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STATUTORY INSTRUMENTS

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**2014 No. 2511**

**ELECTRICITY**

**The Power Purchase Agreement Scheme Regulations 2014**

*Made - - - - 17th September 2014*  
*Laid before Parliament 19th September 2014*  
*Coming into force in accordance with regulation 1(2)*  
*and (3)*

The Secretary of State makes these Regulations in exercise of the powers conferred by section 51(1) to (5) of the Energy Act 2013<sup>(1)</sup>.

In accordance with section 51(6) and (7) of that Act, the Secretary of State has consulted licensed suppliers, the Authority and such other persons as the Secretary of State considers appropriate.

**PART 1**

**General**

**Citation and commencement**

1.—(1) These Regulations may be cited as the Power Purchase Agreement Scheme Regulations 2014.

(2) Regulations 1 to 3, 5(2), 12, 15(1) and (2), 21(1) to (4), 25(1), (3) and (4), 29, 30 and 32 come into force on 14th October 2014.

(3) Except as stated in paragraph (2), these Regulations come into force on 1st October 2015.

**Interpretation**

2.—(1) In these Regulations—

“the Act” means the Energy Act 2013;

“auction” means an auction held by virtue of relevant supply licence conditions;

“backstop power purchase agreement” (“BPPA”) means a power purchase agreement which is entered into under the power purchase agreement scheme;

“Balancing and Settlement Code” means the code for the governance of electricity balancing and settlement in Great Britain which is maintained in accordance with the conditions of transmission licences granted under section 6(1)(b) of the Electricity Act 1989(2), as it was in force on 1st April 2014;

“CFD counterparty” means the person or persons designated as a counterparty for contracts for difference in accordance with section 7 of the Act;

“day” means a day that is not—

- (a) a Saturday or Sunday, Christmas Day or Good Friday, or
- (b) a day which is a bank holiday under the Banking and Financial Dealings Act 1971(3) in England and Wales or Scotland;

“electrical output”, in relation to an eligible generator which has entered into a BPPA in respect of a generating station, means the net electrical output of the generating station delivered to the delivery points over a period of time, as measured by the metering equipment measuring the flows of electricity associated with the generating station and expressed as an amount for each megawatt hour of electricity;

“electricity generator” means a person who operates or participates in the operation of a generating station;

“eligibility requirements” means the requirements specified in relevant supply licence conditions as to the eligibility of an electricity generator to enter into a BPPA with a licensed supplier;

“eligible generator” means an electricity generator in whose case the Authority’s determination under regulation 6(1) is that the eligibility requirements are met;

“expression of interest” has the meaning given in regulation 5(1);

“generating station” is to be read in accordance with paragraph (2);

“GSP group” has the meaning given in the Balancing and Settlement Code (see Annex X-1 of section X of that Code (definitions and interpretation: general glossary));

“levelisation payment” means any payment which is made into or out of the OLR levelisation account in accordance with Part 3;

“mandatory licensed supplier”, in relation to an OLR year, means a licensed supplier in whose case a determination under regulation 12(1)(a) has been made in respect of that OLR year;

“mutualisation distribution” has the meaning given in regulation 26(2)(c);

“mutualisation payment” has the meaning given in regulation 26(2)(b)(i);

“offtaker of last resort” (“OLR”), in relation to a BPPA, means the licensed supplier which enters into the BPPA with an eligible generator;

“OLR levelisation account” means the account maintained by the Authority under regulation 18;

“OLR notice” means a notice that one or more BPPAs are to be subject to an auction held in respect of an eligible generator;

“OLR year” means (as appropriate)—

- (a) the period of 6 months ending on 31st March 2016,
- (b) the period of 12 months starting on 1st April 2016 and ending on 31st March 2017,
- (c) each subsequent 12 month period starting on 1st April and ending on 31st March;

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(2) 1989 c.29. Section 6 was substituted by section 30 of the Utilities Act 2000 (c.27). Section 6(1)(b) was substituted by section 136(1) of the Energy Act 2001 (c.20).

(3) 1971 c.80. Schedule 1 to the Act was amended by section 1 of the St Andrew’s Day Bank Holiday (Scotland) Act 2007 (asp 2).

“periodic levelisation period” means each period determined by the Authority under regulation 21;

“project information” has the same meaning as in relevant supply licence conditions;

“relevant contract” means—

- (a) a contract for difference under Chapter 2 of Part 2 of the Act which has been entered into by an electricity generator, or
- (b) an investment contract within the meaning of Schedule 2 to the Act<sup>(4)</sup> which has been entered into by an electricity generator;

“relevant supply licence conditions” means conditions contained within a supply licence which has been modified by the Secretary of State by virtue of section 50(1) of the Act;

“statement of confirmation” has the same meaning as in relevant supply licence conditions;

“supply” has the same meaning as in the Electricity Act 1989 and “supplied” is to be read accordingly;

“supply licence” means a licence granted by the Authority to supply electricity under section 6(1)(d) of the Electricity Act 1989;

“voluntary licensed supplier” means a licensed supplier which is not a mandatory licensed supplier.

