

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 Noriker Staunch A Ltd (“Noriker”) 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) NRKP02
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:

The Prequalification Certificate that you have submitted in your application does not conform with the Prequalification Certificate as defined in Capacity Market Rules 3.12.3 & 3.4.1 for the following reasons: The Company name on the Application is 'Noriker Staunch A Ltd' whereas the Company Name on the

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.

Prequalification Certificate is 'Staunch A Ltd', the registration number is incorrect and the company address is incorrect.

The Certificate of Conduct that you have submitted in your application does not conform with the Certificate of Conduct as defined in Capacity Market Rules 3.12.3 & 3.4.1 for the following reasons: The Company name on the Application is 'Noriker Staunch A Ltd' whereas the Company Name on the Certificate of Conduct is 'Staunch A Ltd', the registration number is incorrect and the company address is incorrect.

In accordance with Capacity Market Rule 3.7.3(b)(ii), you are required to provide the connection offer (with evidence of acceptance) you have with the Distribution Network Operator. Although the connection offer has been submitted in your application, there is no evidence of acceptance of such connection offer provided in your application nor, where such evidence is not available, is there written confirmation from the Distribution Network Operator that such connection offer is in effect.

Capacity Market Rule 3.7.2 Construction Plan states, each Applicant for a New Build CMU must state in the Application: (b) a schedule identifying the earliest and latest dates for achieving the following Construction Milestones: (i) commencement of construction works; (ii) achievement of the Back-feed Milestone; and (iii) achievement of the Substantial Completion Milestone; (iv) Major Contract Date; (v) Completion of Main Foundations; (vi) First Delivery Date (or, in the case of an Interconnector CMU, Commencement of Cable Laying); and (vii) First Firing Date (or, in the case of an Interconnector CMU, First Test Connection Date).

The following information is missing from this Application; Signing of EPC/equivalent Major Contract, Main Foundations Complete, Gas/Steam Turbine Delivery (or any Generator Dependent on Technology), First Firing.

5. The appellant submitted a request for reconsideration of the Prequalification Decision on 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 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.

We acknowledge that you have provided the signed connection agreement to demonstrate proof of the connection acceptance, however as there was no evidence of signed acceptance of the connection offer provided in your original application, nor written confirmation from the Distribution Network Operator that such connection offer is in effect, the Delivery Body maintains that the correct decision was made during the original assessment of your application.

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

Noriker's Grounds for appeal

8. Noriker have appealed NGET's decision on the following ground:

"The DNO connection agreement (Western Power Distribution, Export Supply No. Core 1470000732304, dated 15 March 2017) has been provided to the Delivery Body, and is enclosed with this Tier 2 dispute as part of our evidence.

The connection agreement was not required for our prequalification, and is therefore new evidence that demonstrates acceptance of a connection offer.

Additionally we also enclose the original signed acceptance letter dated 11/02/2016, which was required (Document 5).

Within the rules the Delivery Body should have accepted our evidence of connection acceptance. In addition we supply the missing document, therefore all required evidence is now available. Specifically, the evidence shows that the DNO connection agreement had been signed and accepted on 11/02/2016, and the CMU has been commissioned and live since 1 May 2017.”

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(b)(ii) requiring the provision of a Connection Agreement states that Applicants must:

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 applicant has a choice as to which documentation they may submit in order to satisfy Rule 3.7.3(b)(ii). This documentation can be:
- a) a Distribution Connection Agreement;
 - b) a connection offer with evidence of acceptance; or
 - c) where this is not possible, written confirmation from the DNO that such a Distribution Connection Agreement or connection offer is in effect

15. Although Noriker provided a connection offer in their original application they did not provide evidence of acceptance of such connection offer, which is required to satisfy this option. The Applicant cannot then rely on their submission of the Distribution Connection Agreement to satisfy the missing information required for the connection offer, as this is a piece of documentation that would have been required in the original application under Rule 3.7.3(b)(ii), as outlined above.
16. Regulation 69(5) states that NGET, when reconsidering a prequalification decision, must not take into account any information or evidence which the applicant should have supplied but failed to do so in the initial application. Therefore NGET was correct to prevent NRKP02 from prequalifying, for failing to provide the documentation required to satisfy Rule 3.7.3(b)(ii) in the original application.

Conclusion

17. NGET reached the correct reconsidered decision to not prequalify NRKP02 for the T-1 Auction on the basis that evidence of the acceptance of the connection offer required under Capacity Market Rule 3.7.3(b)(ii) was not provided with the application.

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 CMUs listed in paragraph 1 for the T-1 Auction.



Julian Roberts

For and on behalf of the Gas and Electricity Markets Authority

12 January 2018