

**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 Urban Reserve Limited (“Urban”) against the reconsidered decisions made by the EMR Delivery Body (National Grid Electricity Transmission plc (“NGET”)) in respect of the following Capacity Market Units (“CMUs”):

a) BPUR03

b) BPUR06

c) CENUR1

d) CPUR02

e) LPUR08

f) PILUR9

g) PPUR01

h) RPUR04

i) SPUR05

j) WPUR07

2. This decision deals with all of the appeals listed above as they are substantively in respect of the same issue and differ only in so far as concerns the identity of the respective CMUs.

3. 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**

4. The appellant submitted an Application for Prequalification for the CMUs in Paragraph 1 in respect of the 2019 T-4 Auction.
5. For each of the CMUs listed in Paragraph 1, NGET issued a Notification of Prequalification Decision dated 29 October 2018 (the “Prequalification Decision”). NGET rejected the CMUs on the following grounds:

*The Certificate of Conduct is required as per Capacity Market Rule 3.12.4. The Certificate of Conduct that you have submitted in your Application does not conform with the Certificate of Conduct as defined in Capacity Market Rule 1.2 as Exhibit C for the following reason: one/two directors who have signed the certificate cannot be verified against Companies House.*

*If this application had met the requirements for prequalification the credit cover requirement would have been £19030.00 as the CMU has yet to satisfy the following requirements:*

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

*Deferred Distribution Connection Agreement: As per Capacity Market Rule 3.7.3(c), Distribution Connection Agreement has been deferred;*

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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.

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

6. Urban submitted a Request for Reconsideration of the Prequalification Decisions.
7. For each of the CMUs listed in Paragraph 1, NGET issued a Notice of Reconsidered Decision (“Reconsidered Decision”) on 16 November 2018 rejecting the disputes on the following grounds:

*The Certificate of Conduct is required as per Capacity Market Rule 3.12.4. The Certificate of Conduct that you have submitted in your Application does not conform with the Certificate of Conduct as defined in Capacity Market Rule 1.2 as Exhibit C for the following reason: one/two directors who have signed the certificate cannot be verified against Companies House. 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.*

8. In addition to the grounds referred to in Paragraph 8, NGET rejected the dispute for CMU SPUR05 on the following ground:

*Capacity Market Rule 3.4.3 (a) (i) requires the Applicant to provide the full postal address and postcode for all Generating Units / CMU components. The postcode of at least one Generating Unit / CMU component in your Application is missing/invalid, therefore cannot be verified. The Applicant has failed to 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.*

9. Urban then submitted Appeal Notices for the CMUs listed in Paragraph 1 to the Authority on 22 November 2018 under Regulation 70 of the Regulations.

### **Urban's Grounds for appeal**

10. Urban disputes NGET's Reconsidered Decision on the basis that at the time it submitted its Request for Reconsideration all of the signatories were listed as directors on Companies House on the Certificate of Conduct (Exhibit C). Specifically, Urban contends that:

(i) *"On Exhibit [sic] A, as submitted with the prequalification application, Mark Tarry and Daniel Vagario were signatuores [sic]. As per NGET disputes guidance you may point to supporting evidence originally submitted elsewhere in the application. The original signed exhibits accompany this dispute application.*

(ii) *Richard Burrell was at the time of prequalification a director of the parent company (Aggregated Micro Power Holdings PLC) as evidenced by public record on companies house.*

(iii) *Richard Burrell was at the point of the Tier 1 dispute a director of Urban Reserve Limited."*

11. Urban submitted the same arguments above to support its grounds of appeal in respect of all the CMUs in Paragraph 1.

### **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 ("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 Rules.

