

# 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 REstore Flexpond UK Limited (REstore Flexpond UK) against reconsidered decision made by the EMR Delivery Body (National Grid Electricity Transmission plc (“NGET”)) in respect of the following Capacity Market Unit (CMU):
  - a) REST23
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. For the CMU referenced 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:

*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*

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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.

*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).*

5. The appellant submitted a request for reconsideration of the Prequalification Decisions.
6. NGET issued a Notice of Reconsidered Decision on 01 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. You have disputed the Prequalification decision under Regulation 69. Your dispute asks to change the generating technology class, this is not a disputable decision, therefore we cannot consider in relation to this.*

*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 we can't consider your new Historic Performance Period. Therefore the original decision of the Delivery Body is upheld.*

7. The appellant then submitted an appeal notice to the Authority on 07 December 2017 under regulation 70 of the Regulations.

#### **REstore Flexpond UK's Grounds for appeal**

8. REstore Flexpond UK disputes the decision on the following grounds.

#### **Ground 1**

9. The appellant's first ground for appeal is their argument *"that all three methodologies available to calculate the De-rated Capacity lead to the CMU being unable to prequalify"*. *The three methodologies identified by the appellant are Rules 3.5.2 (ba) (ii), 3.5.3 and 3.5.5.*
10. As such, the appellant argues that the *"CMU is subject to an unintended consequence of how Rule 4.4.2 (f) works in conjuncture with Rule 3.6.1."* Furthermore, the appellant suggests these unintended consequences discriminate against this CMU and others in this position.

### Ground 2

11. In the appellant's second ground of appeal, the appellant argues that the "CMU is compliant with the intended purpose of the Capacity Market", specifically the purpose of "contributing to the security of supply during system Stress Events".

### Ground 3

12. In the appellant's third ground of appeal, the appellant lists three proposed solutions to allow the CMU to requalify. These are listed below:

*i. Allow the asset to pre-qualify with the proposed capacity (27.11MW) on the basis that the difference between the peak and the de-rated capacity (622kW) is immaterial within the CMU (2.3%) and even more so in the scale of the whole Capacity Market (~0.001%).*

*Furthermore, any potential risk of non-delivery is mitigated by a forecast increase of output at KGS (see supporting letter from the Legal Owner, Third Energy, for details)*

*ii. Choose a shorter period of time to demonstrate the 3 highest peaks (instead of the previous 24 months, use data since 3rd October 2016), thereby lowering the average and meaning that rule 4.4.2 (f) is succeeded:*

*27.738MW, 26.490MW, and 25.616MW = average of 26.61MW and de-rated to 25.23MW. Result means that all peaks are in excess of the de-rated average and can pre-qualify*

*iii. Adjust the de-rating factor to allow for a lower number of MW to be prequalified with all other aspects being compliant with the Rules. Specifically, a de-rating factor of 92.6% (implied de-rating factor to get prequalified under the rules) instead of 94.81% would mean that the CMU would pre-qualify. The new de-rating capacity would be 26.48 MW, which would be below each of the 3 peaks (31.560 MW, 27.738 MW and 26.490 MW).*

### **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. 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**

17. Rule 1.2. defines 'Anticipated De-rated Capacity' as meaning:

*means the anticipated De-rated Capacity for a CMU, based on the information provided by an Applicant pursuant to Rule 3.4.5(a) and Rule 3.4.5(b) and the applicable De-rating Factor for the CMU and, in the case of a Generating CMU that comprises more than one Generating Technology Class, the applicable De-rating Factor for each Generating Unit*

18. Rule 3.4.5 relates to Capacity. It declares that each application must specify:

- (a) *the Connection Capacity or DSR Capacity (as applicable) of the CMU for the Delivery Year to which the Capacity Auction relates and, in the case of a Generating CMU or Interconnector CMU, the basis on which the Connection Capacity has been determined pursuant to Rule 3.5 or Rule 3.5A; and*
- (b) *in the case of a Generating CMU, the Generating Technology Class to which each Generating Unit that comprises such a CMU belongs*

19. Rule 3.5.2 relates to Determining the Connection Capacity of a Generating CMU and declares that:

*Subject to Rules 3.5.3 or 3.5.5, the Connection Capacity of a Generating Unit must be calculated as follows:*

- (a) *for a Generating Unit forming part or all of a Transmission CMU, the Connection Entry Capacity stated in the Grid Connection Agreement for that Generating Unit;*

*(b) for a Generating Unit forming part or all of an Existing Generating CMU which is a Distribution CMU, the registered capacity (or inverter rating, if applicable) stated in the Distribution Connection Agreement for that Generating Unit or in the written confirmation from the Distribution Network Operator provided pursuant to Rule 3.6.3(c)(ii) (as applicable);*

