

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 Boom Bacup Storage Limited ("Boom Bacup," "the Applicant") against the reconsidered decision made by the Electricity Market Reform Delivery Body ("Delivery Body") in respect of the following Capacity Market Unit ("CMU"):
 - a) Bacup 1 (T-1 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 and determine whether the reconsidered decision was correct on the basis of the information before the Delivery Body when it made its decision.

Appeal Background

3. Boom Bacup submitted an Application for Prequalification for the CMU in Paragraph 1 in respect of the 2025 T-1 Auction.
4. For the CMU listed in Paragraph 1, the Delivery Body issued a Notification of Prequalification Decision dated 12 November 2024 (the "Prequalification Decision"). The Delivery Body rejected the CMU on the grounds listed at **Appendix A**.
5. Boom Bacup submitted a request for reconsideration of the Prequalification Decision on 18 November 2024. In their request, they indicated that they wanted to switch the

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.

application type from New Build Generating to Existing Generating, acknowledging that the CMU had already met the Substantial Completion Milestone ("SCM").

6. The Delivery Body issued a Notice of Reconsidered Decision on 10 December 2024 which rejected the dispute on the grounds outlined in **Appendix B**. Of particular importance, the Delivery Body noted in its written reconsidered decision that:

"Application A-T-1-2025-BACUP1-00001 was initially rejected due to several issues, including the CMU already meeting the Substantial Completion Milestone (SCM), incomplete or missing construction plan details, and missing documents.

The subsequent dispute raised by the Applicant stated that they had not understood the requirements on them to reprovide new information as part of this Application, but that the site was constructed and operational.

As such, this site should be considered an Existing Generating CMU.

Of the original failure reasons, those prefaced with F11 relate to constructions milestones that would not have been required to be completed for an Existing Generating CMU. As such, while they appear on the original Prequalification letter and were not directly provided as part of the Dispute, had the original Application been made for the CMU type specified in the Dispute (Existing as opposed to New Build), these fields would not have been required, and so these errors could be considered superfluous in light of the new CMU type.

In the original Application the Method of Calculation chosen for calculating the Connection Capacity was Estimate in Good Faith, if the CMU is to be considered an Existing Generating CMU, this Method of Calculation is not an appropriate selection under the CM Rules. This inconsistency was not addressed as part of the Dispute.

Of the remaining rejection reasons, the absence of a signed Connection Acceptance form was sufficiently addressed, as were the errors on Exhibit A and Exhibit ZB.

However, as the site is operational the Application should have been for an Existing Generating CMU, not a New Build. This is a material change to the Application and is not deemed a clerical or non-trivial error due to the scale of changes that would have been required."

7. Boom Bacup then submitted an Appeal Notice to the Authority on 13 December 2024 under Regulation 70 of the Regulations.

Boom Bacup Storage Limited's Grounds for Appeal

8. We note that the grounds for appeal are inherently interconnected and relate to a common theme of issues with the application process, namely related to incorrectly making an application for a New Build Generating CMU, rather than an Existing Generating CMU.
9. Boom Bacup disputes the decision on the following grounds:

Ground 1

"When applying for the auction, we did not realise that we needed to clone the unit and change the application type from New Build Generating to Existing Generating, so parts of the information needed by the NESO were missing."

Ground 2

"This was the first time that we had to apply to take part in the auction since buying the site in 2024, and it was not clear from the information that we read before applying that we needed to clone the site and change its operating type."

Ground 3

"Once the initial application had been rejected, because we were unable to upload or complete certain sections of the application, as they were 'greyed' out and not selectable, there is no option to resubmit an application."

Ground 4

"We recognise that the initial error was ours, but if after the initial application has been

rejected due to what could be construed as a simple error of applying under the wrong application type, there should be an option to appeal by submitting the correct form, and the supporting information.”

The Legislative Framework

10. 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

11. 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.
12. Regulations 68 to 72 set out the process and powers in relation to dispute resolution and appeals.
13. In particular, Regulation 69(5) sets out the requirements for the Delivery Body reconsidering a Prequalification Decision:

69(5) 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.

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

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(5A) 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.

Regulation 69(7) provides the meaning of a “non-material error or omission”:

(7) 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.

Our Findings

14. We have assessed Boom Bacup’s grounds for appeal, which are summarised above in paragraph 9. Because these grounds are interconnected, in places we have addressed them together.

