection offers, and this connection offer was never interactive. There were material changes in WPD policy between 2014 and 2016, and applying the 2016 policy retrospectively to a 2015 accepted connection offer is manifestly unfair.

Applicant's Details

Company Name :	(redacted) Ltd
Company registered No.	07385282
Postal Address :	[redacted]
Contact Name :	[redacted]
Email Address :	[redacted]
Telephone No.	[redacted]
Fax No.	[redacted]

Consultant's Details (if applicable)

Consultants Name :	[redacted]
Postal Address:	[redacted]
Contact Name :	
Email Address:	[redacted]
Telephone No.:	[redacted]
Fax No.	

Power station location and operation

Power station name :	[redacted]
Postal Address or site boundary plan (1:500) :	[redacted]
Details of any existing Connection Agreements :	None
Target date for provision of connection / commissioning of power station :	01 March 2017

PART 1a

Connection Point (OS grid ref or description) :	See attached plan (Grid Ref SX 87281 59260)
Preferred connection point voltage :	33,000V
Single line diagram of any on-site existing or proposed electrical plant or, where available, operation diagrams	See attached
What security is required for the connection? (see Note A1) :	Single circuit
No. of generation sets in power station :	14 proposed
Are all generation sets of same design/rating?	Y
Will power station operate in island mode?	N
Will generation plant supply electricity to on-site premises?	N

Power station standby import requirements (see Note A2)

Maximum active power import	0.25MW
Maximum reactive power import (lagging)	0.02MVAr
Maximum reactive power export (leading)	0MVAr

Power station top-up import requirements (see Note A3)

Maximum active power import	0MW
Maximum reactive power import (lagging)	MVAr
Maximum reactive power export (leading)	MVAr

PART 1a

Power station export requirements (see Note A4):

Total power station output at registered capacity (net of auxiliary loads)

Registered capacity (maximum active power export)	20MW
Maximum reactive power export (lagging)	6.573MVAr
Maximum reactive power import (leading)	0MVAr

Power station maximum fault current contribution (see Note A5)

Peak asymmetrical short circuit current at 10ms (i_p) for a 3φ short circuit fault at the connection point	4.951 kA
RMS value of the initial symmetrical short circuit current (I_k'') for a 3φ short circuit fault at the connection point	2.149 kA
RMS value of the symmetrical short circuit current at 100ms ($I_{k(100)}$) for a 3φ short circuit fault at the connection point	0.818 kA

Power station interface arrangements (see Note A6)

Means of connection, disconnection and synchronising between the DNO and the Customer	Automatic synchronisation with embedded check sync. Incoming circuit from DNO to customer site is will have circuit breaker lockable in open position.

Note A1 – The DNO will assume a single circuit connection to the power station is required unless otherwise stated. Options include:
(a) single circuit connection
(b) manually switched alternative connection
(c) automatic switched alternative connection
(d) firm connection (secure for first circuit outage)

Note A2 – This section relates to operating conditions when the power station is importing active power, typically when it is not generating. The maximum active power import requirement and the associated maximum reactive power import and/or export requirements should be stated

Note A3 - This section relates to operating conditions when the power station is importing active power, typically when it is generating, but is not generating sufficient power to cater for all the on-site demand

Note A4 – This section relates to operating conditions when the power station is exporting active power. The active power export and associated maximum reactive power export and/or import should be stated for operation at registered capacity.

Note A5 - See Engineering Recommendation G74, ETR 120 and IEC 60909 for guidance on fault current data. Additionally, fault current contribution data may be provided in the form of detailed graphs, waveforms and/or tables This information need not be provided where detailed fault level contribution / impedance data is provided for each Generation Set in Part 1b or Part 2 of this application form

Note A6 - The interface arrangements need to be agreed and implemented between the User and DNO before energisation. DPC7.3.1 of the Distribution Code refers.

PART 1b

Generation set general data

Number of generation sets to which this data applies:		14
Type of generation set (please tick box)	Synchronous generator	✓
	Fixed speed induction generator	
	Double fed induction generator	
	Series converter connected generator	
	Other (provide details)	

Type of prime mover:

Gas fired reciprocating engine

Operating regime (see Note B1). Please tick box	Intermittent	☐
	Non-intermittent	✓

Generation set Active Power capability

Rated terminal voltage (generator)	400V
Rated terminal current (generator)	2,653A
Generation set registered capacity (net)	1.416MW
Generation set apparent power rating (to be used as base for generator parameters)	1.838MVA
Generation set rated active power (gross at generator terminals)	1.471MW

Generation set Reactive Power capability at rated Active Power (gross, at generator terminals)

Maximum reactive power export (lagging). For HV connected generators only	0.488MVAr
Maximum reactive power import (leading). For HV connected generators only	0MVAr

PART 1b

Generation set maximum fault current contribution (see Note B2)

Peak asymmetrical short circuit current at 10ms (i_p) for a 3φ short circuit fault at the generation set terminals (HV connected generators only)	42.45 kA
RMS value of the initial symmetrical short circuit current (I_k'') for a 3φ short circuit fault at the generation set terminals (HV connected only)	15.91 kA
RMS value of the symmetrical short circuit current at 100ms ($I_{k(100)}$) for a 3φ short circuit fault at the generation set terminals	13.26 kA

Note B1 – Intermittent and Non-Intermittent Generation is defined in Engineering Recommendation P2/6 as follows
Intermittent Generation: Generation plant where the energy source for the prime mover can not be made available on demand.
Non-intermittent Generation: Generation plant where the energy source for the prime mover can be made available on demand.

