

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

Introduction

1. This determination relates to an appeal made by Trident Marine Systems and Services Limited ("TMS&S") against a non-qualification determination made by the Electricity Market Reform Delivery Body ("the Delivery Body") in respect of the following Contracts for Difference Unit (the "CfD Unit"):
 - a. AquaSail
2. Pursuant to Regulation 46 of The Contracts for Difference (Allocation) Regulations (as amended) 2014 (the "Regulations")¹, where the Authority² 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 TMS&S for Qualification be upheld in respect of the CfD unit listed in Paragraph 1 for the Allocation Round 5 ("AR5").

Appeal background

4. On 24 April 2023, TMS&S submitted an eligibility qualification application for a CfD unit to participate in the 2023 CfD AR5 (the "CfD application").
5. On 24 May 2023, 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:

"The Delivery Body has determined that there was a fail to provide a CFD Unit map with the application form. This is a requirement as per Schedule 5 of the Allocation Framework for the Fifth Allocation Round. Rule 3 of the Allocation Framework requires that 'the Delivery Body must perform the checks stated in Schedule 5 that are applicable to a particular Application' in order to make a determination. Schedule 5 of the Allocation Framework requires that the applicant provide a Map (the definition of Map (Schedule 1) specifies the inclusion of extreme coordinates) so that the Delivery Body may carry out checks for the applicable planning consents and further that these are "the same as ...the geographic coordinates, and/or the Ordnance Survey grid reference for the CFD Unit specified in the Application."

"The Delivery Body has determined that the Application does not include the information necessary to enable the Delivery Body to make the determination on whether an application qualifies to take part in the allocation process applicable to

¹ [The Contracts for Difference \(Allocation\) Regulations 2014 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

² 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.

the application. Responses were not provided to the mandatory questions B3, B3a, B3b, B3c, B3d, B3e, B3g and E2, as per Rule 3 of the Allocation Framework and Regulation 17 (4) of The Contracts for Difference (Allocation) Regulations 2014 (as amended). This also includes the failure to declare a version number of the Standard Terms and Conditions that the applicant proposed to enter into with the CfD Counterparty."

"The Delivery body has determined that a valid Planning Decision Notice has not been provided in the application form. Therefore, it has been determined that there was a failure to provide Applicable Planning Consents, as per the requirements states in The Contracts for Difference (Allocation) Regulations 2014 (as amended) and the Allocation Framework for the Fifth Allocation Round."

"The Delivery Body has determined that there was a failure to provide a connection agreement, as per the requirements stated in The Contracts for Difference (Allocation) Regulations 2014 (as amended), and the requirements states in the connection agreement section of Schedule 5 of the Allocation Framework for the Fifth Allocation Round. More specifically, only a signed acceptance form was provided with the application and therefore the Delivery Body was unable to satisfy the checks stated in Schedule 5."

6. TMS&S submitted a request for review of the non-qualification determination (the "review notice") on 01 June 2023 in accordance with Regulation 20 of the Regulations.
7. The Delivery Body issued a Non-Qualification Review Determination notice on 15 June 2023 ("non-qualification review notice") which rejected the dispute on the following grounds:

"Failure to provide a connection agreement, as per the requirements stated in The Contracts for Difference (Allocation) Regulations 2014 (as amended), and the requirements stated in the connection agreement section of Schedule 5 of the Allocation Framework for the Fifth Allocation Round. No part of a connection agreement was provided in the initial application and further, the applicant has confirmed that they do not hold a connection agreement in relation to the proposed CfD unit. Without evidence of a connection agreement the Delivery Body are unable to carry out the Schedule 5 checks against the CfD application, i.e. confirming that Location, MW, Dates and Technology are satisfactory as between the CfD application and the connection agreement."

"Failure to provide a CFD Unit map with the application form. This is a requirement as per Schedule 5 of the Allocation Framework for the Fifth Allocation Round. We reserve our position in relation to Clause 20 (2) (c) of the CfD Regulations which state "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" Therefore the provision by the Applicant of a Map at Review stage cannot be accepted by the Delivery Body."

