Determination

Capacity Market Appeal 2026: Flexion Energy Holdings UK LTD

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

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)

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"):

- iV210G (T-4 Auction)
- iV219F (T-4 Auction)

1.2 This decision deals with both 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 Authority[1] 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 both 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 dated 14 August 2025 for iV210G and 18 September 2025 for iV219F.

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."

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

[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.

reference to a fossil fuel emissions declaration within sub-paragraph (a), as set outbelow:

2.5 For each of the CMUs, the Delivery Body issued a notification of prequalification decision dated 11 November 2025. The Delivery Body rejected all the CMUs on a variety of different grounds. For brevity, we have only included the grounds relating to Exhibit ZD and Termination Events, as these are the issues 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.

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.
>
> F14-11 Application made for a New Build CMU that has been terminated in the previous two years
>
> CM Rule 3.3.3(f)(ii) states that an Application may not be made for a New Build CMU, or any Generating Unit comprised in that CMU, that has had a Capacity Agreement terminated in consequence of a Termination Event within Rule 6.10.1(b), 6.10.1(ba), 6.10.1(c), or 6.10.1(e), in the previous two years. The CMU, or components thereof, for which this Application relates has had a Capacity Agreement terminated, therefore this is not eligible to apply."

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 notification of 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 In the requests for reconsideration, Flexion Energy also submitted additional evidence regarding the termination and asked for it to be reconsidered.

2.9 The request in relation to iV210G stated that:

> "We strongly believe that because this project delay is due to oversight and negligence from WPD[2] and NGET[3], that we should be permitted to prequalify this project now, rather than wait until 2027. For reference it was terminated earlier this year as we could not meet the previously committed construction milestones, due to the delay placed on us by WPD.
>
> This evidence was submitted to the EMR[4] and to DESNZ[5] leading up to termination. We wish for this to be reconsidered. It is unnecessary to penalise a capacity provider, effectively removing two years of revenue, for negligence by a third party."

[2] Western Power Distribution.
[3] National Grid Electricity Transmission.
[4] i.e. the Delivery Body.
[5] Department for Energy Security and Net Zero.

2.10 The request in relation to iV219F stated that:

> "We strongly believe that because this project delay is due to oversight and negligence from SHEPD[6] that we should be permitted to prequalify this project now, rather than wait until 2027. For reference it was terminated earlier this year as we could not meet the previously committed construction milestones, due to the delay placed on us by SHEPD.
>
> This evidence was submitted to the EMR and to DESNZ leading up to termination. We wish for this to be reconsidered. It is unnecessary to penalise a capacity provider, effectively removing two years of revenue, for negligence by a third party."

2.11 The Delivery Body issued notification of reconsidered decision 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.
>
> F14-11 Application made for a New Build CMU that has been terminated in the previous two years
>
> CM Rule 3.3.3(f)(ii) states that an Application may not be made for a New Build CMU, or any Generating Unit comprised in that CMU, that has had a Capacity Agreement terminated in consequence of a Termination Event within Rule 6.10.1(b), 6.10.1(ba), 6.10.1(c), or 6.10.1(e), in the previous two years. The CMU, or components thereof, for which this Application relates has had a Capacity Agreement terminated, therefore this is not eligible to apply."

2.12 Flexion Energy submitted an appeal to the Authority for each of the CMUs on 15 December 2025.

Flexion Energy's Grounds for Appeal

2.13 Flexion Energy disputes the decisions on the following grounds:

Ground 1

[6] Scottish Hydro Electric Power Distribution.

2.14 Flexion Energy states that "We have corrected the error in Exhibit ZB[7] [sic] which accompanies this Notice. The prequalification and Tier 1 dispute submissions were made in the belief that the document was completed correctly". This 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).

Ground 2

2.15 The appeal notice repeats the statement that the termination is unjustified and refers us to a letter titled "151120525_ion Ventures_2025 T-4 Capacity Market prequalification rejection - Appeal Notice". This letter, which is accompanied by additional evidence in relation to the Terminated CMUs, states that:

> "We are requesting that these cases are reviewed in full, in relation to the 2025 T-4 Capacity Market prequalification window which closes at 5pm Friday 19th December 2025. We believe Ofgem should grant an exception to the Capacity Market Rules and permit these two sites to prequalify for the 2025 T-4 Capacity Market. The grounds for termination were outside of our control and the fault of DNOs and NESO...
>
> In summary, ion[8] is formally requesting the supporting evidence accompanying this letter is reviewed and iV219F and iV210G are permitted to prequalify for the 2025 T-4 Capacity Market auction."