Note B2 - See Engineering Recommendation G74, ETR 120 and IEC 60909 for guidance on fault current data. Additionally, fault current contribution data may be provided in the form of detailed graphs, waveforms and/or tables

PART 2a

Generation set model data: Synchronous generation sets (or equivalent synchronous generation sets)

Generation set identifier:	1 – 14
Type of generation set (wound rotor, salient pole or asynchronous equivalent). See Note C1	Wound rotor
Positive sequence (armature) resistance (HV connected generators only)	0.0005 per unit
Inertia constant (generation set and prime mover). (HV connected generators only)	7 MWsec/MVA
Direct axis reactances:	
Sub-transient (X''_d) – ~~unsaturated~~ / saturated	0.11 per unit
Transient (X'_d) – ~~unsaturated~~ / saturated (HV connected generators only)	0.20 per unit
Synchronous (X_d) – ~~unsaturated~~ / saturated (HV connected generators only)	2.18 per unit
Time constants:	
State whether time constants are open or short circuit (HV connected only)	Short circuit
D-axis sub-transient – ~~unsaturated~~ / saturated (HV connected generators only)	0.024s (short circuit)
D-axis transient – ~~unsaturated~~ / saturated (HV connected generators only)	0.045s (short circuit)

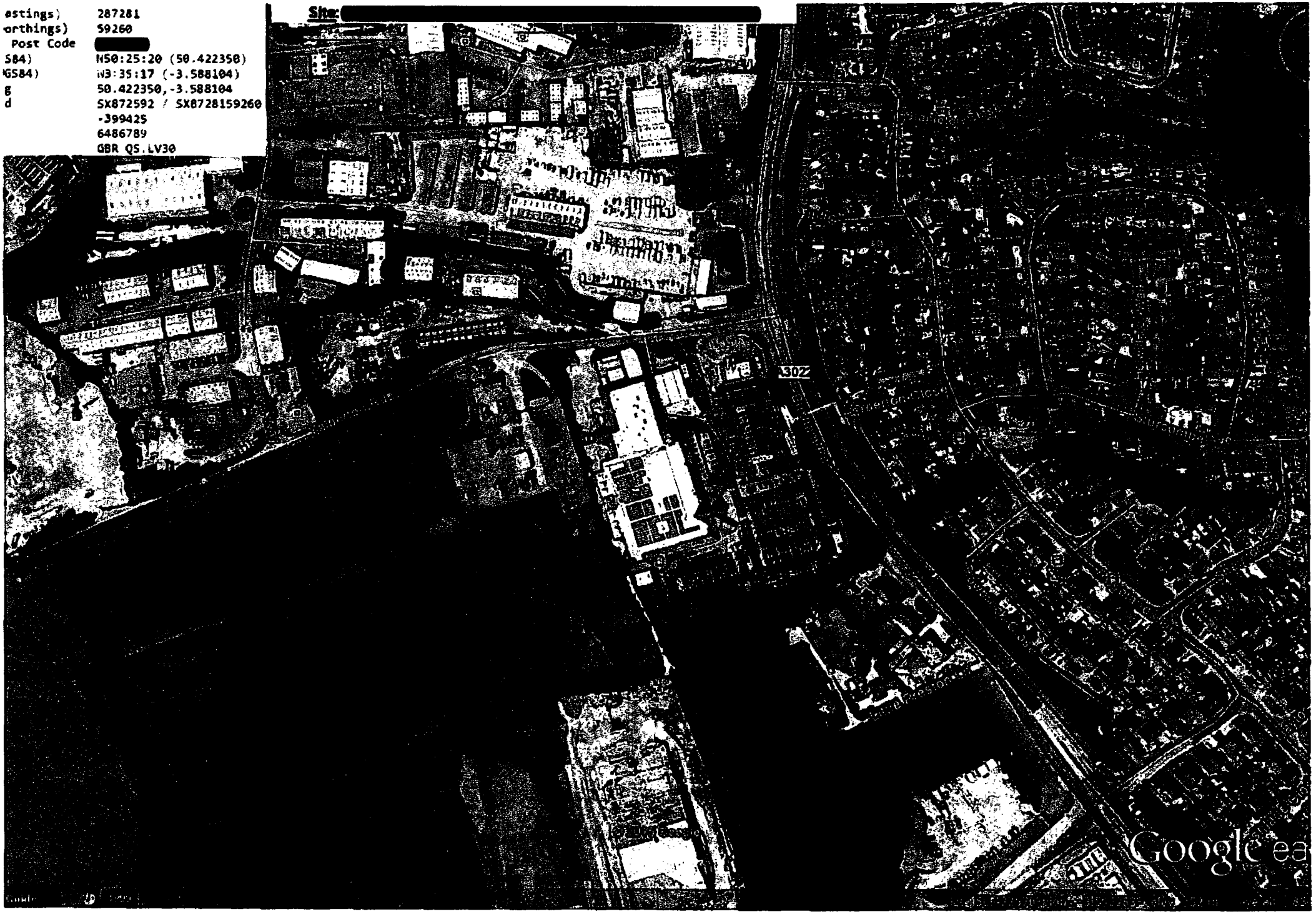
Note C1 – Asynchronous generators may be represented by an equivalent synchronous generator data set

PART 2e

Transformer information

Transformer identifier	1 - 7
Transformer type (Unit/Station/Auxiliary)	Unit
Number of identical units	7
Type of cooling	ONAN
Rated (apparent) power	3.5MVA
Rated voltage ratio (on principal tap)	33kV/0.415kV
Positive sequence resistance (HV connected only)	0.0098
Positive sequence reactance at principal tap	0.0693
Winding configuration (e.g. Dyn11). HV connected only	Dyn11
Type of tap changer (on load / off circuit)	Off circuit, manual
Tap step size	2.5%
Maximum ratio tap	+2%
Minimum ratio tap	-2.5%
Method of voltage control (HV connected only)	manual – fixed tap
Method of earthing of high-voltage winding	None - Delta winding
Method of earthing of low-voltage winding	Solid - TNS

astings)	287281
orthings)	59260
Post Code	[redacted]
584)	N50:25:20 (50.422350)
GS84)	W3:35:17 (-3.588104)
g	50.422350,-3.588104
d	SX872592 / SX8728159260
	-399425
	6486789
	GBR QS.LV30



[redacted] Group Services

3 April 2015

To whom it may concern,

I, [redacted] Operations Director, acting on behalf of [redacted] Group Services Ltd grant permission to (redacted) Ltd [redacted] to make an application to Western Power Distribution for an electricity connection at the site at the Former Uniq factory, now trading as Dainton Self-Storage located on [redacted]

(redacted) also wish to discuss the potential interaction with their requirements and our existing electricity connection. This aspect is limited to discussions and does not permit any changes to our existing connection.

