

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 KiWi Power Ltd (Kiwi Power) against a reconsidered decision made by the EMR Delivery Body (National Grid Electricity Transmission plc (“NGET”)) for the 2018 T-1 auction in respect of the following Capacity Market Unit (CMU):
 - a) KPEG13
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-1 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:

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

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 3.12.4, 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".

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 2017 which rejected the dispute on the following grounds:

"The Minimum Capacity Threshold, as defined in Capacity Market rule 1.2 as having the meaning given in Regulation 15, states that the Minimum Connection Capacity is 2MW. The Connection Capacity for this CMU is below the threshold and therefore does not meet the requirements of the Regulation."

"We have reviewed and accept your dispute regarding your Company Certificate of Conduct. Your Certificate of Conduct have been verified, and have met the requirements of the Capacity Market Rules. We acknowledge and accept submission of your secondary trading details as required by CM rule 3.4.1(c)(ii)."

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

Kiwi Power's Ground for appeal

7. Kiwi Power disputes the decision on the following ground.

Ground 1

8. The appellant states "Capacity Market Regulation 69 does not contain a provision for the Delivery Body to reconsider the delivery body reviewable decision in its entirety, only to be

able to consider the ‘relevant part of the delivery body reviewable decision in dispute’, as set out in Regulation 70(3)(a). As the Delivery body did not identify this issue in the original Prequalification Results letter, 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

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.

Capacity Market Rules

12. Rule 1.2.1 defines Minimum Capacity Threshold and states that it “*subject to Regulation 29A(2)(a), has the meaning given to that term in Regulation 15*”.

Electricity Capacity Regulations 2014:

15.(1) - The Delivery Body must not prequalify a CMU for a capacity auction unless it meets the general eligibility criteria.

15.(2) The general eligibility criteria for a CMU are the conditions specified in paragraphs (3) to (5).

15.(4) The second condition is that the connection capacity of the CMU is equal to or greater than 2MW (the “minimum capacity threshold”).

Our Findings

13. The Authority has assessed each of the appellant's grounds for appeal, which are set out below.

Ground 1

14. The appellant states "Capacity Market Regulation 69 does not contain a provision for the Delivery Body to reconsider the delivery body reviewable decision in its entirety, only to be able to consider the 'relevant part of the delivery body reviewable decision in dispute', as set out in Regulation 70(3)(a)." However the text for Regulation 70(3)(a) states "*An appeal notice must contain a concise statement identifying the relevant part of the delivery body reviewable decision in dispute*". This regulation does not restrict what the delivery body is or is not able to consider when reconsidering a decision in this way and so this ground for appeal is incorrect.
15. We have noted that NGET did not inform the appellant in the Notification of Prequalification Decision that the CMU did not meet the minimum capacity threshold requirement laid out in Regulation 15.4. That said we do not consider that the appellant has been prejudiced by this because the CMU does not meet the general eligibility criteria as stipulated within this regulation. The appellant does not dispute NGET's assertion that the CMU is below the minimum capacity threshold and we are not aware of any practicable steps (within the terms of the legislative framework), that the appellant could have taken, had it been aware of this reason earlier, which could have resulted in it being eligible to Prequalify when NGET made its reconsidered decision.
16. Therefore NGET was correct in applying Rule 1.2.1 and Regulation 15.4 to prevent the CMU listed in paragraph 1 from prequalifying.

Conclusion

17. NGET reached the correct reconsidered decision to not prequalify KPEG13 for the T-1 Auction on the basis that the CMU does not comply with Rule 1.2.1 and Regulation 15.4 and are therefore ineligible to Prequalify. The Authority finds that NGET reached the correct decision not to Prequalify this CMU for the T-1 Auction.

Determination

18. 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-1 Auction.



Emily Sam

For and on behalf of the Gas and Electricity Markets Authority

12 January 2018