

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”):
 - CMU: VID200 (T-4 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.

Appeal Background

3. GridBeyond submitted an Application for Prequalification for the CMU in Paragraph 1 in respect of the 2026 T-4 Auction.
4. The Delivery Body rejected the CMU on the following grounds:
5. For the CMU listed in Paragraph 1, the Delivery Body issued a Notification of Prequalification Decision dated 01 November 2022 (the “Prequalification Decision”).

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.

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

Capacity Market Rule 3.4.1(f) states that if an Application is submitted by an Agent, an Agent Nomination Form (Exhibit E) must be submitted. The Agent Nomination Form submitted has missing & incorrect details (Applicant email and telephone missing/Exhibit E submitted with old Agent address), therefore does not meet the requirements of Exhibit E.

Capacity Market Rule 3.2.5 requires a Despatch Controller Applicant to upload an Applicant Declaration (Exhibit D) if a CMU is comprised of Generating Units that have the same legal owner. The Applicant Declaration provided has a missing or incorrect Director(s) signature(s) from the Despatch Controller therefore cannot be accepted for this Application.

In accordance with Capacity Market Rule 4.4.2(e), this Application was not Prequalified as the Delivery Body was unable to obtain any data with respect to the physically generated net output for the Generating Unit comprised in this Existing Generating CMU in any Settlement Period nominated by the Applicant pursuant to Rule 3.6.1."

6. GridBeyond submitted a request for reconsideration of the Prequalification Decisions on 08 November 2022.
7. The Delivery Body issued a Notice of Reconsidered Decision on 29 November 2022 which rejected the dispute on the following grounds:

"The Delivery Body has reviewed the Prequalification Decision in accordance with the request to review the original Prequalification result. The reconsidered outcome is that the original Prequalification Decision is valid and will be upheld.

"VID200 was originally rejected on the grounds that the Delivery Body could not verify the unit's historical output as per Rule 4.4.4(e). This was because a BMU Name/BMU ID was not submitted in the application for the CMU component and

the Delivery Body uses this to verify the Historic Performance data provided for specific settlement periods within the NED (National Grid Economic Data Warehouse).

VID200 raised a tier 1 dispute and provided the DB with the BMU information along with export data and the Delivery Body was able to find the component in the NED data. However, for the 3 settlement periods supplied in the application, the Delivery Body found data for two of the Settlement Periods which contradicted the information provided in the application data. The Delivery Body were also unable to find data for one of the settlement periods. None of the settlement data found in the NED data satisfied the requirement to pass the 3 historic performance checks.

The Delivery Body also tried to verify the Historic Performance data using the BM website, however when conducting this search it was found that the component T_CASKD-1 is registered under a different company name to that submitted in the PQ Application. This again had different capacities / values to that submitted in the Application. Also, please note Company name is different in BM reports, as it states INOVYN ChlorVinyls Limited (04068812) in the Application and Inovyn Chlor Energy LTD (02076043) in the BM reports website."

8. The Delivery Body accepted the additional elements of GridBeyond's Request for Reconsideration for CMU VID200, stating:

"For information, the Delivery Body has accepted the other elements of the Application and has updated our records accordingly."

9. The Authority sought further clarification from the Delivery Body on which elements of the Application were accepted, to which they confirmed Rule 3.4.1(f) (the agent nomination form) and Rule 3.2.5 (the applicant declaration) had both been resolved at the Request for Reconsideration stage.

10. GridBeyond then submitted an Appeal Notice to the Authority on 06 December 2022 under Regulation 70 of the Regulations.

GridBeyond's Grounds for Appeal

11. GridBeyond disputes the decision on the following grounds:

Ground 1

12. GridBeyond claims the Delivery Body assessed the Applicant CMU incorrectly under a non-existent Rule 4.4.4 (e). GridBeyond further explains that *"upon reviewing the Informal consolidated version of the Capacity Market Rules, 1 August 2022, we can see no mention of rule 4.4.4(e)."*

Ground 2

13. In relation to previous settlement performance, GridBeyond believes that the *"EMR DB are not reviewing the correct metering data in order for them to review the historical output."* GridBeyond acknowledged that it did not provide a BMU ID in its initial Prequalification Application for the applicant CMU, and that the Delivery Body should possibly not be using the BMU ID, but rather the component IDs mentioned in the Metering Test Certificates that were provided in its Prequalification Application.