Please contact me if you require any additional information via email: [redacted]

Yours sincerely

[redacted]
Operations Director

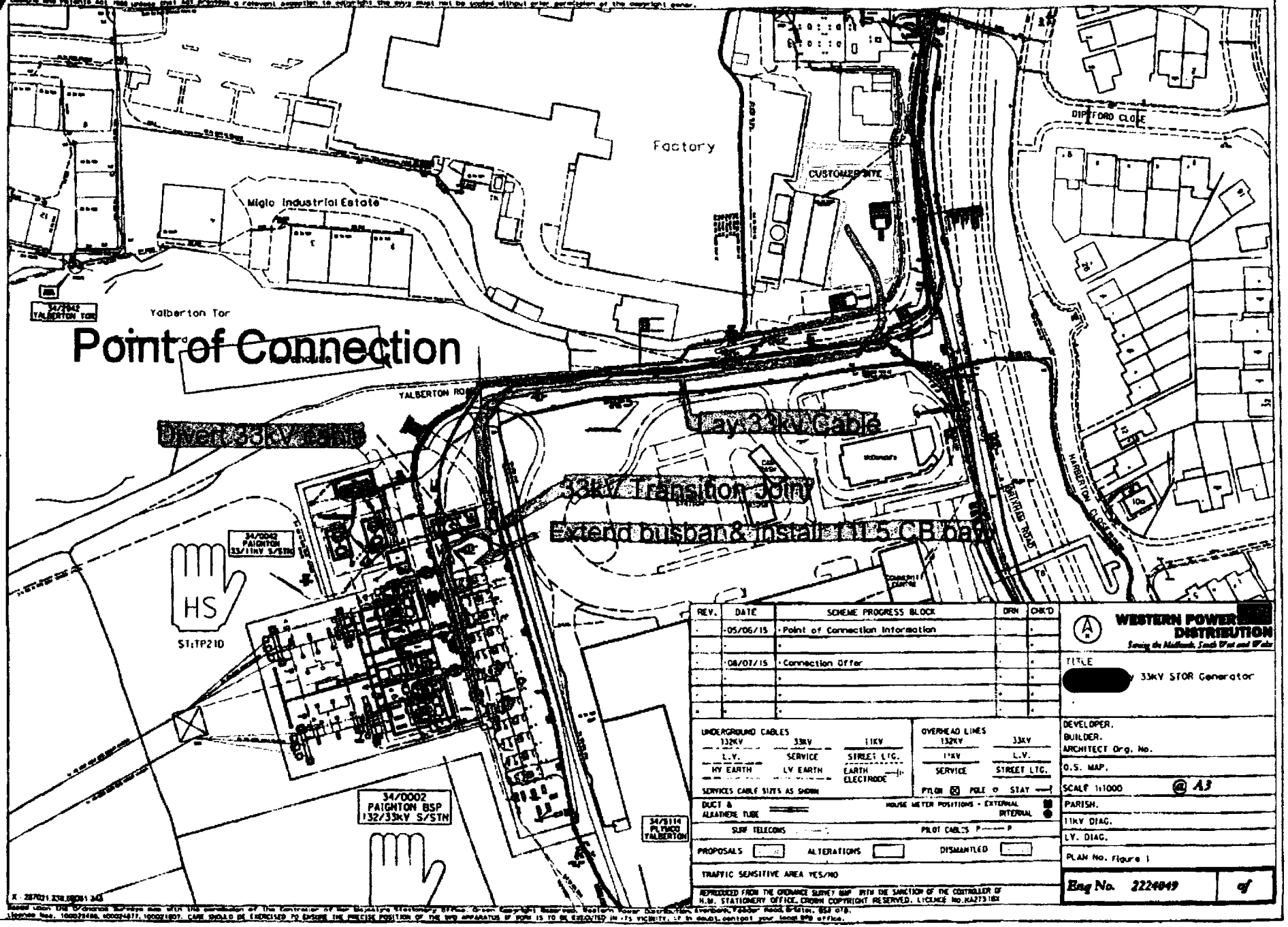
[redacted]

Cc [redacted]

[redacted]

Information is given as a guide only and it's accuracy cannot be guaranteed.

PLEASE NOTE: This plan ONLY shows assets owned by Western Power Distribution. Electricity assets owned by IDNO's (Independent Network Operators) MAY be present in this area.



REV.	DATE	SCHEME PROGRESS BLOCK	DRN	CHK'D
	05/06/15	Point of Connection Information		
	08/07/15	Connection Offer		

UNDERGROUND CABLES: 132KV; 33KV; 11KV; L.V.; SERVICE; STREET LTG.; HV EARTH; LV EARTH; EARTH ELECTRODE; SERVICES CABLE SIZES AS SHOWN

OVERHEAD LINES: 132KV; 33KV; 11KV; L.V.; SERVICE; STREET LTG.; PYLON; POLE; STAY

DUCT & ALKATHENE TUBE; HOUSE METER POSITIONS - EXTERNAL, INTERNAL; SURF TELECOMS; PILOT CABLES P——P; PROPOSALS; ALTERATIONS; DISMANTLED

TRAFFIC SENSITIVE AREA YES/NO

WESTERN POWER DISTRIBUTION
Serving the Midlands, South West and Wales

TITLE: [redacted] 33kV STOR Generator

DEVELOPER.
BUILDER.
ARCHITECT Org. No.
O.S. MAP.
SCALE 1:1000 @ A3
PARISH.
11kV DIAG.
LV. DIAG.
PLAN No. Figure 1

Enq No. 2224049 of

[redacted]

Letter of Acceptance

To:
Western Power Distribution (South West) plc
Avonbank
Feeder Road
St Phillips
Bristol
BS2 0TB

[redacted]

FAO [redacted]

Our Ref:
2224272/2224049

Your Ref:

Customer: [redacted]

[redacted] t Proposed STOR Generator a [redacted]

We, the Customer, accept the terms of your Connection Offer dated 15/07/2015 and wish to proceed on the basis of the option indicated below.

Option 1 – WPD to undertake both Non-contestable and Contestable works ☐
Option 1 price including VAT £469,447.14 (For scheme and version 803144/1)

Option 2 – WPD to undertake the Non-contestable work only ☑
Option 2 price including VAT £272,227.24 (For scheme and version 804597/1)

[Please tick as appropriate]

We accept responsibility for all reasonable costs that WPD may incur as a result of our termination of this Agreement or any variation, cancellation or partial cancellation of the Connection Works and agree that outstanding costs will then be invoiced by WPD for the immediate payment.

