

Determination

Capacity Market Appeal 2026: Flexion Energy Holdings UK LTD

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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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1. Introduction

- 1.1 This determination relates to appeals made by Flexion Energy Holdings UK LTD (“Flexion Energy”) against reconsidered decisions made by the Electricity Market Reform Delivery Body (“Delivery Body”) in respect of the following Capacity Market Units (“the CMUs”):
- EL59II (T-4 Auction)
 - EL259N (T-4 Auction)
 - iV025C (T-4 Auction)
- 1.2 This decision deals with all of the appeals listed above as they are substantively in respect of the same issue and differ only in so far as concerns the identity of the relevant CMUs.
- 1.3 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 Flexion Energy submitted an application for prequalification for each of the CMUs in respect of the 2029/30 T-4 auction and sought a maximum obligation period of 15 years.
- 2.2 Each application for prequalification included an “Exhibit ZD: Form of Low Carbon Declaration” by Flexion Energy’s directors (“the Prequalification Declarations”). These were all dated 18 September 2025.
- 2.3 The template for “Exhibit ZD: Form of Low Carbon Declaration” is included within the Rules. Part 3(3) of the template Exhibit ZD contains the following:

“3. We:

(a) know that the statement in paragraph 1 and the [Fossil Fuel Emissions Declaration] / [Fossil Fuel Emissions Commitment] referred to in paragraph 2 are true and accurate; or

(b) have no reason to suspect that a [Fossil Fuel Emissions Declaration] / [Fossil Fuel Emissions Commitment] provided with this Declaration may be untrue or inaccurate.”

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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2.4 In each of the Prequalification Declarations, within Part 3(3) Flexion Energy retained sub-paragraph (a), and deleted sub-paragraph (b), and also deleted the reference to a fossil fuel emissions declaration within sub-paragraph (a), as set out below:

2.5 For each of the CMUs, the Delivery Body issued a notification of prequalification decision dated 11 November 2025. The Delivery Body rejected the CMUs on a variety of different grounds. For brevity, we have only included the grounds relating to Exhibit ZD, which is the issue addressed in this determination:

“F6-33

Name of Applicant or Capacity Provider on Form of Low Carbon Declaration (Exhibit ZD) 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 Applicant Name was incorrect. Please contact the Delivery Body for more information.

F6-35

Company Registration number on Form of Low Carbon Declaration (Exhibit ZD) 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 Company Registration number was incorrect. Please contact the Delivery Body for more information.

F6-37

Address of Registered Office on Form of Low Carbon Declaration (Exhibit ZD) 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 Address of Registered Office 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.

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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.”

- 2.6 Flexion Energy submitted a request for reconsideration for each of the CMUs on 14 November 2025.
- 2.7 At this stage Flexion Energy provided the Delivery Body with a revised low carbon declaration (Exhibit ZD) for each CMU (“the Revised Declarations”). In the Revised Declarations, Flexion Energy updated a number of details to address the various errors within the Exhibit ZD identified by the Delivery Body in the prequalification decisions. In relation to Part 3(3), item ‘(a)’ of each Revised Declaration was unchanged, but the section was updated so as to include option ‘(b)’. However (b) was not amended to remove the reference to fossil fuels emissions declaration, and the square brackets were retained, as set out below:
- 2.8 The Delivery Body issued notifications of reconsidered decisions on 11 December 2025, which rejected the disputes on the following grounds:
- “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.”
- 2.9 Flexion Energy submitted an appeal to the Authority for each of the CMUs on 15 December 2025.

Flexion Energy’s Ground for Appeal

- 2.10 Flexion Energy disputes the decisions on the following grounds:

Grounds

- 2.11 Flexion Energy states that “We have corrected the error in Exhibit ZB² [sic] which accompanies this Notice. The prequalification and Tier 1 dispute submissions were made in the belief that the document was completed correctly”. This

² We believe that the appeal notice contains a typographical error and Flexion Energy intended to refer to the revised ZD that was provided with the appeal notice.

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statement is accompanied by a replacement low carbon declaration (Exhibit ZD) for each CMU, in which Part 3(3) of the exhibit has been further updated to remove the square bracketed text in sub-paragraph (b).

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.”

- 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—

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- (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:

“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(1) provides that:

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“(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(2) provides that:

“An appeal under paragraph (1) must be made by submitting an appeal notice to the Authority within 5 working days after the date on which the affected person received the notice from the Delivery Body under regulation 69(3) or (4).”