- (2) In these Regulations, any reference to a “generating station” is to be read as a reference to—
  - (a) where the whole of the generating station is subject to a relevant contract, the whole of the generating station; and
  - (b) where only part of the generating station is subject to a relevant contract, that part of the generating station that is subject to the relevant contract.

## 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

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(4) See paragraph 1 of Schedule 2.

- (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(5);
- (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;
  - (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).

## **PART 3**

### **OLR levelisation and mutualisation**

#### *OLR levelisation*

### **OLR levelisation**

**18.**—(1) With effect from the date on which the Authority is notified that the first BPPA is entered into, the Authority must maintain an account (“the OLR levelisation account”)—

- (a) into which licensed suppliers are required to pay an amount in accordance with this Part; and
- (b) from which payments are to be made by the Authority in accordance with this Part.

(2) The annual levelisation payment which a licensed supplier is required to pay into or receive from the OLR levelisation account is to be calculated under regulation 20.

(3) Paragraph (2) applies in respect of any OLR year only if at least one BPPA is in force for the whole or part of that year.

(4) A periodic levelisation payment which a licensed supplier is required to pay into or receive from the OLR levelisation account is to be calculated under regulation 21.

(5) Paragraph (4) applies in respect of any periodic levelisation period only if at least one BPPA is in force for the whole or part of that period.

### Calculations required for purposes of this Part

**19.**—(1) Before calculating the annual levelisation payment under regulation 20 in respect of each licensed supplier (“A”) in respect of an OLR year, the Authority must make the determinations in relation to A which are required by paragraphs (2) to (5).

(2) The amount of A’s “OLR contribution” in respect of an OLR year is to be determined as being the sum of all amounts which, in respect of each BPPA for which A is the OLR, are calculated by applying the formula  $V \times MF$ , where—

- (a) V is the volume of electrical output of the electricity generator purchased by the OLR under the BPPA in any period falling within the OLR year during which the BPPA is in force; and
- (b) MF is the amount of the management fee which is payable to the OLR under the BPPA during the first 12 months for which the BPPA is in force, expressed as an amount for each megawatt hour of electricity purchased by the OLR.

(3) The amount of A’s “adjusted OLR contribution” in respect of an OLR year is to be determined by taking the amount (if any) determined for A under paragraph (2) and adjusting it by—

- (a) adding the amounts of any periodic levelisation payments and mutualisation payments made by A in respect of that OLR year; and
- (b) subtracting the amounts of any periodic levelisation payments and mutualisation distributions received by A in respect of that OLR year.

(4) The “market share” of A in an OLR year is to be determined by expressing the relevant amount of electricity supplied by A in that OLR year as a percentage of the electricity supply market of Great Britain, where—

- (a) “the relevant amount of electricity supplied by A” means the amount of electricity supplied by A to customers in Great Britain;
- (b) “the electricity supply market of Great Britain” means the amount of electricity supplied by all licensed suppliers to customers in Great Britain; and
- (c) “customer” has the same meaning as in the standard conditions of a supply licence.

(5) The “market share OLR contribution” of A in respect of an OLR year is to be determined by—

- (a) calculating the sum of the amounts determined under paragraph (2) in relation to all licensed suppliers; and
- (b) multiplying it by the percentage determined in respect of A under paragraph (4).

### Annual levelisation payments

**20.**—(1) Subject to regulation 18(3), the Authority must, on or before 1st October following the end of each OLR year, calculate the amount which each licensed supplier is entitled to receive from, or required to pay into, the OLR levelisation account in respect of that OLR year as follows.

(2) If the adjusted OLR contribution of a licensed supplier for the OLR year(6) is greater than the licensed supplier’s market share OLR contribution(7), the licensed supplier is entitled to receive an annual levelisation payment from the Authority equal to the difference between those amounts.

(3) If the adjusted OLR contribution of a licensed supplier for the OLR year is less than the licensed supplier’s market share OLR contribution, the licensed supplier must make an annual levelisation payment to the Authority equal to the difference between those amounts.

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(6) See regulation 19(3).

(7) See regulation 19(5).

### **Periodic levelisation payments**

**21.**—(1) The Authority must determine and publish the periodic levelisation periods which are to apply in in respect of each OLR year.

