

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

Introduction

1. This determination relates to appeals made by [REDACTED] ("the Appellant") against reconsidered decision made by the EMR Delivery Body (National Grid Electricity Transmission plc ("NGET")) in respect of the following Capacity Market Unit(CMU):

[REDACTED]

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.
3. This determination considers NGET's reconsidered decisions for the CMU above for both the 2018 T-1 Auction and the T-4 Auction.

Appeal Background

4. The Appellant submitted an Application for Prequalification for the CMU in Paragraph 1 in respect of the 2018 T-1 Auction and 2021 T-4 Auction.
5. For the CMU listed in Paragraph 1, NGET issued a Notification of Prequalification Decision dated 10 November 2017 (the "Prequalification Decision"). NGET rejected the CMU on the following grounds:

"Capacity Market Rule 3.6.3 (d) states an Existing Generating CMU that is not directly connected to a Distribution Network the Applicant may, instead of

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.

complying with Capacity Market Rule 3.6.3(c), provide a letter from the owner of the Private Network to which the CMU is connected confirming: (i) the full output that CMU is able to Export onto that Private Network; and (ii) that the owner of that Private Network has an agreement with the relevant Distribution Network Operator for the connection of the Private Network to, and use of, a Distribution Network. The Private Network letter provided does not confirm the export capacity and the agreement between the private network and the relevant DNO, therefore has not been accepted.

Please note the assessment for capacity has been calculated assuming that the numbers provided from the historic performance and Historic metered output are in MW and not in MWh.”

6. The Appellant submitted a request for reconsideration of the Prequalification Decisions on 20 November 2017.
7. NGET issued a Notice of Reconsidered Decision on 1 December 2017 which rejected the dispute on the following grounds:

“Regulation 69 does not allow the Delivery Body to consider information or evidence from Applicants which should have been provided with the Application, your Private Network letter should have been provided in your original application. Therefore the original decision of the Delivery Body is upheld.”

8. The Appellant then submitted an appeal notice to the Authority on 7 December 2017 under Regulation 70 of the Regulations.

The Appellant’s Grounds for appeal

9. The Appellant disputes the decision on the ground of unreasonableness.
10. The Appellant argues that:

“Due to a clerical error, the Appellant submitted an old version of the historic output letter rather than a letter from the Private Network owner. The changes were made to the letter following updated guidance from the Delivery Body on the contents of the letter in compliance with Capacity Market Rule 3.6.3 (d) but due to a clerical error this updated version was not submitted. As a result of this the mistakenly submitted historic output letter signed by the legal owner didn’t explicitly confirm the two points mentioned above.

The Appellant would submit that the clerical error made is immaterial because information is provided in other parts of the submission and from other formal documentation provided in the Appellant’s Tier 1 Appeal.”

11. They go on to argue that it would be *“unreasonable not to allow the CMU to prequalify”* *“due to such a trivial error which can be easily corrected by reference to the information provided in the Relevant Application and Appellant’s Tier 1 Appeal”*.
12. Regarding the requirement for confirmation of the full export capacity, the Appellant argues that this

“is confirmed in the historic performance confirmation letter signed by the legal owner of the Generating Unit who is also the owner of the Private Network, confirming the maximum output of the Generating Unit. The level of historic output submitted as part of the Relevant Application is shown under the ‘my applications/opt-outs’ section and then under the ‘applications page’ section of the EMR Portal. It shows here the volume which is confirmed by the private network owner to be 3.354MW across all three historic performance dates.”

13. The Appellant submitted the original offer letter from the Distribution Network Operator (DNO), UK Power Networks and the HV electrical distribution drawing as part of its Tier 1 Appeal as evidence of the requirement for confirmation that the Private Network has an agreement with the relevant DNO.

The Legislative Framework

14. The Electricity Capacity Regulations 2014 were made by the Secretary of State under the provisions of section 27 of the Energy Act 2013. The Capacity Market Rules were made by the Secretary of State pursuant to powers set out in section 34 of the Energy Act 2013.
15. The Regulations set out the duties upon 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 powers in relation to dispute resolution and appeals.
17. In particular, Regulation 69(5) sets out the requirements for NGET reconsidering a prequalification decision:

69(5) Subject to [regulations 29(10A) and 87(7)], in reconsidering a prequalification decision or a decision to issue a termination notice or a notice of intention to terminate, the Delivery Body must not take into account any information or evidence which—

(a) the affected person was required by these Regulations or capacity market rules to provide to the Delivery Body before the decision was taken; and

(b) the affected person failed to provide in accordance with that requirement.

