

**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 Energy Pool UK Limited (Energy Pool) against a 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) EPO017

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. Energy Pool submitted an Application for Prequalification for the CMUs in Paragraph 1 in respect of the 2018 T-1 Auction.
4. For each of the CMUs listed in Paragraph 1, NGET issued a Notification of Prequalification Decision dated 10 November 2017 (the “Prequalification Decision”). NGET Rejected the CMUs on the following grounds:

*“The Prequalification Certificate was not submitted for this Application in accordance with CM Rule 3.12.3, which states each Application must be*

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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.

*accompanied by a Prequalification Certificate signed by two directors. There are two directors listed on Companies House.*

*The Certificate of Conduct was not submitted for this Application in accordance with CM Rule 3.12.4, which states Each Application must be accompanied by a Certificate of Conduct signed by two directors of the Applicant. There are two directors listed on Companies House.*

*Capacity Market Rule 3.4.1 (ca) states that where an Applicant is a member of a Group, the name of the direct Holding Company for the Applicant is required. The company name Energy Pool International SAS does not match any company on Companies House therefore this cannot be verified.*

*Rule 3.9.1 states that each Applicant for a Proven DSR CMU must include in the Application a DSR Test Certificate relating to that DSR CMU. No test certificate has been provided.”*

5. Energy Pool submitted a request for reconsideration of the Prequalification Decisions by the relevant deadline.
6. NGET issued a Notice of Reconsidered Decision on 1 December which rejected the dispute on the following grounds:

*We have reviewed your dispute (1 and 2), Your Prequalification Certificate and Certificate of Conduct have been verified, and have met the requirements of the Capacity Market Rules. We have reviewed your dispute (3) and verified the parent company on Companies House. We have reviewed your dispute (4), The number of MPANs listed in your application does not match the number of MPANs from the DSR certificate mentioned in your application. There are two additional MPANs in your application.*

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

### **Energy Pool's Grounds for appeal**

8. Energy Pool disputes the decision on the following grounds.

#### **Ground 1**

9. Energy Pool's initial ground of appeal is that NGET have raised a new justification during the Tier 1 process:

*"this is not a rejection of the tier 1 dispute based on the original justification for Pre-qualification rejection, it is a new Dispute Rationale that has been raised during the tier 1 disputes process."*

#### **Ground 2**

10. Secondly, Energy Pool disputes NGETs statement that there are two too many MPANs listed in the application:

*"The wording makes reference to two too many MPANs listed. The MSID references are NOT MPANs. The guidance given by National Grid is to include any MSID references in the field "Meter Point Administration Number / Other Meter Identifier" of the CMU component*

*We therefore reject the objection to their being too many MPANs listed as there are 15 MPANs listed against the CMU and there are 15 MPANs listed within the DSR test certificate."*

#### **Ground 3**

11. Energy Pool's third ground of appeal is that NGET issued the DSR Test Certificate incorrectly in the first instance:

*"The DSR test certificate was originally issued incorrectly and should include the MSID references for the bespoke meter".*

#### Ground 4

12. Energy Pool's fourth ground of appeal is that, if Ground 3 is not valid, then the alternative is that the guidance issued by the Delivery Body was incorrect:

*"The alternative to [Dispute C] is that the DSR test certificate was originally issued correctly. This would mean that the guidance issued by National Grid to match the components to the information contained within the Aggregation Rules Template is incorrect. In turn this means that the MSID references included against the CMU EPO017 should be ignored."*

#### **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. 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 3.9.1 sets out that each applicant for a Proven DSR CMU must include a Test Certificate and states that :

*3.9.1 DSR Test Certificate*

*Each Applicant for a Proven DSR CMU must include in the Application a DSR Test Certificate relating to that DSR CMU.*

17. Rule 13.2.5. sets out the information that the applicant must provide NGET with in order to carry out a DSR Test:

*“In order to carry out a DSR Test with respect to a DSR CMU, an Applicant or Capacity Provider (as applicable) must provide the Delivery Body with:*

*(a) the Meter Point Administration Number(s) of the meters for that site and/or connection point, and details of any other meters necessary to identify and monitor the DSR from any DSR CMU Component in relation to the DSR CMU; and*