Signed: [redacted]

..... for and on behalf of the Customer

Full Name [redacted]

Designation [redacted]

Dated 15/10/15

(THIS MUST BE SIGNED BY AN AUTHORISED PERSON)

TORBAY COUNCIL

Spatial Planning

2nd Floor, Electric House, Castle Circus, Torquay TQ1 3DR

www.torbay.gov.uk/planning
email: planning@torbay.gov.uk
telephone: 01803 207801

Application for Planning Permission.
Town and Country Planning Act 1990

Publication of applications on planning authority websites.
Please note that the information provided on this application form and in supporting documents may be published on the Authority's website.
If you require any further clarification, please contact the Authority's planning department.

1. Applicant Name, Address and Contact Details

Title: Mr | First name: [redacted] | Surname: [redacted]

Company name: [redacted]

Street address: [redacted]

Town/City: [redacted]

County: [redacted]

Country: United Kingdom

Postcode: [redacted]

	Country Code	National Number	Extension Number
Telephone number:			
Mobile number:			
Fax number:			

Email address:

Are you an agent acting on behalf of the applicant? (•) Yes ( ) No

2. Agent Name, Address and Contact Details

Title: Mr | First Name: [redacted] | Surname: [redacted]

Company name:

Street address: 6th Floor [redacted]

Town/City: [redacted]

County: [redacted]

Country: United Kingdom

Postcode: [redacted]

	Country Code	National Number	Extension Number
Telephone number:		[redacted]	
Mobile number:			
Fax number:			

Email address: [redacted]

3. Description of the Proposal

Please describe the proposed development including any change of use:

To develop a small scale standby electricity generation plant in individual sound proof containers.

Has the building, work or change of use already started? ( ) Yes (•) No

4. Site Address Details

Full postal address of the site (including full postcode where available)

House: Suffix:

House name:

Street address:

Town/City:

County:

Postcode:

Description of location or a grid reference
(must be completed if postcode is not known):

Easting: 287168

Northing: 59356

Description:

land to the rear of Dainton Self Storage & Removals [redacted]

5. Pre-application Advice

Has assistance or prior advice been sought from the local authority about this application? ○ Yes ◉ No

6. Pedestrian and Vehicle Access, Roads and Rights of Way

Is a new or altered vehicle access proposed to or from the public highway? ○ Yes ◉ No

Is a new or altered pedestrian access proposed to or from the public highway? ○ Yes ◉ No

Are there any new public roads to be provided within the site? ○ Yes ◉ No

Are there any new public rights of way to be provided within or adjacent to the site? ○ Yes ◉ No

Do the proposals require any diversions/extinguishments and/or creation of rights of way? ○ Yes ◉ No

7. Waste Storage and Collection

Do the plans incorporate areas to store and aid the collection of waste? ◉ Yes ○ No

If Yes, please provide details:

On site waste would be collected by an approved waste disposal contractor. This waste would be limited to packaging materials for consumables and maintenance waste.

Have arrangements been made for the separate storage and collection of recyclable waste? ○ Yes ◉ No

8. Authority Employee/Member

With respect to the Authority, I am:

(a) a member of staff
(b) an elected member
(c) related to a member of staff
(d) related to an elected member

Do any of these statements apply to you? ○ Yes ◉ No

9. Materials

Please state what materials (including type, colour and name) are to be used externally (if applicable):

Others - description:

Type of other material: Generator Containers

Description of *existing* materials and finishes:

N/A

Description of *proposed* materials and finishes:

The Proposed Development consists of maximum of 14 generators. Each generator would be housed within an individual soundproof metal container and set out as shown on the site plan (Ref: 15060/102). Each container would be approximately 12.2m x 3.0m x 3.5m and would be finished in a colour to be agreed with the local planning authority.

9. (Materials continued)

Are you supplying additional information on submitted plan(s)/drawing(s)/design and access statement? (•) Yes ( ) No

If Yes, please state references for the plan(s)/drawing(s)/design and access statement:

Appendix A 15060.101 Location Plan
Appendix B 15060.102 Site Plan
Appendix C 15060.103 Elevation and Block Plan
Appendix E Ecological Constraint Appraisal
Appendix F Air Quality Assessment
Appendix G1 Landmark site check report
Appendix G2 Landmark site check (maps)
Design and Access planning statement

10. Vehicle Parking

Please provide information on the existing and proposed number of on-site parking spaces:

Type of vehicle	Existing number of spaces	Total proposed (including spaces retained)	Difference in spaces
Cars	0	2	2
Light goods vehicles/public carrier vehicles	0	0	0
Motorcycles	0	0	0
Disability spaces	0	0	0
Cycle spaces	0	0	0
Other (e.g. Bus)	0	0	0
Short description of Other			

11. Foul Sewage

Please state how foul sewage is to be disposed of:

Mains sewer ☒ Package treatment plant ☐ Unknown ☐

Septic tank ☐ Cess pit ☐

Other

Are you proposing to connect to the existing drainage system? (•) Yes ( ) No ( ) Unknown

If Yes, please include the details of the existing system on the application drawings and state references for the plan(s)/drawing(s):

12. Assessment of Flood Risk

Is the site within an area at risk of flooding? (Refer to the Environment Agency's Flood Map showing flood zones 2 and 3 and consult Environment Agency standing advice and your local planning authority requirements for information as necessary.) ( ) Yes (•) No

If Yes, you will need to submit an appropriate flood risk assessment to consider the risk to the proposed site.

Is your proposal within 20 metres of a watercourse (e.g. river, stream or beck)? ( ) Yes (•) No

Will the proposal increase the flood risk elsewhere? ( ) Yes (•) No

How will surface water be disposed of?

☐ Sustainable drainage system ☐ Main sewer ☐ Pond/lake

☒ Soakaway ☐ Existing watercourse

13. Biodiversity and Geological Conservation

To assist in answering the following questions refer to the guidance notes for further information on when there is a reasonable likelihood that any important biodiversity or geological conservation features may be present or nearby and whether they are likely to be affected by your proposals.

