

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 an appeal made by **Alkane Limited** (“Alkane”) 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) AUKN16

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 NGET.

Appeal Background

3. Alkane submitted an Application for Prequalification for AUKN16 in respect of the 2016 T-4 Auction and sought a Maximum Obligation Period of 15 years.
4. AUKN16 was rejected by NGET on the 23 September 2016 on three grounds, but was later conditionally Prequalified after Alkane disputed NGET’s initial Prequalification Decision. The decision to conditionally Prequalify Alkane, however, was on a different Maximum Obligation Period from what had originally been applied for. AUKN16 submitted a Total Project Spend figure which met the Three Year Minimum £/kW Threshold and prequalified with a Maximum Obligation Period of three years. This was set out in NGET’s Reconsidered Prequalification Decision of the 13 October 2016. Alkane did not submit an Appeal to the Authority regarding NGET’s Reconsidered Prequalification Decision of 13 October 2016.
5. On 22 November 2016 Alkane requested that NGET rectify the Capacity Market Register to

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.

amend the Maximum Obligation Period for AUKN16. NGET issued a Reconsidered Decision on 28 November 2016 upholding the original version of the Capacity Market Register.

6. Alkane then submitted an Appeal Notice regarding the entry of AUKN16 into the Capacity Market Register to the Authority on 2 December 2016 under Regulation 70 of the Regulations.
7. Alkane did not obtain a Capacity Agreement in the 2016 T-4 auction held on 6 December 2016 for AUKN16.

Alkane's Grounds for Appeal

8. Alkane states NGET should have allowed it to bid AUKN16 for a Maximum Obligation Period of 15 years, instead of three years, and that the CM Register should reflect this. Alkane raises two grounds to support this argument.

Ground 1

9. Alkane argues that the Maximum Obligation Period of three years was not *"apparent on the preliminary results letter ... and so was not disputed at that time."* Alkane acknowledges that the Maximum Obligation Period was included on NGET's Notice of Reconsidered Prequalification Decision.

Ground 2

10. Alkane argues that it was awarded a Maximum Obligation Period of three years instead of 15 years because the wrong Total Project Spend had been entered in the Prequalification Application:

"There was an administration error [by Alkane] within our pre-qualification application with a typographical error made in the first digit of the Qualifying Capital field. A "2" typed entered instead of a "5". The digits are adjacent on the numerical keypad section of a standard PC keyboard. The rest of the application demonstrates the intention that this should be a 15 year agreement.

It is understandable with so much detailed information requiring entry within a short space of time that human errors may be made. We note that there were and are several administration errors within the Capacity Market Register, showing the Delivery Body is itself not immune from data entry error.”

11. Alkane claims that this mistake is clear because it had also selected in the Prequalification Application that its Qualifying £/kW Capital Expenditure met the 15 Year Minimum £/kW Threshold.

The Statutory Framework

12. 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.
13. Regulations 68 to 72 set out the process and the powers in relation to Dispute Resolution and Appeals.
14. Regulation 68 defines the Reconsidered Decisions which can be appealed to the Authority. Capacity Market Register Appeals can be made following a request to NGET for rectification of the CM Register on the basis of factual inaccuracy.

Capacity Market Rules

15. Rule 7.7.1 provides that:

“Where any person considers that an entry maintained in respect of it or any Capacity Committed CMU for which they are the Capacity Provider under this Chapter 7 is factually inaccurate, they may request to the Delivery Body that the entry be amended or deleted.”

Our Findings

16. Alkane has submitted this appeal in relation to an entry on the CM Register. As stated in Regulation 68(2)(b), *“A dispute or appeal in relation to a delivery body reviewable decision*

may only be brought in accordance with this Chapter” [Chapter 1 Delivery Body Reviewable Decisions].

17. Regulation 68(1) provides that *“In this Chapter, a “delivery body reviewable decision” means a decision by the Delivery Body under capacity market rules of a kind specified in the first column of the following table...”*
18. The table includes one entry relating to the Capacity Market Register: *“A refusal of a request for rectification of the capacity market register on the basis of factual inaccuracy.”*
19. It is clear from this wording that a Delivery Body Reviewable Decision may only be made on the basis of a factual accuracy. Our consideration of this appeal must, therefore, consist of assessing the factual accuracy of the CM Register entry for AUKN16. In particular, we assess whether the CM Register accurately matches the Notice of Reconsidered Prequalification Decision issued by NGET.
20. The requirement of Rule 7.7.1 is that where a person considers that an entry is factually inaccurate, i.e. mistaken, and therefore the CM Register does not reflect NGET’s (Reconsidered) Prequalification Decision, then they may request that the entry be amended or deleted. The corollary of this is where the CM Register accurately reflects NGET’s (Reconsidered) Prequalification Decision it is not, therefore, in itself factually inaccurate. Rule 7.7.1 is not designed as alternative appeals process to challenge NGET’s (Reconsidered) Prequalification Decision.
21. NGET’s Reconsidered Prequalification Decision for AUKN16 specified a Maximum Obligation Period of three years. This is reflected in the CM Register, which also specifies a Maximum Obligation Period of three years. There is therefore not a factual inaccuracy in relation to the Maximum Obligation Period of AUKN16 on the Capacity Market Register.
22. If Alkane wanted to challenge the Reconsidered Prequalification Decision for AUKN16 then it would have needed to do so within five working days of NGET’s Reconsidered Prequalification Decision issued on the 13 October 2016. Alkane did not dispute NGET’s

Reconsidered Prequalification Decision nor did it seek to appeal it to the Authority and it is now out of time to do so under the Regulations.

Conclusion

23. The Authority finds that NGET's Reconsidered Decision of 28 November 2016 was correct and the Maximum Obligation Period on the Capacity Market Register of three years is factually accurate.

Determination

24. For the reasons set out in this determination the Authority hereby determines pursuant to Regulation 71(3)(b) that NGET's 28 November 2016 Reconsidered Decision to reject Alkane's request for rectification of the Capacity Market Register be upheld.



David O'Neill

Head of Security of Supply

For and on behalf of the Gas and Electricity Markets Authority

20 January 2017