

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] against reconsidered the 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.

Appeal Background

3. The appellant submitted an Application for Prequalification for the CMU in Paragraph 1 in respect of the 2018 T-1 Auction.
4. 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 a number of grounds; those relevant to this determination are:

“The Prequalification Certificate provided for this Application was not in accordance with Capacity Market Rule 3.12.3, which is defined in Capacity Market Rule 1.2 as Exhibit A and must be signed by two directors. The VAT number has been deleted from the Prequalification Certificate that you have submitted in your

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.

application and you have not specified whether or not the Company is SME or Large Enterprise. The Prequalification Certificate is also missing the 2nd Director's name and signature.

The Certificate of Conduct provided for this Application was not in accordance with Capacity Market Rule 3.12.4, which is defined in Capacity Market Rule 1.2 as Exhibit C and must be signed by two directors. The Certificate of Conduct is missing the 2nd Director's name and signature."

5. The appellant submitted a request for reconsideration of the Prequalification Decisions on 20 November 2017.
6. NGET issued a Notice of Reconsidered Decision on 01 December which rejected the dispute on the following grounds:

"At the time the application was submitted there were two directors listed on Companies House. The Prequalification Certificate provided for this Application was not in accordance with Capacity Market Rule 3.12.3, which is defined in Capacity Market Rule 1.2 as Exhibit A and must be signed by two directors. The Prequalification Certificate is missing the 2nd Director's name and signature.

The Certificate of Conduct provided for this Application was not in accordance with Capacity Market Rule 3.12.4, which is defined in Capacity Market Rule 1.2 as Exhibit C and must be signed by two directors. The Certificate of Conduct is missing the 2nd Director's name and signature. "

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

Ground for appeal

8. ████████ disputes the decision on the following Ground.
9. ████████ state that the failure to provide its Exhibit A and Exhibit C documents signed by both directors was an administrative error.
10. It notes that as per the Delivery Body's published Disputes Guidance, "certain categories of 'clerical error' can be corrected during the Appeals process". As such, it states that the lack of two signatures on Exhibit A and Exhibit C should be categorised as "'correctable' errors".

The Legislative Framework

11. 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.
12. 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.
13. Regulations 68 to 72 set out the process and powers in relation to dispute resolution and appeals.
14. 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

15. Rule 3.12.3 outlines that each application must be accompanied by a Prequalification Certificate (Exhibit A) signed by two directors of the appellant:

3.12.3 Each Application must be accompanied by a Prequalification Certificate signed by two directors of the Applicant.

16. Rule 3.12.4 outlines that each Application must be accompanied by a Certificate of Conduct (Exhibit C) signed by two directors of the applicant:

3.12.4 Each Application and each Opt-out Notification must be accompanied by a Certificate of Conduct signed by two directors of the Applicant or the person submitting the Opt-out Notification (as applicable).

17. Rule 4.4.2(a) outlines that the Delivery Body must not prequalify a CMU if the Application has not been submitted in accordance with the Rules:

4.4.2 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;

Our Findings

18. The appellant's Ground was that due to an administrative error, Exhibit A and Exhibit C were only signed by one director. The appellant then states that this should be regarded as a "'correctable' error".

19. We acknowledge that the Appellant submitted both Exhibit A and Exhibit C, however, in line with Rules 3.12.3 and 3.12.4, both documents must be signed by two directors.
20. It is the applicant's responsibility to ensure that any necessary signatures are provided in accordance with the Rules and Regulations when submitting their Application to Prequalify. Therefore, NGET was correct to not prequalify the application in its reconsidered decision.

Conclusion

NGET reached the correct reconsidered decision to not prequalify [REDACTED] for the 2018 T-1 Auction on the basis that

- a) The director's signature required under 3.12.3 and 3.12.4 was not provided in the application and accordingly under Rule 4.4.2, the Delivery Body must not prequalify a CMU where it is aware that the Application has not been completed or submitted in accordance with the Capacity Market Rules.

Determination

21. 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 Auction.



Emily Sam

For and on behalf of the Gas and Electricity Markets Authority

12 January 2018