

DETERMINATION PURSUANT TO REGULATION 71(3)(b) OF THE ELECTRICITY CAPACITY REGULATIONS 2014 (AS AMENDED) FOLLOWING AN APPEAL MADE TO THE AUTHORITY PURSUANT TO REGULATION 70(1)(a)

Introduction

1. This Determination relates to the Appeal made by Ardrossan Wind Farm against Reconsidered Decisions made by the Electricity Market Reform Delivery Body ("Delivery Body") in respect of the following Capacity Market Units ("CMU"): Ardrossan Wind Farm (T-4 Auction).
2. Pursuant to Regulation 71(3) of the Electricity Capacity Regulations 2014 (as amended) (the "Regulations"), where the Authority¹ receives an Appeal Notice that complies with Regulation 70, the Authority must review a Reconsidered Decision made by the Delivery Body.

Appeal Background

3. Ardrossan Wind Farm submitted an Application for Prequalification for the CMU in Paragraph 1 in respect of the 2027 T-4 Auction.
4. For the CMU listed in Paragraph 1, the Delivery Body issued a Notification of Prequalification Decision dated 31 October 2023 (the "Prequalification Decision"). The Delivery Body Rejected the CMU on the following grounds:

Ardrossan Wind Farm:

"Capacity Market Rule 3.6.1(c) requires each Applicant for an Existing Generating CMU that is a Non-CMRS Distribution CMU using the Balancing Services Metering Configuration Solution or Bespoke Metering Configuration Solution to provide either in

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

relation to the CMU or to each Generating Unit comprising the Generating CMU: a letter from the supplier or former supplier to such CMU confirming the CMU or Generating Unit's physically generated net output in MWh to three decimal places; or evidence the CMU or Generating Unit delivered a Metered Volume (in MWh to three decimal places) in discharge of an obligation to deliver a balancing service confirming the CMU or Generating Unit's physically generated net output in MWh to three decimal places. The Applicant for this Application has not provided this information, as required by Rule 3.6.1(c). Please contact the Delivery Body for more information."

5. Ardrossan Wind Farm submitted a request for reconsideration of the Prequalification Decision on 7th November 2023.
6. The Delivery Body issued a Reconsidered Decision on 28th November 2023 which rejected the dispute on the following grounds:

"The Delivery Body has reviewed the Prequalification Decision in accordance with the request to review the original Prequalification result. The reconsidered outcome is that the original Prequalification Decision is valid and will be upheld."

The Delivery Body considers the error or omission with the Application (i.e. Letter from supplier not provided) is a non-material error under Regulation 69(5), which is therefore correctable at Tier 1 disputes stage. However after reviewing the information submitted by the Applicant in its request for the Delivery Body to review the Prequalification Decision, the Delivery Body does not view this as addressing the issue in the Application because two of the Historic Performance Period dates provided in the supplier letter submitted as part of the dispute are outside of the 24 months window as per CM Rule 3.6.1(a). As a result, the original Prequalification Decision has been upheld."

7. Under Regulation 70 of the Regulations, Ardrossan Wind Farm then submitted an Appeal Notice to the Authority on 5th December 2023

Ardrossan Wind Farm's Grounds for Appeal

8. **Ardrossan Wind Farm** disputes the decision on the following grounds.

Ground 1

"The Letter from Supplier unfortunately contained clerical errors which resulted in two of the Historic performance periods being submitted incorrectly"

"We believe this is easily rectifiable within the Tier 2 dispute period with the submission of the updated Letter from Supplier form (evidence item 3.0)."

The Legislative Framework

9. The Electricity Capacity Regulations 2014 ("The Regulations") were made by the Secretary of State under the provisions of section 27 of the Energy Act 2013. The Capacity Market Rules 2014 (as amended) ("Rules") were made by the Secretary of State pursuant to powers set out in section 34 of the Energy Act 2013.

The Regulations

10. The Regulations set out the powers and duties of the Delivery Body which it must rely upon when it determines eligibility. Regulation 22(a) specifies that each Application for Prequalification must be determined in accordance with the Capacity Market Rules.
11. Regulations 68 to 72 set out the process and powers in relation to dispute resolution and appeals.
12. In particular, Regulation 69(5) sets out the requirements for the Delivery Body reconsidering a Prequalification Decision:

69(5) Subject to [paragraph (5A) and Regulations 29(10A) and 87(7)], in reconsidering a prequalification decision or a decision to issue a termination notice or a notice of intention to terminate, the Delivery Body must not take into account any information or evidence which—

(a) the affected person was required by these Regulations or capacity market rules to provide to the Delivery Body before the decision was taken; and

(b) the affected person failed to provide in accordance with that requirement.

