Draft Regulations laid before Parliament under section 40(5) of the Energy Act 2013, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2014 No. 0000

ELECTRICITY

The Electricity Capacity 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 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 33, 34(3) to (6), 36, 38(a), 40(1) and 63 of the Energy Act 2013, makes the following Regulations:

PART 1

Introduction

Citation and commencement

1.—(1) These Regulations may be cited as the Electricity Capacity Regulations 2014.

(2) These Regulations, apart from Part 11 (capacity market rules) and regulation 88 (repeal), come into force on the day after the day on which they are made.

(3) Part 11 comes into force on the day after the day on which the results of the first capacity auction held under Part 4, other than a DSR transitional auction, are published under regulation 25(1)(c).

(4) Regulation 88 comes into force on 1st January 2015.

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

Interpretation

2.—(1) In these Regulations—

"the Act" means the Energy Act 2013;

"EA 1989" means the Electricity Act 1989(**2**);

"the Rules" means the Capacity Market Rules 2014(**3**);

"active energy" and "active power" have the meanings given in the Rules;

"administrative parties" means—

(a) the Secretary of State;

(b) the Authority;

(c) the Delivery Body; and

(d) the Settlement Body;

"affected person" is to be interpreted in accordance with regulation 68(2);

"annual penalty cap", in relation to a capacity committed CMU and a delivery year, means the maximum amount of capacity provider penalty charges that the capacity provider may be liable to pay in respect of that CMU for that delivery year;

"applicant" means a person who, in accordance with capacity market rules, has submitted or is entitled to submit an application for prequalification to bid in a capacity auction in respect of a CMU;

"auction clearing price" means, in relation to a capacity auction, the price per MW which, subject to—

(a) sub-paragraphs (b) and (c) of regulation 30(4); and

(b) any provision for adjustment of capacity payments for inflation,

is determined by the capacity auction to be the price at which capacity payments are payable in respect of capacity committed CMUs awarded a capacity obligation in that capacity auction;

"auctioneer" has the meaning given in regulation 24(2);

"auction guidelines" has the meaning given in regulation 21;

"auction parameters" has the meaning given in regulation 11;

"auction window" means a period in which a capacity auction is to be held, being, subject to regulation 87(1)(a), a period starting on 1st September and ending on the following 31st July;

"auxiliary load" means, in relation to a generating CMU or a generating unit, the total amount of electricity used by that unit for purposes directly related to its operation (including for fuel handling, fuel preparation, maintenance and the pumping of water), whether or not that electricity is generated by the unit or used while the unit is generating electricity;

"the Balancing and Settlement Code" means the code for governance of electricity balancing and settlement in Great Britain which is maintained in accordance with the conditions of licences granted under section 6(1) of the Electricity Act 1989(**4**);

"base period" means a period starting on 1st October and ending on the following 30th April, to be used in calculating capacity payments for the purpose of adjusting for inflation the capacity

(**2**) 1989 c.29.

(**3**) The Capacity Market Rules 2014 are at [ ]. Copies are available from the Department of Energy and Climate Change, 3 Whitehall Place, London SW1A 2AW.

(**4**) 1989 c.29. Section 6 was substituted by section 30 of the Utilities Act 2000 (c.27) and subsection (1) of section 6 was amended by sections 136(1), 145(1) and (5) and 197(9) of, and Part 1 of Schedule 23 to, the Energy Act 2004 (c.20), and by S.I. 2012/2400.

cleared price applying to a capacity committed CMU, where paragraph 3 of Schedule 1 provides for such an adjustment to be made;

"bidder" means a person bidding in a capacity auction for a capacity obligation in respect of a CMU;

"bidding round" means a round of bidding in a capacity auction;

"capacity" means an amount of electrical generating capacity or DSR capacity, expressed in MW unless specified otherwise;

"capacity agreement" has the meaning given in regulation 30(1);

"capacity agreement notice" means a notice issued by the Delivery Body to a capacity provider under capacity market rules, containing data about a capacity agreement;

"capacity auction" means an auction under Part 4;

"capacity cleared price" has the meaning given in regulation 30(3) and (4);

"capacity committed CMU", in relation to a delivery year, means a CMU that is identified in the capacity market register as being subject to a capacity obligation for that delivery year;

"the capacity market" means the scheme established by these Regulations and capacity market rules;

"capacity market register" means the register maintained by the Delivery Body in accordance with regulation 31;

"capacity market warning" has the meaning given in the Rules;

"capacity obligation" means an obligation awarded pursuant to a capacity auction, applying for one or more delivery years, to provide a determined amount of capacity when required to do so in accordance with capacity market rules;

"capacity payment" means a payment to a capacity provider under these Regulations for its commitment to meet a capacity obligation during a delivery year;

"capacity provider penalty charge" means an amount payable by a capacity provider under regulation 41;

"capacity year" means a period of one year starting on 1st October and ending on the following 30th September;

"a CFD" means a contract for difference under Chapter 2 of Part 2 of the Act;

"CFD counterparty" means a person designated as such under section 7 of the Act;

"CMU" means—

(a) a generating CMU; or

(b) a demand side response CMU;

"commissioned", in relation to a generating unit, means that—

(a) such procedures and tests have been completed as constitute, at the time they are undertaken, industry standards and practices for commissioning a generating unit of that type such that it is capable of operation at its connection capacity; and

(b) the unit has not subsequently been decommissioned;

"the Connection and Use of System Code" means the code with that name for governance of connection to, and use of, the GB transmission system which is maintained in accordance with the conditions of licences granted under section 6(1) of EA 1989(**5**);

(**5**) 1989 c.29. Section 6 was substituted by section 30 of the Utilities Act 2000 (c.27) and subsection (1) of section 6 was amended by sections 136(1), 145(1) and (5) and 197(9) of, and Part 1 of Schedule 23 to, the Energy Act 2004 (c.20), and by S.I. 2012/2400.

