

# Determination

## Capacity Market Appeal 2026: Nextpower Rutherglen 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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## Determination Nextpower Rutherglen Limited

### 1. Introduction

- 1.1 This determination relates to an appeal made by Nextpower Rutherglen Limited (“Nextpower”) against a reconsidered decision made by the Electricity Market Reform Delivery Body (“Delivery Body”) in respect of the following Capacity Market Unit (“the CMU”):
- NPUK07 (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 Nextpower 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 application included “Exhibit ZD: Form of Low Carbon Declaration” by Nextpower’s directors, dated 25 September 2025. That exhibit declared and confirmed the matters set out “with reference to the 29.9 MW Lithium-ion Battery Energy Storage System”. The MW value described was inconsistent with other information provided in the application for prequalification, which described the relevant CMU as having a 29.0 MW lithium-ion battery energy storage system.
- 2.3 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):
- F6-39 Description of CMU 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 Description of CMU was incorrect. Please contact the Delivery Body for more information.”
- 2.4 Nextpower submitted a request for reconsideration on 18 November 2025. At this stage, Nextpower provided the Delivery Body with a revised “Form of Low Carbon Declaration (Exhibit ZD)”, which at the start set out that the directors would

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<sup>1</sup> 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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declare and confirm the matters set out “with reference to the 29.0 MW Lithium-ion Battery Energy Storage System” This MW value matched the information provided elsewhere in the Application. However, this exhibit/declaration was not signed by Nextpower’s directors, nor dated.

- 2.5 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):

F6-51 Part 4 on Form of Low Carbon Declaration (Exhibit ZD) missing Director Signatures Date

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 Director(s) signature date was missing. Please contact the Delivery Body for more information.

F6-53 Part 4 on Form of Low Carbon Declaration (Exhibit ZD) missing 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 missing. Please contact the Delivery Body for more information.

F6-55 Part 4 on Form of Low Carbon Declaration (Exhibit ZD) missing Director Print Name

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 Director(s) Printed name was missing. Please contact the Delivery Body for more information.”

- 2.6 Nextpower submitted an appeal to the Authority on 11 December 2025. At this stage, Nextpower submitted a third “Form of Low Carbon Declaration (Exhibit ZD)”, which referred to the correct MW value for the CMU, and which is signed by two Nextpower directors, both signatures being dated 11 November 2025. Nextpower also submitted a Docusign summary providing information as to when the Exhibit ZD document was signed by its directors. However, Nextpower acknowledge that “the Delivery Body cannot accept evidence not available to it at the time, such as a sufficiently acceptable Exhibit ZD. While we have provided such evidence here, we do so to show that our arguments at the initial Tier 1 Dispute were in good faith.”.

**Determination Nextpower Rutherglen Limited****Nextpower's Grounds for Appeal**

2.7 Nextpower disputes the reconsidered decision on the following grounds.

Grounds

- 2.8 Nextpower states that it submitted an Exhibit ZD at application for prequalification, but this was rejected due to the description of the CMU being incorrect (the MW value being incorrectly reported). Nextpower states that it then uploaded an Exhibit ZD at the request for reconsideration which corrected the error highlighted at the notification of prequalification decision, but left both the directors' signatures, printed names and dates blank, instead of the signed, corrected Exhibit ZD it had prepared to submit. This request for reconsideration was rejected by the Delivery Body due to the lack of the director's signatures, printed names and dates.
- 2.9 Nextpower accepts that the Delivery Body cannot accept evidence not available to it at the time.
- 2.10 However, Nextpower argues that, since the Exhibit ZD submitted at request for reconsideration was functionally blank, it should be treated as if Nextpower never submitted a Low Carbon Declaration, and the rejection should be overturned on the basis that Rule 3.10ZA.2 allows for applicants who did not submit a low carbon declaration to submit it between prequalification results day and the start of the first bidding window.

**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

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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—

(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):

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“(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) 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—

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- (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):**

“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 additional information:

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**“Additional Information** in respect of a CMU that is the subject of an Application, means the additional information and documents required to be submitted with the Application, as set out in one or more of the paragraphs below:

[...]

(f) in the case of an Application relating to a Generating CMU or DSR CMU which an Applicant intends to be a Declared Low Carbon CMU, such information and documents as are required pursuant to Rule 3.10ZA”

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 3.3.6 states what must be done in order to prequalify:

“For each CMU which an Applicant wishes to Prequalify, and for each Capacity Auction, the Applicant must:

(a) submit a separate application form and the required Additional Information (together, an “Application”) to the Delivery Body;

(b) comply with the requirements of the Application Process; and

(c) cooperate with the Delivery Body and other Administrative Parties in the execution of their duties.”

3.16 Rule 3.4.4A states 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.”

3.17 Rule 3.7.2 states what a “New Build CMU” must state in the application:

“Each Applicant for a New Build CMU must state in the Application:

[...]

(d) for a Generating CMU:

(i) in the case of a CMU in respect of which the Applicant has provided, or intends to provide, a Low Carbon Declaration but has not stated in the

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Application, pursuant to Rule 3.4.4A(b)(iv), that it intends it to be a Three Year Zero Capex Threshold CMU, whether the Qualifying £/kW Capital Expenditure is:

(aa) equal to or greater than the Fifteen Year Minimum £/kW Threshold;

(bb) equal to or greater than the Nine Year Minimum £/kW Threshold and less than the Fifteen Year Minimum £/kW Threshold;

(cc) equal to or greater than the Three Year Minimum £/kW Threshold and less than the Nine Year Minimum £/kW Threshold; or

(dd) less than the Three Year Minimum £/kW Threshold;

(ii) in the case of a CMU in respect of which the Applicant has provided, or intends to provide, a Low Carbon Declaration and has stated in the Application, pursuant to Rule 3.4.4A(b)(iv), that it intends it to be a Three Year Zero Capex Threshold CMU, whether the Qualifying £/kW Capital Expenditure is:

(aa) equal to or greater than the Fifteen Year Minimum £/kW Threshold;

(bb) equal to or greater than the Nine Year Minimum £/kW Threshold and less than the Fifteen Year Minimum £/kW Threshold; or

(cc) less than the Nine Year Minimum £/kW Threshold and equal to or greater than zero;”

3.18 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.”

