STATUTORY INSTRUMENTS

2015 No. 933

ELECTRICITY

The Emissions Performance Standard Regulations 2015

Made - - - - 24th March 2015

Coming into force in accordance with regulation 1(1)

The Secretary of State has before making these Regulations—

(a) obtained the consent of the Department of Enterprise, Trade and Investment in Northern Ireland in accordance with section 62(10) of the Energy Act 2013(**1**), and

(b) consulted the Scottish Ministers and the Welsh Ministers and such other persons as the Secretary of State considered appropriate in accordance with section 62(11) of that Act.

In accordance with section 62(3) 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 57(6) to (8), 60 and 62(9) of, and Schedules 4 and 5 to, the Energy Act 2013, makes the following Regulations:

PART 1

Citation, commencement, extent and application

1.—(1) These Regulations may be cited as the Emissions Performance Standard Regulations 2015, and come into force on the day after the day on which they are made.

(2) Parts 1 and 2 of these Regulations extend to the United Kingdom.

(3) Part 3 of these Regulations applies to England only.

Interpretation

2. In these Regulations—

"the Act" means the Energy Act 2013;

"associated gasification plant" has the meaning given by regulation 5;

"CCS notification" means a notification under regulation 10;

(**1**) 2013 c. 32 which has been amended by S.I. 2014/1638, regulation 48(1) and (2), Schedule 13, Part 1, paragraph 8 and Schedule 14, Part 1.

"CHPQA certificate" means a certificate issued by the Secretary of State in which is reported the amount specified as CHP Qualifying Heat Output (as defined in the CHPQA standard) applying to the relevant fossil fuel plant;

"CHPQA standard" means the Combined Heat and Power Quality Assurance Standard, Issue 5, November 2013(**2**);

"civil penalty notice" means a notice issued under regulation 15;

"combined heat and power generating station" means a generating station which is (or may be) operated in order to supply to any premises—

(a) heat produced in association with the electricity generated; or

(b) steam produced from, or air or water heated by, such heat;

"emissions limit notification" means a notification under regulation 9;

"enforcement notice" means a notice issued under regulation 14;

"EPS annual emissions" is to be construed in accordance with regulations 7 and 8;

"EPS annual emissions notification" means a notification under regulation 11;

"generating station" means a station which generates electricity;

"generating unit" means any combination of generators, boilers, turbines, or other prime movers that are physically connected as one unit and operated together to produce electricity independently of any other unit;

"the GGETS Regulations" means the Greenhouse Gas Emissions Trading Scheme Regulations 2012(**3**);

"Greenhouse Gas Emissions Permit" means a permit granted under regulation 10 of the GGETS Regulations;

"Greenhouse Gas Emissions Report" means a report required to be submitted by an operator by Article 67(1) of the Monitoring and Reporting Regulation(**4**);

"information notice" is a notice issued under regulation 13;

"installed generating capacity", in relation to a generating station or generating unit, means the maximum capacity of electricity generation (in MW) at which that generating station or generating unit could be operated for a sustained period without damage being caused to it (assuming the source of energy used to generate electricity is available without interruption);

"main boiler" means any fired vessel or vessels used to produce steam as part of a generating unit—

(a) with a total thermal capacity in excess of 300MWth; and

(b) in which any mixture of fossil fuel in gaseous, liquid or pulverised solid form is combusted;

"the Monitoring and Reporting Regulation" means Commission Regulation (EU) No 601/2012 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council(**5**);

"MW" means megawatts;

"MWth" means megawatt of thermal output;

(**2**) This document can be found at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/335471/CHPQAStandardIssue5.pdf.
(**3**) S.I. 2012/3038 which has been amended by S.I. 2013/1037, S.I. 2013/3135 and S.I. 2014/3125.
(**4**) See the requirement in a Greenhouse Gas Emissions Permit inserted pursuant to Schedule 4, paragraph 2(3)(b) of the GGETS Regulations.
(**5**) OJ No L 181, 12.7.2012, p 30.

"operator", in relation to a relevant fossil fuel plant, means the person required to hold a Greenhouse Gas Emissions Permit for the relevant fossil fuel plant;

"relevant fossil fuel plant" means a fossil fuel plant to which the emissions limit duty applies under the Act or a generating unit to which the emissions limit duty applies by virtue of regulation 3;

"source stream" has the same meaning as in Article 3(4) of the Monitoring and Reporting Regulation;

"the Verification Regulation" means Commission Regulation (EU) No 600/2012 on the verification of greenhouse gas emission reports and tonne-kilometre reports and the accreditation of verifiers pursuant to Directive 2003/87/EC of the European Parliament and of the Council(**6**); and

"verified" means verified in accordance with the Verification Regulation.

PART 2

Emissions limit duty

Application of emissions limit duty to additional cases

3.—(1) The emissions limit duty applies to a generating unit which satisfies the conditions in paragraphs (2) and (3).

(2) The condition in this paragraph is that the generating unit uses—

(a) fossil fuel; or

(b) fuel produced by gasification plant.

(3) The conditions in this paragraph are that—

(a) the generating station in which the generating unit is located was the subject of a relevant consent granted before 18th February 2014; and

(b) on or after 18th February 2014—

(i) any main boiler in that generating unit is replaced; or

(ii) an additional main boiler is installed in the generating unit.

