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DRAFT STATUTORY INSTRUMENTS

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**2014 No.**

**The Electricity Capacity Regulations 2014**

**PART 4**

Capacity auctions

CHAPTER 1

Determining whether capacity auction is to be held

**Determining whether capacity auction is to be held**

**10.**—(1) The Secretary of State must determine—

- (a) within 4 months after this regulation comes into force, whether a capacity auction is to be held in accordance with regulation 87 for the delivery year starting on 1st October 2018;
- (b) by 15th June in 2015 and 2016, whether a T-4 auction is to be held in the auction window starting on 1st September in that year; and
- (c) by 15th June in 2017 and each subsequent year—
  - (i) whether a T-4 auction is to be held; and
  - (ii) whether a T-1 auction is to be held,in the auction window starting on 1st September in that year.

(2) The Secretary of State must, under paragraph (1)(c)(ii), determine that a T-1 auction is to be held, except where paragraph (3) or (4) applies.

(3) The Secretary of State may determine that a T-1 auction is not to be held if the electricity capacity report for the year in which the determination is to be made contains a forecast that no DSR providers will apply to bid in such an auction.

(4) The Secretary of State must determine that a T-1 auction is not to be held for a delivery year if no T-4 auction was held for that delivery year.

(5) The Secretary of State must publish the determinations under paragraph (1) as soon as reasonably practicable after making them.

(6) A determination that a capacity auction is to be held is subject to regulation 26.

CHAPTER 2

Auction parameters

**Meaning of auction parameters**

**11.**—(1) “Auction parameters”, in relation to a capacity auction, means, subject to paragraph (2), such of the following as are determined by the Secretary of State for that capacity auction under regulation 12 or 29(8)—

- (a) the demand curve;

- (b) the target capacity;
- (c) the price cap;
- (d) the price-taker threshold;
- (e) the 15 year minimum £/kW threshold and 3 year minimum £/kW threshold;
- (f) the base period applicable for the purpose of calculation of capacity payments;
- (g) price duration equivalences for each possible clearing price in the capacity auction; and
- (h) in relation to a DSR transitional auction, the parameter specified in regulation 29(8).

(2) If any of the parameters referred to in paragraph (1) for a capacity auction have been adjusted in accordance with these Regulations or capacity market rules, references to the auction parameters for that capacity auction are to the parameters as so adjusted.

(3) In paragraph (1)—

“15 year minimum £/kW threshold” means the minimum amount of capital expenditure per kilowatt of de-rated capacity which a bidder must commit to spending on a generating CMU to be eligible to bid for a capacity obligation for a period of more than 3 and up to 15 delivery years;

“3 year minimum £/kW threshold” means the minimum amount of capital expenditure per kilowatt of de-rated capacity which a bidder must commit to spending on a generating CMU to be eligible to bid for a capacity obligation for a period of 2 or 3 delivery years;

a “price duration equivalence” means the price at which a bid for a capacity obligation for a specified duration of 2 or more delivery years is to be treated as equivalent to a bid for a capacity obligation for one delivery year, for the purposes of determining—

- (a) in respect of which bids capacity obligations are to be awarded; and
- (b) the capacity cleared price applying to those capacity obligations.

### **Determination of auction parameters by the Secretary of State**

**12.**—(1) For each capacity auction, the Secretary of State must determine each of the auction parameters referred to in sub-paragraphs (a) to (d) of regulation 11(1).

(2) For each T-4 auction, the Secretary of State must also—

- (a) determine the auction parameters referred to in sub-paragraphs (e) and (f) of regulation 11(1); and
- (b) determine whether price duration equivalences are to apply in that capacity auction and, if so, determine those price duration equivalences.

(3) The determinations under paragraphs (1) and (2) are subject to any adjustments which may be made under regulations 13 and 28.