(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 September 2015; and

(b) in respect of any other OLR year, not later than 1st March in the immediately preceding OLR year.

(3) Each periodic levelisation period must be a period of 3 months or less which falls within the OLR year to which a determination under paragraph (1) relates.

(4) The Authority may vary the periodic levelisation periods which are to apply in an OLR year and must publish notice of any such variation at least one month before the variation takes effect.

(5) Subject to regulation 18(5), the Authority must calculate the periodic levelisation payment which each licensed supplier is required to make or is entitled to receive for each periodic levelisation period.

(6) A calculation under paragraph (5) must be based on the Authority's estimate of the difference between the licensed supplier's OLR contribution(8) and its market share OLR contribution(9) for the OLR year in which the periodic levelisation period falls.

(7) If the OLR contribution of a licensed supplier for the OLR year is estimated to be greater than the licensed supplier's market share OLR contribution, the licensed supplier is entitled to receive a periodic levelisation payment from the Authority equal to the difference between those amounts.

(8) If the OLR contribution of a licensed supplier for the OLR year is estimated to be less than the licensed supplier's market share OLR contribution, the licensed supplier must make an annual levelisation payment to the Authority equal to the difference between those amounts.

### **Notice of levelisation payments**

**22.** Where the Authority calculates levelisation payments for any OLR year or periodic levelisation period in accordance with this Part, it must—

(a) give notice to each licensed supplier which is liable to make or entitled to receive a levelisation payment of the amount of that payment; and

(b) where the licensed supplier is liable to make a levelisation payment, specify in the notice the date by which payment is to be made.

### **Payments by the Authority**

**23.**—(1) This regulation applies where a licensed supplier is given notice that it is entitled to receive a levelisation payment.

(2) Subject to paragraphs (3) and (5), the Authority must make the levelisation payment as soon as reasonably practicable after the notice is given.

(3) If a licensed supplier fails to make a levelisation payment to the Authority by the date on which it is due ("a late payment"), the Authority may suspend in whole or in part any levelisation payment due to that licensed supplier until the late payment has been made.

(4) Where the late payment is in respect of a periodic levelisation payment and regulation 26 does not apply—

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(8) See regulation 19(2).

(9) See regulation 19(5).

- (a) any late payment which the Authority receives before it makes the annual levelisation calculation under regulation 20 in respect of the OLR year in which the period falls is to be included in that calculation; and
  - (b) any late payment which the Authority receives after it makes that calculation in respect of that year must be distributed in accordance with regulation 28(2).
- (5) If the Authority believes that the amount in the OLR levelisation account will not be sufficient to enable it to make a levelisation payment out of the account, the Authority may defer all or part of that payment until there is a sufficient amount in the OLR levelisation account.

### **Levelisation correction**

24.—(1) Paragraph (2) applies where the Authority identifies that any calculation under regulation 19 or 20(1) is incorrect.

(2) The Authority may, having regard to any payment made or received under regulation 20 or 21, calculate any levelisation payment that each licensed supplier is entitled to receive from, or is required to pay into, the OLR levelisation account in order to correct the error identified under paragraph (1).

(3) After making a calculation under paragraph (2), the Authority must—

- (a) give notice to each licensed supplier which is liable to make or is entitled to receive a levelisation payment of the amount of that payment; and
- (b) where the licensed supplier is liable to make a levelisation payment, specify in the notice the date by which payment is to be made.

(4) Payments received from licensed suppliers in respect of an OLR year as a result of paragraph (2) are to be distributed in accordance with regulation 28(2).

### *OLR mutualisation*

#### **Trigger for OLR mutualisation**

25.—(1) The Secretary of State must determine in respect of each OLR year a lower limit for the unpaid amounts referred to in paragraph (2)(b) that will trigger a mutualisation (“the mutualisation lower limit”).

(2) Regulation 26 applies if—

- (a) one or more licensed suppliers fail to make to the Authority the whole or part of a periodic levelisation payment within 5 days of the date on which it is due (“the due date”); and
- (b) after 5 days following the due date, the total of unpaid amounts is equal to or greater than the mutualisation lower limit.

(3) In determining the mutualisation lower limit in respect of any OLR year under paragraph (1), the Secretary of State must have regard to—

- (a) where the total of unpaid amounts referred to in paragraph (2)(b) falls below the limit determined for that year, the likely effect on any licensed supplier which has entered into a BPPA with an electricity generator of deferring payment under regulation 23(5) of amounts of periodic levelisation payment to which the licensed supplier is entitled; and
- (b) where the total of unpaid amounts referred to in paragraph (2)(b) is equal to or above the limit determined for that year, the likely effect on all licensed suppliers of having to make mutualisation payments under regulation 26(2).

