

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 GridBeyond Limited (“GridBeyond”) against a reconsidered decision made by the Electricity Market Reform Delivery Body (“Delivery Body”) in respect of the following Capacity Market Unit (“CMU”):
 - a) GB2424 (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. GridBeyond submitted an Application for Prequalification for the CMU in Paragraph 1 in respect of the 2025/26 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):

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.

F4-102 Valid Generating Technology Class not selected for a Generating CMU

CM Rule 3.4.5(b) requires all Applicants to state the Generating Technology Class of the Generating Unit(s) that comprise the CMU. The Generating Technology Class for Generating CMUs should be selected, as defined in Schedule 3. The Generating Technology Class for the relevant Generating Unit(s) comprised in this CMU is invalid since an option from Schedule 3 has not been selected, therefore this cannot be accepted.

Further information relevant to the Application:

F4-102: The GTC type Energy from Waste (EfW) has been selected. The CMU for which this Application relates utilises "waste steam/heat". Steam/heat in itself cannot be considered "waste" as the definition of EfW in this context is "steam generation from waste".

5. GridBeyond submitted a request for reconsideration of the Prequalification Decision to the Delivery Body 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:

The same "Rejection reason(s)" as in the Prequalification Decision listed at Paragraph 4.

In the further information section, the Delivery Body stated:

Application A-T-1-2025-GB2424-00001 was initially rejected due to an invalid selection of the Generating Technology Class. The Application selected Energy from Waste (EfW). The CMU associated with this Application uses steam byproduct as "waste steam/heat," which cannot be considered "waste" under the definition of EfW. EfW requires the waste product to be used as a fuel source.

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

GridBeyond's Grounds for Appeal to the Authority

8. GridBeyond disputes the decision on the following grounds:

The "Energy from Waste" Generating Technology Class is the correct Classification for this CMU (as per Schedule 3 of the Capacity Market Rules).

Ground 1

The definition of "Energy from Waste" includes a non-exhaustive list, and does not specify that Waste must be combusted.

Supported by:

Schedule 3 of the CM Rules defines "Energy from Waste" as the following:

"Generation of energy from waste, including the generation of energy from:

- a) **conventional steam generators using waste;***
- b) anaerobic digestion;*
- c) pyrolysis;*
- d) and d) gasification"*

Note the term "including", and that 4x technologies are given as examples within the Schedule 3 "Energy from Waste" definition. This list is not exclusive, and does not specify that the Waste must be combusted.

Ground 2

As a conventional Steam Turbine generation unit, "Waste" is the only appropriate Primary Fuel Category for CMU GB2424.

Supported by:

*[T]he Primary Fuel Categories available are the following: Bio-fuel, biomass, coal, coal mine methane, diesel, distillate, DSR, gas, hydro, interconnector, nuclear oil, storage- battery, storage – compressed air, storage – pumped, **waste**, onshore wind, offshore wind, and solar. As a conventional steam generator [...] "Waste" is the only appropriate Primary Fuel Category for CMU GB2424.*

Electricity from the 8G-2 Steam Turbine generation unit is generated by the motive force of high pressure steam being let down to low pressure steam across a turbine. This is a conventional steam generator using waste, as per example

(a), Schedule 3 of the CM Rules.

Prax Lindsey Oil Refinery is one of 6x major refineries in the UK. The Refinery extends over 500 acres and utilises some of the most advanced refining and conversion processes in Europe.

These advanced refinery processes produce waste byproducts, including steam. These byproducts are utilised for a variety of energy efficiency measures across the Site. A fraction of this steam waste byproduct is dedicated to the steam turbine generation unit.

*The high pressure steam is produced as a waste byproduct, namely heat recovery through the refinery processes. These refinery processes do not by themselves exist to produce steam (i.e., they are not boilers). **Therefore, we submit that the most accurate Fuel Category for the 8G-2 Steam Turbine generation unit is "Waste".***

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 Rules.
11. Regulations 68 to 72 set out the Delivery Body's and Authority's process and powers in relation to dispute resolution and appeals.

