Draft Regulations laid before Parliament under section 6(8) of the Energy Act 2013, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2014 No. 0000

ELECTRICITY

The Contracts for Difference (Standard Terms) Regulations 2014

Made - - - - 2014

Coming into force in accordance with regulation 1

The Secretary of State has before making these Regulations—

(a) consulted the persons listed in section 24(1)(a) to (g) 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 6(8) 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 6(1), 11(3), 14, 15(2) and (4), 16(b) and 19(1) and (2) of the Energy Act 2013, makes the following Regulations:

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the Contracts for Difference (Standard Terms) Regulations 2014 and come into force on the day after the day on which they are made.

Interpretation

2. In these Regulations—

"the Act" means the Energy Act 2013;

"allocation round notice" has the meaning given in regulation 5(1);

(**1**) 2013 c. 32.

"applicant" means a person to whom section 15(1) of the Act applies;

"the CFD counterparty" means the person or persons designated as a counterparty for contracts for difference in accordance with section 7 of the Act;

"delivery body" means—

(a) the national system operator; or

(b) if the national system operator's functions under Chapter 2 of Part 2 of the Act have been transferred to an alternative delivery body, that body;

"eligible generator" has the meaning given by the Contracts for Difference (Definition of Eligible Generator) Regulations 2014(**2**);

"generating facility" means the facility which produces low carbon electricity generation for the purposes of a CFD;

"generator" means a person who enters into a CFD with the CFD counterparty;

"reference price", in relation to a CFD, means a price determined under the CFD which is intended to represent a market price of electricity in respect of a period specified in that CFD;

"strike price", in relation to a CFD, means a price specified in or determined under the CFD which is compared to the reference price determined under that CFD so as to enable the determination of the amount (if any) which is payable by the CFD counterparty or a generator under the CFD in respect of the generation of electricity by that generator;

"third party" means a person other than a generator who enters into a contract with the CFD counterparty which is not a CFD; and

"working day" means 9 am to 5 pm on Mondays to Fridays excluding—

(a) bank holidays within the meaning of section 1 of the Banking and Financial Dealings Act 1971(**3**), including those bank holidays in part only of the United Kingdom;

(b) Good Friday; and

(c) when it falls on a day that would otherwise be a working day, Christmas Day.

PART 2

Standard terms

Provision to be included in standard terms

3. The standard terms issued under section 11(1) of the Act or revised under section 11(2) of the Act must set out—

(a) that where a strike price is higher than a reference price, the CFD counterparty must pay the generator the difference between the strike price and the reference price;

(b) that where a reference price is higher than a strike price, the generator must pay the CFD counterparty the difference between the reference price and the strike price;

(c) that the amount payable under paragraph (a) or (b) must be calculated by reference to the amount of low carbon electricity generation produced by a generating facility;

(d) the way in which a reference price is to be determined;

(e) the way in which a strike price is to be adjusted according to inflation;

(**2**) S.I. 2014/[ ].
(**3**) 1971 c. 80.

(f) the way in which the amount of low carbon electricity generation produced by a generating facility is to be determined;

(g) that sums must not be paid by the CFD counterparty under a CFD where those sums are not allocated to that CFD in accordance with the Contracts for Difference (Supplier Obligation) Regulations 2014(**4**);

(h) which circumstances allow a generator to reduce the capacity of its generating facility;

(i) which changes in law will cause compensation to be payable by one party to the other party or cause a change to a strike price;

(j) the way in which the amount of compensation payable or a change to a strike price under paragraph (i) is to be determined;

(k) which time limits in a CFD may be extended where force majeure prevents a party from complying with them;

(l) which circumstances require a generator to receive the consent of the CFD counterparty before transferring a CFD or assigning its rights and obligations under a CFD;

(m) the way in which the parties to a CFD may amend a CFD;

(n) a mechanism by which disputes between the parties to a CFD are to be resolved;

(o) which circumstances allow the CFD counterparty to terminate a CFD;

(p) which circumstances require a generator to make a payment to the CFD counterparty following termination of a CFD; and

(q) the way in which the amount payable under paragraph (p) is to be determined.

Provision and publication of information

4.—(1) Where the Secretary of State publishes revised standard terms in compliance with section 11(5) of the Act, the Secretary of State must also publish an explanation of why the revisions have been made.

(2) Before issuing or revising standard terms in accordance with section 11(1) and (2) of the Act, the Secretary of State may request the CFD counterparty to provide information or advice to the Secretary of State concerning the issue or revision of standard terms, and the CFD counterparty must comply with such a request as soon as reasonably practicable.

PART 3

Modification of standard terms

Application to modify the standard terms

5.—(1) An applicant may apply to the CFD counterparty for a modification to the standard terms after a notice establishing an allocation round (an "allocation round notice") has been published by the Secretary of State in accordance with the Contracts for Difference (Allocation) Regulations 2014(**5**).

(2) An application must be made promptly and no later than 20 working days before the application closing date specified in the allocation round notice.

(3) An application must set out—

(**4**) S.I. 2014/[ ].
(**5**) S.I. 2014/[ ].

(a) a description of the proposed modification to the standard terms; and

(b) an explanation as to how the effect of the modification is minor and why it is necessary.

(4) The CFD counterparty must publish guidance on the form of an application and the information to be included in an application.

(5) The CFD counterparty may request such further information as it reasonably considers necessary to determine an application, and the applicant must, to the extent that it holds the information, comply with such a request as soon as reasonably practicable.

Modification of the standard terms

6.—(1) Where the CFD counterparty receives an application, it must give the applicant a notice setting out whether it accepts or refuses the application.

(2) The notice must be given at least 5 working days before the application closing date set out in the allocation round notice.

(3) Where the CFD counterparty accepts an application, the notice must set out the agreed modification of standard terms (the "modification agreement").

(4) Where the CFD counterparty refuses an application, the notice must set out the CFD counterparty's reasons for the refusal.

Minor modification

7.—(1) The CFD counterparty must determine that the effect of a modification is not minor where, in the opinion of the CFD counterparty, it would be likely to decrease the liabilities of a generator under a CFD or increase the commercial benefit for a generator of a CFD.

(2) The CFD counterparty must determine that the effect of a modification is not minor where it would change provision for any of the following in the standard terms—

(a) the period during which a generator may start to receive payments under a CFD;

(b) the period during which the parties to a CFD must make payments under a CFD;

(c) the date by which a generator must—

(i) notify the CFD counterparty that it has incurred a sum specified in the CFD in the development of the generating facility; or

(ii) provide the CFD counterparty with certain documentation specified in the CFD concerning the development of the generating facility;

(d) any methodology which directly or indirectly affects the calculation of sums payable under a CFD;

(e) any time limit for invoicing or for making a payment under a CFD;

(f) which circumstances allow the CFD counterparty to use sums paid by a generator under a CFD as collateral; or

(g) any requirement to provide information to the CFD counterparty where the information is necessary for the performance of any of the CFD counterparty's obligations to make payments to a generator under a CFD.

(3) The CFD counterparty must determine that the effect of a modification is not minor where, in the opinion of the CFD counterparty, it would be likely to cause the CFD counterparty to incur costs above an amount specified by the Secretary of State under paragraph (6) as a result of the CFD counterparty—

(a) carrying out its obligations under a CFD; or

(b) making arrangements for the performance of new obligations required by a modification.