

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 Greenspan Contractors Limited (“Greenspan”) against the reconsidered decisions made by the EMR Delivery Body (National Grid Electricity Transmission plc (“NGET”)) in respect of the following Capacity Market CMU:

a) ABCN02

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. Greenspan submitted an Application for Prequalification for the CMU in Paragraph 1 in respect of the 2019 T-1 and T-4 Auctions.
4. For the CMU listed in Paragraph 1, NGET issued Notifications of Prequalification Decisions dated 29 October 2018 (the “Prequalification Decisions”). NGET rejected the CMU on the following grounds:

Capacity Market Rule 3.6.1 (b) requires the Applicant for an Existing Generating CMU that is a Non-CMRS Distribution CMU, using the Supplier Settlement Metering Configuration Solution, must provide either a letter from the supplier or former

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.

supplier to each CMU confirming the physically generated net output or Metered Volume where applicable, in MWh to three decimal places, and confirmation if line losses have been applied, for the three Settlement Periods required as per Capacity Market Rule 3.6.1 (a). If this is not possible, the Applicant can provide evidence the CMU or Generating Unit delivered Metered Volume (in MWh to three decimal places) in discharge of an obligation to delivering a balancing service confirming the CMU or Generating Unit's physically generated net output. This Application has failed as no evidence has been provided for this CMU.

5. Greenspan submitted a Request for Reconsideration of the Prequalification Decisions.
6. NGET issued Notices of Reconsidered Decisions ("Reconsidered Decision") on 16 November which rejected the dispute on the following grounds:

Capacity Market Rule 3.6.1 (c) requires the Applicant for an Existing Generating CMU that is a Non-CMRS Distribution CMU, using the Balancing Services Metering Configuration or Bespoke Metering Configuration Solution, must provide evidence of the historic output, as per sections 3.6.1 (c) (i), (ii) or (iii). 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. Greenspan then submitted an Appeal Notice to the Authority on 23 November 2018 under Regulation 70 of the Regulations.

Greenspan's Grounds for appeal

8. Greenspan disputes the decision on the following grounds.

Ground 1

9. Greenspan claims that the CMU ABCN02 does not use a Balancing Services Metering Configuration Solution or a Bespoke Metering Configuration Solution. It uses a Supplier Settlement Metering Configuration Solution and Rule 3.6.1(c) therefore does not apply to the CMU. NGET should have assessed the application against the requirements of 3.6.1(b) and, as a result, should have confirmed the CMU had been Accepted for Prequalification.

Ground 2

10. Greenspan argues that NGET's grounds for refusal in the Reconsidered Decision are "ultra vires" because Rule 3.6.1(c) was not stated in the Prequalification Decision and it is inappropriate to introduce a new reason for refusal in the Reconsidered Decision.

Ground 3

11. Greenspan claims that its Application for Prequalification provided evidence it had delivered Metered Volume in discharge of an obligation to deliver a balancing service (Renewable Balancing Reserve) to its customer, Orsted (UK) Limited, and that this met the requirements of Rule 3.6.1(b)(ii).
12. Greenspan also argued that it is not obligatory to use the Balancing Services Metering Configuration Solution when providing balancing services and that it is possible to provide balancing services using the Supplier Settlement Metering Configuration Solution.
13. NGET did not contest Greenspan's appeal argument that the CMU met the requirements of Rule 3.6.1(b). Therefore, Greenspan considers NGET agreed the rule had been met and believes that NGET should therefore have overturned its original Prequalification Decision and confirmed Prequalification of the CMU.

