

Determination

Capacity Market Appeal 2026: ENGIE Power Limited

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This determination is 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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1. Introduction

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

2. Appeal Background

- 2.1 ENGIE Power 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 The Delivery Body issued a notification of prequalification decision dated 11 November 2025. 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):

F1-139 Invalid Despatch Controller Application: An Application cannot be made where the CMU is a Prospective CMU and the Connection Capacity exceeds 50mw.

CM Rules 3.2.8 and 3.2.9 require that where a Prospective Generating CMU with a single Legal Owner appoints a Despatch Controller as the Applicant, the CMU’s Total Connection Capacity must not exceed 50 MW. In this case, the CMU has a Total Connection Capacity of 60 MW, so the conditions in Rule 3.2.8 are not met and Rule 3.2.9 cannot apply. The Application cannot proceed with Despatch Controller as Applicant.

F6-28 Part 4 on Fossil Fuel Emissions Commitment (Exhibit ZB) invalid Director Signatures

CM Rules 3.7.4, 3.8.3 and 3.10.4 require Applicants for New Build Generating, Unproven DSR, or Refurbishing Generating CMUs to provide a Fossil Fuel Emissions Commitment (Exhibit ZB). The Fossil Fuel Emissions Commitment provided has invalid Director(s) Signature(s). As such, the matters set out in the

¹ The terms “we”, “us”, “our”, “Ofgem” and “the Authority” are used interchangeably in this document and refer to the Gas and Electricity Markets Authority. Ofgem is the office of the Authority.

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Exhibit ZB have not been sufficiently addressed, and the requirement not met. Therefore, as per CM Rule 4.4.2(i) the DB must not Prequalify this CMU.

F6-57 Part 3(2)(a) selected but incorrect Fossil Fuel Emissions document selected in Exhibit ZD.

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 relevant Fossil Fuel Emissions document selected in Part 3(2)(a) selection was incorrect. Please contact the Delivery Body for more information.

F6-50 Part 3(3) Declaration in respect of the Relevant CMU on Form of Low Carbon Declaration (Exhibit ZD) is incorrect.

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(3) was incorrect. Please contact the Delivery Body for more information.

F6-54 Part 4 on Form of Low Carbon Declaration (Exhibit ZD) invalid Director Signatures

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, Director(s) Signature was invalid. Please contact the Delivery Body for more information.”

- 2.3 ENGIE Power submitted a request for reconsideration of the prequalification decision on 18 November 2025.
- 2.4 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):

F1-139 Invalid Despatch Controller Application: An Application cannot be made where the CMU is a Prospective CMU and the Connection Capacity exceeds 50mw

CM Rules 3.2.8 and 3.2.9 require that where a Prospective Generating CMU with a single Legal Owner appoints a Despatch Controller as the Applicant, the CMU’s Total Connection Capacity must not exceed 50 MW. In this case, the CMU has a Total Connection Capacity of 60 MW, so the conditions in Rule 3.2.8

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are not met and Rule 3.2.9 cannot apply. The Application cannot proceed with Despatch Controller as Applicant.”

2.5 ENGIE Power submitted an appeal to the Authority on 16 December 2025.

ENGIE Power’s Grounds for Appeal

2.6 ENGIE Power disputes the decision on the following grounds.

Ground 1

2.7 ENGIE Power states that they understand that the conditions of Capacity Market Rule 3.2.8 indicate that only the legal owner can manage the 15-year application for an asset with a connection capacity over 50MW. ENGIE Power argues that the de-rated capacity of the asset is considerably below the 50MW threshold and that it therefore adheres to the spirit of the Capacity Market Rule to have a despatch controller facilitating the application.

Ground 2

2.8 ENGIE Power asks that, if the Authority decides that the spirit of the Capacity Market Rule has not been followed, the Authority instead allows the site to be conditionally pre-qualified with the obligation to transfer the CMU to the legal owner prior to the start of the delivery year.

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) (the “Rules”) were made by the Secretary of State pursuant to powers set out in section 34 of the Energy Act 2013.

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.”

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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:

“69.—(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 Regulation 69(5) sets out the requirements for the Delivery Body when reconsidering a notification of prequalification decision:

“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:

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- (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 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) provides that:

“(3) An appeal notice must contain—

- (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

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(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), 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.”

3.12 Regulation 71(4) states:

“In a determination under paragraph (3)(b)—

(a) the Authority must uphold the reconsidered decision if the Authority determines that it was correct on the basis described in paragraph (3)(b);

(b) if the Authority determines that the Delivery Body incorrectly decided not to prequalify the applicant for a capacity auction in respect of a CMU, it must direct

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the Delivery Body to register the CMU on the capacity market register as a prequalified CMU (in which case regulation 73 applies);

(c) in any other case, if the Authority determines that the Delivery Body's decision was incorrect it must substitute the decision that it considers the Delivery Body should have made.”

The Capacity Market Rules

3.13 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.

3.14 Rule 3.2.3 states the relationship required between applicant and legal owner of the generating units comprising a CMU:

“Subject to Rules 3.2.4 to 3.2.9, the Applicant for a Generating CMU must be the person that is, or in the case of a Prospective Generating CMU will be, the legal owner of each Generating Unit comprised in that CMU.”

