

**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 appeals made by Flexitricity Limited (the “appellant”) against Reconsidered Decisions made by the EMR Delivery Body (National Grid Electricity Transmission plc (“NGET” or the “Delivery Body”)) in respect of the following Capacity Market Units (“CMUs”):
  - a) FLXR33
  - b) FLXR34
2. This decision deals with all of the appeals listed above as they are substantively in respect of the same issue and differ only in so far as concerns the identity of the respective CMUs.
3. 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**

4. The appellant submitted Applications for Prequalification for the CMUs in Paragraph 1 in respect of the 2018 T-1 and T-4 Auctions.

---

<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.

5. NGET issued a Notification of Prequalification Decision dated 11 November 2017, in respect of each Application (the “Prequalification Decisions”). NGET rejected the applications for the T-4 and T-1 Auctions on the following grounds:

*In accordance with Capacity Market Rule 3.7.3(b)(ii), the Applicant is required to provide the connection offer (with evidence of acceptance) that they have with the Distribution Network Operator. The latest connection offer, dated the 23rd January 2017, does not have a corresponding signed acceptance. The only signed acceptance is dated 2nd December 2015 therefore we are not able to accept this with this Application.*

6. The appellant submitted a request for reconsideration of the Prequalification Decisions before the deadline of 20 November 2017.
7. NGET issued a Notice of Reconsidered Decision on 1 December, in respect of each Prequalification 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, in accordance with Capacity Market Rule 3.7.3(b)(ii) whereby you are required to provide the connection offer (with evidence of acceptance) that you have with the Distribution Network Operator.*

*We acknowledge that you have provided documents to demonstrate proof of the connection acceptance, however as there was no evidence of signed acceptance of the connection offer provided in your original application, nor written confirmation from the Distribution Network Operator that such connection offer is in effect, the Delivery Body maintains that the correct decision was made during the original assessment of your application.*

8. The appellant then submitted appeal notices to the Authority on 8 December 2017 under regulation 70 of the Regulations.

**The appellant's ground for appeal**

9. The appellant contends that it *“attached to the Application a connection agreement 5500047328/C. This had been accepted at the date of submission of the Application. The connection agreement was therefore ‘in effect’. We assert that the connection agreement supplied, along with the subsequent amendment offer which is in writing, is from the Distribution Network Operator, and was in effect at the time of Prequalification. These documents together constitute ‘written confirmation from the Distribution Network Operator that such Distribution Connection Agreement or connection offer is in effect.’ This satisfies Rule 3.7.3(b)(ii).”*

**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.
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 3.7.3 sets out the requirements on Applicants regarding the provision of Connection Agreements with their Applications for Prequalification. In particular, Rule 3.7.3(b) and states that :

*(b) Subject to Rule 3.7.3(c) below, Applicants for a New Build CMU that is, or will be, directly connected to a Distribution Network must:*

*(i) confirm that there are one or more Distribution Connection Agreements or accepted connection offers which permit at least, in aggregate, the Anticipated De-rated Capacity of that CMU and any other CMUs to which the Distribution Connection Agreement applies to connect to the Distribution Network in the relevant Delivery Years, and*

*(ii) provide with the Application a copy of any such Distribution Connection Agreement or connection offer (with evidence of acceptance), or where this is not possible, written confirmation from the Distribution Network Operator that such Distribution Connection Agreement or connection offer 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.*

### **Our Findings**

15. The appellant claims that the documents it supplied with its Applications satisfied Rule 3.7.3(b)(ii). The appellant claims that, pursuant to Rule 3.7.3(b)(ii), the documents constitute written confirmation from the Distribution Network Operator that such Distribution Connection Agreement or connection offer is in effect.
16. Rule 3.7.3(b)(ii) says that, where an Applicant has not provided with the Application a copy of any such Distribution Connection Agreement or connection offer (with evidence of acceptance), the Applicant must provide written confirmation from the Distribution Network Operator that such Distribution Connection Agreement or connection offer is in effect and confirms the elements in subparagraphs (aa) and (bb). The term “such” refers back to the accepted connection offer, confirmation of which is required under 3.7.3(b)(i).
17. The appellant submitted Document 5500047328/C as evidence of an accepted Connection Agreement. This document is a “Customer ‘Staged Payment’ Acceptance Form” dated 2 December 2015 and demonstrates payment by the appellant for a connection by Electricity North West. This document shows that a transaction has taken place between the appellant and Electricity North West, but does not constitute a Connection Agreement.
18. The appellant has also submitted an offer dated 23 January 2017 by Electricity North West to amend the Connection Agreement. The appellant has not submitted evidence that this connection offer has been accepted. The forms therein, (including a further “Customer ‘Staged Payment’ Acceptance Form”) have not been signed. The requirements of Rule 3.7.3(b)(ii) are therefore not met.

19. As a result, the Authority holds that NGET was correct to not prequalify FLXR33 and FLXR34.

**Conclusion**

20. NGET reached the correct Reconsidered Decision to not prequalify FLXR33 and FLXR34 for the T-4 and T-1 Auctions on the basis that evidence of a valid Connection Agreement or an accepted connection offer required under Rule 3.7.3(b)(ii) was not provided with the application. The information that was submitted did not satisfy the requirements of this Rule.

**Determination**

21. 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 CMUs listed in paragraph 1 for the T-4 Auction and T-1 Auction.



Emily Sam

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

12 January 2018