

2014 No.

ELECTRICITY

The Power Purchase Agreement Scheme Regulations 2014

Made - - - - ***

Laid before Parliament ***

Coming into force - - ***

CONTENTS

**PART 1
GENERAL**

1. Citation and commencement
2. Interpretation

**PART 2
POWER PURCHASE AGREEMENT SCHEME**

Initial stages for entering into a backstop power purchase agreement

3. Sending expressions of interest to all licensed suppliers
4. Determination as to electricity generator's eligibility and submission of project information
5. Period for making determination as to conditions specified in regulation 4
6. Determination that the conditions specified in regulation 4 are met
7. Circumstances in which multiple BPPAs are to be subject to an auction
8. Determination that the conditions specified in regulation 4 are not met
9. Notification of cases in which no OLR notice is to be issued

Determining which licensed supplier is to offer to enter into a BPPA

10. Requirement to participate in auctions taking place in an OLR year
11. Process for selecting licensed suppliers in respect of any BPPA

Exceptional circumstances

12. Modification of certain deadlines in exceptional circumstances

Information required in connection with power purchase agreement scheme

13. CFD Counterparty to provide information requested by the Authority
14. Licensed suppliers to provide information to the Authority
15. Records to be maintained by the Authority
16. Annual reports

BPPA terms

17. Terms to be included in BPPAs

PART 3
OLR levelisation and mutualisation
OLR levelisation

18. OLR levelisation
19. Calculations required for purposes of annual levelisation and periodic levelisation
20. Annual levelisation payments
21. Periodic levelisation payments
22. Notice of levelisation payments
23. Payments by the Authority
24. Levelisation correction

OLR mutualisation

25. OLR mutualisation
26. Mutualisation lower limit

Miscellaneous

27. Termination of supply licence
28. Late payments

PART 4
Miscellaneous

29. Enforcement
30. Publication of guidance
31. Review by Secretary of State of criteria for selecting mandatory licensed suppliers
32. Review by Secretary of State of power purchase agreement scheme
33. Notices etc

-
- SCHEDULE — BPPA auction process
- PART 1 — The auction
 - PART 2 — Selecting a licensed supplier in respect of a BPPA

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

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) [Except as stated in paragraph (3)], these Regulations come into force on [DATE].]

^(a) 2013 c.32.

(3) [Regulations [] come into force on [DATE]].

Interpretation

2. In these Regulations—

“backstop power purchase agreement” means a power purchase agreement which is entered into under a power purchase agreement scheme;

“BPPA” means a backstop power purchase agreement;

“CFD counterparty” has the meaning given in section 7 of the Energy Act 2013;

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

“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 respect of which the Authority has made a determination falling within regulation 6(1);

“expression of interest” has the meaning given in regulation 3(1);

“GSP group” has same meaning as in relevant supply licence conditions;

“levelisation payment” has the meaning given in regulation 18(6);

“licensed supplier” means a person who is the holder of an electricity supply licence;

“mandatory licensed supplier”, in respect of any auction under Part 2 which takes place in an OLR year, means any licensed supplier which receives a notice under regulation 10(1)(b) in relation to that year;

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

“OLR” means an offtaker of last resort;

“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 under Part 2 in respect of electricity generator;

“OLR year” means each period of 12 months commencing on 1 April and ending on the next 31 March;

“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 contract under Chapter 2 or 4 of Part 2 of the Energy Act 2013 which has been entered into by an electricity generator;

“relevant supply licence conditions” means conditions which by virtue of section 50(1) of the Energy Act 2013 are contained in any electricity supply licence;

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

“working day” means a day that is not—

(a) a Saturday or Sunday, Christmas Day, Good Friday; or

(b) a bank holiday under the Banking and Financial Dealings Act 1971^(b) in any part of the United Kingdom.

(a) 1989 c.29.

(b) 1971 c.80.

PART 2

POWER PURCHASE AGREEMENT SCHEME

Initial stages for entering into a backstop power purchase agreement

Sending expressions of interest to all licensed suppliers

3.—(1) In these Regulations, “expression of interest” means an expression of interest submitted to the Authority by an electricity generator which states that the generator—

- (a) is seeking to enter into a BPPA with one or more licensed suppliers in respect of a generating station specified in the expression of interest; and
- (b) meets the eligibility requirements.

