

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

**Introduction**

1. This determination relates to appeals made by **Simec Uskmouth Power Limited** (“SUPL”) against the Reconsidered Decisions made by the EMR Delivery Body (National Grid Electricity Transmission plc (“NGET”)) in respect of two Capacity Market Units (CMUs):
  - (1) Uskone
  - (2) Usktwo
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<sup>1</sup> receives an Appeal Notice that complies with Regulation 70, the Authority must review a Reconsidered Decision made by NGET.

**Appeal Background**

4. SUPL submitted an Application for Prequalification for Uskone and Usktwo in respect of the Supplementary Auction.
5. In the Notification of Prequalification Decision dated 23 September 2016 (the "Prequalification Decision"), NGET rejected Uskone on the following grounds:

*“This application has been rejected as the Certificate of Conduct has not been signed by two Directors. Rules 3.12.3 and Rule 3.12.4 require a Prequalification Certificate and Certificate of Conduct to be submitted with every application. Rule*

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<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.

*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.*

*As per Rule 3.6.1(a), each applicant for an Existing Generating CMU must identify in the application the three highest Settlement Periods on separate days, our data showed different figures and has been updated to reflect this. The Delivery Body has assumed the 24 month period to 01/07/2014-30/06/2016. The 3 highest outputs considered are - 1. Date - 22/12/2015, Settlement Period - 38, Output - 56.9 MWh (113.800 MW) 2. Date - 19/04/2016, Settlement Period - 43, Output - 56.6 MWh (113.200 MW) 3. Date - 05/04/2016, Settlement Period - 36, Output - 55.2 MWh (110.400 MW)”*

and Usktwo on the following grounds:

*“This application has been rejected as the Certificate of Conduct has not been signed by two directors. Rules 3.12.3 and Rule 3.12.4 require a Prequalification Certificate and Certificate of Conduct to be submitted with every application. 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.*

*As per Rule 3.6.1(a), each applicant for an Existing Generating CMU must identify in the application the three highest Settlement Periods on separate days, our data showed different figures and has been updated to reflect this. SP1: 56.3, SP 2: 55.7 and SP 3: 55.5.*

*The Connection Capacity could not be verified and has been recalculated by the Delivery Body. The Delivery Body Verified De-Rated Capacity has been set at 33.319MW.*

*As per Rule 3.6.4 and Rule 8.3.3 for Existing Generating CMU, each applicant must provide detailed line diagrams showing the electrical configurations and metering sites at which the Generating Units or the DSR CMU Components are located, the line diagram provided does not meet this specification so have assumed that the provision of line diagrams has been deferred.”*

6. SUPL submitted a request for reconsideration of the Prequalification Decisions on 30 September 2016.

7. NGET issued a Notice of Reconsidered Decision on 14 October 2016 which Prequalified Uskone and Usktwo with a de-rated capacity of 33.319MW each. In the Notice of Reconsidered Decision NGET states:

*“We have calculated the connection capacity using Rule 3.5.5, TEC<sup>2</sup> pro rata. Your connection agreement shows a station TEC of 115MW and this has been applied across the three units.”*

8. SUPL then submitted Appeal Notices to the Authority on 21 October 2016 under Regulation 70 of the Regulations.

### **SUPL’s Grounds for Appeal**

9. SUPL states NGET incorrectly calculated the Connection Capacity for Uskone and Usktwo (Grounds 1 and 2), and incorrectly pro-rated the Connection Capacity to a unit that NGET has not Prequalified (Ground 3).

### **Ground 1**

10. SUPL argues in the Appeal Notices that NGET, pursuant to Rule 4.3.3, should have recalculated the connection capacity of the CMUs based on the historical metered output of the units.

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<sup>2</sup> Transmission Entry Capacity, as defined in the Connection and Use of System Code.

## **Ground 2**

11. SUPL argues that NGET was incorrect to have calculated TEC as 115MW and should have used a figure of 230MW. SUPL puts forward three reasons why NGET should have used a different figure:
  - A. that *“It is public knowledge - on the TEC register - that Uskmouth has 230MW of Transmission Entry Capacity”*;
  - B. that TEC refers to Connection Capacity in the Grid Connection Agreement, which is 230MW rather than 115MW;
  - C. that historical generation of the units showed output above 115MW and that *“the units could not have delivered these generation figures without holding TEC, so the Delivery Body should have taken the TEC as matching the generation or questioned why the connection agreement was a different value”*.
12. SUPL notes that NGET should have engaged with it during the process to clarify the entry capacity, arguing *“the Delivery Body seems to have undertaken no informal check and, unlike last year, has not engaged with parties around the pre-qualification process.”*

