
STATUTORY INSTRUMENTS

2014 No. 2511

The Power Purchase Agreement Scheme Regulations 2014

PART 2

Power purchase agreement scheme

Terms of backstop power purchase agreements

Standard terms of BPPAs

3.—(1) Any BPPA entered into between a licensed supplier and an eligible generator must include the standard terms which are applicable under paragraph (3) on the date on which the eligible generator enters into the relevant contract.

(2) The standard terms which are issued, revised or amended under paragraph (3) must include provision about the matters which relevant supply licence conditions require to be included in a BPPA.

(3) The Secretary of State—

- (a) must issue the standard terms of a BPPA;
- (b) may from time to time revise the standard terms issued under sub-paragraph (a) as they apply to eligible generators whose relevant contract is entered into on or after the date specified under paragraph (5)(b) as being the date on which the revision applies; and
- (c) if paragraph (4) applies, may amend the standard terms issued under sub-paragraph (a) as they apply to eligible generators whose relevant contract is entered into before the date specified under paragraph (5)(b) as being the date on which the amendment applies.

(4) This paragraph applies where the Secretary of State is satisfied that—

- (a) the amendments referred to in that paragraph are necessary in order to take account of a new market structure, trading arrangement or industry code; and
- (b) the effect of all of the amendments taken together is such as to maintain so far as possible the balance of risk and reward as between the parties to the BPPA.

(5) The Secretary of State must—

- (a) publish the terms which are issued, revised or amended under paragraph (3); and
- (b) specify the date on or by reference to which any such term, revision or amendment applies (which must not be earlier than the date on which the term, revision or amendment is published).

Number of BPPAs subject to an auction held in respect of an eligible generator

4.—(1) In this regulation, “OLR application capacity”, in relation to a generating station, means the total capacity in megawatts in respect of which an electricity generator is seeking to enter into one or more BPPAs.

- (2) Where the OLR application capacity specified in respect of a generating station in an electricity generator’s project information is—
- (a) less than 100 megawatts, only one BPPA is to be subject to any auction held in respect of the generator;
 - (b) equal to or exceeds 100 megawatts, two or more BPPAs are to be subject to any auction held in respect of the generator.
- (3) In any case falling within paragraph (2)(b)—
- (a) the number of BPPAs which are to be subject to an auction held in respect of the electricity generator is to be determined in accordance with paragraphs (4) and (5); and
 - (b) the capacity in megawatts to which each BPPA relates, is to be determined in accordance with paragraph (6).
- (4) The number of BPPAs is to be determined by applying the formula—

$$\frac{C}{100} \times \frac{3}{2}$$

where “C” is the OLR application capacity in relation to the generating station.

- (5) Where the number resulting from paragraph (4) is not a whole number, that number is to be rounded up or down as follows—
- (a) if the first figure after the decimal point is 5 or more, round the number up to the nearest whole number;
 - (b) otherwise, round it down to the nearest whole number.
- (6) The capacity in megawatts to which each BPPA relates is to be determined by dividing the OLR application capacity by the number resulting from the application of paragraphs (4) and (5).

Procedure for entering into backstop power purchase agreements

Sending expressions of interest to all licensed suppliers

- 5.—(1) In these Regulations, “expression of interest” means an expression of interest submitted to the Authority by an electricity generator which—
- (a) states that the electricity generator is seeking to enter into one or more BPPAs in respect of a generating station specified in the expression of interest (or in respect of a proportion so specified of the capacity of that generating station);
 - (b) states that the electricity generator meets the eligibility requirements;
 - (c) contains the information which relevant supply licence conditions specify in relation to an expression of interest; and
 - (d) complies with any requirements specified under paragraph (2)(a) or (b).
- (2) The Authority—
- (a) may specify other information which is to be contained in an expression of interest;
 - (b) must specify the form of an expression of interest and the manner in which it is to be submitted; and
 - (c) must publish any requirements specified under sub-paragraph (a) or (b).
- (3) Within the period of two days which starts with the first day following the day on which the Authority receives an expression of interest, the Authority must give notice of it to all licensed suppliers together with a copy of the expression of interest.
- (4) Paragraph (3) does not apply where—

