
DRAFT STATUTORY INSTRUMENTS

2014 No.

The Contracts for Difference (Allocation) Regulations 2014

PART 4

Applications for CFDs

CHAPTER 1

Excluded applications

Excluded applications

14.—(1) An eligible generator may not make an application under this Part where the application is excluded under any of the following paragraphs (“an excluded application”).

(2) No application may be made in respect of a CFD unit where the unit is—

- (a) a generating station connected to a complete CCS system; or
- (b) a nuclear power station.

(3) No application may be made in respect of a CFD unit where the CFD unit is—

- (a) to be established as a hydro generating station; and
- (b) to have a generating capacity of 5 megawatts or less.

(4) No application may be made in respect of a CFD unit where—

- (a) the CFD unit uses or is to use as its source of energy—
 - (i) gas formed by the anaerobic digestion of material which is not landfill gas or sewage gas;
 - (ii) solar radiation when captured by a photovoltaic array; or
 - (iii) wind, other than in respect of an offshore wind CFD unit; and
- (b) in the case of a CFD unit described in sub-paragraph (a) which is to be established, it is to have a generating capacity of 5 megawatts or less.

(5) No application may be made in respect of a CFD unit to be altered where an accreditation or registration applies (or has applied) in respect of that unit.

(6) Subject to paragraph (7), no application may be made in respect of a CFD unit where the CFD unit—

- (a) is or is to be an offshore wind CFD unit; and
- (b) is to be established or altered in phases of construction.

(7) Paragraph (6) does not apply to a phased offshore wind CFD unit.

(8) No application may be made in respect of a CFD unit where the CFD unit is or is to be situated wholly or partially—

- (a) in Northern Ireland; or

- (b) in waters in or adjacent to Northern Ireland which are between the mean low water mark and the seaward limits of the territorial sea.
- (9) No application may be made in respect of a CFD unit to be altered where funding has been given in respect of that unit under any of the non-fossil fuel orders.
- (10) Subject to paragraph (11), no application may be made in respect of a CFD unit where a CFD or a capacity agreement applies to the CFD unit.
- (11) Paragraph (10) does not apply to a CFD unit described in that paragraph where the CFD unit—
 - (a) is a relevant fossil fuel generating station or is part of such a station; and
 - (b) is to be altered to be, or be part of, a biomass conversion station.
- (12) No application may be made in respect of a CFD unit unless—
 - (a) where the CFD unit is or is to be part only of a generating station, the electricity to be generated by the CFD unit is metered separately from the electricity generated by the other part of the generating station or any other generating station;
 - (b) where sub-paragraph (a) does not apply, the electricity to be generated by the CFD unit is metered separately from the electricity generated by any other generating station.
- (13) No application may be made in respect of a CFD unit to which an investment contract applies.
- (14) The allocation framework may, in respect of an allocation round to which it applies, set out further descriptions of applications which may not be made in that round.

CHAPTER 2

Applications and determinations

Commencement of allocation rounds

15. Chapters 2 to 4 apply where an allocation round has commenced further to an allocation round notice or a round variation notice.

Applications

16.—(1) A person may make an application where that person is an eligible generator in respect of the CFD unit described in the application.

(2) A person who makes an application permitted by paragraph (1) is “an applicant”.

(3) Up to and including the application closing date, an application may be withdrawn by the applicant at any time.

(4) The allocation framework may provide for circumstances where, after the application closing date, an application may be withdrawn or be treated as withdrawn.

(5) Subject to any provision described in paragraph (4), an application may not be withdrawn after the application closing date.

Determinations: qualifying applicants

17.—(1) The delivery body must determine whether or not an application qualifies to take part in the allocation process applicable to the application.

(2) Where an application does so qualify, that application is “a qualifying application” and the applicant in respect of that application is “a qualifying applicant”.

