

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 Innogy Renewables UK Limited (Innogy) against a reconsidered decision made by the EMR Delivery Body (National Grid Electricity Transmission plc (NGET)) in respect of the following Capacity Market Unit (CMU):
 - a) INON01
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. The CMU was initially conditionally prequalified following a Tier 1 review. Subsequently, NGET issued an updated Notification of Prequalification Decision for the CMU listed in Paragraph 1, dated 11 December 2017 (the “Prequalification Decision”). NGET rejected the CMU on the following grounds:

11th December 2017 - The Prequalification status of this application has been set to Rejected. The Delivery Body has become aware that the CMU has attempted to prequalify as Hydro plant, but is in fact a Wind Farm. Wind Farms are not currently

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.

in the scope of the Capacity Market rules.

Therefore, as per rule 4.4.3A, Following the Prequalification Results Day but prior to the commencement of the first Bidding Window for the relevant Capacity Auction, where the Delivery Body becomes aware or reasonably believes that any information or declaration submitted in or with an Application in respect of a Prequalified CMU did not comply with the requirements in Rule 3.12.1 or that any declaration submitted under Rule 4.7 is false or misleading, the Delivery Body must:

- (a) notify the relevant Applicant as soon as reasonably practicable that the CMU is no longer Prequalified; and*
- (b) send a copy of that notice to the Authority.*

Please accept this revised Prequalification Results letter as your notification from the Delivery Body. We will send the same to the Authority shortly. Please note that this is a Disputable Decision under Regulation 69 of the The Electricity Capacity Regulations 2014 (as amended) (“the Regulations”). You have 5 working days from the issue of this notice to raise a Tier 1 Dispute to the Delivery Body.

5. The appellant subsequently submitted a request for reconsideration of the Prequalification Decision.
6. Following a Tier 1 review, NGET issued a letter to the appellant on 4 January 2018 which rejected the dispute on the following grounds:

[t]he Delivery Body became aware that the CMU had attempted to Prequalify as a Hydro plant, but is in fact a Wind Farm which contravenes Rule 3.12.1. Wind Farms are not currently in the scope of the Capacity Market Rules and therefore, the decision to change the Prequalification status of the application to Rejected pursuant to Rule 4.4.3A is upheld.

7. The appellant then submitted an appeal notice to the Authority on 11 January 2018 under regulation 70 of the Regulations.

Innogy's Grounds for appeal

8. Innogy disputes the decision on the following grounds.

Ground 1

9. The appellant's first ground of appeal is their claim that the CMU is compliant with the eligibility criteria set out in Chapter 3 of the Regulations. They add that they are "not aware of any regulation which state that only those technologies listed in Schedule 3 of the Rules are eligible to participate in the Capacity Market". Further, the appellant argues that there is an oversight in the Rules. The oversight relates to their opinion that "Schedule 3 is not comprehensive in listing all possible technologies and associated fuels" which could provide capacity.

Ground 2

10. The appellant's second ground of appeal is their claim that the true and correct technology of the CMU was declared in the Application and, as a consequence, they have complied with Capacity Market Rule² 3.12.1.
11. Innogy claim the true and correct technology of the CMU was declared on the application. The appellant claims it was suggested, during the aforementioned surgery with the Delivery Body, that they use a manual workaround in order to allow them to take the prequalification Application further, which they did. The manual workaround was to tick an alternative technology option on the Application, as 'onshore wind farm' was not an option, and submit an accompanying cover letter to explain the action taken. Innogy

² Hereinafter referred to as "Rule"

submitted a cover letter as part of their Application. The appellant claims this letter “clearly declared that the CMU is a wind farm”.

Ground 3

12. The appellant’s third ground of appeal asserts that Capacity Market State Aid Decision ‘SA.35980 (2014/N-2) “makes it clear that wind generation not in receipt of other support should be eligible to enter the Capacity Market auction”. The appellant quotes from the State Aid Decision:

“(145) First, the notified measure is a market-wide, technology-neutral capacity mechanism where all eligible capacity providers compete in a single capacity auction to discover the lowest sustainable price at which the necessary capacity can be brought forward.”

The Legislative Framework

13. 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.
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. Further, Regulation 14(2)(a) states that a CMU has prequalified if the Delivery Body, under the Rules, has determined that it has prequalified.

(2) A CMU has prequalified for a capacity auction if, by 11 working days before the start of the capacity auction--

(a) the Delivery Body has determined under capacity market rules, or under Chapter 1 of Part 10 (dispute resolution and appeals), that the CMU has prequalified

16. Regulations 68 to 72 set out the process and powers in relation to dispute resolution and appeals.
17. Regulation 87 sets out transitory powers in relation to the first T-4 Auction only.
18. In particular, Regulation 87(3)(b) sets out the requirement for the treatment of a CMU which is not within a generating technology class, at the application stage.

(3) In relation to the first T-4 auction, the Secretary of State may direct the Delivery Body for the purposes of capacity market rules about prequalification—

(b) to treat a CMU in respect of which a prequalification application is made, and which is not within a generating technology class specified in capacity market rules, as if that CMU were within such generating technology class as the Secretary of State directs for the purpose of determining its de-rated capacity.