(4) The Secretary of State must publish the mutualisation lower limit determined under paragraph (1)—

- (a) in respect of the OLR year which ends on 31st March 2016, on or before 30th September 2015; and
- (b) in respect of any other OLR year, before the beginning of the OLR year to which it relates.

### **OLR mutualisation**

**26.**—(1) In this regulation—

“adjusted market share”, in relation to a licensed supplier, is the market share determined in accordance with regulation 19(4) but adjusted to disregard the market share of the defaulting licensed supplier;

“the amount to be mutualised” means the total of unpaid amounts referred to in regulation 25(2)(b);

“defaulting licensed supplier” means a licensed supplier which has failed to make the whole or part of a periodic levelisation payment to the Authority by the date on which it is due;

“qualifying licensed supplier” is a licensed supplier which has made a mutualisation payment under paragraph (2) in respect of the unpaid amount mentioned in paragraph (6);

“unpaid amount” means an amount of a periodic levelisation payment which a defaulting licensed supplier has failed to pay by the date on which it is due.

(2) Where this regulation applies by virtue of regulation 25, the Authority must—

(a) apportion the amount to be mutualised between all licensed suppliers other than the defaulting licensed supplier, in proportion to each licensed supplier’s adjusted market share;

(b) give notice to each of those licensed suppliers (a “mutualisation notice”)—

(i) that it is liable to make a payment of the amount apportioned to it (a “mutualisation payment”); and

(ii) of the date by which the mutualisation payment is due; and

(c) where paragraph (3) applies, make a distribution of the total amounts received by the Authority (a “mutualisation distribution”) to any licensed supplier which—

(i) is not a defaulting licensed supplier; and

(ii) to whom, because of the unpaid amounts, payment of all or part of a periodic levelisation payment to which it is entitled to under regulation 21 has been deferred.

(3) This paragraph applies if—

(a) the date by which the mutualisation payment is due has passed; and

(b) the Authority has received mutualisation payments.

(4) If after giving a mutualisation notice to a licensed supplier, the Authority identifies that any mutualisation payment specified in that notice is incorrect, the Authority must—

(a) cancel that mutualisation notice; and

(b) give a further mutualisation notice under paragraph (2).

(5) Where a mutualisation notice is given to a licensed supplier in accordance with paragraph (4)

(b) (“the new notice”), the Authority may treat any mutualisation payment made by that licensed supplier in respect of the cancelled notice as a mutualisation payment made in respect of the new notice.

(6) Where, after receiving mutualisation payments from licensed suppliers, the Authority receives a previously unpaid amount from a defaulting licensed supplier, the Authority must within 20 days distribute that amount among qualifying licensed suppliers in proportion to their adjusted market shares.

- (7) Where the Authority receives a mutualisation payment after the date on which it is due—
- (a) if the Authority has not yet made a mutualisation distribution, then this amount is to be included in the distribution; or
  - (b) if the Authority has made a mutualisation distribution, then this amount is to be distributed in accordance with regulation 28(2).

### *Miscellaneous*

#### **Termination of supply licence**

27.—(1) This regulation applies if the supply licence of a licensed supplier (E) is terminated.

(2) E is not to be regarded as a licensed supplier for the purposes of any periodic levelisation, annual levelisation or mutualisation which takes place after the termination of its licence.

(3) If, before the termination of E's licence, it has been determined on a periodic or annual levelisation under this Part that E is liable to pay or entitled to receive an amount, to the extent that it is unpaid—

- (a) E remains subject to that liability but, if the Authority identifies that the calculation of the amount is incorrect, it may adjust the amount and E is liable to pay the adjusted amount (to the extent that it is unpaid);
- (b) E remains entitled to that amount but, if the Authority identifies that the calculation of the amount is incorrect, it may adjust the amount and E is entitled to the adjusted amount (to the extent that it is unpaid).

(4) If—

- (a) an annual levelisation takes place after the termination of E's licence; and
- (b) E had received or paid periodic levelisation payments for the OLR year to which the annual levelisation relates,

the Authority may adjust the annual levelisation payment of each remaining licensed supplier to ensure that the total amount of levelisation payments made or due to be made by licensed suppliers for the OLR year is equal to the total amount of levelisation payments received or due to be received by licensed suppliers for the OLR year.

(5) For the purposes of this regulation, a supply licence is terminated if—

- (a) it is revoked by the Authority in accordance with the terms of the licence;
- (b) it is surrendered by the licensed supplier; or
- (c) it expires by effluxion of time.

#### **Late payments**

28.—(1) This regulation applies when the Authority receives a payment as a consequence of the application of—

- (a) regulation 23(4)(b);
- (b) regulation 24(2); or
- (c) regulation 26(7)(b).