- (a) information which is submitted to the Authority in the electricity generator's expression of interest or project information or which the Authority holds under these Regulations does not support the statement referred to in paragraph (1)(b); or
 - (b) at any time before the Authority gives a notice under paragraph (3), the Authority is notified by the electricity generator that it withdraws its expression of interest.
- (5) In any case falling within paragraph (4), the Authority must give notice to the electricity generator which states that the generator's expression of interest will not be sent to licensed suppliers and states the Authority's reasons for its decision.

Determination as to whether electricity generator meets eligibility requirements

6.—(1) Where licensed suppliers are notified under regulation 5(3) of an expression of interest submitted by an electricity generator, the Authority must determine whether or not the electricity generator meets the eligibility requirements.

(2) Where the Authority determines that the electricity generator meets the eligibility requirements, it must take all of the steps required by regulation 7.

(3) The Authority's determination under paragraph (1) must be made by reference to information provided in the electricity generator's expression of interest or project information or which the Authority holds under these Regulations.

(4) The Authority cannot be satisfied that the electricity generator meets the eligibility requirements where the generator has failed to submit all of the project information.

(5) Where the electricity generator has failed to submit all of the project information, the Authority must give to the generator a notice specifying—

- (a) the further project information that remains to be submitted; and
- (b) the form of the information and the manner in which it is to be submitted.

(6) The Authority cannot be satisfied that the electricity generator meets the eligibility requirements where—

- (a) the electricity generator has (or a previous party to the relevant contract in respect of the generating station specified in the expression of interest has) failed to provide to the Authority any project information or confirmation requested in a notice under paragraph (5) or under paragraph 3(1) of the Schedule within the 5-day period starting with the date on which the notice was given;
- (b) the electricity generator has (or a previous party to the relevant contract in respect of the generating station specified in the expression of interest has) previously withdrawn an expression of interest in respect of the generating station after the date on which the electricity generator (or the previous party to the relevant contract) submitted to the Authority a statement of confirmation in respect of the expression of interest;
- (c) the electricity generator has (or a previous party to the relevant contract in respect of the generating station specified in the expression of interest has) failed to enter into a BPPA in respect of the generating station within 3 days of receiving from the Authority a copy of the BPPA under paragraph 5(6)(c), 7(3)(b), 9(5)(c) or 11(4)(b) of the Schedule which is signed by a licensed supplier; or
- (d) a BPPA previously entered into in respect of the generating station specified in the expression of interest was terminated by the OLR in exercise of a termination right under the BPPA in favour of the OLR and—

- (i) the electricity generator which was party to that BPPA did not commence proceedings in respect of the exercise of that right in a court of competent jurisdiction; or

- (ii) having commenced such proceedings, the electricity generator discontinued them or final judgment in the proceedings was given in favour of the OLR.
- (7) For the purposes of paragraph (6)(d)(ii), a judgment is final—
 - (a) if not appealed against, at the end of the period for bringing an appeal; or
 - (b) if appealed against, when the appeal (or any further appeal) has been disposed of.
- (8) For the purposes of paragraph (7)(b), an appeal is disposed of if—
 - (a) it is determined and the period for bringing any further appeal has ended; or
 - (b) it is abandoned or otherwise ceases to have effect.

