

**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 Limited (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):
  - a) KPEG14
2. 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**

3. The appellant submitted an Application for Prequalification for the CMU in Paragraph 1 in respect of the 2018 T-1 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 wishing to discuss secondary trading in relation to the CMU which is the subject of the Application.*

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<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.

*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 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".*

*Subject to Capacity Market Rule 3.8.1A(c)(ii), the Delivery Body must not Prequalify a CMU where: (e) the Delivery Body is unable to obtain any data with respect to the physically generated net output for a Generating Unit comprised in an Existing Generating CMU in any Settlement Period nominated by the Applicant pursuant to Capacity Market Rule 3.6.1.*

*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 1 provided in the Application is dated 4 June 2015, which is greater than 24 months before the date a month before the start of the Prequalification Window and therefore does not satisfy the requirements of Capacity Market Rule 3.6.1(a)(i)."*

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:

*"We have assessed your Tier 1 Dispute and have concluded that we cannot accept the arguments or supporting documents submitted. Regulation 69 does not allow the Delivery Body to consider information or evidence from Applicants which*

*should have been provided with the Application, your letter confirming the historic metered output figures for the CMU and/or its components should have been provided in your original application. Therefore the original decision of the Delivery Body is upheld.*

*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 1 provided in the Application is dated 4 June 2015, which is greater than 24 months before the date a 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. The Delivery Body accepted the appellant's other grounds for dispute.
8. The appellant 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. The appellant argues that '*the incorrect submission of the date '04/06/2015' as a historic performance period was a clerical error*', and should instead read 24/07/2015. The

amended date is within 24 months prior to the date one month before the start of the Prequalification Window and would satisfy CM Rule 3.6.1(a).

11. The appellant also argue that the EMR Delivery Body gave advice stating that clerical errors *'can be corrected through the T-1 Disputes process'*. The appellant therefore resubmitted the Confirmation of Historic Metered Output letter with the clerical error corrected.

### **The Legislative Framework**

12. The Regulations 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.
15. In particular, Regulation 69(5) sets out the requirements for NGET in 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**

16. 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.*

17. Rule 3.6.1(c) states that Non-CMRS Distribution CMUs must submit a letter from the supplier or former supplier verifying the CMU's physically generated net output. It states that:

*(c) Each Applicant for an Existing Generating CMU that is a Non-CMRS Distribution CMU using the Balancing Services Metering Configuration Solution or Bespoke Metering Configuration Solution must provide either in relation to the CMU or to each Generating Unit comprising the Generating CMU:*

*(i) a letter from the supplier or former supplier to such CMU confirming the CMU or Generating Unit's physically generated net output in MWh to three decimal places;  
or*

*(ii) evidence the CMU or Generating Unit delivered a Metered Volume (in MWh to three decimal places) in discharge of an obligation to deliver a balancing service confirming the CMU or Generating Unit's physically generated net output in MWh to three decimal places;*

*(iii) and if line loss adjustments have been applied, either:*

*(aa) a letter from the Distribution Network Operator confirming the Line Loss Factor values in the three Settlement Periods referred to in Rule 3.6.1(a); or*

*(bb) where applicable, a letter from the owner of the Unlicensed Network confirming the electrical loss factor values in the three Settlement Periods referred to in Rule 3.6.1(a) and the methodology used to calculate such values.*

### **Our Findings**

18. The appellant argues that the incorrect submission of the date '04/06/2015' was a clerical error and should be amended to '24/07/2015' in line with a resubmitted letter from the supplier verifying the CMU's physically generated net output.
19. In accordance with rule 3.6.1(c) the appellant was required to submit a letter from the supplier or former supplier verifying the CMU's physically generated net output. It is this letter that contains the error.
20. Regulation 69(5) states that in reconsidering a prequalification decision the Delivery must not take into account any information or evidence which the affected person was required by the capacity market rules to provide to the Delivery Body before the prequalification decision was taken. As the letter from the supplier confirming the CMU's physically generated net output was required under rule 3.6.1(c), the Delivery Body was unable to

accept a revised version of this letter, with the error corrected, when making its Reconsidered Decision.

21. As the first “historic performance period” provided in the Application and verified in the supplier letter was outside the period required by 3.6.1(a), KPEG14 does not meet the requirements of Rule 3.6.1(a) and NGET was correct in prevent it from prequalifying.

### **Conclusion**

22. NGET reached the correct reconsidered decision to not prequalify KPEG14 for the 2018 T-1 Auction on the basis that it did not meet the requirements of Rule 3.6.1(a).

### **Determination**

23. 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 KPEG14 for the 2018 T-1 Auction.



Julian Roberts

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

12 January 2018