Having referred to the guidance notes, is there a reasonable likelihood of the following being affected adversely or conserved and enhanced within the application site, OR on land adjacent to or near the application site:

a) Protected and priority species

( ) Yes, on the development site ( ) Yes, on land adjacent to or near the proposed development (•) No

b) Designated sites, important habitats or other biodiversity features

( ) Yes, on the development site ( ) Yes, on land adjacent to or near the proposed development (•) No

c) Features of geological conservation importance

( ) Yes, on the development site ( ) Yes, on land adjacent to or near the proposed development (•) No

14. Existing Use

Please describe the current use of the site:

Vacant Land

Is the site currently vacant? (•) Yes ( ) No

If Yes, please describe the last use of the site:

General Industrial

When did this use end (if known) (DD/MM/YYYY)?

Does the proposal involve any of the following?
If yes, you will need to submit an appropriate contamination assessment with your application.

Land which is known to be contaminated? ( ) Yes (•) No

Land where contamination is suspected for all or part of the site? ( ) Yes (•) No

A proposed use that would be particularly vulnerable to the presence of contamination? ( ) Yes (•) No

15. Trees and Hedges

Are there trees or hedges on the proposed development site? ( ) Yes (•) No

And/or: Are there trees or hedges on land adjacent to the proposed development site that could influence the development or might be important as part of the local landscape character? ( ) Yes (•) No

If Yes to either or both of the above, you may need to provide a full Tree Survey, at the discretion of your local planning authority. If a Tree Survey is required, this and the accompanying plan should be submitted alongside your application. Your local planning authority should make clear on its website what the survey should contain, in accordance with the current 'BS5837: Trees in relation to design, demolition and construction - Recommendations'.

16. Trade Effluent

Does the proposal involve the need to dispose of trade effluents or waste? ( ) Yes (•) No

17. Residential Units

Does your proposal include the gain or loss of residential units? ( ) Yes (•) No

18. All Types of Development: Non-residential Floorspace

Does your proposal involve the loss, gain or change of use of non-residential floorspace? ( ) Yes (•) No

19. Employment

If known, please complete the following information regarding employees:

	Full-time	Part-time	Equivalent number of full-time
Existing employees	0	0	0
Proposed employees	0	1	0.2

20. Hours of Opening

If known, please state the hours of opening (e.g. 15:30) for each non-residential use proposed:

Use	Monday to Friday Start Time	Monday to Friday End Time	Saturday Start Time	Saturday End Time	Sunday and Bank Holidays Start Time	Sunday and Bank Holidays End Time	Not Known
B2							☒

21. Site Area

What is the site area? 00.40 hectares

22. Industrial or Commercial Processes and Machinery

Please describe the activities and processes which would be carried out on the site and the end products including plant, ventilation or air conditioning. Please include the type of machinery which may be installed on site:

The principal of the Proposed Development Site would be for the provision of Short Term Operating Reserve (STOR) electricity. The generating plant would operate through a series of engine generators with a thermal input of less than 50MW and a maximum continuous electrical output of 20MW. The Proposed Development Site would contain a maximum of 14 generators, each in their own soundproofed engine cell.

Is the proposal for a waste management development? ( ) Yes (•) No

23. Hazardous Substances

Is any hazardous waste involved in the proposal? ( ) Yes (•) No

24. Site Visit

Can the site be seen from a public road, public footpath, bridleway or other public land? (•) Yes ( ) No

If the planning authority needs to make an appointment to carry out a site visit, whom should they contact? (Please select only one)

(•) The agent ( ) The applicant ( ) Other person

25. Certificates (Certificate B)

Certificate of Ownership - Certificate B

Town and Country Planning (Development Management Procedure) (England) Order 2015 Certificate under Article 14

I certify/ The applicant certifies that I have/the applicant has given the requisite notice to everyone else (as listed below) who, on the day 21 days before the date of this application, was the owner *(owner is a person with a freehold interest or leasehold interest with at least 7 years left to run)* and/or agricultural tenant *("agricultural tenant" has the meaning given in section 65(8) of the Town and Country Planning Act 1990)* of any part of the land or building to which this application relates.

Owner/Agricultural Tenant	Date notice served
Name: [redacted]	06/08/2015
Number:	Suffix:	House name:
Street: [redacted]	
Locality: [redacted]	
Town: [redacted]	
Postcode: [redacted]	

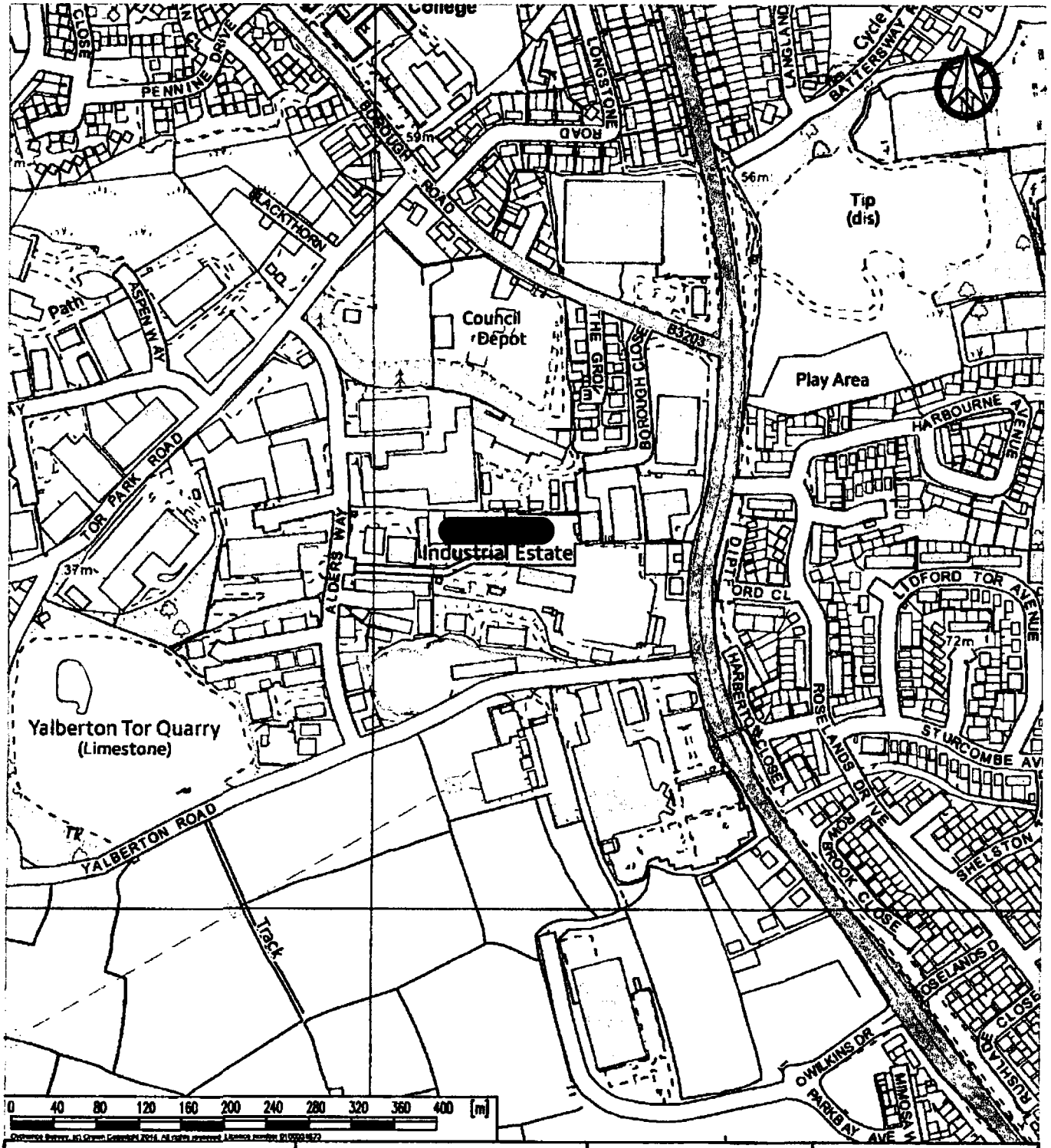
Title: [redacted] First name: [redacted] Surname: [redacted]

