



GRANT OF ELECTRICITY GENERATION LICENCE TO KELLS BES LIMITED

13 MAY 2022



About the Utility Regulator

The Utility Regulator is the independent non-ministerial government department responsible for regulating Northern Ireland's electricity, gas, water and sewerage industries, to promote the short and long-term interests of consumers.

We are not a policy-making department of government, but we make sure that the energy and water utility industries in Northern Ireland are regulated and developed within ministerial policy as set out in our statutory duties.

We are governed by a Board of Directors and are accountable to the Northern Ireland Assembly through financial and annual reporting obligations.

We are based at Queens House in the centre of Belfast. The Chief Executive leads a management team of directors representing each of the key functional areas in the organisation: Corporate Affairs, Markets and Networks. The staff team includes economists, engineers, accountants, utility specialists, legal advisors and administration professionals.



Our mission

To protect the short- and long-term interests of consumers of electricity, gas and water.



Our vision

To ensure value and sustainability in energy and water.



Our values

- Be a best practice regulator: transparent, consistent, proportionate, accountable and targeted.
- Be professional – listening, explaining and acting with integrity.
- Be a collaborative, co-operative and learning team.
- Be motivated and empowered to make a difference.



Abstract

On 07 April 2022, the Utility Regulator (**the Authority**) gave notice (**the Kells BES Notice**) under Article 10(4) of the Electricity (Northern Ireland) Order 1992 (**the 1992 Order**) that it proposed to grant a licence authorising the generation of electricity (**an electricity generation licence**) to Kells BES Limited (**Kells BES**) under Article 10(1) of the 1992 Order. Having considered a single response (**the Response**) to the Kells BES Notice, the Authority has decided to grant an electricity generation licence to Kells BES. This licence was granted on 13 May 2022 and is in the form of the licence published alongside the Kells BES Notice. This document sets out the reasons for our decision.

Audience

Consumers and consumer representatives; flexible technology developers; electricity industry; statutory bodies; government departments.

Consumer impact

The consumer impact is considered positive. As a licence holder, Kells BES shall be able to participate in the Single Electricity Market (**the SEM**). It is expected to be able to offer system support services and generally assist in securing that all reasonable demands for electricity are met. Integration of renewable energy sources will be better facilitated. Competition will be promoted between Kells BES and other system actors involved in the area of generation. Costly system enhancement/re-enforcements may be avoided or deferred. Pressure on prices paid by the NI consumer is expected to be alleviated.



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1. Introduction

Background

On 7 April 2022, the Authority¹ gave notice² (**the Notice**) under Article 10(4) of the Electricity (NI) Order (**the 1992 Order**) that it proposed to grant a licence authorising the generation of electricity (**an electricity generation licence**) to Kells BES Limited (**Kells BES**) under Article 10(1) of the 1992 Order. A copy of the proposed licence was published alongside the Notice.

One response (**the Response**) from an individual³ respondent (**the Respondent**) was received to the Notice. This decision document records our consideration of the Response in making our decision to grant an electricity generation licence to Kells BES.

Regulatory Framework

Article 10(1)(a) of the 1992 Order empowers the Authority to grant an electricity generation licence to an applicant for such a licence. Article 10(3) of the 1992 Order provides that such an application shall be made in *the prescribed manner* and be accompanied by the prescribed fee. Further, Art 10(3) of the 1992 Order also provides that the applicant for an electricity generation licence shall publish the application within 14 days of making the application (in the prescribed manner). The requirements made in Article 10(3) are reflected in schedule 4 to the Electricity (Applications for Licences and Extensions of Licences) (No. 2) Regulations (Northern Ireland) 2007⁴ (**the 2007 Application Regulations**).

The Authority has also published guidance in respect of the making of an application for an electricity generation licence (**the Guidance**).⁵ The Guidance makes reference to and reflects the requirements of the 2007 Application Regulations.

In carrying out its (electricity) function to grant (or not grant) an electricity generation licence the Authority is required to act in accordance with the provisions of Article 12 of the Energy (NI) Order 2003 (**the 2003 Order**).

Article 12(1) of the 2003 Order provides as follows:

12.—(1) The principal objective of the Department and the Authority in carrying out their respective electricity functions⁶ is to protect the interests of consumers⁷ of electricity supplied by authorised suppliers, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the generation, transmission, distribution or supply of electricity

¹ In this document the words “we” “our” “us” “Authority” “UR” “Utility Regulator” and “we” are used interchangeably to refer to the Northern Ireland Authority for Utility Regulation

² [Consultation on proposed electricity generation licence for Kells BES Limited | Utility Regulator \(uregni.gov.uk\)](https://www.uregni.gov.uk/consultation-on-proposed-electricity-generation-licence-for-kells-bes-limited-utility-regulator)

³ The response was signed by the Respondent (it seems) on behalf of a local community interest group.

