

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 two appeals made by EnerNOC UK Limited (EnerNOC) 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) EGEN18
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 and T-4 Auctions.
4. NGET issued a Notification of Prequalification Decision dated 10 November 2017 in respect of each application (the “Prequalification Decisions”). NGET Rejected the CMU for both the T-1 and T-4 Auctions on the following grounds:

“This Application has not met the requirements of the Capacity Market rules to the following reason(s): Capacity Market rule 3.6.3 (d) Connection Arrangements states, for an Existing Generating CMU that is not directly connected to a Distribution Network the Applicant may, instead of complying with rule 3.6.3(c), provide a letter from the owner of the Private Network to which the CMU is connected confirming: (i) the full output that CMU is able to Export onto that

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.

Private Network; and (ii) that the owner of that Private Network has an agreement with the relevant Distribution Network Operator for the connection of the Private Network to, and use of, a Distribution Network. The Private Network letter uploaded does not confirm the CMU address indicated within the application as the addresses are different, therefore the Maximum Export Capacity available in the Private Network letter could not be verified by the Delivery Body.”

5. The appellant submitted requests for reconsideration of the two Prequalification Decisions on 20 November 2017.
6. NGET issued a Notice of Reconsidered Decision on 1 December 2017 for each of the T-1 and T-4 reconsideration requests (the “reconsidered decisions”), which rejected the disputes on the following grounds:

“We have reviewed your dispute and maintain that the original Delivery Body prequalification decision still stands. If document(s) required as information or evidence by the Capacity Market Rules was missing from the Application when the submission was made, the Delivery Body cannot consider that missing information when making a Prequalification Decision or a reconsidered decision if it is subsequently received after the deadline of 29th September 2017.”

7. The appellant then submitted a Capacity Market Appeal Notice to the Authority on 08 December 2017 under regulation 70 of the Regulations in respect of both reconsidered decisions.

EnerNOC’s Grounds for appeal

8. EnerNOC disputes NGET’s rejection of EGEN18 on the basis that *“The correct Private Network Letter (PNL) was provided to the delivery body ‘before the decision was taken.’ Therefore, the corrected PNL does not fall into the category of information that the Delivery Body is not allowed to take into account according to Regulation 69(5)”*.

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. Regulation 21 requires the Delivery Body to publish auction guidelines that provide specific detail as to how each capacity auction will be conducted, and specifies the information that must be included in the guidelines.

21. Auction Guidelines

(2) The auction guidelines must contain--

(c) the timetable for submission and determination of applications, which must in particular include the closing date for submission of applications;

11. 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.
12. Regulations 68 to 72 set out the process and powers in relation to dispute resolution and appeals.
13. 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

14. Rule 3.3.6 (a) stipulates that additional information is part of the prequalification application and states that:

For each CMU which an Applicant wishes to Prequalify, and for each Capacity Auction, the Applicant must:

(a) submit a separate application form and the required Additional Information (together, an “Application”) to the Delivery Body.

15. Rule 3.6.3 requires the appellant to provide a Private Network Letter to confirm that the CMU meets Export Capacity :

Connection Arrangements

(a) Each Applicant for an Existing Generating CMU that is a Transmission CMU must:

(i) confirm that one or more Grid Connection Agreements have been entered into which, subject to Rule 3.6.3(b), secure Transmission Entry Capacity for the relevant Delivery Year for the Generating Units comprised in the CMU at least equal, in aggregate, to the Anticipated De-rated Capacity of that CMU and any other CMU to which any such Grid Connection Agreement applies; and

(ii) provide a copy of the Grid Connection Agreement for each Generating Unit comprised in the CMU with the Application.

(b) In the First Full Capacity Auction and the Second Full Capacity Auction only, an Applicant for an Existing Generating CMU that is a Transmission CMU and that is unable to give the confirmation referred to in Rule 3.6.3(a)(i) may instead declare that it will secure the required Transmission Entry Capacity by the date falling 18 months prior to the commencement of the relevant Delivery Year.

(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; and

(bb) the capacity that such Generating Unit is permitted to export to the Distribution Network.

(d) For an Existing Generating CMU that is not directly connected to a Distribution Network the Applicant may, instead of complying with Rule 3.6.3(c), provide a letter from the owner of the Private Network to which the CMU is connected confirming:

(i) the full output that CMU is able to Export onto that Private Network; and

(ii) that the owner of that Private Network has an agreement with the relevant Distribution Network Operator for the connection of the Private Network to, and use of, a Distribution Network.

(e) Where reference is made to a Grid Connection Agreement, Distribution Connection Agreement or connection offer for a Generating Unit these refer to the agreement or offer in force at the date on which the Application is made.

16. Rule 4.4.2 dictates when the Delivery Body must not Prequalify a CMU and states:

Subject to Rule 3.8.1A(c)(ii), the Delivery Body must not Prequalify a CMU where:

(b) the required Additional Information is missing.

Our Findings

17. EnerNOC provided the correct Private Network Letter (PNL) on 6 November 2017 via email, before the reconsidered decision was made on 10 November 2017. EnerNOC states in their Capacity Market Appeal Notice to the Authority that the PNL should have been taken into account by the Delivery Body, as it was submitted before the Delivery Body made their decision, and therefore does not fall under the prohibition in Regulation 69(5).
18. The 10 week prequalification submission window ran from 24 July 2017 to 29 September 2017. We consider that Regulation 69(5) prohibits the Delivery Body, when making its reconsidered decision, from taking into account information or evidence provided by the applicant after the closing date for submission of applications where applicants were required to provide that information on or before the closing date.
19. The appellant submitted the required PNL document on 6 November 2017, after the deadline for submission of Prequalification Applications had passed and, thus, the PNL could not be considered by the Delivery Body.
20. Regulation 21(2)(c) and Rule 2.2.2 provide that the Delivery Body must publish auction guidelines, and require the Delivery Body to set a timetable for each capacity auction in the guidelines, including the specific opening and closing dates of the prequalification window. Regulation 21(2)(c) also provides that the auction guidelines must include the closing dates for the submission of applications. The definition of 'prequalification window' in Regulation 2 makes clear that this is the period within which prequalification applications must be made. Rule 3.3.6(a) provides that the term 'Application' includes both the application form and the required Additional Information. Consequently, we consider that required Additional Information must be provided with the application within the prequalification window.
21. The Authority therefore holds that NGET was correct in applying Rule 3.6.3, which required the applicant to provide a Private Network letter, and Rule 4.4.2, which prevented the

Delivery Body from prequalifying EGEN18, as the required Additional Information was missing. The Delivery Body was also correct in not taking into account the missing Private Network letter in the Notification of a Reconsidered Decision, as it was provided after the closing date for submission of applications.

Conclusion

22. NGET reached the correct reconsidered decision to not prequalify EGEN18 for the T-4 Auction and T-1 Auction on the basis that the Private Network Letter required under Rule 3.6.3 was not provided with the Prequalification Application. In accordance with regulation 69(5), when making a reconsidered decision, the Delivery Body must not take in consideration any information or evidence which the appellant was required to and failed to produce before the decision was taken.

Determination

23. For the reasons set out in this determination the Authority hereby determines pursuant to Regulation 71(3) that NGET's reconsidered decisions to reject the appellant for Prequalification be upheld in respect of the CMU in Paragraph 1 for the T-1 Auction and T-4 Auction.



Julian Roberts

For and on behalf of the Gas and Electricity Markets Authority

12 January 2018