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DRAFT STATUTORY INSTRUMENTS

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**2016 No.**

**The Contracts for Difference (Miscellaneous  
Amendments) Regulations 2016**

**PART 3**

**Amendments to the Contracts for Difference (Allocation) Regulations 2014**

**Amendments to the Contracts for Difference (Allocation) Regulations 2014**

4. The Contracts for Difference (Allocation) Regulations 2014 are amended as follows.

**Amendment to regulation 2**

5. In regulation 2 (interpretation)—

- (a) in the definition of “distribution system” for “has the meaning given by” substitute “means a system, other than a private network, of the type described in”;

- (b) insert at the appropriate place—

““private network” means a network for the distribution of electricity which is not operated by a person authorised to distribute electricity under a licence granted or treated as granted under section 6(1)(c) of the Electricity Act 1989(1);”;

““target commissioning date” means the intended date, being a date within the target commissioning window, for the generation of electricity to begin by a CFD unit once it is established or altered;”;

““target commissioning window” means the period in which the generation of electricity must take place by a CFD unit once it is established or altered, the duration of which is listed in the allocation framework for each type of eligible generating station;”;

““target commissioning window start date” means the date on which the target commissioning window begins;”;

““target dates” means the target commissioning date and the target commissioning window start date;”;

- (c) for the definition of “working day”, substitute—

““working day” means a day that is not a Saturday or Sunday, Christmas Day, Good Friday or any day that is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971(2).”.

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(1) 1989 c. 29. Section 6 was amended by section 30 of the Utilities Act 2000 (c. 27). Other amendments have been made to section 6 but none is relevant to this provision.

(2) 1971 c. 80.

#### **Amendment to regulation 14**

6. In regulation 14 (excluded applications)—
- (a) in paragraph (5), for “unit to be altered” substitute “unit to be established or altered”;
  - (b) for paragraph (10) substitute—
    - “(10) No application may be made in respect of a CFD unit in relation to which—
      - (a) a CFD applies;
      - (b) a capacity agreement applies; or
      - (c) an application for a capacity agreement has been made but has not been determined.    - (10A) For the purposes of paragraph (10)(c)—
      - (a) an application for a capacity agreement has been made when an application is made for prequalification in accordance with the Electricity Capacity Regulations 2014<sup>(3)</sup> and capacity market rules made under Chapter 3 of Part 2 of the Energy Act 2013 (“CM rules”); and
      - (b) an application for a capacity agreement has been determined when, in accordance with the Electricity Capacity Regulations 2014 and CM rules, it is no longer possible to obtain a capacity agreement as a consequence of that application.”.

#### **Amendment to regulation 14B**

7. In regulation 14B (grounds for granting exemption certificates), after paragraph (8) insert—
- “(9) Where E, P1, P2 or P3 is an unincorporated association, the conditions relating to E, P1, P2 or P3 in paragraphs (4) and (5) apply as if E, P1, P2 or P3 means any member of the unincorporated association.
  - (10) For the purposes of the definition of “relevant court proceedings”, where the applicant is an unincorporated association, court proceedings include proceedings against any member of the unincorporated association.”.

#### **Amendment to regulation 14D**

8. In regulation 14D (register of sites to which a temporary site exclusion applies), after paragraph (1) insert—
- “(1A) Where an eligible generator is an unincorporated association, the requirements relating to the eligible generator in paragraph (1)(c) and (d) apply in relation to the unincorporated association and each member of the unincorporated association.”.

#### **Amendment to regulation 25**

9. In regulation 25 (connection agreements)—
- (a) for paragraphs (2) to (4) substitute—
    - “(2) Where a direct connection applies or is to apply to the relevant CFD unit, the applicant must provide a copy of the connection agreement applicable to the relevant CFD unit, and—

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(3) [S.I. 2014/2043](#), amended by [S.I. 2014/3354](#), [2015/875](#), [2015/1974](#).