"Failure to provide a response to the mandatory question E2, as per Rule 3 of the Allocation Framework and Regulation 17 (4) of The Contracts for Difference

(Allocation) Regulations 2014 (as amended). This also includes the failure to declare a version number of the Standard Terms.

"Failure to provide a valid Planning decision Notice. Therefore, it has been determined that there was a failure to provide Applicable Planning Consents, as per the requirements states in The Contracts for Difference (Allocation) Regulations 2014 (as amended) and the Allocation Framework for the Fifth Allocation Round. The Delivery Body would expect inclusion of valid onshore planning documentation alongside the relevant offshore planning documentation i.e. the Marine License."

8. TMS&S then submitted a qualification appeal to the Authority on 22 June 2023 under Regulation 43 of the Regulations.

TMS&S's grounds for appeal

9. TMS&S disputes the decision on the following grounds:

Ground 1: CFD Unit Map

10. In the CFD application TMS&S provided the Delivery Body with the Ordnance Survey (OS) grid references, extreme co-ordinates and CfD Unit Map. TMS&S further explained that *"there was no specific provision within the Application Form to Upload a separate CfD Unit Scaled Map. Consequently, the Applicant supplied the ESO with the Project Development Plan (PDP) dated 20 April 2023 as an e-mail Attachment on 24 April 2023"*. As part of the review notice TMS&S also supplied a scaled map of the CfD unit installation site annotated with the extreme co-ordinates.

Ground 2: Completion of mandatory questions in application

11. TMS&S stated that questions B3, B3a, B3b, B3c, B3d, B3e, B3g and E2 were addressed in the CfD application.

12.

Ground 3: Connection Agreement

13. TMS&S stated that a connection agreement is not required for Stage 1 of this Project.

Ground 4: Planning Decision

14. TMS&S stated that a Planning Decision Notice is not applicable for this Development and explained in the Project Development Plan submitted via email on 24 April 2023 that: *"Prior to the Original Licence being issued, it was established that the Site for the CfD Unit Installation is beyond the Mean Low Water Mark (MLWM). The MLWM is where the Isle of Wight Council's jurisdiction (as Planning Authority) ends and beyond this, Permissions are instead subject to Marine Licenses issued by the Marine Management Organisation (MMO). As well as Planning, numerous other Consents / Approvals (including Natural England, Environment Agency, English Heritage, the Crown Estate, Health and Safety Executive etc. are Fundamental Processes undertaken by the Regulatory Authority (MMO) before the Marine Licence is issued"*.

The legislative framework

15. 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 5: Allocation Framework, 2023 ("the Allocation Framework")³ was made by the Secretary of State under the provisions of section 13 (2) (a) of the Energy Act 2013.

The Regulations

16. 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.
17. Chapter 2 of Part 4, Regulations 15 to 22, set out the process and powers in relation to applications and determinations.
18. 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;"

19. 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-

(a) 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;"

20. 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."

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

³ [Contracts for Difference Scheme for renewable electricity generation Allocation Round 5: Allocation Framework, 2023 \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/114144/contracts-for-difference-scheme-for-renewable-electricity-generation-allocation-round-5-allocation-framework-2023.pdf)

"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."

22. Regulation 22(1) sets out the requirements of applications and states that:

*"An applicant who makes an application must do so—
(a) in the form and manner required by the delivery body; and
(b) no later than the application closing date."*

23. Regulation 23(2) sets out the relevant works to which applicable planning consents apply and states that:

*"Subject to paragraph (3), the applicant must provide copies of the applicable planning consents which apply to any works ("relevant works") which enable—
(a) the relevant CFD unit to be established or altered;
(b) electricity generated from the relevant CFD unit to be supplied, as applicable, to— (i) the national transmission system for Great Britain; (ii) the distribution system; or (iii) a private network."*

24. Regulation 23(6) sets out the requirements where the applicant considers any of the applicable planning consents do not apply and states that:

*"Where the applicant considers that in respect of the relevant works—
(a) any of the applicable planning consents do not apply; or
(b) a general permission or consent or an exemption applies,*

the applicant must provide details of those matters to the delivery body"