(2) The Authority must distribute the payment to licensed suppliers in proportion to each licensed supplier's market share.



(3) For the purposes of paragraph (2), a licensed supplier's market share is to be calculated in accordance with regulation 19(4) in respect of the OLR year in which the payment was received by the Authority.

(4) The distribution under paragraph (2) must be made on or before 1st October following the end of the OLR year in which the payment was received.

(5) Before making a distribution under paragraph (2), the Authority must give notice to each licensed supplier entitled to receive part of the distribution setting out—

- (a) what the distribution relates to; and
- (b) the amount the licensed supplier is to receive.

## PART 4

### Miscellaneous

#### Enforcement

**29.** Any requirement imposed on a licensed supplier under these Regulations is enforceable by the Authority as if any such requirement was a relevant requirement on a regulated person for the purposes of section 25 of the Electricity Act 1989(10).

#### Publication of guidance

**30.** The Authority may publish procedural guidance for electricity generators and licensed suppliers for or in connection with the power purchase agreement scheme.

#### Reviews by Secretary of State

**31.—**(1) In respect of each OLR year, the Secretary of State must review—

- (a) the criteria for selecting mandatory licensed suppliers which are specified in relevant supply licence conditions; and
- (b) the operation of the power purchase agreement scheme.

(2) Paragraph (1)(a) does not apply in respect of the OLR year which ends on 31st March 2016.

(3) The Authority must provide to the Secretary of State such information in connection with the power purchase agreement scheme as the Secretary of State may require for the purposes of conducting any review under paragraph (1).

(4) The Secretary of State must—

- (a) publish the conclusions of any review under paragraph (1); and
- (b) indicate what (if any) changes to the power purchase agreement scheme are proposed, subject to consultation under section 51(6) or 54(2) of the Act.

#### Notices etc

**32.—**(1) Any requirement to give a notice to any person under these Regulations—

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(10) 1989 c.29. Section 25 was amended by section 54(3) of, and paragraph 12(5) of Schedule 10 to, the Competition Act 1998 (c.41), sections 3(2), 60(1) to (5) and 108 of, paragraphs 24 and 27 of Schedule 6 and Schedule 8 to, the Utilities Act 2000 (c.27), section 63(1) of, and paragraphs 7 and 9 of Schedule 7 to, the Consumers, Estate Agents and Redress Act 2007 (c.17) and section 51(5) of, and paragraphs 4 and 5 of Schedule 14 to, the Enterprise and Regulatory Reform Act 2013 (c.24). It was also amended by S.I. 2011/2704.

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- (a) must be in writing; and
- (b) may be sent to the person by email or fax.

(2) The Authority is to be regarded as having complied with any requirement to give notice to a licensed supplier under these Regulations if it sends the notice to the licensed supplier in accordance with contact details for the licensed supplier which are for the time being shown on the most up-to-date version of the Authority's records.

17th September 2014

*Matthew Hancock*  
Minister of State  
Department of Energy and Climate Change

## SCHEDULE

Regulation 11(1)

### BPPA auction process

## PART 1

### The auction

#### **One auction in respect of each eligible generator**

1. One auction is to be held in respect of each eligible generator irrespective of the number of BPPAs determined in accordance with regulation 4 as being subject to the auction in respect of that generator.

#### **Close of the auction period**

2.—(1) Each auction closes at the end of the 10-day period which starts with the first day after the date on which the OLR notice is sent to licensed suppliers under regulation 7(1)(b).

(2) Sub-paragraph (1) is subject to paragraph 3(2) and regulation 10.

#### **Errors or omissions in information submitted by eligible generator**

3.—(1) If at any time before the close of an auction the Authority identifies that there is an error in or omission from the project information submitted by an eligible generator, the Authority must give a notice to the eligible generator which—

- (a) states the details of the error or omission and asks the eligible generator to provide an explanation;
- (b) states that, if the eligible generator accepts that there is an error or omission, the eligible generator must provide an updated version of the project information; and
- (c) states that, if the eligible generator does not provide either an updated version of the project information or confirm to the Authority that there is no error or omission—
  - (i) within 2 days of the start of the 10-day period specified in paragraph 2, the date on which the auction closes is delayed in accordance with sub-paragraph (2);
  - (ii) within 5 days of the date of the notice under this sub-paragraph, the auction is terminated in accordance with regulation 10(1)(b) and (2)(c).

(2) Where more than 2 days of the 10-day period specified in paragraph 2 have elapsed before the Authority receives an eligible generator's response to a notice under sub-paragraph (1)—

- (a) the auction does not close until the end of a further 10-day period which starts with the date on which the response is received;
- (b) the Authority must give a notice to all licensed suppliers stating the date on which the auction closes by virtue of paragraph (a); and
- (c) where the Authority receives an updated version of the project information from the eligible generator, the Authority must send a copy to all licensed suppliers.