## **Ground 3**

13. SUPL argues that NGET was wrong to apportion TEC between each of the three units at the station as one of these units had not Prequalified and is mothballed. SUPL notes *“We believe the logic would be for NG to set TEC for unit 15 to zero and allocate the remaining TEC between units 13 and 14”*

## **The Statutory Framework**

14. The Regulations were made by the Secretary of State under the provisions of s27 of the Energy Act 2013. The Capacity Market Rules (the “Rules”) were made by the Secretary of State pursuant to powers set out in s34 of the Energy Act 2013.
15. The Regulations set out the duties upon on NGET when it determines eligibility. Regulation

22(a) specifies that each Application for Prequalification must be determined in accordance with the Capacity Market Rules.

16. Regulations 68 to 72 set out the process and the powers in relation to Dispute Resolution and Appeals.

### **Capacity Market Rules**

17. Rule 3.5.5 states that

*“An Applicant for a Generating CMU may, as an alternative to the determination of Connection Capacity set out in Rule 3.5.2 or 3.5.3, nominate a Connection Capacity for a Generating Unit comprised in that Generating CMU in accordance with following formula:*

$$CC_i = \frac{UCEC_i}{SCEC} \times STEC$$

*where:*

*CC<sub>i</sub> is the Connection Capacity of Generating Unit “i”;*

*STEC is:*

- (a) in the case of a Generating Unit which is part of a Transmission CMU, the Transmission Entry Capacity for the power station of which Generating Unit “i” is a component; or*

*SCEC is:*

- (a) in the case of a Generating Unit which is part of a Transmission CMU the sum of the Connection Entry Capacities stated in that Grid Connection Agreement for each Generating Unit which is a component of that power station;*

*UCEC<sub>i</sub> is:*

*in the case of a Generating Unit which is part of a Transmission CMU, the Connection Entry Capacity stated in the Grid Connection Agreement for Generating Unit “i”;*

*“power station” has the meaning given to it in the relevant Grid Connection Agreement*

18. Rule 4.3.3 states that

*“If:*

*(a) an Applicant nominated the Connection Capacity of a Generating Unit comprised in an Existing Generating CMU pursuant to Rule 3.5.3; and*

*(b) the Delivery Body determines that the physically generated net output of the Generating Unit in any Settlement Period specified by the Applicant pursuant to Rule 3.6.1 was different to that which was submitted by the Applicant,*

*the Delivery Body must recalculate the Connection Capacity of the CMU based on its determination of such output.”*

## **Our Findings**

### **Ground 1**

19. SUPL suggests that NGET should have assessed Connection Capacity in accordance with Rule 4.3.3, replacing its Connection Capacity calculations with historical metered output figures.

20. Rule 4.3.3 states that if both 4.3.3(a) and (b) apply *“the Delivery Body must recalculate the Connection Capacity of the CMU based on its determination of such output”*. However, the condition set out in 4.3.3(a) was not satisfied as SUPL chose to have its Connection Capacity calculated in accordance with Rule 3.5.5.

21. The Authority therefore finds that NGET was correct in applying Rule 3.5.5 to determine Connection Capacity.

## Ground 2

22. In its Appeal Notice, SUPL suggests that NGET defined TEC incorrectly as 115MW, rather than 230MW. SUPL put forward three reasons why NGET should have used a TEC figure of 230MW, which we address below.
23. The definition of Transmission Entry Capacity as provided for in the Rules refers to the Grid Code<sup>3</sup> which in turn refers to the Connection and Use of System Code<sup>4</sup> where it is defined as *“the figure specified as such as set out in Appendix C of the relevant Bilateral Connection Agreement or Bilateral Embedded Generation Agreement.”* Therefore, NGET was correct not to consider other documents such as the TEC Register in determining Connection Capacity but to purely assess TEC based on the relevant Grid Connection Agreement
24. For the purposes of the Rules a Grid Connection Agreement is a Bilateral Connection Agreement. SUPL submitted a Grid Connection Agreement to NGET as part of its Application for Prequalification, providing for a cumulative TEC of 115MW. SUPL provided a Grid Connection Agreement with a TEC of 230MW as part of the Appeal Notice lodged with the Authority. This was not submitted to NGET prior to the Reconsidered Decision being made. However, we consider that SUPL, if it had been aware at the time it made its application for Reconsidered Decisions that it had uploaded the wrong Grid Connection Agreement, could have corrected this error by uploading the correct (230MW) Grid Connection Agreement. SUPL has informed us that it did have the correct Grid Connection Agreement at the time of its application so it could have corrected its error.
25. We consider that SUPL’s applications to NGET for Reconsidered Decisions on Uskone and Usktwo were not entirely clear. However, it seems from those applications that SUPL did not know it had submitted the wrong Grid Connection Agreement in its prequalification application. SUPL’s applications for Reconsidered Decisions, when read together, indicate

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<sup>3</sup> The Grid Code specifies technical requirements for connection to, and use of, the National Electricity Transmission System (NETS). Compliance with the Grid Code is a requirement under the Connection and Use of System Code.

