

**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 Flexitricity Limited (Flexitricity) (the appellant) against a reconsidered decision made by the EMR Delivery Body (National Grid Electricity Transmission plc (“NGET”)) in respect of the following Capacity Market Unit (CMU):

a) FLXR71

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. The appellant submitted an application for Prequalification for the CMU in Paragraph 1 in respect of the 2018 T-4 Auction.
4. For the CMU listed in Paragraph 1, NGET issued a Notification of Prequalification Decision dated 10 November 2017 (the “Prequalification Decision”). NGET rejected the CMU on the following grounds:

*“This application has not met the requirements of the Capacity Market rules due to the following reason(s): Capacity Market Rule 3.2.2 states that the Applicant for a DSR CMU must be the DSR Provider for that CMU however for this Application the*

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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.

*Applicant Status 'Despatch Controller' has been selected which does not comply with this rule.*

*As per Capacity Market Rule 3.9.4(a)(i) a Proven DSR CMU must provide detailed line diagrams showing electrical configurations and metering sites at which the DSR CMU Components are located however no Line Diagram has been provided for CMU Component ID 718889."*

5. The appellant submitted a request for reconsideration of the Prequalification Decision before the deadline of 20 November 2017.
6. NGET issued a Notice of Reconsidered Decision on 1 December which rejected the dispute on the following ground:

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

*Regarding the missing Single Line Diagram from the application, no email evidence regarding the Portal updates for this CMU has been provided within this dispute to allow the Delivery Body to consider this further. With each application it is the responsibility of the applicant to ensure all documents have been uploaded and this could have been resolved prior to the end of the submission window had the applicant discovered the missing document. In addition, whilst the applicant was unable to update the Single Line Diagram section of the Portal, the applicant could have uploaded the additional document elsewhere in the application (e.g. Certificates) and we could have reviewed this accordingly.*

*For information, the Delivery Body accepts the clerical error regarding the Applicant Status and has changed this to "DSR Provider"."*

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

### **Flexitricity's Grounds for appeal**

8. Flexitricity disputes the decision on the following grounds.

#### **Ground 1**

9. The appellant states that it had provided the missing line diagram for the CMU previously and that it was not included in the application for FLXR31 due to an error by NGET:

*"The dispute arose because the Delivery Body did not correctly assign to the CMU the relevant single line diagram, even though we provided prior to the Metering Assessment [for the CMU under IDs FLEX71 and FLXT71] as the Rules require, and the online Prequalification portal does not allow uploading of documents in the correct location in respect of Proven DSR CMUs."*

10. The appellant created FLXR31 by cloning existing CMU IDs FLEC71, FLEX71 and FLXT71 in order for the CMU to be:

*"contiguous across delivery years. This is essential for Proven DSR CMUs, as their DSR Test Certificates would otherwise not apply to any year beyond the first, and it would be impossible to Prequalify a CMU as Proven DSR for two years in succession." "This cloning process results in all attachments, including line diagrams, being carried over into the new CMU. In this case, the cloning replicated the Delivery Body's error in omitting the final single line diagram."*

11. The appellant argues that they had informed NGET of the issue in uploading the document to the portal ahead of the Metering Assessment for FLEX71 and FLXT71 and it was therefore NGET's responsibility. The appellant states *"The Delivery Body is aware of the restrictions in the online portal and that diagrams could not be added to the CMU for the current Delivery Year"*. They argue it should not be *"dependent on the Applicant to maintain a record of portal bugs or anomalies, or indeed of communication of issues to the Delivery Body (either written or verbal)"*.

#### **Ground 2**

12. The appellant argues that the Prequalification online portal subsequently prevented them from adding to the Single Line Diagram section, citing NGET's Reconsidered Decision *"whilst the applicant was unable to update the Single Line Diagram section of the Portal,*

*the applicant could have uploaded the additional document elsewhere in the application (e.g. Certificates) and we could have reviewed this accordingly”. The appellant states “We do not believe that it is reasonable for the Delivery Body to insist that the submission of a document in the incorrect location in the Delivery Body’s online portal was an option reasonably available to the Applicant, since the online portal itself gave clear instructions as to which document should be uploaded in which location.”*

### Ground 3

13. The appellant attached the single line diagram with their request to NGET to reconsider its prequalification decision.

### The Legislative Framework

14. 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 (“CM Rules”) were made by the Secretary of State pursuant to powers set out in section 34 of the Energy Act 2013.
15. 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 CM Rules.
16. Regulations 68 to 72 set out the process and powers in relation to dispute resolution and appeals.
17. 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**

18. Rule 3.9.4 of the CM Rules states that

*(a) Each Applicant for a Proven DSR CMU must, subject to Rule 3.9.4(b):*

*(i) provide detailed line diagrams showing electrical configurations and metering sites at which the DSR CMU Components are located; and*

*(ii) complete a Metering Assessment in relation to that CMU.*

19. Rule 3.3.6(a) requires 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;*

### **Our Findings**

20. We have assessed each of the appellants grounds for appeal, which are set out below.

#### **Grounds 1 and 2**

21. Given the connections between the first two grounds, we have considered them together. The appellant argues that the absence of the line diagram resulted from an earlier error by the Delivery Body on an existing CMU which the appellant cloned for the purposes of the 2017 Prequalification. They argue that NGET was aware of this issue and that it, the

appellant, was unable to upload the document to the correct area of the online prequalification portal, making the error NGET's responsibility.

22. Our understanding is that the Delivery Body's IT system provides the functionality to 'clone' or copy the details of an existing CMU, including its associated documents, to create a new application and CMU identifier for a subsequent auction. The appellant used this to create FLXR71. The original version did not have the line diagram associated with it, apparently due to IT system restrictions. The appellant argues that the prequalification online portal did not allow them to upload the document in the Line Diagram Section subsequently and that NGET have acknowledged this to be the case.
23. Rule 3.3.6(a) specifies that an Applicant must submit a separate application for each CMU and for each Capacity Auction for which they wish to prequalify. The appellant's application for FLXR71 constitutes a new application separate from those submitted in previous years for the same CMU. We do not consider any errors which may have resulted from the cloning process of the CMU to remove the appellant's obligation to ensure it submits a complete application and to raise concerns with NGET regarding any omissions in a specific application prior to submitting it. We note that the evidence provided suggests that the appellant notified NGET of their inability to upload the relevant diagram only with regard to the Metering Assessment for FLEX71 and FLXT71, not with regard to the Prequalification application for FLXR31.
24. Rule 3.9.4(a)(i) requires the submission of line diagrams for proven DSR CMU applications. One of the relevant diagrams was not provided by the appellant at the time of submitting their Prequalification Application as required, nor does the evidence we have seen suggest that the appellant sought to address the issue with NGET prior to submitting their application. Therefore, NGET was correct in the decision to reject the application on the ground of a missing line diagram.

### Ground 3

25. The appellant subsequently submitted the missing line diagram to NGET. However, in accordance with regulation 69(5), NGET was not able to consider this as part of the Reconsidered Decision.

**Conclusion**

26. NGET reached the correct reconsidered decision not to prequalify FLXR71 for the T-4 Auction on the basis that
- a) The Single Line Diagram required under Capacity Market Rule 3.9.4 (a) (i) was not provided with the 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**

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



Emily Sam

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

12 January 2018