Determination

Capacity Market Appeal 2026: OakTree Power Limited

Publication date:	13 April 2026
Contact:	Andrew Macdonell
Team:	Electricity Security and Market Management (ESMM)
Email:	EMR_DR@ofgem.gov.uk

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)

© Crown copyright 2026

The text of this document may be reproduced (excluding logos) under and in accordance with the terms of the Open Government Licence.

Without prejudice to the generality of the terms of the Open Government Licence, the material that is reproduced must be acknowledged as Crown copyright and the document title of this document must be specified in that acknowledgement.

This publication is available at www.ofgem.gov.uk. Any enquiries regarding the use and re-use of this information resource should be sent to psi@nationalarchives.gsi.gov.uk

1. Introduction

1.1 This determination relates to an appeal made by OakTree Power Limited ("OakTree") against a reconsidered decision made by the Electricity Market Reform Delivery Body ("Delivery Body") in respect of the following Capacity Market Unit ("CMU"):

- OPL075 (T-4 Auction)

1.1 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 OakTree 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 CMU which is the subject of the application for prequalification is an unproven demand side response (DSR) CMU. In the application, OakTree ticked the box which declared that the CMU was a declared low carbon CMU. OakTree did not however upload a low carbon declaration (Exhibit ZD).

2.3 The Delivery Body issued a notification of prequalification decision dated 11 November 2025. The Delivery Body rejected the CMUs on the following grounds:

> "This Application has not met the requirements of the Capacity Market Rules due to the following reason(s):
>
> F6-16 Description of CMU on Fossil Fuel Emissions Commitment (Exhibit ZB) incorrect
>
> CM Rules 3.7.4, 3.8.3 and 3.10.4 require Applicants for New Build Generating, Unproven DSR[2], or Refurbishing Generating CMUs to provide a Fossil Fuel Emissions Commitment Exhibit ZB). The Fossil Fuel Emissions Commitment provided has an incorrect or inconsistent CMU Description. As such, the matters set out in the Exhibit ZB have not been sufficiently addressed, and the requirement not met. Therefore, as per CM Rule 4.4.2(i) the DB[3] must not Prequalify this CMU.
>
> F6-31 Low Carbon Declaration (Exhibit ZD) missing

[1] References to the "Authority", "Ofgem", "we" and "our" are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) support GEMA in its day-to-day work.
[2] Demand Side Response
[3] Delivery Body

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

F9-7 Unproven DSR Expanded Business Plan not completed correctly for a multi-year Capacity Agreement

Capacity Market Rule 3.10.1(aa) requires an Applicant for an Unproven DSR CMU that is intending to bid for a Capacity Agreement of a duration exceeding one Delivery Year to include details of how the Applicant has taken, or will take, steps to acquire DSR CMU Components and/or Contractual DSR Control so the actual Qualifying £/kW Capital Expenditure will be equal to or greater than the expected Qualifying £/kW Capital Expenditure. This Application is for an Unproven DSR CMU which is applying for a multiyear Agreement, however the details required in the expanded DSR Business Plan document have not been completed as required, therefore this Application fails to meet the requirements of this rule."

2.4 OakTree submitted a request for reconsideration on 18 November 2025. OakTree also completed and attached a low carbon declaration (Exhibit ZD), signed and dated 18 November 2025.

2.5 OakTree submitted that:

'The rejection reasons provided do not reflect the substance of the evidence or the intent of the application. The errors identified are administrative and have now been rectified with correct and complete documentation. All required information under Capacity Market Rules 3. 7.4, 3.8.3, 3.BA.2, 3.9.1, and 3.10.1 (aa) is now provided in full. Under Rule 3.12.1 (a) and Regulation 69 of the Electricity Capacity Regulations 2014, the Delivery Body may accept submissions that are substantively compliant even where they contain minor clerical or procedural deficiencies. The material submitted both initially and in this dispute demonstrates full compliance in substance with all relevant requirements. Accordingly, CMU OPL075 should be reinstated as prequalified for the Capacity Auction with eligibility to bid for a multi-year agreement.'

