



Our ref: 13/0339

10 April 2013

RE: FOI request – DECC decision on length of CfD contracts for renewables

Thank you for your email of 10 March where you requested information, as described below, about the length of CfD contracts for renewable generators:

- The full analysis conducted on contract length prior to publication of the draft Operational Framework in May 2012
- Details of which stakeholders have participated in discussions on the length of contracts between May and November 2012
- Details of further analysis from May 2012 to the present.

I can confirm that the Department holds some of the information that you are seeking.

Other stakeholders have expressed an interest in understanding more detail behind the proposed CfD contract length for renewable technologies. As such, the Department is already intending to publish further details on the analytical methodology underpinning the summary information included in the draft Operational Framework in May 2012. Information held with a view to future publication is exempted from disclosure under section 22 of the Freedom of Information Act. This is not an absolute exemption and we are therefore required to consider the public interest test. We recognise that there is a public interest in releasing this information as greater transparency makes government more accountable; however, the Department does have a reasonable entitlement to determine the form and timing of publications. Our intention in publishing the information, rather than just sharing with stakeholders who have requested it, is to ensure that all interested parties have access to the same information, so that no one group is advantaged. Releasing this information solely to you would undermine that intent. In addition, further work is required to

present the information in a format which is comprehensible to people who are not analytical specialists. As such, the work is not yet ready for release and we feel that the best use of public resources would be applied in pulling this information together, ensuring the information is accurate and published in a consistent and comprehensive format, rather than issuing it in a piecemeal fashion. On these grounds, the Department believes that the balance of public interest lies in not releasing this information yet. We will notify you when it becomes available.

However, not all of the information that you requested is intended for future publication. For example, the modelling undertaken relied on assumptions about the financing terms and CfD strike prices which would be available to projects. Some of this information was provided by third parties in confidence, disclosure of which would constitute an actionable breach of confidence. As such section 41 of the Freedom of Information Act applies. Section 41 is an absolute exemption and states that information is exempt if it was obtained from any other person and its disclosure would give rise to an actionable breach of confidence. For the second condition to apply, the information concerned must have the necessary 'quality of confidence' in that the information is not trivial nor is it readily available by other means.

If the information concerned attracts that element of quality, it can only be disclosed by consent, if required by law or if there is an overriding public interest in disclosure. It should be noted that for this last ground, there is a strong presumption in favour of maintaining the confidentiality in the information which can only be overridden by a stronger, specific interest in favour of disclosure (e.g. revealing misconduct). This is the reverse to the normal public interest test under the Freedom of Information Act.

We believe that the information identified in this case does have the necessary quality of confidence and do not consider that any of the grounds for disclosure arise in this case and, moreover, that the strong presumption in maintaining the confidentiality in the information has not been overridden by any general interest in disclosure.

We also hold other information to which section 41 does not apply. However, we believe that this further information could damage the commercial interests both of third parties and of the Department, which is covered under section 43 (2). This is not an absolute exemption and we have therefore considered the public interest test below.

Draft CfD strike prices for renewable technologies are intended to be published in the draft Delivery Plan in July 2013. As such, this policy remains under development and accordingly section 35 (1) (a) also applies to this information. Again, as this is not an absolute exemption the public interest test has been considered below.

If released, industry could view the assumptions in the model as an indication of the level at which the CfD strike price will be set, and take investment decisions, and / or take other commercial decisions such as to incur costs, accordingly. This would be misleading, as decisions on CfD strike prices have yet to be taken. Other assumptions related to financing were provided by industry stakeholders on a confidential basis, so disclosing these would damage relationships with the Department and make it less likely that they would provide such useful information in future, and could possibly also harm the commercial interests of their organisation in revealing the terms on which they do business. We therefore believe that the exemption under section 43 (2) of the Freedom of Information applies. Whilst there is a public interest in disclosing commercial information used to inform public policy development, as other parties' legitimate economic interests would be harmed by disclosure of information which is not common knowledge and which could adversely impact on future business and that release might reduce the quality of information provided to government in future, we feel that the balance lies in favour of withholding this material.