Capacity Market Rules

12. Rule 3.4.5(b) lays out requirements for Generating Technology Class selection and states that:

3.4.5 Each Application must specify...

b) in the case of a Generating CMU, the Generating Technology Class to which each Generating Unit that comprises such a CMU belongs; and

13. "Generating Technology Class" is defined in the Rules as follows:

Generating Technology Class means a class of Generating Unit, defined by the technology used to generate electricity, for which the Secretary of State requires the Delivery Body to publish a De-Rating Factor, identified in the list attached as Schedule 3

14. Schedule 3 of the Rules sets out the Generating Technology Classes and provides further details about the plant types included in each such class:

Item	Generating Technology Class	Plant types included
34	Energy from Waste	<p>Generation of energy from waste, including the generation of energy from:</p> <ul style="list-style-type: none"> (a) conventional steam generators using waste; (b) anaerobic digestion; (c) pyrolysis; and (d) gasification

Our Findings

15. We have assessed GridBeyond's Grounds for Appeal, which are summarised in Paragraph 8, above.

Ground 1

16. The Applicant has selected the Generating Technology Class as "Energy from Waste" as their CMU uses "high pressure steam" as fuel, which they state is a "waste byproduct" and therefore classified as an "Energy from Waste" plant. The Applicant concluded that

'the most accurate Fuel Category for the [...] generation unit is "Waste"'.

17. The Rules do not define "waste" or "Energy from Waste". The definition of "waste" is derived from section 75(2) of the Environmental Protection Act 1990, which incorporates principles from the Waste Framework Directive ('WFD') and the Waste (England and Wales) Regulations 2011. This transposed significant parts of the WFD including the definition of 'waste' and 'by-products'.
18. Article 3 of the WFD states that *"'waste' means any substance or object which the holder discards or intends to discard"*.
19. Article 5(1) of the WFD defines 'by-products' as
"Member States shall take appropriate measures to ensure that a substance or object resulting from a production process the primary aim of which is not the production of that substance or object is considered not to be waste, but to be a by-product if the following conditions are met:
 - (a) further use of the substance or object is certain;*
 - (b) the substance or object can be used directly without any further processing other than normal industrial practice;*
 - (c) the substance or object is produced as an integral part of a production process; and*
 - (d) further use is lawful, i.e. the substance or object fulfils all relevant product, environmental and health protection requirements for the specific use and will not lead to overall adverse environmental or human health impacts."*
20. The Applicant indicated, in their Appeal Notice, that the advanced refinery processes used at Prax Lindsey Oil Refinery produce "waste byproducts", including steam. The Applicant maintains that *'these byproducts are utilised for a variety of energy efficiency measures across the site'* and *'a fraction of this steam waste byproduct is dedicated to the steam turbine generation unit'*. Therefore, we conclude that the "steam" used for the CMU would not meet the definition of "waste" in Article 3 of the WFD as the holder of the steam does not discard it or intend to discard it. Furthermore, the steam used by the CMU meets the conditions of a by-product set out in Article 5(1) of the WFD. By meeting

the definition of a 'by-product', the steam is excluded from meeting the requirements of 'Energy from Waste'.

Ground 2

21. The Applicant states that "waste" is the only appropriate Primary Fuel Category for the CMU. We believe that the "steam" the CMU utilises cannot be categorised as "waste" for the Primary Fuel Category as it does not meet the definition of "waste" in Article 3 of the WFD as the holder of the steam does not discard it or intend to discard it. The Applicant maintains that *'these byproducts are utilised for a variety of energy efficiency measures across the site'*.
22. The Applicant considered their CMU to be a "conventional steam generator using waste", which is an "Energy from Waste" plant type. The Applicant would need to use waste to generate energy to qualify as an "Energy from Waste" plant. However, the Authority maintains that as the CMU uses a by-product to generate energy, therefore the Applicant cannot select the "Energy from Waste" Generating Technology Class as a valid classification for this CMU.
23. CM Rule 3.4.5(b) requires all Applicants to state the Generating Technology Class of the Generating Unit(s) that comprise the CMU. The Generating Technology Class for Generating CMUs should be selected, as defined in Schedule 3. We consider that the Generating Technology Class selected by the Applicant for this CMU in their request for reconsideration of the Prequalification Decision is invalid. The Applicant maintained that "Energy from Waste" was the correct Generating Technology Class for their CMU 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

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

- a) At Prequalification stage, the Applicant selected “Energy from Waste” as the applicable Generating Technology Class for their CMU.
- b) At reconsideration of Prequalification stage, the Applicant maintained that “Energy from Waste” was the correct Generating Technology Class for their CMU. However, the Generating Technology Class as defined in Schedule 3, selected for the CMU is invalid as it does not meet the criteria of “Energy from Waste”.
- c) The information provided by the Applicant in their request for reconsideration of the Prequalification Decision does not demonstrate that they meet the criteria for “Energy from Waste” Generating Technology Class.

Determination

25. 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 CMU listed in Paragraph 1 for the T-1 Auction.

Maryam Khan

For and on behalf of the Gas and Electricity Markets Authority

10/02/2025