**Off-taker of Last Resort Advisory Group – Third Meeting**

**Wednesday 6th November 2013 15:00 – 17:00**

**Minutes and actions**

**Attendees:**

**DECC attendees:**

Alex Weir (chair)

Tim Warham

Darryl Croft

Matt Coyne

Adam Harper

Helena Crow

**Advisory Group attendees:**

David Handley, RES

Phil Broom, GDF Suez

Keith Patterson, Brodies

Christian Pegrum, Eon

Martin Bell, Ofgem

Charlie Garrood, PwC

Dima Rifai, Paradigm Change Capital Partners LLP

Maria Paz Garcia Alajarin, EDP Renewables

Andrew MacLellan, Energos

Ravi Baga, EDF

Stuart Noble, Scottish Power

Edward Crosthwaite Eyre, Baringa

**Apologies:**

Simon Proctor, Good Energy

Nick Gardiner, BNP Paribas

Robert Owens, Smartest Energy

Konstantin Suplatov, PwC

Ben Cosh, Green Company

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|  | **Timing of Access** | | **Paper 3.01 Timing of Access** | | | | | **Darryl Croft** |  |
| After introductions, Darryl Croft (DC) presented paper 3.01 on the proposal for the timing of access to the off-taker of last resort mechanism.  The following points were raised in the discussion of options for timing of access:   * Agreement that there is likely to be little impact on generators if Backstop PPAs cannot be accessed for a period of time after the allocation of CfDs commences, provided the OLR discounts are set and the design of the OLR contract is locked down by the time CfD allocation commences. DECC confirmed that it intends to set the OLR discounts in Q2 2014, after the consultation stage, and to publish the OLR contract alongside secondary legislation, which is also expected to be in Q2 2014. * Agreement that the earliest that generators would need to access the backstop PPA would be the start of 2016, as it is unlikely any projects would have reached financial close and completed construction before this date. * Mixed views on whether a generator would want or need to access the OLR during the early years of output. Arguments in favour of making the OLR available during these early years were that generators wishing to participate in the short-term PPA market would get better deals if they could sign such PPAs shortly before commissioning, rather than at financial close. This would provide generators with greater flexibility. In addition, having a backstop PPA from the outset allows aggregators to play a role at an earlier stage. Arguments in favour of not making the OLR available during these early years included the fact that lenders are still likely to require a PPA with a bankable counterparty to be in place before they release funds, regardless of whether there is a backstop PPA available, as they are unlikely to rely on backstop PPAs from the outset. In addition, not having an OLR in place immediately may enable a better assessment of how well the PPA market is functioning under CfDs. * The possibility was raised of having different access conditions for the backstop PPA from day one – for example, by only making it available for situations where a generator’s PPA provider had become insolvent. | | | | | | | | | |
|  | | **Conditions of Access** | **Paper 3.02 Conditions of Access** | | | | | **Darryl Croft** |  |
| Darryl Croft (DC) presented paper 3.02 on the proposed conditions of access for the off-taker of last resort mechanism.  The following points were raised in the discussion of options for conditions of access:   * Agreement that the OLR should be available to generators regardless of whether they default on their open market PPA. If the backstop PPA has normal terms and conditions attached to it then consistent bad behaviour would be likely to rule a generator out anyway. Moreover, the significant discount offered by the backstop PPA is expected to make it unattractive even to generators defaulting on their open market PPA, and the likely introduction of a minimum contract length would prevent the OLR being used to reduce generators’ cost of defaulting. * Agreement that the off-taker should have the right to terminate the backstop PPA if the generator breaches its obligations, and that generators would lose their entitlement to future backstop PPAs in such circumstances. This was on the condition that the contract includes all the standard terms relating to cure periods etc, and that protection was built in for lenders. * The possibility that off-takers could ‘frustrate’ backstop PPAs and find an excuse for terminating them, but that this becomes less of an issue under competitive allocation and where the length of a contract is between six and twelve months. It was argued that the potential liabilities for an offtaker found to have deliberately frustrated a backstop PPA (i.e. the lost revenue for the generator for the remainder of their CfD) should be sufficient to remove any incentive to do so. * Agreement that we should not look to restrict the ability of off-takers to ‘buy out’ generators from long-term PPAs as this is not a material risk for consumers. * Agreement that we should require generators to commit to a minimum period of time, in order to prevent the OLR being used as a stop-gap, with 6 months considered a reasonable minimum length of time. Some concern was expressed that a requirement for generators to give 2 months’ notice if they wish to exit a backstop PPA after the break clause is too long, as this will make it harder for them to find PPAs in the open market. * The option for the supplier to sue a generator that leaves a backstop PPA early (as done through private contractual means) was considered a sufficient penalty. The group did not think this would require generators to post collateral as they would not be required to do so under normal commercial contracts. The threat of generators losing their eligibility for future backstop PPAs if they default early was not considered to be a sufficient enough penalty in itself, particularly if their lenders have already have become comfortable without a backstop PPA and/or the generators are coming to the end of their CfD. * The process of accessing backstop PPAs needs to consider how suppliers would hedge the reference price for baseload generators. This may require more notice for suppliers before being required to enter into a backstop PPA, and / or the levelisation process may need to assume the supplier trades in the day-ahead rather than season-ahead market for at least part of the term of the backstop PPA. | | | | | | | | | |
| **3.** | | **Contract Terms** | | **Paper 3.03 Contract Terms** | | **Matthew Coyne** | | |  |
| Matthew Coyne presented paper 3.03 on the proposed contract terms for the off-taker of last resort mechanism.  The following points were raised in the discussion of options for contract terms:   * Agreement that the index price for the backstop PPA should normally be the CfD Market Reference Price and should track it in the event that it changes. However, there may be a need to change the levelisation process or consider reallocation of the PPA. * Mixed views on the curtailment provisions. The Group agreed with the principle of trying to maintain incentives for efficient curtailment, but questioned whether the mechanics are workable considering the normal operational control systems. The group agreed that this was also an issue for standard PPAs under CfDs but that industry has yet to consider this fully. More thinking is required on whose responsibility the curtailment should be. * Agreement that it would be beneficial to have a minimum standard for data provision to make it quicker for generators and off-takers to integrate their systems. There was a general view that system standardisation would increase over time. However, the variety of systems in use at present would make this difficult. At a minimum there should be more onerous standards for maintaining their technical equipment and/or standardising SCADA. More thought is needed on what can be done to speed up systems integration. * Agreement that the generator should not be required to provide credit support. The Group commented that any current requirement for credit support from the generator relates to ROCs, which will not be an issue under the CfD. * The Group agreed with the principle of including a penalty short of termination for generators who repeatedly fail to notify suppliers of a planned outage. The Group did not agree on the nature of this penalty, but felt that it is an important disincentive for poor performance, considering the difficulty of monitoring persistent minor breaches across more than one contract. * General agreement that the compensation from the off-taker for contract termination is proportionate if the backstop PPA mimics the provisions in a regular PPA. The Group felt that there should be some penalty for generators that terminate a contract early – loss of eligibility for the OLR in future may not be a sufficient disincentive. * The group agreed that due to the short term of the contract, there was no need for general Change in Law provisions within the PPA. Any changes necessary to the bPPA could be made ex ante and apply to future bPPAs. | | | | | | | | | |
| **4.** | | **Forward Look** | | |  | |  | | |
| It was highlighted that the next OLRAG meeting will be moved back 1 week and therefore will no longer be held on 14 November. This is to provide time to finish the supporting analysis. A new date has now been set for this meeting, which will be held between 14:00-16:00 on Wednesday 20 November. | | | | | | | | | |