2.6 The Delivery Body issued a notice 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):

F9-7 Unproven DSR Expanded Business Plan not completed correctly for a multi-year Capacity Agreement

Capacity Market Rule 3.10.1(aa) requires an Applicant for an Unproven DSR CMU that is intending to bid for a Capacity Agreement of a duration exceeding

one Delivery Year to include details of how the Applicant has taken, or will take, steps to acquire DSR CMU Components and/or Contractual DSR Control so the actual Qualifying £/kW Capital Expenditure will be equal to or greater than the expected Qualifying £/kW Capital Expenditure. This Application is for an Unproven DSR CMU which is applying for a multi-year Agreement, however the details required in the expanded DSR Business Plan document have not been completed as required, therefore this Application fails to meet the requirements of this rule.

F6-42 Part 2 Declarations in respect of the Relevant CMU on Form of Low Carbon Declaration (Exhibit ZD) is missing

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 2 was missing. Please contact the Delivery Body for more information.

F6-44 Part 3(1) Declaration in respect of the Relevant CMU on Form of Low Carbon Declaration (Exhibit ZD) is missing

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

2.7 OakTree submitted an appeal to the Authority on 15 December 2025.

OakTree's Grounds for Appeal

2.8 OakTree disputes the decision on the following grounds:

Ground 1

2.9 OakTree states that the Delivery Body upheld the rejection under F9-7 (Unproven DSR Expanded Business Plan not completed correctly for a multi-year Capacity Agreement) on the basis that OakTree was applying for a multi-year agreement, but the applicant states that their unproven DSR expanded business plan submitted with the original application stated "Not applicable (not applying for multi-year agreement)". The Applicant states that if they were correctly treated as a single-year application, the requirements under F9-7 no longer apply.

Ground 2

2.10 OakTree confirms that their request for reconsideration submission contained drafting errors which stated an intent to apply for a multi-year agreement. However, OakTree points out that the unproven DSR expanded business plan submitted with the original application stated that OakTree was not applying for a

multi-year agreement and that this should be considered as the evidence of intent over the evidence submitted at the request for reconsideration.

Ground 3

2.11 OakTree states that the Delivery Body's claim that Exhibit ZD part 2 and part 3(1) were "missing" does not reflect the fact that Exhibit ZD was submitted, is signed and dated by directors and contains the "requisite low-carbon declarations in substance". OakTree concedes that some bracketed options and instructional text were not removed, and that the submitted document is therefore present but imperfect. OakTree states that the Authority should allow for the defects to be corrected at the appeal to the authority.

2.12 The facts relied on in the appeal to Authority were summarised as follows:

2.13 the CMU is an unproven DSR CMU submitted by OakTree for the 2029–30 (T-4) Capacity Market prequalification.

2.14 OakTree's true and consistent intent was for the CMU to bid for a single Delivery Year only, not a multi-year Capacity Agreement.

2.15 The signed unproven DSR expanded business plan submitted for the CMU expressly states in the multi-year-only section: "Not applicable (not applying for multi-year agreement)." The unproven DSR expanded business plan is executed (signed and dated).

2.16 Exhibit ZD (low carbon declaration) was submitted with the prequalification application and is executed by directors and dated; some bracketed options and template instruction text remain undeleted in the lodged version.

These documents form part of the material that was available to the Delivery Body when making its decision.

2.17 In respect of the low carbon declaration ground, it is argued that: 'Exhibit ZD was provided and executed; any bracket-option or formatting defect is a clerical issue of form/template completion and should not justify exclusion, and a corrective direction would be proportionate and consistent with procedural fairness.' OakTree further argued that:

"Ground 3 – Exhibit ZD: present, executed, and subject only to a clerical template-completion defect

The reconsidered decision states that Exhibit ZD Part 2 and Part 3(1) declarations were "missing". However, Exhibit ZD for the CMU was submitted, is signed and dated by directors, and contains the requisite low-carbon declarations in substance; the only conceded defect is that some bracketed options and instructional text were not removed.