OLR notice in respect of an eligible generator

- 7.—(1) Where regulation 6(2) applies, the Authority must—
 - (a) issue an OLR notice; and
 - (b) send a copy of it to all licensed suppliers.
- (2) An OLR notice in respect of an eligible generator must state the form and manner in which, and date by which, bids are to be submitted to the Authority for the purposes of an auction held in respect of the eligible generator.
- (3) The OLR notice sent to licensed suppliers under paragraph (1)(b) must be accompanied by—
 - (a) a copy of each BPPA which is to be subject to an auction held in respect of the eligible generator; and
 - (b) all of the other project information received by the Authority from the eligible generator in accordance with relevant supply licence conditions, apart from the eligible generator’s statement of confirmation.
- (4) For the purposes of paragraph (3)(a), a BPPA comprises the standard terms which the Authority determines is applicable to the eligible generator by virtue of regulation 3 and the schedule to the BPPA submitted by the generator which is entitled “Project Information”.
- (5) The Authority must send a copy of the OLR notice to the eligible generator together with one copy of each BPPA sent to licensed suppliers under paragraph (3).

Period for taking steps required by regulations 6 and 7

- 8.—(1) In respect of an electricity generator, the Authority must take the steps required by regulations 6 and 7 within the 5-day period which starts with the first day after—
 - (a) the end of the 4-day period which starts with the day on which the Authority receives an electricity generator’s expression of interest; or
 - (b) if later, the day on which the Authority receives the electricity generator’s statement of confirmation.
- (2) In determining when the 5-day period specified in paragraph (1) ends—
 - (a) in any case where a notice is given to the electricity generator under regulation 6(5) specifying project information which remains to be submitted by the electricity generator, no account is to be taken of the day on which the notice is given and each subsequent day until the first day following the day on which the information specified in the notice is received by the Authority; and
 - (b) in any case where information requested by the Authority under regulation 14(1) is not provided by the CFD counterparty within the 2-day period specified in regulation 14(2),

no account is to be taken of any day after the end of that 2-day period until the first day following the day on which the information is provided.

Circumstances before issue of OLR notice in which no BPPA is to be entered into

9.—(1) Paragraph (3) applies in respect of an electricity generator where, at any time after notice of the expression of interest is given to licensed suppliers under regulation 5(3) but before an OLR notice is issued—

- (a) the Authority is notified by the electricity generator that it withdraws its expression of interest;
- (b) the Authority does not receive the electricity generator’s statement of confirmation within the 10-day period which starts with the first day following the day on which the Authority receives the electricity generator’s expression of interest; or
- (c) a notice requesting further project information is given to the electricity generator under regulation 6(5) and the Authority does not receive the information specified in that notice within the 5-day period which starts with the date on which the notice is given.

(2) Paragraph (3) also applies where the Authority’s determination under regulation 6(1) is that the eligibility requirements are not met in respect of the electricity generator.

(3) Where this paragraph applies in respect of an electricity generator, the Authority—

- (a) must give a notice to the generator stating that no BPPA is to be entered into in respect of the generator and the reasons for its decision;
- (b) must inform all licensed suppliers that no BPPA is to be entered into in respect of the generator; and
- (c) must not otherwise take any further step under this Part.

(4) The Authority must take the steps required by paragraph (3)(a) and (b) as soon reasonably practicable after the duty to take the steps arises.

Circumstances after issue of OLR notice in which no BPPA is to be entered into

10.—(1) Paragraph (2) applies where, at any time after an OLR notice is issued in respect of an eligible generator and before the close of the auction held in respect of the generator—

- (a) the Authority is notified by the eligible generator that it withdraws its expression of interest;
- (b) a notice requesting an updated version of project information is given to the eligible generator under paragraph 3(1) of the Schedule and the eligible generator does not, within the 5-day period which starts with the date on which that notice is given, provide the Authority with an updated version or confirm to the Authority that there is no error in or omission from the project information; or
- (c) the Authority is notified of information which satisfies the Authority that the eligibility requirements are not in fact met in respect of the generator.

(2) Where this paragraph applies in respect of an eligible generator, the Authority—

- (a) must give a notice to the generator stating that no BPPA is to be entered into in respect of the generator and the reasons for its decision;
- (b) must inform all licensed suppliers that no BPPA is to be entered into in respect of the generator;
- (c) must terminate the auction being held in respect of the generator; and
- (d) must not otherwise take any further step under this Part.

