


DETERMINATION PURSUANT TO REGULATION 71(3)(b) OF THE ELECTRICITY CAPACITY REGULATIONS 2014 (AS AMENDED) FOLLOWING APPEALS MADE TO THE AUTHORITY PURSUANT TO REGULATION 70(1)(a)

Introduction

1. This determination relates to two appeals made by Green Frog Power Limited ("GFP") against reconsidered decisions made by the EMR delivery body (National Grid Electricity Transmission plc ("NGET")) in respect of FLASTO CMU.
2. Pursuant to Regulation 71(3) of the Electricity Capacity Regulations 2014 (as Amended) (the "Regulations"), where the Authority receives an appeal notice that complies with Regulation 70, the Authority must review a reconsidered decision made by NGET. In reviewing a reconsidered decision, the Authority must determine whether the decision was correct on the basis of the information that NGET had when it made that decision.

Appeal Background

3. GFP submitted applications for FLASTO CMU in respect of the following:
 - 2015 T-4 Capacity Auction
 - 2015 Transitional Capacity Auction (note this auction is planned to take place in 2016)
4. In the Notification of Prequalification Decisions dated 25 September 2015 (the "NGET Prequalification Decisions"), NGET rejected both FLASTO CMU applications on the following two grounds:
 - a) 
 - b) *"When verifying the historic output figures it is apparent that each of the three output figures is not higher than the Anticipated De-rated Capacity and so the application must be rejected under rule 4.4.2(f)."*

5. On 2 October 2015, GFP asked NGET to reconsider the NGET Prequalification Decisions on the following grounds:

a)



b) *"The Rules (3.5.3. and 3.5.4) explicitly permits using the average highest output to determine connection capacity. It is clear that by definition of a mean average, it is impossible to satisfy both 4.4.2(f) and 3.5.3, because averaging three numbers must produce a number that is lower than at least one of the three - it is mathematically impossible to have an average that is lower than all three constituents."*

6. In the Notices of Reconsidered Decisions for the T-4 Capacity Auction and Transitional Capacity Auction dated 8 October 2015¹ (the "NGET Reconsidered Decisions"):

a)



b) NGET upheld its Prequalification Decisions that the historic performance figures do not satisfy Rule 4.4.2:

*"...the applicant disputes the Delivery Body's interpretation of compliance with CM Rule 4.4.2 and 3.5.5 and 3.5.5 [sic]. The Delivery Body upholds it's [sic] original [sic] decision that the CMU is rejected due to historic performance figures not satisfying CM Rule 4.4.2."*²

7. In Appeal Notices dated 16 October 2015, GFP submitted applications for the Authority to review the NGET Reconsidered Decisions, pursuant to Regulation 70(2), for FLASTO CMU in relation to the 2015 T-4 Capacity Auction and the 2015 Transitional Capacity Auction.

¹ Further to the Authority's request for information made pursuant to Regulation 71(b) (the "Information Request"), NGET confirmed that although the Notices of Reconsidered Decisions were dated 8 October 2015, they were sent to GFP on 9 October 2015.

² Further to the Authority's Information Request, NGET confirmed the reference to Rules "3.5.5 and 3.5.5" was a typographical error and should say Rules 3.5.3 and 3.5.4.

GFP's Reasons for Appeal

8. GFP said:

"We dispute this decision on the basis that the Rules (3.5.3 & 3.5.4) explicitly permit use of the average highest output to determine connection capacity. It is also clear that by definition of a mean average, it is impossible to satisfy 4.4.2(f) and 3.5.3 at the same time. It is mathematically impossible for the components of an average to all be above (or below) the calculated average. Averaging three numbers must produce a number that is lower than at least one of the three numbers used to calculate the average."

9. GFP also said:




"We contend that because it is clear that the Rules intend to permit Rule 3.5.3 (by its existence). Rule 4.4.2(f) needs to be revised to reflect the policy intent. In the interim, we request that Ofgem make a decision based on the intent of the Rules, along with a mandate to modify Rule 4.4.2(f) in the next Rule change round..... We contend that, despite poor drafting of Rule 4.4.2(f), by virtue of the existence of Rule 3.5.3, it is clear that the Rules intend to permit this method (Average Highest Output) of calculating connection capacity."³

Our Findings

10. Rule 4.4.2(f) sets out the circumstances in which NGET must not prequalify a CMU. NGET must not Prequalify a CMU where:

"the physically generated net outputs, or Metered Volumes where applicable, of an Existing Generating CMU in the Settlement Periods nominated by the Applicant pursuant to Rule 3.6.1 are not each greater than the Anticipated De-rated Capacity specified by the Applicant under Rule 3.4.5(d)"

11. GFP provided NGET with the following historic MW outputs for each of the Settlement Periods⁴:

Settlement Period 1: 
Settlement Period 2: 
Settlement Period 3: 

³ In its Appeal Notices GFP also highlighted that these appeals raise different issues to those raised in its previous appeals relating to the 2014 T-4 Capacity Auction. This is noted by the Authority.

