

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 Esso Petroleum Company Limited (EPCO) against the reconsidered decision made by the EMR Delivery Body (National Grid Electricity Transmission plc (“NGET”)) in respect of the following Capacity Market Unit (CMU):
 - a) EM3-21
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-4 Auction.
4. NGET issued a Notification of Prequalification Decision dated 10 November 2017 (the “Prequalification Decision”). NGET Rejected the CMUs on the following grounds:

This application has not met the requirements of the Capacity Market rules due to the following reason(s):

The Secondary Trading details were not provided with this application in accordance with CM Rule 3.4.1, which 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

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.

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.

The Prequalification Certificate that you have submitted in your application does not conform with the Prequalification Certificate as defined in CM Rule 1.2 as Exhibit A for the following reason: Whether the Applicant is an SME or Large Enterprise has not been clarified.

5. Annex A to the Prequalification Decision gave the De-rated Capacity of the CMU as 126.480MW.
6. The appellant submitted a request for reconsideration of the Prequalification Decision on 20 November 2017.
7. NGET issued a Notice of Reconsidered Decision on 1 December (the “Reconsidered Decision”) which prequalified the EM3-21 but did not accept EPCO’s request to amend the De-rated Capacity of the CMU. NGET stated:

The De-rated Capacity quoted shall not be amended as the Delivery Body believes that the values calculated at the time of assessment were correct. The evidence provided in your Dispute can not be accepted as the information should have been provided at the time of your original application.

8. The De-rated Capacity stated in Annex A to the Reconsidered Decision remained as 126.480MW.
9. The appellant then submitted an appeal notice to the Authority on 7 December 2017 under regulation 70 of the Regulations.

EPCO's Grounds for appeal

10. EPCO contests the "exclusion" of two of three CMU components (EPCMU314-1 and EPCM314-2) in NGET's Reconsidered Decision, which led NGET to prequalify EM3-21 with a De-rated Capacity of 126.480MW. EPCO argues that *"sufficient information was supplied at the original pre-qualification submission stage to enable the Delivery Body to pre-qualify the complete CMU as submitted."*
11. EPCO does not agree with the Delivery Body's statement that the evidence provided with EPCO's Request for a Reconsidered Decision should have been provided at the time of the original Application for Prequalification. EPCO believes that *"the additional information supplied as part of the Tier 1 dispute was not information that should have been supplied or was requested to be supplied at the original pre-qualification submission"*. EPCO believes that there was no requirement for further detail regarding their CMU.

The Legislative Framework

12. 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.
13. 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.
14. Regulations 68 to 72 set out the process and powers in relation to dispute resolution and appeals.
15. 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

16. Rule 3.5.3 allows Existing Generating CMUs to nominate a Connection Capacity using the Average Highest Output of that CMU and states that:

An Applicant for an Existing Generating CMU may, as an alternative to the determination of Connection Capacity set out in Rule 3.5.2, nominate a Connection Capacity for that Generating Unit equal to the Average Highest Output of that Existing Generating CMU.

17. Rule 3.6.1(a) outlines the criteria for submitting Previous Settlement Period performance (“historical output”) performance for an Existing Generating CMU which and states that:

3.6.1 Previous Settlement Period performance

(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.

(aa) Each Applicant for an Existing Generating CMU must also identify in the Application the 24 month period which contains the three Settlement Periods referred to in Rule 3.6.1(a).

18. Rule 4.3.2 requires the Delivery Body to verify the data submitted by an applicant to satisfy Rule 3.6.1:

Save where Rule 3.6.1(b) applies, the Delivery Body must verify the data submitted by the Applicant with regard to the physically generated net output of an Existing Generating CMU pursuant to Rule 3.6.1 or the Net Output of an Existing Interconnector CMU pursuant to Rule 3.6A.1.

19. Rule 4.3.3 requires the Delivery Body to recalculate the Connection Capacity of a CMU if they determine the net output submitted by the Applicant was different to their verified output, and states:

If:

(a) an Applicant nominated the Connection Capacity of a Generating Unit comprised in an Existing Generating CMU pursuant to Rule 3.5.3; and

(b) the Delivery Body determines that the physically generated net output of the Generating Unit in any Settlement Period specified by the Applicant pursuant to Rule 3.6.1 was different to that which was submitted by the Applicant,

the Delivery Body must recalculate the Connection Capacity of the CMU based on its determination of such output.

Our Findings

20. The Delivery Body has an obligation under Rule 4.3.2 to verify the historical output data submitted by the Applicant in accordance with Rule 3.6.1. In this instance, the Delivery Body was unable to verify the metered output data provided by EPCO for two of the Generating Units within the CMU EM3-21. As a consequence, the Delivery Body used Rule 4.3.3 to re-calculate the CMU's De-rated Capacity, giving these Generating Units a value of 0MW.
21. In response to the Delivery Body's claim that it was unable to verify the historic output data, the appellant provided meter readings with its Request for Reconsideration as evidence of its historical output.
22. In its reconsidered decision the Delivery Body indicated that, pursuant to Regulation 69(5), it was unable to consider these meter readings, as this was information that should have been provided at the time of the appellant's original application. The Delivery Body therefore maintained its calculation of Connection Capacity in accordance with Rule 4.3.3.
23. We do not agree with the Delivery Body's interpretation of Regulation 69(5) in this instance. We consider that the evidence provided by EPCO in its Request for

Reconsideration was not required to be submitted as part of its Application for Prequalification and, therefore, NGET was wrong to apply Regulation 69(5) not to consider it.

24. In accordance with Rule 4.3.2, NGET had an obligation to verify the historical data submitted by the appellant under Rule 3.6.1. Having reviewed the information submitted by EPCO in its Application for Prequalification and the information in their Request for Reconsideration, we conclude that it would have been possible for NGET to verify the historical output submitted by the Applicant under Rule 3.6.1. In particular, the Units were CMRS and the Applicant had provided sufficient metering information for NGET to be able to confirm the historical output submitted by the applicant with its request for reconsideration.
25. The meter readings submitted by the appellant show that the highest outputs of the CMU were equivalent to a capacity of 228.391MW, 226.385MW, and 226.038MW, which produce a mean average of 226.939MW. This average is equal to the aggregated CMU generation stated by the Applicant in its Request for Reconsideration. As NGET could have accepted these meter readings to help it verify the historical output of the CMU (as required under Rule 4.3.2), it was unnecessary for NGET to use 4.3.3 to recalculate the nominated capacity of the CMU EM3-21.
26. After considering Auxiliary Load and the relevant De-rating Factor, we determine that the De-Rated Capacity for the CMU EM3-21 should be 197.295MW.

Conclusion

27. The Delivery Body reached the correct reconsidered decision to prequalify EM3-21 based on the information that EPCO provided as part of its Application for Prequalification and Request for a Reconsidered Decision. However, for the reasons set out above, the Delivery Body was incorrect to use Rule 4.3.3 to recalculate the capacity of the CMU and should have awarded the CMU with a De-Rated Capacity of 197.295MW.

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 prequalify the appellant be upheld, but the De-Rated Capacity for the CMU should be 197.295MW. Accordingly, NGET is directed to amend the Capacity Market Register to show that EM3-21 is Prequalified with a De-Rated capacity of 197.295MW.



Julian Roberts

For and on behalf of the Gas and Electricity Markets Authority

12 January 2018