

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 Mercia Waste Management Ltd (“Mercia Waste Management”, “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) MWM002 (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. Mercia Waste Management 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 1 year.
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.

"F4-16 No Connection Agreement uploaded

CM Rule 3.6.3(c) requires all Existing Generating CMUs 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, and therefore the requirements of this rule have not been met."

5. Mercia Waste Management submitted a request for reconsideration of the Prequalification Decision on 13 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:

"F4-78 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"

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

Mercia Waste Management's Grounds for Appeal

8. Mercia Waste Management disputes the decision on the following ground:

Mercia Waste Management state that *"the omission to insert the correct Connection Capacity and calculation method within the component portion of the application was a genuine mistake. The correct Connection Capacity (MW) figure should read 19.825 MW and the calculation method used should have been the historical/average output"*.

The Legislative Framework

9. 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. 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

13. Rule 3.5.2 lays out the standard methodology for calculating the Connection Capacity of a Generating Unit and states that:

"Subject to Rules 3.5.3 and 3.5.5, the Connection Capacity of a Generating Unit must be calculated as follows:

(a) for a Generating Unit forming all or part of a Transmission CMU, the Transmission Entry Capacity stated in the Grid Connection Agreement for that Generating Unit; and

(b) for a Generating Unit forming part or all of an Existing Generating CMU which is a Distribution CMU, the Maximum Export Capacity stated in the Distribution Connection Agreement for that Generating Unit or in the written confirmation from the Distribution Network Operator provided pursuant to Rule 3.6.3(c)(ii) (as applicable);

(ba) omitted;

(c) for a Generating Unit forming part or all of a Prospective Generating CMU which is a Distribution CMU:

(i) omitted;

(ii) omitted;

(iii) where the Generating Unit

(aa) omitted;

(bb) does not have a Distribution Connection Agreement or a connection offer, or has a Distribution Connection Agreement or a connection offer but such agreement or offer contains no information relevant to the calculation of registered capacity or inverter rating, the estimated capacity that the Applicant, with respect to the Generating CMU (that includes that Generating Unit) anticipates (acting in good faith) to be the maximum capacity which will be physically capable of being transmitted

from the Generating Unit to the Distribution Network,

in each case expressed in MW to three decimal places.”

Our Findings

14. We have assessed Mercia Waste Management’s Ground for Appeal, which is summarised in paragraph 8 above.
15. The Applicant accepts that they failed to select the correct method of calculation and capacity. They state in their Appeal Notice that the calculation method used should have been the historic/average output and the correct Connection Capacity (MW) figure should read 19.825 MW.
16. Regulation 70 sets out what documentary evidence can be accompanied by the Applicants’ Appeal Notice. Only information and documentary evidence that the Applicant has provided to the Delivery Body as part of their Application for Prequalification or in their request for reconsideration of the Prequalification Decision can be included in the Applicant’s 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’*.
17. The Authority has no ability to consider this information as part of the appeal process as the Authority cannot consider evidence that was not before the Delivery Body as provided in Regulation 71(3)(b).
18. We consider that the Applicant failed to provide evidence which met the requirements of Rule 3.5.2 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 referred to in Paragraph 1 from Prequalification.

Conclusion

19. The Delivery Body reached the correct reconsidered decision to not Prequalify the CMU for the T-4 Auction on the basis that:
- a) At Prequalification stage, Mercia Waste Management accept they did not select the correct method of calculation and capacity. Accordingly, at reconsideration of the Prequalification Decision the Delivery Body correctly concluded that applying Rule 3.5.2 “The aggregate Connection Capacity provided as part of this Application is not equal to the sum of the MEC/TEC value as applicable”.
 - b) In accordance with Regulation 71(3)(b), the Authority can only consider information provided to the Delivery Body. Based on the information before the Delivery Body, it made a correct decision to not prequalify the CMU referred to in paragraph 1 for the T-4 Auction.

Determination

20. 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 Mercia Waste Management 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