25. Regulation 24(1) provides information on applicable planning consents and states that:

*"Applicable planning consents" are—
(a) a development order or, in respect of relevant works in waters in or adjacent to Wales up to the seaward limits of the territorial sea, a TWA order;
(b) a planning permission;
(c) a section 36 consent;
(d) where any relevant works involve a licensable marine activity, a marine licence."*

26. Regulation 25 (2) sets out the requirements for the applicant where a direct or partial connection applies and states that:

"Where a direct connection or a partial connection applies or is to apply to the relevant CFD unit, the applicant must provide a copy of each of the connection agreements applicable to the relevant CFD unit which allows such connection."

27. Regulation 25 (3) sets out the requirements for the applicant where a direct or partial connection does not apply and states that:

*"Where a direct connection or a partial connection does not apply or is not to apply to the relevant CFD unit, the applicant must provide a statement that—
(a) no such connection is, or is to be, applicable; and
(b) no agreement to allow such a connection has been obtained or is to be sought during the period in which a CFD may apply to the relevant CFD unit."*

The Allocation Framework

28. The Allocation Framework sets out the rules for CfD AR5 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.

29. 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."

30. 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."

31. 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."

32. 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.

33. Schedule 5 of the Allocation Framework sets out the eligibility criteria for applicable planning consents and states that:

"In the Application, the Applicant must demonstrate that either the applicable planning consents do not apply, or that the applicable planning consents obtained for the relevant works enable—

- the proposed CFD Unit to be established or altered; and

- electricity generated from the proposed CFD Unit to be supplied to the national Transmission System, the Distribution System, or a Private Network.”

34. Schedule 5 of the Allocation Framework sets out the eligibility criteria for connection agreements and states that:

“In the Application, the Applicant must explain whether—

- a Direct Connection applies or is to apply to the relevant CFD Unit and where the connection is or will be:

(a) to the national Transmission System for Great Britain, the Connection Agreement entered into secures (via either firm or non-firm capacity agreement) Transmission Entry Capacity for the CFD Unit at least equal to 75% of the Initial Installed Capacity Estimate of the CFD Unit; or

(b) to the Distribution System, the Connection Agreement entered into permits (via either a firm or non-firm capacity agreement) at least 75% of the Initial Installed Capacity Estimate of the CFD Unit to connect to the Distribution System [.]”

Our findings

35. We have assessed TMS&S’s grounds for appeal and our findings are summarised below.

Ground 1: CFD Unit Map

36. TMS&S appealed the non-qualification determination on the basis that they provided the Delivery Body with,
- i. the OS grid reference in Section B2 of the CfD application,
 - ii. the extreme co-ordinates in Schedule 1 of the Marine Licence uploaded to the EMR portal via New Section G of the CfD application, and
 - iii. a scaled map of the CfD unit installation site (“the map”) annotated with the extreme co-ordinates was supplied in the Project Development Plan which was submitted as an e-mail attachment on 24 April 2023 and also as part of the review notice.
37. In reviewing the appeal, we considered whether the information provided by the applicant as part of the original CfD application was sufficient to enable the Delivery Body to make the determination (in this respect) on whether the applicant qualifies to take part in the applicable allocation process.
38. 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 allow the Delivery Body to cross check the location

of the CfD Unit against the applicable planning consent and connection agreements, and non-receipt of other funds under government support schemes.

39. 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 TMS&S's appeal, the relevant paragraphs in Schedule 1 of the Regulations are paragraphs 3 and 5.
40. 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 date or dates for the generation of electricity once it is established or altered.
41. 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.
42. 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 of the site where the CfD Unit is located. TMS&S 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 in Schedule 1 of the Marine Licence in 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.
43. 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 OS grid reference for the centre 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.
44. 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 TMS&S 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.

45. Therefore, even though TMS&S 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.
46. TMS&S supplied further information to the Delivery Body in relation to the CFD unit map. As this information was submitted either in the incorrect manner for the Delivery Body (item (iii) above), or as part of the review notice (item (ii) above), it did not form part of the Delivery Body's review and in turn ours, as per Regulations 22(1)(a)⁴ and 20(2)(c).⁵ In this case, as we determined that TMS&S provided the relevant information for the map in the original application, this has no bearing on the our decision.
47. We therefore consider that the Delivery Body had all the information required (in this respect) in the original application from TMS&S dated 24 April 2023 to make a determination.