Person role: Agent Declaration date: 06/08/2015 ☒ Declaration made

26. Declaration

I/we hereby apply for planning permission/consent as described in this form and the accompanying plans/drawings and additional information. I/we confirm that, to the best of my/our knowledge, any facts stated are true and accurate and any opinions given are the genuine opinions of the person(s) giving them.

☒ Date 06/08/2015



[redacted] Self Storage & Removals,
[redacted]

Description:
Proposed Location Plan

Key:
Development Area (0.40Ha):

Scale:
1:5000 @ A4

Drawing:
[15060.101] [redacted]
Location Plan (Rev.2)

Date:
20/07/2015

Revision 2

[redacted]

Drawn By:
ND

Reviewed By:
MD

Plan not to be used for construction

Application Number: P/2015/0786/PA

PLACE and ENVIRONMENT
Spatial Planning, Torbay Council
2nd Floor, Electric House, Castle Circus
Torquay TQ1 3DR
Phone 01803 207801

GRANT OF PLANNING PERMISSION

TOWN AND COUNTRY PLANNING ACT 1990
TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE)(ENGLAND)ORDER 2015

Applicant:

[redacted]

Agent:

[redacted]

In pursuance of its powers under the above-mentioned Act and Orders, Torbay Council as Local Planning Authority hereby PERMIT:

To develop a small scale standby electricity generation plant in individual sound proof containers.

at Land To The Rear Of Dainton Self Storage & Removals, [redacted]

to accord with the application received 14 October 2015 and the plans and particulars submitted.

This permission is subject to the following standard condition:

The development to which this application relates must be begun not later than the expiration of three years beginning with the date on which this permission is granted.

Reason: To comply with Section 91 of the Town and Country Planning Act, 1990.

Additional Condition(s)

P1. The development hereby permitted shall be carried out in complete accordance with the approved plans listed below:

- CRM.322.020.HY.R.002.A - (Version - Drainage strategy) - Date on plan: 01/02/2016 - Flood Risk Assessment received 01.04.2016
- 15060.104 - (Version - Rev.5) - Date on plan: 23/12/2015 - Proposed Sections received 01.03.2016
- APPENDIX B 15060.102 - (Version - Site Plan) - Date on plan: 20/07/2015 - Proposed Layout received 07.08.2015
- 15060-103-REV 3 - Date on plan: 11/08/2015 - Proposed Various received 11.08.2015
- P20150786-1 - Date on plan: 01/06/2015 - Access/Design Statement received 07.08.2015
- APPENDIX A 15060.101 - OS Map/Site Location received 07.08.2015
- APPENDIX D - (Version - Sound report) - Date on plan: 01/07/2015 - Additional Information received 07.08.2015
- APPENDIX F - (Version - Air Quality Assessment) - Date on plan: 01/07/2015 - Additional Information received 07.08.2015
- APPENDIX G1 - (Version - Landmark Site Check Rep) - Date on plan: 28/05/2015 - Additional Information received 07.08.2015
- APPENDIX G2 - (Version - Site check maps) - Additional Information received 07.08.2015
- 15060.104 - (Version - Rev.4) - Date on plan: 27/08/2015 - Proposed Elevations received 09.09.2015

Reason: For the avoidance of doubt and to ensure a satisfactory completion of development.

01. The proposed plant and equipment shall be designed and operated so that it is no louder than 0dB above background noise levels at the nearest residential accommodation when measured and rated using BS 4142:2014 Methods for rating and assessing industrial and commercial sound.

When making this assessment it must be ensured that the methods identified for assessing both tonal and low frequency noise are used. Should the installation fail to meet the standard identified above, steps shall be taken to ensure that noise emissions are brought within this condition within 1 month of the issue arising.

Reason: In the interests of residential amenity in accordance with Policy DE3 of the Torbay Local Plan 2012-2030.

02. The development shall proceed in strict accordance with the submitted Drainage Strategy dated February 2016, reference CRM.322.020.HY.R.002.A. The surface water storage and flow control as detailed within the drainage strategy shall be implemented in full prior to the first use of the site.

Reason: In the interests of adapting to climate change and managing flood risk, and in order to accord with Policies ER1 and ER2 of the Torbay Local Plan 2012-2030 and beyond and paragraph 103 of the NPPF.

03. Prior to the installation of the generator containers, details of the colour and finish of the generator containers shall be submitted to and approved in writing by the Local Planning Authority. The works shall then proceed in accordance with the approved details.

Reason: In the interests of visual amenity in accordance with Policy DE1 of the Torbay Local Plan 2012-2030.