(4) The Secretary of State must—

- (a) make the determinations under paragraph (1) and, if applicable, paragraph (2), and give notice of them to the Delivery Body as soon as reasonably practicable after publishing a decision to hold a capacity auction; and
- (b) publish the determinations.

(5) In making the determinations under paragraphs (1) and (2), the Secretary of State must take into account—

- (a) the electricity capacity report;
- (b) the reliability standard; and
- (c) the matters specified in section 5(2) of the Act.

(6) If the target capacity determined by the Secretary of State is different from a recommendation in the electricity capacity report, the determination must include an explanation of—

- (a) the Secretary of State’s reasons for not following that recommendation; and
- (b) the basis upon which the Secretary of State has made the determination.

### **Adjustment of auction parameters following prequalification**

13.—(1) After the Secretary of State receives a notification from the Delivery Body under regulation 23, the Secretary of State may decide to adjust any of the auction parameters for the capacity auction to which the notification relates.

(2) The Secretary of State must make any decision under paragraph (1), and give notice of any adjustments to the Delivery Body, within 5 working days after receiving the notification from the Delivery Body.

## CHAPTER 3

### Eligibility criteria and prequalification

#### **Eligibility to bid in capacity auctions**

14.—(1) An applicant is eligible to bid in a capacity auction in respect of a CMU if—

- (a) the CMU has prequalified for the capacity auction; and
- (b) the applicant is the person who applied for its prequalification under capacity market rules.

(2) A CMU has prequalified for a capacity auction if, by 11 working days before the start of the capacity auction—

- (a) the Delivery Body has determined under capacity market rules, or under Chapter 1 of Part 10 (dispute resolution and appeals), that the CMU has prequalified; or
- (b) the Delivery Body has registered the CMU on the capacity market register as a prequalified CMU in accordance with a direction of the Authority or the court under Chapter 1 of Part 10.

#### **General eligibility criteria**

15.—(1) The Delivery Body must not prequalify a CMU for a capacity auction unless it meets the general eligibility criteria.

(2) The general eligibility criteria for a CMU are the conditions specified in paragraphs (3) to (5).

(3) The first condition is that the CMU is in Great Britain or the offshore area.

(4) The second condition is that the connection capacity of the CMU is equal to or greater than 2MW (the “minimum capacity threshold”).

(5) The third condition is that the CMU is not an CMU which, by virtue of regulations 16 to 18, the Delivery Body must not prequalify for a capacity auction.

#### **Excluded capacity: low carbon support scheme CMUs**

16.—(1) The Delivery Body must not prequalify a CMU (“CMU i”) in respect of which—

- (a) if CMU i is accredited under the FIT Order, the RHI Regulations or the ROO, the applicant does not provide a non-support confirmation by the close of the prequalification window; or

(b) if an application (which is not determined) for a low carbon exclusion has been made in respect of CMU i for any of the delivery period, the applicant does not provide a withdrawal confirmation by the close of the prequalification window.

(2) The Delivery Body must not prequalify CMU i if CMU i is subject to a CFD which applies for any of the delivery period.

(3) The Delivery Body may request an applicant or the CFD counterparty to provide it with such information as it may require for the purposes of paragraphs (1) and (2), and the applicant or CFD counterparty must, to the extent that it holds the information, comply with such a request as soon as reasonably practicable.

(4) In this regulation—

“co-firing CMU” means a generating CMU consisting of one or more generating units which have, in any month after March 2013, generated electricity in the way described in Schedule 2 to the ROO(1) as “co-firing of regular bioliquid”, “low-range co-firing”, “mid-range co-firing”, “high-range co-firing” or “unit conversion”;

“the FIT Order” means the Feed-in Tariffs Order 2012(2);

“low carbon exclusion” means—

(a) an accreditation under—

- (i) the FIT Order;
- (ii) the RHI Regulations; or
- (iii) the ROO; or

(b) a CFD;

“non-support confirmation” means a declaration in writing to the Delivery Body from an applicant—

