

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) 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) FLXR75

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. 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:

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 Applicant Status ‘Despatch Controller’ has been selected which does not comply with this rule.

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.

In accordance with Capacity Market Rules 13.2.12 and 13.2.5, the DSR Test Certificate is only valid if the configuration of the CMU remains the same. There have been additional MPANs listed in this application therefore the certificate is not valid.

Under a recent Rule change regarding the definition of De-rated Capacity for a DSR CMU, the EMR Delivery Body has amended the De-rated Capacity of this DSR CMU to reflect the DSR Bidding Capacity that was amended by the Applicant for this CMU in a previous Auction.

5. The appellant submitted a request for reconsideration of the Prequalification Decisions before the deadline of 20 November 2017.
6. NGET issued a Notice of Reconsidered Decision on 01 December which rejected the dispute on the following grounds:

We acknowledge and accept your clerical error in relation to the Applicant Status. As a result of your dispute, we have updated your Applicant Status to "DSR Provider".

However, our original Prequalification decision stands because in accordance with Capacity Market Rules 13.2.12 and 13.2.5, the DSR Test Certificate is only valid if the configuration of the CMU remains the same. Additional MPANs were listed in this application.

The MPANs on the DSR Test Certificate for this CMU match the MPANs which were stated on the DSR Letter for this CMU, which was issued to the company on the 31st August 2017. The DSR Test Certificate was then issued in accordance with Rule 13.2.11, which states that if no notice under Rule 13.2.10 is received from the Applicant or Capacity Provider, then a DSR Test Certificate must be issued within 5 working days.

No other evidence has been provided with this dispute notice to allow the Delivery Body to reconsider this decision.

7. The appellant then submitted an appeal notice to the Authority on 08 December 2017 under regulation 70 of the Regulations.

Flexitricity's Grounds for appeal

8. Flexitricity disputes the decision on the following ground.

Ground 1

9. The appellant's ground for dispute is that the Delivery Body did not update and upload the correct DSR Test Certificate, despite Flexitricity notifying NGET of the updated MPANs/MSIDs ahead of the prequalification application. The appellant set out:

"The Delivery Body was at the time of the DSR Test (that is, prior to Prequalification) aware of the components and corresponding MPANs/MSIDs (emails provided). The Applicant made the Delivery Body and Settlement Body aware that the Delivery Body's listing of the components' MPANs on the DSR Test Certificate was incorrect. The Settlement Body retrospectively corrected the Metering Test Certificate for the CMU, but the Delivery Body did not correct the DSR Test Certificate."

The Legislative Framework

10. 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.
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.

Capacity Market Rules

13. Rule 13.2.5. sets out the information that the applicant must provide the Delivery Body 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.”

14. Rule 13.2.10 sets out the instances when an Applicant can request for a DSR Test to be re-run and states that:

“The Applicant or Capacity Provider (as applicable) may, within 2 Working Days of receiving a notice from the Delivery Body pursuant to Rule 13.2.9, issue a notice under Rule 13.2.6(b) above, in which case Rules 13.2.7 to 13.2.9 above once again apply provided that the Applicant or Capacity Provider (as applicable) may only exercise the right to require a retest pursuant to this Rule on one occasion. To the extent such right is exercised, the outcome of the second DSR Test will be conclusive as to the Proven DSR Capacity of the relevant DSR CMU even if such

outcome demonstrates a lower Proven DSR Capacity than the first DSR Test.”

15. 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

16. We have assessed Flexitricity’s ground for appeal, which is set out below.

Ground 1

17. The appellant’s ground for appeal is that NGET failed to update and upload the correct DSR Test Certificate with the correct MPANs and MSIDs, despite Flexitricity providing the updated details ahead of the prequalification application. The appellant alleges that they contacted the Delivery Body via email to alert them to the fact that the MPAN numbers were incorrect, the Delivery Body subsequently updated the Metering Certificate but not the DSR Test Certificate.
18. The appellant followed the prequalification guidance published by the Delivery Body and provided the relevant reference details for the DSR Test within the application for NGET to use as a reference in order to upload the corresponding latest DSR Test Certificate. It appears that NGET failed to include the correct MPANs and MSIDs in the DSR Test Certificate, and therefore the MPANs and MSIDs in the document did not match those in the application, as

required under Rules 13.2.12 and 13.2.5. This is an error on the part of NGET, as opposed to the applicant.

19. NGET have referenced Rule 13.2.10 as a process by which the applicant could have requested a DSR re-test in order to have an updated DSR certificate issued to ensure it complied with Rules 13.2.12 and 13.2.5. Rule 13.2.10 allows an Applicant to request a re-test within two Working Days of receiving a notice from the Delivery Body pursuant to Rule 13.2.6(b); following such request, the Delivery Body will carry out a second DSR Test and this will be the Proven DSR Capacity (even if such outcome is lower than the first test). The appellant argues that there was no need to request a re-test under Rule 13.2.10, as the DSR Test was correctly carried out with all components participating. We accept this re-test process was not appropriate in this instance, as there was not an issue with the DSR Test itself.
20. Therefore NGET was incorrect in referring the appellant to Rule 13.2.10 in its reconsidered decision, and for applying Rules 13.2.12 and 13.2.5 to prevent the CMU listed in paragraph 1 from prequalifying.

Conclusion

21. NGET did not reach the correct reconsidered decision to reject FLXR75 for the T-4 Auction. The information provided by the appellant at Tier 1 demonstrates that NGET made an error in not updating and uploading the DSR Test Certificate for the application of FLXR75, which led to an incorrect reconsidered decision to not prequalify the CMU pursuant to Rules 13.2.5 and 13.2.12.

Determination

22. 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 overturned in respect of the CMU listed in paragraph 1 for the T-4 Auction.

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

Mark Copley

For and on behalf of the Gas and Electricity Markets Authority

12 January 2018