

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 Appeals made by Mynydd Clogau Windfarm Limited and Causeymire Windfarm Limited against reconsidered decisions made by the Electricity Market Reform Delivery Body ("Delivery Body") in respect of the following Capacity Market Units ("CMUs"):
 - a) Mynydd Clogau Windfarm Limited (T-4 Auction)
 - b) Causeymire Windfarm Limited (T-4 Auction)
2. This decision deals with all of the appeals listed above as they are substantively in respect of the same issue and differ only in so far as concerns the identity of the respective CMUs and the applicants.
3. 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

4. Mynydd Clogau Wind Farm Limited and Causeymire Windfarm Limited submitted applications for Prequalification for the CMUs in Paragraph 1 in respect of the 2027 T-4 Auction.

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.

5. For the CMUs 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 CMUs on the following grounds:

Mynydd Clogau Windfarm Limited:

"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 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."

Causeymire Windfarm Limited:

In accordance with Capacity Market Rule 4.4.2(e), this Application was not Prequalified as the Delivery Body was unable to obtain any data with respect to the physically generated net output for the Generating Unit comprised in this Existing Generating CMU in any Settlement Period nominated by the Applicant pursuant to Rule 3.6.1. Please contact the Delivery Body for more information.

6. Mynydd Clogau Windfarm Limited and Causeymire Windfarm Limited submitted a request for Reconsideration of the Prequalification Decisions on 7th November 2023.
7. The Delivery Body issued both applicants with a Notice of Reconsidered Decision on 28th November 2023 which upheld the original Prequalification Decisions on the following grounds:

Mynydd Clogau Windfarm Limited:

"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 a letter from the supplier has not been uploaded as part of the dispute. As a result, the original Prequalification Decision has been upheld.

For information, the Delivery Body has accepted the other elements of the Application and has updated our records accordingly."

Causeymire Windfarm Limited:

"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 a letter from the supplier has not been uploaded as part of the dispute. As a result, the original Prequalification Decision has been upheld.

For information, the Delivery Body has accepted the other elements of the Application and has updated our records accordingly."

8. Both Mynydd Clogau Windfarm Limited and Causeymire Windfarm then submitted an Appeal Notice to the Authority on 5th December 2023 under Regulation 70 of the Capacity Market Regulations.

Mynydd Clogau Windfarm Limited and Causeymire Windfarm Limited Grounds for Appeal

9. Mynydd Clogau Windfarm Limited disputes the Reconsidered Decision on the following grounds.

Ground 1:

"We believe the document was uploaded, but an error with [the] dispute portal has resulted in EMR not receiving the document we provided on time."

10. Causeymire Windfarm Limited disputes the Reconsidered Decision on the following grounds.

Ground 1:

"We believe the document was uploaded, but an error with [the] dispute portal has resulted in EMR not receiving the document we provided on time."

The Legislative Framework

11. 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

12. 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.

13. Regulations 68 to 72 set out the process and powers in relation to dispute resolution and appeals.
14. 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.*

15. **Regulation 69(5A)** 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.*

16. 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.

17. **Regulation 70(4-6)** sets out the requirements for an 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.

18. **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

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

3.6.1 Previous Settlement Period performance

"(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 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 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 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 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*

(b) Each Applicant for an Existing Generating CMU that is a Non-CMRS Distribution CMU using the Supplier Settlement Metering Configuration Solution must provide:

- (i) a letter from the supplier or former supplier to such CMU confirming:
 - (aa) the CMU or Generating Unit's physically generated net output, or Metered Volume where applicable, in MWh to three decimal places; and*
 - (bb) whether line loss adjustments have been applied; or**
- (ii) where the Applicant cannot meet the requirements of 3.6.1(b)(i), 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 the three Settlement Periods referred to in Rule 3.6.1(a) or Rule 3.6.1(aa) for each Generating Unit that comprises that CMU.

