

## **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 Geothermal Engineering Ltd ("Tregath Geothermal", "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) Tregath Geothermal Power Plant
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 Tregath Geothermal for qualification be upheld in respect of the CfD Unit listed in Paragraph 1 for the Allocation Round 6 ("AR6").

### **Appeal Background**

4. On 18 April 2024, Tregath Geothermal submitted an eligibility qualification application for the CfD Unit in order to participate in the 2024 CfD allocation round (the "CfD application").

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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.

5. On 20 May 2024, the Delivery Body issued a notification of CfD qualification determination (the “non-qualification determination”). The Delivery Body rejected the CfD application on the following grounds:

*“The Delivery Body has determined that information provided in the application form (CfD Unit Details Tab) and the information contained within the documentary evidence uploaded, in support of the application, do not align. The grid co-ordinates on the map provided by the Applicant do not match the co-ordinates stated on the application.*

*Failure to provide Applicable Planning Consents, as per requirements in CfD (Allocation) Regulations 2014 (as amended) and AR6 Allocation Framework (Schedule 5).”*

6. Tregath Geothermal 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 Applicant submitted evidence with their review notice which demonstrated that the co-ordinates on the map provided by the Applicant were in a different format (degrees, minutes and seconds) to what was required on the application (WGS84 format to 3 decimal places), but it did represent the same location.
8. In light of this evidence, the Delivery Body issued a non-qualification review notice on 11 June 2024 which overturned its decision to fail Tregath Geothermal on the basis that it had submitted incorrect grid co-ordinates.
9. The non-qualification review notice also noted the Delivery Body’s decision to uphold its non-qualification determination for the Planning Consents failure reason on the following grounds:

*“Tregath Geothermal “(...) confirmed that the planning permission still hasn't been granted and no documentary evidence was provided at the point of application, the requirements under Regulation 17(4) have not*

*been satisfied and the Delivery Body are unable to carry out the checks in Schedule 5.”*

10. The Delivery Body upheld its decision to reject Tregath Geothermal’s application due to failure to provide Applicable Planning Consents, as per requirements in the Regulations and AR6 Allocation Framework (Schedule 5).
11. Tregath Geothermal then submitted a qualification appeal to the Authority on 17 June 2024 under Regulation 43 of the Regulations.

### **Tregath Geothermal’s Grounds for Appeal**

12. Tregath Geothermal disputes the decision on the following ground

#### Ground 1

13. *“The planning application was submitted in December and validated on the 5th of January. All outstanding issues are approaching resolution and it is anticipated that consent for the proposed site will be granted imminently.”*

### **The Legislative Framework**

14. 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**

15. 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.

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

18. Regulation 17(4)(a) sets out the information the Applicant must provide in its application to 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. 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.”*

20. 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.”*

21. Regulation 24(2) states that:

*“planning permission” means in respect of relevant works in-*

- (a) England or Wales, planning permission under Part 3 of the Town and Country Planning Act 1990;*
- (b) Scotland, planning permission under Part 3 of the Town and Country Planning (Scotland) Act 1997.*

## **The Allocation Framework**

22. 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.

23. Rule 3.2 of the Allocation Framework states that:

24. *"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. 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.

28. 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."*

## **Our Findings**

29. We have assessed Tregath Geothermal's grounds for appeal, which are summarised in Paragraph 30, below.

### Ground 1

30. Tregath Geothermal appealed against the Delivery Body's non-qualification determination on the basis that its planning application was submitted in December 2023 and was validated on the 5<sup>th</sup> of January 2024. Although Tregath Geothermal did not have its final planning consent when it appealed against the Delivery Body's non-qualification determination, they stated that all outstanding issues are approaching resolution, and they anticipate receiving consent from Cornwall Council imminently.
31. At the time of application, Tregath Geothermal did not provide evidence to the Delivery Body that they have planning permission for the CfD Unit, as is required by Schedule 5 of the Allocation Framework and Regulation 23(2) of the Regulations. On the basis that Tregath Geothermal failed to provide Applicable Planning Consents prior to the AR6 application deadline, we have determined that Tregath Geothermal have failed to procure all applicable planning consents as per

Regulation 24(1)(b) and was therefore unable to meet the requirements of Regulation 23(2).

32. The onus is on the Applicant to provide the correct documentary evidence as the Regulations clearly set out what must accompany their application. No evidence was submitted to the Delivery Body demonstrating that planning permission was obtained prior to the AR6 application deadline, 19<sup>th</sup> April 2024.
33. The Applicant's failure to demonstrate that it holds the relevant planning permissions, has resulted in the Delivery Body determining that Tregath Geothermal failed to meet the qualification criteria.

## **Conclusion**

34. Tregath Geothermal's application failed to meet the requirements for qualification by being unable to provide applicable planning consents. The Authority consider the Delivery Body was correct in their overall assessment that Tregath Geothermal did not provide all the relevant information required in their CfD application under the Regulations and to enable it to undertake the checks in Schedule 5 of the Allocation Framework.
35. In view of this, the Authority finds the Delivery Body's decision to uphold its non-qualification determination to be correct.

## **Determination**

36. 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 Tregath Geothermal for qualification be upheld in respect of the CfD Unit listed in Paragraph 1 for the Allocation Round 6.



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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