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

16. Regulation 86 and Schedule 2 set out the provisions that apply to a document, which includes an application, notice, invoice or credit note:

*86. Schedule 2 (documents) has effect.*

*1. The provisions of this Schedule—*

- (a) apply to a document, which includes an application, notice, invoice or credit note; and*
- (b) are subject to any specific provisions in these Regulations or capacity market rules about—*
  - (i) a particular kind of document; or*
  - (ii) the provision of documents by or to a particular person or class of persons.*

*2. A document must be in writing and dated.*

## **Capacity Market Rules**

17. Rule 1.2 defines the Certificate of Conduct as follows:

***Certificate of Conduct*** means a certificate of conduct in the form set out in Exhibit C

18. 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);*

19. Rule 3.12.4 outlines that each Application must be accompanied by a Certificate of Conduct (Exhibit C) signed by two directors of the applicant:

*Each Application and each Opt-out Notification must be accompanied by a Certificate of Conduct signed by two directors of the Applicant or the person submitting the Opt-out Notification (as applicable).*

20. Rule 4.4.2(a) outlines that NGET must not Prequalify a CMU if the Application for Prequalification has not been submitted in accordance with the Rules:

*4.4.2 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.*

## **Our Findings**

21. Urban failed to accompany each Application for Prequalification with a Certificate of Conduct (Exhibit C) signed by two directors as required by Rule 3.12.4. Rule 4.4.2(a) dictates that NGET must not Prequalify a CMU where the Application for Prequalification has not been submitted in accordance with the Rules.
22. Urban's first ground of appeal is that, according to NGET's disputes guidance<sup>2</sup>, it is able to point to supporting evidence originally submitted elsewhere. It believes that as Exhibit A has been submitted with the correct signatories, NGET should be able to use Exhibit A to fulfil the requirements of Exhibit C.
23. However, Exhibits A and C attest to different types of declarations by the Applicant. Exhibit A requires confirmation that the company (and parent company) is solvent and would be able to meet its obligations under any capacity agreement. Exhibit C is a statement that the company has not committed any form of market manipulation or other criminal activity, thereby being precluded by misconduct from participating in the Capacity Market. Importantly both statements certify that the company is solvent, fit, and proper.
24. The Authority holds that the relevant information in a declaration is not the signature, but instead is the content of the form as validated through directors' signatures. We therefore, do not agree that the signatures in Exhibit A can be read across to validate Exhibit C.
25. Urban has also argued that at the time of the Request for Reconsideration the erroneous signatory on Exhibit C was listed as a director on Companies House.
26. The importance of the exhibit should be noted: the Prequalification Certificate and Certificate of Conduct provide vital information required for the purpose of verifying information within the Application for Prequalification. The requirement to date the director signatures is in place to verify, in conjunction with Companies House records, that

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<sup>2</sup> For NGET's disputes guidance v3.0 (November 2018) please see [here](#)

the relevant director held the position of required authority at the point of application and time of signing. Dating the signature provides validation and certification of the content by the person who signed with authority to do so, under Rule 3.12.3 and 3.13.4, on the date provided and for the relevant time period.

27. Regulation 69(5) prohibits 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 on or before the closing date. Richard Burrell was not listed as a director of Urban Reserve Limited at the date on the document. Regulation 69(5) prohibits this document from being amended to be in line with the status of Richard Burrell at the time of the Request for Reconsideration; this would constitute as submitting evidence after the closing date for the submission of applications. NGET is therefore, prevented from considering it as part of the Request for Reconsideration.
28. The Authority holds that NGET was correct in applying Rule 4.4.2, which prevented NGET from Prequalifying the CMUs mentioned in Paragraph 1. The Authority also holds that NGET was correct in its Reconsidered Decisions due to the restrictions imposed by Regulation 69(5).

### **Conclusion**

29. NGET reached the correct Reconsidered Decision to not Prequalify the CMUs listed in Paragraph 1 for the T-4 Auction on the basis that:
  - a) The signatures of two directors required on the Certificate of Conduct required under Rule 3.12.4 was not provided in the Applications for Prequalification, and accordingly under Rule 4.4.2, NGET must not Prequalify these CMUs.



- b) In addition to this, for the CMU SPUR05 a postal address required under Rule 3.4.3(a) was not provided in the application, and accordingly under Rule 4.4.2, NGET must not Prequalify this CMU.

**Determination**

30. For the reasons set out in this determination the Authority hereby determines pursuant to Regulation 71(3) that NGET's Reconsidered Decision to reject Urban for Prequalification be upheld in respect of the CMUs listed in Paragraph 1 for the T-4 Auction.



Johannes Pelkonen

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

7 February 2019