

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 Wincham Lane Power Limited (“Wincham Lane” or the “appellant”) against the reconsidered decision made by the EMR Delivery Body (National Grid Electricity Transmission plc (“NGET”)) in respect of the following Capacity Market Unit (CMU):
 - a) WINC05
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. Wincham submitted an Application for Prequalification for the CMU in Paragraph 1 in respect of the 2019 T-4 Auction.
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

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.

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 offer provided for at least one Generating Unit is interactive / conditional, therefore does not meet the requirements of the rule.

5. Wincham submitted a Request for Reconsideration of the Prequalification Decisions.
6. NGET issued a Notice of Reconsidered Decision (“Reconsidered Decision”) on 16 November which accepted the dispute and Conditionally Prequalified the CMU in Paragraph 1 on the following grounds:

Financial Commitment Milestone: As per Capacity Market Rule 6.6, the Financial Commitment Milestone has not been achieved; therefore, this application is Conditionally Prequalified and will need to provide credit cover accordingly.

Please note, the Connection Capacity for the CMU was amended in Assessment to reflect the Connection Agreement, therefore it is 17.658MW before de-rating.

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

Wincham Lane’s Grounds for appeal

8. Wincham Lane states NGET incorrectly calculated the De-rated capacity of WINC05 and disputes the decision on the following grounds:

Ground 1

9. Wincham Lane argues that NGET incorrectly calculated the Connection Capacity and subsequently the De-rated Capacity of WINC05. NGET calculated the Connection Capacity of WINC05 as 17.658 MW and the De-rated Capacity as 16.80 MW. Wincham Lane contend that *“following a successful Tier 1 dispute the WINC05 CMU should have been accepted and prequalified with a De-rated Capacity of 19.028MW rather than 16.8MW. This is the application capacity of 20MW multiplied by the de-rating factor taking account of the grid capacity of 20.16MW.”*
10. Wincham Lane believes that *“the grid connection capacity of 20.16MW has been arbitrarily divided between CMU WINC05 and WINC06”* and the *“application for the grid connection for CMU WINC06 is deferred and is not associated with the 20.16MW connection agreement,”* the WINC06 CMU application should not affect the de-rating of WINC05. Wincham suggest that the WINC05 CMU should be *“prequalified with a capacity of 19.028 MW”* and the capacity of WINC06 CMU be set to 0 MW.

The Legislative Framework

11. 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

12. The Regulations set out the duties upon NGET when it determines eligibility. Regulation 22(a) specifies that each Prequalification Application must be determined in accordance with the Capacity Market Rules.
13. Regulations 68 to 72 set out the process and powers in relation to dispute resolution and appeals.

Capacity Market Rules

14. Rule 3.5.5 states that:

An Applicant for a Generating CMU may, as an alternative to the determination of Connection Capacity set out in Rule 3.5.2 or 3.5.3, nominate a Connection Capacity for a Generating Unit comprised in that Generating CMU in accordance with following formula:

$$CC_i = \frac{UCEC_i}{SCEC} \times STEC$$

where:

CC_i is the Connection Capacity of Generating Unit “i”; STEC is:

- (b) in the case of a Generating Unit which is part of a Distribution CMU, the Maximum Export Capacity for the power station of which Generating Unit “i” is a component;*

SCEC is:

- (b) in the case of a Generating Unit which is part of a Distribution CMU:*
 - (i) Not used;*
 - (ii) the sum of the registered capacities (or inverter ratings, if applicable) stated in that Distribution Connection Agreement for each of the generating sets comprised in that power station;*

UCEC_i is:

- (b) in the case of a Generating Unit which is part of a Distribution CMU, the registered capacity (or inverter rating, if applicable) stated in the Distribution Connection Agreement for Generating Unit “i”;*

“generating set” has the meaning given to it in the relevant Distribution

Connection Agreement;

“Maximum Export Capacity” has the meaning given to it in the Distribution Connection Agreement;

“power station” has the meaning given to it in the relevant Grid Connection Agreement or Distribution Connection Agreement as applicable.

