

## **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 Tolldish Hall Farm Solar Limited ("Tolldish Hall Farm Solar", "the Applicant") 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) Tolldish Hall Farm Solar
2. Pursuant to Regulation 46 of The Contracts for Difference (Allocation) Regulations 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 Tolldish Hall Farm Solar 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, Tolldish Hall Farm Solar 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

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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.

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. Tolldish Hall Farm Solar submitted a request for review of the non-qualification determination (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:

*In their review notice, the Applicant confirmed that Tolldish Hall Farm Solar Limited is VAT registered and operates under the Innova Renewables Limited Group, but a new VAT certificate from HMRC showing the company in the list has not been provided. An explanation has been given that an error has been made by HMRC and that a certificate will be issued to confirm this, however without new evidence or confirmation from HMRC, the Delivery Body cannot carry out the necessary checks under Schedule 5. As such the requirements under Regulation 17(4) have not been satisfied.*

8. Tolldish Hall Farm Solar then submitted a qualification appeal to the Authority on 18 June 2024 under Regulation 43 of the Regulations.

### **Tolldish Hall Farm Solar’s Grounds for Appeal**

9. Tolldish Hall Farm Solar disputes the decision on the following grounds:

#### Ground 1

10. Tolldish Hall Farm Solar is appealing the non-qualification determination on the basis that 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 applicant’s company

details not appearing on the certificate. They state that it is common practice for companies to act and be treated by HMRC as being part of a VAT Group once an application to be added to a VAT Group is submitted and the Applicant has had correspondence from HMRC confirming that it is appropriate to adopt this approach. The Applicant has indicated that a copy of this correspondence can be provided upon request.

## Ground 2

11. If as a result of the lack of sufficient evidence, Tolldish Hall Farm Solar's VAT registration cannot be properly established, the applicant notes 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**

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 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**

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 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.
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— (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"*

17. 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"*

18. 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**

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

20. 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."*

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 of the Allocation Framework.

25. 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**

26. We have assessed Tolldish Hall Farm Solar's grounds for appeal, and our findings

are summarised below.

#### Ground 1

27. Tolldish Hall Farm Solar appealed the non-qualification determination on the basis that a VAT group certificate issued by HMRC has been provided, and that it is a failure by HMRC, not the Applicant, which has resulted in Tolldish Hall Farm Solar not being named on the VAT group certificate.
28. Tolldish Hall Farm Solar provided the Delivery Body with a VAT group certificate issued to Innova Renewables Limited, their parent company. Tolldish Hall Farm Solar contends that they have been omitted from the VAT group certificate due to an HMRC backlog.
29. Tolldish Hall Farm 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-qualification determination. The information provided by Tolldish Hall Farm Solar to the Delivery Body shows that they submitted the VAT50-51 form to HMRC to add Tolldish Hall Farm Solar to a VAT group certificate for Innova Renewables Limited.
30. In the Applicant's appeal notice, the Applicant stated, "It is common practice for companies to act and be treated by HMRC as being part of a VAT Group once an application to be added to a VAT Group is submitted and we have had correspondence from HMRC confirming that it is appropriate to adopt this approach". HMRC have confirmed to the Authority that if an applicant is waiting for a response to their VAT group registration, they should treat the application as provisionally accepted on the day that it is received by HMRC. On the basis of this information from HMRC, the Authority notes that the Applicant was required to positively identify that it was VAT registered, notwithstanding the fact that they had not received an updated VAT group certificate.
31. Therefore, the Authority is content that the VAT50-51 form provided demonstrates the Applicant is included within the VAT group certificate. The Applicant has also confirmed to the Authority that they submitted the VAT50-51 form to HMRC to add Tolldish Hall Farm Solar to the VAT group certificate for Innova Renewables Limited on 26<sup>th</sup> September 2023, and again on 31st October 2023.

32. The Authority is of the view that Tolldish Hall Farm 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.
33. 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 Tolldish Hall Farm Solar have provided a copy of their VAT group certificate. 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 group VAT 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 is updated accordingly to remove this discrepancy and ensure applicants with group VAT certificates can be assessed effectively by the Delivery Body going forward.

#### Ground 2

34. Tolldish Hall Farm Solar's second ground of appeal is that it is not a requirement for companies to be VAT registered to participate in CfD AR6 and therefore, they do not believe this should be grounds for exclusion.
35. 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 the case where the applicant is not VAT registered would not be a ground for disqualification.
36. In circumstances where the Applicant is VAT registered, a registration number for the Applicant must be provided, and failure to do so would be grounds for disqualification. In this case, the Applicant has confirmed that they are VAT registered, and therefore the Applicant is required to provide its VAT registration number. The Authority's position on the VAT registration status and requirements of the Regulations and the Allocation Framework are described above under our findings for Ground 1.
37. However, if in fact it had been the case that the Applicant was not registered, we

agree that under the Regulations they would not be required to provide a VAT registration number.

## **Conclusion**

38. The Delivery Body did not reach the correct qualification review decision to reject Tolldish Hall Farm 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.

39. Going forward, The Authority will make a recommendation that Schedule 5 of the Allocation Framework is updated to ensure applicants with group VAT certificates can be assessed effectively by the Delivery Body.

## **Determination**

40. 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 Tolldish Hall Farm Solar for qualification be overturned in respect of the CfD Unit for AR6 and determines Tolldish Hall Farm Solar is a qualifying applicant.

Maryam Khan

Head of Electricity Security and Market Management

**For and on behalf of the Gas and Electricity Markets Authority**

24 July 2024