

**DETERMINATION PURSUANT TO REGULATION 71(3)(b) OF THE ELECTRICITY CAPACITY REGULATIONS 2014 (AS AMENDED) FOLLOWING APPEALS MADE TO THE AUTHORITY<sup>1</sup> PURSUANT TO REGULATION 70(1)(a)**

**Introduction**

1. This determination relates to appeals made by **KiWi Power Ltd** (“KiWi”) against the reconsidered decision made by the EMR delivery body (National Grid Electricity Transmission plc (“NGET”)) in respect of the following Capacity Market Unit (CMU):
  - (1) KPEG05
2. Pursuant to regulation 71(3) of the Electricity Capacity Regulations 2014 (as Amended) (the "Regulations"), where the Authority receives an appeal notice that complies with regulation 70, the Authority must review a reconsidered decision made by NGET.

**Appeal Background**

3. KiWi submitted an application for KPEG05 in respect of the Supplementary Auction for delivery in 2017/18.<sup>2</sup>
4. In the Notification of Prequalification Decision dated 23 September 2016 (the "NGET Prequalification Decision"), NGET rejected KPEG05 on the following grounds:

*“The Application has been rejected as the information required by Rule 3.4.3(a)(i) regarding the Ordnance Survey Grid Reference is invalid.*

---

<sup>1</sup> 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.

<sup>2</sup> The definition of supplementary auction has been inserted into the Regulations by SI 2016/742 amending regulation 2(1)(b) thus: ‘after the definition of “storage facility” insert— “supplementary auction” has the meaning given in regulation 10(1)(ba);’ and adding to regulation 10(1) as follows: ‘(ba) by 1st August 2016, whether a T-1 auction is to be held in the auction window starting on 1st September 2016 (a “supplementary auction”)’

*Connection Agreement provided but has not met the requirements so the Application has been rejected based on Rule 3.6.3.*

*The Application has been rejected as it has not met the requirements of rule 3.6.1 (b) which requires that a letter from a supplier confirming historic output is provided as part of the Application. Such a letter has not been provided.”*

5. KiWi submitted a request for reconsideration of the initial prequalification decision (“Dispute Notice”) on 30 September 2016.
6. NGET issued a Notice of Reconsidered Decision on 14 October 2016 and determined that KPEG05 would become Conditionally Prequalified. NGET noted:  
*“Connection Document provided but not met requirements; therefore, we have assumed a Connection Document Deferral allowed by Rule 3.7.3(c); therefore this application is Conditionally Prequalified and will need to provide credit cover as 4 above.”*
7. KiWi then submitted an appeal to the Authority on 21 October 2016 under regulation 70 of the Regulations.

### **KiWi’s Grounds for Appeal**

8. KiWi argues that their connection agreement does meet the requirements of the Rules. It states that:  
*“CMU KPEG05 should never have been conditionally prequalified, and the connection documents that was [sic] provided contained all the necessary information.”*
9. KiWi also claims that the Rules referred to by NGET in its reconsidered decision are not relevant to KPEG02:  
*“The Rules under Section 3.7 refer only to New build [sic] CMUs. KPEG02 is an Existing Generation CMU, and so 3.7.3 (c) does not apply. Furthermore, the connection agreement in the original application provided all information requested under the Rules in Section 3.6.”*

## **The Statutory Framework**

10. The Electricity Capacity Regulations 2014 were made by the Secretary of State under the provisions of s27 of the Energy Act 2013. The Capacity Market Rules were made by the Secretary of State pursuant to powers set out in s34 of the Energy Act 2013.
11. The Regulations set out the duties upon on the Delivery Body (NGET) when it determines eligibility. Regulation 22(a) specifies that each application for prequalification must be determined in accordance with the Capacity Market Rules.
12. Regulations 68 to 72 set out the process and the powers in relation to Dispute Resolution and Appeals.

## **Capacity Market Rules**

13. Rule 3.7.3 sets out the requirements for Connection Arrangements for New Build CMUs. NGET referred to this rule in the Notice of Reconsidered Decision by mistake, and we understand from NGET that it should have read 3.6.3, as it had in the Prequalification Notice.
14. Rule 3.6.3 sets out the requirements for Connection Arrangements for Existing Generating CMUs, of which KPEG05 is one. The specific requirements for Distribution Connection Agreements are established in rule 3.6.3(c)(ii) and are as follows:
  - (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.*

15. A Distribution Connection Agreement as defined in rule 1.2, means:  
*for a Distribution CMU , an agreement entered into between a DNO and the person responsible for that CMU for the connection of that CMU to, and use of, a Distribution Network*

**Our Findings**

16. The documents submitted by KiWi as evidence of its Distribution Connection Agreement do not fulfil the requirements set out in rule 3.6.3. KiWi submitted a joint declaration by the Legal Owner and the Despatch Controller (in this case KiWi) and a letter (on unheaded paper) which appears to be from an employee of UK Power Networks.
17. The letter submitted to NGET does not fulfil the requirements of rule 3.6.3 because it is not a connection agreement. It says that the counterparty is awaiting a formal offer.
18. The Appellant has also submitted a "Summary of Mains Parallel Connection Agreement" for the site to NGET prior to its Reconsidered Decision. However, this is stated as being a 'draft' agreement and so is not compliant with rule 3.6.3.

**Conclusion**

19. The Authority finds that the Appellant presented inadequate evidence to the Delivery Body that it had in place a Distribution Connection Agreement or written confirmation from the Distribution Network Operator as required within the Rules.
20. The Authority therefore considers that NGET made the correct decision to treat the Distribution Connection Agreement as deferred and Conditionally Prequalify the CMU.

**Determination**

21. For the reasons set out in this determination the Authority hereby determines pursuant to regulation 71(3) that the NGET Reconsidered Decision to Conditionally Prequalify KPEG05 be upheld in respect of the Supplementary Auction.

A handwritten signature in cursive script, appearing to read "David O'Neill".

**David O'Neill**

**Head of Wholesale Markets Policy**

For and on behalf of the Gas and Electricity Markets Authority

**5 December 2016**