

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 by Bluefield Energy Limited (“Bluefield”, “the Applicant”) against a reconsidered decision made by the Electricity Market Reform Delivery Body (“Delivery Body”) in respect of the following Capacity Market Unit (“CMU”):

- a) BOOTH28 (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 and determine whether the reconsidered decision was correct on the basis of the information before the Delivery Body when it made its decision.

Appeal Background

3. Bluefield submitted an Application for Prequalification for the CMU in Paragraph 1 in respect of the 2028 T-4 Auction and sought a Maximum Obligation Period of 15 years.
4. For the CMU listed in Paragraph 1, the Delivery Body issued a Notification of Prequalification Decision dated 12 November 2024 (the “Prequalification Decision”). The Delivery Body rejected the CMU on the following grounds set out in Annex A:

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.

"F4-78 Aggregated Connection Capacity is not equal to the maximum capacity

CM Rules 3.5.2 and 3.5.5 require all Generating Units comprised in a Generating CMU to provide an aggregate Connection Capacity equal to the Maximum Export Capacity (MEC)/Transmission Entry Capacity (TEC) value relevant to each of the Generating Units comprised in that Generating CMU. The aggregate Connection Capacity provided as part of this Application is not equal to the sum of the MEC/TEC value as applicable, and therefore the requirements of this rule have not been met.

F4-53 Unsigned Connection Acceptance Form

CM Rule 3.7.3(b) requires all New Build Generating CMUs that are Distribution connected to provide a copy of the Distribution Connection Agreement or connection offer (with evidence of acceptance), or where this is not possible, written confirmation from the Distribution Network Operator that such Distribution Connection Agreement or connection offer 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. The Distribution Connection Agreement / Connection Offer provided for at least one Generating Unit in the CMU has not been signed, and therefore the requirements of this rule have not been met.

F4-112 Incorrect Method used to calculate the Connection Capacity selected

CM Rule 3.5 requires all Applicants to determine the Connection Capacity of a Generating CMU and to state the method of calculation used. As per CM Rule 3.5.2(b) a Distribution Generating Unit forming all or part of a CMU should, unless nominating a capacity equal to their Average Output under CM Rule 3.5.3, calculate their Connection Capacity with the Maximum Export Capacity. A Method of Calculation was selected that is not applicable to this CMU, and so the requirements of these rules have not been met."

5. Bluefield submitted a request for reconsideration of the Prequalification Decision on 19 November 2024.
6. The Delivery Body issued a Notice of Reconsidered Decision on 10 December 2024 which in Annex A rejected the dispute on the following ground:

"F4-53 Unsigned Connection Acceptance Form

CM Rule 3.7.3(b) requires all New Build Generating CMUs that are Distribution connected to provide a copy of the Distribution Connection Agreement or connection offer (with evidence of acceptance), or where this is not possible, written confirmation from the Distribution Network Operator that such Distribution Connection Agreement or connection offer 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. The Distribution Connection Agreement / Connection Offer provided for at least one Generating Unit in the CMU has not been signed, and therefore the requirements of this rule have not been met."

7. Bluefield then submitted an Appeal Notice to the Authority on 16 December 2024 under Regulation 70 of the Regulations.

Bluefield's Grounds for Appeal

8. Bluefield disputes the decision on the following grounds.

Ground 1

9. Bluefield noted that the Delivery Body rejected their Application for Prequalification on several grounds, and accepted Bluefield's request for reconsideration of the Prequalification Decision on most of the grounds *"...apart from this as the signed page of the connection agreement was not uploaded as a supporting document of the dispute."* The omission of the signed document *"was a clerical error, an honest mistake and non-material omission that has now been remedied."*

Ground 2

10. Bluefield argue that had they “elected to defer supplying the connection agreement the application would have been accepted, the CMU would have been ‘Conditionally Pre-Qualified’ allowing [Bluefield] to submit the Connection Agreement documents ahead of the auction thus achieving ‘Pre-Qualified’ status. The reason for rejection is due to a missing page on a document that could have been deferred.”

The Legislative Framework

11. 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. Regulation 71(3)(b) sets out the Authority’s obligations when receiving an Appeal Notice:

“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.”