(3) An application is not a qualifying application unless the application—

(a) is one to which an allocation process applies in the allocation round;

- (b) is not an excluded application;
 - (c) meets the general qualification requirements set out or referred to in Chapter 3; and
 - (d) where applicable, meets the additional qualification requirements set out or referred to in Chapter 4.
- (4) An applicant must provide with the application—
- (a) the information necessary to enable the delivery body—
 - (i) to make the determination under paragraph (1); and
 - (ii) to give a CFD notification were the application to be a successful application, including the information listed or referred to in Schedule 1;
 - (b) where more than one set of standard terms⁽¹⁾ applies in an allocation round, a statement by the applicant which identifies the set which would apply in respect of the application were a CFD to be allocated; and
 - (c) where the applicant has reached a modification agreement⁽²⁾, a statement by the applicant which identifies the agreement.

Information to be provided by the Authority

18.—(1) In order to determine an application, the delivery body may require the Authority to inform it whether or not an accreditation or an application for accreditation applies to a relevant CFD unit.

(2) Where the Authority receives a request under paragraph (1), it must reply as soon as practicable in respect of information held by the Authority at the date on which the request is received⁽³⁾.

Notices of determinations

19.—(1) Subject to paragraph (4), the delivery body must give a notice to each applicant which states whether or not an application made by the applicant is a qualifying application.

- (2) A notice under paragraph (1) must—
- (a) subject to paragraph (3), be given no later than 10 working days after the application closing date; and
 - (b) where the delivery body determines that the application is not a qualifying application (“a non-qualification determination”), give reasons for that determination.

(3) The allocation framework which applies to the allocation round may provide for a different period than that stated in paragraph (2)(a) and, where such a period is provided, the obligation in paragraph (2)(b) applies in respect of that period.

(4) A notice is not required under paragraph (1) where, before the notice would otherwise be given,—

- (a) a termination notice has effect in respect of the allocation round; or
- (b) the application is withdrawn.

(1) See section 11(1) of the Energy Act 2014.

(2) See section 15(2) of the Energy Act 2014.

(3) The prohibitions on disclosure stated in section 19(4)(a) and (b) of the Act do not apply in respect of a disclosure required by virtue of section 19.

Reviews of non-qualification determinations

20.—(1) An applicant may give a notice (“a review notice”) to the delivery body to request a review of a non-qualification determination (“a non-qualification review”).

(2) A review notice must—

- (a) subject to paragraph (6), be given by a date (“the non-qualification review request date”) which is no later than 5 working days after the date of the notice containing the non-qualification determination;
- (b) contain the matters specified in paragraph (3) and be made in the form and manner as may be required by the delivery body; and
- (c) not contain any documentary evidence which was not provided to the delivery body in support of the application which is the subject of the non-qualification determination.

(3) The matters referred to in paragraph (2)(b) are—

- (a) a concise statement which—
 - (i) identifies the relevant part of the non-qualification determination in dispute; and
 - (ii) sets out the facts on which the applicant relies;
- (b) a summary of the grounds for disputing the non-qualification determination;
- (c) a succinct presentation of the arguments supporting each of the grounds for dispute; and
- (d) a schedule listing the documents submitted with the review notice.

(4) Where the delivery body receives a review notice in accordance with paragraph (2), it must give a notice (“a non-qualification review notice”) to the applicant which—

- (a) states whether or not the delivery body has determined to uphold the non-qualification determination; and
- (b) gives reasons for the determination.

(5) Subject to paragraph (6), a non-qualification review notice must be given by no later than 10 working days after the date on which the review notice is received.

(6) The allocation framework which applies to the allocation round may provide for a different period than that stated in paragraph (2)(a) or (5), and where such a different period is provided for, the obligation in paragraph (2)(a) or (5) applies in respect of that different period.

Additional applications

21.—(1) Except where paragraph (4) applies, no more than one application in respect of the same CFD unit may be made in the same allocation round, unless the prior application is withdrawn.

(2) Paragraph (3) applies where in respect of an application (“A”)—

- (a) a non-qualification determination has been given;
- (b) a review has upheld the non-qualification determination; and
- (c) the applicant has made an appeal or the period within which an appeal may be brought against the determination has not expired.

