

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 BF27 BF SOLAR LIMITED ("Bluefield Partners LLP", "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) BF27 BF SOLAR LIMITED
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 Bluefield Partners LLP for qualification be upheld in respect of the CfD Unit listed in Paragraph 1 for the Allocation Round 6 ("AR6").

Appeal Background

4. Bluefield Partners LLP submitted an eligibility qualification application for the CfD Unit in order to participate in the 2024 CfD allocation round (the "CfD application"), dated 19 April 2024.

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.

5. For the CfD Unit listed in Paragraph 1, the Delivery Body issued a notification of CfD Qualification Determination dated 20 May 2024 (the "non-qualification determination"). The Delivery Body rejected the CfD application on the following grounds:

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

6. Bluefield Partners LLP 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 notification of CfD Non-Qualification Review Determination dated 11 June 2024 ("non-qualification review notice") which rejected the dispute on the following grounds:

Bluefield Partners LLP "(...) confirmed that there have been delays by the local authority, resulting in the planning permission not being provided in time for the CfD application and provided new evidence that full planning permission has since been granted. However, under Regulation 20(2)(c) the review notice given by the applicant 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, we cannot accept the new evidence in assessing your application and the requirements under Regulation 17(4) have not been satisfied, the Delivery Body are unable to carry out the checks in Schedule 5 with the evidence in the original application."

8. The Delivery Body upheld its decision to reject Bluefield Partners LLPs application due to Failure to provide Applicable Planning Consents, as per requirements in CfD (Allocation) Regulations 2014 (as amended) and AR6 Allocation Framework (Schedule 5).

9. Bluefield Partners LLP then submitted a qualification appeal to the Authority on 18 June 2024 under Regulation 43 of the Regulations.

Bluefield Partners LLP's grounds for appeal

10. Bluefield Partners LLP disputes the decision on the following grounds

Ground 1

11. *"We tried our very best to regularly chase various external third-party Planning teams over the 14-week period (from 11 January 2024, when Durham County Council's Planning Committee considered planning was approved, to 19 April 2024, when the CfD AR6 Application window closed) to expedite processes however the teams were extremely slow to respond. These administrative delays were entirely outside our control."*

Ground 2

12. *"14 weeks is more than ample time for S39 document and subsequent Planning Decision notice to have been signed and dated based on our previous experience with Planning processes. It is evident that Durham County Local Authority, like many other Local Authorities at this moment in time, is extremely resource stretched. It is extremely unfair to penalise Renewable Developers for Local Planning Authority resource shortfalls."*

The Legislative Framework

13. 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

14. 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.

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

16. 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."

17. 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;"*

18. 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."

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:

"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.
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 Bluefield Partners LLP’s grounds for appeal, which are summarised in Paragraphs 31 and 32 below.
30. We note that for the purposes of this determination we have considered the applicability of the Regulations and the Allocation Framework for AR6 to both grounds of appeal together.

Ground 1

31. Bluefield Partners LLP states that administrative delays at Durham County Council were the sole reason for its planning permission not being signed and dated in time for the CfD application deadline. Bluefield Partners LLP argued that these delays

were outside of its control, and that Durham County Council had ultimately taken responsibility for this delay.

Ground 2

32. Bluefield Partners LLP also states that it had allowed adequate time for planning permission documents to be signed and dated by Durham County Council and that Renewable Developers should not be penalised for Local Authority resourcing issues.

Findings

33. By the CfD application deadline, Bluefield Partners LLP failed to provide evidence to the Delivery Body that it had obtained a signed and dated planning decision. The Delivery Body noted that Bluefield Partners LLP had also not obtained planning permission, as per Regulation 24(1)(b) and was therefore unable to meet the requirements of Regulation 23(2). In this case we have determined that Bluefield Partners LLP have failed to provide all applicable planning consents.
34. 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."
35. In its Tier 1 appeal to the Delivery body, Bluefield Partners LLP provided evidence of delays at Durham Country Council in processing the planning application. Bluefield Partners LLP also provided new evidence of a signed approval of planning permission from Durham Country Council dated 28 May 2024. However, as per Regulation 20(2)(c), this new evidence submitted by Bluefield Partners LLP could not form part of the Delivery Body's review, in assessing Bluefield Partners LLPs application. Per Regulation 44, the Authority is also constrained from considering new evidence that was not before the Delivery Body when it undertook the non-qualification review. 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.

36. We therefore consider the Delivery Body did not have all the information required in the original application to determine whether Bluefield Partners LLP met the requirements in relation to Applicable Planning Consents as per the requirements stated in the Regulations.

Conclusion

37. The Delivery Body reached the correct non-qualification review decision to reject BF27 BF SOLAR LIMITED for the Allocation Round on the basis that the applicants CfD application failed to meet the requirements for qualification as it failed to provide applicable planning consents. The Authority consider the Delivery Body was correct in their overall assessment that Bluefield Partners LLP 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.
38. 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

39. 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 Bluefield Partners LLP for Qualification be upheld in respect of the CfD unit listed in Paragraph 1 for the Allocation Round 6.

Maryam Khan

Head of Electricity Security and Market Management

For and on behalf of the Gas and Electricity Markets Authority

24 July 2024