<sup>4</sup> The Connection and Use of System Code (CUSC) constitutes the contractual framework for connection to, and use of, National Grid’s high voltage transmission system.

that SUPL thought NGET had made the correct decision (in terms of de-rated capacity) on Uskone, but not on Usktwo. SUPL did not therefore appreciate that they had failed to upload the right Grid Connection Agreement. Instead it seems SUPL assumed that NGET had the correct Grid Connection Agreement but had ignored it in the case of Usktwo.

26. This apparent misunderstanding on the part of SUPL arose because the Prequalification Decisions by NGET on Uskone and Usktwo differed in one relevant respect. NGET made clear for Usktwo that its de-rated capacity would be 33.319MW if it did prequalify at the Reconsidered Decision stage. For Uskone, however, NGET did not state what the de-rated capacity would be if it did prequalify and SUPL assumed that this meant that the de-rated capacity would be consistent with the 230MW Grid Connection Agreement.
27. We consider that had NGET informed SUPL in the Prequalification Decision for Uskone, as it did for Usktwo, that its de-rated capacity would be 33.319MW, SUPL would have readily appreciated that it had not provided the correct Grid Connection Agreement and would have corrected that by uploading the correct Grid Connection Agreement as it would be entitled to do so under the Regulations in advance of the Reconsidered Decisions being made.
28. SUPL also argues that the historical output of the units was above 115MW. As noted in paragraph 23 above, TEC must be assessed in accordance with the definition of the term as clearly set out in the CUSC and this does not involve considering extraneous matters.

### **Ground 3**

29. SUPL argues that NGET was wrong to apportion TEC between each of the three units at the station as one of these units had not Prequalified and is mothballed.
30. Rule 3.5.5 provides the formula for apportioning TEC between units at a station. In particular it defines the station level Connection Entry Capacity (SCEC) as *“the sum of the Connection Entry Capacities stated in that Grid Connection Agreement for each Generating Unit which is a component of that power station”*. The Grid Connection Agreement that



SUPL provided as part of its Application for Prequalification contained three units, each with a Connection Entry Capacity of 121MW.

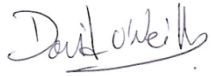
31. NGET was therefore correct in applying Rule 3.5.5 and assessing SCEC as defined in this Rule and which in this matter included all three of the components listed in the Grid Connection Agreement.

### **Conclusion**

32. The Authority finds that NGET took the correct approach in taking a TEC of 115MW as stated in the Grid Connection Agreement submitted by SUPL as part of its Application for Prequalification and dividing this between the three units in question.
33. NGET reached the correct decision to prequalify Uskone and Usktwo for the Supplementary Auction based on the information that SUPL provided as part of its prequalification application and application for a reconsidered decision. However, NGET did not inform SUPL in the Prequalification Decision for Uskone, as it did for Usktwo, that its de-rated capacity would be 33.319MW if it did prequalify that CMU. That information would have enabled SUPL to upload the correct Grid Connection Agreement and for that to be taken into account by NGET before it made the Reconsidered Decisions. This would have in turn resulted in TEC of 230MW being applied under Rule 3.5.5, producing Connection Capacity of 66.639MW for each CMU. The Authority is therefore satisfied that Uskone and Usktwo should be Prequalified with de-rated capacity of 66.639MW each.

### **Determination**

34. For the reasons set out in this determination the Authority hereby determines pursuant to Regulation 71(3)(b) that NGET's Reconsidered Decisions to prequalify SUPL under Rule 3.5.5 be upheld in respect of Uskone and Usktwo, but the de-rated capacity for each unit should be 66.639MW. Accordingly, NGET is directed to amend the Capacity Market Register to show that Uskone and Usktwo are Prequalified with a de-rated capacity of 66.639MW each.

A handwritten signature in black ink that reads "David O'Neill". The signature is written in a cursive style with a horizontal line underneath the name.

**David O'Neill**

**Head of Security of Supply**

For and on behalf of the Gas and Electricity Markets Authority

4 January 2017