Ground 3

14. GridBeyond stated that *"the data we have provided in our initial prequalification application is straight from the industry compliant COP meter and matches with the data we uploaded in the private network letter."*

Other information included in GridBeyond's appeal

15. In relation to the Delivery Body's Request for Reconsideration decision, GridBeyond also notes that *"in the Informal consolidated version of the Capacity Market Rules, 1 August 2022, there is no mention that the Delivery Body will use National Grid Economic Data Warehouse to verify the Historic Performance data provided for specific settlement*

periods.” GridBeyond considered it unfair not to have access or visibility of which source the DB are using to assess the historical output data.

The Legislative Framework

16. 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

17. 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.
18. Regulations 68 to 72 set out the process and powers in relation to dispute resolution and appeals.
19. 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):

(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.

20. Regulation 71(3) 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—

(a) subject to paragraph (4), review the Reconsidered Decision;

(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

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

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

22. Rule 3.12.1 sets out declaration requirements to be made by the Applicant when submitting an Application and states that:

"A person submitting an Application or an Opt-out Notification must ensure and confirm in the Application or the Opt-out Notification that:

(a) in all material respects, the Application or Opt-out Notification and, in the case of an Application, all Additional Information submitted by the Applicant; and

(b) in all respects, each of the specific declarations referred to in Rules 3.4 to 3.11 (where relevant),

is true and correct (or, to the extent that the Additional Information is a copy document, that it is a true and correct copy) and that the Application and Additional Information has been authorised by the board of directors of the Applicant or the person submitting the Opt-out Notification (as applicable)."

23. Rule 4.3.2 imposes obligations on the Delivery Body to review complete Applications and states that:

"Save where Rule 3.6.1(b) applies, the Delivery Body must verify the data submitted by the Applicant with regard to the physically generated net output of an Existing Generating CMU pursuant to Rule 3.6.1 or the Net Output of an Existing Interconnector CMU pursuant to Rule 3.6A.1."

24. Rule 4.4.2 sets out provisions whereby the Deliver Body must not Prequalify a CMU and states 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;

(aa) it reasonably believes that any information or declaration submitted in or with an Application does not comply with the requirements in Rule 3.12.1;

.....

(e) the Delivery Body is unable to obtain any data with respect to the physically generated net output for a Generating Unit comprised in an Existing Generating CMU in any Settlement Period nominated by the Applicant pursuant to Rule 3.6.1;

Our Findings

25. We have considered GridBeyond's Grounds of Appeal, which are summarised below.

Ground 1

26. GridBeyond's first ground is that the Delivery Body assessed the Applicant CMU incorrectly under a non-existent Rule 4.4.4 (e). Following our review of the Appeal documents, we note that the Delivery Body referenced Rule 4.4.2 (e) in its initial correspondence to GridBeyond. For this reason, it is our view the Delivery Body erroneously referenced Rule 4.4.2 (e) as Rule 4.4.4 (e) in the Notice of Reconsidered Decision. As such, notwithstanding this error by the Delivery Body, we consider that GridBeyond's ability to submit the required information within the Request for Reconsideration was not adversely affected.

Ground 2

27. GridBeyond's second ground is that the Delivery Body *"are not reviewing the correct metering in order for them to review the historic output."*
28. We understand that CMU VID200 was initially rejected on the grounds that the Balancing Mechanism Unit (BMU) information was not submitted in the Application for the CMU component. This consequently prevented the Delivery Body from undertaking the verification required under Rule 4.3.2 regarding data submitted by the Applicant pursuant to Rule 3.6.1 (a).
29. In its Appeal to the Authority, GridBeyond argues that *"EMR DB should possibly not be using the BMU ID and the correct components should be the component IDs mentioned in the approved metering test certificate."* GridBeyond also acknowledged that the *"T_CASKD-1" Forward Physical Notification (FPN) is simply a forecast and not half hourly data which can be used to assess the historical output."*
30. The Delivery Body's Capacity Market Prequalification Guidance (2022^{2,3}) clarifies what Historic Output will be assessed and verified and provides:

² pages 38-39 EMR Delivery Body Capacity Market Prequalification guidance Creating an Application for all CMU types, version 2.0 August 2022: [*PowerPoint Presentation \(emrdeliverybody.com\)](https://www.emrdeliverybody.com)

