

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 KiWi Power Ltd (“KiWi”) 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) for the 2018 T-4 Auction:

a) KPEG10

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 CMU on the following grounds:

The Secondary Trading details were not provided with this Application in accordance with Capacity Market Rule 3.4.1 (c) (ii), which states each Applicant must provide an email address and telephone number that can be used by a person

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.

wishing to discuss secondary trading in relation to the CMU which is the subject of the Application.

In accordance with Capacity Market Rule 3.12.4, each Application must be accompanied by a Certificate of Conduct signed by two directors of the Applicant. The Certificate of Conduct is defined in Capacity Market Rule 1.2 as Exhibit C and must be signed by two directors. Specifically the title of the certificate stated "2017 Prequalification Certificate" rather than the correct heading of "2017 Certificate of Conduct".

Capacity Market Rule 3.4.3 states, each Applicant must: (a) specify in the Application: (i) the CMU to which the Application relates (including a description of, the full postal address with postcode and the two letter prefix and six-figure Ordnance Survey grid reference numbers of, the Generating Unit(s). The OS Grid Reference provided is in an incorrect format - 2 letters and 10 digits instead of 2 letters and 6 digits.

5. KiWi 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 grounds:

In your application you have opted 'Yes' to the question: "Has the CMU been operational in the 24 months prior to the start of the Prequalification Window?"

Where the CMU has been operational in the 24 months prior to the date one month before the start of the Prequalification Window, in accordance with Capacity Market Rule 3.6.1(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 which opened on 24 July 2017.

The Historic Performance Period 2 provided in the Application and Confirmation of Historic Metered Output letter do not match. The Historic Performance Period 2 provided in the Confirmation of Historic Metered Output letter is dated 30 June 2017 and The Historic Performance Period 2 provided in the Application is dated 9 June 2017. The Historic Performance Period 2 provided in the Confirmation of Historic Metered Output letter is less than one month before the start of the Prequalification Window and therefore does not satisfy the requirements of Capacity Market Rule 3.6.1(a)(i).

7. NGET accepted KiWi's other grounds for dispute.
8. KiWi then submitted an appeal notice to the Authority on 8 December 2017 under regulation 70 of the Regulations.

KiWi's Grounds for appeal

9. KiWi disputes the decision on the following grounds.

Ground 1

10. KiWi argues that NGET has incorrectly interpreted Capacity Market Rule 3.6.1. They believe KPEG10 meets the exception in 3.6.1(a)(ii) and that the period during which the CMU must provide previous Settlement Period performance should be "the most recent period of operation", as specified by 3.6.1(a)(ii)(bb).

Ground 2

11. KiWi state that NGET did not identify the historic output data issues in the Prequalification Results letter, and therefore *"it is not in accordance with the Capacity Market Regulations that it should find an additional area of rejection at a later stage."*

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.

Capacity Market Rules

15. Rule 3.6.1(a) sets out the requirement for Existing Generating CMUs to submit periods to verify previous settlement period performance. It states that
 - 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.

Our Findings

16. We have assessed KiWi's grounds for appeal, which are set out below.

Ground 1

17. In determining the correct interpretation of 3.6.1 and the time period which applies to KPEG10 we have considered the following factors:

The purpose of Rule 3.6.1

18. Rule 3.6.1 sets out the requirement on applicants to provide data for three Settlement Periods as part of their application. Rule 4.4.2(f) sets out that NGET must not prequalify a CMU for which the physically generated net outputs in the three Settlement Periods nominated by the Applicant pursuant to Rule 3.6.1 are not each greater than the Anticipated De-rated Capacity. The purpose of the Rule is to ensure a generator can generate up to the level of the obligation they wish to receive. These provisions are designed so that NGET has the best possible information about an applicant's ability to generate.
19. The operation of 3.6.1 is to specify a time period in which the applicant must demonstrate it delivered its highest physically generated net outputs. The default requirement, under Rule 3.6.1(a)(i), is to provide that settlement data for the 24 months, ending one month before the prequalification window (the "default period"). There are two exceptions to that default requirement. The first, under 3.6.1(a)(ii) deals with a period of non-operation, and the second, under 3.6.1(a)(iii) deals with a period of Transmission Restriction.