Ground 1

15. The Applicant's first ground was that they did not realise they needed to clone the unit and change the application type from New Build Generating CMU to Existing Generating CMU.
16. The implication of making an Application for Prequalification under the incorrect CMU type is that the Applicant failed (at both Application for Prequalification and subsequently in their request for reconsideration of the Prequalification Decision) to provide all the information required for an Existing Generating CMU as required under the Rules.
17. The Application for Prequalification process requires that the application type accurately reflects the status of the CMU, to ensure that the Delivery Body receives the requisite information to make a decision about that unit type that complies with the Rules.
18. The CMU Transfers User Guidance document provides detailed instructions on how to clone a CMU and change its type. According to the guidance in section 4, when cloning a CMU, the applicant has the option to create a new CMU ID and change the CMU type if it has changed (e.g., from New Build Generating to Existing Generating).²
19. Here is an excerpt from the CMU Transfers User Guidance:

"Clone the CMU – select 'Yes.' In the new box that appears, you will be given the option to create a new CMU ID. You will also have the opportunity to change the CMU type if this has changed (e.g., New Build Generating CMU changing to an Existing Generating CMU)."
20. This guidance ensures that the CMU type accurately reflects its current status and complies with the Rules.

² This information can be found on the EMR portal for guidance [PowerPoint Presentation](#)
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Ground 2

21. The Applicant's second ground was that this was their first time applying for the auction since buying the site in 2024, and they were unaware of the need to change the operating type.
22. We have considered this argument alongside Ground 4, which covers our views on whether the Applicant made a material error in applying under the incorrect application type.

Ground 3

23. The Applicant's third ground was that after their rejection at Prequalification, they were unable to upload or complete certain sections of the application as they were 'greyed out' and not selectable. This is due to settings within the application portal, which prevented the Applicant from making further changes to their application.
24. However, this does not address the fundamental problem of the incorrect application type and the material errors in the initial submission. The Applicant did not address this issue in their request for reconsideration of the Prequalification Decision, and a number of documents and evidence, as outlined in Appendix B, remained outstanding at this stage.

Ground 4

25. The Applicant's fourth ground was that submitting their application under the wrong unit type was a simple error, and that there should be an option to resubmit. We consider our reasoning here also applies to the Applicant's first and third ground.
26. The Applicant accepts that it made an error in making its application under in the incorrect CMU type. To remedy the cascade of errors that flowed from this (as outlined at Appendix A), a large volume of evidence was required to be resubmitted to the Delivery Body in the Applicant's request for reconsideration of the Prequalification Decision. It is worth noting that a large number of matters were not remedied in the

Applicant's request for reconsideration of the Prequalification Decision, and these were outlined by the Delivery Body in their Notice of Reconsidered Decision (see Appendix B).

27. Regulation 69(5) limits the evidence that the Delivery Body can consider when it is reconsidering a Prequalification Decision. The Regulation provides that, subject to the exceptions set out in Regulation 69(5A), the Delivery Body must not take into account any information or evidence which the Applicant was required to provide to the Delivery Body before the Prequalification Decision, but that the Applicant failed to provide.
28. There are limited exceptions to this position, outlined at Regulation 69(5A). These are circumstances where the evidence submitted in the Applicant's request for reconsideration of the Prequalification Decision is capable of rectifying a non-material error or omission made in the Application for Prequalification.
29. Regulation 69(7) outlines what is meant by a "non-material error or omission", which is 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.
30. In its Notice of Reconsidered Decision, the Delivery Body stated some of the omissions of evidence outlined in Appendix A had been remedied by the Applicant, meaning the Delivery Body accepted that they were not material changes. However, the Delivery Body stated that: *"... as the site is operational the Application should have been for an Existing Generating CMU, not a New Build. This is a material change to the Application and is not deemed a clerical or non-trivial error due to the scale of changes that would have been required"*.
31. We agree with the Delivery Body that the error made by the Applicant was highly consequential for the remaining non-compliance with the Rules, as set out at Appendix A. It is also our view that if the Applicant was able to resubmit their application as an

Existing Generating CMU, it would for all purposes be an entirely new application. While Regulation 69(7)(a) accounts for honest mistakes, the Applicant had the opportunity to remedy these mistakes in their request for reconsideration of the Prequalification Decision, and we are not satisfied that they have done so. In our view, the Applicant had the opportunity to take the care needed to ensure that their application met the Delivery Body's requirements, and they have not done so.

