

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”) or the “Delivery Body”) in respect of the following Capacity Market Unit (CMU):
 - a) FLXR56
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 T-4 Capacity Auctions for 2021/22.
4. NGET issued a Notification of Prequalification Decision dated 11 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 reasons:

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 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 connection offer provided, reference 5500091142/C, does not have a corresponding acceptance provided. The only signed acceptance provided is for reference 5500091142D, for which the connection offer has not been provided in the Application. Therefore we are not able to accept the connection offer as a result.

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 01 December which rejected the dispute 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.

7. The Appellant then submitted an appeal notice to the Authority on 8 December 2017 under regulation 70 of the Regulations.

The Appellant's ground for appeal

8. Flexitricity contends that *"The Delivery Body's Reconsidered Decision states that the Application failed to meet the requirements of Rule 3.7.3(b)(ii) and specifically states 'whereby you are required to provide the connection offer (with evidence of acceptance) that you have with the Distribution Operator'. This decision overlooks the continuation of Rule 3.7.3(b)(ii) which states 'or where this is not possible, written confirmation from the Distribution Network Operator that such Distribution Connection Agreement or connection*

offer is in effect'. The condition in this part of the Rule is satisfied because it was not possible to provide a connection offer with evidence of acceptance. Instead, a valid connection offer, in effect at the time of the Application, was presented with the Application, satisfying this Rule."

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

13. 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

14. The Appellant claims that it has satisfied Rule 3.7.3(b)(ii) because it supplied, with its Application a valid connection offer, in effect at the time of the Application.
15. 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 requirements 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).

16. The connection offer from the Distribution Network Operator, provided by Appellant with its Application, had not been accepted at the time that the Application for prequalification was submitted and this was acknowledged by the Appellant in its Appeal Notice. The requirements of Rule 3.7.3(b)(ii) are therefore not met.
17. As a result, the Authority holds that NGET was correct to not prequalify FLXR56.

Conclusion

18. NGET reached the correct reconsidered decision not to prequalify FLXR56 for the T-4 Auction 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

19. 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