⁴ https://www.legislation.gov.uk/nisr/2007/289/pdfs/nisr_20070289_en.pdf

⁵ <http://www.uregni.gov.uk/applying-licence>

⁶ This is read to include the grant of an electricity generation licence.

⁷ The reference to consumers is to be read as a reference to existing and future consumers. References to “consumers” in this paper are to be read accordingly.

Art. 12(2) of the 2003 Order provides that

(2) *The Department and the Authority shall carry out those functions in the manner which it considers is best calculated to further the principal objective, having regard to—*

(a) *the need to secure that all reasonable demands in Northern Ireland or Ireland for electricity are met . . .*

Article 12(3) of the 2003 Order provides that in performing the duty under Art 12(2) of the 2003 Order the Authority is obliged to have regard to (but not exclusively to) the interests of persons described. These persons described are individuals who (i) are the chronically sick or disabled (ii) are of pensionable age (iii) have low incomes and, (iv) are residing in rural areas.

Article 10(4) of the 1992 Order provides that:

(4) *Before granting a licence under this Article, the Authority shall give notice—*

(a) *stating that the Authority proposes to grant the licence;*

(b) *stating the reasons why it is proposed to grant the licence; and*

(c) *specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed licence may be made,*

and shall consider any representations or objections which are duly made and not withdrawn.

Previous decisions on grant of electricity generation licences to BESS operators

Kells BES has signalled its intention to operate a battery energy storage system (**BESS**). The Authority has previously granted generation licences to entities intending to operate BESS facilities.⁸ Reference should be made to those decisions (**the/or previous BESS licensing decisions**) alongside this decision document.

The Notice

The Notice was published on 07 April 2022.

The Notice confirmed that the Authority considered (at that time) that the grant of an electricity generation licence⁹ to Kells BES would accord with our responsibilities under Art 12 of the 2003 Order. We assessed at that time that the Kells BES application for a generation licence was made in the prescribed manner and the appropriate fee had been received. The Kells BES application was thus considered made in accordance with the 2007 Application

⁸ - [Utility Regulator decision to grant an Electricity Generation Licence to Drumkee Energy Ltd: Battery Storage | Utility Regulator \(uregni.gov.uk\)](#) [Utility Regulator decision to grant an Electricity Generation Licence to Mullavilly Energy Ltd: Battery Storage | Utility Regulator \(uregni.gov.uk\)](#) [Decision to grant an electricity generation licence to Belfast Energy Storage Company Limited | Utility Regulator \(uregni.gov.uk\)](#)

⁹ In the (standard) form of that published alongside the published Notice.

Regulations¹⁰ and the Guidance.

In making our Article 12 assessments we had regard to the role that a BESS (such as that intended for operation by Kells BES) could be expected to play in a modern electricity system.

As a licence holder, Kells BES could participate in the (all-Island) SEM arrangements¹¹. Kells BES could provide valuable system support services envisaged under the DS3¹² programme. Integration of renewable energy sources (**RES**) into the electricity system would be better facilitated given that a BESS can act as demand in times of excess generation and produce electricity for the grid in times of under production from other generation (to include RES). Costly system re-enforcements could be deferred or avoided. Pressure on prices to be paid by consumers would be expected to be alleviated. We recognised competition type concerns where regulatory considerations to prevent energy storage investors (such as Kells BES) from providing services in the energy market.

All in all, it appeared that Kells BES could assist in securing that all reasonable demands for electricity in Northern Ireland (or Ireland) are met, and as such the proposed grant of a generation licence to Kells BES was considered to be in full accord with the provisions of Article 12(1) of the 2003 Order (when read with Art. 12(2) of the 2003 Order). Granting a licence would, furthermore, address potential barriers to competition.¹³ The interest of all consumers¹⁴ would be duly protected.

The Notice asked for (any responding) representations or objections to be sent to us by 8 May 2022.

¹⁰ We would note that no probity concerns were evident in respect of Kells BES.

¹¹ A licenced operator of a BESS/BSF is classed as a Generator Unit within the SEM arrangements. An actor such as Kells BES requires to hold a licence issued by the Authority in order to participate in the SEM arrangements. SONI also requires that an actor such as Kells BES hold such a licence prior to energisation of a grid connection.

