

## 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 Moss Lane Farm Solar Limited (“MLFS”) 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) Moss/Drury Solar Farm
2. Pursuant to Regulation 46 of The Contracts for Difference (Allocation) Regulations (as amended) 2014 (the “Regulations”), where the Authority<sup>1</sup> 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 MLFS for qualification be overturned in respect of the CfD unit listed in Paragraph 1 for the Allocation Round 4 (“AR4”).

### Appeal Background

4. On 13 January 2022, MLFS submitted an eligibility qualification application for the CfD Unit 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 CfD Unit Map, as defined in Schedule 1 of AR [4] Allocation Framework and required for checks under Schedule 5 of AR4 Allocation Framework.”*

6. MLFS submitted a request for review of the non-qualification determination (the “review notice”) to the Delivery Body on 04 March 2022 in accordance with Regulation 20 of the Regulations. MLFS stated in their review notice that they have provided the

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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.

Delivery Body with the co-ordinates (Longitude and Latitude (in WGS84 format to 3 decimal places) of the Northerly, Easterly, Southerly and Westerly extreme co-ordinates of the site where the CfD Unit is located), in the CfD application. They argued that this is the key relevant information that a map would provide to the Delivery Body in order to make a qualification determination. Therefore, MLFS believed that the information required by the Delivery Body to make a qualification determination was submitted in the CfD application. MLFS also highlighted that they had mistakenly uploaded the “grid connection documents” twice instead of uploading the CfD location map. MLFS uploaded the CfD location map with the review notice, caveating that they believed this is “(...) *not new information, but a clarification of the co-ordinates on the map agreed by the planners.*”

7. The Delivery Body issued a non-qualification review notice on 24 March 2022 (non-qualification review notice”) which rejected the dispute on the following grounds:

*MLFS “(...) did not upload the CfD location map and the argument is that the lack of CfD location map is mitigated by the grid co-ordinates being provided as on the application form.” The Delivery body rejected this as “The Allocation Framework states that a map must be provided as documentary evidence as a part of the application submission.”*

*The Delivery Body also stated that an attachment titled “Moss Drury – CFD map and long lat plus scale.pdf” was submitted at the review stage. As such, the Delivery Body stated that they “(...) would be unable to accept this at the review stage as this would be classified as new documentary evidence in accordance with Regulation 20(2)(c) of the Regulations.”*

8. MLFS then submitted a qualification appeal to the Authority on 31 March 2022 under Regulation 43 of the Regulations.

### **MLFS’s Grounds for Appeal**

9. MLFS disputes the decision on the following grounds:

#### Ground 1

10. MLFS stated in their qualification appeal to the Authority that they have “(...) *already provided the information necessary for the [Delivery Body] to make a determination.*” They consider that the Delivery Body has “(...) *adopted a “tick-box” approach in finding that a failure to provide a particular document constitutes a failure to meet the qualification requirements.*” Therefore, MLFS believe that the Delivery Body had the

relevant information that would have been set out in the map already available to them as the co-ordinates of the CfD Unit were specified in Part B of the CfD application. They believe that the Delivery Body had the sufficient evidence it needed to make a determination without having a map and MLFS's failure to provide a map did not frustrate the Delivery Body's ability to make a proper determination on the evidence before it.

## Ground 2

11. MLFS state that *"If the [Delivery Body] had had regard to all relevant evidence available to it (...), it would have determined that the Application met the qualification requirements as set out in the Regulations."* MLFS believes that the map provides a pictorial view but does not provide new information as all the co-ordinates were already provided within the application. Therefore, MLFS believes that they would have been successful in qualifying had the Delivery Body looked at all the relevant evidence.

## **The Legislative Framework**

12. 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**

13. 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 requirement (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.
14. Chapter 2 of Part 4, Regulations 15 to 22 set out the process and powers in relation to applications and determinations.
15. 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.”*

16. 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;”*

17. Regulation 20(2)(c) sets out the requirements for the applicant when submitting a review notice and states that:

*“A review notice must not contain any documentary evidence which was not provided to the delivery body in support of the application which is the subject of the non-qualification determination.”*

18. As referred to in Regulation 17(4), Schedule 1(3)(a) gives the following information that must be provided by the Applicant:

*“In respect of the relevant CFD unit the following which apply (or are intended by the applicant to apply) to the unit—*

- (i) name;*
- (ii) location;*
- (iii) capacity in megawatts; and*
- (iv) the target dates;*

19. 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**

20. 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.

21. 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.”*

22. 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.”*

23. 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.”*

24. 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.

25. Schedule 1 of the Allocation Framework defines a map as:

*“Map means a map showing the scale, name, shape of the CFD Unit and the Longitude and Latitude (in WGS84 format to 3 decimal places) of the Northerly, Easterly, Southerly and Westerly extreme coordinates of the site where the CFD Unit is located. The Ordnance Survey Grid Reference(s) in question B2 of the Application should be for the centre of the site where the CFD Unit is located”*

## **Our Findings**

26. We have assessed both of MLFS’s Grounds for Appeal and our findings are set out

below.

