

2014 No. 2013

ELECTRICITY

The Electricity Market Reform (General) Regulations 2014

Made - - - - *31st July 2014*

Coming into force in accordance with regulation 1

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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^(a) 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), 12(3), 16, 19 and 63 of the Energy Act 2013, makes the following Regulations:

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the Electricity Market Reform (General) 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;

“advice notice” has the meaning given by regulation 4(1);

“the Allocation Regulations” means the Contracts for Difference (Allocation) Regulations 2014^(b);

“applicant” has the meaning given by regulation 9(2);

“capital costs” means the capital costs of an electricity generating station;

“counterparty notice” has the meaning given by regulation 6(2);

“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 body, that body;

“eligible generator” has the same meaning as it has under the Contracts for Difference (Definition of Eligible Generator) Regulations 2014^(c);

“first round CFD application” has the meaning given by regulation 10(3)(c);

“generator notice” has the meaning given by regulation 7(2);

“operational costs” means the costs of operation of an electricity generating station;

“progress report” has the meaning given by regulation 4(1)(c);

“relevant generating station” has the meaning given by regulation 9(1);

(a) 2013 c. 32.

(b) S.I. 2014/2011.

(c) S.I. 2014/2010.

“strike price” means a price for one megawatt hour of electricity generated by a generating station;

“supply chain application” means an application under regulation 9(1) for a supply chain statement;

“supply chain statement” means a statement by the Secretary of State that to establish or alter a generating station is likely to make a material contribution to the development of supply chains;

“supply chains” means the chains of suppliers of goods or services in relation to the construction, alteration, maintenance or operation of a generating station;

“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(a), 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

Secretary of State requiring information from the delivery body

Provision of information

3.—(1) The Secretary of State may require the delivery body to provide information (including advice and analysis) to the Secretary of State in relation to the strike price applicable (or to be applicable) to any form of low carbon electricity generation.

(2) The information which may be required under paragraph (1) includes information about how such strike prices may affect any of the following—

- (a) the reduction of the carbon intensity of electricity generation in the United Kingdom;
- (b) the security of electricity generation;
- (c) the cost of operation of low carbon electricity generation;
- (d) the price of energy payable by consumers; or
- (e) the funding available to the Secretary of State to support forms of low carbon electricity generation.

(3) The information which may be required under paragraph (1) may include the modelling of the impacts of such strike prices on different markets within the United Kingdom.

Notice to the delivery body

4.—(1) Where the Secretary of State requires information under regulation 3(1), the Secretary of State must give a notice (“an advice notice”) to the delivery body which sets out—

- (a) the information required;
- (b) the date by which the information, or parts of it, is to be provided;
- (c) whether or not the delivery body must provide a written report (“a progress report”) to the Secretary of State stating the progress being made by the delivery body to comply with sub-paragraphs (a) and (b); and
- (d) where a progress report is required, the date by which it is to be provided.

(2) An advice notice may—

(a) 1971 c. 80.

- (a) describe or refer to assumptions which the delivery body must apply when providing information;
 - (b) require a methodology described or referred to in the notice to be used by the delivery body when providing any of the information required by the notice;
 - (c) require the information to be provided in a particular form; and
 - (d) be withdrawn by notice by the Secretary of State to the delivery body.
- (3) The delivery body must comply with an advice notice which is given to it.
- (4) The Secretary of State may in writing require the delivery body to have regard to such other matters not described or referred to in the advice notice as the Secretary of State considers relevant to the provision of information set out in the notice.
- (5) A written requirement under paragraph (4) must be made as soon as practicable after an advice notice is given to the delivery body.
- (6) The Secretary of State and the delivery body may agree a variation of any of the matters set out in an advice notice or a written requirement made under paragraph (4).
- (7) The Secretary of State must make publicly available an advice notice.
- (8) So far as practicable, the Secretary of State must consult the delivery body about the intended content of—
- (a) an advice notice before the notice is given; or
 - (b) a written requirement under paragraph (4) before the requirement is made.

