

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 an Appeal made Norwich East Electric Forecourt LTD against Reconsidered Decisions made by the Electricity Market Reform Delivery Body ("Delivery Body") in respect of the following Capacity Market Units ("CMU"): Norwich East Electric Forecourt LTD (T-1 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. Norwich East Electric Forecourt LTD submitted an Application for Prequalification for the CMU in Paragraph 1 in respect of the 2024 T-1 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:

"Capacity Market Rule 3.6.3(c) requires all Existing Generating CMU that are Distribution connected to provide a copy of the Distribution Connection Agreement for each Generating Unit comprised in the CMU with the Application, or where this is not possible, written confirmation from the Distribution Network Operator that such Distribution Connection Agreement is in effect, which confirms the registered capacity of the Generating Unit and the capacity of the Generating Unit is permitted to export to

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.

the Distribution Network. Neither a Distribution Connection Agreement nor written confirmation from the Distribution Network Operator has been provided for this Application, therefore fails to meet this Rule requirement.

Please note, the Connection Capacity for the CMU was amended in assessment as the Connection Capacity entered is higher than Historic Output. Historic Output values used to apply de-rating factor, therefore it is 5.821MW before de-rating."

5. Norwich East Electric Forecourt LTD submitted a request for reconsideration of the Prequalification Decision on 2nd November 2023.
6. The Delivery Body issued a Reconsidered Decision on 28th November 2023 which rejected the dispute on the following grounds:

Norwich East Electric Forecourt LTD:

"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.

Capacity Market Rule 3.6.3(c) requires all Existing Generating CMU that are Distribution connected to provide a copy of the Distribution Connection Agreement for each Generating Unit comprised in the CMU with the Application, or where this is not possible, written confirmation from the Distribution Network Operator that such Distribution Connection Agreement is in effect, which confirms the registered capacity of the Generating Unit and the capacity of the Generating Unit is permitted to export to the Distribution Network. Neither a Distribution Connection Agreement nor written confirmation from the Distribution Network Operator has been provided for this Application, therefore fails to meet this Rule requirement.

The Applicant has failed to address this failure reason in the request to review the Prequalification Decision, therefore this requirement is still outstanding, and the status of the Application under the Reconsidered Decision remains as Rejected."

7. Under Regulation 70 of the Regulations, Norwich Eastern Electric Forecourt LTD submitted an Appeal Notice to the Authority on 1st December 2023.

Norwich East Electric Forecourt LTD's Grounds for Appeal

8. **Norwich East Electric Forecourt LTD** disputes the decision on the following ground/s:

Ground 1

"The connection offer agreement was not attached to the Tier 1 dispute claim along with the acceptance form. Therefore, the EMR delivery body was unable to verify the capacity of 6000 kVA using the acceptance form alone."

"Not including the connection offer was human error. This document has been included with this tier 2 dispute as this is the document required to meet rule 3.6.3 c regarding the 6000kVA."

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 3.6.3(c)** sets out the requirement for connection arrangements:

"(c) Each Applicant for an Existing Generating CMU that is a Distribution CMU must:

(i) confirm that one or more Distribution Connection Agreements have been entered into which permit at least, in aggregate, the Anticipated De-rated Capacity of that CMU and any other CMU to which any such Distribution Connection Agreement applies to connect to the Distribution Network in the relevant Delivery Years; and

(ii) provide a copy of the Distribution Connection Agreement for each Generating Unit comprised in the CMU with the Application or, where this is not possible, written confirmation from the Distribution Network Operator that such Distribution Connection Agreement is in effect and confirming:

(aa) the registered capacity (or inverter rating, if applicable) of that Generating Unit and where a range of values is specified for the registered capacity (or inverter rating if applicable), the minimum value in that range; and

(bb) the capacity that such Generating Unit is permitted to export to the Distribution Network.”

Our Findings

18. We have assessed Norwich East Electric Forecourt LTD’s Grounds for Appeal, which are summarised below.

Ground 1

19. As set out in the rules above at paragraph 17, Rule 3.6.3(c) requires Existing Generating CMU to provide Connection Agreements with their prequalification application.
20. On 31st October 2023, at Prequalification Application stage, Norwich East Electric Forecourt LTD was rejected by the Delivery Body as they did not provide either a Distribution Connection Agreement or written confirmation from the Distribution Network Operator, as required by Rule 3.6.3(c).
21. On 2nd November 2023, Norwich East Electric Forecourt LTD requested a reconsideration of the Prequalification Decision.
22. In the reconsideration decision letter published on 28th November 2023, the Delivery Body upheld the Prequalification Decision on the basis that the applicant did not comply with Rule 3.6.3(c) as the required documentation was not provided.
23. On 1st December 2023, Norwich East Electric Forecourt LTD raised an Appeal Notice to the Authority to state that not including the connection offer in the request for reconsideration was “human error”.

24. In their Appeal Notice to the Authority the applicant submitted a Distribution Connection Agreement. However, the Authority cannot take into account this evidence as it was not before the Delivery Body as laid out in Capacity Market 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. As the Authority cannot take into consideration the Distribution Connection Agreement submitted with the applicant's Appeal Notice to the Authority, we find that the applicant had not provided the evidence needed to meet the requirement of Rule 3.6.3(c) and that the applicant did not rectify the original omission within the Application for Prequalification. Therefore, we consider that the Delivery Body was correct to reject the CMU referred to in Paragraph 1 from Prequalification.

Conclusion

26. The Delivery Body reached the correct Reconsidered Decision to not Prequalify Norwich East Electric Forecourt LTD for the T-1 Auction on the basis that:
- a) Norwich East Electric Forecourt LTD did not provide a Connections Agreement in accordance with Capacity Market Rule 3.6.3(c) at either Prequalification or reconsideration of Prequalification Decision stages.
 - b) 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

27. 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 Norwich East Electric Forecourt LTD for Prequalification be upheld in respect of the CMU listed in

Paragraph 1 for the T-1 Auction.

A handwritten signature in black ink, reading "A Macdonell". The signature is written in a cursive, flowing style.

Andrew Macdonell – Senior Policy Manager

For and on behalf of the Gas and Electricity Markets Authority

Date 06/02/2024