(a) that the period for which relevant support may be paid or issued under the FIT Order, the RHI Regulations or the ROO in respect of CMU i will have expired before the start of the delivery period; or

(b) that—

- (i) CMU i is a co-firing CMU; and
- (ii) if the applicant is awarded a capacity obligation in respect of CMU i, the applicant will not, except in accordance with regulation 34, seek to obtain relevant support in respect of CMU i for any of the delivery period;

“relevant support” means—

(a) a FIT payment within the meaning referred to in the FIT Order;

(b) a periodic support payment within the meaning of the RHI Regulations; or

(c) a ROC;

“the RHI Regulations” means the Renewable Heat Incentive Scheme Regulations 2011(3);

“withdrawal confirmation” means a notice to the Delivery Body from the applicant in respect of CMU i that the applicant has withdrawn its application for a low carbon exclusion in respect of that CMU.

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(1) The definitions of “co-firing of regular bioliquid”, “low-range co-firing”, “mid-range co-firing”, “high-range co-firing” and “unit conversion” were inserted into Schedule 2 to S.I. 2009/785 by S.I. 2013/768, and were inserted into Schedule 2 to S.S.I. 2009/140 by S.S.I. 2013/116.

(2) S.I. 2012/2782, amended by S.I. 2013/1099.

(3) S.I. 2011/2860, amended by S.I. 2012/1999, S.I. 2013/1033, S.I. 2013/2410 and S.I. 2013/3179.

### **Excluded capacity: NER 300 and CCS grant scheme CMUs**

17.—(1) The Delivery Body must not prequalify a CMU (“CMU i”) unless the applicant has provided to it, by the close of the prequalification window, a declaration in writing that no relevant grant has been, or will be, paid in respect of CMU i.

(2) In this regulation—

“relevant grant” means a grant under a relevant scheme, the first payment of which is made, or to be made, within the period of 10 years immediately before the commencement of the delivery period; and

“relevant scheme” means a scheme of financial assistance provided under—

- (a) NER 300;
- (b) section 1(1) of the Energy Act 2010<sup>(4)</sup> in respect of a CCS demonstration project within the meaning of that section; or
- (c) section 5(1) of the Science and Technology Act 1965<sup>(5)</sup> to support carbon capture and storage.

(3) In paragraph (2), “NER 300” means the competition established under Article 10a(8) of [Directive 2003/87/EC](#) of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council [Directive 96/61/EC](#)<sup>(6)</sup>.

### **Excluded capacity: long term STOR CMUs**

18.—(1) The Delivery Body must not prequalify a CMU (“CMU i”) that is the subject of a relevant STOR contract unless the applicant has provided to it, by the close of the prequalification window, a withdrawal declaration.

(2) In this regulation, “relevant STOR contract” means a contract entered into pursuant to a tender by the national system operator for short term operating reserve—

- (a) between the national system operator and a person responsible for CMU i;
- (b) which relates to CMU i, or to one or more generating units or demand side response CMU components comprised in CMU i; and
- (c) where—
  - (i) the contract is entered into before the date on which this regulation comes into force; and
  - (ii) the expiry date of the contract is after the start of that delivery year.

(3) For the purposes of paragraph (2), a contract for short term operating reserve—

- (a) is entered into on the date on which the national system operator notifies its acceptance of a tender; and
- (b) expires on the date specified in or determined in accordance with the contract.

(4) In paragraph (1), a “withdrawal declaration” means a declaration in writing by an applicant that, if the applicant is awarded a capacity obligation for CMU i, it will offer to the national system operator to withdraw from or terminate the relevant STOR contract with effect from a date no later than the start of the delivery period.

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(4) [2010 c.27](#).

(5) [1965 c.4](#). Section 5(1) has been amended by [S.I. 1971/719](#), [S.I. 1992/1296](#), [S.I. 1995/2785](#) and [S.I. 1995/2985](#). Other amendments have been made to section 5 which are not relevant.