"connection capacity", in relation to a generating CMU or a generating unit forming part of a CMU, means the amount which in accordance with capacity market rules is declared in an application for prequalification as the connection capacity of that generating CMU or generating unit;

"the court" has the meaning given in regulation 72(2);

"CPI" means the UK Consumer Prices Index (All Items) published monthly by the Office for National Statistics or, if such index ceases to be published, such other index as may replace it;

"credit cover" has the meaning given in regulation 53;

"customer" means a person to whom electrical power is provided (whether or not that is the same person as the person who provides the electrical power);

"decommissioned", in relation to a generating unit, means that the generating unit has permanently been physically disconnected from the total system, or from equipment used to provide on-site supply;

"Delivery Body" means—

(a) subject to paragraph (b), the national system operator; or

(b) if the national system operator's functions under Chapter 3 of Part 2 of the Act have been transferred to an alternative delivery body by an order under section 46 of the Act, that body;

"delivery year"—

(a) in relation to a capacity auction, means the capacity year—

  (i) for which each one year capacity obligation awarded as a result of that capacity auction has or will have effect; and

  (ii) which is the first year of the period for which each multi-year capacity obligation awarded as a result of that capacity auction has effect;

(b) in relation to a capacity obligation or a capacity agreement, means a capacity year in which that capacity obligation, or the capacity obligation imposed by that capacity agreement, has effect; and

(c) otherwise, means any capacity year in which one or more capacity obligations has or will have effect;

"demand curve", in relation to a capacity auction, means a specification (which may be in the form of a curve on a graph) of how the total amount of capacity for which capacity agreements are to be issued is to vary depending on the auction clearing price;

"demand side response" means the activity of reducing the metered volume of imported electricity of one or more customers below a baseline, by a means other than a permanent reduction in electricity use;

"demand side response CMU" has the meaning given in regulation 5;

"demand side response CMU component" means—

(a) a DSR customer's consumption of electricity as measured by a single half hourly meter; or

(b) a permitted on-site generating unit,

which forms part of the means by which a DSR provider commits to provide capacity as described in regulation 5(1);

"de-rated capacity" has the meaning given in the Rules;

"de-rating factor" has the meaning given in the Rules;

"distribution CMU" means a generating CMU consisting of one or more generating units which export electricity to a distribution network;

"distribution connection agreement" has the meaning given in the Rules;

"distribution network" means a distribution network in Great Britain operated under a licence granted pursuant to section 6(1)(c) of EA 1989(**6**);

"distribution network operator" means a person who operates a distribution network;

"DSR bid capacity" means, in relation to a demand side response CMU, the amount of capacity bid into a capacity auction by a bidder in respect of that CMU, being the de-rated capacity of that CMU or, if less, the capacity nominated by the applicant in accordance with the Rules;

"DSR capacity" means—

(a) in the case of a proven demand side response CMU, its proven DSR capacity; and

(b) in the case of an unproven demand side response CMU, its unproven DSR capacity,

as determined in accordance with capacity market rules;

"DSR customer" has the meaning given in regulation 5(2);

"DSR provider" has the meaning given in regulation 5(1);

"DSR test" has the meaning given in the Rules;

"DSR test certificate" has the meaning given in the Rules;

"DSR transitional auction" has the meaning given in regulation 29(1);

"electricity capacity report" means a report by the Delivery Body under regulation 7;

"electricity interconnector" has the meaning given in section 4(3E) of EA 1989(**7**);

"electricity supplier" has the meaning given in regulation 3(2);

"export" means the flow of electricity from a generating unit on to a distribution network or the GB transmission system, or to an on-site consumer;

"financial commitment milestone" has the meaning given in the Rules;

"GB transmission system" means the national transmission system for Great Britain (and for this purpose "transmission system" has the same meaning as in EA 1989(**8**));

"general eligibility criteria" means the criteria in regulation 15;

"generating CMU" has the meaning given in regulation 4;

"generating technology class" has the meaning given in the Rules;

"generating unit" means any equipment in which electrical conductors are used or supported or of which they form part which produces electricity, including such equipment which produces electricity from storage;

"the Grid Code" means the code with that name specifying technical requirements for connection to, and use of, the GB transmission system which is maintained in accordance with the conditions of licences granted under section 6(1) of EA 1989(**9**);

(**6**) Section 6(1)(c) of EA 1989 was substituted by section 30 of the Utilities Act 2000 (c.27). Other amendments have been made to section 6 which are not relevant.

(**7**) Section 4(3E) of EA 1989 was inserted by section 145(1) and (3) of the Energy Act 2004 (c.20). Other amendments have been made to section 4 which are not relevant.

(**8**) See section 4(4) of EA 1989. The definition of "transmission system" in that subsection was substituted by section 135(1) and (4) of the Energy Act 2004 (c.20).

(**9**) 1989 c.29. Section 6 was substituted by section 30 of the Utilities Act 2000 (c.27) and subsection (1) of section 6 was amended by sections 136(1), 145(1) and (5) and 197(9) of, and Part 1 of Schedule 23 to, the Energy Act 2004 (c.20), and by S.I. 2012/2400.