04. Prior to the installation of the proposed ancillary buildings (including the portacabins, kiosk, metering station, transformers and storage area), details of the colour and finish of each of these units shall be submitted to and approved in writing by the Local Planning Authority. The works shall then proceed in accordance with the approved details.

Reason: In the interests of visual amenity in accordance with Policy DE1 of the Torbay Local Plan 2012-2030.

Informative(s)

01. In accordance with the requirements of Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order, 2015, in determining this application, Torbay Council has worked positively with the applicant to ensure that all relevant planning concerns have been appropriately resolved. The Council has concluded that this application is acceptable for planning approval.

The proposed development has been tested against the following policies of the Development Plan and other relevant material considerations and in the opinion of the Local Planning Authority the proposed development is not in conflict with these policies:

SS7 - Infrastructure, phasing and delivery of employment
DE3 - Development Amenity
DE1 - Design

The applicant is advised that the granting of planning permission is a separate matter to that relating to the issue of restrictive covenants that may exist on the land. Such covenants protect private rights and benefits. They have not been a material consideration in the determination of this application. You should make your own enquiries relative to such covenants before proceeding to implement the approved development.

THIS IS NOT AN APPROVAL UNDER BUILDING REGULATIONS

Our Building Control Team will be happy to discuss your proposals to help you establish if Building Regulation Approval is required. Please contact Neil Palmer on 01803 208082

Executive Director
On behalf of Torbay Council
6 April 2016

NOTES FOR GUIDANCE

GRANT OF PLANNING PERMISSION

TOWN AND COUNTRY PLANNING ACT 1990
TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE)(ENGLAND)ORDER 2015

Your application for Planning permission has been granted. You must adhere to the details of the approved plans and comply with the conditions attached to the decision notice.

This decision is not a decision under the Building Regulations It may be necessary to apply for Building Regulation approval. If you need further information about this you may telephone the Building Control Team on 01803 208095.

If you are aggrieved by the decision of your Local Planning Authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State under section 78 of the Town and Country Planning Act 1990.

If this is a decision on a planning application relating to the same or substantially the same land and development as is already the subject of an enforcement notice, if you want to appeal against your local planning authority's decision on your application, then you must do so within 28 days of the date of this notice.

If an enforcement notice is served relating to the same or substantially the same land and development as in your application and if you want to appeal against your local planning authority's decision on your application, then you must do so within:

- 28 days of the date of service of the enforcement notice or
- 6 months (12 weeks in the case of a householder appeal) of the date of this notice

whichever period expires earlier.

If this is a decision to refuse planning permission for a householder application, if you want to appeal against your local planning authority's decision then you must do so within 12 weeks of the date of this notice.

Otherwise, if you want to appeal against your local planning authority's decision then you must do so within 6 months of the date of this notice.

Appeals must be made using a form which you can get from the Secretary of State at

Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN

or online at www.gov.uk/government/organisations/planning-inspectorate

The Secretary of State can allow a longer period for giving notice of an appeal, but will not normally be prepared to used this power unless there are special circumstances which excuse the delay in giving notice of appeal.

The Secretary of State need not consider an appeal if it seems to the Secretary of State that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.

In practice, the Secretary of State does not refuse to consider appeals solely because the local planning authority based their decision on a direction given by the Secretary of State.

Section 76 of the Town and Country Planning Act 1990 requires that your attention is drawn to the provisions of the Chronically Sick and Disabled Persons Act 1970, the Code of Practice for Access for the Disabled to Buildings (BS 5810:1979) and Design Note 18 "Access for the Disabled to Educational buildings" in relation to buildings which the public will be admitted. Further information about this may be obtained from the Building Control Team on 01803 208095.

This permission does NOT include authority to execute any works within the boundary of the public highway, or in any way affecting the public highway, or the sewers system in the highway without the permission of the Highway Engineer. You may contact the Highways Team on 01803 207671 or the Drainage Team on 01803 207821.

Purchase Notices

If either the local planning authority or the Secretary of State refuses permission to develop land or grants it subject to conditions, the owner may claim that the owner can neither put the land to a reasonably beneficial use in its existing state nor render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.

In these circumstances, the owner may serve a purchase notice on the Council (that is, where the land is situated in a National Park, the National Park authority for that Park, or in any other case the district council (or county council which is exercising the functions of a district council in relation to an area for which there is no district council), London borough council or Common Council of the City of London in whose area the land is situated). This notice will require the Council to purchase the owner's interest in the land in accordance with the provisions of Chapter I of Part 6 of the Town and Country Planning Act 1990.

From: [redacted]
Sent: 27 April 2016 18:46
To: [redacted]
Cc: [redacted]
Subject: RE: [redacted] STOR site, [redacted]

Dear [redacted],

Thank you for your e-mail and for the reference for the approved planning application.

The Development Boundary as indicated in the approved planning application is different from the site boundary defined in the connection application. Therefore a new connection application will be required for this connection.

Please let me know should you have any further questions.

Kind Regards

[redacted]

From: [redacted] [mailto:[redacted]
Sent: 26 April 2016 11:54
To: [redacted]
Cc: [redacted]
Subject: RE: Alders Way STOR site, Paignton

[redacted]

Good to meet you yesterday and many thanks for your prompt response.

Just to confirm, at this point in time we are looking at the Point of Supply being within the area defined in our original Application with our Site being located to the north west within the same ownership boundary, as discussed. For your information our Approved Planning Application Reference for this Site is:

Application Number: P/2015/0786/PA

I can confirm that [redacted] will discuss all the options including the possibility of leasing land from WPD adjacent to the Grid Primary Substation and come back to you once our Team has reviewed all the issues surrounding a Connection in this area. We will also advise if [redacted] do opt to appoint WPD for an All Works option for our Connection ensuring that adequate lead times are provided for the procurement of long lead items to meet our build programme/Connection date.

Many thanks.

Regards

[redacted]
Project Manager – Electrical Connections
[redacted]

Mobile: [redacted]
Email: [redacted]

From: [redacted]
Sent: 26 April 2016 11:35
To: [redacted]
Cc: [redacted]
Subject: [redacted] site, [redacted]

Dear [redacted]

Further to our meeting yesterday afternoon, I have sought further advice in relation to moving the generation and keeping the connection point within the same location. As the development boundary for the above site has changed a new connection application will be required. I am aware of potential fault level issues on the 132kV network that feed the [redacted] area which could impact on the connection date of a new application.