3.15 Rule 3.2.8 defines when Rule 3.2.9 applies:

“Rule 3.2.9 applies where:

(a) a Prospective Generating CMU comprises a Generating Unit or a number of Generating Units with a Connection Capacity totalling no more than 50MW;

(b) all such Generating Units are within the legal ownership of the same person; and

(c) the Despatch Controller with respect to each Generating Unit comprised in that Prospective Generating CMU is a person other than the legal owner.”

3.16 Rule 3.2.9 states the requirements for a despatch controller as an applicant:

“Where this Rule 3.2.9 applies, the Despatch Controller must be the Applicant with respect to a Prospective Generating CMU and an Applicant Declaration must be submitted with the relevant Application, signed by:

(a) two directors (or officers, in the case of a body other than a company) of the person having legal ownership of each Generating Unit comprised in that Prospective Generating CMU; and

(b) two directors (or officers, in the case of a body other than a company) of the Despatch Controller of each Generating Unit comprised in that Prospective Generating CMU.”

4. Our Findings

4.1 We have assessed ENGIE Power's grounds for appeal, which are summarised below.

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- 4.2 ENGIE Power argues that the de-rated capacity of the asset is considerably below the 50MW threshold and that it therefore adheres to the spirit of the Rule to have a despatch controller facilitating the application.
- 4.3 Rule 3.2.3 states that the applicant for a generating CMU must be (or, for a prospective generating CMU, will be) the legal owner of each generating unit in the CMU, subject to Rules 3.2.4 to 3.2.9. Rule 3.2.8 and Rule 3.2.9 permit an exception to Rule 3.2.3, by allowing the person who will be the despatch controller for a prospective generating CMU to be the applicant, provided they submit the required documentation. Rule 3.2.8(a) limits this ability to act as the despatch controller to a generating CMU which comprises of generating units with a connection capacity totalling no more than 50MW.
- 4.4 At notification of prequalification decision, the Delivery Body rejected the application because ENGIE Power was a despatch controller and the connection capacity exceeded 50MW, which is prohibited by Rule 3.2.8(a). At the request for reconsideration, ENGIE Power stated that “we acknowledge this application is currently invalid” and requested that the application either be reduced to a connection capacity of 49MW (electing to leave the remaining 10.5MW unsubsidised) or conditionally prequalified on the condition that the CMU be transferred to the legal owner prior to the auction. The Delivery Body upheld its rejection under Rules 3.2.8 and 3.2.9 at notification of reconsidered decision.
- 4.5 We hold that the Delivery Body can only conditionally prequalify a CMU when given this power by the Rules, and there is no Rule that gives the Delivery Body the power to conditionally prequalify a CMU with the requirement that it be transferred to the legal owner prior to the auction.
- 4.6 Rule 3.5.2 states that, for a transmission CMU, the connection capacity is the transmission entry capacity given in the connection agreement. Given that the connection agreement supplied by ENGIE Power is for a transmission connection, ENGIE Power cannot request to change their connection capacity without provision of an alternative connection agreement reflecting an equivalent change in transmission entry capacity.
- 4.7 In their appeal to the Authority, ENGIE Power state that “we understand that the conditions of Rule 3.2.8 indicate that only the legal owner can manage the 15-year application for an asset with a connection capacity of over 50 MWs, as the AACO/de-rated capacity is considerably below the 50 MW threshold (3.810 MW), we would argue that this application adheres to the spirit of Rule to enable the Dispatch Controller to facilitate this application”.
- 4.8 We hold that the specific requirements of Rule 3.2.8 must be adhered to, and this Rule states a connection capacity totalling no more than 50MW, not a de-rated connection capacity.

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- 4.9 ENGIE Power asks that, if the Authority decides that the spirit of the Rule has not been followed, they instead allow the site to be conditionally pre-qualified with the obligation to transfer the CMU to the legal owner prior to the start of the delivery year.
- 4.10 Regulations 71(3) and 71(4) require the Authority to determine whether the reconsidered decision was correct by reference solely to the information available to the Delivery Body at the time the decision was made. Where the Authority concludes that the reconsidered decision was correct on that basis, it is under a statutory obligation to uphold that decision. In those circumstances, the Authority has no discretion to take any alternative course of action: it is not empowered to substitute its own decision or to impose any outcome other than upholding the Delivery Body's reconsidered decision.

5. Conclusion

- 5.1 The Delivery Body reached the correct non-qualification review decision to reject the CMU for the T-4 auction on the basis that:
- (a) ENGIE Power is a despatch controller with a generating CMU comprising of generating units with a connection capacity exceeding 50 MW, which is not permitted under Rule 3.2.8(a).
 - (b) ENGIE Power's proposals to request a conditional prequalification or a reduction in connection capacity at the request for reconsideration were not viable routes to resolve this issue.

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(c)

6. Determination

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 ENGIE Power for prequalification be upheld in respect of the CMU for the T-4 auction.

Andrew Macdonell

Senior Policy Manager – Energy Markets and Security

For and on behalf of the Gas and Electricity Markets Authority