32. We note, for example, that in the Delivery Body's Notice of Reconsidered Decision, it specifically notes that the revised evidence submitted by the Applicant does not address matters arising from the incorrect CMU application type being selected. The Delivery Body noted:

"In the original Application the Method of Calculation chosen for calculating the Connection Capacity was Estimate in Good Faith, if the CMU is to be considered an Existing Generating CMU, this Method of Calculation is not an appropriate selection under the CM Rules. This inconsistency was not addressed as part of the Dispute."

33. We agree with the Delivery Body that the Applicant has not complied with Rule 3.5, which requires all Applicants to determine the Connection Capacity of a Generating CMU and to state the method of calculation used. In the evidence submitted by the Applicant to the Delivery Body in their request for reconsideration of the Prequalification Decision, the Method of Calculation was selected that is not applicable to an Existing CMU. The Applicant provided an estimate in good faith, which is not suitable for a unit that was fully operational, and the Applicant should have known its actual Connection Capacity and been able to provide this evidence to the Delivery Body.
34. Regardless of the Delivery Body's finding that the failure to submit the application as an Existing Generating CMU was a "material error", we consider that the Application was still not made in compliance with the Rules due to the failure to comply with rule 3.5.

Conclusion

35. The Delivery Body reached the correct reconsidered decision to not Prequalify the CMU listed in Paragraph 1 for the T-1 Auction on the basis that:

- a) At the Prequalification stage, the Applicant incorrectly made an application for a New Build CMU rather than an Existing Generation CMU.
- b) This led to a number of failures within the Prequalification Application, outlined at Appendix A.
- c) The Applicant failed to remedy these issues, and the Delivery Body correctly found in their Reconsidered Decision that the Applicant has not met the requirements of the Rules, in particular, by failing to provide evidence of their Connection Capacity under rule 3.5.

Determination

36. 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 Boom Bacup Storage Limited for Prequalification be upheld in respect of the CMU listed in Paragraph 1 for the T-1 Auction.

Maryam Khan

For and on behalf of the Gas and Electricity Markets Authority

Date 10 February 2025

Appendix A – grounds for rejecting Prequalification Decision

"This Application has not met the requirements of the Capacity Market Rules due to the following reason(s):

F2-9 Prequalification Certificate (Exhibit A) has not been provided

CM Rule 3.12.3 states that each Application must be accompanied by a Prequalification Certificate (Exhibit A). No Prequalification Certificate (Exhibit A) was attached to this Application, and therefore this requirement has not been met.

F2-29 Certificate of Conduct (Exhibit C) has not been provided

CM Rule 3.12.4 requires that a Certificate of Conduct (Exhibit C) is provided with each Application. This Application did not have an accompanying Certificate of Conduct, and so this requirement was not met.

F4-53 Unsigned Connection Acceptance Form

CM Rule 3.7.3(b) requires all New Build Generating CMUs that are Distribution connected to provide a copy of the 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, which confirms the registered capacity of the Generating Unit, and the capacity of the Generating Unit is permitted to export to the Distribution Network. The Distribution Connection Agreement / Connection Offer provided for at least one Generating Unit in the CMU has not been signed, and therefore the requirements of this rule have not been met.

F4-112 Incorrect Method used to calculate the Connection Capacity selected

CM Rule 3.5 requires all Applicants to determine the Connection Capacity of a Generating CMU and to state the method of calculation used. As per CM Rule 3.5.2(b) a Distribution Generating Unit forming all or part of a CMU should, unless nominating a capacity equal to their Average Output under CM Rule 3.5.3, calculate their Connection Capacity with the Maximum Export Capacity. A Method of Calculation was selected that is not applicable to this CMU, and so the requirements of these rules have not been met.

F6-8 Application Year on Fossil Fuel Emissions Commitment (Exhibit ZB) incorrect
CM Rules 3.7.4, 3.8.3 and 3.10.4 require Applicants for New Build Generating, Unproven DSR, or Refurbishing Generating CMUs to provide a Fossil Fuel Emissions Commitment (Exhibit ZB). The Fossil Fuel Emissions Commitment provided has an incorrect Application Year. As such, the matters set out in the Exhibit ZB have not been sufficiently addressed, and the requirement not met. Therefore, as per CM Rule 4.4.2(i) the DB must not Prequalify this CMU.