¹² Delivering a secure, sustainable electricity programme (DS3): <https://www.semcommittee.com/ds3>

¹³ Noting that the Authority had already granted electricity generation licences to other BESS operators.

¹⁴ Which is considered to include those described in Art 12(3) of the 2003 Order. For example people of low income can be expected to feel higher prices more than those on higher incomes. Security of supply might also be a more acute issue for those with disabilities or the chronically sick.

2. Our consideration of the Response

Consideration

The Response submitted by the Respondent makes three broad¹⁵ points.

First, the response observes that there is a claimed lack of alignment between the planning permission for the relevant BESS project and the details of the generating station supplied in the licence application made by Kells BES limited. Simply put, it was claimed that the generating station being constructed on the ground (and narrated in the Kells BES licence application) is different to that permitted under the relevant planning permission.

We do not consider that this “planning point” should cause us not to grant a generating licence to Kells BES. Our approach to planning considerations is set out in our previous decisions. Planning enforcement is for the planners. The grant of a generating licence simply authorises the activity of generation by Kells BES. Kells BES is still subject to other statutory controls. That includes planning controls.

Second, the response observes that there are significant potential safety concerns relating to a (Lithium Ion) BESS facility of the type proposed by Kells BES. A link was provided to a seminar/presentation made on You Tube. That has been considered.

We do not consider that this safety point should cause us not to grant a generating licence to Kells BES. We are aware that there have been expressions of concern as to issues of operational safety affecting BESS. Similar concerns to those expressed in the Response have been relayed to the Authority previously. The Respondent makes this point in the Response. Our previous BESS licensing decisions ranged over these matters. This decision should be read with those previous decisions.

We consider that a decision to grant a generation licence to Kells BES is in harmony with the provisions of Art 12 of the 2003 Order. We have had regard to the provisions of Art 12(5) of the 2003 Order which provides so far as relevant that:

(5) Subject to paragraph (2), the . . . Authority shall carry out [its] . . . electricity functions in the manner which it considers is best calculated

. . .

(b) to protect the public from dangers arising from the generation, transmission or supply of electricity

As recorded in our previous BESS licensing decisions, we do not accept that the provisions of Art 12(5)(b) of the 2003 Order operate to prevent the Authority from granting an electricity generation licence to Kells BES where that grant is otherwise considered appropriate (as it is) in accordance with Article 12(1) and (2) of the 2003 Order.

¹⁵ The Response referenced an earlier letter from our CEO to the Respondent in response to an earlier email from the Respondent to the CEO. We need not set that correspondence out here.

Importantly, the underlined section of Article 12(5) clearly provides that the provisions of Art. 12(5)(b) are subject to the provisions of Art 12(5)(2). As we have explained, the Notice reflected a consideration that the proposed grant was in accordance with Art 12(1) of the 2003 Order. That consideration reflected our judgement in accordance with Article 12(2) of the 2003 Order. The grant of the licence was (and is) expected to assist in securing that all reasonable demands for electricity in NI and Ireland are met.¹⁶

Clearly, people might well reasonably hold alternative perspectives as to the “safety” of BESS facilities. It is not for the Authority to adjudicate and determine that controversy within the context of the Kells BES application for a generation licence. We can only act within the applicable legislative framework.

It is for the operator of a BESS to satisfy itself that it is meeting all of its legal obligations (to include relevant safety obligations) in respect of the operation of a BESS. It is for the appropriate statutory agencies to police and enforce these obligations. We proceed on the basis that they will. The Authority has no such (legislative) enforcement role.

The Authority is only (here) deciding whether to grant to Kells BES a licence *authorising the generation of electricity* by Kells BES. Possession of such a generation licence does not absolve Kells BES from its ordinary legal obligations viz. the operation of its BESS facility. The licence only prevents Kells BES from being guilty of an offence under Article 8 of the 1992 Order should it choose¹⁷ to generate electricity in NI and not qualify for an exemption pursuant to the Electricity (Class Exemptions from the requirement for a Licence) Order (NI) 2013.

Third, the Response said this (after noting our general approach to the safety considerations affecting BESS):

Under condition 10 of the Licence you would appear to have oversight in granting the licence with other authorities for the Health and Safety of employees (but not the wider public or firefighters) and we would ask if you and your board have considered these matters in being minded to grant the Licence?