(2) Where the Authority receives an expression of interest, it must send a copy of it to all licensed suppliers.

(3) The Authority must comply with paragraph (2) before the end of the period of two working days which starts with the first working day following the day on which the Authority receives the expression of interest.

Determination as to electricity generator’s eligibility and submission of project information

4.—(1) Where the Authority has received an expression of interest from an electricity generator, it must determine whether conditions A and B are met in respect of the generator.

(2) Condition A is that the information which the electricity generator has submitted to the Authority or which the Authority holds under these Regulations supports the statement made by the generator in the expression of interest that the generator meets the eligibility requirements.

(3) Condition B is that it appears to the Authority that the electricity generator has submitted all of the project information required for the purposes of entering into a BPPA with a licensed supplier.

(4) If at any time before the end of the period determined in accordance with regulation 5 it appears to the Authority that an electricity generator has submitted part only of the project information to the Authority, it must give the generator a notice specifying—

- (a) the information that remains to be submitted; and
- (b) the form and manner in which it is to be submitted.

(5) No determination is to be made under paragraph (1) in respect of an electricity generator where—

- (a) the Authority has not received the generator’s statement of confirmation before the end of the period of 10 working days which starts with the first working day following the day on which the Authority receives the generator’s expression of interest; or
- (b) a notice is given to the generator under paragraph (4) and the Authority has not received the information specified in the notice from the generator before the end of the period of 5 working days which starts with the date on which the notice was given.

Period for making determination as to conditions specified in regulation 4

5.—(1) The determination under regulation 4(1) in respect of an electricity generator must be made by the Authority within the period of 5 working days—

- (a) which starts with the first working day following the relevant date determined under paragraph (2) or (3); but
- (b) which excludes any day specified in paragraph (4).

(2) Where the Authority receives the electricity generator’s statement of confirmation before the end of the initial period, the relevant date is the final day of that period.

(3) Where the Authority does not receive the electricity generator's statement of confirmation until the initial period has ended, the relevant date is the day on which the Authority receives the statement of confirmation.

(4) In paragraphs (2) and (3), the "initial period" means the period of 4 working days which starts with the day on which the Authority receives an electricity generator's expression of interest.

(5) For the purposes of paragraph (1)(b), the excluded days are—

- (a) if a notice is given to the generator under regulation 4(4), the day on which the notice is given and each subsequent working day until the first working day following the day on which the information specified in the notice is received by the Authority; and
- (b) if any information in respect of the generator is not provided to the Authority in accordance with regulation 13, each working day after the end of the period specified in paragraph (2) of that regulation and each subsequent working day until the first working day following the date on which the information is provided.

Determination that the conditions specified in regulation 4 are met

6.—(1) Where the determination under regulation 4(1) is that both of the conditions specified in regulation 4 are met in respect of an electricity generator (an "eligible generator"), the Authority must—

- (a) in any case to which regulation 7 applies, determine the number of BPPAs which are to be subject to an auction under this Part in respect of that generator and the capacity of each of those BPPAs;
- (b) send an OLR notice to all licensed suppliers; and
- (c) send a copy of the OLR notice to the eligible generator, together with a copy of the BPPA sent to licensed suppliers under paragraph (2)(b).

(2) An OLR notice must state the form and manner in which, and date by which, bids are to be submitted to the Authority for the purposes of the auction in respect of the eligible generator and must be accompanied by—

- (a) a copy of all information which the generator submitted to the Authority with a view to entering into a BPPA, apart from the generator's statement of confirmation; and
- (b) a copy of each BPPA which is to be subject to an auction in respect of the generator.

(3) The terms of any BPPA which is to be subject to an auction in respect of an eligible generator are the terms determined by the Secretary of State under regulation 17 which apply to the generator and which were for the time being in force on the date that the electricity generator entered into the relevant contract (but subject to any amendment of those terms made under regulation 17(5)).

(4) For the purposes of complying with paragraph (2)(b), the Authority must identify the terms of the BPPA which apply to the eligible generator under paragraph (3).

Circumstances in which multiple BPPAs are to be subject to an auction

7.—(1) This regulation applies where the capacity of the generating station to which an eligible generator's expression of interest relates is equal to or exceeds 150 megawatts.

(2) The number of BPPAs which are to be subject to an auction under this Part in respect of the eligible generator, and the capacity of each of those BPPAs, is to be determined as follows.