- (a) where connection is to the national transmission system for Great Britain, that agreement must secure transmission entry capacity for the CFD unit of at least 75% of the provisional capacity estimate of the CFD unit; or
  - (b) where connection is to the distribution system, that agreement must provide for the export of at least 75% of the provisional capacity estimate of the CFD unit to the distribution system.
- (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 either—
- (a) a statement that the applicant is or is to be the operator of the private network to which the relevant CFD unit exports or is to export electricity; or
  - (b) a copy of a private network use agreement applicable to the relevant CFD unit.
- (4) Where a partial connection applies or is to apply to the relevant CFD unit, the applicant must provide—
- (a) copies of—
    - (i) either—
      - (aa) a statement that the applicant is or is to be the operator of the private network to which the relevant CFD unit exports or is to export electricity; or
      - (bb) a copy of a private network use agreement applicable to the relevant CFD unit; and
    - (ii) the connection agreement applicable to the relevant CFD unit; or
  - (b) copies of—
    - (i) the private network use agreement applicable to the relevant CFD unit that allows the CFD unit to access a connection to the national transmission system for Great Britain or the distribution system; and
    - (ii) the connection agreement between the operator of the private network and the national system operator or the distribution system.”;
- (b) in paragraph (6)—
- (i) in the definition of “connection agreement” after “means an agreement” insert “(including a countersigned offer)”; and
  - (ii) insert at the appropriate place—
    - ““private network use agreement” means an agreement to connect to a private network, entered into by the operator of that private network, which sets out the terms for exporting electricity to that private network and the capacity in the private network that is accessible under the agreement;”;
    - ““provisional capacity estimate” means the capacity of the relevant CFD unit, as provided by an applicant in accordance with paragraph 3(a)(iii) of Schedule 1;”;
    - ““transmission entry capacity” means the maximum amount of electricity permitted by the national system operator to be exported from the relevant CFD unit to the national transmission system for Great Britain at any given time.”.

### **Amendment to regulation 32**

**10.** In regulation 32 (notices of requests for review or appeal), in paragraph (1), after “Secretary of State” insert “and the Authority”.

#### **Amendment to regulation 34**

11. In regulation 34 (delay to the commencement of allocation processes)—
- (a) in paragraph (2), for “the information provided in compliance with paragraph 3(a)(iv) of Schedule 1 (“the target dates”)” substitute “target dates”;
  - (b) in paragraphs (2) and (4) to (6), for “varied” substitute “delayed”;
  - (c) in paragraph (4), for “vary” substitute “delay”;
  - (d) in paragraph (6)(b), for “paragraph (4)(b)” substitute “paragraph (5)(b)”.

#### **Amendment to regulation 38**

12. In regulation 38 (proceeding, re-running an allocation process or terminating an allocation round), in paragraph (1) omit “Subject to regulation 40(1)(a),”.

#### **Amendment to regulation 39**

13. In regulation 39 (re-running an allocation process)—
- (a) in paragraph (2)(a) omit “subject to regulation 40(1)(b),”;
  - (b) after paragraph (2) insert—
    - “(3) The allocation framework may, in respect of an allocation round to which it applies, set out periods within which the delivery body must complete any re-run of the allocation process or part of it.”.

#### **Amendment to regulation 40**

14. In regulation 40 (delay after completion of allocation process), in paragraph (1)(a) for “proceed direction” substitute “re-run notice”.

#### **Amendment to regulation 46**

15. In regulation 46 (determinations of the Authority)—
- (a) after paragraph (2) insert—
    - “(2A) The Authority may by notice require the delivery body to provide it with information to assist the Authority to determine a qualification appeal.
    - (2B) Where the delivery body—
      - (a) holds the information required by the notice, it must provide the Authority with the information;
      - (b) only holds part of the information required by the notice, it must provide the Authority with the information it holds and a statement describing the information that it does not hold;
      - (c) does not hold any of the information required by the notice, it must provide the Authority with a statement that it does not hold the information.
    - (2C) The delivery body must provide the information required by the notice by no later than 5 working days after the date of the notice.”;
  - (b) in paragraph (3), after “the applicant” insert “, the Secretary of State”;
  - (c) in paragraph (4), for “must be given of as” substitute “must be given as”.