(4) For the purposes of paragraph (3)(a), a generating station is to be treated as the subject of a relevant consent if, by virtue of a consent or approval granted before section 36 of the Electricity Act 1989(**7**) or Article 39 of the Electricity (Northern Ireland) Order 1992(**8**) came into force, no relevant consent was required in respect of it.

(5) The emissions limit duty does not apply to any generating equipment of a generating station in which the generating unit is located if that equipment is installed for safety purposes or for use in an emergency.

(6) In paragraph (5), "emergency" means an occurrence which involves a risk to the health or safety of persons or to the safe operation of the generating station.

(**6**) OJ No L 181, 12.7.2012, p 1.
(**7**) 1989 c. 29. Section 36 was amended by the Energy Act 2004, section 93(1) and (3), the Planning Act 2008, section 36 and Schedule 2, paragraphs 31, 32(1), (2) and (3), the Marine and Coastal Access Act 2009, section 12(7)(a) and (8), and S.I. 2006/1054, article 2 and Schedule 1, Part 1, paragraph 1(1) and (2).
(**8**) S.I. 1992/231 (N.I. 1).

Modification of emissions limit

4.—(1) Paragraph (3) applies to a relevant fossil fuel plant in respect of any year in which the plant meets any of the conditions in paragraph (2).

(2) The conditions referred to in paragraph (1) are that during the year in question—

(a) the relevant fossil fuel plant is used for the first time for the generation of electricity;

(b) the relevant fossil fuel plant permanently ceases to be used for the generation of electricity;

(c) the emissions limit duty does not apply in relation to a generating unit in the relevant fossil fuel plant by virtue of section 58 of the Act; or

(d) the installed generating capacity of the generating station is altered.

(3) Where this paragraph applies, the emissions limit of the relevant fossil fuel plant for the purposes of section 57 of the Act and regulations 9 and 11 is $EL_{(revised)}$ tonnes of carbon dioxide, calculated in accordance with paragraph (4).

(4) In paragraph (3), $EL_{(revised)}$ means—

(a) if the condition in paragraph (2)(a) applies—

$$EL \div 365 \times N$$

where—

EL is to be calculated in accordance with section 57(1) of the Act as it applies without the modifications required to be made by paragraph (3); and

N is the number of days of the year in which the relevant fossil fuel plant generated electricity after the relevant fossil fuel plant commences generation, including the day on which the generation commenced;

(b) if the condition in paragraph 2(b) applies—

$$EL \div 365 \times N$$

where—

EL is to be calculated in accordance with section 57(1) of the Act as it applies without the modifications required to be made by paragraph (3);

N is the number of days of the year in which the relevant fossil fuel plant generated electricity before the relevant fossil fuel plant ceased generation, including the day on which the generation ceased;

(c) if the condition in paragraph (2)(c) applies—

$$\left(EL \div 365 \times N\right) + \left(C_{(revised)} \times R \times 7.446 \div 365 \times D\right)$$

where—

$C_{(revised)}$ is the installed generating capacity of the relevant fossil fuel plant comprised of the generating units not covered by an exemption under section 58 of the Act;

D is the number of days in the year in which the relevant fossil fuel plant generated electricity where an exemption under section 58 of the Act applied;

EL is to be calculated in accordance with section 57(1) of the Act as it applies without the modifications required to be made by paragraph (3);

N is the number of days in the year in which the relevant fossil fuel plant operated where an exemption under section 58 of the Act did not apply; and

R is the statutory rate of emissions, in g/kWh;

(d) if the condition in paragraph (2)(d) applies—

$$\left(EL \div 365 \times N\right) + \left(C_{(revised)} \times R \times 7.446 \div 365 \times D\right)$$

where—

$C_{(revised)}$ is the installed generating capacity of the relevant fossil fuel plant after the alteration;

D is the number of days in the year in which the relevant fossil fuel plant generated electricity after the alteration, including the day on which the fossil fuel plant first generated electricity with the altered installed generating capacity;

EL is to be calculated in accordance with section 57(1) of the Act as it applies without the modifications required to be made by paragraph (3);

N is the number of days in the year in which the relevant fossil fuel plant generated electricity before the alteration in the installed generating capacity of that plant; and

R is the statutory rate of emissions, in g/kWh.

Associated gasification plant

5. "Associated gasification plant" means any gasification plant where—

(a) that plant—

(i) uses fossil fuel; and

(ii) produces fuel from the fossil fuel; and

(b) the fuel so produced by that plant is used by a relevant fossil fuel plant to generate electricity.

Exemption for complete carbon capture and storage system

6. The exemption from the emissions limit duty in section 58(1) of the Act applies only to those generating units which use a complete CCS system(**9**).

EPS annual emissions

7. Subject to regulation 8, in respect of a relevant fossil fuel plant, the emissions from it that are attributable to the use of fossil fuel in any year ("EPS annual emissions") are—

(a) the total emissions of carbon dioxide which are the direct result of operations and processes carried out in the generation of electricity during the year by that relevant fossil fuel plant; and

(b) if not already included in the total under paragraph (a), the total emissions of carbon dioxide directly attributable to the production of the fuel produced by any associated gasification plant and used by the fossil fuel plant in the generation of electricity in that year.

EPS annual emissions: reduction for CHPQA

8. Where a relevant fossil fuel plant is a combined heat and power generating station, EPS annual emissions are—

$$E_{electricity} - \left(CHP_{QHO} \times 0.205 \div 0.9\right)$$

where—

(**9**) "Complete CCS system" has the same meaning as in section 58 of the Act.