Non-compliance

5.—(1) The requirements imposed under regulation 4 on the delivery body to provide by the date required by an advice notice—

- (a) the information required by the notice; or
- (b) any progress report required by the notice,

subject to paragraph (3), are to be treated as relevant requirements on the delivery body as a regulated person for the purposes of section 25 of the Electricity Act 1989(a).

(2) Reference in paragraph (1) to a matter required by an advice notice is a reference to that requirement—

- (a) subject to any written requirement made under regulation 4(4); and
- (b) as may be varied further to regulation 4(6).

(3) Where—

- (a) to comply with an advice notice requires the delivery body to be provided with information further to a counterparty notice or a generator notice;
- (b) the delivery body has given, as applicable, a counterparty notice or a generator notice; and
- (c) the delivery body is not provided with the information required by the counterparty notice or generator notice (“missing information”),

there is no failure to comply with paragraph (1)(a) to the extent of the missing information.

Provision of information by a CFD counterparty to the delivery body

6.—(1) Paragraph (2) applies where the delivery body has been given an advice notice.

(2) The delivery body may give a notice (“a counterparty notice”) to a CFD counterparty, requiring it to provide to the delivery body information which the delivery body reasonably

(a) 1989 c. 29.

believes that the CFD counterparty holds (or is entitled to obtain) and which the delivery body reasonably requires to comply with the advice notice.

(3) A counterparty notice must set out—

- (a) the information required; and
- (b) the date by which the information is to be provided.

(4) The information required by a counterparty notice may include information in relation to the capital costs and operational costs in respect of an eligible generator who is a party to a CFD.

(5) A counterparty notice may be varied or withdrawn by notice by the delivery body to the CFD counterparty.

(6) A CFD counterparty must comply with a counterparty notice which is given to it.

(7) Subject to paragraph (8), the requirement imposed under paragraph (6) is to be treated as a relevant requirement on the CFD counterparty as a regulated person for the purposes of section 25 of the Electricity Act 1989.

(8) Where—

- (a) the CFD counterparty has been given a counterparty notice but to comply with that notice the CFD counterparty needs to obtain information from an eligible generator who is a party to a CFD; and
- (b) the CFD counterparty is not provided with that information from the eligible generator (“missing information”),

there is no failure to comply with paragraph (6) to the extent of the missing information.

Provision of information by generators to the delivery body

7.—(1) Paragraph (2) applies where—

- (a) by virtue of a counterparty notice, the delivery body has sought to obtain information from a CFD counterparty;
- (b) some or all of the information sought has not been provided; and
- (c) the delivery body reasonably believes that the information may be obtained from an eligible generator who is a party to a CFD (“a relevant generator”).

(2) The delivery body may give a notice (“a generator notice”) to a relevant generator requiring the relevant generator to provide to the delivery body information which the delivery body reasonably believes that the relevant generator holds (or is entitled to obtain) and which the delivery body reasonably requires to comply with an advice notice.

(3) A generator notice must set out—

- (a) the information required; and
- (b) the date by which the information is to be provided.

(4) The information required by a generator notice may include information in relation to the capital costs and operational costs of the electricity generating station which is the subject of the CFD to which the relevant generator is a party.

(5) A generator notice may be varied or withdrawn by notice by the delivery body to the relevant generator.

(6) A relevant generator must comply with a generator notice which is given to it.

(7) The requirement imposed under paragraph (6) is to be treated as a relevant requirement on the relevant generator as a regulated person for the purposes of section 25 of the Electricity Act 1989.

Confidentiality

8.—(1) This regulation applies only to a delivery body which is not the national system operator.

(2) Where the delivery body obtains information further to a generator notice (“generation information”), the delivery body must not process that information for any purpose other than to comply with an advice notice except—

- (a) with the consent of the generator who provided the information; or
- (b) as required by or under—
 - (i) an order of the court;
 - (ii) an enactment; or
 - (iii) an EU obligation;
- (c) as required or permitted by or under—
 - (i) a licence condition which applies to the delivery body; or
 - (ii) a condition of an industry document to which the delivery body is a party.