If the Connection Point remains in its original location and there is a length of 33kV cable (eg. 100m) between the connection point and the generator transformers it will be necessary for a separate customer circuit breaker to be installed to protect that length of cable.

I attach a plan showing the cables crossing the site. The cable running across the centre of the plan appears to be not energised.

I have contacted our Estates Manager ([redacted]) regarding the land adjoining our substation and await a reply.

Please let me know should you have any further questions.

Kind Regards

[redacted]

From: [redacted]
Sent: 18 July 2016 16:56
To: [redacted]
Subject: FW: (redacted)- site at Paignton

Dear [redacted],

Firstly, many thanks for coming to see Tony and I last Monday and discussing your complaint regarding your site at [redacted]

To summarise the current position, the site a[redacted]s subject to a connection offer accepted on 15 October 2015. The offer is for a 20MW gas fired generating station. The accepted offer relates to an area "the premise" as marked on a plan by the applicant at the time the connection was requested. The dispute between us has arisen because WPD have refused to vary the offer to accommodate the generation being located outside of the boundary of the original area marked area on the plan. The reason for our refusal is because our application rules require a developer to re-apply for the connection and go to the back of the "capacity queue" under this particular set of circumstances. This is stated in our policy published on our website with the latest version dated April 1 2016.

Our policy in relation to allowable changes to accepted offers requires that an application for supply must define the premises to be connected. The definition of premises under the 1989 Electricity Act is any land, building or structure, therefore an application for connection must include a site map showing the footprint of land on which the generation structure is to be situated. As we discussed last Monday, the policy was put in place when multiple applications for the same part of the network became common-place across WPD. This required us to introduce some strict rules and our approach was initially published in a document on interactivity dated December 2014 which can be viewed here.

The issue for us therefore, in deciding whether to exempt your site from our published rules, is one of commercial fairness to all customers who have accepted offers and are part of a capacity queue. If there were was no detrimental effect on other customers then it would not be a problem to issue a variation to your original connection offer but this is not the case for the site in Paignton. Whilst I fully accept your representations that your application is not speculative or an attempt to "bank capacity" I can find no justification for different treatment of your site to other customers queuing for capacity in the same area. For this reason, I am therefore unable to agree to vary your existing offer as requested.

I am sorry that this is not the answer that you would have hoped for but as the complaint has now been escalated through to myself, I would stress that this is our final position. I understand that you may now escalate the complaint to Ofgem for determination and I would be happy to provide you with more information on this course of action if helpful to you.

Regards

[redacted]

Regulatory & Government Affairs Manager

[redacted]

From: [redacted]@westernpower.co.uk>
Sent: 13 December 2016 12:08
To: [redacted]
Cc: [redacted]@prospectlaw.co.uk; [redacted]@ukpowerreserve.com; mh@prospectlaw.co.uk
Subject: RE: [redacted] determination

Categories: [SharePoint] You saved this message in 'Migration > Electricity Distribution > Elec_Distrib_Lib > Connections > Determinations > Electricity > Active determinations > (redacted) v WPD > emails ofgem WPD'

Dear [redacted]

Thank you for the minded to decision.

I have no comments to make on the decision document. It is an accurate reflection of the evidence submitted by WPD.

I submitted 2 emails between WPD and (redacted). I will resubmit these with names and emails of both parties redacted. Otherwise all evidence was intended for publication.

Regards

[redacted]
Regulatory Compliance Manager

From: [redacted] [mailto:[redacted]@ofgem.gov.uk]
Sent: 12 December 2016 17:35
To: [redacted]@prospectlaw.co.uk'; [redacted]@prospectlaw.co.uk'
Subject: [redacted] determination

Dear All,

Minded to decision on (redacted) Limited v Western Power Distribution (South West) PLC determination

Please find attached our "minded-to" decision on the (redacted) Limited v Western Power Distribution (South West) PLC determination. The "minded to" decision contains our provisional conclusions on the issues in dispute. It provides you with the opportunity to comment on the draft decision before we issue the final decision. The final decision will be appended with evidence which was submitted during the course of our investigation. You will be given the opportunity to redact confidential information.

Please provide me with any comments you may have in a separate Word or PDF document by Monday 9 January 2017.

Kind Regards,

[redacted]
Senior Policy Analyst
Energy Systems Integration
9 Millbank
London
SW1P 3GE
[redacted]
http://www.ofgem.gov.uk

ofgem

[redacted]

From: [redacted]prospectlaw.co.uk>
Sent: 19 December 2016 13:11
To: [redacted]
Cc: [redacted]
Subject: FW: Alders Way determination

Categories: [SharePoint] You saved this message in 'Migration > Electricity Distribution > Elec_Distrib_Lib > Connections > Determinations > Electricity > Active determinations > UK Power Reserve v WPD > emails ofgem UKPR'

Dear [redacted],

Whilst this is obviously a disappointing decision, given the timing constraints on the project it is not commercially viable [redacted] to take this any further.

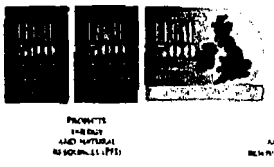
[redacted]re in the process of checking the submitted materials for any required redactions and will submit these as soon as possible.

Regards,

[redacted]

[redacted]
Paralegal
Prospect Law Ltd
[redacted]

www.prospectlaw.co.uk



From: [redacted] [mailto:[redacted]@ofgem.gov.uk]
Sent: 12 December 2016 17:35
To: [redacted]
Subject: Alders Way determination

Dear All,

Minded to decision on UK Power Reserve Limited v Western Power Distribution (South West) PLC determination

Please find attached our "minded-to" decision on the UK Power Reserve Limited v Western Power Distribution (South West) PLC determination. The "minded to" decision contains our provisional conclusions on the issues in dispute. It provides you with the opportunity to comment on the draft decision before we issue the final decision. The final decision will be appended with evidence which was submitted during the course of our investigation. You will be given the opportunity to redact confidential information.

Please provide me with any comments you may have in a separate Word or PDF document by Monday 9 January 2017.

Kind Regards,

[redacted]
Senior Policy Analyst
Energy Systems Integration
9 Millbank
London
SW1P 3GE
[redacted]
http://www.ofgem.gov.uk

ofgem