

**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 Conrad (Amphill) Limited (“Conrad”) against reconsidered decision made by the EMR Delivery Body (National Grid Electricity Transmission plc (“NGET”)) in respect of the following Capacity Market Unit (CMU):
  - a) CDAMP1
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. Conrad submitted an Application for Prequalification for the CMUs in Paragraph 1 in respect of the 2019 T-1 and T-4 Auctions.
4. For the CMU listed in Paragraph 1, NGET issued a Notification of Prequalification Decision dated 29 October 2018 (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):*

*Capacity Market Rule 3.7.3 (b) requires all New Build Generating CMUs that are Distribution connected to confirm that one or more Grid Connections Agreements*

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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.

*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 for the relevant Delivery Years, and that the Applicant provides a copy of the Grid Connection Agreement, or connection offer (with evidence of acceptance) for each Generating Unit comprised in the CMU with the Application, or if not possible, a written confirmation from the Network Operator to confirm the registered capacity of the Generating Unit and that the capacity of the Generating Unit is permitted to export to the Distribution Network.*

*The Distribution Connection Agreement / connection offer provided for at least one Generating Unit will not come into effect before the beginning of the relevant Delivery Year, therefore does not meet the requirements of the rule.*

*If this application had met the requirements for Prequalification, there would be credit cover requirement (which has been stated in the T-4 application letter for this CMU) for the following reasons:*

*Financial Commitment Milestone: As per Capacity Market Rule 6.6, the Financial Commitment Milestone has not been achieved;*

*Deferred Planning Consents: As per Capacity Market Rule 3.7.1(a)(i), Planning Consents have been deferred.*

5. Conrad submitted a Request for Reconsideration of the Prequalification Decision.
6. NGET issued a Notice of Reconsidered Decision (“Reconsidered Decision”) on 16 November 2018 which rejected the dispute on the following grounds:

*The Delivery Body has reviewed the request for a Reconsidered Decision for the Prequalification result however this has not been accepted. Capacity Market Rule*

*3.7.3 (b) requires all New Build Generating CMUs that are Distribution connected to confirm that one or more Grid Connections 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 for the relevant Delivery Years, and that the Applicant provides a copy of the Grid Connection Agreement, or connection offer (with evidence of acceptance) for each Generating Unit comprised in the CMU with the Application, or if not possible, a written confirmation from the Network Operator to confirm the registered capacity of the Generating Unit and that the capacity of the Generating Unit is permitted to export to the Distribution Network.*

*The Distribution Connection Agreement / connection offer provided for at least one Generating Unit will not come into effect before the beginning of the relevant Delivery Year, therefore does not meet the requirements of the rule.*

*The Applicant has failed to sufficiently address this failure reason in the request to review the Prequalification Decision, therefore this requirement is still outstanding and the status of the Application under the Reconsidered Decision remains as Rejected.*

7. Conrad then submitted an Appeal Notice to the Authority on 23 November 2018 under Regulation 70 of the Regulations.

#### **Conrad's Grounds for appeal**

8. Conrad disputes NGET's Reconsidered Decision on the following grounds.
9. Conrad outlined that its original Application for Prequalification fulfilled the requirements of Rule 3.7.3(b) because the submission of the connection agreement stated the completion date as "on or before 30<sup>th</sup> September 2020", thereby not excluding an earlier

date, whilst other supporting evidence showed the completion date of construction would be before the commencement of the relevant Delivery Year.

10. Conrad provided NGET, alongside the Request for a Reconsideration of the Prequalification Decision, subsequent email correspondence dated 2 November 2018 from the Distribution Network Operator (DNO) (UK Power Networks) that stated the connection would come into effect before the relevant Delivery Year.

### **The Legislative Framework**

11. 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 (“Rules”) were made by the Secretary of State pursuant to powers set out in section 34 of the Energy Act 2013.