### **Amendment to regulation 51**

16. In regulation 51 (successful applications determined by the Authority)—

(a) after paragraph (1) insert—

“(1A) Paragraph (1B) applies where the delivery body—

- (a) receives a notice from the Authority in accordance with regulation 46(3) that states the determination of the Authority is that an applicant is a qualifying applicant; and
- (b) has not given a proceed notice under regulation 37(1)(b)(i) in respect of the most recent run of the allocation process for the allocation round.

(1B) Where this paragraph applies, the delivery body must—

- (a) re-run the allocation process; and
- (b) after completion of the re-run, comply with regulation 35.”;

(b) in paragraph (2), after “Chapter 4 or 5 of Part 5” insert “or paragraph (1B)”;

(c) in paragraph (3), after “is a successful application” insert “in accordance with the allocation framework for the allocation round”;

(d) in paragraph (6)—

- (i) in sub-paragraph (a), for “the information provided in compliance with paragraph 3(a)(iv) of Schedule 1 (“the target dates”)” substitute “target dates”;
- (ii) in sub-paragraphs (a) to (c), for “varied” substitute “delayed”; and
- (iii) in sub-paragraph (b), for “vary” substitute “delay”;

(e) in paragraph (7), for “except any flexible bid” substitute “including any flexible bid”;

(f) for paragraph (10) substitute—

“(10) In paragraph (7), “flexible bid” means a bid, where it is permitted under the allocation framework, in which the applicant specifies—

- (a) a strike price;
- (b) the first delivery year as a year the same as or after the first delivery year set out in the applicant’s application;
- (c) a target commissioning date as a date on or after the target commissioning date provided by the applicant with the applicant’s application; and
- (d) the amount of electricity to be generated as an amount which is no greater than the amount set out in the applicant’s application.”.

### **Amendment to regulation 54**

17. In regulation 54 (allocation reports), for paragraph (3) substitute—

“(3) Where the allocation process for the allocation round has included a competitive process under which bids of strike prices were made, the Secretary of State—

- (a) may only direct the delivery body to provide information in respect of those bids in an anonymised form;
- (b) must not require the delivery body to provide the strike prices submitted as part of those bids;
- (c) must not require the delivery body to provide the information until after it makes the first CFD notification after the allocation round involving those bids.

(4) The Secretary of State may disclose information obtained under paragraph (3) to a person providing services to the Secretary of State in connection with the evaluation of any allocation round, to the extent that the disclosure is required to enable that person to provide those services.”.

#### **Amendment to regulation 58**

**18.**—(1) Renumber regulation 58 (obligation to notify the specified person) as paragraph (1) of that regulation.

(2) After paragraph (1) insert—

“(2) Where a specified person is an unincorporated association, the Secretary of State must give a copy of the direction to each member of the unincorporated association.”.

#### **Amendment to Schedule 1**

**19.** In Schedule 1 (information in support of applications)—

(a) renumber paragraph 2 as sub-paragraph (1) of that paragraph;

(b) in paragraph 2(1), after paragraph (c) insert—

“(ca) where the applicant is an unincorporated association, the name of the person whom the applicant intends will act as representative for the parties to the unincorporated association in the CFD;”;

(c) after paragraph 2(1) insert—

“(2) Where an applicant is an unincorporated association—

(a) the requirement relating to the applicant in paragraph (a) of sub-paragraph (1) applies in relation to the unincorporated association and each member of the unincorporated association;

(b) the requirements relating to the applicant in paragraphs (b), (c), (e) and (f) of sub-paragraph (1) apply in relation to each member of the unincorporated association;

(c) paragraph (d) does not apply.”;

(d) for paragraph 3(a)(iv) substitute—

“(iv) the target dates;”;

(e) renumber paragraph 4 as sub-paragraph (1) of that paragraph;

(f) after paragraph 4(1) insert—

“(2) Where an applicant is an unincorporated association, the requirement relating to the applicant in sub-paragraph (1) applies in relation to each member of the unincorporated association.”.