STATUTORY INSTRUMENTS

2016 No. 742

ELECTRICITY

The Electricity Capacity (Amendment) Regulations 2016

Made - - - - 13th July 2016

Coming into force in accordance with regulation 1

The Secretary of State has before making these Regulations—

(a) consulted the persons listed in section 40(2)(a) and (b) of the Energy Act 2013(**1**) and such other persons as the Secretary of State considered it appropriate to consult; and

(b) had regard to the matters in section 5(2) of that Act.

In accordance with section 40(5) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Accordingly the Secretary of State, in exercise of the powers conferred by sections 27 to 31, 34(3), 36 and 40(1) of the Energy Act 2013, makes the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Electricity Capacity (Amendment) Regulations 2016.

(2) These Regulations come into force on the day after the day on which they are made.

(3) The amendments made by paragraphs 8, 9, 10, 11, 13, 14, 15, 17(3) and 19 in Part 2 of Schedule 1 do not apply in respect of a capacity agreement awarded as a result of a capacity auction held before these Regulations come into force.

(4) The amendments made by Part 3 of Schedule 1 do not apply in respect of a capacity agreement awarded in a DSR transitional auction.

(5) In this regulation—

"capacity agreement" and "capacity auction" have the meanings given in regulation 2(1) of the Electricity Capacity Regulations 2014(**2**); and

"DSR transitional auction" has the meaning given in regulation 2(1) of those Regulations as amended by paragraph 37 in Part 4 of Schedule 1 to these Regulations.

(**1**) 2013 c.32.
(**2**) S.I. 2014/2043; amended by S.I. 2014/3354, 2015/875 and 2015/1974.

Amendment of the Electricity Capacity Regulations 2014

2.—(1) The Electricity Capacity Regulations 2014 are amended as set out in Schedule 1.

(2) Any reference in that Schedule to a numbered regulation or Schedule is to the regulation or Schedule so numbered in those Regulations.

Amendment of the Electricity Capacity (Supplier Payment etc.) Regulations 2014

3.—(1) The Electricity Capacity (Supplier Payment etc.) Regulations 2014(**3**) are amended as set out in Schedule 2.

(2) Any reference in that Schedule to a numbered regulation is to the regulation so numbered in those Regulations.

Amber Rudd
Secretary of State
13th July 2016 Department of Energy and Climate Change

(**3**) S.I. 2014/3354, amended by S.I. 2015/875.

SCHEDULE 1 Regulation 2

Amendments to the Electricity Capacity Regulations 2014

PART 1

Supplementary auction

Regulation 2 (interpretation)

1. In regulation 2(1)(**4**), after the definition of "storage facility" insert—

""supplementary auction" has the meaning given in regulation 10(1)(ba);".

Regulation 7 (annual electricity capacity report)

2. After regulation 7(5)(**5**) insert—

"(6) The Delivery Body must before 1st August 2016—

(a) prepare an annex to the last electricity capacity report prepared before 1st June 2016; and

(b) send that annex to the Secretary of State.

(7) The annex prepared under paragraph (6) must include a recommendation as to the target capacity for any supplementary auction that may be held.".

Regulation 10 (determining whether capacity auction is to be held)

3.—(1) In regulation 10(1), omit "and" after sub-paragraph (b) and insert after that sub-paragraph —

"(ba) by 1st August 2016, whether a T-1 auction is to be held in the auction window starting on 1st September 2016 (a "supplementary auction"); and".

(2) After regulation 10(1), insert—

"(1A) Paragraphs (2), (3) and (4) apply in relation to the determination required by regulation 10(1)(c)(ii).".

Regulation 12 (determination of auction parameters by the Secretary of State)

4. In regulation 12(5)(**6**), insert at the end of sub-paragraph (a) "(including any annex prepared under regulation 7(6))".

Regulation 14 (eligibility to bid in capacity auctions)

5. In regulation 14(3), after "auction" insert "(other than a supplementary auction)".

(**4**) Regulation 2(1) is also amended by paragraphs 8, 20, 37 and 41 of this Schedule.
(**5**) Paragraph (5) of regulation 7 is inserted by paragraph 43 of this Schedule.
(**6**) Regulation 12 is also amended by paragraph 45 of this Schedule.

Regulation 59 (requirement to provide applicant credit cover)

6.—(1) In regulation 59(2)(**7**), for "The amount" substitute "Subject to paragraphs (2A) and (2B), the amount".

