

# Determination

## Capacity Market Appeal 2026: Capbal (Kilwinning) Limited

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Contact:	Andrew Macdonell
Team:	Electricity Security and Market Management (ESMM)
Email:	EMR_DR@ofgem.gov.uk

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This is a determination made 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)

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**Determination Capbal (Kilwinning) Limited**

## 1. Introduction

- 1.1 This determination relates to an appeal made by Capbal (Kilwinning) Limited (“Capbal”) against a reconsidered decision made by the Electricity Market Reform Delivery Body (“Delivery Body”) in respect of the following Capacity Market Unit (the “CMU”):
- (a) KILW25 (T-4 Auction)
- 1.2 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.

## 2. Appeal Background

- 2.1 Capbal submitted an application for prequalification for the CMU in respect of the 2029/30 T-4 auction and sought a maximum obligation period of 15 years.
- 2.2 In the application, Capbal ticked the box which stated ‘by ticking this box I declare that this CMU is to be a Declared Low Carbon CMU as per Rule 3.4.4A.’ but did not submit a Low Carbon Declaration (Exhibit ZD).
- 2.3 The Delivery Body issued a notification of prequalification decision dated 11 November 2025. The Delivery Body rejected the CMUs on the following grounds:

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

F4-15 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.

F6-31 Low Carbon Declaration (Exhibit ZD) missing

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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) support GEMA in its day-to-day work.

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Capacity Market Rules 3.4.4, 3.7.2, 3.8A.2 and 3.10ZA require, an Applicant to provide a Low Carbon Declaration (Exhibit ZD). The Applicant for this Application has not provided a Low Carbon Declaration (Exhibit ZD); therefore, this Application is not in accordance with the Capacity Market Rules.”

- 2.4 Capbal submitted a request for reconsideration of the prequalification decision on 11 November 2024 . In this request Capbal stated that: “Regarding the missing Low Carbon Declaration (Exhibit ZD), we had not intended to declare as a Low Carbon CMU, as per information provided by EMR... that this was permitted but not mandatory. However, the application was unable to be submitted without checking this box titled “Declared Low Carbon CMU: By ticking this box I declare that this CMU is to be a Declared Low Carbon CMU as per Rule 3.4.4A”. We therefore checked the box and had mistakenly understood that only Exhibit ZB was required... We would request that the Delivery Body:

Firstly confirm if our initial determination was correct, and if so, to please remove our Low Carbon Declaration;

Secondly, if our initial determination was incorrect, to view the omission of Exhibit ZD as a non-material omission... which has now been rectified by provision of Exhibit ZD via this Dispute process.”

- 2.5 With its request for reconsideration, Capbal also submitted a Low Carbon Declaration (Exhibit ZD), Part 3(1) of which specified that the CMU would be a Low Emissions CMU.

- 2.6 The Delivery Body issued a notification of reconsidered decision on 9 December 2025 which rejected the dispute on the following grounds:

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

F6-45 Part 3(1) Declaration in respect of the Relevant CMU on Form of Low

Carbon Declaration (Exhibit ZD) is incorrect. Check the supporting evidence with the Declaration to verify. Capacity Market Rules 3.4.4, 3.7.2, 3.8A.2, 3.10ZA and 3.10ZB require an Applicant to provide a Form of Low Carbon Declaration (Exhibit ZD). The Delivery Body considers that the Applicant has not fully addressed the matters set out in Exhibit ZD, specifically the declaration in respect of the Relevant CMU in Part 3(1) was incorrect. Please contact the Delivery Body for more information.”

- 2.7 The notice of reconsidered decision further clarified that “in Part 3(1) you must retain only one of (a) or (b) or (c) and it should be consistent to the Fossil Fuel declaration in the Application.”

- 2.8 Capbal submitted an appeal to the Authority on 16 December 2025.

**Determination** Capbal (Kilwinning) Limited**Capbal’s Grounds for Appeal**

2.9 Capbal disputes the decision on the following grounds:

Grounds

2.10 Capbal states that the error in the Exhibit ZD provided at the request for reconsideration:

“was a “non-material error” within the meaning of Regulation 69(7) of the Regulations, and “capable of rectification by supply of a signed Exhibit ZD, which was duly delivered at the Tier 1<sup>2</sup> dispute [and] is borne out of our honest and conservative classification of the CMU based on the relevant rules and subsequent guidance sought by us from the EMR Delivery Body.”