(6) [OJ L 275, 25.10.2003, p.32](#). Aspects of NER 300 are implemented by Commission Decision 2010/670/EU ([OJ L 290, 6.11.2010, p.39](#)). Those projects which have received a grant under NER 300 can be examined at: [www.ec.europa.eu/clima/funding/ner300/index\\_en.htm](http://www.ec.europa.eu/clima/funding/ner300/index_en.htm).

**Regulations 16 to 18: interpretation**

19. In regulations 16 to 18, “delivery period” means the delivery year or period of delivery years for which a capacity obligation would be awarded in respect of a CMU (“CMU i”) if a bid in respect of CMU i were accepted at the capacity auction for which the applicant is applying for prequalification.

**CHAPTER 4****Determining eligibility and holding capacity auctions****General duty of Delivery Body**

20.—(1) This Chapter applies where the Secretary of State has determined that a capacity auction is to be held.

(2) The Delivery Body must exercise the functions conferred on it by—

- (a) this Chapter; and
- (b) capacity market rules.

(3) The Delivery Body must exercise those functions in accordance with these Regulations and capacity market rules.

**Auction guidelines**

21.—(1) The Delivery Body must, before the start of the prequalification window, publish guidelines for the capacity auction (“auction guidelines”).

(2) The auction guidelines must contain—

- (a) the provisional date on which the capacity auction is to start;
- (b) details of how to apply to prequalify to bid in the capacity auction;
- (c) the timetable for submission and determination of applications, which must in particular include the closing date for submission of applications;
- (d) the auction parameters;
- (e) the de-rating factor for each generating technology class, as determined by the Delivery Body under capacity market rules; and
- (f) such other information as may be—
  - (i) required by capacity market rules; or
  - (ii) directed by the Secretary of State or the Authority.

(3) The Delivery Body must, not less than 3 weeks before the date specified under paragraph (2) (a), publish a final version of the auction guidelines which contains—

- (a) the date on which the capacity auction is to start; and
- (b) any changes made to the auction parameters under regulation 13.

**Determination of eligibility**

22. The Delivery Body must—

- (a) determine each application for prequalification that is made to it in accordance with capacity market rules;
- (b) notify each applicant of its determination; and
- (c) reconsider a determination, if an applicant requests it to do so under regulation 69.

### **Notifying prequalification results to the Secretary of State**

**23.**—(1) The Delivery Body must, as soon as reasonably practicable after it has determined all the applications made to it, notify the Secretary of State of the aggregate de-rated capacity of—

- (a) CMUs which have prequalified to bid in the capacity auction;
- (b) CMUs in respect of which applications were rejected; and
- (c) generating CMUs in respect of which the Delivery Body received—
  - (i) an opt-out notification stating that the CMU will be closed down, decommissioned or otherwise non-operational by the commencement of the delivery year;
  - (ii) an opt-out notification stating that the CMU will be temporarily non-operational for all the winter of the delivery year but will be operational thereafter; or
  - (iii) an opt-out notification stating that the CMU will remain operational during the delivery year.

(2) The Delivery Body must, at the same time—

- (a) advise the Secretary of State whether, in light of the data referred to in paragraph (1), the demand curve for the capacity auction should be adjusted; and
- (b) provide a recommendation to the Secretary of State as to the adjustment, if any, that should be made to the demand curve.

(3) The Delivery Body must give the advice and recommendation in accordance with any directions given by the Secretary of State.

(4) In paragraph (1), “opt-out notification” has the meaning given in the Rules.

### **Holding the capacity auction**

**24.**—(1) The Delivery Body must, subject to regulation 26, hold a capacity auction starting on the date specified in the final auction guidelines published under regulation 21(3).

(2) The Delivery Body may arrange for another person to conduct the capacity auction on its behalf, and in these Regulations “the auctioneer” means—

- (a) the Delivery Body, if it conducts the capacity auction itself; or
- (b) the person appointed by the Delivery Body to conduct the capacity auction.