(3) The Authority must take the steps required by paragraph (2)(a), (b) and (c) as soon reasonably practicable after the duty to take the steps arises.

Auction process for selecting a licensed supplier in respect of a BPPA

11.—(1) The Schedule to these Regulations makes provision in connection with auctions which are held in respect of eligible generators.

(2) Subject to the provisions of the Schedule, the Authority must conduct the auctions to determine which licensed supplier is the successful bidder (or the successful reserve bidder) in respect of each BPPA subject to an auction.

(3) The Authority may delegate to such person or persons as the Authority may determine any of its functions relating to the conduct of the auction.

Requirement to participate in auctions held in an OLR year

12.—(1) The Authority must, in respect of each OLR year—

- (a) determine in accordance with relevant supply licence conditions which licensed suppliers are required to participate in all auctions which are held in that OLR year in respect of eligible generators;
- (b) give a notice to each of those licensed suppliers stating that the licensed supplier is required by relevant supply licence conditions to participate in all such auctions held in that OLR year; and
- (c) publish a list for that OLR year of all licensed suppliers notified under sub-paragraph (b).

(2) The determination under paragraph (1) must be made—

- (a) in respect of the OLR year which ends on 31st March 2016, on or before 1st April 2015;
- (b) in respect of the OLR year which ends on 31st March 2017, on or before 1st September 2015; and
- (c) in respect of any other OLR year, not later than 1st September in the immediately preceding OLR year.

(3) For the purposes of paragraph (1), an auction in respect of an eligible generator is to be regarded as held in a particular OLR year if the expression of interest from the generator is received by the Authority in that OLR year.

Modification of certain deadlines in exceptional circumstances

13.—(1) This regulation applies to any function of the Authority (“relevant function”) which is conferred by—

- (a) regulation 5(3);
- (b) regulation 6;
- (c) regulation 7; or
- (d) paragraph 5(6), 7(3), 9(5) or 11(4) of the Schedule;

and, in relation to any relevant function, the “specified period” is the period specified in the provision conferring the function within which the Authority is required to discharge it.

(2) Where exceptional circumstances prevent the Authority from discharging any relevant function within the specified period—

- (a) the specified period does not apply to the Authority in the discharge of the relevant function;

- (b) the Authority must as soon as reasonably practicable give notice to the electricity generator and to all licensed suppliers of the circumstances which have occurred and the date by which the Authority expects to discharge the relevant function; and
 - (c) the date specified by the Authority under sub-paragraph (b) must be as soon as reasonably practicable after the end of the specified period.
- (3) Circumstances are to be regarded as exceptional for the purposes of paragraph (2) if they are beyond the reasonable control of the Authority or of any person to whom relevant functions are delegated under regulation 11(3).
- (4) For the purposes of paragraph (3)—
- (a) circumstances are not to be regarded as beyond the Authority’s reasonable control solely because they involve, or are caused by, a change in the arrangements for the sale and supply of electricity in the United Kingdom or a change of participants in those arrangements; but
 - (b) if the Authority receives more than 20 statements of confirmation in any one day in circumstances falling within sub-paragraph (a), paragraph (2)(a) to (c) shall apply to the Authority’s discharge of relevant functions in connection with each statement of confirmation received by it on that day which is in excess of a total of 20 such statements received on that day.

Information in connection with power purchase agreement scheme

CFD Counterparty to provide information requested by the Authority

14.—(1) For the purposes of enabling the Authority to make a determination under regulation 6(1) in respect of an electricity generator, the Authority may request a CFD counterparty to provide it with information about any relevant contract which has been entered into by that generator.

(2) Where a request is made under paragraph (1), the CFD counterparty must provide the information to the Authority within the period of 2 days which starts with the day on which the CFD counterparty receives the request.

