

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):
 - a) KPEG26
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. NGET issued a Notification of Prequalification Decision dated 10 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 reason(s):

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

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.

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.

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 location specified by the postcode does not match the location of the OS Grid Reference provided.

Capacity Market Rule 4.4.2 (f) states that a CMU cannot prequalify if the physically generated net outputs, or Metered Volumes where applicable, of an Existing Generating CMU in the Settlement Periods nominated by the Applicant pursuant to Capacity Market Rule 3.6.1 are not each greater than the Anticipated De-rated Capacity. The Historic performance for this CMU is not in excess of De-rated capacity (as per selected method of calculation).

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 is dated 26 June 2017, which 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).

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 which rejected the dispute on the following grounds:

Capacity Market Rule 4.4.2 (f) states that a CMU cannot prequalify if the physically generated net outputs, or Metered Volumes where applicable, of an Existing Generating CMU in the Settlement Periods nominated by the Applicant pursuant to Capacity Market Rule 3.6.1 are not each greater than the Anticipated De-rated Capacity. The Historic performance for this CMU is not in excess of De-rated capacity (as per selected method of calculation).

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 3 provided in the Application is dated 26 June 2017, which 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. The Delivery Body accepted KiWi'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. KiWi argue that the historic performance for the CMU does exceed the de-rated capacity, and that *"The Generating Unit has adequate capacity to provide maximum output for a 1 hour duration"*, however *"from 1 July onwards the Generating Unit has been operating under an EFR contact"*.
11. KiWi further explain that the EFR programme requires *"a maximum of 15 minutes at maximum output during testing and service"*, and *"does not allow the Generating Unit to opt-out of the contract in order to conduct a full discharge over a 30 minute period, as would have been necessary to show historic output at the maximum level; the Generating Unit is contracted to provide a continuous service"*.

Ground 2

12. KiWi argues that the Delivery Body has incorrectly interpreted Capacity Market Rule 3.6.1. They believe KPEG26 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).

The Legislative Framework

13. 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.
14. 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.
15. Regulations 68 to 72 set out the process and powers in relation to dispute resolution and appeals.
16. Regulation 2 defines Settlement Period as

a period of 30 minutes beginning on an hour or half-hour.

Capacity Market Rules

17. Rule 4.4.2(f) provides that the Delivery Body must not prequalify a CMU where the historic performance data is not in excess of the de-rated capacity and states that:

Subject to Rule 3.8.1A(c)(ii), the Delivery Body must not Prequalify a CMU where:

[...]

(f) the physically generated net outputs, or Metered Volumes where applicable, of an Existing Generating CMU in the Settlement Periods nominated by the Applicant pursuant to Rule 3.6.1 are not each greater than the Anticipated De-rated Capacity;

18. 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

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

Ground 1

20. KiWi argued their CMU is capable of generating in excess of the de-rated capacity; however, it has an EFR contract which requires a maximum of 15 minutes at maximum output during testing and servicing.
21. The purpose of Rule 4.4.2(f) is to determine that an Existing Generating CMU is able to generate up to the level of its de-rated capacity and would be therefore able to fulfil the requirements of a Capacity Obligation.

22. In our view, if Rule 3.6.1(a) had intended for CMUs to be able to demonstrate their historical output over a shorter period than 30 minutes, it would not have specified a Settlement Period, which is defined in Regulation 2 as *“a period of 30 minutes beginning on an hour or half-hour”*. In such circumstances Rule 3.6.1(a) would have just required the Applicant to state the maximum net output of its CMUs on three separate days, with no mention of Settlement Periods.
23. Rule 4.4.2(f) states that the CMU cannot be prequalified if *“the physically generated net outputs [...] in the Settlement Periods nominated by the Applicant [...] are not each greater than the Anticipated De-rated Capacity.”*
24. A proper interpretation of Rule 3.6.1(a) and Rule 4.4.2(f) leads to the conclusion that an Applicant must identify Settlement Periods and demonstrate output in Settlement Periods of 30 minutes. The Delivery Body would be unable to extrapolate data given for 15 minutes and conclude that a CMU had met the requirements of Rule 4.4.2(f).
25. The Appellant’s argument that the CMU could not provide full output for 30 minute Settlement Periods due to the requirements of its Enhanced Frequency Response contract is not a relevant matter for the purposes of the prequalification assessment NGET is required to conduct.
26. The generated net outputs in the Settlement Periods submitted by the Applicant were not greater than the De-rated Capacity. The Appellant has therefore not demonstrated that the CMU can generate in excess of the De-rated Capacity in a settlement period.
27. Therefore NGET was correct in applying Rule 4.4.4(f), which prevented NGET from prequalifying KPEG26.

Ground 2

28. In determining the correct interpretation of 3.6.1 and the time period which applies to KPEG26 we have considered the following factors:

The purpose of Rule 3.6.1

29. 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 the Delivery Body 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 the Delivery Body has the best possible information about an applicant's ability to generate.
30. 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

31. 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".
32. 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 KPEG26

33. KPEG26 was not fully operational until 1 July 2017 and was undergoing testing in June 2017. We note that all of the settlement periods submitted by KiWi are during June 2017. The default period ran for 24 months backwards, starting from the date one month before the start of the Prequalification Window (24 June 2017). Consequently, KPEG26 was not operational for the majority of the default period. 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 KPEG26. Accordingly, KiWi is entitled to rely upon its most recent period of operation for the purposes providing information regarding its previous settlement period performance.

Conclusion

34. NGET reached the correct reconsidered decision to not prequalify KPEG26 for the T-1 Auction on the basis that under Rule 4.4.2, the Delivery Body must not Prequalify a CMU where the physically generated net outputs, or Metered Volumes where applicable, of an Existing Generating CMU in the Settlement Periods nominated by the Applicant pursuant to Rule 3.6.1 are not each greater than the Anticipated De-rated Capacity.

Determination

35. 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 KPEG26 for the 2018 T-1 Auction.



Julian Roberts

For and on behalf of the Gas and Electricity Markets Authority

12 January 2018