

**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 EMR Delivery Body (National Grid Electricity Transmission plc (“NGET”)) in respect of the following Capacity Market Unit (CMU):
  - a) GBD001
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 NGET.

**Appeal Background**

3. GridBeyond submitted an Application for Prequalification for the CMU in Paragraph 1 in respect of the 2019 T-1 and T-4 Auctions
4. For the CMU listed in Paragraph 1, NGET issued a Notification of Prequalification Decision dated 29 October 2018 (the “Prequalification Decision”). NGET rejected the CMU on the following grounds:

*Capacity Market Rule 3.9.2 requires all Applicants for Proven DSR CMUs to include details of all Permitted On-site Generating Units however this Application is*

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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.

*missing this content, therefore cannot be verified. Please contact the Delivery Body for more information.*

*Capacity Market Rule 3.4.3 (a) (i) requires the Applicant to provide the full postal address and postcode (if assigned) for all Generating Units / CMU components. The address of at least one Generating Unit / CMU component in your Application is missing/invalid, therefore cannot be verified. Please contact the Delivery Body for more information.*

*Capacity Market Rule 3.4.3 (a) (i) requires the Applicant to provide the full postal address and postcode for all Generating Units / CMU components. The postcode of at least one Generating Unit / CMU component in your Application is missing/invalid, therefore cannot be verified. Please contact the Delivery Body for more information.*

*Capacity Market Rule 3.4.3 (a) (i) requires the Applicant to provide the two-letter prefix and six-figure Ordnance Survey grid reference number(s), for all Generating Units / CMU components within the CMU. The OS grid reference for at least one Generating Unit / component in your Application was missing/invalid, therefore cannot be verified.*

*Please note, the Connection Capacity for the CMU was amended in Assessment to reflect the connection capacity agreement values, which meant the Delivery Body could not include 1 component in the calculations, therefore it is 2.206MW before de-rating.*

5. GridBeyond submitted a Request for Reconsideration of the Prequalification Decisions.
6. NGET issued a Notice of Reconsidered Decision (“Reconsidered Decision”) on 16 November 2018 which rejected the dispute on the following grounds:

*Capacity Market Rule 3.9.2 requires all Applicants for Proven DSR CMUs to include details of all Permitted On-site Generating Units however this Application is missing this content, therefore cannot be verified. The Applicant has failed to address this failure reason in the request to review the Prequalification Decision, therefore this requirement is still outstanding and the status of the Application under the Reconsidered Decision remains as Rejected.*

7. GridBeyond then submitted an Appeal Notice to the Authority on 16 November 2018 under Regulation 70 of the Regulations.

#### **GridBeyond's Grounds for appeal**

8. GridBeyond's principal ground of appeal is based on the argument of a simple clerical error during the cloning of GBD001's "mother" CMU, END004. GridBeyond explains that the cloned component, END004.1, was included in the CMU GBD001 in error. The errant CMU component END004.1 was a "placeholder" component which should have been deleted after the issuance of the DSR Test Certificate. Applicants for Unproven DSR CMUs include in their application "placeholder" components until they complete their metering assessment and DSR test closer to the Delivery Year and it becomes a Proven DSR CMU.
9. GridBeyond indicates that not removing the placeholder CMU component END004.1 from GBD001 was unintentional and that they were not attempting to alter the computed baseline or DSR Volume delivered against GBD001.

#### **The Legislative Framework**

10. The Electricity Capacity Regulations 2014 were made by the Secretary of State under the provisions of section 27 of the Energy Act 2013. The Capacity Market Rules ("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 duties upon NGET 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. Regulation 2 defines a Permitted On-Site Generating Unit as a generating unit that:
  - (a) *is primarily used to provide on-site supply; and*
  - (b) *does not supply electricity to a distribution network or the GB transmission system other than in settlement periods where-*
    - (i) *the electricity requirements of the on-site consumer are fully and exclusively met by on-site supply from the generating unit;*
    - (ii) *those requirements are less than the available capacity of the generating unit;**and*
  - (iii) *neither the generating unit nor the on-site consumer imports any electricity;*
14. Regulation 2 defines a proven Demand Side Response CMU as

*A demand side response CMU in respect of which a DSR test has been carried out*
15. Regulation 2 defines an Unproven Demand Side Response CMU as

*A demand side response CMU other than a proven demand side response CMU*

## **Capacity Market Rules**

16. Rule 3.9.1 requires that each Applicant for a Proven DSR CMU includes in their Application a DSR Test Certificate relating to the DSR CMU.