³ CM Rule 4.2.4 incorporate the Guidance into the requirements and provides that *"[a]ny evidence which does not meet the requirements of the Regulations, the Rules or the Auction Guidelines or such other requirements as specified by the Delivery Body under Rule 3.3.7(b)(iii) may be rejected by the Delivery Body[.]"* CM Rule 3.3.7(b) outlines that an Application will not be considered or accepted unless it is in accordance with *"(i) the Regulations, Rules . . . and (iii) "such other requirements as may be specified by the Delivery Body from time to time."*

*"Existing Generating CMUs must provide evidence that the De-rated Capacity has previously been delivered. Each Applicant for an Existing Generating CMU, Pre-Refurbishing CMU and Interconnector CMUs must identify in the Application three Settlement Periods on separate days in the 24 months prior to the end of the Prequalification Submission Window (between 20 September 2020 and 20 September 2022) in which such CMU delivered a net output greater than its Anticipated De-rated Capacity...**To validate historic performance data for CMRS CMUs, the Delivery Body sources metered data from the ESO that is fed through from Elexon's Balancing Mechanism systems. Ensure that the BMU ID has been entered correctly to enable this data to be located.**"*

*"In previous Prequalification rounds, several CMUs selected CMRS as the Classification of the CMU, however the Delivery Body was unable to verify the historic performance for those CMUs as they did not appear in the public version of BM reports. The Applications were therefore rejected at Prequalification. During the Tier 1 dispute process, Applicants had the opportunity to clarify why the data was not publicly available but that the information could still be found. In general, these units were smaller CMUs that would not historically fall into the CMRS category so this would explain the confusion caused during the assessment and also to the providers in question. **To prevent this situation arising, any clarifications for historic performance should be added to the Covering Letter supplied in the Application. This would help to reduce the chances of an Application being rejected by the Delivery Body at Prequalification. Information required for the Delivery Body to verify a Supplier/Private Network Letter"** (emphasis added)*

31. Balancing Mechanism (BM) reports used for verifying Historic Output are publicly available information, however not all CMUs appear in the public versions of the BM reports. As such, the Guidance advises applicants to include clarifications for historic performance, if applicable, in the Covering Letter supplied with their Application, in order to reduce the chances of the Application being rejected.

32. GridBeyond did not submit the required BMU ID in its original Prequalification. When it submitted a BMU ID at the subsequent Tier 1 dispute, it did not alert the Delivery Body to the fact that, in Gridbeyond's view, the Delivery Body should verify its submitted data by reference to the component IDs mentioned in the metering test certificates. In its attempt to rectify the omission of a BMU ID for the CMU component (VID200) in the original Application, Gridbeyond decided to submit to the Delivery Body BMU information along with export data in its Request for Reconsideration. However, the result of the verification of the BMU information (as submitted by the Applicant) revealed discrepancies between the information provided in the Application and Historic Output data found by the Delivery body through the BM report. We consider that if, in its request for Reconsideration, GridBeyond wanted to rely on the component IDs contained in the Metering Certificate⁴ to rectify the omission of the BMU ID in its Prequalification Application, it could have elected to do so and notified the Delivery Body that this was the information that ought to be verified. Gridbeyond provided the Delivery Body with a BMU ID that the Delivery Body attempted to verify in accordance with the processes set out in the Guidance. The DB was unable to verify the BMU ID submitted and had no reason to think that it ought instead to attempt to verify the component IDs set out in the metering test certificates submitted.
33. It would have been possible for GridBeyond to instruct the Delivery Body in the Cover Letter to use the component IDs set out in the metering test certificates or to seek further clarification in advance of submission, but it did not. Nor did it provide any explanation or clarification regarding the component IDs in the Metering Certificate or the linked CMUs in its Request for Reconsideration. For this reason, the Authority finds that the BMU ID submitted by GridBeyond in its Request for Reconsideration did not rectify the omission in the original Application or enable the Delivery Body to verify the Historic Output data as required under Rule 3.6.1(a). We therefore consider that the Delivery Body were correct to uphold the Prequalification Decisions in accordance with Rule 4.4.2 (e).
34. Furthermore, under Rule 4.4.2 (aa), the Delivery Body must not qualify a CMU where it reasonably believes that any information or declaration submitted in or with an

⁴ "means, in relation to a CMU, a certificate issued by the CM Settlement Body pursuant to Rule 13.3.6(a) or Rule 13.3.6B(a)"

Application does not comply with the requirements in Rule 3.12.1. Rule 3.12.1 requires an Application and Additional Information to be true and correct in all material respects. The Delivery Body found that the Previous Settlement Period performance information submitted by the Applicant contradicted the information it had access to. In circumstances where the Delivery Body has reason to believe that the Application and/or Additional Information are not correct in a material aspect it is appropriate for the Delivery Body not to prequalify an Application under Rule 4.4.2 (aa).

