**DECC: ELECTRICITY MARKET REFORM  
FUNCTIONS OF THE FIT CFD COUNTERPARTY BODY**

| **Clause** | **Clause heading** | **Decision / action of CPB** |
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|  | ***Parties & Background*** | CPB to sign FiT CfD. *Note: CPB will have no discretion as to whether to enter into a FiT CfD.* |
|  | ***Definitions*** | *Note: any decisions / actions contained within the definitions have been captured elsewhere in this table.* |
|  | ***Milestone*** | * CPB to ensure that the generator has delivered a directors’ certificate certifying the minimum spend amount by the required date. * CPB to review the directors’ certificate and the accompanying supporting evidence to ensure that the amount spent by the generator is equal to or more than the minimum spend amount specified in the FiT CfD. * CPB to determine whether it is reasonably satisfied with the form and content of the evidence produced by the generator and decide whether it requires the generator to produce a report from an independent third party evidencing the minimum spend amount specified in the FiT CfD. |
|  | ***Milestone Early Termination*** | CPB to decide whether to terminate the FiT CfD in the event of: (i) the generator’s failure to deliver evidence of the satisfaction of the minimum spend milestone in accordance with the provisions of the FiT CfD by the required date; or (ii) a default event in respect of the generator having occurred (see further in relation to clause 20). CPB to provide notice of termination to the generator in the event of a CPB decision to terminate the FiT CfD. |
|  | ***Conditions Precedent*** | * CPB to ensure that all of the documentation / evidence (including directors’ certificates (where required)) to be provided by the generator with respect to satisfaction of the conditions precedent has been provided and determine whether it is reasonably satisfied with the form and content of such documentation / evidence. * CPB to decide whether to waive the fulfilment of all or any of the conditions precedent or extend the date by which all or any of the conditions precedent are to be fulfilled.. * CPB to ensure that the generator has delivered written reports at the required times to CPB as to the generator’s progress towards the fulfilment of the conditions precedent. CPB to determine whether it is reasonably satisfied with the form and content of such reports. * CPB to notify the generator in writing when all of the conditions precedent have been waived or fulfilled (and, hence, the “Start Date” for the relevant FiT CfD). * CPB may agree to a different target commissioning window and / or a later longstop date than those set out in the FiT CfD. * CPB to decide whether to terminate the FiT CfD if any of the conditions precedent has not been fulfilled or waived by CPB on or before the longstop date. CPB to provide notice of termination to the generator in the event of a CPB decision to terminate the FiT CfD. |
|  | ***Term*** | *Note: the term of the FiT CfD expires automatically and therefore no actions are required by CPB.* |
|  | ***Metered Output*** | *Note: these provisions are at any early stage and will require significant further development.* |
|  | ***Reference Price*** | CPB to calculate the reference price for each settlement period in accordance with the mechanism set out in the FiT CfD. |
|  | ***Strike Price*** | CPB to calculate the strike price indexation each year and notify the result to the generator. |
|  | ***Payment of Differences*** | * CPB to calculate the difference between the reference price and the strike price for each settlement period and the relevant difference amount (save to the extent that is an output from the work undertaken by the CfD Settlement Agent). * CPB to administer two-way payment flows to/from generator resulting from the above calculation (see further in relation to clauses 10 and 11 below). * CPB to make appropriate requests from suppliers as permitted/required under the supplier obligation arrangements to ensure that it is in sufficient funds to make payments under the FiT CfD. |
|  | ***Billing Statement*** | * CPB to prepare and send to the generator a billing statement at the intervals required by the FiT CfD, which shows the amounts owed by CPB or the generator (as the case may be). * CPB to estimate metered output for the relevant settlement period in accordance with the FiT CfD where metered data has not been received or is unavailable and use that estimated information in the billing statement (again, save to the extent that: (a) the decision to use estimated data; and (b) the corresponding calculations when that decision has been made, are part of the CfD Settlement Agent’s role). * CPB to carry out a reconciliation exercise where a billing statement contains estimated information or incorrect information and adjust the billing statement for subsequent billing periods accordingly (note that even if an adjusted billing statement is produced by CPB, the actual reconciliation exercise which provides the data to populate that billing statement may be produced by the CfD Settlement Agent). |
|  | ***Payment Mechanics*** | * CPB to make payments due to the generator in respect of a billing period (if any) within the required timeframe after issue of billing statement. * CPB to assess application of VAT and payment adjustments required to reflect VAT analysis. * CPB to assess whether tax deductions / withholdings required and, if so, to notify the generator, pay the relevant tax authority and provide receipt to generator (*note: the converse applies to any tax deductions / withholdings made by the generator*). * CPB to decide whether to set off, after a termination event, any amounts due from the generator against any amounts due by CPB to the generator. If that decision is made, calculation of the amount to be set-off will be required. * CPB to decide whether to dispute any sum shown in a billing statement. In the event of a dispute as to payment raised by either party, CPB to comply with the dispute resolution procedures. * If relevant, CPB to calculate and pay interest to the generator in the event that it does not receive sufficient amounts under the supplier obligation to satisfy payments to the generator or fails to pay the generator for some other reason. * Where a dispute as to payment has been resolved and CPB is required to pay amounts to the generator as a result, CPB to calculate and pay associated interest. |
