

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 GridBeyond Limited ("GridBeyond") against Reconsidered Decisions made by the Electricity Market Reform Delivery Body ("Delivery Body") in respect of the following Capacity Market Units ("CMUs"):
 - a) GBD003 (T-1 and T-4 Auctions)
 - b) GBD004 (T-1 and T-4 Auctions)
 - c) GBD008 (T-1 and T-4 Auctions)
 - d) GBD009 (T-1 and T-4 Auctions)
 - e) GBD010 (T-4 Auction)
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 Authority¹ receives an Appeal Notice that complies with Regulation 70, the Authority must review a Reconsidered Decision made by the Delivery Body.

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.

Appeal Background

4. GridBeyond submitted an Application for Prequalification for the CMUs listed in Paragraph 1 in respect of the 2022 T-1 and T-4 Auctions.
5. For the CMUs listed in Paragraph 1, the Delivery Body issued a Notification of Prequalification Decision dated 26 October 2021 (the "Prequalification Decision"). The Delivery Body Rejected the CMUs listed in Paragraph 1 on the following ground:

"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 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."

6. The Delivery Body went on to provide differing closing statements as to the specific reason for failure. For CMUs GBD003, GBD004 and GBD008, the Delivery Body state, in addition to above:

"This Application has failed, as the Supplier Letter provided to the Delivery Body does not confirm the Settlement Periods referred to in Rule 3.6.1(a) and the Supplier Letter does not confirm reference to other evidence provided by the Applicant, therefore the Delivery Body is unable to verify the Generating Unit physically generated net output, therefore this Application did not meet the requirements of this Rule."

7. Whereas, for CMUs GBD009 and GBD010, the Delivery Body state, in addition to the reason given in Paragraph 5:

"This Application has failed as the incorrect document has been provided for Confirmation of Historic Metered Output, therefore this Application did not meet the requirements of this rule."

8. The Delivery Body added the following separate ground for CMU GBD003:

"Capacity Market Rule 3.6.3(c) requires all Existing Generating CMUs that are Distribution connected to provide a copy of the Grid Connection Agreement 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. Neither a Distribution Connection Agreement nor written confirmation from the Network Operator has been provided for this Application therefore this CMU fails to meet this rule requirement."

9. For the CMUs listed in Paragraph 1, GridBeyond submitted a Request for Reconsideration of the Prequalification Decisions on 5 November 2021.
10. For the CMUs listed in Paragraph 1, the Delivery Body issued a Notice of Reconsidered Decision dated 23 November 2021 ("Reconsidered Decision") which Rejected the Request for Reconsideration for the following reasons:

"The Delivery Body considers the error or omission with the Application (Incorrect document provided for Confirmation of Historic Metered Output as per Rule 3.6.1(b)) is a non-material error under Regulation 69(5), which is therefore correctable at Tier 1 disputes stage. However after reviewing the information submitted by the Applicant in its request for the Delivery Body to review the Prequalification Decision, the Delivery Body does not view this as addressing the issue in the Application because the supplier letter provided by the Applicant was provided and signed by GridBeyond and not signed by a supplier. As a result, the original Prequalification Decision has been upheld."

11. The Delivery Body accepted the additional elements of GridBeyond's Request for Reconsideration for CMU GBD003, with regards to Rule 3.6.3(c), stating that:

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

12. GridBeyond then submitted an Appeal Notice to the Authority on 30 November 2021 under Regulation 70 of the Regulations.

GridBeyond's Grounds for Appeal

13. GridBeyond disputes the decision on the following ground:

"In both the Notification of Prequalification Decision and the Notice of Reconsidered Decision, EMR incorrectly assessed the applicant CMU under Rule 3.6.1 (b). The attached supporting evidence (Metering Test Certificate and Cover Letter) confirms that the applicant CMU was using the Bespoke Metering Configuration Solution and was doing so at the time of prequalification and thereafter. Therefore, this CMU should have been assessed under Rule 3.6.1 (c), under the correct Metering Configuration Solution. It was this incorrect Rule application from EMR which created confusion and affected the ability of the applicant to submit the proper documentation, as per the additional information in the Notification of Reconsidered Decision."

14. In their Appeal Notice to the Authority, GridBeyond submitted further evidence in support of their dispute of the Delivery Body's Reconsidered Decision. GridBeyond state that:

"The Delivery Body considers the error or omission with the Application (Incorrect document provided for Confirmation of Historic Metered Output as per Rule 3.6.1(b)) is a non-material error under Regulation 69(5), which is therefore correctable at Tier 1 disputes stage.

