

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 Gas Generation Burnley Limited (GGBL) against Reconsidered Decision made by the EMR Delivery Body (National Grid Electricity Transmission plc (“NGET”)) in respect of the following Capacity Market Unit (CMU):
 - a) BUR002
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. GGBL submitted an Application for Prequalification for the CMU in Paragraph 1 in respect of the 2018 T-4 Capacity Auction for 2021/22.
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 the following grounds:

Capacity Market Rule 3.4.3 states, 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). There is missing content for the Postcode of the CMU Component in this Application.

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.

5. GGBL submitted a request for reconsideration of the Prequalification Decision.
6. NGET issued a Notice of Reconsidered Decision on 1 December which rejected the dispute on the following grounds:

We have reviewed your dispute and maintain that the original Delivery Body prequalification decision still stands.

We acknowledge that you have provided your grid connection offer and acceptance form to demonstrate the postcode of the CMU component, however, the Delivery Body is not able to prequalify an Application that has not been completed or submitted in accordance with the Capacity Market Rules. As per Rule 3.4.3, each Applicant must specify in the Application: the CMU to which the Application relates (including description of CMU, the full postal address with postcode, correctly formatted (XX123456 –spacing allowed). The omission of the postcode has been deemed as missing information, which can only be verified from other information provided in the Application, therefore we cannot accept the information provided in the dispute.

7. GGBL then submitted an appeal notice to the Authority on 8 December 2017 under regulation 70 of the Regulations.

GGBL's Grounds for appeal

8. GGBL disputes the decision on the ground that they “made an unfortunate clerical error in the initial CM application submission by not entering the postcode of “BB12 0BJ” with the full postal address.” GGBL argues that apart from that clerical error “the CMU application includes all relevant information and documents to be pre-qualified”. GGBL argue that this should not be treated as missing information. They also note that the planning consents did not include the postcode and they did not want to contradict the postal address on this document.

The Legislative Framework

9. 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.
10. 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.
11. Regulations 68 to 72 set out the process and powers in relation to dispute resolution and appeals.
12. 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

13. Rule 3.4.3(a) provides that:

Each Applicant must specify in the Application:

- (i) the CMU to which the Application relates (including a description of, the full postal address with postcode and the two letter prefix and six-figure Ordnance Survey grid reference numbers of, the Generating Unit(s) and for Proven DSR CMUs, their CMU Component(s), or of the Electricity Interconnector);*

Our Findings

14. The Notification of Prequalification Decision rejected the application on the grounds that the postcode of the CMU Component was missing from the Application.
15. In the Notification of Reconsidered Decision, NGET acknowledged that GGBL provided evidence, including the grid connection offer to demonstrate the postcode of the CMU. However, NGET contended that due to the functioning of Regulation 69(5), this information could not be accepted, as it had not been provided in the original Application.
16. We note that GGBL had provided the postal address of the site, and the correct six-figure ordnance Survey grid reference number in their Application. GGBL then provided sufficient clarity of its full address, including postcode, in its Tier 1 appeal. Alongside the explanation provided at Tier 1 it was possible to use information within the Application to determine the postcode of the site. GGBL therefore did not need to rely on any additional information prohibited under Regulation 69(5).
17. Given that NGET could confirm the address provided by GGBL at Tier 1 without taking into account any new information or evidence, we conclude that NGET should have accepted GGBL's grounds in their Request for Reconsideration.

Conclusion

18. NGET reached the incorrect Reconsidered Decision to not prequalify BUR002 for the 2018 T-4 Auction on the basis that GGBL had provided sufficient clarity at Tier 1, without submitting any new information, to fulfil the requirements of Rule 3.4.3(a).

Determination

19. For the reasons set out in this determination the Authority hereby determines pursuant to Regulation 71(3) that NGET's Reconsidered Decision to reject GGBL for Prequalification be overturned. We direct NGET to register the CMU BUR002 on the Capacity Market Register as a Conditionally Prequalified CMU for the 2018 T-4 Auction.

A handwritten signature in black ink, consisting of a stylized initial 'E' followed by a long horizontal line.

Emily Sam

For and on behalf of the Gas and Electricity Markets Authority

12 January 2018