Ground 2: Mandatory application questions

48. In its appeal, TMS&S states that questions B3, B3a, B3b, B3c, B3d, B3e, B3g and E2 were addressed in the CfD application.
49. In the non-qualification review notice, the Delivery Body identified "*failure to provide a response to the mandatory question E2*" as one of the reasons for upholding the non-qualification determination, as well as "*failure to declare a version number of the Standard Terms*".
50. Failure to provide a response to questions B3, B3a, B3b, B3c, B3d, B3e, B3g was not included in the Delivery Body's justification for upholding the non-qualification determination, as set out in the non-qualification review notice issued on 15 June 2023, albeit this did form part of the original determination.
51. In response to question E1 in the CfD Application, TMS&S confirmed that the type of connection that applies to the CfD Unit is a "direct" connection. TMS&S provided no answer in the application form to question E2 which asks: "*Confirm if transmission or distribution connection.*"
52. Regulation 17(4)(a) states that: "*An applicant must provide with the application—*

⁴ Regulation 22(1)(a) of the Regulations states that: "*an applicant who makes an application must do so— (a) in the form and manner required by the delivery body*".

⁵ Regulation 20(2)(c) of the Regulations 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*".

(a) 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”.

53. TMS&S also failed to declare a version number of the Standard Terms. Although this was not addressed in its appeal to the Authority, TMS&S confirmed in the review notice to the Delivery Body that the *“failure to declare the version number of the Standard Terms and Conditions was an oversight”*.
54. We therefore consider the Delivery Body did not have all the information required in this respect.

Ground 3: Connection Agreement

55. In its appeal TMS&S states that a connection agreement is not required for Stage 1 of this Project. They further clarify that, *“The AquaSail Tidal-Stream Turbine System (CfD Unit) for this Stage-1 Site is a fully self-contained unit. It is a Performance Validation and Integrity Monitoring System (to support Stages 2-6) of the National Grid Project and there is no onshore development.”*
56. In response to question E1 in the CfD application, TMS&S confirmed that the type of connection that applies to the CfD Unit is a “direct” connection.
57. Regulation 25(2) of the Regulations states that: *“where a direct connection or a partial connection applies or is to apply to the relevant CFD unit, the applicant must provide a copy of each of the connection agreements applicable to the relevant CFD unit which allows such connection”*. TMS&S did not provide a copy of the connection agreement, which they indicated in the CfD application applies to the CfD Unit, and therefore does not meet this condition for qualification.
58. Regulation 25(3) of the Regulations states that: *“where a direct connection or a partial connection does not apply or is not to apply to the relevant CFD unit, the applicant must provide a statement that (a) no such connection is, or is to be, applicable; and (b) no agreement to allow such a connection has been obtained or is to be sought during the period in which a CFD may apply to the relevant CFD unit”*. TMS&S has not provided such a statement and disclosed in its review notice to the Delivery Body that *“Connection Agreements will be applied for as soon as the Contract has been agreed and signed”*.
59. This assessment is consistent with Schedule 5 of the Allocation Framework which states the following in regards to a direct connection: *“In the Application, the Applicant must explain whether— a Direct Connection applies or is to apply to the relevant CFD Unit and where the connection is or will be: (a) to the national Transmission System for Great Britain, the Connection Agreement entered into secures (via either firm or non-firm capacity agreement) Transmission Entry Capacity for the CFD Unit at least equal to 75% of the Initial Installed Capacity Estimate of the CFD Unit; or (b) to the Distribution System, the Connection*

Agreement entered into permits (via either a firm or non-firm capacity agreement) at least 75% of the Initial Installed Capacity Estimate of the CFD Unit to connect to the Distribution System". TMS&S confirmed in the CfD application that the type of connection that applies to the CfD Unit is a "direct" connection but did not provide the necessary further information as listed in Schedule 5 of the Allocation Framework. As such, the Delivery Body was unable to complete the application checks that are due to be carried out as per Schedule 5 in respect of the location, MW (relevant Transmission Entry Capacity for direct connections), dates and technology.