Capacity Market Rules

19. Rule 1.2 defines 'Generating Technology Class' as meaning:

"a class of Generating Unit, defined by the technology used to generate electricity, for which the Secretary of State requires the Delivery Body to publish a De-Rating Factor, identified in the list attached as Schedule 3"

20. Rule 3.4.5(b) states that each Application must specify:

(b) in the case of a Generating CMU, the Generating Technology Class to which each Generating Unit that comprises such a CMU belongs"

21. Rule 3.12.1 requires that a person submitting an Application ensures all information submitted and declarations made in the Application are true and correct.

“A person submitting an Application or an Opt-out Notification must ensure and confirm in the Application or the Opt-out Notification that:

(a) in all material respects, the Application or Opt-out Notification and, in the case of an Application, all Additional Information submitted by the Applicant; and

(b) in all respects, each of the specific declarations referred to in Rules 3.4 to 3.11 (where relevant),

is true and correct (or, to the extent that the Additional Information is a copy document, that it is a true and correct copy) and that the Application and Additional Information has been authorised by the board of directors of the Applicant or the person submitting the Opt-out Notification (as applicable).”

22. Rule 4.1.1. states that:

The Rules govern the process by which the Delivery Body determines whether to prequalify a CMU on the basis of an Application received pursuant to the Rules in Chapter 3.

23. Rule 4.4.3A states that :

Following the Prequalification Results Day but prior to the commencement of the first Bidding Window for the relevant Capacity Auction, where the Delivery Body becomes aware or reasonably believes that any information or declaration submitted in or with an Application in respect of a Prequalified CMU did not comply with the requirements in Rule 3.12.1 or that any declaration submitted under Rule 4.7 is false or misleading, the Delivery Body must:

- (a) notify the relevant Applicant as soon as reasonably practicable that the CMU is no longer Prequalified; and*
- (b) send a copy of that notice to the Authority.*

Our Findings

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

Ground 1

25. Innogy assert that the CMU is compliant with the eligibility criteria set out in Chapter 3 of the Regulations. They add that they are not aware of any regulation which state that only those technologies listed in Schedule 3 of the Rules are eligible to participate in the Capacity Market.
26. As stated in Paragraph 14 Regulation 22(a) specifies that each Application for prequalification must be determined in accordance with the Capacity Market Rules.
27. Rule 3.4.5(b) requires that, in the case of a Generating CMU, each Application must specify the Generating Technology Class to which each Generating Unit that comprises such a CMU belongs. The class of Generating Unit are set out in Schedule 3 of the Rules. Wind farms are not listed as a technology type in Schedule 3.
28. Innogy also state there is an oversight in the Rules in that Schedule 3 is not comprehensive in listing all possible technologies and associated fuels which could provide capacity.
29. Regulation 87(3)(b) details a provision of how the Delivery Body should treat a CMU in respect of which a prequalification application is made, and which is not within a Generating Technology Class specified in Capacity Market Rules, if directed by the Secretary of State to do so. However, it is important to note that this Regulation was only applicable for the first T-4 Capacity Market auction, held in 2014, and so cannot be enacted for the purposes of this appeal. It is reasonable therefore to conclude that as no additional

technology classes were added to the Schedule during that year, the list of eligible technology classes is limited to those listed in Schedule 3 of the Rules.

Ground 2

30. Innogy state that they have complied with Rule 3.12.1. They are of the opinion that the true and correct technology of the CMU was declared in the Application.
31. Rule 3.12.1 requires that an Application, in all material respects, including any of the declarations specified in Rules 3.4 to 3.11, is true and correct. On the Application submitted by Innogy, the unit was identified as a hydro unit for both its technology class and primary fuel type. The true and correct technology of this CMU is not hydro but, in fact, an onshore wind farm, as the appellant has acknowledged.
32. The Authority acknowledges that the appellant provided an explanation in a cover letter submitted as part of the Application which clarified the unit was an onshore wind farm and that hydro was selected purely for the purposes of completing and submitting the Application. Nonetheless, this does not change the fact that the declaration made on the Application was not in line with the Rules (as set out in Ground 1), which requires that it includes the technology classes in Schedule 3.
33. As such, the Application was not submitted in accordance with Rule 3.12.1. Therefore, NGET was correct in applying Rule 4.4.3A to prevent CMU INON01 from prequalifying.

Ground 3

34. The appellant's third ground of appeal is that Capacity Market State Aid Decision 'SA.35980 (2014/N-2) "makes it clear that wind generation not in receipt of other support should be eligible to enter the Capacity Market auction".
35. As stated in Paragraph 14, Regulation 22(a) specifies that each Application for prequalification must be determined in accordance with the Capacity Market Rules.

Additionally, Rule 4.1.1. states that “The Rules govern the process by which the Delivery Body determines whether to prequalify a CMU on the basis of an Application received pursuant to the Rules in Chapter 3.” We consider that the Delivery Body was correct not to consider wider issues, including the State Aid Decision.

36. We are satisfied that NGET discharged this requirement correctly and that the correct process has been followed and the correct conclusion has been reached.

Conclusion

37. NGET reached the correct reconsidered decision to not prequalify INON01 for the T-4 Auction on the basis that it is not a technology class contained in Schedule 3 of the Rules and it failed to comply with Rule 3.12.1. In accordance with Rule 4.4.3A, NGET became aware that information submitted in the Application did not comply with Rule 3.12.1 and subsequently notified the Applicant that the CMU is no longer Prequalified.

Determination

38. 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 listed in paragraph 1 for the T-4 Auction.



Mark Copley

For and on behalf of the Gas and Electricity Markets Authority

15 February 2018