

## **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 the appeal made by Vattenfall Wind Power Ltd (Vattenfall) 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) for the 2018 T-4 auction:
  - a) UPB-01
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-4 Auction.
4. NGET then issued a Notification of Prequalification Decision dated 10 November 2017 (the “Prequalification Decision”). NGET Rejected the CMU on the following ground:

*Capacity Market Rule 3.12.4 states, each Application must be accompanied by a Certificate of Conduct. The Certificate of Conduct is defined in 1.2 as Exhibit C and must be signed by two directors. However, the Certificate of Conduct submitted for this Application was incorrectly titled "2017 Prequalification Certificate" rather than "2017 Certificate of Conduct".*

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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.

5. The appellant submitted a request for reconsideration for 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:

*The Rejection reason is maintained. The location specified by the postcode provided in your Application does not correspond with the location specified by the OS Grid Reference.*

*As in the Capacity Market Rule 3.4.3 states, each Applicant must: (a) specify in the Application: (i) the CMU to which the Application relates, 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 provided in your Application does not correspond with the location specified by the OS Grid Reference.*

*NB Exhibit C: Form of Certificate of Conduct, will be accepted.*

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

#### **Vattenfall's Grounds for appeal**

8. Vattenfall disputes the decision on the basis that NGET were incorrect to say that the location specified by the postcode did not correspond with the location specified by the OS Grid Reference.
9. Vattenfall note that there was no opportunity for them to provide evidence of this as NGET only raised the concern in the CMU's Application for the T-1 auction. They state, "*As the Delivery Body did not cite postcode and OS Grid Reference as a concern for the T-4 auction in the 'Prequalification Decision', we did not provide the same evidence again in our T-4 Auction request for a Tier 1 Review.*"

### **The Legislative Framework**

10. 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.
11. 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.
12. Regulations 68 to 72 set out the process and powers in relation to dispute resolution and appeals.

### **Capacity Market Rules**

13. *Rule 3.4.3(a) provides that: "Each Applicant must 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) and for Proven DSR CMUs, their CMU Component(s), or of the Electricity Interconnector);"*

### **Our Findings**

14. NGET did not inform Vattenfall of the full reasons for rejection of the T-4 Auction application in the Notification of Prequalification, which meant that Vattenfall was not aware that it had to provide additional information to NGET to clarify that the postcode and OS Grid Reference corresponded with each other.
15. We accept that Vattenfall would have been able to satisfactorily explain the difference in postcode and OS Grid Reference for this CMU in their Request for Reconsideration in respect of their 2018 T-1 Application. Therefore, we are satisfied that had full reasons been given by NGET in the Notice of Prequalification then Vattenfall would have also been able

to clarify the postcode and the OS Grid Reference in respect of their 2018 T-4 Application, and therefore would have been eligible to be Conditionally Prequalified

### **Conclusion**

16. NGET did not inform Vattenfall of the full reasons for their decision to reject them for prequalification in the Notification of Prequalification. Vattenfall was therefore not able to provide appropriate representations when it made its Request for Reconsideration, which, had Vattenfall done so, we are satisfied would have clarified the issue. Consequently, the basis of NGET's reconsidered decision to reject Vattenfall for the T-4 Auction was incorrect. The CMU should therefore be Conditionally Prequalified for the 2018 T-4 Auction.

### **Determination**

17. 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 in respect UPB-01. We direct the Delivery Body to register the CMU UPB-01 on the capacity market register as a Conditionally Prequalified CMU for the 2018 T-4 Auction.



Julian Roberts

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

12 January 2018