



**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Information Rights**

Tribunal Reference: NV/2015/0005
Appellant: Donald Russell
Respondent: The Environment Agency

Judge: Peter Lane
Member: Christopher Perrett

DECISION NOTICE

1. The respondent administers the system of Climate Change Agreements (CCAs) in the United Kingdom. On 6 May 2015 the respondent issued a notice to the appellant under rule 7.2 of the underlying climate change agreement for the cold storage sector made on 1 April 2013 between the administrator of that agreement and the appellant. The appellant was considered to have failed to meet its target required under the agreement, with the result that if the appellant wished to remain eligible to claim the climate change agreement discount on the climate change levy, it was required by the respondent to pay a buy-out fee calculated in accordance with regulation 12(2) of the Climate Change Agreements (Administration) Regulations 2012. Applying regulation 12(2)(c), the amount of the fee was calculated as being $\text{£}12 \times (W-S)$, where W in units of tonnes CO₂ (equivalent) represents the amount by which the emissions for the target period exceed the target; and S in units of tonnes CO₂ (equivalent) represents a surplus. The buy-out fee amounted to $\text{£}3,696.00$.
2. Rule 13 of the Agreement provides for a right of appeal against the respondent's decision to serve the notice imposing a buy-out fee. Regulation 20(3) states that, where an agreement provides for a right of appeal in respect of such a decision, that appeal is an appeal to the First-tier Tribunal.
3. The appellant appealed against the notice issued on it by the respondent. The appellant's case is that it operates a cold storage facility in Kintore, handling both its own goods and those of third parties. As more product is put through its business, the appellant uses additional energy. Running the business more efficiently means, according to the appellant, that increased electricity costs are incurred. No account was said by the appellant to have

been taken by the respondent of the volume of product, relative to the energy costs associated with that product.

3. The climate change levy was introduced by the Finance Act 2000. It is a carbon tax that adds around 15% to the energy bills of business and public sector organisations. It is levied by energy suppliers when they bill energy consumers, with the energy suppliers passing the sums collected to Her Majesty's Revenue and Customs. Climate change agreements are voluntary agreements made between sector associations, their members and the respondent, committing energy intensive installations and facilities to targets for improving their energy efficiency or reducing carbon dioxide emissions, in return for receiving a reduced climate change levy rate.
4. So-called umbrella agreements are sector-level agreements between the respondent and the relevant sector or trade association, setting out the targets for the sector; the obligations of the parties; and the procedures for administering the agreements. There is also a system of underlying agreements, which are individual contracts between the agency and an operator.
5. A "target unit" is the facility or group of facilities to which the climate change agreement applies. Operators that fail to meet their targets can continue to receive the climate change levy discount if they pay a buy-out fee to cover the shortfall. An operator that misses the target and does not pay the buy-out fee loses its certification, which means it is no longer eligible for the discount.
6. The sector commitment contained in the agreement of 1 April 2013, to which the appellant subscribed, was established on the basis of energy targets (rather than carbon) and by default uses a relative currency based on the physical volume of the cold store expressed in m³. Around 15% of target units within the current underlying agreements under the sector's umbrella agreement have agreements based on an absolute target currency, with the remainder applying the default relative currency. Around 9% of target units with current agreements under the umbrella agreement have agreements based on an alternative throughput measure, such as FT², "kilo eaches" with the remainder applying the default.
7. The appellant in the present case entered into the underlying sector agreement on 1 April 2013 and agreed that the performance targets under that agreement would be expressed in absolute energy terms. The appellant could have chosen a relative target but did not do so.
8. The effect of the appellant's choice was, therefore, that, by increasing the use of its cold store facility, it increased its energy usage of that facility and, thus, failed to meet its absolute target. That, in essence, is the respondent's case, as set out in its response. The appellant has not taken issue with that case which, in any event, we find as a fact to be the position.
9. The process which led the respondent to calculate the amount of the payment as £3,696.00 has not been challenged by the appellant. It is set out in an annex to the response. It is as follows:-

- “ (1) The target energy consumption for TP1 was : 6,381,430.510kWh (cell E 26).
- (2) The actual energy consumption for TP1 was : 7,917,200.200kWh (cell E63).
- (3) The operator therefore exceeded the target for TP1 by the difference between the figures in (1) and (2) which is –1,535,769.690kWh (cell E114).
- (4) The weighted average carbon to energy conversion factor for the fuel types used during TP1 is calculated as: 5.46×10^{-5} tonnes C/kWh (cell E113).
- (5) The excess energy is calculated by multiplying the values in (3) and (4) which gives a carbon value of 83.853 tonnes C.
- (6) The carbon dioxide equivalent is obtained by multiplying the value in (5) by 44/12 and rounding up, which gives a CO₂ equivalent of 308 tonnes CO₂ (cell E119).
- (7) The buy-out fee is calculated by multiplying the value in (6) by £12, which gives a buy-out fee value of £3,696 (cell E120).”

10. The Tribunal finds as a fact that these calculations are accurate and that the correct fee, accordingly, is as stated by the respondent.

11. This appeal is dismissed.

Peter Lane

Chamber President

Dated 30 October 2015

Promulgated 2nd November 2015