However the applicant is a bespoke metering arrangement, this is evidenced by the metering certificate to this unit submitted as evidence in this dispute.

*Therefore the unit should have been assessed as per Rule 3.6.1 (c)).
Under Rule 3.6.1(c) the applicant relied upon section (i) as it had done in
previous years.*

*The applicant accepts that there was an issue with the letters it submitted under
Rule 3.6.1(c) i) which would have been rectified easily during the Tier 1 dispute
if EMR had assessed the applicant under the correct criteria.”*

The Legislative Framework

15. 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

16. The Regulations set out the powers and duties of the Delivery Body which it must rely upon when it determines eligibility. Regulation 22(a) specifies that each Application for Prequalification must be determined in accordance with the Rules.
17. Regulations 68 to 72 set out the process and powers in relation to dispute resolution and appeals.
18. In particular, Regulation 69(5) sets out the requirements for the Delivery Body reconsidering a Prequalification Decision:

*“Subject to [paragraph (5A) and 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.*"

19. Regulation 69(5) is subject to Regulation 69(5A), which sets out the exceptions to Regulation 69(5):

"In reconsidering a prequalification decision, the Delivery Body may take into account information or evidence if the Delivery Body determines that:

- (a) *the relevant application for prequalification contained a non-material error or omission; and*
- (b) *the information or evidence is capable of rectifying such non-material error or omission.*"

20. Regulation 69(7) provides the meaning of a "non-material error or omission":

"In this regulation-

"non-material error or omission" means an error or omission in an application for prequalification which is-

- (a) *manifest, and either inadvertent or the result of an honest mistake;*
- (b) *clerical, typographical or trivial in nature; or*
- (c) *determined by the Delivery Body to be inconsequential to the affected person's compliance with, or the enforcement of, any requirement in these Regulations or the Rules to which the error or omission relates.*"

Capacity Market Rules

21. Rule 3.6.1(b) sets out the Previous Settlement Period performance requirement 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 three Settlement Periods referred to in Rule 3.6.1(a) for each Generating Unit that comprises that CMU."

22. Rule 3.6.1(c) sets out 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

23. We have assessed GridBeyond's grounds for appeal, which are summarised below.

Application of the Rules by the Delivery Body

24. GridBeyond state that "...EMR incorrectly assessed the applicant CMU under Rule 3.6.1 (b)." The Delivery Body informed us that Rule 3.6.1(b) was applied to CMUs GBD003, GBD004 and GBD008 as they did not have the required information from GridBeyond at the Prequalification stage, or in their Request for Reconsideration, to correctly categorise CMUs GBD003, GBD004 and GBD008. The Delivery Body also applied Rule 3.6.1(b) to CMUs GBD009 and GBD010. However, for CMUs GBD009 and GBD010, the required information was provided in the Application for Prequalification to allow the Delivery Body to correctly assess both of these CMUs under Rule 3.6.1(c).
25. As above, the Delivery Body was provided with the relevant information for CMUs GBD009 and GBD010 in GridBeyond's Application for Prequalification to be correctly assessed under Rule 3.6.1(c). As such, we consider that the Delivery Body were incorrect to apply Rule 3.6.1(b) for these CMUs. For the remaining CMUs, the Delivery

Body have informed us that, without information to the contrary, they assumed the CMUs used the Supplier Settlement Metering Configuration Solution, therefore assessing these CMUs under Rule 3.6.1(b).

26. We understand that a Bespoke Metering Configuration is being used for each of the CMUs listed in Paragraph 1. This was as confirmed by GridBeyond in their Appeal Notice to the Authority through the provision of Metering Test Certificates. Rule 3.6.1(c) provides for an Existing Generating CMU that is a Non-CMRS Distribution CMU using a Bespoke Metering Configuration Solution.
27. As a result, we consider that Rule 3.6.1(c), not 3.6.1(b) is the correct Rule in this case. The Authority therefore refers to Rule 3.6.1(c) as the relevant Rule in this Determination, and against which we assess GridBeyond's grounds for appeal. We note that the relevant evidentiary requirements under Rules 3.6.1(b) and 3.6.1(c) are materially the same.