Step 1

Divide the total capacity in megawatts in respect of which the eligible generator intends to enter into a BPPA by 100.

Step 2

Round the number resulting from step 1 to the nearest whole number.

Step 3

Divide the total capacity in megawatts in respect of which the eligible generator intends to enter into a BPPA by the number resulting from step 2.

(3) The number resulting from step 2 is the number of BPPAs which are to be subject to an auction under this Part in respect of the eligible generator.

(4) The number resulting from step 3 is the capacity in megawatts of each of those BPPAs.

Determination that the conditions specified in regulation 4 are not met

8. Where the determination under regulation 4(1) is that either or both of the conditions specified in that regulation are not met in respect of an electricity generator, the Authority must send a notice to that effect to the electricity generator setting out the Authority's reasons for its determination.

Notification of cases in which no OLR notice is to be issued

9.—(1) In any of the following cases the Authority must notify all licensed suppliers that no OLR notice is to be issued (and no auction is to take place under this Part) in respect of an electricity generator from which the Authority has received an expression of interest—

- (a) case 1 is where the Authority is notified that the electricity generator has withdrawn the expression of interest at any time before the Authority makes a determination under regulation 4(1);
- (b) case 2 is where no determination under regulation 4(1) is to be made in circumstances which fall within regulation 4(5);
- (c) case 3 is where the Authority makes a determination falling within regulation 8.

(2) Where case 2 applies, the Authority must also notify the electricity generator that no OLR notice is to be issued and no auction is to be take place under this Part in respect of the generator.

Determining which licensed supplier is to offer to enter into a BPPA

Requirement to participate in auctions taking place in an OLR year

10.—(1) On or before 1st September in each OLR year, the Authority must—

- (a) determine in accordance with relevant supply licence conditions which licensed suppliers are required to participate in all auctions under this Part which take place in the following OLR year (“the specified OLR year”);
- (b) notify each of those licensed suppliers that, in relation to the specified OLR year, the licensed supplier is required by relevant supply licence conditions to participate in all such auctions taking place in that year; and
- (c) publish a list of all licensed suppliers notified under sub-paragraph (b) in relation to the specified OLR year.

(2) For the purposes of paragraph (1)—

- (a) an auction in respect of an eligible generator is to be regarded as taking place in a particular OLR year if the expression of interest from the generator was received by the Authority in that OLR year; and
- (b) it is irrelevant whether the whole or any part of the auction takes place in that OLR year or in the following one.

Process for selecting licensed suppliers in respect of any BPPA

11.—(1) The Schedule to these Regulations makes provision in connection with auctions which are to take place for the purposes of this Part.

(2) Subject to the provision of that Schedule, the Authority must—

- (a) determine the characteristics of the process for determining by auction the licensed suppliers which are to offer to enter into BPPAs with eligible generators; and
 - (b) operate that process in respect of each eligible generator.
- (3) The Authority may delegate any functions conferred by paragraph (2)(b) to such person or persons as the Authority may determine.

Exceptional circumstances

Modification of certain deadlines in exceptional circumstances

12.—(1) This paragraph applies where exceptional circumstances beyond the Authority’s reasonable control (or beyond the reasonable control of any person to whom functions are delegated under regulation 11(3)) prevent anything being done within the period specified in a relevant provision for it to be done^(a).

(2) In any case to which paragraph (1) applies, the Authority must as soon as reasonably practicable notify the electricity generator and all licensed suppliers of—

- (a) the exceptional circumstances which have occurred;
- (b) the date by which the Authority expects anything to be done which is still required to be done and for which a period was specified by a relevant provision; and
- (c) any delay in doing anything by the date specified under sub-paragraph (b) (or under this sub-paragraph), the new date for doing it and a statement of the reasons for the delay.

(3) The Authority must—

- (a) in determining whether circumstances which have arisen are exceptional, have regard in particular to whether or not all reasonable steps were taken to avoid the circumstances arising and to overcome them; and
- (b) in specifying a date under paragraph (2) for anything to be done, take all reasonable steps to ensure that the date falls as soon as reasonably practicable after the end of the period specified in the relevant provision in question.

(4) “Relevant provision” means—

- (a) regulation 3(3);
- (b) regulation 5(1); or
- (c) any of paragraphs 2, 3, 7(6) of 11(5) the Schedule to these Regulations.

