

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 First Renewable Alpha Limited (“FRA” or the “Appellant”) against the reconsidered decision made by the EMR Delivery Body (National Grid Electricity Transmission plc (“NGET” or the “Delivery Body”)) in respect of the following Capacity Market Unit (“CMU”):

a) BYGEN3

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. NGET issued a Notification of Prequalification Decision dated 10 November 2017 (the “Prequalification Decision”). NGET Rejected the CMU on the following grounds:

The Incorrect option has been selected for “Method used to calculate the Connection Capacity” for the application type as per CM Rule 3.5.2. The following options are applicable for the application type as per CM Rule 3.5.2: -

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.

- All CMU – Historic Output

- Distribution CMU - Unit Reg. Capacity

- Distribution CMU - MEC Pro-rota

There is nothing to clarify the link between the company name (First Renewable Alpha Limited) in the Application and the company name in the offer/acceptance form (Power Quinn Limited), as per CM Rule 3.7.3(b).

5. The Appellant submitted a request for reconsideration of the Prequalification Decision (a “Tier 1 appeal”) before the deadline of 20 November 2017.
6. NGET issued a Notice of Reconsidered Decision on 1 December which prequalified the dispute for a De-rated Capacity of 3.887MW on the following grounds:

We have reviewed and accepted your dispute and updated your prequalification status from Rejected to Prequalified.

We have changed the Method used to calculate the Connection Capacity to 'All CMU – Historic Output'. Your De-Rated Capacity has been limited to that stated in your Connection Agreement and is as stated in your Prequalification Results Letter.

We have no evidence that your Maximum Export Capacity has been increased beyond that stated in the Connection Agreement attached in your application.

We have reviewed the supporting documentation and accept the link provided between the company name in the Application and the company name in the offer/acceptance form.

7. The Appellant then submitted an appeal notice to the Authority on 8 December 2017 (a “Tier 2 appeal”) under regulation 70 of the Regulations.

FRA's Grounds for appeal

8. FRA disputes the decision on the following grounds.

Ground 1

9. Page 13 of the Connection Agreement states that FRA's Maximum Export Capacity will increase to 26.63MW, subject to the completion of works at the site. This will take effect upon a formal written agreement between Western Power Distribution and FRA.

Ground 2

10. FRA cites inconsistencies in the prequalification decisions as BYGEN1 (T-4 2020) and BYGEN2 (T-1 2017) have been prequalified to deliver a De-Rated Capacity of 20MW with only the Connection Agreement as evidence.

Ground 3

11. FRA alleges that BYGEN1 and BYGEN2 were successfully prequalified without the requirement to provide the Variation Agreement confirming the increase in Maximum Export Capacity. FRA used these CMUs as precedent for the prequalification of BYGEN3 for a higher De-rated Capacity.

Ground 4

12. FRA alleges that historical third-party metered output data provided by FRA's supplier (Gazprom Marketing & Retail) demonstrates that the plant was exporting in excess of the 4.1MW used to calculate the prequalified De-rated Capacity.

Ground 5

13. FRA believes that supplication of the metered output data and Connection Agreement at both the prequalification application and Tier 1 appeal provided sufficient evidence to prove that the site is capable of generating in excess of 20MW.

Ground 6

14. FRA states that the Variation Agreement was not necessary as part of the prequalification application. They provide this letter within the Tier 2 appeal to further evidence the change in connection capacity.

The Legislative Framework

15. 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.
16. 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.
17. Regulations 68 to 72 set out the process and powers in relation to dispute resolution and appeals.
18. 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

19. Rule 3.5.2 delineates how the Connection Capacity is calculated and states that:

Subject to Rules 3.5.3 or 3.5.5, the Connection Capacity of a Generating Unit must be calculated as follows:

- (a) for a Generating Unit forming part or all of a Transmission CMU, the Connection Entry Capacity stated in the Grid Connection Agreement for that Generating Unit;*
- (b) for a Generating Unit forming part or all of an Existing Generating CMU which is a Distribution CMU, the registered capacity (or inverter rating, if applicable) stated in the Distribution Connection Agreement for that Generating Unit or in the written confirmation from the Distribution Network Operator provided pursuant to Rule 3.6.3(c)(ii) (as applicable);*

