

The grid connection configuration - A completed collateral contract

A collateral contract is:

1 "a contract that coexists side by side with the main contract, often between one of the parties to the main
2 contract and a third party. A subsidiary contract which induces a person to enter into a main contract or which
3 depends upon the main contract for its existence"

A completed option agreement and a collateral contract affirming the connection agreement

4 The option agreement completed between EW and MFC dated 15th June 2012 is, in effect a license for
5 the Developer, EW, to construct and operate the wind turbine.

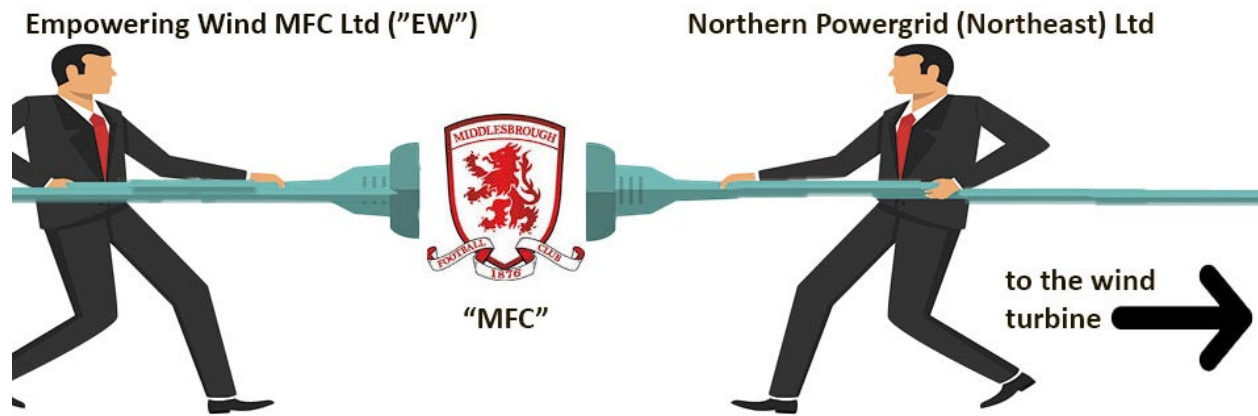
6 Recital B of page 3 of the option agreement states that;

7 *The Developer intends to construct, connect to the Grid and operate a 90m high wind turbine at the property in*
8 *accordance with the Conditions of the Planning Permission granted 7 July 2008 granted pursuant to the*
9 *Planning Application for such wind turbine as listed within the Middlesbrough Council Planning Portal with its*
10 *application reference number of: M.FP0849/08P as amended by any subsequent planning permission.*

Necessity

11 Connecting to the electricity grid, so that the wind turbine can commercially operate is a prerequisite
12 essential requirement of the option, the Lease, Connection Deed and the Energy Supply Agreement.
13 Without a connection to the grid, the turbine cannot commercially operate and all of the contracts
14 between the parties had intended the turbine to be capable of commercial operation. It is clearly implied
15 that the terms for providing the connection for the wind turbine comes naturally, insofar as without a
16 connection, there is no wind turbine.

17 The equivalent action would be MFC granting an option for Mr Millinder / EW to build a wall, taking the
18 money for the option and then later refusing the use of cement, clearly the wall would come crashing
19 down, a wall without cement is as much use as a chocolate fireguard next to the roaring open fire, which
20 is the same as a wind turbine with no connection. It is implied as a matter of course that to build a wall,
21 cement is needed, the position is identical in respect of the wind turbine and a connection to the grid,
22 without it, it just does not work. The position is hardly rocket science.



1 Clearly in order to complete the Accommodation Works schedule within the Lease, a connection to the
 2 grid is a prerequisite requirement. In this respect, MFC prevented the Tenant from completing the Rights
 3 Granted under the Lease that required the turbine to be capable of commercial operation and therefore
 4 interfered with the construction of the Tenant's equipment.

The connection configuration was completed during the Option Period

5 If at any time during the option period either party became dissatisfied with the commercial or technical
 6 arrangements proposed, the aggrieved party could negate without financial commitment. That did not
 7 happen, on the contrary, MFC extended the option the specific purpose of securing the same and only
 8 grid connection for the wind turbine.