60. We therefore consider the Delivery Body was correct in their assessment that TMS&S does not meet the requirements stated in the Regulations and in the connection agreement section of Schedule 5 of the Allocation Framework.

Ground 4: Planning Consents

61. In its appeal, TMS&S states that a Planning Decision Notice is not applicable for this Development. In the Project Development Plan submitted via email on 24 April 2023, TMS&S explains that: *"it was established that the Site for the CfD Unit Installation is beyond the Mean Low Water Mark (MLWM). The MLWM is where the Isle of Wight Council's jurisdiction (as Planning Authority) ends and beyond this, Permissions are instead subject to Marine Licences issued by the Marine Management Organisation (MMO)".*
62. Regulation 24(1) outlines applicable planning consents as: *"(a) a development order or, in respect of relevant works in waters in or adjacent to Wales up to the seaward limits of the territorial sea, a TWA order; (b) a planning permission; (c) a section 36 consent; (d) where any relevant works involve a licensable marine activity, a marine licence".*
63. Regulation 23(2) states that: *"subject to paragraph (3), the applicant must provide copies of the applicable planning consents which apply to any works ("relevant works") which enable— (a) the relevant CFD unit to be established or altered; (b) electricity generated from the relevant CFD unit to be supplied, as applicable, to— (i) the national transmission system for Great Britain; (ii) the distribution system; or (iii) a private network".*
64. Regulation 23(6) states that: *"where the applicant considers that in respect of the relevant works— (a) any of the applicable planning consents do not apply; or (b) a general permission or consent or an exemption applies, the applicant must provide details of those matters to the delivery body".*
65. TMS&S supplied evidence of the Marine Licence, as per the requirement of Regulation 24(1). TMS&S failed, however, to provide evidence to demonstrate that it has the relevant onshore planning consents for the CFD unit as per Regulation 23(2). They also failed to provide evidence to the Delivery Body detailing why the inclusion of valid onshore planning may not be relevant for this CFD unit (e.g., a general permission or consent, or applicable exemption) as per Regulation 23(6).

66. The onus is on applicants to provide the correct documentary evidence as the Regulations clearly set out what must be submitted with the application and plainly state that Delivery Body may only determine whether an application is a qualifying application based on the evidence provided at the time the application was made.
67. Additionally, information which was submitted not in the manner required by the Delivery Body (the Project Development Plan via email on 24 April 2023) could not form part of the Delivery Body's review, and in turn ours, as per the Regulation 22(1)(a)⁶. In this case as we have determined that TMS&S have failed to provide all applicable planning consents, or details as to why they are not relevant, this has no bearing on the decision.
68. We therefore consider the Delivery Body did not have all the information required in the original application to determine whether TMS&S met the requirements in relation to Applicable Planning Consents as per the requirements stated in the Regulations.

Conclusion

69. The applicant's CfD application failed to meet the requirements for qualification in a number of respects: i) applicable planning consents; ii) connection agreements; and iii) completion of mandatory questions (grounds 2, 3 and 4 above). Despite the Authority determining that TMS&S provided the relevant information required from the map in the application process (as addressed in our findings for ground 1), the Authority consider the Delivery Body was correct in their overall assessment that TMS&S did not provide all the relevant information required in the CfD application under the Regulations and to enable it to undertake the checks in Schedule 5 of the Allocation Framework.
70. In view of this, the Authority find the Delivery Body's decision to uphold its initial non-qualification decision on review to be correct.

Determination

71. 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 Trident Marine Systems and Services Limited for Qualification be upheld in respect of the CfD unit listed in Paragraph 1 for the Allocation Round 5.

Holly MacDonald
Head of Domestic Market Management
For and on behalf of the Gas and Electricity Markets Authority
31 July 2023

⁶ Regulation 22(1)(a) of the Regulations states that: "*an applicant who makes an application must do so— (a) in the form and manner required by the delivery body*".