(3) Sub-paragraph (2) does not apply where the auction is terminated in accordance with regulation 10(1)(b) and (2)(c).

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## PART 2

### Selecting a licensed supplier in respect of a BPPA

#### Single BPPA subject to an auction

4. Paragraphs 5 to 7 apply in any case where—
- (a) not more than one BPPA is subject to an auction in respect of an eligible generator; and
  - (b) one or more bids in that auction are received by the Authority before the auction closes.

#### Determining the successful bid

5.—(1) The Authority must in accordance with sub-paragraphs (2) to (5) select the successful bidder in respect of the BPPA.

(2) The Authority must take no account of any bid made by a licensed supplier which is not connected to the GSP group that is specified in the eligible generator's project information in relation to the generating station specified in that project information.

(3) If only one bid was received, the Authority must select the licensed supplier which submitted that bid.

- (4) If more than one bid was received, the Authority must—
- (a) compare the amount of the management fee which, in accordance with relevant supply licence conditions, each bidder proposed for the BPPA; and
  - (b) select as the successful bidder the licensed supplier which proposed the lowest amount.

(5) Where the lowest amount of management fee is proposed in bids which are submitted by more than one licensed supplier, the Authority must select as the successful bidder the licensed supplier whose bid the Authority received first.

- (6) Within one day of the close of the auction, the Authority must give a notice to—
- (a) the licensed supplier which is selected under this paragraph, stating that the licensed supplier has been selected as the successful bidder in respect of the BPPA;
  - (b) all other licensed suppliers which bid in the auction, stating that they have not been selected; and
  - (c) the eligible generator, stating the name of the licensed supplier selected and enclosing the signed copies of the BPPA which the licensed supplier provided to the Authority in accordance with relevant supply licence conditions.

#### Reserve bids

6.—(1) Each licensed supplier which submitted a bid in respect of the BPPA subject to an auction is to be treated for the purposes of paragraph 7 as a reserve bidder which submitted a reserve bid in respect of the BPPA.

- (2) Sub-paragraph (1) does not apply to—
- (a) the successful bidder; or
  - (b) any voluntary licensed supplier which specified in its bid in accordance with relevant supply licence conditions that the bid was not to be considered as a reserve bid.

### **Consideration of reserve bids**

7.—(1) Sub-paragraph (2) applies where an eligible generator which has entered into a BPPA with an OLR which has been selected under paragraph 5 or this paragraph gives notice which states that it—

- (a) is in accordance with the terms of the BPPA;
- (b) is given on the grounds that the OLR has committed a material breach of the BPPA; and
- (c) results in termination of the BPPA no more than 5 days after the date determined in accordance with the BPPA’s terms as being its date of its commencement.

(2) The Authority must repeat the steps specified in paragraph 5(2) to (5) in order to select the successful reserve bidder in respect of the BPPA and, in the application of that paragraph for this purpose—

- (a) any reference to “bid” is to be read as if it were a reference to “reserve bid”;
- (b) any reference to “bidder” is to be read as if it were a reference to “reserve bidder”; and
- (c) no account is to be taken of any bid submitted by any licensed supplier which has already received a notice in respect of that BPPA under paragraph 5(6)(a) or sub-paragraph (3)(a).

(3) Within one day of receiving the notice under sub-paragraph (1), the Authority must give a notice to—

- (a) the licensed supplier which is selected under this paragraph, stating that the licensed supplier has been selected as the successful reserve bidder; and
- (b) the eligible generator, stating the name of that licensed supplier and enclosing the signed copies of the BPPA which the licensed supplier provided to the Authority in accordance with relevant supply licence conditions.

### **Multiple BPPAs subject to an auction**

8. Paragraphs 9 to 11 apply where—

- (a) in accordance with regulation 4, two or more BPPAs are to be subject to an auction in respect of an eligible generator; and
- (b) two or more bids in that auction are received by the Authority before the auction closes.

### **Determining the successful bid: multiple BPPA auction**

9.—(1) The Authority must take no account of any bid made by a licensed supplier which is not connected to the GSP group that is specified in the eligible generator’s project information in relation to the generating station specified in that project information.

(2) The Authority must—

- (a) identify the amount of the management fee which, in accordance with relevant supply licence conditions, was proposed in each bid submitted by a licensed supplier; and
- (b) draw up a list which ranks all such amounts in order, from lowest to highest.