Information required in connection with power purchase agreement scheme

CFD Counterparty to provide information requested by the Authority

13.—(1) For the purposes of enabling the Authority to discharge its functions under regulation 5, the Authority may request a CFD counterparty to provide it with information about any relevant contract which has been entered into by an electricity generator.

(2) The CFD counterparty to which a request is made under paragraph (1) must provide the information to the Authority within 2 working days of receiving the request.

Licensed suppliers to provide information to the Authority

14.—(1) In respect of each periodic levelisation period which falls wholly or partly within the period during which the BPPA is in force, the OLR must provide the Authority with a statement of the volume output of the electricity generator during that period measured by meter.

(2) The statement required by paragraph (1) must be sent to the Authority on or before [DATE].

(a) Additional information on this draft regulation is set out at pp. XX of the accompanying OLR consultation document.

(3) The Authority may reasonably require any licensed supplier to provide it with information which it 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.

Records to be maintained by the Authority

15.—(1) The Authority must establish and maintain records of—

- (a) any electricity generator which withdraws an expression of interest—
 - (i) after submitting to the Authority the generator's statement of confirmation; but
 - (ii) before the date on which an OLR notice is issued in respect of the generator;
- (b) any electricity generator which withdraws an expression of interest after the date on which an OLR notice is issued in respect of the generator;
- (c) any electricity generator which fails to enter into a BPPA in respect of a generating station having received an offer to do so from a successful bidder (or successful reserve bidder) which was selected in accordance with Part 2 of the Schedule to these Regulations; and
- (d) any generating station in respect of which a BPPA previously entered into was terminated at any time before the expiry of the BPPA's full term, otherwise than by agreement between the electricity generator and the licensed supplier which were party to the BPPA.

(2) The Authority must also maintain—

- (a) a list of each BPPA which has been entered into between an electricity generator and a licensed supplier;
- (b) a statement of the reference number of the relevant contract to which the electricity generator was subject at the time that the BPPA was entered into;
- (c) a statement of the management fee payable to the licensed supplier in respect of the BPPA, expressed as an amount for each megawatt hour of electricity;
- (d) a statement of the date on which the Authority notified the licensed supplier under Part 2 of the Schedule to these Regulations that it had been selected as the successful bidder (or successful reserve bidder) in respect of the BPPA; and
- (e) a statement of the date notified to the Authority by the licensed supplier in accordance with relevant licence conditions as being the date on which the BPPA commenced.

(3) The Authority must make any record or list 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 records of BPPA terms which are issued, revised or amended by the Secretary of State under regulation 17.

Annual reports

16. On or before [DATE] 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 amount of electricity generated in that year under the power purchase agreement scheme;
- (c) the total number of electricity generators participating in the power purchase agreement scheme;
- (d) the total number of generating stations of any particular technology in respect of which BPPAs have been entered into; and
- (e) any information that the Authority is required to make public under these Regulations.

BPPA terms

Terms to be included in BPPAs

17.—(1) The Secretary of State must issue the standard terms which are to be included in any BPPA.

(2) The Secretary of State may from time to time—

- (a) revise the standard terms issued under paragraph (1); and
- (b) give to the Authority such directions under paragraph (3) as the Secretary of State considers appropriate.

(3) Directions under this paragraph are directions as to specified terms which are to be included in any BPPA which is to entered into at any specified time by any specified electricity generator or any specified class of electricity generator.

(4) Directions under paragraph (3)—

- (a) may specify a date on or by reference to which any specified class of electricity generator ceases to be eligible to enter into a BPPA; but
- (b) must not specify any such date in relation to any electricity generator which enters into a relevant contract before 1st April 2019.

(5) The Secretary of State may amend any BPPA terms which by virtue of regulation 6(3) would otherwise apply to an electricity generator but only if, and to the extent that, the Secretary of State is satisfied that—

- (a) the amendments are necessary in order to take account of a new market structure, trading arrangement or industry code; and
- (b) the effect of all 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.

(6) The Secretary of State must publish—

- (a) any terms issued, revised or amended, or any directions given, under this regulation; and
- (b) the date on or by reference to which any term or direction is to take effect.

(7) In this regulation, “specified” means specified in a direction given by the Secretary of State under paragraph (3).