|  | ***Metering*** | CPB to ensure that the generator maintains meters / metering equipment in accordance with the requirements of the FiT CfD throughout the term. In this regard, CPB to decide whether (and at what times) to access the plant, property or assets of the generator for the purposes of verifying the metered output and conducting tests on the metering equipment. |
|  | ***Project Information*** | * CPB to ensure that the generator provides the project information required under the terms of the FiT CfD, including the regular forecasts of expected availability of metered output. * CPB to consider the project information received from the generator and decide whether (and at what times) to request further information from the generator as to the financial condition, business and operations of the generator. |
|  | ***Data Provision*** | CPB to ensure that the generator provides the details of the metered output in respect of each settlement period promptly. CPB to decide whether the generator should provide that information to CPB as well as the CfD Settlement Agent. |
|  | ***Generator’s Representations and Warranties*** | *Note: the generator’s representations and warranties are provided by the generator and therefore no actions are required by CPB save where CPB becomes aware of a breach of a representation or warranty.* |
|  | ***CPB’s Representations and Warranties*** | CPB to provide representations and warranties as at the date of the FiT CfD as to its status, power and authority, enforceability of the FiT CfD, its status as principal and the non-conflict of the FiT CfD with other obligations of CPB. |
|  | ***Undertakings*** | * Generator’s undertakings – CPB to decide whether (and at what times) to request information from the generator as to its compliance with the generator undertakings. * CPB’s undertakings – CPB to comply in all material respects with laws and directives applicable to it. CPB to provide the generator with information regarding its compliance with this undertaking when reasonably requested to do so by the generator. CPB to notify generator promptly upon becoming aware of any breach by CPB of any material obligation under the FiT CfD. |
|  | ***Change in Law*** | * CPB to consider whether a qualifying change in law or change in industry documents has occurred under the terms of the FiT CfD. CPB to consider whether the change is discriminatory or specific and whether it is foreseeable. * If CPB considers that a qualifying change has occurred, CPB to give notice of that fact to the generator with supporting evidence. * If the generator serves a notice on CPB of a change in law or change in industry documents or provides information to CPB in response to CPB having served a notice, CPB to ensure that notice meets the requirements under the FiT CfD. CPB to consider the notice or information received from the generator and review the evidence provided to decide whether the change in law is a qualifying change in law or change in industry documents. CPB to consider foreseeability and materiality. * CPB to seek to agree with generator whether a qualifying change in law has occurred, whether the costs are material, the proposed change to the strike price and any steps that can be taken to mitigate the effect. * CPB to consider whether a strike price adjustment is possible or practical and if not, CPB is permitted to propose an alternative compensation mechanism to the generator. CPB to consult with the generator as to the method and consider any representations made by the generator. * CPB to assess and seek to agree with the generator whether any changes to the mechanics of the FiT CfD are necessary to reflect a change in industry documents. * CPB to decide whether to refer any dispute as to the change in law provisions in accordance with the dispute resolution procedures. * CPB to quantify costs incurred by it in assessing any change in law requests and seek costs recovery from generator. |
|  | ***Force Majeure*** | * If CPB is affected by a force majeure event, CPB to promptly notify the generator in writing of the nature and extent of the force majeure event and the steps being taken to mitigate the force majeure, the anticipated date of resumption of performance of its obligations and such other details reasonably requested by the generator. CPB to use all reasonable endeavours to mitigate the effects of the force majeure, carry out its obligations in any way reasonably practicable and resume performance when possible. CPB to update the generator at agreed intervals and notify the generator of any material developments relating to the force majeure event. * If the generator is affected by a force majeure event, CPB to assess supporting information provided by the generator and to determine whether to request information relating to the force majeure event from the generator. |
|  | ***Default and Termination*** | * CPB to determine whether a termination event has occurred in accordance with the terms of the FiT CfD. * CPB to decide whether to terminate the FiT CfD following the occurrence of a termination event. CPB to provide notice of termination to the generator in the event of a CPB decision to terminate the FiT CfD (including the proposed termination date). * In a number of cases, before CPB exercises a termination right, CPB must notify the generator to afford the generator an opportunity to remedy the default. This applies, for example, to: (i) non-payment by the generator; (ii) misrepresentation by the generator; (iii) the occurrence of a remediable material breach of the FiT CfD by the generator; (iii) credit support default; and (iv) loss of generation licence by the generator. * CPB to calculate the termination payment after the early termination date and notify that amount to the generator. * In the event of a prolonged force majeure, CPB to decide whether to terminate the FiT CfD and, if so, to notify the generator. |
