

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 EP SHB Limited (SHB) 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) EPSHBA
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-4 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: The Historic Performance dates are prior to 24 months before the start of the Prequalification Window. CM rule 3.6.1 states that for 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

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 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.

5. The Appellant submitted a request for reconsideration of the Prequalification Decision before the deadline of 20 November 2017.
6. NGET then issued a Notice of Reconsidered Decision on 1 December which rejected the dispute on the following grounds:

We have reviewed your dispute and unfortunately your application remains rejected. TEC Reduction, although reflected in a bilateral agreement with the system operator does not constitute a restriction on the generating units ability to export on to the GB Transmission system. Rather, it represents a reduction in the maximum export rights of the generating unit and as such does not constitute a Transmission Restriction. The rules constrain the period when you can prove performance and therefore you should be demonstrating performance between 23/6/15 to 1/10/15 at 540MW when you were not subject to a Transmission restriction in accordance with rule 3.6.1.

7. The Appellant then submitted a Notification of Appeal to the Authority on 8 December 2017 under regulation 70 of the Regulations.

SHB's Grounds for appeal

8. SHB disputes the decision on the following grounds.

Ground 1

9. The Appellant disagrees with NGET and argues that a TEC Reduction constitutes a Transmission Restriction.

Ground 2

10. The Appellant believes that NGET's decision is not consistent with the purpose of the Capacity Market Rules, including Rule 3.6.1.

Ground 3

11. The Appellant believes that process failures by NGET prevented SHB from prequalifying.

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.

Capacity Market Rules

15. Rule 1.2.1 defines Transmission Restriction to mean:

a continuous restriction on a Generating Unit's ability to export on to the GB Transmission System pursuant to the terms of a bilateral agreement between the generator and the System Operator

16. Rule 3.6.1(a) sets out the requirement for Existing Generating CMUs 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

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

Ground 1

18. SHB argue that NGET have misapplied Rule 3.6.1(a) and have misinterpreted the definition of Transmission Restriction. SHB believe that the exception in Rule 3.6.1(a)(iii) applies in their case. We have considered several items to determine the correct interpretation of Rule 3.6.1(a) and whether the exception of 3.6.1(a)(iii) applies in SHB's case.

The meaning of a continuous restriction

19. The exception in Rule 3.6.1(a)(iii) applies "if the CMU has been subject to a continuous

Transmission Restriction”. We have considered whether two separate transmission restrictions, as argued by the Applicant, would constitute “a” transmission restriction. We conclude that two transmission restrictions could count as “a” transmission restriction. This avoids a perverse outcome where a plant with two transmission restrictions is required to use periods within a transmission restriction to provide historical data. This would defeat exactly the purpose of this exception.

Whether one Generating Unit being restricted means that a CMU is restricted

20. A CMU may be comprised of several Generating Units. We considered whether if only one Unit was restricted it would mean the CMU was also restricted. We believe this to be the case. This aligns with the purpose of the Rule, which is to help determine whether a CMU is able to meet its obligation. Even if only part of a CMU is restricted or non-operational, it would impact the CMU’s ability to deliver.

Whether a Supplementary Balancing Reserve contract is a Transmission Restriction

21. A SBR contract is a bilateral agreement between the system operator and the Applicant. SHB’s contract contained provisions which explicitly precluded it from exporting electricity. We have concluded that a SBR contract should be interpreted as being a Transmission Restriction.

Whether a reduction in TEC falls under the definition of a Transmission Restriction

22. As SHB note in their appeal, Transmission Entry Capacity acts as a legal restriction on a plant’s ability to export to the network. If TEC were to be considered a Transmission Restriction for the purposes of 3.6.1(a)(iii) then all plants could fall within this exception with no obvious 24 month period to use to demonstrate historical performance. This would be an absurd result and in our view the Rule is not intended to operate in this manner.
23. SHB argue that in light of this, the only sensible way to interpret the Rule is by considering the difference between a normal and abnormal level of TEC. SHB argue that a “normal” TEC would be reflective of a plant’s “normal ability to export onto the network”.

24. We do not believe it is possible to draw a bright line between a “normal” and “abnormal” level of TEC. A generators TEC will change over time as the commercial situation of the plant changes, and therefore a reduction in TEC would often amount to a “normal” state of affairs. It would also not be sensible for NGET to have to determine for each individual case whether the TEC of the plant represented a “normal” or “abnormal” level. Therefore, it is not possible to say that a reduced level of TEC is a “restriction” in the sense of the Rules and we believe NGET has not misinterpreted the definition of Transmission Restriction in this case.

Whether the exception under 3.6.1(a)(ii) applies for SHB

25. We have considered whether the exception in 3.6.1(a)(ii) applies to SHB as their SBR contract made the CMU non-operational for some of the 24 month period one month before the start of the Prequalification Window.

26. SHB was non-operational for the duration of their SBR contract from 1 October 2015 to 30 September 2017. Using Rule 3.6.1(a)(ii)(aa) we determine the correct 24 month period in which SHB is required to provide its highest historical outputs to be from 1 October 2013 to 30 September 2015. The historical Settlement Periods and capacity values submitted by SHB are the highest values within this range and therefore we determine that SHB has met the requirements of 3.6.1(a) and as a consequence EPSHBA should be prequalified for the 2018 T-4 Auction.

Grounds 2 and 3

27. As the arguments raised under these Grounds relate to the issue of the application of Rule 3.6.1, and as we have concluded that the requirements of this Rule have been met by SHB we do not intend to set out any response to Grounds 2 and 3.

Conclusion

28. NGET did not reach the correct reconsidered decision to reject EPSHBA for the 2018 T-4

Auction on the basis that they met the requirements of Rule 3.6.1(a).

Determination

29. 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 overturned. We direct the Delivery Body to register the CMU EPSHBA on the capacity market register as a Prequalified CMU for the 2018 T-4 Auction.

A handwritten signature in black ink, appearing to read 'Mark Copley', with a large, sweeping flourish at the end.

Mark Copley

For and on behalf of the Gas and Electricity Markets Authority

12 January 2018