PART 3

OLR levelisation and mutualisation

OLR levelisation

OLR levelisation

18.—(1) With effect from the date on which 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 a levy in accordance with this Part; and
- (b) from which payments in connection with the power purchase agreement scheme are to be made by the Authority in accordance with the provisions of this Part.

(2) The amount of the payments which are to be made into the OLR levelisation account and the amount of the payments which are to be made out of that account are to be calculated and paid periodically and annually.

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

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

(5) No amount is payable under this Part in respect of any BPPA after the expiry of the 12 month period which starts with the date notified to the Authority by the licensed supplier in accordance with relevant licence conditions as being the date on which the BPPA commences.

(6) In this Part "levelisation payment" means any payment determined in accordance with this regulation and regulations 19 to 24 which is made into or out of the OLR levelisation account.

Calculations required for purposes of annual levelisation and periodic levelisation

19. 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 determine the following amounts.

Step 1

Determine the amount of A's OLR contribution in respect of an OLR year as being the sum of all amounts which, in respect of each BPPA in respect of which the A is the OLR, are calculated by applying the formula $V \times MF$, where—

- (a) V is the volume output of the electricity generator subject to the BPPA, measured by meter, 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, expressed as an amount for each megawatt hour of electricity, which is payable in respect of the BPPA in question.

Step 2

Determine the amount of A's adjusted OLR contribution in respect of an OLR year by taking the amount (if any) determined for A under Step 1 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.

Step 3

Determine A's market share in an OLR year 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 an electricity supply licence.

Step 4

Determine the market share OLR contribution of A in respect of an OLR year by—

- (a) calculating the sum of the amounts determined under Step 1 in relation to all licensed suppliers; and
- (b) multiplying it by the percentage determined in respect of A under Step 3.

Annual levelisation payments

20.—(1) On or before 1st October following the end of each OLR year, the Authority must 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 (as determined under step 2 of regulation 19) is greater than the licensed supplier's market share OLR contribution (as determined under step 4 of that regulation), the licensed supplier is entitled to receive an annual levelisation payment 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 equal to the difference between those amounts.

Periodic levelisation payments

21.—(1) The Authority must not later than 1st March before the start of each OLR year, determine and publish the periodic levelisation periods which are to apply in that OLR year.

(2) 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.

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

(4) In respect of each periodic levelisation period, the Authority must calculate the periodic levelisation payment which each licensed supplier is required to make or is entitled to receive.

(5) A calculation under paragraph (4) must be based on the Authority's estimate of the difference between the licensed supplier's OLR contribution (as determined under step 1 of regulation 19) and its market share OLR contribution (as determined under step 4 of that regulation) for the OLR year in which the periodic levelisation period falls.

Notice of levelisation payments

22. After the Authority has calculated levelisation payments, 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 possible 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 25 does not apply—

- (a) any 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; or
- (b) any 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(1) 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 give notice to licensed suppliers in accordance with regulation 22.

(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

OLR mutualisation

25.—(1) This regulation applies—

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

(2) In paragraph (3), “the amount to be mutualised” means the total referred to in paragraph (1)(b).

(3) 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 market share at the due date;
- (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 (4) 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.

(4) Paragraph (3)(c) applies if—

- (a) the date by which the mutualisation payment is due has passed; and
- (b) the Authority has received mutualisation payments.

(5) 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) issue a further mutualisation notice under paragraph (3).

(6) Where a mutualisation notice is issued to a licensed supplier in accordance with paragraph (5)(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.

(7) Where, after receiving mutualisation payments from licensed suppliers, the Authority receives an unpaid amount from a defaulting licensed supplier, the Authority must within 20

working days distribute that amount among qualifying licensed suppliers in proportion to their market shares at the unpaid amount's due date.

- (8) 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).
- (9) In this regulation—

“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;
“market share” is to be determined in accordance with step 3 of regulation 19;
“mutualisation lower limit” has the meaning given in regulation 26;
“qualifying licensed supplier” is a licensed supplier which has made a mutualisation payment under paragraph (3) in respect of the unpaid amount mentioned in paragraph (7); and
“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.

Mutualisation lower limit

26.—(1) The Secretary of State must determine in respect of each OLR year a lower limit for the unpaid amounts (as referred to in regulation 25(1)(b) and defined in regulation 25(9)) that will trigger a mutualisation (“the mutualisation lower limit”).

(2) The Secretary of State must publish the determination under paragraph (1) not less than one month before the beginning of the OLR year to which it relates.