13. Regulation 69(5) is subject to Regulation 69(5A), which sets out the exceptions to Regulation 69(5):

(5A) In reconsidering a prequalification decision, the Delivery Body may take into account information or evidence if the Delivery Body determines that:

(a) the relevant application for prequalification contained a non-material error or omission; and

(b) the information or evidence is capable of rectifying such non-material error or omission.

14. Following this, **Regulation 69(7)** sets out the definition of non-material error as referenced in Regulation 69(5A).

(7) In this regulation "non-material error or omission" means an error or omission in an application for prequalification which is—

(a) manifest, and either inadvertent or the result of an honest mistake;

(b) clerical, typographical or trivial in nature; or

(c) determined by the Delivery Body to be inconsequential to the affected person's compliance with, or the enforcement of, any requirement in these Regulations or the Rules to which the error or omission relates.

15. **Regulations 70 (4-6)** sets out the requirements for the applicant's Appeal to the Authority:

(4) The appeal notice must be accompanied by—

(a) a copy of—

- (i) the notice given by the Delivery Body under regulation 69(3) or (4);*
- (ii) the request made to the Delivery Body for reconsideration; and*
- (iii) any information or evidence submitted to the Delivery Body in support of that request;*

(b) in the case of an appeal relating to a prequalification decision, a copy of—

- (i) the prequalification decision; and*
- (ii) any information or documents provided by the affected person to the Delivery Body as part of the application for prequalification which are relevant to the matter in dispute;*

(c) in the case of an appeal relating to a termination notice or a notice of intention to terminate, a copy of—

- (i) the notice; and*
- (ii) any information or documents provided by the affected person to the Delivery Body before the notice was issued, which are relevant to the matter in dispute; and*

(d) any other documentary evidence which the affected person wishes to rely on in support of the appeal and which—

- (i) was provided to the Delivery Body before the reconsidered decision was made; or*
- (ii) is needed to show what evidence was before the Delivery Body when the reconsidered decision was made.*

(5) Where a request for reconsideration was rejected by the Delivery Body on the ground that it did not comply with regulation 69(2), the affected person may submit evidence to the Authority that the request did comply with that regulation.

(6) Except as provided in paragraphs (4) and (5), no other documentary evidence may be included in or submitted with the appeal notice.

16. **Regulation 71(3)** sets out the Authority's obligations when receiving a request:

(3) - Upon receiving an appeal notice which complies with regulation 70, and any information requested from the Delivery Body, the Authority must—

(a) subject to paragraph (4), review the reconsidered decision;

(b) determine whether the reconsidered decision was correct on the basis of the information which the Delivery Body had when it made the decision.

Capacity Market Rules

17. **Rule 3.6.1(a)** sets out the requirement for an applicant to provide a Balancing Services Metering Configuration Solution or Bespoke Metering Configuration Solution, and states that:

"(a) Except where Rule 3.6.1(aa) applies each Applicant for an Existing Generating CMU must identify in the Application three Settlement Periods on separate days in:

the 24 months prior to the end of the Prequalification Window, or in the case where Rule 3.13 applies, prior to the close of the last day for submission of secondary trading, in which such Existing Generating CMU delivered a net output equal to or greater than its Anticipated De-rated Capacity,

and specify the physically generated net outputs, or Metered Volume where applicable, in MWh to three decimal places for each of those Settlement Periods.

(aa) This Rule 3.6.1 (aa) applies solely to an Application submitted during the Prequalification Window for a Capacity Auction held in the 2022/23 2023/2024 Auction Window (for the purposes of this Rule "the 2022 2023 Prequalification Window") in respect of an Existing Generating CMU which has been closed down, decommissioned or otherwise non-operational in the 24 months prior to the end of the 2022 2023 Prequalification Window ("the relevant CMU"). An Application must confirm that this Rule 3.6.1(aa) applies and identify three Settlement Periods on separate days in:

- (i) *the most recent period of 24 months prior to the end of the 2022 2023 Prequalification Window during which the relevant CMU was operational; or*
- (ii) *if the relevant CMU has previously been operational for less than a period of 24 months, the most recent period prior to the end of the 2022 2023 Prequalification Window during which the relevant CMU was operational,*

in which the relevant CMU delivered a net output equal to or greater than its Anticipated De-rated Capacity, and specify the physically generated net outputs, or Metered Volume where applicable, in MWh to three decimal places for each of those Settlement Periods"

18. **Rule 3.6.1(c)** sets out the requirement for an applicant to provide a Balancing Services Metering Configuration Solution or Bespoke Metering Configuration Solution, and states that:

Previous Settlement Performance:

"(c) Each Applicant for an Existing Generating CMU that is a Non-CMRS Distribution CMU using the Balancing Services Metering Configuration Solution or Bespoke Metering Configuration Solution must provide either in relation to the CMU or to each Generating Unit comprising the Generating CMU:

- (i) a letter from the supplier or former supplier to such CMU confirming the CMU or Generating Unit's physically generated net output in MWh to three decimal places; or*
- (ii) evidence the CMU or Generating Unit delivered a Metered Volume (in MWh to three decimal places) in discharge of an obligation to deliver a balancing service confirming the CMU or Generating Unit's physically generated net output in MWh to three decimal places;*
- (iii) and if line loss adjustments have been applied, either:*

(aa) a letter from the Distribution Network Operator confirming the Line Loss Factor values in the three Settlement Periods referred to in Rule 3.6.1(a) or Rule 3.6.1(aa); or

(bb) where applicable, a letter from the owner of the Unlicensed Network confirming the electrical loss factor values in the three Settlement Periods referred to in Rule 3.6.1(a) or Rule 3.6.1(aa) and the methodology used to calculate such values"

Our Findings

19. We have assessed Ardrossan Wind Farms' Grounds for Appeal, which are summarised below.

Ground 1

20. As set above, Rule 3.6.1(c) requires Existing Generating CMU to confirm their Previous Settlement Performance. Ardrossan Wind Farm did not provide this information as part of their prequalification application.
21. On 7th November 2023, Ardrossan Wind Farm entered a request for reconsideration of the Prequalification Decision to the Delivery Body and included a letter from supplier dated 3 November 2023.
22. In the Reconsidered Decision letter from the Delivery Body, published 28th November 2023, it states that the applicant did not comply with Rule 3.6.1(c), because two of the three dates provided in the Historic Performance Period readings provided in the supplier letter were outside of the 24-month window, and were therefore not compliant with the requirements of Rule 3.6.1(a).
23. On 5th December 2023, Ardrossan Wind Farm raised an Appeal Notice to the Authority to state that they feel the errors in the supplier letter provided are "easily rectifiable". In their Appeal Notice to the Authority, the applicant states that "clerical errors" resulted in the incorrect information being submitted to the Delivery Body.

24. In their Appeal Notice to the Authority the applicant submitted an updated version of the letter from supplier dated 29 November 2023. However, the Authority cannot take into account this evidence as it was not before the Delivery Body as laid out in Regulation 71(3)(b) which reads as follows:

*"(3) Upon receiving an appeal notice which complies with regulation 70, and any information requested from the Delivery Body, the Authority must—
(b) determine whether the reconsidered decision was correct on the basis of the information which the Delivery Body had when it made the decision."*

25. In assessing the appeal, we must first consider whether the error or omission in the Application for Prequalification meets the definition set out in Regulation 69(5). The Authority's view is that this omission is a 'non-material error or omission as defined in Regulation 69(7), on the basis that the stated clerical error within the supplier letter appears to be manifest and an inadvertent or honest mistake. We therefore consider that the Delivery Body was correct to consider that the omission of the documents required to comply with Rule 3.6.1(a) in the original Prequalification Application was a non-material error or omissions which could be corrected in the Request for Reconsideration.
26. The applicant did not provide a supplier letter in compliance with Rule 3.6.1(c) in the Prequalification Application. At the request for reconsideration of the Prequalification Decision stage, the applicant provided a supplier letter to comply with Rule 3.6.1(c), however, as two of the Historic Performance Period dates provided were outside of the 24 months window required by Rule 3.6.1(a), the supplier letter was not in compliance with the requirements of Rule 3.6.1(a).
27. Consequently, we consider that by failing to provide the evidence which met the requirements of Rule 3.6.1(a) in the request for reconsideration of the Prequalification Decision, Ardrossan Wind Farm could not rectify the omission within the Application for Prequalification. As such the Delivery Body was correct to reject the CMU referred to in Paragraph 1 from Prequalification.

Conclusion

28. The Delivery Body reached the correct Reconsidered Decision to not Prequalify Ardrossan Wind Farm for the T-4 Auction on the basis that:

- a) At Prequalification stage Ardrossan Wind Farm did not provide a Previous Settlement Performance letter in accordance with Rule 3.6.3(c).
- b) At reconsideration of Prequalification Decision stage, the applicant did supply a Letter from Supplier, but the readings provided were not within the correct timeframe to be compliant with Rule 3.6.1(a).
- c) In accordance with Regulation 71(3), the authority is obliged to only consider information which was before the Delivery Body at the time it made its decision.

Determination

29. For the reasons set out in this Determination, the Authority hereby determines pursuant to Regulation 71(3) that the Delivery Body's reconsidered decision to reject Ardrossan Wind Farm for Prequalification be upheld in respect of the CMU listed in Paragraph 1 for the T-4 Auction.



Andrew Macdonell – Senior Policy Manager

For and on behalf of the Gas and Electricity Markets Authority

Date 06/02/2024