

## **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 Low Carbon UK Solar Operations Limited ("Low Carbon", "the Applicant") against reconsidered decisions made by the Electricity Market Reform Delivery Body ("Delivery Body") in respect of the following Capacity Market Units ("CMUs"):
  - a) LCB105 Layer 2 BESS (2025 T-1 Auction)
  - b) LCB104 Shaftesbury BESS (2025 T-1 Auction)
  - c) LCB101 Kimpton BESS (2025 T-1 Auction)
2. This decision deals with all of the appeals listed above collectively, as they are substantively in respect of the same issue, and differ only in respect of the identity of the relevant CMUs.
3. 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**

4. Low Carbon submitted an Application for Prequalification for the CMUs in Paragraph 1 in respect of the 2025 T-1 Auction and sought a Maximum Obligation Period of 1 year.
5. For each of the CMUs listed in Paragraph 1, the Delivery Body issued a Notification of Prequalification Decision dated 12 November 2024 (the "Prequalification Decision"). The

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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.

Delivery Body Rejected the Application for Prequalification made in respect of each of the CMUs on the following grounds:

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

*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.*

*F4-15 No Connection Agreement uploaded:*

*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. 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".*

6. Low Carbon submitted requests for reconsideration of each of the Prequalification Decisions on 19 November 2024.
7. The Delivery Body issued a Notice of Reconsidered Decision in respect of each of the CMUs listed in paragraph 1 on 10 December 2024. These notices are substantively

identical, except for the references to the different CMU IDs. We have therefore addressed these matters collectively.

8. In its Notice of Reconsidered Decisions, the Delivery Body noted that the errors relating to the incorrect method of calculating connection capacity had been addressed for each of the CMUs. However, the Delivery Body found that the issues relating to the Connection Agreements had not been resolved in respect of any of the CMUs. While Low Carbon had provided revised documentation to the Delivery Body with regards to their connection agreements, the Delivery Body found that *'... a Connection Agreement was not provided. The Applicant shared the "Customer Acceptance Form"'*.
9. Therefore, in its Notice of Reconsidered Decision the Delivery Body found that the Applications for Prequalification had not met the requirements of the Capacity Market Rules due to Rule 3.7.3(b) not having been complied with.
10. Low Carbon then submitted Appeal Notices in respect of each of the CMUs to the Authority on 16 December 2024 under Regulation 70 of the Regulations.

## **Low Carbon's Grounds for Appeal**

11. Low Carbon disputes the Delivery Body's decisions on the following grounds:

### Ground 1

In each of the Appeal Notices, Low Carbon stated:

*"We wish to dispute the decision on the grounds that the grid connection offer is available and has been supplied to the Delivery Body [for all 3 prospective CMUs] previously. As part of our Tier 1 dispute, we submitted the evidence of acceptance of this grid offer. We believed this was the required action to resolve the issue with our application and sought to confirm this with EMR prior to submitting the Tier 1 appeal. The feedback we received indicated that we were responding appropriately."*

### Ground 2

Low Carbon also argued an alternative ground with respect to all three CMUs:

*"The offer and the acceptance documents are compliant with the requirements of prequalification for the Capacity Market. Submission of these same documents for the linked CMUs [LCB001, LCB004, and LCB005] have already been accepted by the Delivery Body as required under the Financial Commitment Milestone."*

## **The Legislative Framework**

12. 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**

13. 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.
14. Regulations 68 to 72 set out the process and powers in relation to dispute resolution and appeals.
15. In particular, 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**

16. Rule 3.7.3(b) is relevant to the determination of this dispute. It requires that applicants for a New Build CMU that is, or will be directly connected to a Distribution Network, to provide evidence of their Distribution Connection Agreement or connection offer.
17. Rule 3.7.3(b) specifically provides that:

*"(b) Subject to Rule 3.7.3(c) below, Applicants for a New Build CMU that is, or will be, directly connected to a Distribution Network must:*

*(i) confirm that there are one or more Distribution Connection Agreements or accepted connection offers which permit at least, in aggregate, the Anticipated De-rated Capacity of that CMU and any other CMUs to which the Distribution Connection Agreement applies to connect to the Distribution Network in the relevant Delivery Years; and*

*(ii) provide with the Application a copy of any such 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 and confirming:*

*(aa) the registered capacity (or inverter rating, if applicable) of that Generating Unit and where a range of values is specified for the registered capacity (or inverter rating, if applicable), the minimum value in that range; and*

*(bb) the capacity that such Generating Unit is permitted to export to the Distribution Network."*

18. Rule 4.4.2 provides that:

*"Subject to Rule 3.8.1A(c)(ii), the Delivery Body must not Prequalify a CMU where:*

*(a) it is aware that the Application has not been completed or submitted in accordance with the Rules;"*

## **Our Findings**

19. We have assessed Low Carbon's Grounds for Appeal, which are summarised below:

### Ground 1

20. As a starting point, Rule 3.7.3(b) requires that the Applicant provides a copy of the Distribution Connection Agreement ("Connection Agreement") or connection offer (with evidence of acceptance) alongside their Prequalification Application. The Rule provides an alternative where that is not possible, which requires the Applicant to provide written

confirmation from the Distribution Network Operator confirming the same.<sup>2</sup>