Licensed suppliers to provide information requested by the Authority

15.—(1) The Authority may by notice require a licensed supplier to provide it with—

- (a) a statement of the amount of electricity the licensed supplier has supplied in Great Britain in an OLR year; and
- (b) any other information which the Authority believes the licensed supplier holds and which, in the Authority’s opinion, the Authority requires in order to discharge its functions in connection with the power purchase agreement scheme.

(2) A licensed supplier must comply with a requirement under paragraph (1) within such period as the Authority may specify when imposing the requirement.

(3) The Authority may by notice require an OLR which has entered into a BPPA to provide the Authority with a statement, in respect of any periodic levelisation period which falls wholly or partly within the period during which the BPPA is in force, of the electrical output of the electricity generator provided under the BPPA during that period.

(4) An OLR must comply with a requirement under paragraph (3) within such period as the Authority may specify when imposing the requirement.

Records to be maintained by the Authority

16.—(1) The Authority must establish and maintain records of each generating station in respect of which—

- (a) an electricity generator fails to provide any project information or confirmation requested in a notice under regulation 6(5) or paragraph 3(1) of the Schedule within the 5-day period starting with the date on which the notice was given;
- (b) an expression of interest is withdrawn by an electricity generator after the date on which the generator’s statement of confirmation in respect of the generating station was submitted;
- (c) an electricity generator fails to enter into a BPPA within 3 days of receiving a copy of the BPPA which was signed by a licensed supplier and sent to the generator under paragraph 5(6)(c), 7(3)(b), 9(5)(c) or 11(4)(b) of the Schedule; and
- (d) a BPPA is terminated by the OLR in exercise of a right of termination under the BPPA in favour of the OLR, where the circumstances specified in regulation 6(6)(d)(i) or (ii) apply in respect of the exercise of that right of termination.

(2) The Authority must also maintain—

- (a) a list of each BPPA which has been entered into between an eligible generator and an OLR;
- (b) a statement of the unique identifier for the relevant contract to which the eligible generator was a party at the time that the BPPA was entered into;
- (c) a statement of the management fee which is payable to the OLR under the BPPA, expressed as an amount for each megawatt hour of electricity purchased by the OLR; and
- (d) a statement of the date notified to the Authority by the OLR in accordance with relevant supply licence conditions as being the date on which the BPPA commenced.

(3) The Authority must make any record, list or statement maintained by it under paragraph (1) or (2) available for inspection by members of the public in a legible form at such times and in such place or places as the Authority may determine.

(4) The Authority must maintain and publish records of the standard terms which are issued, revised or amended under regulation 3 and the date on or by reference to which any such term, revision or amendment applies.

(5) In paragraph (2)(b), the “unique identifier” of a relevant contract is—

- (a) in relation to a contract for difference under Chapter 2 of Part 2 of the Act, the unique identifier assigned to the contract by the CFD counterparty under regulation 12(2)(a) of the Contracts for Difference (Standard Terms) Regulations 2014(1);
- (b) in relation to an investment contract within the meaning of Schedule 2 to the Act, the name specified in the contract by which the project to which the contract relates is known or any unique identifier assigned to the contract by a person to whom property, rights or liabilities under the contract are transferred by a scheme made under paragraph 16 of Schedule 2 to the Act.

Annual reports

17.—(1) On or before 31st December after the end of each OLR year the Authority must provide to the Secretary of State a report in respect of that OLR year setting out—

- (a) the total number of BPPAs entered into in that OLR year;
- (b) the total number of electricity generators which have entered into a BPPA in that OLR year;

(1) S.I. 2014/2012.

- (c) the total number of generating stations of each particular technology in respect of which BPPAs have been entered into in that OLR year;
 - (d) the total amount of management fees payable to OLRs under BPPAs which are in force for the whole or part of that OLR year;
 - (e) the total amount of electricity purchased by OLRs under BPPAs in that OLR year; and
 - (f) any information that the Authority is required to make public under these Regulations.
- (2) The Authority must publish any report it provides under paragraph (1).