(3) The Authority must select from the list drawn up under sub-paragraph (2)(b)—

- (a) the licensed supplier which proposed the lowest amount as the successful bidder for one of the BPPAs subject to auction; and
- (b) the licensed supplier which proposed the next lowest amount as the successful bidder for another of the BPPAs subject to auction,

and so on until a successful bidder has been selected for all of the remaining BPPAs subject to auction.

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(4) Where the same amount of management fee is proposed by more than one licensed supplier who would otherwise be selected under sub-paragraph (3) in respect of a BPPA, the Authority must—

- (a) select as the successful bidder for that BPPA the licensed supplier whose bid the Authority received first; and
- (b) if another BPPA remains to be considered by the Authority, select as the successful bidder for that other BPPA the licensed supplier whose bid the Authority received second,

and so on until all of the licensed suppliers which proposed that amount of management fee have been selected.

(5) Within one day of the close of the auction, the Authority must give a notice to—

- (a) each licensed supplier which is selected under this paragraph, stating that the licensed supplier has been selected as the successful bidder in respect of a BPPA;
- (b) all other licensed suppliers which bid in the auction, stating that they have not been selected; and
- (c) the eligible generator, stating the name of each licensed supplier selected and in each case enclosing the signed copies of the BPPA which the licensed supplier provided to the Authority in accordance with relevant supply licence conditions.

#### **Reserve bids: multiple BPPA auction**

**10.**—(1) Each licensed supplier which submitted a bid in respect of a BPPA subject to an auction is to be treated for the purposes of paragraph 11 as a reserve bidder which submitted a reserve bid in respect of that BPPA.

(2) Sub-paragraph (1) does not apply—

- (a) to any bid submitted by a licensed supplier which has already been selected under paragraph 9 or 11; or
- (b) to any bid submitted by a voluntary licensed supplier which specified in its bid in accordance with relevant supply licence conditions that the bid was not to be considered as a reserve bid.

#### **Consideration of reserve bids: multiple BPPA auction**

**11.**—(1) Sub-paragraph (2) applies where an eligible generator which has entered into a BPPA with an OLR which has been selected under paragraph 9 or this paragraph gives notice which states that it—

- (a) is in accordance with the terms of the BPPA;
- (b) is given on the grounds that the OLR has committed a material breach of the BPPA; and
- (c) results in termination of the BPPA no more than 5 days after the date determined in accordance with the BPPA's terms as being its date of its commencement.

(2) The Authority must exclude from the list drawn up under paragraph 9(2)(b) any bid made by a licensed supplier which has already received a notice in respect of a BPPA under paragraph 9(5)(a) or sub-paragraph (4)(a).

(3) The Authority must select from that list the successful reserve bidder for the BPPA as being the licensed supplier which—

- (a) by virtue of paragraph 10 is treated as a reserve bidder in respect of any bid made by the supplier; and
- (b) proposed an amount of management fee which is lower than any other amount which is then remaining on that list.

(4) Within one day of receiving the notice under sub-paragraph (1), the Authority must give a notice to—

- (a) the licensed supplier which is selected under this paragraph, stating that the licensed supplier has been selected as the successful reserve bidder; and
- (b) the eligible generator, stating the name of that licensed supplier and enclosing the signed copies of the BPPA which the licensed supplier provided to the Authority in accordance with relevant supply licence conditions.

### **Publishing the outcome of an auction**

12. In relation to each BPPA which is entered into by an OLR, the Authority must publish a statement specifying—

- (a) the name of OLR;
- (b) the name of the eligible generator which is party to the BPPA; and
- (c) the amount of the management fee payable to the OLR under the BPPA, expressed as an amount for each megawatt hour of electricity.

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## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations apply to Great Britain and make provision for or in connection with a scheme to promote the availability to electricity generators of power purchase agreements (“power purchase agreement scheme”). Other provisions in connection with the power purchase agreement scheme are contained in modifications to the standard conditions of electricity supply licences (“relevant supply licence conditions”). These modifications are made under section 50 of the Energy Act 2013 (c. 32) (“the Act”) and are available from the Department of Energy and Climate Change, 3 Whitehall Place, London, SW1A 2AW.

Part 2 (regulations 3 to 17) confers functions on the Gas and Electricity Markets Authority (“the Authority”) and the Secretary of State in relation to the operation of the power purchase agreement scheme and sets out the process for determining which persons who hold an electricity supply licence under section 6 of the Electricity Act 1989 (“licensed suppliers”) are to offer to enter into agreements with electricity generators under the scheme. Agreements entered into under the scheme are referred to in the Regulations as BPPAs (“backstop power purchase agreements”).