3.11 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
- (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—

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(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.”

3.12 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.”

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 3.4.4A sets out the obligation for an applicant to declare whether they will provide a low carbon declaration:

“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.”

3.15 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:

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(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)."

4. Our Findings

- 4.1 We have assessed Flexion Energy's grounds for appeal, which are summarised below.
- 4.2 Flexion Energy argues that it submitted the Prequalification Declarations and the Revised Declarations in the belief that the documents were completed correctly, and has included updated versions of the low carbon declarations (Exhibit ZD) for each of the CMUs with this appeal to the Authority.
- 4.3 We have considered Flexion Energy's submissions on this point, and note that the Delivery Body originally rejected all the CMUs in its notification of prequalification decision due to a number of different errors within the Prequalification Declarations. As recorded above, the Delivery Body stated that the name of the applicant or capacity provider, the company registration number, the address of registered office and the declarations in Part 3(3) were incorrect within each Prequalification Declaration.
- 4.4 We understand from the Delivery Body that that the reason Part 3(3) of each Prequalification Declaration was deemed to be incorrect was because Flexion Energy had deleted sub-paragraph (b) from Part 3(3), it being the Delivery Body's view that both (a) and (b) were required.
- 4.5 We disagree with this interpretation of the requirements of Part 3(3) of the low carbon declaration (Exhibit ZD). As part of each application, Flexion Energy submitted a fossil fuels emissions commitment signed by its directors. Having provided a statement confirming that the directors knew that that each fossil fuels emissions commitment was "true and accurate", it was unnecessary for the directors to add that they had no reason to suspect that the same document was untrue or inaccurate. We also note that the word 'or' in between sub-paragraphs (a) and (b) indicate that they are intended to be alternatives to each other.³ We

³ Although there may be circumstances where both are necessary, for example where an applicant is submitting a fossil fuels emissions declaration that has elements confirmed by the directors, and other elements certified by a third party such as an independent emissions verifier.

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therefore determine that Part 3(3) of the Prequalification Declarations were correctly completed (although there were other errors that needed to be addressed).

- 4.6 With the request for reconsideration, Flexion Energy submitted the Revised Declarations, in which it corrected all the other errors highlighted above, but updated Part 3(3) so as to include sub-paragraph (b). Within that sub-paragraph (b), Flexion Energy did not delete the reference to “[Fossil Fuels Emissions Declaration]”. It seems that the update to include sub-paragraph (b) arose from the erroneous decision by the Delivery Body at prequalification that Part 3(3) of the Prequalification Declarations were incorrect, and the feedback Flexion Energy received regarding the need to include sub-paragraph (b). The Delivery Body then rejected the Revised Declarations solely because of the failure to delete the reference to “[Fossil Fuels Emissions Declaration]” in sub-paragraph (b) of Part 3(3).
- 4.7 We find that if the Delivery Body had not incorrectly rejected Part 3(3) of the Prequalification Declarations, sub-paragraph (b) would (correctly) not have been included in the Revised Declarations. We also find that the Revised Declarations were correct, as given sub-paragraph (b) of Part 3(3) was not applicable or required, the error in completing it was irrelevant. All other errors were corrected within the Revised Declarations, and therefore in our view the Delivery Body incorrectly rejected the low carbon declarations submitted for each of the CMUs.
- 4.8 Flexion Energy have provided updated low carbon declarations (Exhibit ZD) with their appeal to the Authority and requested these be used instead of the Exhibit ZDs submitted with Flexion Energy’s requests for reconsideration. In light of the above, it is not necessary for us to determine this issue, but we note that the Authority has no ability to consider this information as part of the appeal process as the revised low carbon declarations (Exhibit ZD) that were submitted with Flexion Energy’s appeal notices do not fall within the scope of sub-paragraphs (4) or (5) of Regulation 70.

5. Conclusion

- 5.1 The Delivery Body did not reach the correct decision to reject the CMUs for the T-4 auction. The Delivery Body wrongly determined that Part 3(3) of the low carbon declarations submitted for the CMUs for the T-4 auction were incorrect, and therefore the reconsidered decision in respect of each of these CMUs was also not correct.

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

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reject Flexion Energy for prequalification for the T-4 auction be overturned in respect of the CMUs.

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For and on behalf of the Gas and Electricity Markets Authority