(3) The auctioneer must conduct the capacity auction in accordance with—

- (a) capacity market rules;
- (b) the auction guidelines; and
- (c) any instructions given by the Secretary of State on how price decrements are to be set.

(4) The Delivery Body is responsible for the performance of functions conferred on the auctioneer by these Regulations or capacity market rules, whether or not the Delivery Body performs those functions itself.

(5) In paragraph (3)(c), “price decrement” means the amount by which the bidding price is to be decreased from one bidding round of a capacity auction to the next.

### **Notification of results**

**25.**—(1) The Delivery Body must, after a capacity auction is completed—

- (a) as soon as reasonably practicable notify the auction results to the Secretary of State;
- (b) within one working day, give notice to each bidder of whether or not its bid was a successful bid; and

- (c) within 8 working days, publish the auction results.
- (2) In paragraph (1) “the auction results” means—
  - (a) the auction clearing price;
  - (b) the total amount of capacity in respect of which successful bids were made;
  - (c) the CMUs in respect of which successful bids were made;
  - (d) in respect of each such CMU—
    - (i) the de-rated capacity of the CMU, and, in the case of a demand side response CMU, its DSR bid capacity if different; and
    - (ii) the duration of capacity obligation for which, and the price at which, the successful bid was made.
- (3) In paragraphs (1) and (2), a “successful bid” means a bid that, subject to regulation 27, results in the award of a capacity obligation to the bidder.

### **Cancellation, postponement or stopping of capacity auction**

**26.**—(1) A capacity auction may not be cancelled, postponed or stopped except as provided in this regulation.

- (2) The Delivery Body—
  - (a) must cancel or postpone a capacity auction if directed to do so by the Secretary of State under paragraph (3); and
  - (b) may postpone or stop a capacity auction if, in the Delivery Body’s opinion, the capacity auction cannot be conducted fairly and in accordance with regulation 24(3), because of a failure of the auction IT system or any other exceptional circumstances.
- (3) The Secretary of State—
  - (a) must, before the date on which the capacity auction is to start, direct the Delivery Body to cancel or postpone the capacity auction if, in the Secretary of State’s opinion, were the capacity auction to proceed the awarding of capacity agreements or making of capacity payments to successful bidders could breach the law relating to state aid;
  - (b) may, at any time before the date on which the capacity auction is to start, direct the Delivery Body for any other reason—
    - (i) to postpone a capacity auction for an indefinite period; or
    - (ii) to start the capacity auction on a later date than the date specified in auction guidelines.
- (4) If the Delivery Body postpones or stops a capacity auction under paragraph (2)(b), the Delivery Body must hold or restart the capacity auction at a later date, and must comply with regulation 28(3)(b) and (c) in relation to the rearranged capacity auction.
- (5) If the Secretary of State gives a direction under paragraph (3)(a) to postpone a capacity auction, the Secretary of State—
  - (a) may subsequently direct the Delivery Body to rearrange the capacity auction if the Secretary of State is, at the date of the later direction, satisfied that the awarding of capacity agreements and making of capacity payments to successful bidders would not breach the law relating to state aid; and
  - (b) must otherwise direct the Delivery Body to cancel the capacity auction.
- (6) If the Secretary of State gives a direction under paragraph (3)(b) to postpone a capacity auction, the Secretary of State must as soon as reasonably practicable give a further direction to the Delivery Body to rearrange or cancel the capacity auction.

(7) Paragraphs (5)(a) and (6) are subject to regulation 28(4).

(8) If the Secretary of State directs the Delivery Body to cancel or postpone a capacity auction, the Secretary of State must, not later than 4 weeks after giving that direction, publish the reasons for it.

#### **Power to annul capacity auction**

**27.**—(1) The Secretary of State may, within 7 working days after a capacity auction is completed, annul the capacity auction if it appears to the Secretary of State that there are reasonable grounds to suspect that—

- (a) there was an irregularity in relation to the capacity auction; and
- (b) the irregularity affected—
  - (i) the auction clearing price; or
  - (ii) the CMUs which were successful in the capacity auction.