Condition 10 provides as follows:

Condition 10: Health and Safety of Employees

1. The Licensee shall:

(a) acting jointly and in co-operation with the holders of other licences granted under the Order, consider and discuss matters of mutual concern in respect of the health and safety of persons employed by them; and

(b) establish and maintain appropriate processes for consultation with representatives of the Licensee’s employees in respect of the health and safety of those employees.

We respond to this Condition 10 point as follows.

Condition 10 does not reflect that we have the claimed “oversight” with “other authorities” for the health and safety of employees of Kells BES. Rather Condition 10 merely requires that

¹⁶ To specifically include those in the Art 12(3) categories.

¹⁷ It will be noted that an electricity generation licence *authorises* the activity of “generation”: it does not *require* the licence holder to engage in that activity.

Kells BES consider, discuss, establish and maintain the appropriate processes for consultation in respect of health and safety for the employees of Kells BES and other licence holders. This does not equate to the type of “oversight” role claimed by the Respondent.

We do not consider the Condition 10 point made by the respondent can argue against the proposed grant of a generating licence to Kells BES. It is noted that Condition 10 only comes into effect/operation once any licence is granted.

We proceed on the basis that other statutory agencies (e.g. HSENI) will fulfil their statutory role with regard to protecting the Health and Safety of those potentially affected by the operation of the proposed BESS facility. Again, this decision should be read along with our previous decisions on BESS licensing.

3. Our Decision

We have concluded - having carefully considered the Response - that an electricity generation licence is to be granted to Kells BES.

We consider that the grant of an electricity licence to Kells BES is appropriate for the reasons set out in the Notice. It is considered that the grant of the electricity licence to Kells BES is in accord with our statutory responsibilities as set out in Article 12 of the 2003 Order. The Kells BES application (for a generation licence) was made in accordance with the 2007 Application Regulations (and the Guidance). No probity concerns have been raised in respect of Kells BES.

As a licence holder, Kells BES can be expected to contribute to overall security of supply by participation in the SEM and the DS3 arrangements in respect of the provision of system services. Matching demand with available supply of electricity will be better secured. Integration of RES is expected to be better facilitated. Competition will be promoted. Costly re-enforcement works may be delayed or avoided. Price pressures are expected to be alleviated. The decision is consistent with our principal objective of protecting the interests of existing and future consumers.

We confirm our view that a BESS, of the type intended for operation by Kells BES, is a form of “*generating station*” within the meaning of the 1992 Order for licensing purposes. The BESS facility imports electricity from the grid (in “charge” mode), converts that electricity to (electro) chemical energy and then converts (in “discharge” mode) that “stored” energy to electrical energy for export back to the grid. Thus, we consider that a BESS facility is involved in “generation” activity. It produces electricity for the grid when signalled to do so.

Our view here is also consistent with Ofgem’s perspective on the licensing of BESS operators.¹⁸ Ofgem grants electricity generation licences to BESS operators. We understand that CRU acts likewise.¹⁹

We note with interest the decision of the High Court in the *ABO Wind* case.²⁰ We consider that there is nothing in that decision that calls into question our present decision (or previous BESS licensing decisions) to grant an electricity generation to a BESS operator.

An electricity generation licence (the **Kells BES Licence**) was granted to Kells BES on 13 May 2022. The Kells BES Licence is in the form of the licence published alongside the Notice. A copy of the Kells BES Licence shall be published on the Authority’s website. A copy of the Kells BES Licence may also be viewed by contacting the Utility Regulator’s office (noting that due to the current working from home arrangements in place in NI and the Regulator’s office, visibility may not be possible).

We should note that we have been able to turn around the grant of this particular licence in

¹⁸ See, for example, the regulatory letter on energy storage (which includes BESS) published by Ofgem on 2 October 2020:

https://www.ofgem.gov.uk/system/files/docs/2020/10/storage_licensing_statcon_decision_cov_letter_final_for_website_0.pdf

¹⁹ We recognise that a BESS unlike other forms of generation exhibits substantial demand characteristics. We accept that the overall capabilities and particular features of “storage” technologies (like a BESS) could be better clarified within the regulatory/statutory framework.

²⁰ Delivered on 21 October 2021. Ref HUM11648

short course following the closing date for responses specified in the Notice. This should not cause future applicants for a generation licence (or any other licence type) to consider/expect that this will be the case for their application. Our usual processes indicate a longer turnaround time. In this case we were able to expedite matters at the specific request of Kells BES. We were not bound to do so. Nor, to be clear, did this expedition involve any failure to give full and proper regard to the Response. The Response was fully considered.