Capacity Market Rules

18. Rule 3.6.3 (d) states that :

For an Existing Generating CMU that is not directly connected to a Distribution Network the Applicant may, instead of complying with Rule 3.6.3(c), provide a letter from the owner of the Private Network to which the CMU is connected confirming:

- (i) the full output that CMU is able to Export onto that Private Network; and*
- (ii) that the owner of that Private Network has an agreement with the relevant Distribution Network Operator for the connection of the Private Network to, and use of, a Distribution Network.*

19. Rule 3.6.3(c) states that:

Each Applicant for an Existing Generating CMU that is a Distribution CMU must:

- i) confirm that one or more Distribution Connection Agreements have been entered into which permit at least, in aggregate, the Anticipated De-rated Capacity of that CMU and any other CMU to which any such Distribution Connection Agreement applies to connect to the Distribution Network in the relevant Delivery Years; and*
- (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.**

20. Rule 4.4.2 states that

Subject to Rule 3.8.1A(c)(ii), the Delivery Body must not Prequalify a CMU where:

- (a) it is aware that the Application has not been completed or submitted in accordance with the Rules;*
- (aa) it reasonably believes that any information or declaration submitted in or with an Application does not comply with the requirements in Rule 3.12.1;*
- (b) the required Additional Information is missing;*

Our Findings

- 21. We have assessed the Appellant's ground of "unreasonableness".
- 22. The Appellant confirms in their Appeal Notice that their original Application did not include a letter from the Private Network Owner which explicitly confirmed the points set out in 3.6.3(d). They refer instead to the other areas of their Application in which they confirmed

the CMU's historic performance data as evidence of the export capacity, including their historic performance confirmation letter "*signed by the legal owner of the Generating Unit who is also the owner of the Private Network*". However, it is our understanding that the documents which they provided in the original Application did not give a clear statement from the Private Network Owner confirming the export capacity, but rather that the volume across all three historical performance dates was the same.

23. The Appellant provided further documentation at Tier 1 as evidence of an agreement being in place between the DNO and the Private Network Owner. The Appellant argues that the absence of the confirmation of agreement in the original Application constitutes an immaterial clerical and trivial error.
24. Rule 3.6.3 as a whole sets out the Connection Arrangements within the Additional Information requirements for Existing Generating CMUs. Rule 3.6.3(d) specifically makes provisions for Existing Generating CMU that is a Distribution CMU and is not directly connected to a Distribution Network to submit a letter from the owner of the Private Network to which the CMU is connected confirming the full output that CMU is able to Export onto that Private Network and that the Private Network Owner has an agreement in place with the relevant DNO. This is in place of *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* otherwise required under 3.6.3(c).
25. The Private Network Owner letter may therefore be considered the equivalent of a connection agreement for the purpose of this Rule. We do not agree, therefore, that the failure to provide the confirmations required under 3.6.3(d) is an immaterial clerical or trivial error.
26. Rule 4.4.2 requires NGET to reject any CMU where the "*required Additional Information is missing*". In addition, in accordance with regulation 69(5), when making a reconsidered

decision, the Delivery Body must not take in consideration any information or evidence that the Appellant was required to and failed to do so before the decision was taken. The Appellant was required to provide this information under Rule 3.6.3(d) but failed to do so when they submitted their Application for prequalification. We therefore do not agree with the Appellant's argument that the NGET's decision to not prequalify them on the grounds that their Application did not comply with the requirements of the Rules was unreasonable.

Conclusion

27. NGET reached the correct reconsidered decision to not prequalify [REDACTED] for the T-1 and T-4 Auctions on the basis that
1. Additional Information required under 3.6.3 (d) was not provided in the Application.
 2. Accordingly under Rule 4.4.2, the Delivery Body must not Prequalify a CMU where the required Additional Information is missing.

Determination

28. For the reasons set out in this determination the Authority hereby determines pursuant to Regulation 71(3) that NGET's reconsidered decision to reject the Appellant for Prequalification be upheld in respect of the CMU listed in paragraph 1 for the T-1 and T-4 Auctions.



Emily Sam

For and on behalf of the Gas and Electricity Markets Authority

12 January 2018