(2) For the purposes of paragraph (1) there is an irregularity if, but only if, the capacity auction was not conducted in accordance with regulation 24(3).

(3) If the Secretary of State decides to annul a capacity auction, the Secretary of State must—

- (a) immediately publish that decision; and
- (b) not later than 4 weeks after making that decision, publish the reasons for it.

#### **Rearranged capacity auctions**

**28.**—(1) If the Secretary of State gives a direction under regulation 26(5) or (6) to rearrange a capacity auction, the Secretary of State may, subject to paragraph (4)—

- (a) give directions to the Delivery Body about the holding of that capacity auction; and
- (b) decide to adjust any of the auction parameters for that capacity auction.

(2) Directions under paragraph (1)(a) may include a direction to re-open prequalification for the capacity auction, and must include such a direction if any of the auction parameters are adjusted.

(3) The Delivery Body must—

- (a) comply with any directions under paragraph (1);
- (b) publish a revised version of the auction guidelines for the rearranged auction; and
- (c) ensure that a rearranged capacity auction is completed by the earlier of—
  - (i) the end of the auction window; or
  - (ii) 6 months after the date of any direction by the Secretary of State to hold a rearranged capacity auction.

(4) The Secretary of State must not give directions under regulation 26(5)(a) or (6), or paragraph (1) of this regulation, if the effect of those directions is that it would not be reasonably practicable for the Delivery Body to comply with paragraph (3)(c).

### **CHAPTER 5**

#### **DSR transitional auctions**

#### **DSR transitional auctions**

**29.**—(1) A “DSR transitional auction” is a capacity auction in which bids may only be made for a one year capacity agreement in respect of—

- (a) a demand side response CMU; or

- (b) a non-CMRS distribution CMU with a connection capacity not exceeding 50MW.
- (2) The Delivery Body must hold a DSR transitional auction—
  - (a) in the auction window commencing on 1st September 2015, for the 2016-17 delivery year; and
  - (b) in the auction window commencing on 1st September 2016, for the 2017-18 delivery year.
- (3) Following a DSR transitional auction, a successful bidder must, in accordance with capacity market rules, elect whether to be issued with a capacity agreement for—
  - (a) a time banded capacity obligation; or
  - (b) a non-time banded capacity obligation.
- (4) A time banded capacity obligation is an obligation to provide capacity during such times of the day and such months of a delivery year as are specified in capacity market rules.
- (5) A non-time banded capacity obligation is an obligation to provide capacity at any time during a delivery year.
- (6) Capacity payments for a non-time banded capacity obligation are payable at a rate equal to the auction clearing price.
- (7) Capacity payments for a time banded capacity obligation awarded following the DSR transitional auction held under paragraph (2)(a) are payable at a rate equal to 70% of the auction clearing price.
- (8) The Secretary of State must determine as an auction parameter the rate, expressed as a percentage of the auction clearing price, at which capacity payments are to be payable for a time banded capacity obligation awarded following the DSR transitional auction held under paragraph (2) (b).
- (9) The Secretary of State must—
  - (a) determine the auction parameters under—
    - (i) regulation 12(1); and
    - (ii) paragraph (8);
  - (b) give notice of them to the Delivery Body as soon as reasonably practicable after making those determinations; and
  - (c) publish the determinations.
- (10) Chapters 1 to 4 of this Part apply in relation to DSR transitional auctions with the modifications that—
  - (a) regulation 12 applies as if paragraphs (4), (5)(a) and (b) and (6) were omitted; and
  - (b) regulation 23 applies as if paragraphs (1)(c) and (2) to (4) were omitted.
- (11) In this regulation, “non-CMRS distribution CMU” means a CMU consisting of one or more non-CMRS distribution units, within the meaning given in regulation 5(8).