3.19 Rule 3.10ZA.2 states that an applicant not required to comply with Rule 3.10ZA.1 may provide a low carbon declaration between prequalification results day and the commencement of the first bidding window:

“In the period between the Prequalification Results Day and the commencement of the first Bidding Window for that Capacity Auction, an Applicant that is not required to comply with Rule 3.10ZA.1 may, in respect of a Delivery Year (“Delivery Year X”), provide a Low Carbon Declaration to the Delivery Body:

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(a) in respect of a Prequalified CMU which is a Prospective Generating CMU or an Unproven DSR CMU where:

(i) no Low Carbon Declaration has been made; or

(ii) a Low Carbon Declaration has previously been made specifying a Low Carbon Period that does not include all or part of Delivery Year X; and

(b) which specifies a Low Carbon Period that includes all or part of Delivery Year X."

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 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:

(a) it is aware that the Application has not been completed or submitted in accordance with the Rules; (aa) it reasonably believes that any information or declaration submitted in or with an Application does not comply with the requirements in Rule 3.12.1;

(b) the required Additional Information is missing;

[...]"

## 4. Our Findings

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

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- 4.2 Nextpower requests that the unsigned Exhibit ZD provided at the request for reconsideration should not be considered as a submitted low carbon declaration, stating that “As the Exhibit ZD under consideration at the Tier 1 stage is blank and unsigned, this cannot be considered as making a Low Carbon Declaration [...] The Delivery Body used the blank Exhibit ZD to reconsider the application at the Tier 1 stage. This shows that they considered the blank version to supersede the initially provided version. As the Exhibit submitted was not signed, while there was intention to make a Low Carbon Declaration, the declaration was not made”. Nextpower seeks to submit a low carbon declaration between prequalification results day and the start of the first bidding window, under Rule 3.10ZA.2.
- 4.3 Nextpower was not required to submit a low carbon declaration with the application because it was not seeking for the CMU to qualify within any of the sub-categories set out in Rule 3.10ZA.1. However, Nextpower provided evidence 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” and submitted an Exhibit ZD: form of low carbon declaration.
- 4.4 In the notification of prequalification decision, the Delivery Body rejected the Application on the grounds that the description of the CMU in Exhibit ZD was incorrect. Reviewing the exhibit shows that the connection capacity stated for the CMU is given as 29.9MW, while the grid connection agreement and other documentation stated a connection capacity of 29.0MW. We therefore agree with the Delivery Body’s decision at this stage that the description of the CMU in Exhibit ZD was incorrect.
- 4.5 At the request for reconsideration, Nextpower submitted a replacement Exhibit ZD which gave 29.0MW as the connection capacity. However, this replacement Exhibit ZD did not have the signatures, dates or print names of either of the two directors required, and for this reason the Delivery Body upheld its rejection in the notification of reconsidered decision.
- 4.6 Rule 3.10ZA.2 allows an applicant who has not submitted a low carbon declaration to submit a low carbon declaration in the period between the prequalification results day and the commencement of the first bidding window for that capacity auction. However, Nextpower expressed the intention that the CMU be a declared low carbon CMU and submitted an Exhibit ZD at the application for prequalification, and then submitted a replacement Exhibit ZD at the request for reconsideration. In making that submission, Nextpower was required to comply with Rule 3.12.1. This provides that an applicant must ensure and confirm in the Application that (a) in all material respects, the application and all additional information submitted by the applicant; and (b) “in all respects” each of the specific declarations identified in Rules 3.4 to 3.11 (of which a low carbon declaration is one) must be ‘true and correct’, and that the application and additional information has been authorised by the board of directors.

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- 4.7 We do not consider that Rule 3.10ZA.2 enables Nextpower to avoid this requirement, given that Nextpower submitted a low carbon declaration with the application for prequalification.
- 4.8 Further, the Delivery Body was required to reject the application as, under Rule 4.4.2, it must not prequalify a CMU where it is aware that the application has not been completed or submitted in accordance with the Rules; it reasonably believes that any information or declaration submitted in or with an application for prequalification does not comply with the requirements in Rule 3.12.1; or that required additional information was missing.
- 4.9 We do not accept Nextpower's arguments that the document submitted at the request for reconsideration was "blank", as the Exhibit ZD submitted had the company and CMU information filled in. We also do not agree with the argument that an incomplete version of an exhibit submitted at request for reconsideration should lead the Delivery Body to conclude that the application should be treated as if the exhibit had never been submitted.

## 5. Conclusion

- 5.1 The Delivery Body reached the correct decision to reject NPUK07 for the T-4 auction on the basis that:
- (a) The Exhibit ZD submitted at the application for prequalification did not meet the requirements set out in Rule 3.12.1, meaning that the Delivery Body could not prequalify the Application under Rule 4.4.2; and
  - (b) The Exhibit ZD submitted at the request for reconsideration also did not meet the requirements set out in Rule 3.12.1, meaning that the Delivery Body could not prequalify the application under Rule 4.4.2.

## 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 Nextpower for prequalification for the T-4 auction be upheld 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