2.11 Capbal states that the error was manifest under Regulation 67(7)(a) because: “the Delivery Body identified the error on the face of the application provided [...] The Delivery Body had accurate and complete information regarding the physical components of the CMU via the EMR portal, which clearly shows that the CMU comprises a battery storage facility with no Emissions Component”

2.12 Capbal states that the error, alternatively, was inconsequential under Regulation 69(7)(c) because: “the selection of paragraph 3.1(b) does not affect: (i) whether the CMU actually emits; (ii) whether any emissions limits actually apply; (iii) any monitoring, reporting or enforcement obligation; or (iv) the CMU’s eligibility to participate in the Capacity Market. The classification error therefore does not alter any substantive regulatory outcome [...] even if the CMU were treated as a Low Emissions CMU as opposed to not comprising an Emissions Component, the applicable regulatory obligations remain at least as stringent, if not more so, and the Delivery Body’s ability to assess and enforce compliance is unaffected.”

2.13 Capbal also requests that the Authority direct the Delivery Body to take account of the updated Exhibit ZD submitted with their appeal notice, in accordance with Regulation 69(5A).

**3. The Regulatory Framework**

3.1 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.

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<sup>2</sup> The request for reconsideration

**Determination Capbal (Kilwinning) Limited****The Regulations**

3.2 The Regulations set out the powers and duties of the Delivery Body which it must rely upon when it determines eligibility.

3.3 Regulation 22(a) specifies that each application for prequalification must be determined in accordance with the Rules:

“The Delivery Body must—

(a) determine each application for prequalification that is made to it in accordance with capacity market rules;

(b) notify each applicant of its determination; and

(c) reconsider a determination, if an applicant requests it to do so under regulation 69.”

3.4 Regulations 68 to 72 set out the process and powers in relation to dispute resolution and appeals.

3.5 Regulations 69 (1)-(4) state that:

“(1) An affected person may request the Delivery Body to review a delivery body reviewable decision.

(2) The request must—

(a) be submitted in writing to the Delivery Body within 5 working days after receiving notice of the decision; and

(b) include each of the matters specified in sub-paragraphs (a) to (e) of regulation 70(3).

(3) [If the Delivery Body receives a request which complies with paragraph (2), within [20] working days of giving notice of the decision it must]—

(a) reconsider the matter; and

(b) give notice to the affected person of—

(i) the outcome of the reconsideration (the “reconsidered decision”); and

(ii) the reasons for the reconsidered decision.

(4) The Delivery Body must, within 5 working days after receiving a request which does not comply with paragraph (2), give notice to the affected person that the request is rejected as not complying with that paragraph, and give the reason why.”

3.6 Further, Regulation 69(5) sets out the requirements for the Delivery Body when reconsidering a prequalification decision:

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“69(5) Subject to [paragraph (5A)], in reconsidering a prequalification decision or a decision to issue a termination notice or a notice of intention to terminate or a decision to issue a CCS CFD transfer refusal notice, 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.”

3.7 Regulation 69(5) is subject to Regulation 69(5A), which sets out the exceptions to Regulation 69(5):

“(5A) In reconsidering a prequalification decision or a decision to issue a CCS CFD transfer refusal notice, the Delivery Body may take into account information or evidence if the Delivery Body determines that:

- (a) the relevant application for prequalification or a CCS CFD transfer notice contained a non-material error or omission; and
- (b) the information or evidence is capable of rectifying such non-material error or omission.”

3.8 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 or a CCS CFD transfer notice 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.”

3.9 Regulation 70 provides that:

“(1) an affected person who has, in accordance with regulation 69(2), made a request to the Delivery Body to review a delivery body reviewable decision, may appeal to the Authority if—

- “(a) the affected person disputes the reconsidered decision; or
- (b) the request for reconsideration was rejected by the Delivery Body on the ground that it did not comply with regulation 69(2).”

3.10 Regulation 70(3)-(6) provide that:

“(3) An appeal notice must contain—

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- (a) a concise statement identifying the relevant part of the delivery body reviewable decision in dispute;
  - (b) a concise statement of the facts on which the affected person relies;
  - (c) a summary of the grounds for disputing the delivery body reviewable decision;
  - (d) a succinct presentation of the arguments supporting each of the grounds for dispute; and
  - (e) a schedule listing the documents submitted with the appeal notice.
- (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;
    - (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; and
    - (iii) any information or evidence submitted in accordance with regulation 69(5A);
- [...]
- (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.”

