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 SmartestEnergy Limited ("the appellant") against reconsidered decisions made by the EMR Delivery Body (National Grid Electricity Transmission plc ("NGET")) in respect of the following Capacity Market Unit (CMU):

    a) SE1831

2. This determination decision deals with two appeals made by the appellant and they are grouped into a single decision as they are substantively in respect of the same issue. They differ only in so far as concerns the auctions. The findings of this determination will apply in respect of each reconsidered decision made by NGET.

3. Pursuant to Regulation 71(3) of the Electricity Capacity Regulations 2014 (as amended) (the "Regulations"), where the Authority[1] receives an appeal notice that complies with Regulation 70, the Authority must review a reconsidered decision made by NGET.

Appeal Background

4. The appellant submitted an Application for Prequalification for the CMU in Paragraph 1 in respect of the 2018 T-1 and T-4 Auctions.

5. NGET issued both Notifications of Prequalification Decisions dated 10 November 2017 (the "Prequalification Decisions"). NGET rejected the CMU on the following grounds:

[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.

This application has not met the requirements of the Capacity Market rules due to the following reasons:

As per Capacity Market rule 3.2.5 (b), the Applicant Declaration must be signed by two directors of the Despatch Controller however the Delivery Body has only been able to verify Naoki Ito as a director from the two signatories, with the other unknown director not listed on Companies House.

Capacity Market rule 3.6.3(c)(ii)(bb) states an Existing Generating CMU that is Distribution Connected must be allowed to export onto the Distribution Network as part of their Connection Agreement. However the letter from the Distribution Network to the Legal Owner on the 27th September 2017 titled "C.H.P. Installation, Heathcoat Fabrics Ltd., Tiverton." includes that "due to network restrictions in your area this equipment is not permitted to export to the grid", as a result of this information, the CMU does not meet the requirements of this rule.

The Minimum Capacity Threshold, as defined in Capacity Market rule 1.2 as having the meaning given in Regulation 15, states that the Minimum Connection Capacity is 2MW. Whilst the CMU is stated as having a 2MW capacity, the 0.08MW auxiliary load figure provided takes the Connection Capacity to 1.992MW, which is below the threshold and therefore does not meet the requirements of the Regulation.

As per Capacity Market rule 3.5.2(ba)(i) an Applicant may only select "Estimate in good faith" as the calculation method for Connection Capacity if the Connection Agreement does not state a registered capacity or inverter rating. The Connection Agreement states Generation of 2026kW/per Unit therefore this, or Historic Performance should have been used.

Capacity Market rule 4.4.2(f) states, if the physically generated 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 greater than the Anticipated De-rated Capacity the Delivery Body must not Prequalify the CMU. The supplier letter values for the Settlement Periods do exceed the De-rated Capacity therefore CMU does not meet the requirements of the rule.

6. The appellant submitted a request for reconsideration of the Prequalification Decisions before the deadline of 20 November 2017.

7. NGET then issued Notices of Reconsidered Decisions on 1 December which accepted three parts of the dispute, and rejected two parts of the disputes on the following grounds:

"Dispute A - We have accepted this part of the dispute raised and acknowledge the power of attorney supplied in support of the signature provided on the certificate.

Dispute B - Capacity Market rule 3.6.3(c)(ii)(bb) states that an Existing Generating CMU that is Distribution Connected must provide a copy of the Connection Agreement confirming the capacity that the generating unit is permitted to export to the Distribution Network. However the letter from the Distribution Network to the Legal Owner on the 27th September 2017 includes that "due to network restrictions in your area this equipment is not permitted to export to the grid", as a result of this information, the CMU does not meet the requirements of this rule. We therefore can't accept this part of the dispute

Dispute C - We have accepted this part of the dispute and have amended the connection capacity for the agreement to that of what has been written into the connection agreement. The auxiliary load has not been deducted as you have already confirmed in the application that this is metered separately.

Dispute D - We have accepted this part of the dispute and as mentioned in Dispute C, we have amended the connection capacity to that which was written in the connection agreement.

Dispute E - The supplier letter provided to meet Capacity Market rule 4.4.2(f) is not greater than the anticipated de-rated capacity of the CMU and therefore does not meet the requirements of the rule. We therefore can't accept this part of the dispute."

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

The appellant's Grounds for appeal

9. The appellant disputes the decision on the following grounds. Ground 1 relates to the issue of exporting onto the network. Ground 2 relates to an alleged misinterpretation of the data on the EMR portal by the Delivery Body.

Ground 1A

10. The appellant disagrees with NGET's assertion that *"Capacity Market Rule 3.6.3 (c)(ii) (bb) states that an Existing Generating CMU that is Distribution Connected must be allowed to export onto the Distribution Network".* It argues that "*this rule does not explicitly state that an Existing Generating CMU that is Distribution Connected must be allowed to export onto the Distribution Network*", but only to *"confirm the Capacity that such Generating Unit is permitted to export to the Distribution Network".*

Ground 1B

11. The appellant also argues that it has met the definition of export, as the application meets the definition of an on-site consumer and the Electricity Capacity Regulations 2014 define "export" to mean *"the flow of electricity from a generating unit on to a distribution network or the GB transmission system, or to an on-site consumer."*

Ground 2

12. The appellant argues that the Delivery Body has misinterpreted the data on the Delivery Body portal for the following reasons:

    1) The data presented, when calculated as MW, demonstrates that generation output is greater than the Anticipated De-Rated Capacity.
    2) The Delivery Body requested on the EMR Portal that data be presented in MWh format.
    3) The Distribution Connection agreement confirms generation output of 2.026MW.
    4) Capacity Market Rule 4.4.2(f) does not apply.

