

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 KiWi Power Ltd (“KiWi”) against the reconsidered decisions made by the EMR delivery body (National Grid Electricity Transmission plc (“NGET”)) in respect of the following Capacity Market Units (CMUs):
 - (1) KPEG01
 - (2) KPEG03
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 applications for the CMUs in paragraph 1 in respect of the 2016 Supplementary Auction for delivery in 2017/18.²
4. In the Notification of Prequalification Decision dated 23 September 2016 (the "NGET Prequalification Decision"), NGET rejected the CMUs on the following grounds:

The information required by Rule 3.4 is missing and the missing items are the postcode of the CMU Unit.

The Application has been rejected as the Second Legal Owner Signature provided on the

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.

² 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”)’

Applicant Declaration was not listed on Companies House as a director and Exhibit D was also not dated.

Connection Agreement does not highlight any export capacity so we are not able to use estimate in good faith or historic data.

As per Rule 3.6.4 and Rule 8.3.3 for Existing Generating CMU, each applicant must provide detailed line diagrams showing electrical configurations and metering sites, these have not been provided so have assumed that the provision of line diagrams has been deferred.

5. KiWi submitted a request for reconsideration of the initial prequalification decision (“Dispute Notice”) on 30 September 2016 and provided corrections to the errors specified in the NGET Prequalification Decision.
6. NGET issued a Notice of Reconsidered Decision on 14 October 2016 which continued to reject the dispute on the following grounds:

We have reviewed your dispute and the status of your application remains as rejected in accordance with rules 3.2.6 and 3.2.7. Your application contained one generating unit and the rules state that as a dispatch controller, the CMU must consist of a number of generating units (CMU Components).

We have made the following updates to your application:

Updated the postcode in the CMU address details.

Uploaded a valid Exhibit D

Uploaded the letter from the DNO

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 contends that Rules 3.2.6 and 3.2.7 “do not expressly state that there must be more

than one component in a CMU submitted by a despatch controller, rather they imply that there may be one or more components”.

9. KiWi also contends that the CMU KPEG01 was entered “*with one CMU Component, and in the initial rejection letter (Annex A) there was no indication that this configuration is not acceptable*”. The application for KPEG03 contained “*multiple generating units ... submitted as separate CMU Components in the initial application during the pre-qualification window (CMU Component IDs KPEG13 and KPEG23).*”
10. These CMU Components were combined into one Component in the Request for Reconsideration. KiWi claims that this request was made in order to be able to meet the requirements of the supplier letter, but that NGET had said at the time that combining the components “*shouldn’t be necessary*”.

The Statutory Framework

11. 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.
12. The Regulations set out the duties of 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.
13. Regulations 68 to 72 set out the process and the powers in relation to Dispute Resolution and Appeals.

Capacity Market Rules

14. Rules 3.2.4 to 3.2.7 provide for circumstances where the Despatch Controller may be the applicant for a CMU:

3.2.4 *Rule 3.2.5 applies where:*

- (a) *an Existing Generating CMU comprises a Generating Unit or a number of Generating Units;*
- (b) *all such Generating Units are within the legal ownership of the same person; and*
- (c) *the Despatch Controller with respect to each Generating Unit comprised in that Existing Generating CMU is a person other than the legal owner.*

3.2.5 *Where this Rule 3.2.5 applies, the Despatch Controller may be the Applicant with respect to an Existing Generating CMU provided that an Applicant Declaration is submitted with the relevant Application signed by:*

- (a) *two directors (or officers, in the case of a body other than a company) of the person having legal ownership of each Generating Unit comprised in that Existing Generating CMU; and*
- (b) *two directors (or officers, in the case of a body other than a company) of the Despatch Controller of each Generating Unit comprised in that Existing Generating CMU.*

3.2.6 *Rule 3.2.7 applies where:*

- (a) *a Generating CMU comprises a number of Generating Units with a Connection Capacity totalling no more than 50 MW;*
- (b) *legal ownership of such Generating Units is or, in the case of a Prospective CMU, will be vested in more than one person; and*
- (c) *Despatch Control with respect to each Generating Unit comprised in that Generating CMU rests or, in the case of a Prospective CMU, will rest with a single Despatch Controller (who may also be the legal owner of one or more of the Generating Units comprised in such Generating CMU).*

3.2.7 *Where this Rule 3.2.7 applies, the Despatch Controller (or, in the case of a Prospective CMU, the person who will be the Despatch Controller) must be the*

Applicant with respect to a Generating CMU and the following declarations must be submitted with the relevant Application:

- (a) an Aggregator Declaration signed by two directors (or officers, in the case of a body other than a company) of the Despatch Controller of each Generating Unit comprised in that Generating CMU; and*
- (b) a Legal Owner Declaration in respect of each Generating Unit comprised in that Generating CMU signed by two directors (or officers, in the case of a body other than a company) of the person having legal ownership of the relevant Generating Unit.*

Our Findings

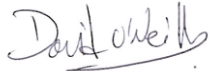
- 15. Pursuant to Rule 3.2.6, Rule 3.2.7 applies where “*a Generating CMU comprises a number of Generating Units*”. As KPEG01 and KPEG03 have one component Rule 3.2.7 does not apply.
- 16. However, the applications submitted by KiWi met the requirements of Rule 3.2.4, as follows:
 - a) Both CMUs are Existing Generating CMUs and are comprised of “*a Generating Unit or a number of Generating Units*”.
 - b) As there was only a single component in each case, there was not more than one legal owner for each CMU
 - c) The despatch controller was separate from the legal owner for each CMU
- 17. Rule 3.2.5 allows the despatch controller to be the Applicant for each CMU.

Conclusion

- 18. The Authority considers that NGET has misapplied the Rules in assessing the Applications for Prequalification by KPEG01 and KPEG03 and that these CMUs should have been Prequalified for the Supplementary Auction.

Determination

19. For the reasons set out in this determination the Authority hereby determines pursuant to Regulation 71(3) that the NGET Reconsidered Decision to Reject KPEG01 and KPEG03 is incorrect and that they be registered as Prequalified for 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

6 December 2016