

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 Tye Lane Solar Farm (Damsongreen Energyfarm Limited) against a non-qualification determination made by the Electricity Market Reform Delivery Body ("Delivery Body") in respect of the following Contracts for Difference Unit (the "CfD Unit"):
 - a) CfD Unit Tye Lane Solar Farm
2. Pursuant to Regulation 46 of The Contracts for Difference (Allocation) Regulations 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 Damsongreen Energyfarm Limited for Qualification be overturned in respect of the CfD unit listed in Paragraph 1 for the Allocation Round 6 ("AR6").

Appeal Background

4. On 19 April 2024, Damsongreen Energyfarm Limited submitted an eligibility qualification application for a CfD Unit in order to participate in the 2024 CfD allocation round (the "CfD application").
5. On 20 May 2024, the Delivery Body issued a Notification of CfD Qualification Determination (the "non-qualification determination"). The Delivery Body rejected the

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

CfD application on the following grounds:

"The Applicants Name specified in the VAT Certificate, or Tax Registration is not the same as the Applicant Name specified in the Application, with no evidence to explain the difference.

6. Damsongreen Energyfarm Limited submitted a request for review of the non-determination qualification (the "review notice") on 28 May 2024 in accordance with Regulation 20 of the Regulations.
7. The Delivery Body issued a non-qualification review notice on 11 June 2024 which rejected the dispute on the following grounds:

"Although the Applicant confirmed that Damsongreen Energyfarm Limited is VAT registered and operates under EDF Energy Renewables Limited, a new VAT certificate from HMRC showing the company in the list is not provided. The DB acknowledges that a letter was provided from the Applicant to confirm that Damsongreen Energyfarm Limited is included in the Parent Company, but this is not sufficient to allow the DB to carry out the necessary checks under Schedule 5.

Regarding the requirement of providing a 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 such the requirements under Regulation 17(4) have not been satisfied and the DB are unable to carry out the checks in Schedule 5."

8. Damsongreen Energyfarm Limited then submitted a qualification appeal to the Authority on 18 June 2024 under Regulation 43 of the Regulations.

Damsongreen Energyfarm Limited's Grounds for Appeal

9. Damsongreen Energyfarm Limited disputes the decision on the following grounds:

Ground 1

10. The Delivery Body's non-qualification determination erred in basing its determination on the finding that the Applicant's name in the VAT certificate is not the same as the Applicant name specified in the application and no evidence was provided to explain the difference. Neither the Regulations nor the Guidance specifically require the Applicant name specified in the VAT Certificate to match the Applicant name specified in the application and the combination of the letter and explanation provided as part of the application clearly explained that the Company is part of the EDF Energy Renewables group VAT registration as required by the Regulations.

Ground 2

11. The Review Determination stated that the Delivery Body was not able to carry out the checks required by Schedule 5 of the Allocation Framework, namely, check that the company registration number on the application matched the company registration number on the VAT Certificate, however VAT group certificates do not include company registration numbers, so it is unclear how the Delivery Body would be able to carry out such checks in any case.

Ground 3

12. The Applicant stated that the Allocation Framework and the Guidance contain contradictory information on what checks the Delivery Body will carry out in relation to VAT registration where a group VAT registration certificate is relied upon.

Ground 4

13. The Delivery Body has routinely qualified projects on the basis of a VAT group certificate that did not include the relevant applicant's company registration number together with a letter from a director confirming that the application forms part of the VAT group as suggested by the Guidance. The Guidance together with the Delivery Body's existing approach to verifying VAT registration of applicants forming part of a VAT group has created a legitimate expectation that a VAT group certificate plus a letter from a director will be sufficient evidence for the purposes

of Regulation 17(4)(a). To deviate from this approach suggests that the qualification process discriminates against applicants who are VAT registered as part of a group.

Ground 5

14. The reason given for non-qualification determination is different to the reason for the Review Determination, and therefore may not have been made lawfully.

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 6: Allocation Framework, 2024 ("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

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 the General qualification requirements (see Chapter 3 of Part 4, Regulation 23 to 25 of the Regulations) and the Additional qualification requirements (see Chapter 4 of Part 4, Regulations 26 to 28 of the Regulations) 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(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."

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

"An applicant must provide with the application — (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;"

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

"(c) where the applicant is a UK registered company, the company registration number of the applicant

...

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

21. 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 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

22. The Allocation Framework sets out the rules for CfD AR6 and the eligibility requirements applicants must satisfy. This includes rules 3.2 to 3.5 which sets out how to determine eligibility for a CfD contract using the applicable checks.

23. Rule 3.2 of the Allocation Framework states that:

"Where the Delivery Body is required to make a determination under Regulation 17, the Delivery Body must perform the checks stated in Schedule 5 that are applicable to a particular Application"

24. 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."