Miscellaneous

Termination of supply licence

27.—(1) This regulation applies if the electricity 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 the amount is unpaid, E remains subject—

- (a) to that liability; or
- (b) to such part of the entitlement that the Authority may determine.

(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, an electricity 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(3); or
- (c) regulation 25(8).

(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 step 3 of regulation 19 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(a).

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.

Review by Secretary of State of criteria for selecting mandatory licensed suppliers

31.—(1) [On or before DATE in any OLR year], the Secretary of State must review the circumstances in which a licensed supplier is or may be required to offer to enter into a BPPA.

(2) The Secretary of State must publish the results of any review conducted under paragraph (1).

Review by Secretary of State of power purchase agreement scheme

32.—(1) The Secretary of State must conduct a review into the operation of the power purchase agreement scheme in respect of each OLR year.

(2) On request by the Secretary of State, the Authority must provide to the Secretary of State such information in connection with the power purchase agreement scheme as is requested for the purposes of any review conducted under paragraph (1).

(3) The Secretary of State must publish the results of any review conducted under paragraph (1).

(a) 1989 c.29

Notices etc

33.—(1) A notice under these Regulations—

- (a) must be in writing; and
- (b) may be transmitted by electronic means.

(2) The Authority is to be regarded as having complied with any requirement under these Regulations to send to all licensed suppliers a notice or a copy of an expression of interest if it sends it to such licensed suppliers as are for the time being shown in the most up-to-date version of the Authority's records.

SCHEDULE

Regulation 11(1)

BPPA auction process

PART 1

The auction

One auction in respect of each eligible generator

1. One auction is to take place in respect of each eligible generator irrespective of the number of BPPAs determined under regulation 7 as being subject to the auction in respect of that generator.

Close of the auction period

2.—(1) Except in a case falling within paragraph 3, each auction closes at the end of the period of 10 working days which starts with the first working day after the date on which the Authority sent the OLR notice to licensed suppliers in accordance with regulation 6.

(2) For the purposes of sub-paragraph (1), no account is to be taken of whether or not the Authority receives any bids in the auction.

Errors or omissions in information submitted by electricity generator

3.—(1) If at any time during the period specified in paragraph 2 the Authority becomes aware of any error in or omission from the project information submitted by an electricity generator, the Authority must—

- (a) notify all licensed suppliers of the error or omission, giving details;
- (b) notify the generator of it, giving details; and
- (c) send to all licensed suppliers any updated version of the project information which the Authority receives from the electricity generator.

(2) Where more than 2 days of the period specified in paragraph 2 have already elapsed before the Authority becomes aware of the error or omission referred to in sub-paragraph (1), the auction does not close until the end of the period of 10 working days which starts with the date on which the Authority sends to licensed suppliers the updated version of the project information which it receives from the electricity generator.

(3) For the purposes of sub-paragraph (2), no account is to be taken of whether or not the Authority receives any bids in the auction.

Termination of auction

4. Where at any time before the auction closes the Authority becomes aware of information which indicates that an electricity generator does not in fact meet the eligibility requirements, the Authority must notify the electricity generator that the auction is terminated.

Notifying licensed suppliers that no auction is to take place following issue of OLR notice

5.—(1) In any of the following cases the Authority must notify all licensed suppliers that, notwithstanding that an OLR notice has been issued in respect of an electricity generator, the auction in respect of the generator is terminated—

- (a) case 1 is where the Authority is notified before the close of the auction that the electricity generator has withdrawn its expression of interest;
- (b) case 2 is where, in circumstances which fall within paragraph 3, the Authority does not receive an updated version of the project information before the end of the period of [5] days which starts with the date on which the generator is notified by the Authority under paragraph 3(1)(b);
- (c) case 3 is where paragraph 4 applies in respect of the generator.

(2) Where case 2 applies, the Authority must also notify the electricity generator that the auction is terminated.

PART 2

Selecting a licensed supplier in respect of a BPPA

Single BPPA subject to auction

6. Paragraphs 7 to 9 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

7.—(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 specified in the electricity generator's project information in relation to the generating station in respect of which the generator is seeking a BPPA.

(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 any bid submitted by more than one licensed supplier, the Authority must, in a manner determined by the Authority, select as the successful bidder the licensed supplier whose bid the Authority received first.

