

DETERMINATION PURSUANT TO REGULATION 71(3)(b) OF THE ELECTRICITY CAPACITY REGULATIONS 2014 (AS AMENDED) FOLLOWING APPEALS MADE TO THE AUTHORITY¹ PURSUANT TO REGULATION 70(1)(a)

Introduction

1. This determination relates to appeals made by Limejump Ltd (“Limejump”) against reconsidered decisions made by the EMR delivery body (National Grid Electricity Transmission plc (“NGET”)) in respect of the following Capacity Market Units (CMUs):

- (1) DSR_04
- (2) DSR_05
- (3) DSR_06
- (4) DSR_07
- (5) DSR_08
- (6) DSR_09
- (7) DSR_10
- (8) DSR_11

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.

3. 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

4. Limejump submitted applications for the CMUs in paragraph 1 in respect of the 2016

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.

Transitional Arrangements (TA) Auction.

5. In the Notification of Prequalification Decision dated 23 September 2016 (the "NGET Prequalification Decision"), NGET rejected the CMUs on the following grounds:

"This application has been rejected as the address on the Certificate of Conduct and Prequalification Certificate was incorrect. Rule 1.2 defines the Prequalification Certificate as in the form set out in Exhibit A, and the Certificate of Conduct as in the form set out in Exhibit C. The form set out in Exhibits A and C includes a requirement to date/sign the certificate."

6. Limejump submitted a request for reconsideration of the initial Prequalification Decision ("Dispute Notice") on 27 September 2016. They noted:

"Limejump agrees that the registered address was incorrect. We had the same issue last year and we sent updated exhibits A and C as part of the disputes in the previous year pre-qualification and we thought it would have been updated on the portal. However the old one was still on the portal and has been used for all our submissions this year."

7. NGET issued a Notice of Reconsidered Decision on 14 October 2016 which continued to reject the dispute on the following grounds.

"We have reviewed and not accepted your dispute. CMRS units are not able to partake in the TA auction.

The Exhibits A and C have been uploaded"

8. Limejump then submitted an appeal to the Authority on 21 October 2016 under Regulation 70 of the Regulations.

Limejump's Grounds for Appeal

9. Limejump claims that the classification of these CMUs as CMRS units was an administrative error by Limejump and that the CMUs are all non-CMRS units. The CMUs were intended to be entered as non-CMRS as Limejump was aware of the eligibility requirements for the TA, having entered seven CMUs in last year's auction.
10. Limejump states that not all reasons for the rejection of the CMUs were communicated in the NGET Prequalification Decision, noting that *"The delivery body flagged other issues/problems with our application in the Tier 1 dispute that we fixed in due time. However, the aforementioned mistake about CMRS/Non CMRS was not brought to our attention. Therefore, we did not revise our application further."*
11. Limejump claims *"This error could have been fixed if it would had [sic] been flagged by the delivery body during the Tier 1 dispute"*

The Statutory Framework

12. 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.
13. 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.
14. Regulations 68 to 72 set out the process and the powers in relation to Dispute Resolution and Appeals.
15. Regulation 29 sets out the eligibility criteria for the Transitional Arrangements auctions:

29.—(1) A "DSR transitional auction" is a capacity auction in which bids may only be made for a one year capacity agreement in respect of—

- (a) a demand side response CMU; or*
- (b) a non-CMRS distribution CMU with a connection capacity not exceeding 50MW.*

Capacity Market Rules

16. Chapter 11 of the Capacity Market Rules governs the Transitional Arrangements Auctions and sets out in Rule 11.3.2 the eligibility criteria:

11.3.2 Prequalification and Eligibility

The following CMUs must be prohibited from participating in a Transitional Capacity Auction (and an Applicant must not submit an Application for a Transitional Capacity Auction in relation to any such CMU):

- (a) any CMRS CMU;*
- (b) any Non-CMRS Distribution CMU or DSR CMU that includes any Generating Unit or DSR CMU Component that forms part of a CMU that has been awarded a Capacity Agreement in a Capacity Auction (other than a Transitional Capacity Auction);*
- (c) any Non-CMRS Distribution CMU with a De-rated Capacity of 50MW or higher;*
and
- (d) any Interconnector CMU.*

Our Findings

17. Limejump's Applications for Prequalification for these eight CMUs specified that they are CMRS units, making them ineligible for Prequalification. However, we understand from the Appeal Notice that selection of CMRS was an administrative error by Limejump.
18. NGET did not inform Limejump of the full reasons for rejection in the Notification of Prequalification which meant that Limejump was not aware that it had to provide additional

information to NGET to remedy its administrative error before NGET made its reconsidered decision.

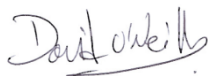
19. The Authority is satisfied that Limejump made an administrative error and that the CMUs in question are non-CMRS units and would have been eligible to Conditionally Prequalify if the administrative error had not occurred. Further, had full reasons been given by NGET in the Notice of Prequalification then Limejump would have been able to correct the administrative error before NGET made its reconsidered decision.

Conclusion

20. NGET did not give full reasons for the rejection of the CMUs. This meant that Limejump was not aware that it had to submit information which would have corrected its administrative error. The reconsidered decision was therefore incorrect and the Authority is satisfied that the CMU units are non-CMRS units and should be Conditionally Prequalified.

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 Reject the Appellant is incorrect in respect of DSR_04, DSR_05, DSR_06, DSR_07, DSR_08, DSR_09, DSR_10, and DSR_11. NGET is directed to register these CMUs as Conditionally Prequalified on the capacity market register.



David O'Neill

Head of Security of Supply

For and on behalf of the Gas and Electricity Markets Authority

7 December 2016