(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"

20. Rule 4.4.2 (e)

"Subject to Rule 3.8.1A(c)(ii), the Delivery Body must not Prequalify a CMU where:

the Delivery Body is unable to obtain any data with respect to the physically generated net output for a Generating Unit comprised in an Existing Generating CMU in any Settlement Period nominated by the Applicant pursuant to Rule 3.6.1;"

Our Findings

21. We have assessed Mynydd Clogau Windfarm Limited and Causeymire Windfarm Limited's Grounds for Appeal, which are summarised together below.

Mynydd Clogau Windfarm Limited and Causeymire Windfarm Limited:

22. Mynydd Clogau Windfarm Limited and Causeymire Windfarm Limited submitted their prequalification applications on 18th September 2023 via the EMR portal. The applications were both submitted by the same individual, hereafter referred to as the “application handler”. Both these applications were subsequently rejected by the Delivery Body as they did not provide the documentation required to fulfil Capacity Market (“CM”) Rule 3.6.1.
23. On 7th November 2023, the applicants submitted a request for reconsideration of the Prequalification Decision and sought to include documents intending to remedy the non-material omissions that the Delivery Body had highlighted.
24. On 28th November 2023, the Delivery Body formally upheld the original Prequalification Decision on the basis that the required documents to demonstrate Previous Settlement Period performance in accordance with Rule 3.6.1 had not been provided to them in the request for reconsideration of the Prequalification Decision as permitted under Regulation 69(5).
25. In Mynydd Clogau Windfarm Limited, the applicant failed to provide a supplier letter or alternative evidence confirming that the CMU was a Non-CMRS Distribution CMU using the Balancing Services Metering Configuration Solution or Bespoke Metering Configuration Solution for the purposes of meeting Rule 3.6.1(c).
26. In Causeymire Windfarm Limited, the applicant failed to provide a supplier letter in order to validate the physically generated net output for the Generating Unit comprised by this Existing Generating CMU in any Settlement Period nominated by the applicant in Rule 3.6.1. Consequently, the Delivery Body could not prequalify the application under Rule 4.4.2(e) as they were unable to obtain any data with respect to the physically generated net output for the Generating unit comprised in this Existing Generating CMU in any Settlement Period nominated by the applicant in Rule 3.6.1.
27. On 5th December 2023, the applicants raised an Appeal Notice to the Authority to review the Reconsidered Decisions. In the Appeal notices to the Authority, the application

handler, submitting on behalf of both CMUs, reported that during submission of the dispute to the Delivery Body, they had experienced issues uploading the outstanding Prequalification documents on the EMR portal. In the Appeal Notices to the Authority, the applicants stated that *"there was an error with the portal (on the EMR's side) at the stage of uploading."* The applicants also stated in their Appeal Notice to the Authority *"we believe the document was uploaded, but an error with [the] dispute portal has resulted in EMR not receiving the documentation we provided on time"*. The Delivery Body has confirmed to the Authority that no other users reported problems with the EMR portal during the period when the applicant handler attempted submission of their documentation.

28. The applicants and the Delivery Body both confirmed to the Authority that the Delivery Body agreed to assist the application handler with the upload process. The Delivery Body has confirmed that on this occasion, they agreed to accept service of documents via email due to the apparent issues with the portal that the application handler reported. The application handler then submitted documents which they believed had not uploaded via the portal to the Delivery Body, via email on 7th November 2023. In their appeal to the Authority, the applicants indicated it was their belief that the Supplier Letters had been successfully uploaded via the EMR portal.
29. The Delivery Body stated in the Reconsidered Decision that the documentation required to comply with Rule 3.6.1, had not been received for either applicant in the dispute process. Consequently, the Delivery Body remained unable to validate the historic performances of the sites in accordance with Rule 3.6.1(c) and the applicants were rejected at Reconsideration of Prequalification Decision stage.
30. As part of their Appeal to the Authority, the applicant handler has provided the Supplier Letters which had not been provided at Prequalification and Reconsidered Decision stage. The Authority is limited by Regulation 71(3) to only consider information which was before the Delivery Body at the time the Reconsidered Decision was made. On the basis of information provided by both the applicant and the Delivery Body to the Authority for the purposes of this Appeal, it is not clear that an error with the EMR portal occurred although the Authority notes that applicant handler agrees the Supplier Letter was not included within the documentation provided to the Delivery Body via email.