**3.11 Per Regulation 71(3):**

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“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.”

**The Capacity Market Rules**

3.12 [Chapter 1 of the Rules contains general provisions, including definitions \(set out within Rule 1.2.1\).](#)

3.13 Rule 1.2.1 gives the definition of terms used in the Capacity Market Rules, including:

“Low Carbon Declaration means a declaration in the form set out in Exhibit ZD”

3.14 Chapter 3 of the Rules governs the processes by which an applicant may apply to the Delivery Body for prequalification of a CMU to participate in a capacity auction for a given delivery year.

3.15 Rule 3.4.4A states the obligation for an applicant to declare whether they will provide a low carbon declaration:

“A Statement as to Low Carbon Declaration

Each Application must state whether:

*(a) in respect of the CMU to which the Application relates, the Applicant is providing a Low Carbon Declaration; and*

*(b) where it is providing a Low Carbon Declaration, whether it intends the CMU to be: (i) a Declared 12 Month Long Stop CMU; (ii) a Declared 24 Month Long Stop CMU; (iii) a Nine Year Capex Threshold CMU; or (iv) a Three Year Zero Capex Threshold CMU.”*

3.16 Rule 3.10ZA.1 states when an applicant must provide a low carbon declaration with their application:

“An Applicant must provide a Low Carbon Declaration to the Delivery Body with an Application in respect of:

(a) a Prospective Generating CMU that it wishes to be a Declared Long Stop CMU;

(b) a Prospective Generating CMU, or an Unproven DSR CMU, that it wishes to be a Nine Year Capex Threshold CMU; or

(c) a Prospective Generating CMU (other than a Refurbishing CMU), or an Unproven DSR CMU, that it wishes to be a Three Year Zero Capex Threshold CMU.”

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3.17 Rule 3.10ZB.1 sets out defined terms:

“[...]”

(b) a “Low Carbon Declarant” means the Applicant or Capacity Provider for a CMU in respect of which a Low Carbon Declaration is made;

(c) “Low Carbon Evidence” means any of the following, where provided with a Low Carbon Declaration:

(i) a Fossil Fuel Emissions Declaration;

(ii) the information, measurements, analysis or calculations set out in or annexed to a Low Carbon Declaration or Fossil Fuel Emissions Declaration;

3.18 Rule 3.12.1 states that an Applicant must ensure the information they submit is true and correct:

“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).”

3.19 Rule 4.4.2 states when the Delivery Body must not prequalify a CMU:

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

[...]”

(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”

## 4. Our Findings

4.1 We have assessed Capbal’s Grounds for Appeal, which are summarised below.

4.2 Capbal acknowledges that the Exhibit ZD document submitted with the request for reconsideration incorrectly classified the CMU as a low emissions CMU rather than stating that it does not comprise any emissions components. Capbal argues

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that this was a “non-material error” within the meaning of Regulation 69(7) and requests that the Authority directs the Delivery Body to take account of the updated Exhibit ZD submitted by Capbal with the appeal to the Authority.