(3) The restriction in paragraph (2) does not apply to generation information which is publicly available (other than by breach of this regulation).

(4) The restriction in paragraph (2) imposed on the delivery body is to be treated as a relevant requirement on the delivery body as a regulated person for the purposes of section 25 of the Electricity Act 1989.

(5) In this regulation—

- (a) “industry document” means any of the following documents maintained under a licence—
 - (i) the Balancing and Settlement Code;
 - (ii) the Connection and Use of System Code; or
 - (iii) the Grid Code; and
- (b) “licence” means a licence under section 6 of the Electricity Act 1989.

PART 3

Supply chain statements and documents

Application for supply chain statements

9.—(1) An eligible generator may make a supply chain application to the Secretary of State in respect of a generating station identified in the application (“a relevant generating station”).

(2) An eligible generator who makes an application described in paragraph (1) is “an applicant”.

(3) The Secretary of State must not provide a supply chain statement unless the Secretary of State is satisfied that—

- (a) the applicant is an eligible generator in respect of the relevant generating station; and
- (b) the establishment or alteration of the relevant generating station is likely to make a material contribution to the development of supply chains.

(4) In deciding whether or not to provide a supply chain statement to an applicant, the Secretary of State must have regard to the extent to which the establishment or alteration of the relevant generating station is likely to support the following matters—

- (a) the development of competition in supply chains;
- (b) innovation in supply chains; and
- (c) the development of skills in supply chains.

Particulars of applications

10.—(1) A supply chain application must—

- (a) identify the relevant generating station;
 - (b) describe how the relevant generating station is to be established or altered;
 - (c) set out how the applicant considers that the establishment or alteration of the relevant generating station is likely—
 - (i) to make a material contribution to the development of supply chains; and
 - (ii) to support the matters listed in regulation 9(4); and
 - (d) include the information necessary in support of the matters in sub-paragraphs (a) to (c).
- (2) An applicant must—
- (a) identify any information included in, or in support of, a supply chain application which the applicant considers is commercially confidential; and
 - (b) where such information is identified, provide reasons why the applicant considers that disclosure of that information (other than to the Secretary of State for the purposes of determining the supply chain application) may damage the commercial interests of the applicant or another person.
- (3) Paragraph (4) applies where—
- (a) the first allocation round is established by virtue of the Allocation Regulations;
 - (b) except where regulation 12 applies, the Allocation Regulations require a supply chain statement to be provided in support of an application for a CFD; and
 - (c) the applicant or other eligible generator in respect of the relevant generating station intends to make an application for a CFD in the first allocation round (“a first round CFD application”).
- (4) Where this paragraph applies the applicant must—
- (a) make the supply chain application by no later than 10 working days before the last date by which applications for a CFD must be made for the first allocation round; and
 - (b) state in the supply chain application that a first round CFD application is intended to be made.

Providing supply chain statements or refusing applications

11.—(1) Except where regulation 12 applies, the Secretary of State must as soon as practicable after a supply chain application is received by the Secretary of State give a notice to the applicant which includes—

- (a) a supply chain statement and the period for which the statement has effect; or
 - (b) a refusal of the application and reasons for that refusal.
- (2) Where paragraph (1)(a) applies, the period for which a supply chain statement has effect is—
- (a) 12 months from the date of the notice; or
 - (b) where the Secretary of State is of the opinion that there is a compelling reason for the period to be longer, such longer period.

First allocation round

12.—(1) This regulation applies only to the first allocation round established by virtue of the Allocation Regulations.

(2) The Secretary of State may determine that no supply chain statements will be provided in respect of supply chain applications where a first round CFD application is to be made.

(3) A determination must only be made under paragraph (2) where the Secretary of State considers that it is not possible properly to assess by the relevant date all supply chain applications where a first round CFD application is to be made.

