

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 Corby Power Limited (Corby) against Reconsidered Decisions made by the EMR Delivery Body (National Grid Electricity Transmission plc (NGET)) in respect of the following Capacity Market Unit (CMU):
 - a) CORBY_
2. This decision deals with all of the appeals for the CMU listed above as they are substantively in respect of the same issue and differ only in so far as concerns the T-1 or T-4 auctions.
3. 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

4. Corby submitted an Application for Prequalification for the CMU in Paragraph 1 in respect of the 2018 T-1 and T-4 Auctions.
5. NGET issued a Notification of Prequalification Decision dated 10 November 2017 for each of the auctions (the “Prequalification Decisions”). In both cases NGET rejected the CMU on the following grounds:

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.

This application has not met the requirements of the Capacity Market rules due to the following reasons:

Capacity Market Rule 3.4.1 states, each Applicant must provide such details in each Application; General details about the Applicant (Applicant name, Registration number (if applicable), contact details (incl. address), secondary trading tel. and email, name of direct Holding Company for the Applicant, Agent Nomination Form for an Agent.

The Parent Company name given with this Application cannot be verified on Companies House.

Applicant stated that the CMU had not been operational for 24 months prior to the start of prequalification so provided other dates in line with Capacity Market Rule 3.6.1(a)(iii). However, BMU data indicates that the unit has been operational in this time. Therefore they failed to provide correct data under Capacity Market Rule 4.4.2(e) which states, Subject to Rule 3.8.1A(c)(ii), the Delivery Body must not Prequalify a CMU where: (e) the Delivery Body is unable to obtain any data with respect to the physically generated net output for a Generating Unit comprised in an Existing Generating CMU in any Settlement Period nominated by the Applicant pursuant to Rule 3.6.1.

6. Corby submitted a request for reconsideration of the Prequalification Decisions on 24 November 2017.
7. NGET issued a Notice of Reconsidered Decision on 1 December which rejected the dispute on the following grounds:

The Delivery Body has reviewed your dispute however has upheld the original Prequalification decision of Rejected.

Where the CMU has been operational in the 24 months prior to the date one month before the start of the Prequalification Window, in accordance with Capacity Market Rule 3.6.1(a), each Applicant for an Existing Generating CMU must identify in the Application the three Settlement Periods on separate days in (i) the 24 months prior to the date one month before the start of the Prequalification Window which opened on 24 July 2017. In the dispute the applicant states the site was subject to a Supplemental Balancing Reserve Contract from 01/10/2015 to 30/09/2017, however the site was not subject to this contract from 24/06/2015 to 30/09/2015 and was operational. The rules constrain the period when the applicant can prove performance and therefore the CMU should have demonstrated performance between 24/06/2015 to 30/09/2015 when the Generating Unit was not subject to a SBR restriction in accordance with Capacity Market Rule 3.6.1. Therefore this element of the dispute has not been overturned and the overall status of the application remains Rejected.

For reference, we acknowledge and accept submission of your parent company details as required by Capacity Market Rule 3.4.1(ca). In order to preserve data integrity we request that you update these details in the Companies section of the Portal at your earliest convenience.

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

Corby's Grounds for appeal

9. Corby disputes the decision on the following grounds.

Ground 1

10. NGET has incorrectly interpreted Capacity Market Rule 3.6 and its interpretation is inconsistent with the approach taken in the previous auction.

Ground 2

11. Corby relied on assurances from NGET as to how the reference period would be assessed which gave rise to a substantive legitimate expectation.

Ground 3

12. The reasons given by NGET for rejecting Corby's Application for Prequalification were unclear, incorrect and different from the ground on which Corby's request for reconsideration of the Prequalification Decisions was rejected, which deprived Corby of the opportunity to dispute the decision properly.

The Legislative Framework

13. The Regulations 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. 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.

Capacity Market Rules

16. Rule 3.6.1(a) sets out the requirement for Existing Generating CMUs to verify previous settlement period performance. It states that:

(a) Each Applicant for an Existing Generating CMU must identify in the Application the three Settlement Periods on separate days in:

(i) the 24 months prior to the date one month before the start of the Prequalification Window; or

(ii) if the CMU has not been operational in the 24 months prior to the date one month before the start of the Prequalification Window:

(aa) the most recent 24 months of operation; or

(bb) if the CMU has previously been operational for less than 24 months, the most recent period of operation; or,

(iii) if the CMU has been subject to a continuous Transmission Restriction for the whole of the 24 months prior to the date one month before the start of the Prequalification Window, the most recent 24 months in which the CMU was not subject to a Transmission Restriction,

in which such Existing Generating CMU delivered its highest physically generated net outputs, or Metered Volume where applicable, and specify such physically generated net outputs or Metered Volume in MWh to three decimal places.