Regulation 3 provides that any BPPA entered into by an electricity generator must contain standard terms issued by the Secretary of State which are applicable on the date on which the generator enters into a “relevant contract” (defined as a contract for difference under Chapter 2 of Part 2 of the Act or an investment contract within the meaning of Schedule 2 to the Act). The standard terms must include provision about the matters which relevant supply licence conditions require to be included in a BPPA. Regulation 4 makes provision as to the number of BPPAs which are to be subject to any auction held in respect of the generator.

Regulation 5 makes provision about expressions of interest submitted to the Authority by electricity generators seeking to enter into a BPPA. Unless specified circumstances apply, the Authority is required to send a copy of any expression of interest it receives to all licensed suppliers within 2

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working days of receiving it. Regulation 6 requires the Authority to determine whether the eligibility requirements for an electricity generator to enter into a BPPA are met. If those requirements are met, the Authority must issue a notice (“an OLR notice”) under regulation 7 and send a copy to all licensed suppliers informing them that a BPPA auction is to be held in respect of the eligible generator. A copy of any BPPA which is to be subject to an auction must be enclosed with the OLR notice. Regulation 8 specifies the period within which the Authority must comply with regulations 6 and 7. The Authority is required by regulations 9 and 10 to inform the generator and licensed suppliers that no BPPA is to be entered into (and to terminate any auction that has already started) in any case where the Authority determines that the eligibility requirements are not met in respect of the generator and in certain other circumstances.

Regulation 11 and the Schedule make provision about the conduct of auctions which relevant supply licence conditions require in order to determine which licensed suppliers are to offer to enter into BPPAs with electricity generators. The Schedule sets out when an auction closes and how the Authority is to determine successful bids. Regulation 12 contains provision about licensed suppliers which are required to participate in auctions which are held in any 12 month period starting on 1 April (“an OLR year”).

Regulation 13 makes provision for the suspension in exceptional circumstances of the deadlines within which the Authority is required to discharge specified functions. The Authority must inform licensed suppliers and electricity generators of any delay in discharging the function and specify a new deadline.

Regulation 14 requires the person or persons designated as CFD counterparty for contracts for difference in accordance with section 7 of the Act to provide the Authority with information about relevant contracts entered into by electricity generators. Under regulation 15, licensed suppliers may be required to provide the Authority with information in connection with the power purchase agreement scheme. The Authority has a duty under regulation 16 to maintain records in connection with the operation of the scheme, including records of certain previous conduct in connection with the power purchase agreement scheme which results in a generator being ineligible to enter into future BPPAs in respect of an electricity generating station. The Authority has to report to the Secretary of State on the operation of the power purchase agreement scheme under regulation 17.

Part 3 (regulations 18 to 28) makes provision for a levelisation process which includes mutualisation of certain unpaid amounts. Licensed suppliers are required to make payments to or receive payments from the Authority for the purpose of ensuring that the costs of participating in the power purchase agreement scheme are proportionate to the market shares which the licensed suppliers have in the electricity supply market in Great Britain.

Regulation 18 provides for the Authority to keep an account (“the OLR levelisation account”) into which, and from which, are made levelisation payments which are calculated annually and periodically. Regulation 19 requires the Authority to determine certain values and costs for the purposes of calculating annual levelisation payments. These annual levelisation payments are calculated in accordance with regulation 20 and this regulation sets out when such annual payments are to be made into, and paid from, the OLR levelisation account. Under regulation 21, periods for calculating periodic levelisation payments have to be determined by the Authority and the Authority is required to make and receive these periodic levelisation payments on account of annual levelisation payments. Regulation 22 makes provision for the Authority to give notices relating to the making of levelisation payments and regulation 23 deals with the making of such payments by the Authority. There is a correction mechanism under regulation 24 if a calculation made under regulation 20 or 21 is later found to have been incorrect.

Mutualisation is a process by which costs arising from the non-payment of periodic levelisation payments are allocated among all licensed suppliers. If the total of unpaid amounts is equal to or greater than a limit determined by the Secretary of State under regulation 25, the Authority is required by regulation 26 to apportion the unpaid amounts among the licensees and to distribute a mutualisation payment.



Regulation 27 provides what happens in respect of levelisation and mutualisation if, in the course of an OLR year, a licensed supplier has its licence terminated. Regulation 28 provides for the treatment of late mutualisation payments or of late levelisation payments which do not trigger a mutualisation.

Part 4 (regulations 29 to 32) contains miscellaneous provisions. Regulation 29 makes provision for the enforcement of obligations imposed on licensed suppliers by the Regulations. Regulation 30 provides for the Authority to publish guidance in connection with the power purchase agreement scheme. Regulation 31 provides for the Secretary of State to conduct reviews in connection with the scheme. Regulation 32 makes provision about the giving of notices under the Regulations.