(4) Where a determination is made under paragraph (2), the Secretary of State must immediately—

- (a) publish that determination; and
- (b) give a notice of the determination to the delivery body.

(5) In paragraph (3), “relevant date” means the last date by which applications for a CFD must be made for the first allocation round.

Confidentiality

13.—(1) The Secretary of State must not disclose to any other person any information contained in a supply chain application where that disclosure may, in the opinion of the Secretary of State, damage the commercial interests of the applicant or another person, except—

- (a) in the case of the commercial interests of—
 - (i) the applicant, with the consent of the applicant; or
 - (ii) another person, with the consent of that person;
- (b) as required by or under—
 - (i) an order of the court;
 - (ii) an enactment; or
 - (iii) an EU obligation; or
- (c) to a permitted person for a permitted purpose, and the Secretary of State is satisfied that arrangements have been made with that person to prevent any further disclosure of that information by that person.

(2) In paragraph (1)—

“permitted person” means—

- (a) a public authority to which the Human Rights Act 1998^(a) applies; or
- (b) a person providing services to the Secretary of State in relation to a permitted purpose or any officer, employee or agent of that person;

“permitted purpose” means—

- (a) to enable the Secretary of State to determine whether or not to provide a supply chain statement; or
- (b) to support the development of supply chains.

Documents

14. The Schedule (documents) has effect, except in respect of Part 4.

PART 4

Liability of the national system operator

Restricted liability in damages

15.—(1) Paragraph (2) applies to—

- (a) the national system operator;
- (b) any director of the national system operator; and
- (c) any employee, officer or agent of the national system operator.

(a) 1998 c. 42.

(2) Subject to paragraph (3), a person to whom this paragraph applies is not liable in damages for anything done or omitted to be done in the exercise or purported exercise of the national system operator's functions under—

- (a) these Regulations;
- (b) the Allocation Regulations; or
- (c) any allocation framework made by the Secretary of State pursuant to section 13(2) of the Act.

(3) The exclusion of liability in paragraph (2) does not—

- (a) apply where the act or omission occurs in bad faith, including where the act or omission—
 - (i) constitutes a tort which involved a wilful act or omission calculated to cause harm or loss to another person; or
 - (ii) is fraudulent;
- (b) prevent an award of damages in respect of an act or omission which is—
 - (i) unlawful by virtue of section 6(1) of the Human Rights Act 1998^(a);
 - (ii) a breach of a duty owed by virtue of section 27(4) of the Electricity Act 1989;
 - (iii) a criminal offence;
 - (iv) an infringement of a person's intellectual property rights;
 - (v) a breach of confidentiality, whether statutory or at common law; or
 - (vi) a breach of contract.

31st July 2014

Amber Rudd
Parliamentary Under-Secretary of State
Department of Energy and Climate Change

SCHEDULE

Regulation 14

Documents

1. The provisions of this Schedule apply to a document, which includes an application, notice or statement.

2. A document must be in writing and dated.

3. A document given to a person on a non-working day is to be treated as given on the next following working day.

4. A document may be given to a person by—

- (a) delivering it to that person in person;
- (b) leaving it at that person's proper address;
- (c) sending it by post or fax to that person's proper address;
- (d) sending it by email to that person; or
- (e) submitting it by means of a dedicated portal on that person's website.

(a) 1998 c. 42.

5. For the purposes of paragraph 4(a) a document is given to—
- (a) a body corporate, where it is given to a person having control or management of that body;
 - (b) a partnership, where it is given to a partner or a person having control or management of the partnership business;
 - (c) an unincorporated association, where it is given to a person having management responsibilities in respect of the association.
6. For the purposes of paragraph 4(d), a document is given to—
- (a) a body corporate, where it is sent to an email address of—
 - (i) the body corporate; or
 - (ii) a person having control or management of that body,
 where that address is supplied by that body for the conduct of the affairs of that body;
 - (b) a partnership, where it is sent to an email address of—
 - (i) the partnership; or
 - (ii) a partner or a person having control or management of the partnership business,
 where that address is supplied by that partnership for the conduct of the affairs of that partnership;
 - (c) an unincorporated association, where it is sent to an email address of a person having management responsibilities in respect of the association, where that address is supplied by that association for the conduct of the affairs of that association.