- 4.3 It is correct that Capbal was not required to submit a low carbon declaration with the application for prequalification under Rule 3.10ZA.1 because the CMU did not belong to any of the sub-categories set out in this Rule. However, Capbal indicated that it had, as part of the application for prequalification, ticked a box under the statement “By ticking this box I declare that this CMU is to be a Declared Low Carbon CMU as per Rule 3.4.4A”.
- 4.4 Rule 3.4.4A requires that each application for prequalification must state whether, in respect of the relevant CMU, the applicant is providing a low carbon declaration. As such, when Capbal ticked the box (with accompanying statement) in the application, it undertook to provide an Exhibit ZD form. Per Rule 3.12.1, a person submitting an application must ensure that in all material respects, the application is true and correct. Per Rule 4.4.2, the Delivery Body must not prequalify a CMU where it is aware that the application “has not been completed or submitted in accordance with the Rules”. As such, where (as in this instance) the Delivery Body was aware that an exhibit which an applicant has declared that it is providing has not been submitted, it is correct not to prequalify that CMU.
- 4.5 At the request for reconsideration, Capbal outlined the events that had led to it declaring as a low carbon CMU without submitting an Exhibit ZD form. Capbal stated that it had not intended to declare as a low carbon CMU and had understood that this was permitted under the Rules (which was correct). Capbal also stated that “the application was unable to be submitted without checking this box.” The Authority has corresponded with the Delivery Body and established that the position is that the portal does not require or force an applicant to select the low carbon CMU declaration, and that the Delivery Body did not receive any reports during the prequalification window to indicate that the system was malfunctioning in this respect. Nonetheless, Capbal state in their request for reconsideration that it ‘did not intend to declare as a Low Carbon CMU’ and their determination was that they did not have to do so. Capbal concluded by making a request to the Delivery Body to;
- “Firstly, confirm if our initial determination was correct, and if so, to please remove our Low Carbon Declaration;
- Secondly, if our initial determination was incorrect, to view the omission of Exhibit ZD as a non-material omission”
- 4.6 Correspondence between the Authority and the Delivery Body indicates that the Delivery Body based the rejection of Capbal’s submitted Exhibit ZD form at the request for reconsideration on a finding that Capbal presented two mutually contradictory positions regarding the intended declaration status. The Delivery Body made this assessment with reference to Regulation 70(3). Regulation 70(3)

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requires that an appeal notice must contain “a concise statement identifying the relevant part of the delivery body reviewable decision in dispute”. However, this Regulation explicitly applies to appeals to the Authority and not to reconsideration by the Delivery Body. As such, the Delivery Body has misdirected itself as to the application of the Regulations. In any case, the Authority considers that the Delivery Body was incorrect in the assessment that Capbal had presented mutually contradictory positions on their intended declaration status. In the request for reconsideration, Capbal twice states that it had not intended to declare as a low carbon CMU and concludes the arguments by presenting the Delivery Body with two options for resolution which are clearly ranked by preference - “Firstly, [...] Secondly, [...]”.

- 4.7 As outlined above, the Authority considers that the Delivery Body misdirected itself in applying Regulation 70(3) and should, instead, have applied Regulation 69(5A) which deals with the rectification of non-material errors and omissions (the error in this case being Capbal mistakenly declaring as a low carbon CMU by ticking the box in the application for prequalification).
- 4.8 Regulation 69(5A) has a two-strand test: first, whether the application contained a non-material error or omission (Regulation 69(5A)(a), and second, whether the information and evidence provided is capable of rectifying such a non-material error (Regulation 69(5A)(b)).
- 4.9 In this case, the Authority considers that the error was non-material under Regulation 69(7)(a) because the error is manifest and the result of an honest mistake. The error is manifest inasmuch as Capbal did not support the declaration with the required Exhibit ZD in the first instance, and stated twice in the request for reconsideration that Capbal did not intend the CMU to be a low carbon CMU. The Authority is also satisfied that the error was the result of an honest mistake and that Capbal had, including via interactions with the Delivery Body during the process, attempted to submit its application correctly.
- 4.10 The Authority considers that the information and evidence supplied with the request for reconsideration rectifies this error. This is because, Capbal’s statement at the request for reconsideration of its intent not to declare as a low carbon CMU and the clear request to the Delivery Body that the low carbon declaration be removed meant that Capbal could be treated as an applicant that had not elected to submit a low carbon declaration. As a result, the erroneous low carbon declaration that was provided at request for reconsideration did not need to be considered. Given this finding, we do not need to consider the specific arguments raised by Capbal regarding the erroneous low carbon declaration in its appeal to the Authority.
- 4.11 For these reasons, the Authority considers that the Delivery Body incorrectly decided not to prequalify Capbal because it did not take into account information

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and evidence that was capable of rectifying the non-material error contained in the application for prequalification.

## 5. Conclusion

5.1 The Delivery Body did not reach the correct non-qualification review decision in rejecting the CMU for the T-4 auction on the basis that:

- (a) the request from Capbal to remove the low carbon declaration (exhibit ZD) at the request for reconsideration was sufficient to resolve the issues with the application for prequalification.

## 6. Determination

6.1 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 Capbal for prequalification for the T-4 auction be overturned in respect of the CMU.

Andrew Macdonell

Senior Policy Manager – Energy Markets and Security

For and on behalf of the Gas and Electricity Markets Authority