(6) Within one working day of the close of the auction, the Authority must notify—

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

Reserve bids

8.—(1) In respect of the BPPA subject to auction, any licensed supplier to which sub-paragraph (2) applies is to be treated for the purposes of paragraph 9 as a reserve bidder which submitted a reserve bid.

(2) This sub-paragraph applies to any licensed supplier other than—

- (a) the successful bidder; and
- (b) any licensed supplier which—
 - (i) is not a mandatory licensed supplier; and
 - (ii) when submitting its bid, specified in accordance with relevant supply licence conditions that the bid was not to be considered as a reserve bid.

Consideration of reserve bids

9.—(1) Sub-paragraph (2) applies where an eligible generator which has entered into a BPPA with a licensed supplier which has been selected under this Part of this Schedule gives notice which—

- (a) is in accordance with the terms of the BPPA; and
- (b) is given on the grounds that the licensed supplier has committed a material breach of the BPPA; and
- (c) results in termination of the BPPA no more than 5 working 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 set out in paragraph 7 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 or “reserve bidder”; and
- (c) no account is to be taken of the bid submitted by any licensed supplier which has already been notified by the Authority under paragraph 7(6)(a) or sub-paragraph (3)(a).

(3) The Authority must—

- (a) notify the licensed supplier which is selected under this paragraph that it has been selected as the successful reserve bidder; and
- (b) notify the eligible generator of the name of that licensed supplier, enclosing the signed copy of the BPPA which the licensed supplier was required by relevant supply licence conditions to provide to the Authority.

Multiple BPPAs subject to auction

10. Paragraphs 11 to 13 apply where—

- (a) the Authority has determined in accordance with regulation 7 that more than one BPPA is 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

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

(2) The Authority must—

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

(3) The Authority must consider each of the BPPAs subject to auction one after the other and select the licensed supplier which proposed the lowest amount as the successful bidder for the first BPPA considered, select the licensed supplier which proposed the next lowest amount as the successful bidder for the next BPPA, and so on until a successful bidder has been selected for all of the BPPAs subject to auction.

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

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

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

(5) Within one working day of the close of the auction, the Authority must notify—

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

Reserve bids: multiple BPPA auction

12.—(1) In respect of each BPPA subject to an auction, any licensed supplier to which sub-paragraph (2) applies is to be treated for the purposes of paragraph 13 as a reserve bidder which submitted a reserve bid.

(2) This sub-paragraph—

- (a) applies to any licensed supplier in respect of any bid submitted in the auction which has not already been selected under paragraph 11 or 13; but
- (b) does not apply in respect of any bid made by any licensed supplier which—
 - (i) is not a mandatory licensed supplier; and
 - (ii) when submitting the bid, specified in accordance with relevant supply licence conditions that it was not to be considered as a reserve bid.

Consideration of reserve bids: multiple BPPA auction

13.—(1) Sub-paragraph (2) applies where an eligible generator which has entered into a BPPA with a licensed supplier which has been selected under this Part of this Schedule gives notice which—

- (a) is in accordance with the terms of the BPPA;
- (b) is given on the grounds that the licensed supplier has committed a material breach of the BPPA; and
- (c) results in termination of the BPPA no more than 5 working days after the commencement date specified in it.

(2) The Authority must have regard to the list drawn up under paragraph 11(1) and select as the successful reserve bidder for the BPPA in question, the licensed supplier which—

- (a) is treated by virtue of paragraph 12(1) 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 which appears on that list and which has not already been selected as a successful bidder under paragraph 11 or as a successful reserve bidder under this paragraph.

Publishing the outcome of an auction

14. In relation to each BPPA which is entered into by a licensed supplier which is the successful bidder or a successful reserve bidder, the Authority must publish a statement specifying—

- (a) the name of licensed supplier;
- (b) the name of the electricity generator; and

- (c) the amount of the management fee payable to that licensed supplier in respect of the BPPA, expressed as an amount for each megawatt hour of electricity.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for or in connection with a scheme (“power purchase agreement scheme”) to promote the availability to electricity generators of power purchase agreements. Other provisions in connection with the power purchase agreement scheme are contained in modifications made under section 50 of the Energy Act 2013 (c. 32) to the standard conditions of electricity supply licences (“the PPA licence conditions”), which 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. It also makes provision about an auction process for determining which persons who hold an electricity supply licence under section 6 of the Electricity Act 1989 (“a licensed supplier”) are to offer to enter into an agreement with electricity generators under the scheme and provision about information which is to be provided in connection with the scheme.

