

## **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 HEIT WG Limited ("HEIT WG", "the Applicant") against a reconsidered decision made by the Electricity Market Reform Delivery Body ("Delivery Body") in respect of the following Capacity Market Unit ("CMU"):

a) HWGL25 (T-1 Auction)

2. Pursuant to Regulation 71(3) of the Electricity Capacity Regulations 2014 (as amended) (the "Regulations"), where the Authority<sup>1</sup> 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. The Applicant 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 following grounds:

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

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<sup>1</sup> 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.

*F2-53 Invalid Certificate of Conduct (Exhibit C): Incorrect Year of Application provided*

*CM Rule 3.12.4 requires that a Certificate of Conduct (Exhibit C) is provided with each Application. The Certificate of Conduct provided in this Application has an incorrect year of Application. As such this does not sufficiently address the matters as set out in the Certificate of Conduct as required under CM Rule 3.12.4.*

*F4-81 Missing/Incorrect Connection Arrangement*

*CM Rule 3.1.2(a) requires the Application process to determine for each applying CMU the correct connection arrangement in regards to Distribution/Transmission status. It has not been possible from this Application to determine whether this CMU is Distribution or Transmission*

*F4-80 Missing/Incorrect Classification of CMU*

*CM Rule 3.1.2(a) requires the Application process to determine for each applying CMU the correct classification in regards to CMRS/Non-CMRS status. It has not been possible from this Application to determine whether this CMU is CMRS or Non-MRS.*

*F4-125 Location specified by the Postcode does not match the OS Grid Reference*

*CM Rule 3.4.3(a)(i) requires the Applicant to provide the full postal address and postcode (if assigned) and the two-letter prefix and six-figure Ordnance Survey grid reference number(s), for all the Generating Units comprised within the CMU. The OS grid reference does not match the post code of at least one Generating Unit in the Application, and therefore the requirements of this rule have not been met.*

*F4-200 No historic performance entered for at least one of the settlement periods*

*Capacity Market Rule 3.6.1(a) requires each Applicant for an Existing*

*Generating CMU to identify in the Application three Settlement Periods on separate days in the 24 months prior to the end of the Prequalification Window, in which such Existing Generating CMU delivered a net output equal to or greater than its Anticipated De-rated Capacity. This information has not been provided as part of this Application as required by Rule 3.6.1(a).*

*F4-209 No document provided for Confirmation of Historic Metered Output 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. This information has not been provided as part of this Application, as required by Rule 3.6.1(b).*

*F4-10 Distribution Entry Capacity Declaration not selected  
CM Rule 3.6.3(c) requires each Applicant for an Existing Generating CMU that is a Distribution CMU to confirm that one or more Distribution Connection Agreements have been entered into which permit at least, in aggregate, the Connection Capacity of that CMU and any other CMU to which any such Distribution Connection Agreement applies to in the relevant Delivery Years. The Distribution Entry Capacity Declaration has not been selected for this Application, and therefore the requirements of this rule have not been met.*

*F4-16 No Connection Agreement uploaded  
CM Rule 3.6.3(c) requires all Existing Generating CMUs that are Distribution connected to provide a copy of the Distribution Connection Agreement for each Generating Unit comprised in the CMU with the Application, or where this is not possible, written confirmation from the Distribution Network Operator that such*

*Distribution Connection Agreement 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. Neither a Distribution Connection Agreement nor written confirmation from the Distribution Network Operator has been provided for this Application, and therefore the requirements of this rule have not been met.*

5. The Applicant submitted a request for reconsideration of the Prequalification Decision on 18 November 2024.
6. The Delivery Body issued a Notice of Reconsidered Decision on 10 December 2024 which rejected the dispute on the following grounds:

*F4-200 No historic performance entered for at least one of the settlement periods*

*Capacity Market Rule 3.6.1(a) requires each Applicant for an Existing Generating CMU to identify in the Application three Settlement Periods on separate days in the 24 months prior to the end of the Prequalification Window, in which such Existing Generating CMU delivered a net output equal to or greater than its Anticipated De-rated Capacity. This information has not been provided as part of this Application as required by Rule 3.6.1(a).*

7. The Applicant then submitted an Appeal Notice to the Authority on 17 December 2024 under Regulation 70 of the Regulations.

## **HEIT WG's Grounds for Appeal**

8. The Applicant disputes the decision on the following ground:

The Applicant disputes the Delivery Body's Notice of Reconsidered Decision as they have provided the historic performance data with date, settlement period and average physical net outputs in MWh as part of the Appeal Notice. They believe that 'a *non-material error was made as the CMU is a fully compliant CMU and the error only arose*

*from not submitting the relevant MWh figures to support the settlement periods and dates submitted'. They argue that since this data has now been supplied as part of the Appeal Notice, 'the clerical error which resulted in the rejection has now been rectified'.*

## **The Legislative Framework**

9. 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**

10. 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 Capacity Market Rules.
11. Regulations 68 to 72 set out the process and powers in relation to dispute resolution and appeals.
12. Regulations 70(4)-(6) sets out the requirements for the Applicant's Appeal to the Authority:

*(4) The appeal notice must be accompanied by—*

*(a) a copy of—*

- (i) the notice given by the Delivery Body under regulation 69(3) or (4);*
- (ii) the request made to the Delivery Body for reconsideration; and*
- (iii) any information or evidence submitted to the Delivery Body in support of that request;*