The Legislative Framework

14. The Electricity Capacity Regulations 2014 (“the Regulations”) 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

15. 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.
16. Regulations 68 to 72 set out the process and powers in relation to dispute resolution and appeals.
17. 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

18. Rule 3.6.1(b) specifies the Previous Settlement Period performance requirements for Existing Non-CMRS Distribution CMUs using the Supplier Settlement Metering Configuration Solution and states that:

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 3.6.1(c) specifies the Previous Settlement Period performance requirements for Existing Non-CMRS Distribution CMUs using the Balancing Services Metering Configuration Solution or Bespoke Metering Configuration Solution and states that:

Each Applicant for an Existing Generating CMU that is a Non-CMRS Distribution CMU using the Balancing Services Metering Configuration Solution or Bespoke Metering Configuration Solution must provide either in relation to the CMU or to each Generating Unit comprising the Generating CMU:

- (i) a letter from the supplier or former supplier to such CMU confirming the CMU or Generating Unit's physically generated net output in MWh to three decimal places; or*
- (ii) 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 MWh to three decimal places;*
- (iii) and if line loss adjustments have been applied, either:*
- (aa) a letter from the Distribution Network Operator confirming the Line Loss Factor values in the three Settlement Periods referred to in Rule 3.6.1(a); or*
- (bb) where applicable, a letter from the owner of the Unlicensed Network confirming the electrical loss factor values in the three Settlement Periods referred to in Rule 3.6.1(a) and the methodology used to calculate such values.*

Our Findings

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

Ground 1

21. Greenspan argued that the CMU does not use a Balancing Services Metering Configuration Solution or a Bespoke Metering Configuration Solution, but instead uses a Supplier Settlement Metering Configuration Solution. Hence, Rule 3.6.1(c) does not apply to the CMU in question.
22. The type of metering configuration used by any CMU can be evidenced on both the Application for Prequalification and on the Capacity Market Register. In this case, these both show that the CMU ABCN02 uses the Supplier Settlement Metering Configuration Solution. Therefore, NGET incorrectly applied Rule 3.6.1(c) to reject this CMU from Prequalifying.

Ground 2

23. Greenspan argued that NGET's grounds for refusal in the Reconsidered Decision are "ultra vires" because Rule 3.6.1(c) was not stated in the Prequalification Decision and it is inappropriate to introduce a new reason for refusal in the Reconsidered Decision.
24. NGET misinterpreted the additional representations made by Greenspan in its request for a Reconsidered Decision that it provided a balancing service to its customer Orsted (UK) Limited, and concluded that Greenspan uses either a Balancing Services Metering Configuration Solution or a Bespoke Metering Configuration Solution.
25. NGET did not change the justification for rejection from its Prequalification Decision to its Reconsidered Decision; this was that the CMU had not met the historic performance requirements in accordance with Rule 3.6.1. However, NGET did change the reference in the Rules, so that it is consistent with the type of metering it concluded the CMU uses as explained in Paragraph 24.
26. For this reason, NGET referenced that the requirements of Rule 3.6.1(c) had not been met, which applies to Non-CMRS Distribution CMUs using either a Balancing Services Metering Configuration Solution or a Bespoke Metering Configuration Solution.
27. Since the CMU uses a Supplier Settlement Metering Configuration Solution, NGET incorrectly applied Rule 3.6.1(c) to reject this CMU from Prequalifying, and it should have assessed it against the requirements of 3.6.1(b). We do not agree with Greenspan's view that NGET acted ultra vires. Notwithstanding NGET's application of the incorrect rules at Prequalification, it validly exercised its statutory powers. However, NGET's failure to reference the correct rule in its Prequalification Decision may have resulted in a lost opportunity for Greenspan to put information to NGET with their request for a Reconsidered Decision and, as a result, could have constituted a lack of procedural fairness from NGET. This would, nevertheless, not have changed the final outcome because even if NGET had assessed the CMU against Rule 3.6.1(b), the operation of Regulation 69(5) does

not allow any further information or evidence which should have been submitted at Prequalification to be taken into account when NGET reconsiders a Prequalification decision.