⁴ Pursuant to Regulation 2 and Rule 3.6.1, Settlement Periods are three half hour periods on separate days in a 24 month period, during which the FLASTO CMU delivered its highest physically generated net outputs or Metered Volumes.

12. The Connection Capacity, pursuant to Rule 3.5.3 is 18.796 which is the average of the three Settlement Periods. The De-rating Factor which applies is 94.54% (OCGT and Reciprocating Engines Technology Group)⁵. The Anticipated De-rated Capacity is therefore 17.770 (94.54% x 18.796). As output during Settlement Period 3 is less than the Anticipated De-rated Capacity (██████ < 17.770), NGET is required by Rule 4.4.2(f) to not prequalify the FLASTO CMU. NGET has applied the Rules correctly.
13. GFP did not dispute these figures. GFP's dispute is based on it not being possible for *"the components of an average to all be above (or below) the calculated average"*. Whilst it would be mathematically impossible for all of the components which make up the average (Settlement Periods 1, 2 and 3) to be higher than the average itself, once the De-rating Factor is applied to calculate the Anticipated De-rated Capacity, the average is reduced. As such it is possible for each of the components which make up the average to be higher than the Anticipated De-rated Capacity.
14. GFP has been unable to meet the requirement of Rule 4.4.2(f) due to the difference in value of Settlement Period 3 compared to Settlement Periods 1 and 2. If the physically generated net outputs in Settlement Period 3 had been higher and closer in value to Settlement Period 1 and Settlement Period 2 (or if the net outputs for Settlement Period 1 and Settlement Period 2 had been lower and closer in value to Settlement Period 3) it would have been possible for GFP to have met this condition. This is illustrated by the example figures below which looks at the FLASTO CMU's actual values (the first line) and scenarios (the other lines) where the output in Settlement Period 3 is higher. The figures highlighted in green show where the Anticipated De-rated Capacity is lower than output in the three relevant Settlement Periods.

⁵ See Auction Guidelines:
https://www.emrdeliverybody.com/Capacity%20Markets%20Document%20Library/Auction%20Guidelines%20June%2029%202015_TA.pdf



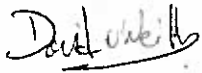
15. We also note that NGET has said in its response to our request for information that *“many applicants with respect to existing generating CMUs are able to satisfy both Rules”* (i.e. the Anticipated De-rated Capacity is lower than output in the three relevant Settlement Periods).
16. GFP also ask that we make a decision based on the intent of the Rules as the *“poor drafting of Rule 4.4.2(f), by virtue of the existence of Rule 3.5.3, it is clear that the Rules intend to permit this method (Average Highest Output) of calculating connection capacity.”* As we explain and demonstrate above it is clearly possible to satisfy both Rules. The drafting of Rule 4.4.2(f) is clear and it is clear there is no inconsistency between these two Rules.
17. GFP also note a *“recent telephone conversation between ourselves and the Delivery Body”* concerning the reasons some of GFP’s CMUs were rejected in the 2014 prequalification. This information is not relevant to the current dispute as it must be decided on its own facts.

Conclusion

18. NGET must not Prequalify a CMU if the Settlement Periods nominated by the Applicant pursuant to Rule 3.6.1 are not each greater than the Anticipated De-rated Capacity specified by the Applicant under Rule 3.4.5(d). NGET has applied the Rules correctly. GFP’s ground for dispute – that it is not possible for the components of an average to all be higher than the average itself – is incorrect as it ignores the De-rating Factor that is applied to the average.
19. GFP say that it is impossible to satisfy Rule 4.4.2(f) and Rule 3.5.3 at the same time. This is also incorrect.

Determination

20. For the reasons set out in this determination the Authority hereby determines pursuant to Regulation 71(3) that the NGET Reconsidered Decisions be upheld in respect of the FLASTO CMU in relation to the 2015 T-4 Capacity Auction and the 2015 Transition Capacity Auction.



David O'Neill

**Head of Wholesale Markets Policy
For and on behalf of the Gas and Electricity Markets Authority**

10 November 2015