### Ground 1

27. MLFS appealed against the Delivery Body's non-qualification determination on the basis that the omission of the CfD location map should not have affected the Delivery Body's determination. MLFS believes that the relevant information was provided in the CfD application as set out in Regulation 17(4), Schedule 1(3) and Schedule 1(5) of the Regulations.
28. Schedule 1(5) of the Regulations highlights that the Allocation Framework may specify other information required for an application. Schedule 5 of the Allocation Framework sets out the application checks for each eligibility criteria to be carried out by the Delivery Body. The Schedule 5 checks require applications to provide a map as documentary evidence to check the applicant's location is correct and thus have applicable planning consent, connection agreements and non-receipt of other funds under government support schemes. As a consequence of this, the Delivery Body issued a non-qualification determination for MLFS's CfD application as it had not provided a map pursuant to Schedule 5 of the Allocation Framework.
29. In reviewing the appeal, we considered if a map was needed for the checks in accordance with the Regulations and the Allocation Framework.
30. Regulation 17(4)(a) of the Regulations outlines that the information required for the Delivery Body to make a determination includes the information listed or referred to in Schedule 1 of the Regulations. For the purposes of MLFS's appeal, the relevant paragraphs in Schedule 1 of the Regulations are paragraphs 3 and 5.
31. Schedule 1(3) of the Regulations details what information is required in respect of the CfD Unit, and it does not specifically refer to a "map". Instead, it requires the "name, the location, the capacity in megawatts and the target dates of the CfD unit" which MLFS have provided in their application.
32. Schedule 1(5) of the Regulations states that "*Such other information concerning the applicant or 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*" must be provided by the applicant.
33. As defined in Schedule 1 of the Allocation Framework, a map should show the scale, name, shape and the Longitude and Latitude (in WGS84 format to 3 decimal places) of the Northerly, Easterly, Southerly and Westerly extreme co-ordinates. MLFS provided

the Delivery Body with the Longitude and Latitude (in WGS84 format to 3 decimal places) of the Northerly, Easterly, Southerly and Westerly extreme co-ordinates of the site where the CfD Unit is located in Part B of the CfD Application. The Delivery Body were also aware of the name of the CfD unit in the CfD Application. We believe that this is sufficient information in order for the Delivery Body to make a qualifying determination.

34. With regard to the scale and shape of the CfD unit, we believe that had this information been provided it would not have had a material impact on the Delivery Body's determination. Therefore, in the absence of a map, the Delivery Body could have proceeded with the checks outlined in Schedule 5. Although the definition of a map in the Allocation Framework includes "scale" and "shape", neither of these are mentioned in the application checks to be carried out by the Delivery Body under Schedule 5 for planning consents, connection agreements and non-receipt of other funds under government support schemes. The application checks for these three eligibility criteria only require the ordnance survey grid reference for the center of the site, postcode and geographic co-ordinates of the CfD unit. The Delivery Body already had this information available to them in the CfD application, therefore "scale" and "shape" of the CfD unit would not have given them any further information in order to apply these checks.
35. Rule 3 of the Allocation Framework highlights the checks the Delivery Body must undertake to make a determination on eligibility. These checks are outlined in Schedule 5 of the Allocation Framework. Rule 3.4 of the Allocation Framework applies as MLFS did not provide a map for these checks to be satisfied and the Delivery Body must apply Rule 3.5 and determine whether an application is a qualifying application by having regard to the relevant evidence available to it.
36. Therefore, even though MLFS have failed to provide the map required under Schedule 5 of the Allocation Framework, they have provided the relevant information required from the map to make a qualifying determination i.e., the Longitude and Latitude (in WGS84 format to 3 decimal places) of the Northerly, Easterly, Southerly and Westerly extreme co-ordinates of the site where the CFD Unit is located.
37. We therefore consider that the Delivery Body had all the information required in the original application from MLFS dated 13 January 2022 to make a determination.

## Ground 2

38. In its appeal, MLFS state that if the Delivery Body had regard to all the relevant evidence available to it, it would have determined that the application met the qualification requirements as set out in the Regulations.

39. The Delivery Body determined that MLFS's CfD application was non-qualifying because the CfD location map was omitted from the CfD application.
40. In assessing the appeal, we must consider all the information available to the Delivery Body in the CfD application. As mentioned in paragraph 33-36 above, we believe that MLFS provided sufficient information for the Delivery Body to make a qualifying determination i.e., Ordnance Survey Grid Reference for the center of the site, the postcode and the Longitude and Latitude (in WGS84 format to 3 decimal places) of the Northerly, Easterly, Southerly and Westerly extreme co-ordinates of the site where the CFD Unit is located.

### **Conclusion**

41. The Delivery Body did not reach the correct qualification review decision to reject MLFS for AR4 on the basis that the Delivery Body had all the relevant information required in the CfD application to undertake the checks in Schedule 5 of the Allocation Framework and make a determination.

### **Determination**

42. 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 Moss Lane Solar Farm for qualification be overturned in respect of the CfD Unit for AR4 and determines that MLFS 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