9 We refer to the "[Grid Connection Email Chain](#)", scrolling to page 34 where it is proposed by the third
 10 party, Northern Powergrid on 10th December 2012, that:

11 *Have completed the studies and costings and can confirm that the connection point will be on the existing 11KV
 12 cables on the site. As we are proposing to pass over ownership of the two existing substations on site to the club,
 13 one of my commercial colleagues will need to get involved to arrange this therefore he will be issuing the POC
 14 quote.*

15 Both Mr Bloom and Mr Smith of MFC were copied to that email. Prior to that and scrolling to page 36 of
 16 the exhibit of email chain relating to the connection, we have a further email from Smith, MFC's then head
 17 of commercial operations, acknowledging the express requirement of the Distribution Network Operator
 18 where he states;

19 *Many thanks for this update and continues to appear positive news which is fantastic... I just want to have some
 20 clarity in regards to the transfer of ownership of the current sub-station point mention means in reality to club
 21 and equally thought if you guys are planning a site visit over coming couple of weeks then we can dove tail that
 22 with a catch up of our own (plus the potential to get our ops team up to speed by being involved in the site visit).*

1 Scrolling to page 43 of the grid connection email chain, there is an email from Brown of the 4th
2 Respondent dated 25th September 2012 stating:

3 *Thanks Andrew - apparently there has been some suggestion about the need to transfer the two existing*
4 *substations from the DNO to the club*

5

6 Both MFC and Womble Bond Dickinson knew precisely of the Distribution Network Operator's express
7 requirement that MFC takes ownership of its substations so that the connection for the wind turbine can
8 be established. They knew of that requirement long before the option agreement was exercised and the
9 Lease was completed off the back of it on 17th June 2013.

A completed collateral contract

10 The commercial and technical terms agreed or implied during the option period become binding upon
11 exercise of the option and completion of the Lease. The Lease was completed on the sole basis of the
12 pre-agreed grid connection for the project. From February 2015, MFC effectively "U-turned" on the grid
13 connection, rendering the project useless.

14 At page 37 of the exhibit, being the email from Mr Bloom to Mr Millinder dated 2nd November 2012 at
15 16.28PM. Mr Bloom stated:

16 *For the avoidance of doubt are you saying the commercials between yourselves and ourselves would be the same*
17 *with the 1.5MV connection. We were happy to agree an extension for the same commercial deal but if the deal is*
18 *materially different we would need to return to the market. My understanding is that the 6-month extension is*
19 *for the current 3MV deal not for any revised deal. I just want to be clear we are all proceeding on the same basis.*
20 Mr Millinder, for EW, responded on 3rd November 2012 (directly above in the same chain) and stated:

21 *Thanks for your note. Yes the deal is going to be the same. Once I have spoken with Tony on Monday we will*
22 *know better where we stand in terms of costs of connection. The cost of connection is the only issue.*

23

24 The third party, the Distribution Network Operator had proposed the terms of the connection (the
25 proposer to the collateral contract). Mr Bloom, former senior partner of Womble Bond Dickinson had, on
26 2nd November 2012 agreed to extend the option on the basis of the connection and Mr Millinder had
27 confirmed from his end that "costs of the connection is the only issue" and "that the deal is going to be the
28 same".

29 We refer to tab 0002 which is a copy of the Deed of Variation completed on 7th November 2012
30 extending the option agreement on the basis of those negotiations and therein forming the completed
31 collateral contract affirming the terms of the connection configuration for the wind turbine.

1 Essentially, MFC had breached the terms of the connection offer, the completed collateral contract
2 forming the entire purpose of the project and the entire basis of the Option Agreement, Lease, the Energy
3 Supply Agreement and the Connection Deed in the first place.

4 The connection configuration for the wind turbine is clearly illustrated in the technical drawing provided by
5 Power Systems UK Ltd (Empowering Wind MFC Ltd's connection provider) to the Club on 4th January
6 2013. The connection configuration is precisely as specified by Northern Powergrid in the Connection
7 Offer. The red and blue parts are the privately owned 11Kv configuration that was to be owned by the
8 Club, the green is the new wind turbine substation and the connection from that into the wind turbine.