Our Findings

17. We have assessed Corby's grounds for appeal, which are set out below.

Ground 1

18. Corby disputes NGET's assertion that Corby should have demonstrated performance between 24/06/2015 to 30/09/2015 in accordance with Capacity Market Rule 3.6.1.
19. Corby argues it is entitled to rely on the three Settlement Periods included in its Application for Prequalification. These three Settlement Periods are in the 24 months prior to the start of Corby's Supplemental Balancing Reserve (SBR) contract. Corby notes that it relied on Capacity Market Rule 3.6.1(a)(ii)(aa) to provide Settlement Periods in the most recent 24 months of operation.
20. Corby considers that it had not been operational within the meaning of Capacity Market Rule 3.6.1 during the period in which it had been under a SBR contract.

21. We have considered each item below in order to determine the correct interpretation of Rule 3.6.1(a) and whether the exception of 3.6.1(a)(ii) applies in Corby's case.

The purpose of Rule 3.6.1

22. Rule 3.6.1 sets out the requirement on applicants to provide data for three Settlement Periods as part of their application. Rule 4.4.2(f) sets out that the Delivery Body must not prequalify a CMU for which the three Settlement Periods nominated by the Applicant pursuant to Rule 3.6.1 are not each greater than the Anticipated De-rated Capacity. The purpose of the Rules is to ensure a generator can generate up to the level of the obligation they wish to receive. These provisions are designed so that the Delivery Body has the best possible information about an applicant's ability to generate.
23. The operation of 3.6.1 is to specify a time period in which the applicant must demonstrate it delivered its highest physically generated net outputs. The default requirement, under Rule 3.6.1(a)(i), is to provide that settlement data for the 24 months, ending one month before the Prequalification Window. There are two exceptions to that default requirement. The first, under 3.6.1(a)(ii) deals with a period of non-operation, and the second, under 3.6.1(a)(iii) deals with a period of Transmission Restriction.

Whether a SBR contract means that a CMU is non-operational

24. The terms of the SBR contract had provisions which explicitly precluded CORBY_ from operating. We have concluded that functioning under a SBR contract should therefore be interpreted as being non-operational.

The length of time in which a CMU must be non-operational for 3.6.1(a)(ii) to apply

25. Rule 3.6.1(a)(ii) applies "if a CMU has not been operational in the 24 months prior to the date one month before the start of the Prequalification Window".
26. The purpose of the rule, as noted above, is to find the three highest Settlement Periods so that a CMU can demonstrate its historical performance. The 24 month period is set to give

a plant a sufficient time period in which to demonstrate its highest output. If the default period provided for in 3.6.1(a)(i) is curtailed by reason of non-operation then the rule operates in a way to allow the CMU to draw data from alternative periods. We conclude that in light of this purpose and the construction of Rule 3.6.1(a)(ii) that it can be relied upon where a CMU has been non-operational for some of the 24 month period. This is in contrast to Rule 3.6.1(a)(iii), where a CMU has to be under a continuous Transmission Restriction for the provision to apply as specifically provided for in the rule itself.

Whether the exception under 3.6.1(a)(ii) applies to CORBY_

27. By virtue of the above conclusions we consider that Corby are correct in arguing that the exception set out in 3.6.1(a)(ii) applies to them.
28. We determine that Rule 3.6.1(a)(ii)(aa) applies as Corby has been operational for more than 24 months previously. We therefore agree that the correct period for the provision of historical operational data by Corby is from 1 October 2013 to 30 September 2015 and as a consequence Corby should be prequalified for the 2018 T-1 and T-4 auctions.

Grounds 2 and 3

29. As the arguments raised under these Grounds also go to the issue of the application of 3.6.1 and we have concluded, as set out above, that the requirements of this rule have been met by CORBY_ we do not intend to set out any response to these Grounds.

Conclusion

30. NGET did not reach the correct reconsidered decision to reject CORBY_ for the 2018 T-1 and T-4 Auctions on the basis that Corby met the requirements of Rule 3.6.1(a)

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 reject CORBY_ for Prequalification be overturned. We direct the Delivery Body to register the CMU CORBY_ on the capacity market register as a prequalified CMU for the 2018 T-1 and T-4 Auctions.

A handwritten signature in black ink, appearing to read 'Mark Copley', with a large, sweeping flourish extending to the right.

Mark Copley

For and on behalf of the Gas and Electricity Markets Authority

12 January 2018