35. In its Appeal to the Authority, GridBeyond also argues that there is no reference in Capacity Market Rules that the Delivery Body will use National Grid Economic Data Warehouse (NED) to verify the Historic Performance data provided for specific settlement periods and therefore, considered it unfair that it does not have access to the NED or visibility of the data source which the Delivery Body relies on to assess the historical output. However, the Guidance states that *"to validate historic performance data for CMRS CMUs, the Delivery Body sources metered data from the ESO that is fed through from Elexon's Balancing Mechanism systems. Ensure that the BMU ID has been entered correctly to enable this data to be located."* Additionally, the Delivery Body has confirmed in its correspondence with the Authority that the settlement period performance and Historic Output data provided in the applications are verified against the NED, which contains metered data sourced from Elexon's Balancing Mechanism systems. Where necessary, metered data is cross referenced with Balancing Mechanism Reporting Service reports, which are publicly available. The Delivery Body also confirmed that this method of validation is standard and is performed across all applications, and that applications with bespoke metering and private wire connection have been successfully validated using this method in previous cases. The consistent approach to verification across Applicants and the use of appropriate data sets to verify applications is not unfair to the Applicant in this appeal.

Ground 3

36. GridBeyond's third ground for Appeal is that the Historic Metered Output data for CMU VID200 was obtained directly from industry compliant COP meters and should correspond with the historic output values contained within the Private Network Letter provided in its Prequalification Application. However, Rule 3.6.1 (a) requires Existing

Generation CMUs to provide evidence of previous settlement performance. Rule 4.3.2 requires the Delivery Body to verify the data submitted. Rule 4.4.2(e) states that the Delivery Body must not prequalify an Applicant where it is unable to obtain any data with respect to the physically generated net output required by Rule 3.6.1. In this case the Delivery Body was unable to obtain 3rd party data to verify the Applicant's stated Historical Output. We understand that the Delivery Body was not alerted to the Applicant's view that verification should be sought in respect of the component IDs set out in the metering test certificates nor that the Private Wire Letter would satisfy the requirement for verification in respect of those component IDs. In our view the Delivery Body was correct not to prequalify the Applicant in circumstances where it was unaware that the Applicant would prefer verification of the component IDs and that verification could be obtained from the Private Wire letter it submitted.

37. We agree with the Delivery Body's decision not to prequalify GridBeyond's application on the basis of Rule 4.4.2 (e).

Conclusion

38. The Delivery Body reached the correct reconsidered decision to not Prequalify CMU VID200 for the T-4 Auction on the basis that:

- a) The Prequalification Application and Request for Reconsideration did not include the information required to enable the Delivery Body to verify Historic Output data in accordance with Rule 4.3.2. GridBeyond failed to clearly demonstrate, in its Prequalification Application or in its Request for Reconsideration, an alternative means for the Delivery Body to verify its Historic Performance Pursuant to Rule 3.6.1. The Delivery Body was obligated not to prequalify the Application where it was unable to obtain any data with respect to the physically generated net output for a Generating Unit comprised in an Existing Generating CMU in any Settlement Period nominated by the Applicant pursuant to Rule 3.6.1.
- b) Rule 4.4.2 (aa) provides that the Delivery Body must not Prequalify a CMU where it reasonably believes that any information or declaration submitted in or with an Application does not comply with the requirements in Rule 3.12.1. Rule 3.12.1

requires an Application and Additional Information to be true and correct in all material respects. The Delivery Body found that the Previous Settlement Period performance information submitted by the Applicant contradicted the information it had access to. In circumstances where the Delivery Body has reason to believe that the Application and/or Additional Information are not correct in a material aspect it is appropriate for the Delivery Body not to prequalify an Application under Rule 4.4.2 (aa).

Determination

39. 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 CMUs listed in Paragraph 1 for the T-4 Auction.



Andrew Macdonell, Senior Policy Manager in Domestic Market Management

For and on behalf of the Gas and Electricity Markets Authority

February 2023