In that context, the declaration is present but imperfect in form. Characterising Parts 2 and 3(1) as "missing" does not accurately reflect the documents

provided. The EMR Dispute Resolution Guidance emphasises proportionality and efficiency, and allows Ofgem to consider whether the Delivery Body's decision correctly applied the rules in light of the material actually before it.

Where an executed declaration exists and any defect is purely one of template completion, a rejection that treats the declaration as absent risks being disproportionate to the nature of the error. Ofgem has scope within its dispute role to direct a corrective outcome where a correctable defect exists and procedural fairness supports allowing clarification rather than exclusion."

3. The Regulatory Framework

3.1 The Regulations were made by the Secretary of State under the provisions of section 27 of the Energy Act 2013. The Capacity Market Rules 2014 (as amended) ("Rules") were made by the Secretary of State pursuant to powers set out in section 34 of the Energy Act 2013.

The Regulations

3.2 DSR CMUs are defined in Regulation 5. Unproven DSR CMUs must meet the conditions specified in Regulation 5(3), or will meet those conditions prior to the start of the delivery year for which the DSR provider has a capacity agreement.

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

3.4 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."

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

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

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

(2) The request must—

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

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

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

(a) reconsider the matter; and

(b) give notice to the affected person of—

(i) the outcome of the reconsideration (the "reconsidered decision"); and

(ii) the reasons for the reconsidered decision.

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

3.7 In particular, 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 [...] 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."

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

"(5A) In reconsidering a prequalification decision [...], the Delivery Body may take into account information or evidence if the Delivery Body determines that:

(a) the relevant application for prequalification [...] contained a non-material error or omission; and

(b) the information or evidence is capable of rectifying such non-material error or omission."

3.9 Regulation 69(6) provides that "subject to regulations 70 to 72, the reconsidered decision is final".

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 [...] 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 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—

3.12 "(a) the affected person disputes the reconsidered decision; or

3.13 (b) the request for reconsideration was rejected by the Delivery Body on the ground that it did not comply with regulation 69(2)."

3.14 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—

(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."

3.15 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;"

3.16 (b) determine whether the reconsidered decision was correct on the basis of the information which the Delivery Body had when it made the decision.." Regulation 71(4) outlines the potential outcomes of a determination of an appeal to the Authority:

"(4) 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 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

3.17 Per Rule 3.4.4A, on statements as to low carbon declaration (emphasis added):

"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.

3.18 Rule 3.10 states that an unproven demand side response CMU must include a business plan and sets out what it must contain. This includes the following:

"(aa) An Applicant for an Unproven DSR CMU ("CMU A") that is intending to bid for a Capacity Agreement of a duration exceeding one Delivery Year must include in the Application a statement as to:

(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 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; or

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

(ia) 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; or

(ib) in the case of any other Unproven DSR 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 Three Year Minimum £/kW Threshold and less than the Fifteen Year Minimum £/kW Threshold; or

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

3.19 Rule 3.10ZA is entitled 'Low Carbon Declarations: Additional Information for Declared Long Stop CMUs, Nine Year Capex Threshold CMUs and Three Year Zero Capex Threshold CMUs'.. *"*

3.20 Rule 3.10ZA.1 provides that (emphasis added):

"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."

Declaration to be made when submitting an Application

3.21 Rule 3.12 makes various requirements as to the declarations to be made when submitting an application.

3.22 Per Rule 3.12.1, a person submitting an application [...] must ensure and confirm in the application [...] 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)."

Determination of Eligibility by the Delivery Body

3.23 Per Rule 4.2.1, following receipt of an Application, the Delivery Body must check that (a) the Application has been completed and submitted in accordance with the Regulations and the Rules; and (b) the required Additional Information appears to have been included. Rule 4.2.2 provides that the Delivery Body has no obligation to consider and check an Application prior to the closing of the Prequalification Window.

3.24 Per Rule 4.4.2, subject to Rule 3.8.1A,[4] 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 OakTree's Grounds for Appeal, which are summarised below.

Ground 1

4.2 OakTree states that they were rejected on the basis of not submitting a correctly completed unproven DSR expanded business plan because they were incorrectly considered as applying for a multi-year agreement, despite stating in their unproven DSR expanded business plan that they were not applying for a multi-year agreement.