The length of time in which a CMU must be non-operational for 3.6.1(a)(ii) to apply

20. Rule 3.6.1(a)(ii) applies “if a CMU has not been operational in the 24 months prior to the date one month before the start of the prequalification window”.
21. The purpose of the rule, as noted above, is to find the three highest Settlement Periods so that a CMU can demonstrate its historical performance. The 24-month period is set to give a plant a sufficient time period in which to demonstrate its highest output. If the default period provided for in 3.6.1(a)(i) is curtailed by reason of non-operation then the Rule operates in a way to allow the CMU to draw data from alternative periods. We conclude that in light of this purpose and the construction of Rule 3.6.1(a)(ii) that it can be relied upon where a CMU has been non-operational for some of the 24-month period. This is in contrast to Rule 3.6.1(a)(iii), where a CMU has to be under a continuous Transmission Restriction for the provision to apply, as specifically provided for in the Rule itself.

Whether the exception under 3.6.1(a)(ii) applies to KPEG10

22. KPEG10 was not fully operational until 31 May 2017 and therefore it was not operational for the majority of the default period, which ran from 24 June 2015 to 24 June 2017. It was operational for less than 24 months and we consider that KiWi are correct in arguing that the exception set out in 3.6.1(a)(ii)(bb) applies to KPEG10. Accordingly, KiWi is entitled to rely upon its most recent period of operation for the purposes providing information regarding its previous Settlement Period performance.

Ground 2

23. In the Notice of Reconsidered Decision, NGET state, *“The Historic Performance Period 2 provided in the Application and Confirmation of Historic Metered Output letter do not match.”* However, this was not given as a reason for rejection by NGET in the original Notification of Prequalification Decision. This meant KiWi had no opportunity to explain the discrepancy and remedy its administrative error when requesting a Reconsidered Decision.

24. We note that the date for the Historic Performance Period 2 provided in the Application ('09/06/17') is the same as the date for the Historic Performance Period 1 ('09/06/17'), whereas Rule 3.6.1(a) requires that Settlement Periods be provided on separate days. We also note that both the Settlement Period ('47') and physically generated net output ('2.715MWh') in the Application for Historic Performance Period 2 match the figures in the supplier letter. Therefore, we conclude that the date provided in the Application for the Historic Performance Period 2 was a clerical error, and that the correct date was provided in the supplier letter. The Historic Performance Period 2 in the Application should therefore have read '30/06/2017', instead of '09/06/2017'.
25. Consequently, the Authority is satisfied that KiWi made an administrative error in respect of the date of a Historic Performance Period, and would have been eligible to prequalify if the administrative error had not occurred. Further, had NGET given full reasons and cited this error in the original Notification of Prequalification Decision, KiWi would have been able to correct this administrative error in their Tier 1 appeal before NGET made its Reconsidered Decision, without submitting new information, and would have met the requirements of Rule 3.6.1(a).

Conclusion

26. NGET did not give full reasons for the rejection of KPEG10 in its Prequalification Decision. This meant that KiWi was not aware that it had to explain a clerical error, which would have allowed it to prequalify. The Reconsidered Decision was therefore incorrect and the Authority is satisfied that the CMU would have been able to meet the requirements of Rule 3.6.1(a) and should be Prequalified.

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 overturned. We direct NGET to register the CMU KPEG10 on the Capacity Market Register as a Prequalified CMU for the 2018 T-4 Auction.

A handwritten signature in black ink, appearing to read 'Julian Roberts', with a stylized flourish at the end.

Julian Roberts

For and on behalf of the Gas and Electricity Markets Authority

12 January 2018