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DRAFT STATUTORY INSTRUMENTS

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**2014 No.**

**The Electricity Capacity Regulations 2014**

**PART 4**

**Capacity auctions**

**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.I. 2009/140 by 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.