F6-26 Part 4 on Fossil Fuel Emissions Commitment (Exhibit ZB) incorrect Director Signatures Date

CM Rules 3.7.4, 3.8.3 and 3.10.4 require Applicants for New Build Generating, Unproven DSR, or Refurbishing Generating CMUs to provide a Fossil Fuel Emissions Commitment (Exhibit ZB). The Fossil Fuel Emissions Commitment provided has incorrect Director(s) Signature(s) dates. As such, the matters set out in the Exhibit ZB have not been sufficiently addressed, and the requirement not met. Therefore, as per CM Rule 4.4.2(i) the DB must not Prequalify this CMU.

F6-28 Part 4 on Fossil Fuel Emissions Commitment (Exhibit ZB) invalid Director Signatures

CM Rules 3.7.4, 3.8.3 and 3.10.4 require Applicants for New Build Generating, Unproven DSR, or Refurbishing Generating CMUs to provide a Fossil Fuel Emissions Commitment (Exhibit ZB). The Fossil Fuel Emissions Commitment provided has invalid Director(s) Signature(s). As such, the matters set out in the Exhibit ZB have not been sufficiently addressed, and the requirement not met. Therefore, as per CM Rule 4.4.2(i) the DB must not Prequalify this CMU.

F10-7 CMU has already met Substantial Completion Milestone (SCM)

As per CM Rule 6.7.2, this CMU has met Substantial Completion Milestone (SCM) and is therefore an Existing Generating CMU and not a New Build Generating CMU.

F11-1 Construction Plan Summary Information box has not been completed

CM Rule 3.7.2(a) requires each Applicant for a New Build CMU to provide a description of the nature of the construction, repowering or refurbishment works to be undertaken.

The Construction Plan Summary Information was not completed for this Application, therefore fails to meet the requirement of this Rule. Please contact the Delivery Body for more information.

F11-3 Construction Plan Declaration not made

CM Rule 3.7.2(e) requires each Applicant for a New Build CMU to declare the information contained in the Construction Plan is accurate to the best of the Applicant's knowledge and belief. The Construction Plan Declaration has not been made for this Application, therefore fails to meet the requirement of this Rule. Please contact the Delivery Body for more information.

F11-4 Construction Milestone Dates not provided - Signing of EPC/equivalent Major Contract

CM Rule 3.7.2(b) requires each Applicant for a New Build CMU to identify the earliest and latest dates for achieving the relevant Construction Milestones with their Application. The following Construction Milestone(s) date has not been provided for: Signing of EPC/equivalent Major Contract.

F11-5 Construction Milestone Dates not provided - Commencement of Construction Works

CM Rule 3.7.2(b) requires each Applicant for a New Build CMU to identify the earliest and latest dates for achieving the relevant Construction Milestones with their Application. The following Construction Milestone(s) date has not been provided for: Commencement of Construction Works.

F11-6 Construction Milestone Dates not provided - Main Foundations Complete

CM Rule 3.7.2(b) requires each Applicant for a New Build CMU to identify the earliest and latest dates for achieving the relevant Construction Milestones with their Application. The following Construction Milestone(s) date has not been provided for: Main Foundations Complete.

F11-7 Construction Milestone Dates not provided - Gas/Steam Turbine Delivery (or any Generator Dependent on Technology)

CM Rule 3.7.2(b) requires each Applicant for a New Build CMU to identify the earliest

and latest dates for achieving the relevant Construction Milestones with their Application. The following Construction Milestone(s) date has not been provided for: Gas/Steam Turbine Delivery (or any Generator Dependent on Technology).

F11-8 Construction Milestone Dates not provided - Achievement of the Back-Feed Milestone

CM Rule 3.7.2(b) requires each Applicant for a New Build CMU to identify the earliest and latest dates for achieving the relevant Construction Milestones with their Application. The following Construction Milestone(s) date has not been provided for: Achievement of the Back-Feed Milestone.

F11-9 Construction Milestone Dates not provided - First Firing

CM Rule 3.7.2(b) requires each Applicant for a New Build CMU to identify the earliest and latest dates for achieving the relevant Construction Milestones with their Application. The following Construction Milestone(s) date has not been provided for First Firing.