Consequently, as a matter of fact the Authority finds that the Supplier Letter provided in the applicant's appeal to the Authority is not material which was before the Delivery Body at the time of the Reconsidered Decision.

31. Notwithstanding the above, we verified the Supplier Letters now provided by the applicant handler in order to consider the possibility of whether these documents would have fulfilled the requirements of Rule 3.6.1 had they been provided to the Delivery Body for the purposes of the Reconsidered Decision and we believe that these do not fulfil the requirements of Rule 3.6.1.
32. As stated above, Rule 4.4.2(e), the Delivery Body must not pre-qualify a CMU when they are unable to validate the performance for the settlement periods nominated by the applicants. In the case of both Causeymire and Mynydd Clogau Wind Farms, the Settlement Periods nominated by the applicants did not match with the Settlement Periods within the Supplier Letter provided.
33. In the case of Causeymire Wind Farm, the Settlement Periods nominated by the Applicant for this application were as follows: 8/8/2023 SP-48, 20/8/2023 SP-48, 9/9/2023 SP-48. The attached Supplier Letter provided values for different dates, namely: 26/9/2022 SP-15, 20/2/2023 SP-24, 24/2/2022 SP-6. The same issue was seen in the documentation provided for Mynydd Clogau, the Settlement Periods nominated were as follows: 6/8/2023 SP-48, 19/8/2023 SP-48, 8/9/2023 SP-48. These are different dates to those on the Supplier Letter provided, those being 18/2/2023 SP-9, 12/1/2023 SP-9, 17/2/2023 SP-14.
34. Since the Supplier Letters would not have fulfilled the requirements of Rule 3.6.1, the issues reported in uploading them to the portal would have no bearing on the Delivery Body's decision. For this reason, the Authority considers that the Delivery Body's decision to reject both applications at Reconsideration of the Prequalification Decision stage on the basis of the applicants' failure to provide evidence which met the requirements of Rule 3.6.1 is correct.

Conclusion

Mynydd Clogau Wind Farm Limited:

35. The Delivery Body reached the correct reconsidered decision to not Prequalify Mynydd Clogau Wind Farm for the T-4 Auction on the basis that:
- a) The applicant failed to provide the relevant documentation in accordance with Rule 3.6.1(c) at Prequalification stage. The applicant did not provide a Supplier Letter, or alternative evidence, in order to correct this omission at the Reconsidered Decision stage.
 - b) In accordance with Regulation 71(3), the Authority is obliged to only consider information which was before the Delivery Body at the time the Reconsideration Decision was made. At that time of the Delivery Body's Reconsideration decision, the applicant failed to provide documentation which corrected non-material omissions or errors at the prequalification stage. Consequently, the Authority must conclude that Rule 3.6.1 was not met and the Delivery Body's decision should be upheld.

Causeymire:

36. The Delivery Body reached the correct reconsidered decision to not Prequalify Causeymire for the T-4 Auction on the basis that
- a) The applicant did not supply data with respect to the physically generated net output for a Generating Unit comprised in an Existing Generating CMU in any Settlement Period nominated by the applicant pursuant to Rule 3.6.1, as per Rule 4.4.2(e).
 - b) In accordance with Regulation 71(3), the Authority is obliged to only consider information which was before the Delivery Body at the time is made the reconsideration decision. At that time of the Delivery Body's Reconsidered

Decision, the applicant failed to provide documentation which corrected omissions or errors at the prequalification stage. Consequently, the Authority must conclude that Rule 3.6.1 was not met and the Delivery Body decision's should be upheld.

Determination

37. For the reasons set out in this Determination, the Authority hereby determines pursuant to Regulation 69(5) that the Delivery Body's Reconsidered Decision to reject Mynydd Clogau Windfarm Limited for Prequalification be upheld in respect of the CMUs listed in Paragraph 1 for the T-4 Auction.
38. For the reasons set out in this Determination, the Authority hereby determines pursuant to Regulation 69(5) that the Delivery Body's Reconsidered Decision to reject Causimire Windfarm Limited for Prequalification be upheld in respect of the CMUs 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