4.3 Rule 3.10.1 requires an applicant for an unproven DSR CMU to include a business plan, with Rule 3.10.1(aa) providing additional requirements for unproven DSR CMUs that intend to bid for capacity agreements with a duration exceeding one Delivery Year.

4.4 At the application for prequalification, OakTree submitted an unproven DSR business plan and in the section marked "All Unproven DSR CMU's applying for multi-year Capacity Agreements must complete the following table", the Applicant wrote "Not applicable (not applying for multi-year agreements)". However, elsewhere in the application, in a section marked DSR Information, OakTree ticked a box to indicate that they were a multi-year application.

4.5 At the notification of prequalification, the Delivery Body rejected OakTree on the grounds that it did not meet the requirements of Rule 3.10.1(aa). Rule 3.12.1(b)

[4] Rule 3.8.1A provides specific requirements for refurbishing CMUs and so does not apply in this case, which concerns an unproven DSR CMU.

states that "in all respects", each of the specific declarations identified in Rules 3.4 to 3.11 (which includes the unproven DSR business plan) must be "true and correct", and Rule 4.4.2 states that the Delivery Body must not prequalify a CMU where 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. Given the ambiguity about whether this Unproven DSR CMU was applying for a single- or multi-year agreement, we agree that the Delivery Body were correct to believe that the information in the unproven DSR business plan was not "true and correct" and were correct to reject the application on this basis.

4.6 In their request for reconsideration, OakTree attempts to clarify whether they are a single- or multi-year unproven DSR CMU, but makes two contradictory statements. OakTree first states that "A minor error was made in selecting Yes to multiple year agreement. The DSR business plan justly confirms that CMU OPL075 is applying solely for a single-year Capacity Agreement [...] Total Project Spend is declared as zero, reflecting that no capital expenditure applies for a single-year agreement, as capital expenditure thresholds and reporting only apply to multi-year Capacity Agreements". However, later in the same document, the Applicant states that "The clarified Total Project Spend figure demonstrates compliance with the financial threshold for a 15-year Capacity Agreement".

4.7 The Delivery Body upheld their rejection at the notification of reconsidered decision. Regulation 69(5A) states that the Delivery Body may take into account additional evidence provided to them at the Request for Reconsideration provided that "(a) the relevant application for prequalification contained a non-material error or omission; and (b) the information or evidence is capable of rectifying such non-material error or omission". Given that the request for reconsideration gave contrasting statements about whether it should be treated as a single- or multi-year unproven DSR CMU, we do not hold that the information provided at the request for reconsideration was capable of rectifying the non-material error or omission, and hold that the Delivery Body's decision to uphold the decision given in their notification of prequalification determination was correct.

Ground 2

4.8 OakTree confirms that their request for reconsideration submission contained drafting errors which stated an intent to apply for a multi-year agreement, but holds that the unproven DSR expanded business plan submitted with the original application, which stated that they were not applying for a multi-year agreement, should be taken as the definitive indication of their intent.

4.9 As stated in Ground 1, we hold that the contrasting statements provided in the Request for Reconsideration were not sufficient to meet the requirements of 69(5A)(b).

Ground 3

4.10 OakTree states that the Delivery Body's claim that Exhibit ZD part 2 and part 3(1) were "missing" does not reflect the fact that Exhibit ZD was submitted, is signed and dated by directors and contains the "requisite low-carbon declarations in substance". OakTree concedes that the submitted document contained some errors and requests that the Authority directs a corrective outcome as a correctable defect exists and procedural fairness supports allowing clarification rather than exclusion.

4.11 OakTree stated in their appeal to the Authority that "Exhibit ZD (Low Carbon Declaration) was submitted with the prequalification application and is executed by directors and dated; some bracketed options and template instruction text remain undeleted in the lodged version." This does not appear to be consistent with the Authority's understanding of the facts. The only Exhibit ZD that was submitted with this appeal is a document submitted with the request for reconsideration which is signed and dated 18 November 2025 which was not submitted at prequalification. This is consistent with the notification of prequalification decision which stated that an Exhibit ZD had not been submitted.