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;

[7] 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 to the Authority.
[8] The parent company of Flexion Energy.

(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 Regulation 68 defines what a Delivery Body reviewable decision is and who may submit one, including that a termination notice or a notice of intention to terminate a capacity agreement may be disputed or appealed by the capacity provider to whom the notice has been issued.

3.6 Specifically, Regulation 68 states that:

(1) In this Chapter, a "delivery body reviewable decision" means a decision by the Delivery Body under capacity market rules of a kind specified in the first column of the following table.
(2) A dispute or appeal in relation to a delivery body reviewable decision may only be brought—
(a) by a person specified in the corresponding entry in the second column of the table (an "affected person"); and
(b) in accordance with this Chapter.

Table

Decision	Person who may bring dispute or appeal
A prequalification decision.	The applicant or secondary trading entrant in relation to whom the decision has been made.
A refusal of a request for rectification of the capacity market register on the basis of factual inaccuracy.	The person who made a request for rectification in accordance with the capacity market rules.
A refusal of a request to amend a capacity agreement notice on the basis of factual inaccuracy.	The capacity provider to whom a capacity agreement notice has been issues, and who has made a request to amend it in accordance with the capacity market rules.
The issue of a non-completion notice, a termination notice, or a notice of intention to terminate a capacity agreement or a transferred part.	The capacity provider to whom the notice has been issues.
A low emissions determination	The capacity provider to whom the notice of the determination was given.
The issue of a CCS CFD transfer refusal notice.	The capacity provider who made a request for termination and to whom the notice has been issued.

(3) In the table in paragraph (2), [CCS CFD transfer refusal notice",] "secondary trading entrant" [, "termination notice" and "notice of intention to terminate" have the meaning] given in the Rules."

3.7 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."

3.8 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."

3.9 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."

3.10 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."

3.11 Regulation 70(1) 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)."

3.12 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)."

3.13 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);

(c) in the case of an appeal relating to a termination notice [a CCS CFD transfer refusal notice] or a notice of intention to terminate, a copy of—

(i) the notice; and

(ii) any information or documents provided by the affected person to the Delivery Body before the notice was issued, which are relevant to the matter in dispute; [...]

(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."

3.14 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

3.15 Chapter 1 of the Rules contains general provisions, including definitions (set out within Rule 1.2.1).

3.16 Rule 1.2.1 gives the definition of "Termination Event"

"Termination Event means an event referred to in Rule 6.10.1 or Rule 6.10.1A"

3.17 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.

3.18 Rule 3.3.3 sets out the situations in which an application cannot be made for a CMU for a capacity auction:

"An Application may not be made for a CMU for a Capacity Auction if:

[…]

(f) subject to Rule 3.3.3A(b), the Application is for a New Build CMU in respect of which, at any time ("t") during the preceding two years:

(i) the Applicant, or a member of the Applicant's Group, was the New Build Capacity Provider; and

(ii) a Capacity Agreement awarded in respect of the CMU was terminated at time t and in consequence of a Termination Event within Rule 6.10.1(b), 6.10.1(ba), 6.10.1(c), or 6.10.1(e) or a notice was issued under Rule 6.8.2B;

provided that:

(aa) this Rule does not prevent an Application in relation to such CMU as an Existing CMU; and

(bb) if the CMU previously ceased to be Prequalified as a result of this Rule when read with Rule 4.4.3AC, this Rule does not operate to prevent an Application for the CMU in respect of auctions in more than two consecutive Auction Windows as a result of the same termination."

3.19 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."

3.20 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)."

3.21 Chapter 6 governs the issuance, terms and provisions of capacity agreements.

3.22 Rule 6.10.1 defines a termination event:

"Each of the following events is a Termination Event with respect to a Capacity Agreement (other than a Capacity Agreement that has been transferred under Rule 9.2.4(a)), and the Capacity Provider must notify the Delivery Body if any of the following events has occurred and is continuing:

[...]

