

DETERMINATION PURSUANT TO REGULATION 46 OF THE CONTRACTS FOR DIFFERENCE (ALLOCATION) REGULATIONS 2014 FOLLOWING AN APPEAL MADE TO THE AUTHORITY PURSUANT TO REGULATION 43

Introduction

1. This determination relates to an appeal made by Carn Nicholas Solar Limited ([“Carn Nicholas Solar”]) against a non-qualification determination made by National Grid Electricity System Operator as the Delivery Body (“the Delivery Body”) in respect of the following Contracts for Difference Unit (the “CfD Unit”):
 - a) Carn Nicholas Solar Farm
2. Pursuant to Regulation 46 of The Contracts for Difference (Allocation) Regulations (as amended) 2014 (the “Regulations”), where the Authority¹ receives a qualification appeal notice that complies with Regulations 43 and 44, the Authority must determine that appeal.
3. For the reasons set out in this determination, the Authority hereby determines pursuant to Regulation 46 that the Delivery Body’s non-qualification determination to reject Carn Nicholas Solar for qualification be overturned in respect of the CfD unit listed in Paragraph 1 for the Allocation Round 4 (“AR4”).

Appeal Background

4. On 14 January 2022, Carn Nicholas Solar submitted an eligibility qualification application for the CfD Unit in order to participate in the 2022 CfD allocation round (the “CfD application”).
5. On 21 February 2022, the Delivery Body issued a notification of CfD qualification determination for the CfD Unit (the “non-qualification determination”). The Delivery Body rejected the CfD application on the following grounds:

*“Failure to provide VAT Certificate as per requirement under Schedule 5 of AR4 Allocation Framework
Supporting regulations/rules for Non-Qualification determination are AR4 Allocation Framework Schedule 5, Incorporation, Documentary Evidence”*

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.

6. Carn Nicholas Solar submitted a request for review of the non-qualification determination (the “review notice”) on 4 March 2022 in accordance with Regulation 20 of the Regulations.
7. The Delivery Body issued a non-qualification review notice on 24 March 2022 which rejected the dispute on the following grounds:

“The non-qualification review notice states that a VAT Certificate was provided and attached to the CFD application and is the relevant VAT certificate which applies to Carn Nicholas Solar Limited. The explanation given was that an HMRC error has resulted in the company name of Carn Nicholas Solar Limited not being referenced on the VAT certificate.

Schedule 5 states that where the Applicant has specified in the Application that the Applicant is VAT registered: (a) a copy of the Applicant’s VAT Certificate of Registration is included with the Application; and (b) the company registration number specified in the VAT Certificate is the same as the Applicant’s company registration number specified in the Application.

As a result of the information provided; our position remains unchanged. We are unable to verify that Carn Nicholas Solar Limited is VAT registered (Question A20 of the application form) and therefore uphold our original non-qualification determination in accordance with Schedule 5 of the Allocation Framework for Allocation Round 4.”

8. Carn Nicholas Solar then submitted a qualification appeal to the Authority on 1 April 2022 under Regulation 43 of the Regulations.

Carn Nicholas Solar ’s Grounds for Appeal

9. Carn Nicholas Solar disputes the decision on the following grounds:

Ground 1

“The VAT Certificate issued by HMRC has been provided and that it is a failure by HMRC, not the applicant, which has resulted in the company registration number not appearing on the certificate. We have correspondence with HMRC to identify the error and to correct the certificate, copies of which can be provided if requested.”

Ground 2

10. *“Furthermore, if as a result of the lack of sufficient evidence Carn Nicholas Solar’s VAT registration cannot be properly established, we note that it is not a requirement for companies to be VAT registered and therefore don’t believe this should be grounds for exclusion”*

The Legislative Framework

11. The Regulations were made by the Secretary of State under the provisions of section 6 of the Energy Act 2013. The Contracts for Difference Allocation Round 4: Allocation Framework, 2021 (the “Allocation Framework”) was made by the Secretary of State under the provisions of section 13(2)(a) of the Energy Act 2013.

The Regulations

12. The Regulations provide for the matters on which the Delivery Body must be satisfied in order to determine an application as a qualifying application, including that the general qualification requirements (see Chapter 3 of Part 4, Regulations 23 to 25) and the additional qualification requirements (see Chapter 4 of Part 4, Regulations 26 to 28) have been met.
13. Chapter 2 of Part 4, Regulations 15 to 22, set out the process and powers in relation to applications and determinations.
14. Regulation 17(1) sets out the requirements for the Delivery Body to determine if an applicant is qualifying and states that:

“The delivery body must determine whether or not an application qualifies to take part in the allocation process applicable to the application.”

15. Regulation 17(4)(a) sets out the information the applicant must provide the Delivery Body and states that:

*“An applicant must provide with the application the information necessary to enable the delivery body—
i.to make the determination under paragraph (1); and*

ii. to give a CfD notification were the application to be a successful application, including the information listed or referred to in Schedule 1;”

16. Schedule 1(2)(e) sets out the information referred to in Regulation 17(4) which must be provided by an applicant and states:

“(e) where the applicant is VAT registered, the VAT registration number of the applicant”

17. As referred to in Regulation 17(4), Schedule 1(5) gives the following information that must be provided by the Applicant:

“Such other information concerning the applicant or the application as may be set out in the allocation framework which applies to the allocation round and in such form as may be required by that framework.”