*(b) in the case of an appeal relating to a prequalification decision, a copy of—*

- (i) the prequalification decision; and*
- (ii) any information or documents provided by the affected person to the Delivery Body as part of the application for prequalification which are relevant to the matter in dispute;*

*(c) in the case of an appeal relating to a termination notice or a notice of intention to*

*terminate, a copy of—*

*(i) the notice; and*

*(ii) any information or documents provided by the affected person to the Delivery Body before the notice was issued, which are relevant to the matter in dispute; and*

*(d) any other documentary evidence which the affected person wishes to rely on in support of the appeal and which—*

*(i) was provided to the Delivery Body before the reconsidered decision was made; or*

*(ii) is needed to show what evidence was before the Delivery Body when the reconsidered decision was made.*

*(5) Where a request for reconsideration was rejected by the Delivery Body on the ground that it did not comply with regulation 69(2), the affected person may submit evidence to the Authority that the request did comply with that regulation.*

*(6) Except as provided in paragraphs (4) and (5), no other documentary evidence may be included in or submitted with the appeal notice.*

13. Regulation 71(3)(b) sets out the Authority's obligations when receiving an Appeal Notice:

*"Upon receiving an Appeal Notice which complies with regulation 70, and any information requested from the Delivery Body, the Authority must—*

*(b) determine whether the Reconsidered Decision was correct on the basis of the information which the Delivery Body had when it made the decision."*

## **Capacity Market Rules**

14. Rule 3.6 sets out the Additional Information required to be submitted for an Existing Generating CMU.

15. Rule 3.6.1 requires Existing Generation CMUs to provide evidence of Previous Settlement Period performance (referred to as Historic Output by the Delivery Body) and states:

### 3.6.1 "Previous Settlement Period performance

*(a) Except where Rule 3.6.1(aa) applies each Applicant for an Existing Generating CMU must:*

*(i) identify in the Application three Settlement Periods on separate days in the 24 months prior to the end of the Prequalification Window, or in the case where Rule 3.13 applies, prior to the close of the last day for submission of secondary trading, in which such Existing Generating CMU delivered a net output equal to or greater than its Anticipated De-rated Capacity,*

*(ii) and specify the physically generated net outputs, or Metered Volume where applicable, in MWh to three decimal places for each of those Settlement Periods."*

## Our Findings

16. We have assessed the Applicant's Ground for Appeal, which are summarised in Paragraph 8, above.
17. As set out above, Rule 3.6.1(a) requires Existing Generation CMUs to confirm their previous Settlement Period performance. The Applicant did not provide this information as part of their Application for Prequalification and in their request for reconsideration of the Prequalification Decision, the Historic Performance Data they provided was not within the period 24 months prior to the end of the Prequalification Window (1st October 2024). The Settlement Periods provided by the Applicant in their request for reconsideration of the Prequalification Decision fell after the Prequalification Window.
18. In their Appeal Notice, the Applicant states that *a 'non-material error was made as the CMU is a fully compliant CMU and the error only arose from not submitting the relevant MWh figures to support the settlement periods and dates submitted'*. They argue that since this data has now been supplied as part of the Appeal Notice, *'the clerical error which resulted in the rejection has now been rectified'*. Additionally, the Applicant provided a supplier letter confirming these Settlement Periods.

19. Regulation 70 sets out what documentary evidence can be accompanied by the Applicants' Appeal Notice. Only information and documentary evidence that the Applicant has provided to the Delivery Body as part of their Application for Prequalification or in their request for reconsideration of the Prequalification Decision can be included in the Applicant's Appeal Notice. Regulation 70(6) states that *'except as provided in paragraphs (4) and (5), no other documentary evidence may be included or submitted with the Appeal Notice'*.
20. The Applicant did not provide their previous Settlement Period performance in compliance with Rule 3.6.1(a) in their Application for Prequalification. The previous Settlement Period performance data provided at the Applicants' request for reconsideration of the Prequalification Decision stage, also did not comply with Rule 3.6.1(a).
21. Therefore, the Authority cannot take into account the MWh figures that were submitted by the Applicant in their Appeal Notice as it was not before the Delivery Body as laid out in Regulation 71(3)(b), as stated in Paragraph 13. Furthermore, the Settlement Periods provided at the Applicants request for reconsideration of the Prequalification Decision fell after the Prequalification Window and did not comply with Rule 3.6.1(a).
22. We consider that the Applicant failed to provide the evidence which met the requirements of Rule 3.6.1(a) in their Application for Prequalification. The Applicant did not rectify this in their request for reconsideration of the Prequalification Decision. As such the Delivery Body was correct to reject the CMU in paragraph 1 from Prequalification.

## Conclusion

23. The Delivery Body reached the correct reconsidered decision to not Prequalify the CMU for the T-1 Auction on the basis that:
  - a) At the Prequalification stage, the Applicant did not provide information in regards to Previous Settlement Period performance in accordance with Rule 3.6.1(a).



- b) At reconsideration of Prequalification Decision stage, the Applicant, provided information in regards to Previous Settlement Period performance, however this data did not meet the requirements of Rule 3.6.1(a) as the Historic Performance Data they provided was not within the period 24 months prior to the end of the Prequalification Window nor did the Applicant include the average physically generated net outputs in MWh.
- c) In accordance with Regulation 71(3) the Authority must determine whether the Reconsidered Decision was correct on the basis of the information which the Delivery Body had when it made its decision.

## **Determination**

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 the Applicant 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