F11-10 Construction Milestone Dates not provided - Achievement of the Substantial Completion Milestone

CM Rule 3.7.2(b) requires each Applicant for a New Build CMU to identify the earliest and latest dates for achieving the relevant Construction Milestones with their Application. The following Construction Milestone(s) date has not been provided for: Achievement of the Substantial Completion Milestone

Appendix B – grounds for rejecting reconsidered decision

"This Application has not met the requirements of the Capacity Market Rules due to the following reason(s):

F10-7 CMU has already met Substantial Completion Milestone (SCM)

As per CM Rule 6.7.2, this CMU has met Substantial Completion Milestone (SCM) and is therefore an Existing Generating CMU and not a New Build Generating CMU.

F11-1 Construction Plan Summary Information box has not been completed

CM Rule 3.7.2(a) requires each Applicant for a New Build CMU to provide a description of the nature of the construction, repowering or refurbishment works to be undertaken. The Construction Plan Summary Information was not completed for this Application, therefore fails to meet the requirement of this Rule. Please contact the Delivery Body for more information.

F11-3 Construction Plan Declaration not made

CM Rule 3.7.2(e) requires each Applicant for a New Build CMU to declare the information contained in the Construction Plan is accurate to the best of the Applicant's knowledge and belief. The Construction Plan Declaration has not been made for this Application, therefore fails to meet the requirement of this Rule. Please contact the Delivery Body for more information.

F11-4 Construction Milestone Dates not provided - Signing of EPC/equivalent Major Contract

CM Rule 3.7.2(b) requires each Applicant for a New Build CMU to identify the earliest and latest dates for achieving the relevant Construction Milestones with their Application. The following Construction Milestone(s) date has not been provided for: Signing of EPC/equivalent Major Contract.

F11-5 Construction Milestone Dates not provided - Commencement of Construction Works

CM Rule 3.7.2(b) requires each Applicant for a New Build CMU to identify the earliest and latest dates for achieving the relevant Construction Milestones with their Application. The

following Construction Milestone(s) date has not been provided for: Commencement of Construction Works.

F11-6 Construction Milestone Dates not provided - Main Foundations Complete

CM Rule 3.7.2(b) requires each Applicant for a New Build CMU to identify the earliest and latest dates for achieving the relevant Construction Milestones with their Application. The following Construction Milestone(s) date has not been provided for: Main Foundations Complete.

F11-7 Construction Milestone Dates not provided - Gas/Steam Turbine Delivery (or any Generator Dependent on Technology) CM Rule 3.7.2(b) requires each Applicant for a New Build CMU to identify the earliest and latest dates for achieving the relevant Construction Milestones with their Application. The following Construction Milestone(s) date has not been provided for: Gas/Steam Turbine Delivery (or any Generator Dependent on Technology).

F11-8 Construction Milestone Dates not provided - Achievement of the Back-Feed Milestone

CM Rule 3.7.2(b) requires each Applicant for a New Build CMU to identify the earliest and latest dates for achieving the relevant Construction Milestones with their Application. The following Construction Milestone(s) date has not been provided for: Achievement of the Back-Feed Milestone.

F11-9 Construction Milestone Dates not provided - First Firing CM Rule 3.7.2(b) requires each Applicant for a New Build CMU to identify the earliest and latest dates for achieving the relevant Construction Milestones with their Application. The following Construction Milestone(s) date has not been provided for First Firing.

F11-10 Construction Milestone Dates not provided - Achievement of the Substantial Completion Milestone

CM Rule 3.7.2(b) requires each Applicant for a New Build CMU to identify the earliest and latest dates for achieving the relevant Construction Milestones with their Application. The following Construction Milestone(s) date has not been provided for: Achievement of the Substantial Completion Milestone.

F4-112 Incorrect Method used to calculate the Connection Capacity selected

CM Rule 3.5 requires all Applicants to determine the Connection Capacity of a Generating CMU and to state the method of calculation used. As per CM Rule 3.5.2(b) a Distribution Generating Unit forming all or part of a CMU should, unless nominating a capacity equal to their Average Output under CM Rule 3.5.3, calculate their Connection Capacity with the Maximum Export Capacity. A Method of Calculation was selected that is not applicable to this CMU, and so the requirements of these rules have not been met.