

**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 an appeal made by ADD RENEWABLES No.3 LIMITED (“the Appellant”) 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):
  - a) HAlex1
2. 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**

3. The appellant submitted an Application for Prequalification for the CMU in Paragraph 1 in respect of the 2018 T-4 Auction.
4. NGET then issued a Notification of Prequalification Decision dated 10 November 2017 (the “Prequalification Decision”). NGET Rejected the CMU on the following grounds:

*“Capacity Market Rule 3.4.2 states that each Applicant must provide with each Application a Certificate of incorporation and other related evidence as required for the relevant type of person under the Auction Guidelines. The Certificate of incorporation provided does not match the Applicant name or company registration number in the Application. The certificate provided is for "ADD Renewables Limited", registration number 8679071, whereas the Application is in*

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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.

*the name of "ADD Renewables No.3 Limited", with a registration number of 10042216.*

*As per Capacity Market Rule 3.4.3 (a) (i), each Applicant must specify in the Application: the CMU to which the Application relates (including a description of CMU, the full postal address with postcode, correctly formatted (XX123456 – spacing allowed) and an Ordnance Survey grid reference. For CMU Component "HAlex1", the postcode has not been provided and the Ordnance Survey grid reference is invalid because it is missing the two letters at the beginning of the reference.*

*Capacity Market Rules 3.7.1 (a) (ii) and (b) (i) state that an Applicant must provide documentary evidence of all Relevant Planning Consents and that the Applicant has Legal Right to use the land. Whilst Planning Consents have been provided, we have been unable to verify if the Applicant has Legal Right to use the land as there is no mention of ADD Renewables No.3 Limited and no explanation provided in supporting documentation to confirm a link to the Planning Consent therefore we are not able to accept the documentation.*

5. The appellant submitted a request for reconsideration of the Prequalification Decision before the deadline of 20 November 2017.
6. NGET issued a Notice of Reconsidered Decision on 1 December 2017 which accepted the appellants ground relating to some of the areas raised, but rejected the dispute based upon the following:

*"As stated in the Prequal Results Letter, Capacity Market Rule 3.4.2 states that each Applicant must provide with each Application a Certificate of incorporation and other related evidence as required for the relevant type of person under the Auction Guidelines. The Certificate of incorporation provided does not match the Applicant name or company registration number in the Application. As the correct*

*certificate had not been provided, it is deemed missing information and therefore the Delivery Body cannot accept the rationale in your dispute.”*

7. 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**

8. The appellant disputes the decision, arguing the rejection is unreasonable.
9. The appellant states that they did submit a Certificate of Incorporation and that the required information could be verified by cross checking it with additional documents provided in the application. Additionally, the Appellant claims that the company details were initially checked by the Delivery Body, in order to secure access to the Delivery Body Portal.
10. The appellant highlights “... *the Delivery Body had already verified the legal status of the Applicant at the time of registration, and since the Delivery Body could also verify the legal status of the Applicant based upon the further documents submitted in accordance with the Disputes Guidance.*”
11. “*Further, the correct Company Details were provided and were cross-checked by the Delivery Body as a part of the registration process necessary to complete Prequalification and secure access to the Delivery Body Portal.*”
12. The appellant also states that the error is “clerical” and can therefore be corrected.

#### **The Legislative Framework**

13. 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.

14. The Regulations set out the duties upon NGET when it determines eligibility for prequalification. Regulation 22(a) specifies that each application for prequalification must be determined in accordance with the Capacity Market Rules.
15. Regulations 68 to 72 set out the process and powers in relation to dispute resolution and appeals.
16. 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**

17. Rule 3.4.2 (a) outlines that each Applicant must provide a copy of its certificate of incorporation within its application:

*“3.4.2 Legal status of the Applicant*

- a) Subject to Rule 3.4.2(b), each Applicant must provide in the Application a copy of its certificate of incorporation and other related evidence as required for the relevant type of person under the Auction Guidelines;”*

18. Rule 4.4.2(a) outlines that NGET 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**

19. The Appellant’s ground for appeal is that, even though the submitted Certificate of Incorporation did not refer to the correct company for the relevant application, this should be categorised as a “clerical” error and, as such, the required information could be crosschecked from the other documents provided.
20. However, Rule 3.4.2(a) stipulates that an *“Applicant must provide in the Application a copy of its certificate of incorporation.”*
21. The purpose of the certificate is to confirm the company’s legal name and date of incorporation. By submitting the certificate of incorporation for its sister company, it meant that the Delivery Body was not in a position to assess the legal status of the appellant, and the purpose of the certificate was defeated.
22. The appellant states that submitting the incorrect certificate was a “clerical” error. As such, the company information could be verified from elsewhere within the application. Additionally, the Appellant claims that the legal status was verified by the Delivery Body, in order to gain access to the Delivery Body Portal. However, as above, Rule 3.4.2 (a) requires a valid Certificate of Incorporation to be submitted. As above, we conclude that the relevant Certificate of Incorporation was missing and therefore that the application did not comply with Rule 3.4.2(a).
23. Based on the above, we conclude that NGET was correct in applying Rule 3.4.2(a) which prevented HAlex1 from prequalifying.

### **Conclusion**

24. NGET reached the correct reconsidered decision to not prequalify HAlex1 for the T-4

Auction on the basis that the Certificate of Incorporation required under Capacity Market Rule 3.4.2 (a) was not provided with the application and accordingly, under Rule 4.4.2, the Delivery Body could not prequalify it.

**Determination**

25. 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-4 Auction.



Julian Roberts

**For and on behalf of the Gas and Electricity Markets Authority**

12 January 2018