(3) Where this paragraph applies, a further application may be made in the same allocation round in respect of the relevant CFD unit to which A applies only where—

- (a) the Authority upholds the non-qualification determination or no appeal is made; and
- (b) the further application is made no later than the application closing date.

Requirements of applications

22.—(1) An applicant who makes an application must do so—

- (a) in the form and manner required by the delivery body; and
- (b) no later than the application closing date.

(2) Where an application has been made in accordance with paragraph (1), the delivery body must give a notice to the applicant which states the date of receipt of the application.

CHAPTER 3

General qualification requirements

Requirement for applicable planning consents

23.—(1) Paragraphs (2) to (5) are subject to paragraph (7).

(2) Subject to paragraph (3), the applicant must provide copies of the applicable planning consents which apply to any works (“relevant works”) which enable—

- (a) the relevant CFD unit to be established or altered;
- (b) electricity generated from the relevant CFD unit to be supplied, as applicable, to—
 - (i) the national transmission system for Great Britain;
 - (ii) the distribution system; or
 - (iii) a private network.

(3) Paragraph (2) does not require the provision of any of the applicable planning consents in respect of any relevant works to which a connection agreement applies, where those works are undertaken by a person other than the applicant.

(4) “Relevant works” includes any of the following works—

- (a) the alteration, construction or removal of any plant, building or other structure;
- (b) the alteration, installation or removal of any cable, line, pipeline or other service media;
- (c) any works associated with the matters described in sub-paragraph (a) or (b).

(5) Paragraph (2) applies in respect of relevant works undertaken or to be undertaken by the applicant or any other person on the applicant’s behalf.

(6) Where the applicant considers that in respect of the relevant works—

- (a) any of the applicable planning consents do not apply; or
- (b) a general permission or consent or an exemption applies,

the applicant must provide details of those matters to the delivery body.

(7) The allocation framework which applies to an allocation round may, in respect of the allocation round to which the framework applies, amend, add to or remove the requirements in any of paragraphs (2) to (5) and the general qualification requirements are so modified where such an amendment, addition or removal is made.

Applicable planning consents

24.—(1) “Applicable planning consents” are—

- (a) a development order or, in respect of relevant works in waters in or adjacent to Wales up to the seaward limits of the territorial sea, a TWA order;
- (b) a planning permission;
- (c) a section 36 consent;

(d) where any relevant works involve a licensable marine activity, a marine licence.

(2) In this regulation—

“development order” means a development consent order under section 114 of the Planning Act 2008(4);

“licensable marine activity” has the meaning given—

(a) except where paragraph (b) applies, in section 66 of the Marine and Coastal Access Act 2009(5); or

(b) in respect of relevant works in the Scottish marine area, in section 21 of the Marine (Scotland) Act 2010(6);

“marine licence” has the meaning given—

(a) except where paragraph (b) applies, in Part 4 of the Marine and Coastal Access Act 2009; or

(b) in respect of relevant works in the Scottish marine area, in Part 4 of the Marine (Scotland) Act 2010;

“planning permission” means in respect of relevant works in—

(a) England or Wales, planning permission under Part 3 of the Town and Country Planning Act 1990(7);

(b) Scotland, planning permission under Part 3 of the Town and Country Planning (Scotland) Act 1997(8);

“Scottish marine area” has the meaning given by section 1 of the Marine (Scotland) Act 2010;

“section 36 consent” means a consent under section 36 of the Electricity Act 1989(9);

“TWA order” means an order under section 3 of the Transport and Works Act 1992(10).

Connection agreements

25.—(1) Paragraphs (2) to (4) are subject to paragraph (5).

(2) Where a direct connection or a partial connection applies or is to apply to the relevant CFD unit, the applicant must provide a copy of each of the connection agreements applicable to the relevant CFD unit which allows such connection.