20. Rule 3.6.3 (c) requires the Applicant to confirm that they have entered into a Connection Agreement which permits at least (in aggregate) the Anticipated De-rated Capacity of the CMU, and to provide a copy of such Connection Agreement in the prequalification application:

- (c) 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;

21. Rule 4.2.1 describes the assessment requirements when the Delivery Body is reviewing an application and states that:

Following receipt of an Application in accordance with Chapter 3, the Delivery Body must check that:

- (a) the Application has been completed and submitted in accordance with the Regulations and the Rules; and*
(b) the required Additional Information appears to have been included.

Our Findings

22. We have assessed each of FRA's grounds for appeal, which are set out below.

Ground 1, Ground 5 and Ground 6

23. Rule 3.6.3 (c) requires the Applicant to confirm that one or more Connection Agreements have been entered into which permit at least, in aggregate, the Anticipated De-rated Capacity of the CMU; and, to provide evidence of the Connection Capacity under the Connection Agreement (either through providing a copy of the Connection Agreement, or through a letter from the DNO of changes to their registered capacity in the Connection Agreement). The Applicant provided a copy of the Connection Agreement in their prequalification application, which states that the Maximum Export Capacity is 3.887MW.
24. FRA claims that the conditional increase in Maximum Export Capacity on page 13 of the Connection Agreement is sufficient information for NGET to increase their prequalification capacity. However, FRA did not provide proof that the conditions on page 13 had been

satisfied. The Board Minutes submitted by FRA to demonstrate its intention to conclude the Variation Agreement do not constitute sufficient evidence that the Variation Agreement has been concluded, and that the conditions on page 13 have been fulfilled.

25. The Authority acknowledges that FRA provided evidence of the increase to the Maximum Export Capacity through the Variation Agreement at appendix three to the current appeal. However, under Regulation 69(5), the Delivery Body cannot use information contained within the Variation Agreement to change their prequalification decision, as this is information that was required to be provided to the Delivery Body before the decision was taken, ie to evidence the increase to the Maximum Export Capacity in the Connection Agreement submitted under Rule 3.6.3(c).
26. Therefore, NGET was correct in applying Rule 3.6.3(c) and Regulation 69(5) to prequalify the CMU listed in paragraph 1 without amending the original De-rated Capacity.

Grounds 2 and 3

27. FRA alleges that previous prequalification applications submitted by the Appellant have successfully prequalified with a De-rated Capacity of 20MW from only the information provided in the Connection Agreement. However, according to Rule 4.2.1, each application is assessed on the basis of its own merits and any additional information submitted alongside; therefore, the successful prequalification of previous CMUs is not relevant to this dispute and NGET was correct not to take previous prequalification applications into account in making its decision.

Ground 4

28. FRA provided historical output data that demonstrated that the plant was exporting in excess of 4.1MW. However, signed proof was not provided in the prequalification application that the necessary works had been carried out such that the Maximum Export Capacity under the Connection Agreement could increase beyond 4.1MW. Since the information in the prequalification application did not support an increase in the Maximum

Export Capacity, pursuant to Rules 3.5.2 and 3.6.3(c) NGET determined the Connection Capacity to be limited to that stated in the Connection Agreement.

29. The Authority therefore determines that NGET was correct in applying Rules 3.5.2 and 3.6.3(c) to prequalify the CMU listed in paragraph 1 without amending the original De-rated Capacity.

Conclusion

30. NGET reached the correct reconsidered decision to prequalify BYGEN3 for the T-1 Auction without amending the De-rated Capacity on the basis that the Variation Agreement required to evidence the increase to the Maximum Export Capacity under Rule 3.6.3 (c) was not provided with the application.

Determination

31. For the reasons set out in this determination the Authority hereby determines pursuant to Regulation 71(3) that NGET's reconsidered decision to prequalify the Appellant for Prequalification with a De-rated Capacity of 3.887 MW be upheld in respect of the CMU BYGEN3 for the 2018 T-1 Auction.



Julian Roberts

For and on behalf of the Gas and Electricity Markets Authority

12 January 2018