|  | ***Acceptable collateral*** | * CPB to determine the trigger date for the provision of collateral (being the date on which CPB reasonably considers the reference price will be above the strike price for a prescribed period of time). * CPB to ensure that acceptable collateral is provided by the generator by the trigger date and maintained thereafter. CPB to determine whether it is reasonably satisfied with the form and content of the letters of credit provided by the generator and / or the terms on which cash is secured in CPB’s favour. * CPB to ensure that, if a letter of credit is due to expire, a substitute letter of credit is provided or the existing letter of credit is extended. * CPB to make a demand under a letter of credit or draw down cash if the generator fails to pay amounts owed under the FiT CfD or fails to replace a letter of credit if required by the FiT CfD. |
|  | ***Confidentiality, announcements, freedom of information*** | * CPB to keep all of the generator’s confidential information confidential and not disclose it unless it obtains the generator’s prior consent (save where CPB is permitted to disclose such information pursuant to the exceptions set out in the FiT CfD). In this regard, CPB to decide what generator confidential information it proposes to disclose, when and for what purpose. If disclosure is proposed, CPB to assess whether: (i) it is permitted to disclose without generator consent (and, if so, comply with any associated conditions, such as consulting with the generator, notifying the generator and/or ensuring that the recipient of the confidential information is subject to the same confidentiality obligations as CPB); or (ii) it must seek generator consent to do so. * Where the generator is proposing to disclose CPB’s confidential information and notifies CPB of that fact, CPB to decide whether to contest such disclosure. * CPB to decide what announcements to make (form, content and timing). * CPB to decide whether to consent to an announcement being made by the generator and, if so, to determine the requirements it wishes to impose as regards the nature, content and timing of that announcement. * CPB to deal with FoIA and EIR requests for information (including consultation / engagement with generator where required). |
|  | ***Dispute resolution procedure*** | * CPB to comply with the dispute resolution procedures with respect to the conduct of any dispute. The decisions required may derive from either: (a) a decision from CPB to initiate a dispute; or (b) the need for CPB to react to any dispute initiated by the generator. CPB will, in each case, need to assess: (i) what is covered by the dispute; (ii) what is its desired outcome in respect of the dispute; (iii) what is its overall strategy with respect to that dispute; (iii) which “senior representative” of CPB should conduct the dispute (prior to expert / arbitrator referral); (iv) whether consolidation/joiner of multiple disputes should be pursued; and (v) what information disclosure is required. A number of other specific decision-making functions related to the above are described below. * CPB required to decide whether to initiate the dispute resolution procedure and, if so, to provide the requisite information to the generator. CPB to determine its position with respect to any dispute initiated by the generator, including whether any dispute notice served by the generator complies with the dispute resolution procedure requirements. * CPB to decide whether a departure from the prescribed dispute resolution procedure is desirable (eg to obtain injunctive relief) and how to position itself if the generator so departs. * CPB senior representative to participate in resolution discussions with generator senior representative. Associated decisions will result from: the general considerations noted above; an assessment of whether any discussions / meetings should be held solely on a “without prejudice” basis; decisions as to whether and on what terms a settlement should be proposed (or, if the generator, makes a proposal, CPB’s position with respect to that proposal); and, if an outline settlement / compromise is agreed, the manner in which that is documented. * If a dispute not resolved by senior representatives, CPB to decide whether dispute resolution procedure provides for arbitration or expert determination and deal with corresponding appointment matters (eg agreeing the identity of the expert / arbitrator and agreeing terms of reference etc.). * CPB to make one or more submissions to the expert or arbitrators and otherwise comply with the procedural requirements which result from expert / arbitrator appointment. * CPB to comply with the determination of the expert or arbitral award and, if necessary, assess grounds for appeal/challenge (and, if grounds exist, to pursue appeal/challenge). |
|  | ***General provisions*** | * CPB to decide whether to consent to the transfer by the generator of all of its rights and obligations under the FiT CfD if a request is made. * CPB permitted to transfer its rights or obligations under the FiT CfD in prescribed circumstances on the proviso that CPB ensures that all accrued payment liabilities transfer. CPB also permitted to sub-contract or delegate any of its obligations under the FiT CfD. * CPB to enter into a direct agreement with generator’s financing banks (*note: will include agreeing the terms of that direct agreement*). * CPB to decide whether there is an issue relating to the operation of multiple FiT CfDs and notify the generators accordingly. If CPB notifies generators of the common issue, CPB should work with generators to agree a solution across FiT CfDs (see also “Practice Statements” below). * CPB to notify the generator in writing if it becomes aware of a decision by Commission to nullify State aid decision. |
|  | ***Governing Law*** | *Note: no actions are required by CPB.* |
|  | ***Language*** | CPB to decide whether to provide consent, if requested by the generator, to information being provided under the FiT CfD in a language other than English. |