(3) Where a direct connection or a partial connection does not apply or is not to apply to the relevant CFD unit, the applicant must provide a statement that—

(a) no such connection is, or is to be, applicable; and

(b) no agreement to allow such a connection has been obtained or is to be sought during the period in which a CFD may apply to the relevant CFD unit.

(4) Where a partial connection applies or is to apply to a relevant CFD unit, the applicant must provide a statement setting out how data in respect of metering of electricity supply is to be provided to the CFD counterparty.

(4) 2008 c. 29. Section 114 was amended by section 128(2) of, and paragraphs 1 and 55(1) and (2)(a) of Part 1 of Schedule 13 to, the Localism Act 2011 (c. 20).

(5) 2009 c. 23.

(6) 2010 asp 5.

(7) 1990 c. 8.

(8) 1997 c. 8.

(9) 1989 c. 29. Section 36 has been amended by: section 93 of the Energy Act 2004 (c. 20), section 36 of, and Schedule 2 to, the Planning Act 2008 (c. 29), section 12 of the Marine and Coastal Access Act 2009 (c. 23) and, in relation to Scotland, by S.I. 2006/1054.

(10) 1992 c. 42. Section 3 has been amended by section 36 of, and Schedule 2 to, the Planning Act 2008.

(5) The allocation framework which applies to an allocation round may amend, add to or remove the requirements in any of paragraphs (2) to (4) and the general qualification requirements are so modified where such an amendment, addition or removal is made.

(6) In this regulation—

“connection agreement” means an agreement to connect to—

- (a) the national transmission system for Great Britain; or
- (b) the distribution system,

entered into by the operator of the relevant system;

“direct connection” means a connection to—

- (a) the national transmission system for Great Britain; or
- (b) the distribution system,

which applies to all the electricity generated by the relevant CFD unit;

“partial connection” means a connection to—

- (a) the national transmission system for Great Britain; or
- (b) the distribution system,

which applies to part only of the electricity generated by the relevant CFD unit.

CHAPTER 4

Additional qualification requirements

Statements in relation to supply chains

26.—(1) Paragraph (3) applies where the two following conditions apply.

(2) The first condition is that the relevant CFD unit—

- (a) is to be established with a threshold generating capacity; or
- (b) is to be altered and the unit—

(i) before and after the alteration will have a threshold generating capacity; or

(ii) in consequence of the alteration, will have a threshold generating capacity.

(3) The second condition is that, in respect only of the first allocation round, the Secretary of State has not made a determination under regulation 12(2) of the Electricity Market Reform (General) Regulations 2014⁽¹¹⁾ that statements under regulation 11 of those Regulations will not be provided for that round.

(4) Where this paragraph applies, the applicant must provide a statement made by the Secretary of State under regulation 11 of the Electricity Market Reform (General) Regulations 2014 in relation to the relevant CFD unit.

(5) In this regulation, “threshold generating capacity” means a generating capacity of 300 megawatts or more.

Offshore CFD units

27.—(1) This regulation applies where the relevant CFD unit is or is to be an offshore generating station or part of such a station.

(2) The applicant must demonstrate that a lease or an agreement for lease has been granted by the Crown Estate in respect of the location of the relevant CFD unit.

⁽¹¹⁾ S.I. 2014/xxx.

(3) In this regulation, “offshore generating station” means a generating station which is located wholly in offshore waters.

Supplemental requirements

28.—(1) An allocation framework may in respect of an allocation round provide for requirements (“supplemental requirements”) in relation to any or all types of eligible generating station which are in addition to the requirements in this Chapter.

(2) To the extent that any supplemental requirements apply to an application, the applicant in respect of that application must satisfy those requirements as additional qualification requirements for the allocation round.

(3) Supplemental requirements may include any of the following requirements in relation to a CFD unit—

- (a) the amount of electricity to be generated;
- (b) location;
- (c) the manner and security of supply of fuel to be used to generate electricity;
- (d) the metering of electricity to be generated;
- (e) the type of fuel to be used to generate electricity.