The Allocation Framework

18. The Allocation Framework sets out the rules for CfD AR4 and the eligibility requirements applicants must satisfy. This includes Rule 3.3 to 3.5 which sets out how to determine eligibility for a CfD contract using the applicable checks.

19. Rule 3.3 of the Allocation Framework states that:

“Subject to Rule 3.5 below, where the applicable checks in Schedule 5 are satisfied in respect of an Application, the Delivery Body is entitled to make a presumption that the Application is a Qualifying Application.”

20. Rule 3.4 of the Allocation Framework states that:

*“The presumption in Rule 3.3 above does not apply where, having regard to credible evidence—
(a) received in writing by the Delivery Body from a Relevant Person; or
(b) otherwise in the knowledge of, or presented to, the Delivery Body in its role as the Delivery Body, including that received from a person other than a Relevant Person,
it is apparent to the Delivery Body that the Application may not have satisfied any one or more of the checks in Schedule 5.”*

21. Rule 3.5 of the Allocation Framework states that:

“If Rule 3.4 above applies, the Delivery Body must determine whether or not the Application is a Qualifying Application having regard to such relevant evidence available to it before the Delivery Body is required to give notice to an Applicant under Regulation 19.”

22. Schedule 5 of the Allocation Framework details the application checks to be conducted by the Delivery Body. This schedule highlights all the necessary checks that the Delivery Body must conduct in order to determine if the application can qualify as outlined in Rule 3 of the Allocation Framework.

23. Schedule 5 —states that an eligibility criterion for an incorporation is:

“Where the Applicant has specified in the Application that the Applicant is VAT registered: (a) a copy of the Applicant’s VAT Certificate of Registration is included with the Application; and (b) the company registration number specified in the VAT Certificate is the same as the Applicant’s company registration number specified in the Application.”

Our Findings

24. We have assessed Carn Nicholas Solar’s Grounds for Appeal, and our findings are summarised below.

Ground 1

25. Carn Nicholas Solar appealed the non-qualification determination on the basis that the VAT group certificate issued by HMRC has been provided and it is a failure by HMRC, not the applicant, which has resulted in Carn Nicholas Solar not appearing on the certificate.

26. Carn Nicholas Solar provided a VAT group certificate issued to its parent company, Innova Renewables Limited, as the parent company. Carn Nicholas Solar contends that they have been omitted from the VAT group certificate due to an administrative error on HMRC's part. Carn Nicholas Solar have indicated that this is evidenced by the fact that the reference numbers on the VAT group certificate jump from 000 to 002.
27. Carn Nicholas Solar have also provided documentary evidence to the Authority on which they wish to rely to show what evidence was before the Delivery Body when it upheld its non-qualifying determination. The information provided by Carn Nicholas Solar shows that they submitted the VAT51 form to HMRC to add Carn Nicholas Solar to a VAT group certificate and this application was accepted by HMRC as evident by the Government Gateway confirmation. This further information supports that Carn Nicholas Solar are VAT registered under Innova Renewables Limited's VAT group certificate. Their omission from the group certificate was also identified by Carn Nicholas Solar in March 2021, and they have provided internal correspondence to demonstrate the steps they took in order to rectify this with HMRC.
28. The Authority is of the view that Carn Nicholas Solar have followed the correct and necessary procedure to achieve VAT registration and have provided a copy of their VAT group certificate issued by HMRC. It is evident that Carn Nicholas Solar took action and sought to correct HMRC's administrative error.
29. Further, the Authority is of the view that Carn Nicholas Solar has satisfied the requirements of Schedule 1(2)(e) of the Regulations as they were required to provide their VAT registration number and have done so, as evidenced by the VAT certificate which contains the VAT registration number. Additionally, the applicant has satisfied the relevant requirements of Schedule 5 of the Allocation Framework, which stipulates that a copy of the VAT certificate must be provided, and Carns Nicholas Solar have provided a copy of their VAT group certificate.

Ground 2

30. Carn Nichols Solar's second ground of appeal is that it is not a requirement for companies to be VAT registered to participate in CfD AR4 and therefore, they do not believe this should be grounds for exclusion.
31. The Authority finds that in circumstances where the applicant is not VAT registered, Schedule 1(2)(e) of the Regulations confirms that it is not a requirement to provide a VAT registration number, and therefore failure to provide a VAT registration number in this case would not be a ground for disqualification. However, in circumstances where the applicant is VAT registered, a registration number for the applicant must be provided, and failure to do so would be a ground-for disqualification. Carn Nichols Solar believe to the best of their understanding that they are VAT registered. They maintain that they have done everything within their power to ensure this is reflected on their corporate group's VAT registration certificate. However, if in fact it transpired that they were not registered, we agree that under the Regulations they would not be required to provide a VAT registration number.

Conclusion

32. The Delivery Body did not reach the correct qualification review decision to reject Carn Nicholas Solar for the Allocation Round on the basis that:
 - a) The applicant has provided sufficient information to demonstrate that they are VAT registered and have provided a copy of their VAT group certificate.

Determination

33. For the reasons set out in this determination the Authority hereby determines pursuant to Regulation 46 that the Delivery Body's non-qualification determination to reject Carn Nicholas Solar for qualification be overturned in respect of the CfD Unit for AR4 and determines Carns Nicholas Solar is a qualifying applicant.

Grendon Thompson

Head of Domestic Market Management

For and on behalf of the Gas and Electricity Markets Authority

12 May 2022