### **The Regulations**

12. 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 Rules.
13. Regulations 68 to 72 set out the process and powers in relation to dispute resolution and appeals.
14. 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.*

### **Capacity Market Rules**

15. Rule 3.7.3 (b) explains the requirements for New Build CMUs to submit connection agreements showing they will be connected in the relevant Delivery Year as part of their Prequalification Application. It states that:

- (b) *Subject to Rule 3.7.3(c) below, Applicants for a New Build CMU that is, or will be, directly connected to a Distribution Network must:*
  - (i) *confirm that there are one or more Distribution Connection Agreements or accepted connection offers which permit at least, in aggregate, the Anticipated De-rated Capacity of that CMU and any other CMUs to which the Distribution Connection Agreement applies to connect to the Distribution Network in the relevant Delivery Years, and*
  - (ii) *provide with the Application a copy of any such Distribution Connection Agreement or connection offer (with evidence of acceptance), or where this is not possible, written confirmation from the Distribution Network Operator that such Distribution Connection Agreement or connection offer is in effect and confirming:*
    - (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.*

16. Rule 4.4.2 dictates the circumstances in which NGET must not Prequalify a CMU. In particular, Rule 4.4.2(b) states:

*Subject to Rule 3.8.1A(c)(ii)<sup>2</sup>, the Delivery Body must not Prequalify a CMU where:*

*(b) the required Additional Information is missing*

17. The “Additional Information” referred to in Rule 4.4.2(b) is defined in Rule 1.2 to mean the additional information to be submitted with an Application, which in this case, is the information as is required by Rule 3.7.3(b), i.e. the letter from the DNO as set out in Paragraph 10 above.

### **Our Findings**

18. We have assessed Conrad’s grounds for appeal.
19. Conrad failed to provide evidence that confirmed the connection would come into effect before the beginning of the relevant Delivery Year in its Application for Prequalification, as required by Rule 3.7.3(b). Rule 4.4.2 dictates that NGET must not Prequalify a CMU where this required information is missing.
20. Conrad argues that submitting this evidence as part of its Request for Reconsideration of the Prequalification Decision should satisfy NGET. However, Regulation 69(5) prevents NGET, when making its Reconsidered Decision, from taking into account information or evidence provided by the applicant after the closing date for submission of applications where applicants were required to provide that information at Prequalification.

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<sup>2</sup> Rule 3.8.1A relates to the additional information for a Refurbishing CMU.

21. In accordance with Rules 3.7.3(b) and 4.4.2, Conrad needed to provide evidence that confirmed the connection would come into effect before the beginning of the relevant Delivery Year as part of its Application for Prequalification, but failed to do so. Regulation 69(5) prevents NGET from considering this evidence as part of the Reconsidered Decision.
22. As set out in Regulation 70, the Authority's role in determining Appeals is to assess NGET's Prequalification and Reconsidered Decisions on the basis of the information that NGET had when making the decision. Conrad failed to provide NGET with evidence that confirmed the connection would come into effect before the beginning of the relevant Delivery Year as part of its Application for Prequalification and the Authority therefore holds that NGET was correct in rejecting CDAMP1 from Prequalifying on the basis of Rule 3.7.3 and Rule 4.4.2.
23. As a result of Conrad failing to provide the evidence of acceptance of a connection offer at Prequalification, NGET was prevented by Regulation 69(5) from considering the new evidence submitted by Conrad as part of its Request for Reconsideration. The Authority therefore holds that NGET was correct in its Reconsidered Decisions to uphold its Prequalification Decision.

### **Conclusion**

24. NGET reached the correct Reconsidered Decision to not Prequalify CDAMP1 for the T-1 Auction on the basis that Conrad failed to provide evidence that confirmed the connection would come into effect before the beginning of the relevant Delivery Year in its Application for Prequalification, as required by Rule 3.7.3(b). Accordingly, under Rule 4.4.2, NGET must not Prequalify a CMU where this required Additional Information is missing.

**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 upheld in respect of the CMU listed in Paragraph 1 for the T-1 Auction.

A handwritten signature in black ink, appearing to be 'JP', written in a cursive style.

Johannes Pelkonen

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

07 February 2019