Within 2 working days of the Authority receiving an electricity generator’s expression of interest in entering into a power purchase agreement under the scheme with a licensed supplier, the Authority must send a copy of it to all licensed suppliers (regulation 3). Agreements entered into under the scheme are referred to in the Regulations as a “backstop power purchase agreements” or “BPPAs”. The Authority must then determine whether the requirements specified in regulation 4 are met in respect of the generator and this determination is to be made within the period determined in accordance with regulation 5. These specified requirements relate to the generator’s eligibility and to whether the generator has provided all of the project information which is listed in the relevant supply licence conditions. If these requirements are met, the Authority must send out certain material to the generator and to all licensed suppliers informing them that a BPPA auction is to take place in respect of the generator (regulation 6). The material to be sent includes a notice referred to in the Regulations as “an OLR notice”. Where the capacity of the electricity generating station in respect which a BPPA is sought is or exceeds 150 megawatts, more than one BPPA will be subject to auction in respect of the generator (regulation 7). But if the Authority determines that the requirements set out in regulation 4 are not met, the Authority must inform the generator and give reasons for its determination (regulation 8). Licensed suppliers must also be notified in any case where, notwithstanding that an expression of interest has been given by a generator, no OLR auction is to be issued, and no auction is to take place under Part 2 of the Regulations (regulation 9).

In respect of each 12 month period starting on 1 April (“OLR year”), the Authority is required to determine which licensed suppliers are required to bid in BPPA auctions which take place in that year (regulation 10). The Schedule contains detailed provision about when an auction closes, determining the successful bid and publishing the result. Subject to those provisions, the Authority determines how the auction is to be run and may decide to delegate functions relating to its operation to another person (regulation 11).

Where exceptional circumstances arise which prevent certain deadlines being met, the Authority must specify a later date for the delayed activity to be done. The relevant deadlines are those set out in regulation 3 or 5 or in specified paragraphs of the Schedule to the Regulations (regulation 12).

Requirements are imposed on the CfD counterparty (which is defined in section 7 of the Energy Act 2013) to provide the Authority with information about certain contracts entered into by an electricity generator (regulation 13). Other requirements are imposed on licensed suppliers to provide the Authority with information in connection with the scheme (regulation 14). The Authority has a duty to maintain records in connection with the operation of the scheme, including records of certain conduct by a generator which makes it ineligible to enter into future BPPAs

(regulation 15). The Authority must also produce a report to the Secretary of State on the scheme's operation (regulation 16).

Provision is made for BPPA terms to be determined by, or by direction of, the Secretary of State (regulation 17).

Part 3 (regulations 18 to 28) makes provision for a levelisation process under which licensed suppliers are 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.

The Authority is required to keep an account ("the OLR levelisation account") into which and from which levelisation payments are made. Levelisation payments are calculated annually and periodically and are made into, and paid from, that account (regulation 18). The Authority must determine certain values and costs for the purposes of calculating annual levelisation payments (regulation 19) and, using the results of those calculations, determine the amount of the annual levelisation payments made into, and paid from, the OLR levelisation account (regulation 20). The Authority must also determine and publish the periods when periodic levelisation payments will be calculated and must make and receive such payments on account of annual levelisation payments (regulation 21). There is also provision for the Authority to give notices relating to the making of levelisation payments (regulation 22), for the making of payments by the Authority (regulation 23) and for a correction mechanism if the Authority identifies that a determination or calculation made under regulation 19 or 20 is later found to have been incorrect (regulation 24).

Mutualisation is a process by which costs arising from the non-payment of periodic levelisation payments are allocated among all licensed suppliers. Regulation 25 provides the conditions which will trigger a mutualisation, how the Authority is to apportion the unpaid amounts among the licensees and how a mutualisation payment is to be distributed. Regulation 26 requires the Secretary of State to set a lower limit for the amount of unpaid periodic levelisation payments above which a mutualisation is triggered.

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 late levelisation payments not triggering a mutualisation.

Part 4 (regulations 29 to 33) contains miscellaneous provisions. These include enforcement of obligations imposed on licenced suppliers by the Regulations, the provision of guidance, the giving of notices and the conduct of an annual review of the scheme by the Secretary of State.