*(b) with regard to a DSR CMU that is not a BM Unit either:*

*(i) the Metering Test Certificate for the DSR CMU, in which case each DSR CMU Component comprised in the DSR CMU will be measured against the metering configuration specified for that DSR CMU Component in the Metering Test Certificate; or*

*(ii) where no Metering Test Certificate has been issued for the DSR CMU, confirmation of the Approved Metering Solution that each DSR CMU Component is to be measured against.”*

18. Rule 13.2.12 sets out that a DSR Test Certificate will only remain valid for the CMU as long as the details relating to the CMU given under Rule 13.2.5 remain valid:

*“A DSR Test Certificate issued pursuant to this Rule 13.2 will only be valid for the DSR CMU for so long as the details relating to the configuration of such DSR CMU as detailed pursuant to Rule 13.2.5 remain valid. (provided that the addition of new DSR CMU Components will not be deemed to change such configuration). In*

*the event that the DSR CMU configuration changes, such DSR CMU will be deemed to be an Unproven DSR CMU, until such time as a new DSR Test Certificate has been issued.”*

### **Our Findings**

19. We have assessed each of Energy Pool’s grounds for appeal, which are set out below.

#### **Ground 1**

20. Energy Pool’s first ground of appeal is that NGET have raised a new dispute rationale as part of the Tier 1 process. One of the reasons that NGET gave in its rejection of the Prequalification Decision was that no test certificate had been provided by Energy Pool under Rule 3.9.1. Subsequently, at Tier 1, NGET rejected the appeal because the number of MPANs listed in Energy Pool’s application did not match the number of MPANs from the DSR Test Certificate mentioned in their application, indicating that there was a DSR Test Certificate provided under Rule 3.9.1. Accordingly, NGET did not inform Energy Pool of the full reasons for rejection in the Notification of Prequalification. This omission could have prejudiced Energy Pool, as they were not in receipt of all information relevant to their application refusal at the Tier 1 stage.

#### **Ground 2**

21. Energy Pool’s second ground of appeal is that there were not too many MPANs included in the application; the additional numbers (the MSIDs) are a different set of Meter Identifiers which are not MPANs. After reviewing the evidence provided by Energy Pool, it appears that 15 MPANs were provided in the application under Rule 13.2.5, which match the 15 MPANs included within the DSR Test Certificate under Rule 13.2.12. The additional numbers provided are in fact MSID numbers, which are different to MPANs. This means that the DSR Test Certificate referenced in the application contains the correct number of MPANs for the

CMU.

22. Therefore NGET was incorrect in applying Rule 3.9.1 or Rules 13.2.5 and 13.2.12 to prevent the CMU listed in paragraph 1 from prequalifying.

### Ground 3

23. Energy Pool's third ground of appeal is that it was NGET's mistake that the original DSR test certificate was issued incorrectly and included incorrect Meter references. After reviewing the evidence provided by Energy Pool, it appears that Energy Pool submitted a meter Aggregation Rules template to NGET, which was subsequently accepted by NGET, before the DSR test certificate was issued under Rule 13.2.11. The correct MSID numbers were therefore incorrectly excluded by NGET on the original DSR test certificate.

24. Therefore NGET was incorrect in applying Rule 3.9.1 or Rules 13.2.5 and 13.2.12 to prevent the CMU listed in paragraph 1 from prequalifying.

### Ground 4

25. Energy Pool's fourth ground is that, if ground three did not apply, then it would mean that the guidance issued by NGET with respect to matching components in the Aggregation Rules Template was incorrect.

26. As set out above, we consider that ground 3 raised by Energy Pool is correct; therefore ground 3 does not need to be applied.

### Conclusion

27. NGET did not reach the correct Reconsidered Decision to reject EPO017 for the T-1 Auction on the basis that the information provided by Energy Pool at Tier 1 as proof that NGET misinterpreted the information provided in their application does demonstrate that NGET

made an error in interpreting their application.

**Determination**

28. For the reasons set out in this determination the Authority hereby determines pursuant to Regulation 71(3) that NGET's Reconsidered Decision to reject Energy Pool for Prequalification be overturned in respect of the CMUs listed in paragraph 1 for the T-1 Auction.

A handwritten signature in black ink, appearing to read 'Mark Copley', written in a cursive style.

Mark Copley

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

12 January 2018