Our Findings with respect to the Rules

28. We note that in GridBeyond's grounds for appeal, GridBeyond argue that the incorrect application of Rule 3.6.1(b) "*...created confusion and affected the ability of the applicant to submit the proper documentation...*". Additionally, in the further evidence submitted by GridBeyond as part of their Appeal Notice to the Authority, GridBeyond state that "*Under Rule 3.6.1(c) the applicant relied upon section (i) as it had done in previous years. The applicant accepts that there was an issue with the letters it submitted under Rule 3.6.1(c) i) which would have been rectified easily during the Tier 1 dispute if EMR had assessed the applicant under the correct criteria.*"
29. As per Paragraph 27, we find that the relevant evidentiary requirements under Rules 3.6.1(b) and 3.6.1(c) are materially the same. As such, we consider that, notwithstanding this error by the Delivery Body, GridBeyond's ability to submit the required information within the Request for Reconsideration had not been adversely affected.
30. Where Rule 3.6.1(c) applies, an applicant is required to provide *either* (i) a letter from the supplier or former supplier to such CMU confirming the CMU or Generating Unit's

physically generated net output *or* (ii) evidence that the CMU or Generating Unit 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.

31. GridBeyond submitted a spreadsheet detailing Historic Metered Output in their Application for Prequalification for each of the CMUs listed in Paragraph 1. However, as this information only confirms readings, it does not satisfy the requirements of Rule 3.6.1(c)(i); this information was not provided within a letter from the supplier or former supplier to the respective CMUs. Nor does this information satisfy 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 CMUs' physically generated net output. The Authority therefore finds that GridBeyond did not submit evidence that satisfies the requirements of Rule 3.6.1(c)(i) or Rule 3.6.1(c)(ii) in its Application for Prequalification.
32. In their Request for Reconsideration, GridBeyond submitted a letter for each of the CMUs listed in Paragraph 1 detailing Historic Metered Output. GridBeyond noted in the Appeal to the Authority that "*Under Rule 3.6.1(c) the applicant relied upon section (i) as it had done in previous years.*" These letters were signed by GridBeyond. The Delivery Body, in its Reconsidered Decision, states that "*...the error by GridBeyond in their Prequalification Application is considered a non-material error under Regulation 69(5), which is therefore correctable at Tier 1 disputes stage*".
33. As per Paragraph 19, under Regulation 69(5A), the Delivery Body may take into account information or evidence in reconsidering a Prequalification Decision if it determines that the error or omission in the Application for Prequalification constitutes a non-material error or omission (in accordance with the specific definition set out in Regulation 69(7)²), and that the information or evidence is capable of rectifying such an error or omission.
34. The Authority's view is that the failure to provide a supplier letter does constitute a 'non-material error or omission' within Reg 69(7)(a) on the basis that it appears to be manifest and inadvertent. We therefore consider that the Delivery Body was correct to

² Please note this is a term defined in statute, not the ordinary meaning of word 'non-material'

consider that this error was 'non-material' and capable of being rectified in the Request for Reconsideration.

35. We agree with the Delivery Body that the letters provided by GridBeyond in their Request for Reconsideration were not sufficient to meet the requirements of Rule 3.6.1(c)(i). The letters were provided and signed by GridBeyond. In a discussion held between the Authority and GridBeyond on 18 January 2022, GridBeyond confirmed that they were neither the supplier or former supplier to the CMUs listed in Paragraph 1. Therefore, the letters provided did not qualify as supplier letters which meet the requirements of Rule 3.6.1(c)(i) and, consequently, were not capable of remedying the error in the Application for Prequalification. As a result, we find that the Delivery Body were correct to uphold the Prequalification Decisions.

Conclusion

36. The Delivery Body reached the correct Reconsidered Decision to not Prequalify the CMUs listed in Paragraph 1 for the 2022 T-1 and T-4 Auctions on the basis that:
- a) Information required under Rule 3.6.1(c)(i) was not provided in the Application for Prequalification.
 - i. A valid supplier letter was not provided by GridBeyond with the Application for Prequalification, or in their Request for Reconsideration, in order to comply with the requirements of Rule 3.6.1(c)(i);
 - ii. Rule 4.4.2(a) provides that the Delivery Body must not Prequalify a CMU where it is aware that the Application has not been completed or submitted in accordance with the Rules.

Determination

37. 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 GridBeyond for Prequalification be upheld in respect of the CMUs listed in Paragraph 1 for the 2022 T-1 and T-4 Auctions.



Heather Stewart

Acting Head of GB Wholesale Markets

For and on behalf of the Gas and Electricity Markets Authority

25 January 2022