

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 Vattenfall Wind Power Ltd (Vattenfall) 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) URB-01
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 then 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(s):

In accordance with Capacity Market Rule 3.12.4, each Application must be accompanied by a Certificate of Conduct signed by two directors of the Applicant. The Certificate of Conduct is defined in Capacity Market Rule 1.2 as Exhibit C and must be signed by two directors. Specifically the title of the certificate stated "2017 Prequalification Certificate" rather than the correct heading of "2017 Certificate of Conduct".

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.

Capacity Market Rule 3.4.3 states, each Applicant must specify in the Application: the CMU to which the Application relates, a description of CMU, the full postal address with postcode, correctly formatted. However the postcode information is missing from this Application.

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

Capacity Market Rule 3.4.3 states, each Applicant must specify in the Application: the CMU to which the Application relates, a description of CMU, the full postal address with postcode, correctly formatted. However the postcode information is missing from this Application.

7. NGET accepted the other ground made by the appellant relating to their Certificate of Conduct.
8. 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

9. Vattenfall disputes the decision on the following grounds.

Ground 1

10. Vattenfall considers that NGET was wrong to reject the application on the basis of missing a postcode, as the proposed generator was located on a remote site for which no postcode existed.

Ground 2

11. Vattenfall argues that a legitimate expectation had been created as NGET had advised them in a Prequalification Surgery on 8 September that *“as the battery is located in a remote location without a specific post code, that no post code should be used”*.

The Legislative Framework

12. 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.
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 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);”*

16. Rule 3.3.6 provides that:

For each CMU which an Applicant wishes to Prequalify, and for each Capacity Auction, the Applicant must:

(a) comply with the requirements of the Application Process;

17. Rule 4.4.2 provides that:

Subject to Rule 3.8.1A(c)(ii), 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;

(b) the required Additional Information is missing;

Our Findings

18. We have assessed Vattenfall's grounds for appeal, which are set out below.

Ground 1

19. The appellant accepts that no postcode was submitted with the application. However, it states that it was impossible for the applicant to provide this information as it had no postcode. We accept that the location, as evidenced by the address, OS Grid Reference and planning permission, did not have an associated postcode.
20. Rule 3.4.3(a) requires that each applicant must provide "the full postal address including postcode" for a CMU. The framing of this requirement does not provide additional guidance for applicants who do not have a postcode at the time of application.
21. The purpose of Rule 3.4.3(a) is to enable NGET to identify a description of the CMU, including the location of the site. An accurate location is necessary to allow the Delivery Body to confirm that the Applicant has all relevant planning consents.

22. As the site can be located accurately through the rest of the address, and this matches with the planning consent submitted in the Application, we consider that URB-01 has met the requirements of Rule 3.4.3(a). Therefore, NGET was incorrect in rejecting URB-01 from prequalifying.

Ground 2

23. Given our conclusion in respect of Ground 1, as set out above, we do not consider it necessary to set out any response to this Ground.

Conclusion

24. NGET did not reach the correct reconsidered decision to reject URB-01 for the 2018 T-4 Auction as, contrary to the reasons in NGET's decision, the application met the requirements of Rule 3.4.3(a).

Determination

25. 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 URB-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