*(ba) for a Generating Unit forming part or all of an Existing Generating CMU which is a Distribution CMU, but where the Distribution Connection Agreement or connection offer does not state its registered capacity (or inverter rating, if applicable):*

*(i) the estimated capacity that the Applicant, with respect to the Generating CMU (that includes that Generating Unit), calculates to be the registered capacity or inverter rating, based on information otherwise contained within the Distribution Connection Agreement or a connection offer; or*

*(ii) the maximum capacity which will be physically capable of being transmitted from the Generating Unit to the Distribution Network, based on information otherwise contained within the Distribution Connection Agreement or a connection offer.*

*(c) for a Generating Unit forming part or all of a Prospective Generating CMU which is a Distribution CMU:*

*(i) the registered capacity (or inverter rating, if applicable) for that Generating Unit stated in the Distribution Connection Agreement for that Generating Unit or in the written confirmation from the Distribution Network Operator provided pursuant to Rule 3.7.3(b)(ii) (as applicable); or*

*(ii) where the Generating Unit does not have a Distribution Connection Agreement, the registered capacity (or inverter rating, if applicable) for that Generating Unit stated in the connection offer for that Generating Unit or in the written confirmation from the Distribution Network Operator provided pursuant to Rule 3.7.3(b)(ii) (as applicable); or*

*(iii) where the Generating Unit:*

*(aa) has a Distribution Connection Agreement or a connection offer but such agreement or offer does not state its registered capacity or inverter rating, the estimated capacity that the Applicant, with respect to the Generating CMU (that includes that Generating Unit), calculates to be the registered capacity or inverter rating, based on information otherwise contained within the Distribution Connection Agreement or connection offer; or*

*(bb) does not have a Distribution Connection Agreement or a connection offer, or has a Distribution Connection Agreement or a connection offer but such agreement or offer contains no information relevant to the calculation of registered capacity or inverter rating, the estimated capacity that the Applicant, with respect to the Generating CMU (that includes that Generating Unit) anticipates (acting in good faith) to be the maximum capacity which will be physically capable of being transmitted from the Generating Unit to the Distribution Network,*

*in each case expressed in MW to three decimal places.*

20. Rule 3.5.3 also relates to Determining the Connection Capacity of a Generating CMU. This Rule enables the appellant to calculate connection capacity based on “historical outputs” and states that :

*An Applicant for an Existing Generating CMU may, as an alternative to the determination of Connection Capacity set out in Rule 3.5.2, nominate a Connection Capacity for that Generating Unit equal to the Average Highest Output of that Existing Generating CMU.*

21. Rule 3.5.5 also relates to Determining the Connection Capacity of a Generating CMU and states:

*An Applicant for a Generating CMU may, as an alternative to the determination of Connection Capacity set out in Rule 3.5.2 or 3.5.3, nominate a Connection Capacity for a Generating Unit comprised in that Generating CMU in accordance with following formula:*

$$CC_i = UCEC_i / SCEC \times STEC$$

*where:*

*CC<sub>i</sub> is the Connection Capacity of Generating Unit “i”;*

*STEC is:*

*(a) in the case of a Generating Unit which is part of a Transmission CMU, the Transmission Entry Capacity for the power station of which Generating Unit “i” is a component; or*

*(b) in the case of a Generating Unit which is part of a Distribution CMU, the Maximum Export Capacity for the power station of which Generating Unit “i” is a component;*



*SCEC is:*

*(a) in the case of a Generating Unit which is part of a Transmission CMU:*

*(i) not in use*

*(ii) the sum of the Connection Entry Capacities stated in that Grid Connection Agreement for each Generating Unit which is a component of that power station;*

*(b) in the case of a Generating Unit which is part of a Distribution CMU:*

*(i) Not used;*

*(ii) the sum of the registered capacities (or inverter ratings, if applicable) stated in that Distribution Connection Agreement for each of the generating sets comprised in that power station;*

*UCECi is:*

*(a) in the case of a Generating Unit which is part of a Transmission CMU, the Connection Entry Capacity stated in the Grid Connection Agreement for Generating Unit “i”; or*

*(b) in the case of a Generating Unit which is part of a Distribution CMU, the registered capacity (or inverter rating, if applicable) stated in the Distribution Connection Agreement for Generating Unit “i”;*

*“generating set” has the meaning given to it in the relevant Distribution Connection Agreement;*

*“Maximum Export Capacity” has the meaning given to it in the Distribution Connection Agreement;*

*“power station” has the meaning given to it in the relevant Grid Connection Agreement or Distribution Connection Agreement as applicable.*

22. Rule 3.6.1(a) outlines the requirements for the highest physically generated net outputs that the appellant must submit in their application and states that:

*Previous Settlement Period performance*

*(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.*

*(aa) Each Applicant for an Existing Generating CMU must also identify in the Application the 24 month period which contains the three Settlement Periods referred to in Rule 3.6.1(a).*

23. Rule 4.4.2(f) does not allow the Delivery Body to Prequalify an Existing Generating CMU if the highest physically generated net outputs are not each greater than the Anticipated De-rated Capacity and states that:

*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*

*An Applicant for an Existing Generating CMU may, as an alternative to the determination of Connection Capacity set out in Rule 3.5.2, nominate a Connection Capacity for that Generating Unit equal to the Average Highest Output of that Existing Generating CMU.*

### **Our Findings**

24. We have assessed each of REstore Flexpond UK's grounds for appeal, which are set out below.

#### **Ground 1**

25. The appellant's first ground for appeal is their argument *"that all three methodologies available to calculate the de-rated capacity lead to the CMU being unable to prequalify"*. *The three methodologies identified by the appellant are Rules 3.5.2 (ba) (ii), 3.5.3 and 3.5.5.*
26. As such the *"CMU is subject to an unintended consequence of how Rule 4.4.2 (f) works in conjuncture with Rule 3.6.1."* These unintended consequences discriminate against this CMU and others in this position.
27. The Delivery Body rejected the CMU for prequalification based on Rule 4.4.2(f). This Rule was applied as one of the physically generated net outputs or Metered Volumes of the CMU in the Settlement Periods nominated by the Applicant pursuant to Rule 3.6.1 was not greater than the Anticipated De-rated Capacity.
28. The appellant accepts they were unable to comply with either methodology set out in Rule 3.5.2 (ba) (ii) and Rule 3.5.5 respectively, due to the CMU running at sub-maximum output

for the past 24 months. The appellant chose the methodology outlined in Rule 3.5.3 to determine the Anticipated De-rated Capacity of the CMU.

29. The physically generated net outputs, or Metered Volumes, of this CMU in the Settlement Periods nominated by the Applicant pursuant to Rule 3.6.1 were 31.56MW, 27.738MW and 26.490MW.
30. The Appellant agrees that Capacity Market Rule 3.5.3 means that the average of these three highest peaks be subject to a de-rating factor of 94.81% based on the OGCT asset type. This resulted in the De-rated Capacity of the CMU being confirmed as 27.112MW.
31. As the Anticipated De-rated Capacity of the CMU is greater than the 26.490MW physically generated net outputs, or Metered Volumes, NGET was correct in applying rule 4.4.2(f) to prevent REST23 from prequalifying.
32. The Capacity Market Rules are in place to ensure the potential Capacity Providers are capable of delivering the capacity that they are paid to provide. Therefore, all Applicants are subject to the same Rules, and connection capacity calculation methodologies.
33. As part of the Tier 1 dispute, the appellant submitted a letter from Third Energy Trading Limited to substantiate their claim the CMU was capable of delivering the necessary capacity during the Capacity Market 2018/2019 delivery year.
34. Regulation 69 (5) does not allow the Delivery Body to consider information or evidence from Applicants which should have been provided with the Application. The letter confirming the historic metered output figures for the CMU and/or its components should have been provided in the original application.
35. As a result, the NGET were correct in their decision not to consider this information.

## Ground 2

36. The appellant's second ground of appeal is that the "*CMU is compliant with the intended purpose of the Capacity Market*", specifically the purpose of "*contributing to the security of supply during system Stress Events*".
37. The Rules are in place to define how a CMU can evidence its ability to provide power during Stress Event. As described above, the CMU was unable to meet the criteria specified in the Rules. As a consequence, NGET was correct in applying rule 4.4.2(f) to prevent REST23 from prequalifying.

## Ground 3

38. The appellant lists three proposed solutions to allow the CMU to requalify. These are listed in paragraph 13.
39. We do not consider the suggested solutions as being relevant for this appeal.
40. The Capacity Market Rules are in place to ensure the potential Capacity Providers are capable of delivering the capacity that they are paid to provide. Therefore, all Applicants are subject to the same Rules, and connection capacity calculation methodologies. An exemption to these requirements is not permissible by means of the suggested solutions set out by the Appellant.

## Conclusion

41. NGET reached the correct reconsidered decision to not prequalify REST23 for the T-1 Auction on the basis that under Rule 4.4.2 (f), 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 Period nominated by the Applicant pursuant to Rule 3.6.1 are not greater than the Anticipated De-rated Capacity.

**Determination**

42. 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 stated in paragraph 1 for the T-1 Auction.

A handwritten signature in black ink, consisting of a stylized initial 'E' followed by a long, horizontal, slightly wavy line.

Emily Sam

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

12 January 2018