25. 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."

26. 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."

27. 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.

28. 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

29. We have assessed Damsongreen Energyfarm Limited's Grounds for Appeal, and our findings are summarised below.

Ground 1

30. Damsongreen Energyfarm Limited provided a VAT group certificate together with a letter from the parent company, EDF Energy Renewables Limited. The letter from the parent company is to confirm that the Applicant is included in the parent company group VAT registration.
31. The Applicant explained that they were a newly incorporated company and a revised VAT group certificate had not yet been provided by HMRC.
32. HMRC has confirmed to the Authority that if an applicant is waiting for a response to their VAT group registration (having submitted the relevant VAT 50-51 form), they should treat the application as provisionally accepted on the day that it is received by HMRC. As such, the Authority notes that the Applicant was required to positively identify that it was VAT registered, notwithstanding the fact that they had not yet received an updated VAT group certificate.
33. The Authority has received confirmation from the Applicant that the VAT 50-51 form (the relevant form for group company VAT registration) has been submitted to HMRC. Therefore, the Authority is satisfied that the Applicant will in effect be included within the VAT group certificate. The Authority is also satisfied that the Applicant is a subsidiary of EDF Energy Renewables Limited and forms part of the group (based on the Applicant's certificate of incorporation and associated information).
34. The Authority is of the view that Damsongreen Energyfarm Limited has followed the relevant procedure to achieve VAT registration. Pending receipt of the updated VAT certificate, the Applicant has provided a copy of their VAT group certificate issued by HMRC. This fact, together with confirmation that VAT 50-51 form for the Applicant has been submitted to HMRC, satisfies the Authority that the relevant requirements of Schedule 5 of the Allocation Framework have (in effect) been met.

Ground 2

35. Damsongreen Energyfarm Limited's second ground of appeal states that the Delivery Body would not be able to carry out the checks for Schedule 5 of the Allocation Framework for any applicant who was part of a VAT group certificate, namely, that the company registration number on the application matches the company registration number on the VAT certificate, as group VAT certificates do not include company registration numbers.
36. The Authority notes Schedule 5 of the Allocation Framework requires the Applicant's company registration number to be included on the VAT certificate, however, this is not possible in the case of VAT group certificates as company registration numbers are not included on such certificates. The Authority has also confirmed with the Delivery Body that it is not possible for this requirement to be satisfied in the case of applicants that are part of a VAT group registration. The Authority will make a recommendation that Schedule 5 of the Allocation Framework and associated Guidance is updated accordingly to remove this discrepancy and ensure applicants with VAT group certificates can be assessed effectively by the Delivery Body going forward.

Ground 3:

37. Damsongreen Energyfarm Limited's third ground of appeal is that the Allocation Framework and the Guidance contain contradictory information on what checks the Delivery Body will carry out in relation to VAT registration where a group VAT registration certificate is relied upon.
38. This issue has been addressed in Ground 2, namely that the Allocation Framework and Guidance is updated to reflect the practical reality of group VAT registration.

Ground 4:

39. Damsongreen Energyfarm Limited's fourth ground of appeal is that the Guidance document and the Delivery Body's existing approach to verifying VAT registration has created a legitimate expectation that a VAT group certificate, plus a letter from a director will be sufficient.

40. The Authority makes no finding as to the Delivery Body's approach in previous cases nor the impact of any such approach. For the reasons set out in Ground 1 above, the Authority is satisfied that the Applicant has (in effect) met the requirements of Schedule 5 in relation to VAT certification.

Ground 5:

41. Damsongreen Energyfarm Limited's fifth ground of appeal is that the reason given for the non-qualification determination is different to the reason for the Review Determination, and therefore the Applicant is concerned this may not have been made lawfully.
42. The Authority's scope in determining appeals is based on the review of the decision made by the Delivery Body at the non-qualification review stage. As set out in Ground 1 above, we have overturned the Delivery Body's decision at the non-qualification review stage.

Conclusion

43. The Delivery Body did not reach the correct qualification review decision to reject Damsongreen Energyfarm Limited for the Allocation Round on the basis that the Applicant has provided sufficient information to demonstrate that they are VAT registered and have (in effect) satisfied the relevant requirements of Schedule 5 of the Allocation Framework in relation to VAT registration.
44. Going forward, the Authority will make a recommendation that Schedule 5 of the Allocation Framework and Guidance is updated to ensure applicants with VAT group certificates can be assessed effectively by the Delivery Body.

Determination

45. 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 Damsongreen Energyfarm Limited for qualification be overturned in respect of the CfD Unit for AR6 and determines Damsongreen Energyfarm Limited is a qualifying applicant.



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for energy consumers

Maryam Khan

Head of Electricity Security and Market Management

For and on behalf of the Gas and Electricity Markets Authority

24 July 2024