21. In their Appeal Notice, Low Carbon acknowledges that it did not originally provide copies of their Connection Agreements alongside their Applications for Prequalification, but that it did provide them alongside its requests for reconsideration of each of the Prequalification Decisions (in respect of each CMU).
22. The Delivery Body found that the evidence submitted by Low Carbon in relation to the Connection Agreement was insufficient to meet the requirements of rule 3.7.3(b). Low Carbon provided evidence to the Delivery Body of a Customer Acceptance Form, rather than a copy of the Connection Agreements. We agree that the evidence supplied to the Delivery Body was insufficient for the purposes of rule 3.7.3(b) as it does not specify the capacity or terms that are associated with a Connection Agreement.
23. We note that Connection Agreements meeting the requirements set out in rule 3.7.3(b) were provided to the Authority alongside the Appeal Notices received on 16 December 2024. Regulation 71(3) provides that the role of the Authority is to determine whether the Delivery Body's reconsidered decision was correct on the basis of the information which the Delivery Body had before them when they made the decision. Therefore, the Authority has no ability to consider additional supporting documents relating to the application as part of the Authority's appeals process.<sup>3</sup>
24. Low Carbon also provided evidence relating to email correspondence with the Delivery Body regarding the submission of its Connection Agreements in its requests for reconsideration of each of the Prequalification Decisions. Low Carbon stated in their Appeal Notice to the Authority that they sought to clarify their intended response with EMR, *"and were met with a positive response"*. Low Carbon stated via email to the Delivery Body that the failure to provide the Connection Agreements was a *"clerical error on our part not realising the signed Grid Offer Acceptance certificates had not been submitted alongside the offer. I have these on file and can submit them immediately"*.
25. The Delivery Body responded to this statement as follows: *"It seems like you are*

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<sup>2</sup> Refer rule 3.7.3(b)(ii)(aa) and (bb)

<sup>3</sup> Refer Regulation 70(6)

*comfortable with F4-15, but let me know if there are any other questions”.*

26. We do not consider that this email correspondence constitutes the Delivery Body’s acceptance of the evidence that was subsequently submitted alongside Low Carbon’s requests for reconsideration of each of the Prequalification Decisions, or changes the position outlined above that the evidence did not meet the threshold required by rule 3.7.3(b).

## Ground 2

27. In the alternative, Low Carbon argues that the Delivery Body already held a copy of the relevant Connection Agreements by virtue of the fact that these units had been cloned from three CMUs that had previously been successfully prequalified.
28. Low Carbon have argued that *“It was our belief that we needed to provide the evidence of grid offer acceptance, which we acknowledge was not provided during our prequalification application. This was in the knowledge that EMR held the grid connection offer already for [the relevant site], without which the site would not have obtained a T-4 contract and completed the Financial Commitment Milestone. Evidence of the prior submission of the grid connection offer and acceptance for Shaftesbury BESS is provided”.*
29. The CMU IDs LCB101, LCB104, and LCB105 were created via the ‘cloning’ process on the Delivery Body’s EMR portal. The original CMUs for each of the sites (LCB001, LCB004, and LCB005 respectively) were prequalified ahead of the 2024 T-4 Auction. In each case, both the original CMU IDs and the ‘cloned’ CMU IDs are represented by the same generating equipment.
30. However, at the Prequalification stage for the original (pre-cloned CMUs), Low Carbon elected to defer provision of their Connection Agreements.<sup>4</sup> Therefore, when Low Carbon undertook the cloning process, the Connection Agreements were not copied across to the applications in question as they did not form part of the original Applications for

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<sup>4</sup> Under rule 3.7.3(c), an Applicant for a T-4 auction can elect to defer providing confirmation of a Connection Agreement by providing a declaration that it will be in place at least 18 months prior to the commencement of the relevant Delivery Year.

Prequalification for the pre-cloned CMUs.

31. While we accept that the Delivery Body may have held the relevant Connection Agreements for the original CMUs, they were at no point notified or instructed to access these Connection Agreements from the original CMUs by Low Carbon Solar, and cannot reasonably have been expected to find the relevant Connection Agreements elsewhere within their system.
32. Furthermore, the argument that the Delivery Body already held the Connection Agreements was only raised in the Appeal Notice to the Authority, and the Applicant did not bring this to the attention of the Delivery Body at any earlier stage, either in their original application or in their Tier 1 appeal.
33. Rule 4.4.2 is clear that the Delivery Body must not Prequalify a CMU where it is aware that the Application has not been submitted in accordance with the Rules. Even if the Delivery Body held a copy of the relevant Connection Agreements, Low Carbon Solar was required to submit these alongside its Applications for Prequalification.
34. We consider that the Applicant failed to provide the evidence which met the requirements of Rule 3.7.3(b) in their Applications for Prequalification. The Applicant did not rectify this in their requests for reconsideration of each of the Prequalification Decisions. As such the Delivery Body was correct to reject the CMUs in paragraph 1 from Prequalification.

## **Conclusion**

35. The Delivery Body reached the correct reconsidered decision to not Prequalify the CMUs for the T-1 Auction on the basis that:
  - a) At the Prequalification stage, the Applicant did not provide a Connection Agreement for any of the CMUs in accordance with Rule 3.7.3(b).
  - b) At reconsideration of Prequalification Decision stage, the Applicant provided copies of Customer Acceptance Forms relevant to their Connection



Agreements, however these agreements did not fully satisfy the requirements of Rule 3.7.3.

- c) Although the Applicant provided copies of the full Connection Agreements alongside their Appeal Notices to the Authority, Regulation 71(3)(b) provides that the Authority cannot consider additional information that was not before the Delivery Body at the time they made their reconsidered decision. Therefore, the provision of a Connection Agreement to the Authority does not rectify this omission.

## **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 Low Carbon for Prequalification be upheld in respect of the CMUs listed in Paragraph 1 for the T-1 Auction.

**Maryam Khan**

**For and on behalf of the Gas and Electricity Markets Authority**

**10 February 2025**