### *DSR Test Certificate*

*Each Applicant for a Proven DSR CMU must include in the Application a DSR Test Certificate relating to that DSR CMU.*

17. Rule 3.9.2 regarding Permitted On-Site Generating Units states that:

*Each Applicant for a Proven DSR CMU must include in the Application details of all Permitted On-Site Generating Units and electricity connections from or through which electricity is or could be supplied to the site where and/or electrical apparatus through which the DSR will be effected.*

18. Rule 3.10.2 relates to Required Testing and states that:

*Each Applicant for an Unproven DSR CMU must confirm that it will complete in relation to that CMU:*

- (a) Prior to the date falling one month before the commencement of the Delivery Year to which the Capacity Auction relates, a DSR Test or Joint DSR Test;*
- (b) Prior to the date falling four months before the commencement of the Delivery Year to which the Capacity Auction relates, a Metering Assessment (including providing line diagrams as described in Rule 3.9.4(a)(i)); and*
- (c) Prior to the date falling two weeks before the commencement of the Delivery Year to which the Capacity Auction relates, if required, a Metering Test.*

## **Our Findings**

19. We have assessed GridBeyond's grounds for appeal.

20. GridBeyond contends that Rule 3.9.2 had not been breached because END004.1 is a redundant placeholder component and the details of all actual Permitted On- Site Generating Units and electricity connections have been included in line with Rule 3.9.2.
21. In the Prequalification Decision GridBeyond was rejected for missing component details for END004.1 as required by Rule 3.4.3 and missing component details for Permitted On-Site Generating Units as required by Rule 3.9.2. GridBeyond clarified the missing content for the addresses, postcode, and OS grid reference numbers for all components in its Request for Reconsideration. In the Reconsidered Decision, NGET accepted that the inclusion of END004.1 was a clerical error. However, NGET upheld its decision to reject GridBeyond's appeal for the reasons set out in Paragraph 6 above.
22. On 11 January 2019, NGET confirmed in its correspondence with the Authority that GridBeyond's appeal was rejected as it had failed to answer whether all components in GBD001 are Permitted On-Site Generating Units (as per Rule 3.9.2) in the original application forms and that the failure was not challenged by GridBeyond in its appeal. NGET disregarded the rogue component.
23. NGET did not communicate with GridBeyond the exact reasons as to why its Request for Reconsideration failed and, as such, GridBeyond was unable to accurately or fully dispute the basis of NGET's decision.
24. Rule 3.9.2 requires the applicant to provide details of all Permitted On-Site Generating Units. Although GridBeyond failed to make a declaration in respect of Rule 3.9.2, the Application for Prequalification contained information elsewhere which confirms that the components are not Generating Units.
25. We can infer from the supporting documents provided along with the high level CMU description in the original Applications for Prequalification that the CMUs that make up GBD001 and its 'parent' CMU END004 are not Generating Units and are in fact DSR CMU

Components performing load reduction. The supporting documentation which evidence this includes:

- a) GBD001 T-1 and T-4 application form - the high level description of all components forming the CMU is that they are “Load Response – automated.”
- b) GBD001’s Proven DSR Business Model was submitted with the GBD001 Application for Prequalification demonstrates that each component forming the CMU is Load Response.
- c) The Prequalification covering letter submitted with the Application for Prequalification states that all of GridBeyond’s CMUs for the 2018 Prequalification Window (GBD001 inclusive) “both Proven and Unproven, will be constructed from demand sites located across the country.”
- d) END004 metering assessment. The applicant declared that there are no ‘Generating Units with associated load’ for all CMU components.

26. As the relevant information could be found in other parts of the original application, we consider it reasonable to accept this information to fulfil the requirements of Rule 3.9.2 and determine that no on-site generating units are contained in GBD001.

27. We consider that had NGET provided further information as to why GridBeyond’s original application and Tier 1 appeal had been rejected, GridBeyond would have had the opportunity to submit accurate and full representations in its Request for Reconsideration. Consequently, the basis of NGET’s Reconsidered Decision to reject GridBeyond for the T-1 and T-4 Auction was incorrect. The Authority holds that the information GridBeyond submitted in its Application for Prequalification would have been sufficient to address its reasons for rejection in a Reconsidered Decision and, as a result, the CMU should therefore be Conditionally Prequalified.

### **Conclusion**

28. The Authority considers that NGET did not reach the correct Reconsidered Decision to

reject GBD001 on the basis that:

- a) GridBeyond has sufficiently demonstrated that the information which NGET considered to be missing in the original Application for Prequalification was provided in the high level description of the CMU components in the GBD001 T-1 and T-4 application forms, the GBD001 Proven DSR Business Model, the Prequalification covering letter, and END004 metering assessment.
- b) NGET took the incorrect approach in assessing the Applications for Prequalification by GBD001 and therefore these CMU should have been Prequalified for the T-1 and T-4 Auctions respectively.

### **Determination**

29. For the reasons set out in this determination the Authority hereby determines pursuant to Regulation 71(3) that NGET's Reconsidered Decision to reject GridBeyond for Prequalification be overturned in respect of the CMU listed in Paragraph 1 for the T-1 and T-4 Auction.



Johannes Pelkonen

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

07 February 2019