15. Rule 3.7.3 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.*
- (c) Except in the case of an Application to participate in a T-1 Auction, an Applicant which is unable to give the confirmation referred to in Rule 3.7.3(b)(i), or the letter*

referred to in Rule 3.7.3(ba) may, instead of complying with Rule 3.7.3(b), or Rule 3.7.3(ba), either

- (i) declare that a Distribution Connection Agreement will be in place by the date 18 months prior to the commencement of the relevant Delivery Year; or*
- (ii) provide a letter from the owner of the Private Network, to which the CMU will be connected, that confirms that the owner of that Private Network will have an agreement with the relevant Distribution Network Operator for the connection of the Private Network to, and use of, a Distribution Network by the date 18 months prior to the commencement of the relevant Delivery Year.*

Our Findings

16. We have assessed Wincham Lane’s ground for appeal, which is set out below.

Ground 1

17. Wincham Lane argues that NGET incorrectly calculated the Connection Capacity and subsequently the De-rated Capacity of WINC05 and contends that WINC05 CMU should have been Prequalified with a De-rated Capacity of 19.028MW rather than 16.8MW. Wincham also believes that the Distribution Entry Capacity has been arbitrarily divided between CMU WINC05 and WINC06. Wincham Lane states the requirement to provide evidence of a grid connection for CMU WINC06 was deferred in the application in line with Rule 3.7.3(c) and WINC06 is not associated with the 20.16MW connection agreement. The Distribution Entry Capacity of 20.16MW thus should not be apportioned between WINC05 and WINC06 but should be attributed entirely to WINC05.
18. Wincham Lane submitted applications for four linked CMUs (two pairs of parallel T-4 and T-1 applications): WINC05 and WINC07, alongside WINC06 and WINC08. The “Distribution

Entry Capacity Deferral” box was checked for WINC06 and WINC08, allowing the applicant to exercise Rule 3.7.3(c) and declare that a Distribution Connection Agreement will be in place 18 months prior to the commencement of the relevant Delivery Year. However, Rule 3.7.3(c) does not permit a deferral in relation to an Application for the T-1 Auction. As WINC08 is related to a T-1 Auction, it is not permitted to defer submission of a Distribution Connection Agreement. As WINC06 is related to a T-4 Auction, it is able to use this deferral provision.

19. Wincham Lane also submitted a covering letter and supporting documents for its Applications for Prequalification. The supporting documentation contains the connection agreement with 20.16MW of Distribution Entry Capacity, which was submitted separately, in fulfilment of Rule 3.7.3(b), in the applications for WINC05 and WINC07, confirming Distribution Entry Capacity for these two CMUs.
20. Notwithstanding the deferral for WINC06 and WINC08, as there was a connection agreement found in all of the CMU applications (albeit for WINC06 and WINC08 as a supporting document and not submitted through the functionality for connection agreements), NGET applied Rule 3.7.3(b)(i) to Wincham Lane’s applications. As such NGET assessed the Maximum Export Capacity for the site containing WINC05, WINC06 (T-4), and WINC07, WINC08 (T-1) to be 20.16MW. Under this assumption, the aggregate De-rated capacities of WINC05 and WINC06 or WINC07 and WINC08 could not exceed the limit of 20.16MW. In order to enable all Wincham Lane CMUs to prequalify, NGET proportionally adjusted the De-rated capacities in line with the formula outlined in Rule 3.5.5.
21. The Authority finds that NGET was incorrect to apply the approach outlined in Paragraph 20 to calculate the De-rated capacities for WINC05 and WINC06 as Wincham had opted to defer submission of a Distribution Connection Agreement for CMU WINC06. NGET should have Prequalified WINC05 with a Connection Capacity of 20 MW and a subsequent De-rated capacity of 19.028MW. WINC06 should have been Prequalified with a connection capacity of 4MW and a De-rated capacity of 3.806MW.

22. However, as it is not permitted for an applicant to defer a connection agreement for a CMU related to a T-1 Auction (Rule 3.7.3(c)), NGET was correct and reasonable in applying Rule 3.7.3(b)(i), in conjunction with Rule 3.5.5 to calculate the De-rated capacity of WINC07 and WINC08. We find that NGET correctly calculated the De-rated capacities of these two CMUs and apportioned in a fair manner in respect of the Maximum Export Capacity of the connection agreement.

Conclusion

23. NGET reached the incorrect Reconsidered Decision to Prequalify WINC05 and WINC06 with De-rated capacities of 16.80 MW and 3.36 MW respectively for the T-4 Auction on the basis that
- a) Wincham opted to defer the submission of a Distribution Connection Agreement, as per Rule 3.7.3(c), for WINC06.
 - b) the Authority finds that NGET took the incorrect approach in applying Rule 3.5.5 in calculating the De-rated capacity of CMU WINC05 and WINC06.
24. However, NGET reached the correct Reconsidered Decision to Prequalify WINC07 and WINC08 with De-rated capacities of 16.80MW and 3.36MW respectively for the T-4 Auction on the basis that as outlined in Rule 3.7.3(c) a deferral of a connection agreement is only permitted for an application related to the T-4 Auction.

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 conditionally Prequalify WINC05 and WINC06 with connection capacities of 17.658MW and 3.531MW be overturned.
26. The Authority directs NGET to amend the connection capacities of WINC05 and WINC06 in

the Capacity Market Register to 20MW and 4MW respectively and to de-rate them in line with the Rules.

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