7. A person may, in substitution for the proper address which would otherwise apply, specify an address in the United Kingdom at which that person or someone on that person's behalf may be given documents, which address is to be treated instead as that person's proper address.

8. In this Schedule—

“dedicated portal” means a facility on a person's website which is established to allow electronic communication with that person;

“proper address” means in the case of—

- (a) a body corporate, the registered office (if it is in the United Kingdom) or the principal office of that body in the United Kingdom;
- (b) a partnership, the principal office of the partnership in the United Kingdom;
- (c) any other person, that person's last known address, which includes an email address.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made further to chapters 2 and 9 of Part 2 of the Energy Act 2013 (c. 32) (“the Act”). Parts 2 and 3 of these Regulations apply to contracts for difference (see section 6(2) of the Act, and where such a contract is referred to as a CFD). Part 4 applies in respect of certain functions of the national system operator acting as the delivery body under Part 2 of the Act.

Regulation 2 includes definitions used in these Regulations.

Part 2

Regulation 3 provides that the Secretary of State may require information from the delivery body (defined in regulation 2) in relation to strike prices. Regulation 4 provides that a notice must be given to the delivery body by the Secretary of State setting out the information required and that a

progress report must be given to the Secretary of State in respect of the provision of the information required. By regulation 5, the requirement to provide the information required or a progress report, is treated as a relevant requirement as provided in section 25 of the Electricity Act 1989 (c. 29).

By regulation 6, where the delivery body is required to provide information to the Secretary of State and to comply the delivery body needs to obtain information from a CFD counterparty (see section 6(3) of the Act), the delivery body may require information from a CFD counterparty. The requirement on a CFD counterparty to provide the information is treated as a relevant requirement as provided in section 25 of the Electricity Act 1989.

Regulation 7 allows the delivery body also to require information to be provided to it by an eligible generator who is a party to a CFD if the delivery body has not been able to provide that information to the delivery body. The requirement on such a generator is treated as a relevant requirement as provided in section 25 of the Electricity Act 1989.

Regulation 8 contains provisions requiring the delivery body, where it is not the national system operator, to keep confidential the information which it obtains from a generator under regulation 7. That requirement is treated as a relevant requirement as provided in section 25 of the Electricity Act 1989.

Part 3

Regulation 9 provides that an eligible generator may apply to the Secretary of State for a statement (“a supply chain statement”) that to establish or alter a generating station identified in the application is likely to make a material contribution to the development of supply chains, i.e. the chains of suppliers of goods or services in relation to the construction, alteration, maintenance or operation of generating stations.

Regulation 10 provides for the contents of applications and whether the applicant intends to make an application for a CFD in the first allocation round established further to the Contracts for Difference (Allocation) Regulations 2014 (“the Allocation Regulations”).

By regulation 11, except where regulation 12 applies, the Secretary of State must by notice give a supply chain statement in response to an application or refuse the application. Where a statement is given, the notice must include the period for which the statement has validity.

By regulation 12, the Secretary of State may determine that supply chain statements will not be provided in relation to applications for CFDs under the first allocation round established further to the Allocation Regulations. Such a determination must be published.

Regulation 13 contains provisions requiring the Secretary of State to keep confidential information which is obtained further to an application made under regulation 9. By regulation 14, the Schedule is given effect, except in respect of Part 4.

Part 4

Regulation 15 provides for restrictions on liability for damages by the national system operator and persons connected with it.

Schedule

The Schedule provides that documents must be in writing and dated and provides for the methods by which a person may give a document to another person.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Department of Energy and Climate Change at 3 Whitehall Place, London, SW1A 2AW and is published with the Explanatory Memorandum alongside this instrument on www.legislation.gov.uk.

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