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.

17. Regulation 2 defines the following terms:

"distribution CMU" means a generating CMU consisting of one or more generating units which export electricity to a distribution network;

"export" means the flow of electricity from a generating unit on to a distribution network or the GB transmission system, or to an on-site consumer;

Capacity Market Rules

18. Rule 3.6.1(b) sets out additional requirements an applicant must meet to verify their Previous Settlement Performance, and states that:

(b) Each Applicant for an Existing Generating CMU that is a Non-CMRS Distribution CMU using the Supplier Settlement Metering Configuration Solution must provide:

(i) a letter from the supplier or former supplier to such CMU confirming:

(aa) the CMU or Generating Unit's physically generated net output, or Metered Volume where applicable, in MWh to three decimal places; and

(bb) whether line loss adjustments have been applied; or

(ii) where the Applicant cannot meet the requirements of 3.6.1(b)(i), 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 the three Settlement Periods referred to in Rule 3.6.1(a) for each Generating Unit that comprises that CMU.

19. Rule 3.6.3(c) sets out the rules for Connection Agreements for Applicants for an Existing Generating CMU that is a Distribution CMU and states that :

> *(c) Each Applicant for an Existing Generating CMU that is a Distribution CMU must:*
>
> *(i) confirm that one or more Distribution Connection Agreements have been entered into which permit at least, in aggregate, the Anticipated De-rated Capacity of that CMU and any other CMU to which any such Distribution Connection Agreement applies to connect to the Distribution Network in the relevant Delivery Years; and*
>
> *(ii) provide a copy of the Distribution Connection Agreement for each Generating Unit comprised in the CMU with the Application or, where this is not possible, written confirmation from the Distribution Network Operator that such Distribution Connection Agreement is in effect and confirming:*
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> *(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.*

20. Rule 4.4.2 states that the Delivery Body must not Prequalify a CMU where:

(a) it is aware that the Application has not been completed or submitted in accordance with the Rules;

…

(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;

Our Findings

21. We have assessed each of the appellant's grounds for appeal, which are set out below.

Grounds 1A and 1B

22. The appellant's first ground of appeal is that it is not explicitly required to be allowed to export onto the Distribution Network, and that having the Distribution Network Operator confirm that the amount it is allowed to export onto the Distribution Network, which in this case is 0 MW, satisfies the requirements of Rule 3.6.3(c).

23. The appellant also states that the definition of export includes the transfer of electricity to an on-site consumer, and that it is not a requirement to transfer electricity to the distribution network.

24. The definition of "export" in Regulation 2(1) includes the flow of electricity to distribution and transmission networks, as well as to an on-site consumer. However, the definition for a "Distribution CMU" is more specific, and requires the export of electricity to the Distribution Network specifically.

25. Rule 3.6.3(c) applies only to an applicant that meets the definition of Distribution CMU, and based on the definition above, the applicant must therefore be able to confirm that it has consent to export greater than 0 MW to the Distribution Network.

26. The appellant has provided a Distribution Connection Agreement that states it is not permitted to export to the Distribution Network. Since the application was submitted on the basis of the applicant meeting the requirements of a Distribution CMU, it must fulfil the requirement to export electricity to the Distribution Network and submit the respective confirmation by the Distribution Network Operator. As stated above the appellant failed to provide this confirmation.

27. Without the ability to export to the Distribution Network, a CMU cannot meet the definition of a Distribution CMU under the Regulations. As the appellant does not meet the definition of Distribution CMU in Regulation 2(1), NGET was correct in preventing SE1831 from prequalifying.

Ground 2

28. The appellant argues that the Delivery Body misinterpreted the data on the EMR portal because it was requested to provide outputs in MWh; that its net outputs, when converted to MW, are each greater than its Anticipated De-rated Capacity; the Distribution Connection agreement confirms generation output of 2.026MW; and that given these facts, Rule 4.4.2(f) does not apply. It states that the data used to show the net outputs is contained within the supplier letter.

29. While the appellant submitted previous settlement period performance in MWh in accordance with the Rules, the supplier letter provided by the appellant shows the "metered volumes of the import settlement meter" instead of the physically generated net outputs, as required by 3.6.1(b)(i). It is therefore not possible to confirm from the supplier letter that the physically generated net outputs in the Settlement Periods nominated in the Application are greater than the Anticipated De-Rated Capacity.

30. While the Distribution Connection Agreement confirms an output of 2.062MW, this is insufficient to satisfy the requirements of Rule 3.6.1(b)(i) which require a letter from the

supplier or former supplier confirming the physically generated net outputs of the CMU or Generating Unit.

31. In consideration and pursuant to Rules 4.4.2(a), the Application was not complete or submitted in accordance with the Rules, and therefore NGET was correct in preventing SE1831 from prequalifying.

Conclusion

32. NGET reached the correct reconsidered decisions to not prequalify for the 2018 T-1 and T-4 Auctions on the basis that:

- the CMU did not meet the definition of a Distribution CMU; and

- the appellant did not provide a valid supplier letter which confirmed the physically generated net outputs in the Settlement Periods nominated in the Application, as required by Rule 3.6.1(b)(i)

Determination

33. For the reasons set out in this determination the Authority hereby determines pursuant to Regulation 71(3) that NGET's reconsidered decisions to reject the appellant for Prequalification be upheld in respect of CMU SE1831 for the 2018 T-1 and T-4 Auctions.

Julian Roberts

For and on behalf of the Gas and Electricity Markets Authority

12 January 2018