In addition to these considerations, as the analysis was only ever intended for internal discussion to aid the decision-making process, it was not formally written up (other than the summary published in the draft Operational Framework in May which you reference in your request) and therefore does not contain all the necessary caveats and explanations. As such, it is open to misinterpretation if released in this format, and could misrepresent the robustness of DECC's analysis. Release in this format would also risk requiring all analysis undertaken by government to be prepared to a standard ready for publication and interpretation by a broad range of stakeholders, which would reduce the ability of government to undertake proportionate analysis in future, and ultimately reduce the quality of information available to assist in government decision-making. Accordingly, we have considered whether the public interest in disclosing information about the process of government policy formulation outweighs the public interest in ensuring that officials have the appropriate space to conduct their work freely, as provided for under section 35 of the Freedom of Information Act. Our conclusion is that the latter point prevails; because some information will already be put into the public domain broadly enabling people to understand the basis on which the decision was made, and releasing the full information could result in negative consequences for commercial organisations, as well as constraining the policy making process. The Department is therefore withholding this information.

The second part of your request related to stakeholders who have been involved in discussions with the Department on contract length for renewables. This topic of CfD contract length is often included in our standard presentations, and as such this issue was discussed with a broad range of stakeholders in the period May to November 2012, and indeed subsequently, in varying levels of detail. We have checked our records and have provided a list of organisations as an Annex to this letter. However, you should note we do not believe this list

to be exhaustive, as full minutes are not kept for every meeting, so it is likely that further discussions with other stakeholders have also taken place.

Your final question asked what further analysis on CfD contract length had been conducted since May 2012. In respect of renewable technologies, the Department has re-run the original analysis with revised financing assumptions, which did not change the overall conclusions. New analysis has also been conducted on the net present value per MWh of different contract lengths. A summary of the new findings will be included in the forthcoming publication, and in this respect the exemption under section 22 applies as outlined above. Similarly, releasing the full details of this analysis would also be exempt under sections 35 and 43 of the Act. Again, in arriving at this conclusion we have applied a public interest test, as set out above, and concluded that the balance of interest is in withholding the information.

If you are dissatisfied with the handling of your request, you have the right to ask for an internal review. Internal review requests should be submitted within two months of the date of receipt of the response to your original letter and should be addressed to the DECC Information Rights Unit (foi@decc.gsi.gov.uk).

Please remember to quote the reference number above in any future communications.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Yours sincerely

Annex A: stakeholders who we can confirm have participated in discussions on CfD contract length for renewables

- The CfD Expert Group
- Energy UK
- Renewable UK
- REA
- Scottish Renewables
- Attendees at the City Briefing event
- The Power Trading Forum
- Greenpeace
- Green Alliance
- Friends of the Earth
- E3G
- WWF

The CfD Expert Group includes representatives from:

- Centrica
- DLT Consulting
- EDF
- Grant Thornton
- National Grid
- Ofgem
- Opten
- PWC
- RES
- RWE
- Scottish Power
- Smartest Energy
- Statkraft
- Which?

Energy UK includes representatives from:

- Biossence Renewable Energy
- Centrica
- Dong
- EDF Energy
- Eggborough Power
- E.ON
- ESBI
- Green Frog
- International Power

- RES Group
- RWE npower
- Scottish Power
- SSE
- Welsh Power

Attendees at the City Briefing included representatives from:

- AMP Capital
- Apax Partners
- Bank of America Merrill Lynch
- Bank of Ireland
- Bank of Tokyo Mistubishi
- Barclays
- BDO
- Beetle Capital
- Bloomberg New Energy Finance
- BNP Paribas
- Borealis
- Brookfield Utilities UK
- Canacord
- Citi Group
- CityGate
- Climate Change Capital
- Credit Sights
- Credit Suisse
- Deutsche Bank
- Dexia
- Dong Energy
- Ernst & Young
- Earth Capital Partners
- Ecofin Ltd
- ENCE
- European Investment Bank
- Eversheds
- Falck
- Fidelity
- Firststate
- Fitch Ratings
- GE Financial Services
- Goldman Sachs
- Griffin Securities
- Hastings Funds Management

- Hazel Capital
- Herbert Smith
- HSBC
- Hudson CEP
- Imperial
- InfraCapital (M&G Group)
- Ingenious Investments
- InterGen
- Investec
- JP Morgan
- Lloyds Bank
- MAEG
- Mainstream Renewable Power
- Mizuho Corporate Bank
- Morgan Stanley
- National Grid
- NIBC
- Nomura
- Nord LB
- Nordpool Spot
- Norton Rose
- Oddo Securities
- Ofgem
- Paradigm
- RBC
- RBS
- Redburn
- Riverfleet Capital
- Rothschild
- Royal Bank of Canada
- Royal Bank of Scotland
- Slaughter & May
- Société Générale
- Standard & Poor's
- Triodos
- Typhoon Offshore
- UBS
- UKGI
- UKTI
- Unicredit
- Utilyx Ltd

- Zouk