Ground 3

28. Greenspan argued that it provided evidence it had delivered Metered Volume in delivering a balancing service to its customer, Orsted (UK) Limited. It also claimed that this met the requirements of Rule 3.6.1(b) and the CMU should have been Prequalified.
29. Greenspan also noted that since NGET did not contest its appeal argument that the provision of a balancing service to its customer – i.e. not an officially defined balancing service under the Rules – should be accepted in accordance with Rule 3.6.1(b)(ii), it deemed that the CMU had met the necessary requirements.
30. Rule 3.6.1(b) requires the provision of the CMU or Generating Unit’s physically generated net output or Metered Volume in relation to Previous Settlement Period performance. Greenspan did not provide this information in response to this specific requirement as part of the Application for Prequalification, but did provide it as part of the Request for Reconsideration.
31. Rule 3.6.1(b) specifically requires the physically generated net output or Metered Volume to be provided by the applicant as part of the Application for Prequalification and Regulation 69(5) does not allow any further information or evidence, which should have been submitted at Prequalification, to be taken into account when NGET reconsiders a Prequalification decision. We therefore do not consider Greenspan to have supplied the relevant information as part of the original application.
32. NGET was unable to verify Historic Output as required under CM Rule 3.6.1(a) and 3.6.1(b), since not all required information was provided in the Application for Prequalification. For this reason, NGET correctly rejected the CMU listed in Paragraph 1 to Prequalify as

specified in Rule 4.4.2(a).

33. Greenspan would have failed to Prequalify due to the unfulfilled requirement of Rule 3.6.1(b) even if it had submitted the metering data it provided with its Request for Reconsideration as part of its original Application for Prequalification.. The submitted evidence would not have enabled NGET to verify the historic performance of the CMU, as Greenspan did not provide a letter from a supplier or a former supplier, or other equivalent evidence of delivering a balancing service. Without verification of the physically generated net output or Metered Volume, the requirements of Rule 3.6.1(b) would not be met and the CMU ABCN02 should not be Prequalified.
34. Greenspan in its Request for Reconsideration argued that the term “*balancing service*” does not have capitalised initials and that means that Rule 3.6.1(b)(ii) does not refer to defined term Balancing Service as defined in Rule 1.2.1. Greenspan claimed that as a result it is allowed to submit metering data from providing a balancing service to its customer Orsted (UK) Limited.
35. Rule 1.2.1 states that the term balancing service has the meaning given to it in NGET’s Transmission Licence. Specifically, it means “*ancillary services, offers and bids made in the balancing mechanism, and other services available to the licensee which serve to assist the licensee in co-ordinating and directing the flow of electricity onto and over the national electricity transmission system ... but shall not include anything provided by another transmission licensee pursuant to STC*”.
36. With its Request for Reconsideration, Greenspan submitted metering data that originated from a contractual arrangement it has with its customer Orsted (UK) Limited rather than a balancing service contract with the System Operator (NGET). Such an arrangement is not within the definition of a balancing service under the Rules. Greenspan misinterpreted the term balancing service in Rule 3.6.1(b)(ii) and it would be improper for NGET to determine that the requirements of the aforementioned Rule had been met.

Conclusion

37. NGET reached the correct Reconsidered Decision to not Prequalify the CMU listed in Paragraph 1 for the T-4 Auction and T-1 Auctions on the basis that
- a) the evidence for the physically generated net output or Metered Volume required under Rule 3.6.1(b) was not provided with the Application for Prequalification. In accordance with Regulation 69(5), when making a Reconsidered Decision, the NGET must not take in consideration any information or evidence which Greenspan was required to and failed to produce before the decision was taken;
 - b) verification of Previous Settlement Period performance required under Rule 3.6.1(b) was not provided in the Application for Prequalification, and when provided with its Request for Reconsideration, it was submitted in a format that would not allow NGET to verify the CMU's Historic Output.

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 Greenspan for Prequalification be upheld in respect of the CMU listed in Paragraph 1 for the T-4 Auction and T-1 Auction.



Johannes Pelkonen

For and on behalf of the Gas and Electricity Markets Authority

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