(b) where the Capacity Agreement is in respect of a New Build CMU, a failure by the Capacity Provider to achieve its Financial Commitment Milestone for that New Build CMU as determined in accordance with Rule 6.6"

3.23 Rule 6.10.2 contains the definition of 'Termination Notice', stating that:

"Procedure for automatic termination

(a) Where the Delivery Body:

(i) has been notified by another Administrative Party or a Capacity Provider of, or otherwise becomes aware of the occurrence of, any of the circumstances referred to in Rule 6.10.1 or as the case may be Rule 6.10.1A, or

(ii) receives a direction from the Secretary of State or the Authority to terminate the Capacity Agreement for an actual or suspected engagement in one or more of the Prohibited Activities by an Applicant-related Party or any member of the Applicant's Group;

it must issue a written notice to the Capacity Provider, the Secretary of State, the CM Settlement Body and the Authority (a "Termination Notice") stating that the Capacity Agreement of the relevant CMU (or, in the case of the circumstances in Rule 6.10.1(a) or Rule 6.10.2(a)(ii), all CMUs for which it is the Capacity Provider) will terminate in 60 Working Days and specifying which of the grounds in Rule 6.10.1(a) to (s) or Rule 6.10.2(a)(ii) applies."

4. Our Findings

4.1 We have assessed Flexion Energy's grounds for appeal, which are summarised below.

Ground 1

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 its 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 decisions 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[9]. We therefore determine that Part 3(3) of the Prequalification Declarations were

[9] 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.

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 notification of prequalification decision 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 appeals to the Authority and requested these be used instead of the Exhibit ZDs submitted at with Flexion Energy's requests for reconsideration. In the 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 to the Authority do not fall within the scope of sub-paragraphs (4) or (5) of Regulation 70.

Ground 2

4.9 As set out above, Flexion Energy requests that the CMUs be permitted to prequalify, and that the Authority reviews the specifics of the terminations and grant an exception to the Capacity Market Rules to permit the two sites to prequalify. In support of its request, Flexion Energy relies on evidence submitted with the appeal to the Authority that was not before the Delivery Body.

4.10 Regulation 70 sets out what documentary evidence can accompany an appeal to the Authority. Only information and documentary evidence that an applicant has provided to the Delivery Body as part of the application for prequalification or in the request for reconsideration of the prequalification decision can be included with an appeal to the Authority. Regulation 70(6) states that "*except as provided in paragraphs (4) and (5), no other documentary evidence may be included or submitted with the Appeal Notice"*.

4.11 The additional evidence submitted by Flexion Energy does not fall within the scope of Regulation 70, sub-paragraphs (4) or (5) and therefore we are unable to consider it.

4.12 Turning to the substance of Flexion Energy's request, Rule 3.3.3 states that an application may not be made for a CMU for a capacity auction if the application is for a new build CMU in respect of which the applicant, or a member of the applicant's group was the new build capacity provider and a capacity agreement awarded in respect of the CMU was terminated as a result of Rule 6.10.1(b) during the preceding two years.

4.13 The Delivery Body has confirmed that pursuant to Rule 6.10.1(b) it issued a termination notice in respect of iV210G on 7 January 2025, and a termination notice in respect of iV219F on 8 July 2025.

4.14 Regulation 68 states that a termination notice issued by the Delivery Body may be appealed by the capacity provider to whom the notice has been issued. Regulation 69(2) states that a reconsideration request for a Delivery Body decision must be submitted in writing to the delivery body within 5 working days after receiving notice of the decision. Regulation 70 states that an affected person who has made an appeal to the Delivery Body may appeal to the Authority if they dispute the reconsidered decision or if the request for reconsideration was rejected by the Delivery Body on the grounds that it did not comply with regulation 69(2).

4.15 The evidence presented by Flexion Energy does not indicate that the initial termination notices from the Delivery Body in respect of the terminated CMUs were appealed under Regulation 69 within the 5 working days deadline, or at all. Regulation 70 only gives the Authority power to review reconsidered decisions from the Delivery Body. Without an initial request for reconsideration submitted to the Delivery Body, we do not have the power under the Regulations to directly review a Delivery Body decision to issue termination notices in respect of the terminated CMUs. In our view, Flexion Energy has not identified any grounds for challenge under the Rules or the Regulations in its notice of appeal in relation to the CMUs, and the Delivery Body's decision must be upheld.

5. Conclusion

The Delivery Body reached the correct decision to reject the CMUs for the T-4 auction on the basis that Rule 3.3.3 forbids these New Build CMUs from submitting an application because they had been terminated under Rule 6.10.1(b) within the preceding two years.

5.1 We note that 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 this issue was also not correct. However, this is irrelevant given the findings above.

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

Andrew Macdonell

Senior Policy Manager – Energy Markets and Security

For and on behalf of the Gas and Electricity Markets Authority