(2) After regulation 59(2) insert—

"(2A) Paragraph (2B) applies where an applicant for a supplementary auction is required to provide credit cover in accordance with this regulation.

(2B) Where at the time applicant credit cover must be provided for the supplementary auction the applicant is maintaining applicant credit cover in accordance with regulation 60 for any other capacity auction (including a T-4 auction held in the same auction window as the supplementary auction) in respect of a CMU ("the original credit cover")—

(a) in order to prequalify for the supplementary auction in respect of that CMU, the applicant is not required to provide additional credit cover of an amount exceeding the difference between—

(i) the amount determined under paragraph (2)(a), and

(ii) the amount of the original credit cover;

(b) the original credit cover is included in the credit cover that may be drawn down under regulation 61(1)(c) in relation to a capacity agreement awarded in the supplementary auction; and

(c) notwithstanding sub-paragraph (h) of regulation 60(1), any credit cover drawn down in relation to that agreement must be replaced in accordance with the obligation under regulation 60(1) to maintain the original credit cover.".

Regulation 61 (draw down of applicant credit cover)

7. In regulation 61(**8**), after paragraph (4) insert—

"(5) If applicant credit cover relates to a supplementary auction—

(a) paragraph (1) is to be read as if for sub-paragraph (b) there were substituted—

"(b) where CMU i is a distribution CMU in respect of which regulation 60(1)(g)(ii) applies, the credit obligation period has not ended by the date falling 6 months prior to the commencement of the delivery year of A's capacity agreement in respect of CMU i;

(ba) where CMU i is a prospective generating CMU or a prospective interconnector CMU, the credit obligation period has not ended by the date falling 3 months after the date on which A was awarded a capacity agreement in respect of CMU i;"; and

(b) this regulation has effect as if the following paragraphs were inserted after paragraph (1)—

"(1A) If paragraph (1)(b) applies but the date by which a copy of a distribution connection agreement is required by capacity market rules to be provided in respect of CMU i is extended under regulation 33(2)(b), the date in paragraph (1)(b) is extended to the date to which the requirement is extended.

(1B) If paragraph (1)(ba) applies but the date by which a financial commitment milestone is required by capacity market rules to be met in respect of CMU i is extended under regulation 33(2)(b), the date in paragraph (1)(ba) is extended to the date to which that requirement is extended.".".

(**7**) Regulation 59 is also amended by paragraph 17 of this Schedule.
(**8**) Regulation 61 is also amended by paragraph 19 of this Schedule.

PART 2

Termination fees etc. and credit cover

Regulation 2 (interpretation)

8. In regulation 2(1), for the definitions of "TF1" and "TF2" substitute—

""TFx", for any value of x from x = 1 to x = 5, means the corresponding termination fee payable under regulation 43(3);".

Regulation 31 (capacity market register)

9. In regulation 31(2)(i), for "rates at which TF1 and TF2 are payable" substitute "rate at which each termination fee is payable".

Regulation 32 (termination fee rates)

10.—(1) In regulation 32(1)(**9**)—

(a) for ""$TF1_{rate}$" means" substitute ""TFx_{rate}" (for any value of x from x = 1 to x = 5) means";

(b) for "that TF1" substitute "that TFx"; and

(c) omit the definition of "$TF2_{rate}$".

(2) For regulation 32(2) and (3) substitute—

"(2) Those rates are as follows—

$TF1_{rate}$ is £5,000/MW;

$TF2_{rate}$ is £25,000/MW;

$TF3_{rate}$ is £10,000/MW;

$TF4_{rate}$ is £15,000/MW;

$TF5_{rate}$ is £35,000/MW.".

Regulation 43 (termination fees)

11.—(1) In regulation 43(3)(**10**)—

(a) for "TF1 is payable" substitute "TFx is payable (for any value of x from x = 1 to x = 5)"; and

(b) for the formula, substitute—

$$TFx = TFxrate \times CO.$$

(2) Omit regulation 43(4).

(3) In regulation 43(5), for the definitions of "$TF1_{rate}$" and "$TF2_{rate}$" substitute—

""TFx_{rate}" (for any value of x from x = 1 to x = 5) means the rate in pounds per MW determined in accordance with regulation 32 and specified on the capacity market register as the rate at which TFx is payable under the capacity agreement.".

(**9**) Regulation 32 is also amended by paragraph 23 of this Schedule.

(**10**) Regulation 43 is also amended by paragraph 27 of this Schedule.