4.12 OakTree was not required to submit a low carbon declaration with their application under Rule 3.10ZA.1 because they did not belong to any of the sub-categories set out in this rule. However, OakTree indicated that they had, as part of their 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". The Delivery Body stated in the notification of prequalification decision that the failure to submit a low carbon declaration (Exhibit ZD) was one of the reasons for rejection of the application for prequalification.

4.13 Rule 3.4.4A requires that each application for prequalification must state whether, in respect of the relevant CMU, the applicant is providing a low carbon declaration. As such, when OakTree ticked the box (with accompanying statement) in their application, they undertook to provide an Exhibit ZD form. Per Rule 3.12.1, a person submitting an application for prequalification must ensure that in all material respects, the application for prequalification is true and correct. Per Rule 4.4.2, the Delivery Body must not prequalify a CMU where it is aware that the application for prequalification has not been completed or submitted in accordance with the Rules. We therefore hold that the Delivery Body was correct in rejecting the application for prequalification for this reason.

4.14 OakTree submitted an Exhibit ZD at the request for reconsideration, but this Exhibit ZD had errors in part 2 and part 3(1). Part 2 concerns the period that the declaration applies to, presents options (a) and (b) and states that one should be deleted. Part 3(1) concerns whether the CMU contains fossil fuel components, presents options (a), (b) or (c) and states that only one should be retained. For Part 2, the Exhibit ZD OakTree submitted at request for reconsideration kept both (a) and (b) for Part 2 and kept Part (b) and (c) for Part 3(1). This results in an Exhibit

ZD which contains contradictory statements about the period that the declaration applies to and whether the CMU contains fossil fuel components.

4.15 The Regulations contain a power for the Delivery Body to take into account certain new evidence or information at the request for reconsideration, where this is capable of rectifying a non-material error or omission, per Regulation 69(5)-(5A). In this case, as in Paragraph 4.7, the Exhibit ZD submitted with the request for reconsideration contained directly contradictory and conflicting statements. As such the Regulation 69(5A) test could not be met, because the information or evidence submitted with the request for reconsideration was not capable of rectifying the errors made in declaring that the CMU was a declared low carbon CMU but not submitting a true and correct Exhibit ZD.

4.16 We acknowledge that the issues raised at notification of reconsidered decision have been resolved in the Exhibit ZD submitted with the appeal to the Authority, however Regulation 70 sets out what documentary evidence can be submitted with the applicant's appeal notice. Only information and documentary evidence that the applicant has provided to the Delivery Body as part of their application for prequalification or in their request for reconsideration can be included in the applicant's appeal notice. 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". The Authority has no ability to consider the information provided as part of the appeal process because Regulation 70(6) prevents this.

4.17 The role of the Authority as stated in Regulation 71(3)(b) is to "determine whether the reconsidered decision was correct on the basis of the information which the Delivery Body had when it made the decision." The combined effect of Regulation 70 and 71 means that the Authority cannot consider new information provided as part of the Appeal Exhibits and must consider the position at the point the Delivery Body reached its reconsidered decision.

4.18 We consider that the defects with the Exhibit ZD provided at request for reconsideration were defects of substance, and not 'purely one of template correction'. The Authority agrees with the Delivery Body that the deficiencies in Part 2 and 3(1) of the Exhibit ZD provided mean there is ambiguity as to when the low carbon period begins and whether the CMU contains fossil fuel components. As such, the information submitted under Rule 3.4.4A did not meet the requirements that it be true and correct, set out in Rule 3.12.1. We therefore hold that the Delivery Body were correct in their decision to reject the CMU under this ground.

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) OakTree provided contradictory statements in their application for prequalification about whether they were applying as a single- or multi-year unproven DSR CMU, resulting in the application for prequalification not meeting the requirements set out in Rule 3.12.1, meaning that the Delivery Body could not prequalify the Application under Rule 4.4.2. This issue was not resolved at the request for reconsideration.

(b) OakTree stating in their application for prequalification that they would provide a low carbon declaration and not including an Exhibit ZD 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. 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 OakTree 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