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Change in Law provisions

CfD workshop

22 August 2013

Disclaimer



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These slides contain a high level summary of the provisions incorporated at Part 11 of the draft CfD published in August.

These provisions are subject to change and refinement.



- The CfD is designed to address wholesale price volatility by stabilising prices
- The Change in Law provisions are primarily designed to address the risk that price stability is unduly impacted by changes in law, regulation or industry documentation
- The CfD is not intended to provide a guaranteed return on investment – plant should still be exposed to normal market signals
- Whilst generators will not benefit from any changes which lead to an increase in wholesale prices due to the capped strike price, they do get cover for changes which target them specifically
- Change in law provisions are designed to compensate generators and the CfD counterparty with respect to the impact of particular types of unforeseeable changes in “law” through payments or strike price adjustments

Change in Law process: *Does it qualify?*



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Is it a Qualifying Change in Law?

Is it a “Change in Law”?

YES

Was it a “Foreseeable Change in Law”?

NO

Is it classified as a “specific”, “discriminatory” or
“other” Change in Law?

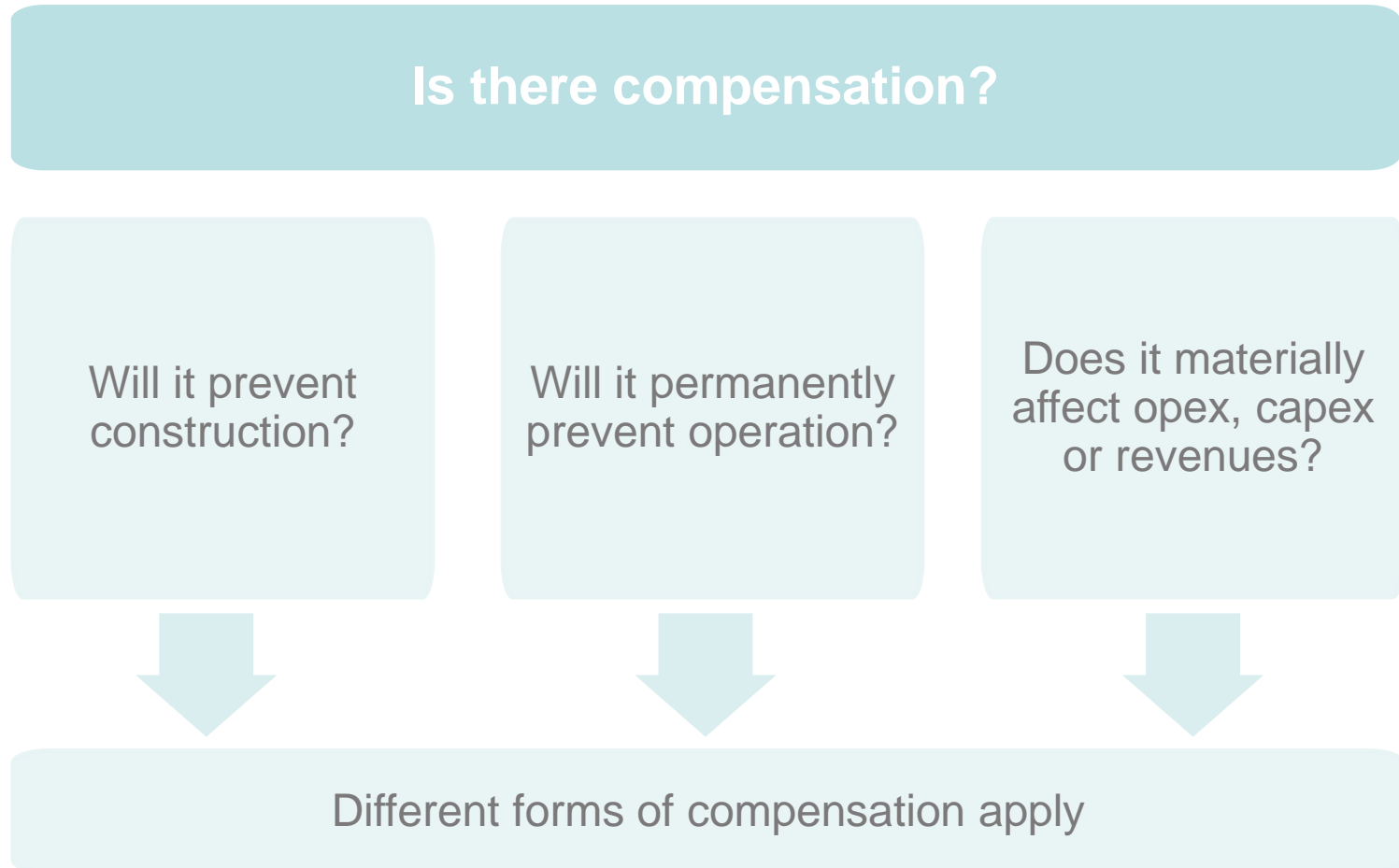
YES

In principle
Change in Law protection is available

Change in Law process: *Is there compensation?*



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Does it qualify: *Is it a “Change in Law”?*



