

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 an appeal made by Inovyn Chlorvinyls Limited (“Inovyn”) against reconsidered decisions made by the Electricity Market Reform Delivery Body (the “Delivery Body”) in respect of the following Capacity Market Unit (“CMU”):
 - a) VID100 (T-4 auction)
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 the Delivery Body.

Appeal Background

3. Inovyn submitted an Application for Prequalification for the CMU in paragraph 1 in respect of the 2024-25 T-4 Auction and sought a Maximum Obligation Period of 1 year.
4. For this CMU, the Delivery Body issued a Notification of Prequalification Decision dated 06 November 2020 (“Prequalification Decision”). The Delivery Body Rejected the CMUs on the following Grounds:

“Capacity Market Rule 3.4.1(f) states that if an Application is submitted by an Agent, an Agent Nomination Form (Exhibit E) must be submitted. The Agent

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.

Nomination Form submitted has missing/incorrect agent details and therefore does not meet the requirements of Exhibit E.

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, [to] provide either a letter from the supplier or former 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. Inovyn submitted a request for reconsideration of the Prequalification Decision ("Tier 1 Appeal") on 13 November 2020.
6. The Delivery Body issued a Notice of Reconsidered Decision on 11 December 2020 which rejected the Tier 1 Appeal for the following reasons:

"The supporting evidence provided, does not confirm the requirements as per CM Rules:

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 or Bespoke Metering Configuration Solution, [to] provide either a letter from the supplier or former 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.

For information, the Delivery Body has accepted the other elements of the Application and has updated its records accordingly."

7. Inovyn then submitted an appeal notice to the Authority ("Tier 2 Appeal") on 15 December 2020 under Regulation 70 of the Regulations.

Inovyn's Grounds for appeal

8. Inovyn disputes the decision of the Delivery Body in relation to its Tier 1 Appeal on the following grounds:

Ground 1

9. Inovyn states that CMU VID100 uses a bespoke metering configuration. It claims, therefore, that it is impossible to provide a supplier letter as required by Rule 3.6.1.

Ground 2

10. Inovyn states that CMU VID100 *"is already qualified and is delivering in the capacity market."* Inovyn states that it therefore has an approved EMRS metering test *"confirming the metering is bespoke and acceptable."*

The Legislative Framework

11. The Regulations were made by the Secretary of State under the provisions of section 27 of the Energy Act 2013. The Capacity Market Rules 2014 (as amended) ("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 the Delivery Body when it determines eligibility. Regulation 22(a) specifies that each application for Prequalification 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. In particular, regulation 69(5) sets out the requirements for the Delivery Body reconsidering a Prequalification Decision:

" 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

14. Rule 3.6.1(b) requires Existing Generating CMUs that are Non-CMRS Distribution CMUs to provide evidence of previous performance and states that:

"3.6.1 Previous Settlement Period Performance

...

- (b) 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.”

15. Rule 3.6.1(c) specified the Previous Settlement Period performance requirement 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

Application of Rules by the Delivery Body

16. We understand that, as confirmed by Inovyn in its Request for Reconsideration, a Bespoke Metering Configuration is being used for the CMU listed in paragraph 1. Rule 3.6.1(c) provides for an Existing Generating CMU that is a Non-CMRS Distribution CMU using a Bespoke Metering Configuration Solution. Therefore, the Delivery Body incorrectly applied Rule 3.6.1(b) to reject this CMU from Prequalification. The Authority therefore refers to Rule 3.6.1(c) as the relevant Rule in this Determination. We note that the relevant

evidentiary requirements under Rules 3.6.1(b) and 3.6.1(c) are materially equivalent such that Inovyn's grounds should be addressed against Rule 3.6.1(c). In this case, and for the reasons set out in this paragraph, we consider that Rule 3.6.1(c) is the correct Rule against which Inovyn's application and subsequent appeals should be assessed under, and we address Inovyn's grounds of appeal with reference to that Rule.

17. The Authority invited Inovyn to make further representations to the Authority, on 2 March 2021, given that the Delivery Body's assessment at Tier 1 was on the application of the incorrect Rules. As a point of fair process, we provided Inovyn (and the Delivery Body) with our minded-to position, giving Inovyn an opportunity to respond with additional representations. We received a response from Inovyn on 3 March 2021 and have taken this response into consideration in reaching our final decision. We note for the avoidance of doubt that we have not taken into account any information or evidence that would be prohibited under regulation 69(5).

Our Findings with respect to the Rules:

18. We have assessed Inovyn's grounds under its Tier 2 Appeal, which are again summarised below:

Ground 1

19. Inovyn's first ground is that it uses a bespoke metering configuration and for this reason it was not possible to provide a Supplier Letter.
20. Rule 3.6.1(c) requires that an applicant, to which this Rule is applicable, must provide *either* (i) a letter from a supplier confirming the CMU's physically generated output *or* (ii) evidence that the CMU has delivered a Metered Volume in discharge of an obligation to deliver a balancing service confirming the CMU or Generating Unit's physically generated net output. Where an Applicant is not able to provide a Supplier Letter in compliance with Rule 3.6.1(c)(i) for whatever reason, they must instead submit evidence that complies with Rule 3.6.1(c)(ii) to meet the requirements of the Rules.
21. We note that Inovyn provided an Excel spreadsheet detailing historic metered output in its Prequalification Application. However, as this information only confirms readings it does not in our view satisfy the requirements of Rule 3.6.1(c)(ii); the information does not include evidence of being in discharge of an obligation to deliver a balancing service confirming the CMU's physically generated net output. No other evidence was submitted

by Inovyn in its Prequalification Application to verify that the CMU VID100 was delivering a balancing service, nor was a letter from a supplier provided. The Authority therefore finds that Inovyn did not submit evidence that satisfies the requirements of Rule 3.6.1(c)(i) or Rule 3.6.1(c)(ii) in its Prequalification Application.

22. In addition, we note that in its Tier 1 Appeal Inovyn provided a Metering Test Certificate². We agree with the Delivery Body that this information is not sufficient to meet the requirements of the Rules. The Metering Test Certification provided by Inovyn does not in our view meet the requirements of Rule 3.6.1(c)(i) or Rule 3.6.1(c)(ii). It is neither a letter from a supplier, nor does it evidence that the historic metered output provided at Prequalification is being provided in discharge of an obligation to deliver a balancing service.

Ground 2

23. Inovyn's second ground is that the CMU VID100 is already delivering in the Capacity Market, and that the Delivery Body have, in Prequalification Application/s made in previous year/s, approved the type of metering information provided by Inovyn.
24. The Authority must consider each appeal according to its own merits. The fact that Inovyn has previously been prequalified for the Capacity Market Auction does not create a legitimate expectation that the Delivery Body should have prequalified its current application in respect of the CMU listed in paragraph 1. We therefore do not consider Ground 2 to be a relevant consideration in this Tier 2 Appeal.

Conclusion

25. The Delivery Body reached the correct reconsidered decision to not prequalify CMU VID100 for the T-4 Auction on the basis that the information required under Rule 3.6.1 was missing from the Prequalification Application.

Determination

26. For the reasons set out in this Determination, the Authority hereby determines pursuant to regulation 71(3) that the Delivery Body's reconsidered decision to reject Inovyn

² means, in relation to a CMU, a certificate issued by the CM Settlement Body pursuant to Rule 13.3.6(a) or Rule 13.3.6B(a)

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

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

Robin Dunne

For and on behalf of the Gas and Electricity Markets Authority

12 March 2021