Capacity Market Rules

15. Rule 3.7.3(b)(ii) requires Distribution Network-Connected New Build CMUs to provide a valid Distribution Connection Agreement and states that:

Subject to Rule 3.7.3(c) below, Applicants for a New Build CMU that is, or will be, directly connected to a Distribution Network must:

(i) confirm that there are one or more Distribution Connection Agreements or accepted connection offers which permit at least, in aggregate, the Anticipated De-rated Capacity of that CMU and any other CMUs to which the Distribution Connection Agreement applies to connect to the Distribution Network in the relevant Delivery Years; and

(ii) provide with the Application a copy of any such Distribution Connection Agreement or connection offer (with evidence of acceptance), or where this is not possible, written confirmation from the Distribution Network Operator that such Distribution Connection Agreement or connection offer 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

16. We have assessed Bluefield's Grounds for Appeal, which are summarised below.

Ground 1

17. The Applicant conceded that they had failed to upload the signed page of the Grid Connection Agreement “as a supporting document of the dispute”. The Applicant’s justification was that “*[this] was a clerical error, an honest mistake and non-material omission that has now been remedied.*”
18. The Applicant had therefore failed to provide a signed Grid Connection Agreement pursuant to Rule 3.7.3(b)(ii) to the Delivery Body as part of their request for reconsideration of the Prequalification Decision. The Authority has no ability to consider additional supporting documents relating to the application as part of the Authority’s appeals process. Regulation 70 sets out what documentary evidence can be accompanied by the Applicants’ Appeal Notice. Regulation 70(6) states that ‘*except as provided in paragraphs (4) and (5), no other documentary evidence may be included or submitted with the Appeal Notice*’. The Authority cannot consider this information as it was not before the Delivery Body as provided in Regulation 71(3)(b).
19. The Authority considers that none of the supporting documentation submitted by the Applicant at the Application for Prequalification or at the Applicants’ request for reconsideration of the Prequalification Decision constitutes a Connection Agreement, a valid offer for a Connection Agreement with evidence of acceptance, or written confirmation from the relevant Distribution Network Operator (“DNO”) that a Connection Agreement is in force or that a connection offer has been accepted. The Authority holds that the requirements of Rule 3.7.3(b)(ii) are therefore not met, and the Delivery Body was correct to reject the CMU in paragraph 1 from Prequalification.

Ground 2

20. In their Appeal Notice, the Applicant argues that had they “*elected to defer supplying the connection agreement the application would have been accepted, the CMU would have been ‘Conditionally Pre-Qualified’ allowing [Bluefield] to submit the Connection Agreement documents ahead of the auction thus achieving ‘Pre-Qualified’ status.*” The Authority cannot consider this information as it was not before the Delivery Body as provided in Regulation 71(3)(b). The Authority therefore has no ability to address this information in

the appeals process. In addition, the Applicant's reference to electing to defer the submission of the connection agreement does not provide evidence that a Grid Connection Offer has been accepted as part of their Application for Prequalification or rectify their omission in their request for reconsideration of the Prequalification Decision. The Authority holds that the requirements of Rule 3.7.3(b)(ii) are therefore still not met, and the Delivery Body was correct to reject the CMU in paragraph 1 from Prequalification.

21. We consider that the Applicant failed to provide the evidence which met the requirements of Rule 3.7.3(b)(ii) in their Application for Prequalification. The Applicant did not rectify this in their request for reconsideration of the Prequalification Decision. As such the Delivery Body was correct to reject the CMU in paragraph 1 from Prequalification.

Conclusion

22. The Delivery Body reached the correct reconsidered decision to not Prequalify the CMU for the T-4 Auction on the basis that:
 - a) At the Prequalification stage, the Applicant did not provide a Grid Connection Agreement in accordance with Rule 3.7.3 (b)(ii).
 - b) At reconsideration of Prequalification Decision stage, the Applicant provided a Grid Connection Agreement, however this Grid Connection Agreement still did not fully satisfy the requirements of Rule 3.7.3(b)(ii) as it was not signed so there was no evidence of acceptance.
 - c) The Authority cannot consider additional information that was not before the Delivery Body as provided in Regulation 71(3)(b). The Applicant's assertion to the Authority that it could have elected to defer provision of a Grid Connection Agreement does not rectify this omission.

Determination

23. 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 Bluefield for

Prequalification be upheld in respect of the CMU listed in Paragraph 1 for the T-4 Auction.

Maryam Khan

For and on behalf of the Gas and Electricity Markets Authority

10 February 2025