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Covers changes to:

- Acts of Parliament and regulations
- Directives issued by relevant bodies e.g. Ofgem
- Industry documents e.g. BSC
- Required Authorisations e.g. generation licences

“Change” covers:

- New provisions
- Amendments / supplements
- Withdrawal / termination / repeal / replacement
- Change in interpretation

Exclusions:

- Change in Law (CIL) due to breach or default of the relevant law by the generator
- CIL due to failure of the generator to act to a Reasonable and Prudent Standard
- CIL which is continued development of industry best practice

Questions: *Change in Law definition*



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- Since November we have refined the approach to Change in Law to provide clarity of process. However, we acknowledge that the provisions are complex. Given the complexity of these provisions, in what way could they be simplified?
- Bearing in mind the nature of regulation in the sector, are there any other categories of change which could have a specific or discriminatory impact on a generator?

Does it qualify: *Was it a “Foreseeable Change in Law”?*



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- Defined term under Clause 22.1 “Foreseeable Change in Law”
- Removed general test in the November 2012 CfD Heads of Terms which included all documents “reasonably foreseeable by a Reasonable and Prudent Operator” due to concerns over scope
- Instead foreseeability is now assessed against a list of documents either published or of which a generator has received a copy before contract signature

Questions: *Foreseeability*



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- Can the foreseeability provisions now be clearly understood and priced by generators?

Does it qualify: *Is it classified as specific, discriminatory or “other”?*



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Specific

Specifically applies only to:

- one technology
- CfD holders
- CfD holders of a certain technology.
- holding of interests in companies or organisations involved in facilities covered by one of the definitions above

Discriminatory

Only affects:

- the project
- the facility
- or the generator

“Other”

- Instigated by the UK Government
- Undue, not objectively justifiable, discriminatory effect when compared with the effect on certain other generators

Questions: *specific, discriminatory,* *“other” Change in Law*



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- What are your views on the comparator groups for “other” CIL?
 - Operating facilities that deploy one or more of the Material Generation Technologies
 - Other plants operating the same technology as the generator
- Have we got the right parameter to define a Material Generation Technology?
 - At least 1% of all installed generation capacity

Is there compensation: *Is the impact material?*



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- The concept of materiality is included in the draft terms
- This involves considering whether the amount of net costs or savings are significant
- We are still considering a metric for assessing this impact
- The intention is to avoid the administrative burden of claims for immaterial cost changes, and to ensure a proportionate approach to compensation

Note:

- Reasonable and Prudent Standard applies to mitigate costs of the CIL

Questions: *materiality*



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- We are considering how to define the materiality metric. What are your thoughts on this – do you agree it should be considered in determining whether CIL compensation will be payable and, if so, how would you suggest it is defined?
- The process requires generators to estimate the impact of changes on them. Should compensation be calculated on this basis, or should there be a later adjustment to reflect actual costs incurred?

Is there compensation: *Does it prevent construction or operation?*



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Prevention of construction

- Cover for sunk costs (including any necessary decommissioning works)
- Which are unavoidable and wholly attributable to construction
- Will take account of any savings (e.g. insurance and tax reliefs)

Permanent prevention of operation

- Still considering the scope of compensation payments in these circumstances

Note: where compensation is applied for these Change in Law events, no other Change in Law compensation will be given and the CfD Counterparty will also have a termination right

Is there compensation: *Does it affect opex, capex or revenues?*



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Opex

- Calculated based on the net present value of costs for the remaining term of the CfD, against projected generation

Capex

- Full compensation up to year 12 based on the hurdle rate and projected generation
- Where CIL is post year 12, reducing proportion of compensation

Revenues

- Compensation for material revenue reduction in a reduced output period caused by a change in law
- May be different if due to capex
- Considering compensation to counterparty for revenue increase

The expectation is that the strike price will be adjusted. However the Counterparty may pay compensation in an equivalent lump sum or series of payments

Questions: *compensation*



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- What costs should be covered for payments where construction is prevented or operations permanently cease as a result of a CIL?
- The contract does not currently set out how compensation for changes leading to additional revenues will be paid to the CfD Counterparty. Should this just be the mirror of the lost revenues provisions?
- What should be the interactions between adjustments for costs / savings and those which affect revenues?