



Department
of Energy &
Climate Change

Electricity Market Reform:

Consultation on Ofgem & Fuel
Measuring and Sampling /
Sustainability under the CFD

Government Response

January 2015

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Introduction

Consultation overview

1. The Government's Electricity Market Reform programme is promoting investment in secure and low carbon electricity generation, while improving affordability for consumers. Integral to this is the introduction of Contracts for Difference (CFDs). Introduced by the Energy Act 2013 as a mechanism to encourage investment in low carbon generation, a CFD is a private law contract between an eligible generator and a counterparty, currently designated as the Low Carbon Contracts Company (LCCC).
2. CFD generators operating fuelled technologies¹ are subject to contract provisions relating to the fuel that they use in generating electricity. These provisions require them to agree and subsequently comply with fuel measurement and sampling (FMS) arrangements made with the LCCC, and ensure that payment is only made under the CFD for the portion of their generation that is renewable. These generators must also comply with and report on the compliance of their fuel with sustainability criteria.
3. On 31 October 2014, the Government published a consultation, which sought views on the Government's proposal to enable Ofgem to undertake on behalf of the LCCC, in a fuelled technology CFD, certain functions relating to FMS and sustainability. This maintains the status quo for generators, who currently work with Ofgem in complying with similar duties under the Renewables Obligation (RO).
4. Separately, those impacted by the equivalent policy on Investment Contracts (ICs) were consulted with. Four responses were received from this group, all supportive of the proposal that the policy extend to encompass them.

Publication and dissemination of the consultation

5. This consultation was open between 31 October and 28 November 2014 and was published on the Government website.² A link to the consultation was sent to more than 800 EMR stakeholders on the day of publication including electricity generators, suppliers and consumer groups.
6. In total, eight responses were received to the consultation. Respondents included generators, energy suppliers and other companies involved in the energy sector. We would like to thank all those who engaged with the consultation. A list of these respondents is included at Annex A.

Analysis of consultation responses

7. This Government response summarises answers to the consultation questions and sets out Government's response to them, in addition to two further points that were raised by

¹ At present, these are Advanced Conversion Technologies, Anaerobic Digestion, Dedicated Biomass with CHP, Biomass Conversion, Energy from Waste with CHP, Landfill Gas and Sewage Gas.

² <https://www.gov.uk/government/consultations/ofgem-fuel-measuring-and-samplingsustainability-under-the-cfd>

respondents but not consulted upon. Although all responses received were analysed, not all are responded to in detail.

Next steps

8. Following analysis of the responses to the wider consultation, regulations have been drafted that reflect the original proposal alongside the additional policy relating to ICs. These enable but do not require Ofgem to enter into arrangements with the LCCC, or the Secretary of State if required in the case of ICs, regarding advice in relation to FMS arrangements and enforcement, as well as sustainability obligations.

9. The decisions taken in light of this consultation have been reflected in the Electricity Market Reform (General) (Amendment) Regulations 2015, which have been laid in Parliament alongside the publication of this document, and are expected to come into force in March 2015, subject to the will of Parliament.

Questions and responses

Consultation question		8 responses
1	Do you agree with the proposal that Ofgem be enabled to enter into arrangements with the LCCC so that Ofgem can advise the LCCC on the appropriateness of a Generator's FMS under the CFD? If not, why, and what alternatives would you suggest?	

Summary of responses

10. All respondents provided positive responses to this question.

11. Three respondents noted the expertise that Ofgem holds in this area and underlined the value of Ofgem's role continuing under the CFD regime.

12. Two respondents raised concerns around any delay in action by the LCCC that Ofgem's involvement might introduce and noted the timings that it must keep to under the CFD contract.

Government response

13. Given the positive response to this proposal, the policy will be implemented as originally described.

14. In response to the respondents' concerns relating to possible delays, the existing proposal does not include any lessening of obligations on the LCCC under the CFD contract and will not provide the LCCC with any greater time to respond, even where dependent upon Ofgem for advice.

Consultation question		8 responses
2	Do you agree with the proposal that Ofgem be enabled to enter into arrangements with the LCCC to allow it to monitor and provide advice on compliance related matters in relation to the FMS and Sustainability obligations under the CFD? If not, why, and what alternatives would you suggest?	

Summary of responses

15. All respondents provided positive responses to this question.

Government response

16. Given this response, the policy will be implemented as described.

Consultation question		8 responses
3	Do you agree with the proposal that these functions will continue to be undertaken by Ofgem, due to its existing role and relevant expertise? If not, why, and what alternatives would you suggest?	

Summary of responses

17. All respondents provided positive responses to this question.

Government response

18. Given this response, the policy will be implemented as described.

Additional points raised

Preparation of guidance

19. Three respondents sought assurance that the LCCC or Ofgem would continue to produce fuelled station guidance similar to that made available under the RO. Government does not oppose the publication of guidance in principle where it is appropriate, and recognises the importance of fuelled station guidance for generators under the RO.

20. However, unlike the RO, the CFD is a bilateral contract between a generator and the LCCC, where contractual rights and obligations are clearly defined. As a result, it does not necessarily follow that guidance of the same nature is appropriate for this regime. Further, as the CFD regime and management of the contract develops, it will be for the LCCC and Ofgem to consider whether and when to publish fuelled station guidance specific to the CFD, and indeed whether such guidance should be issued by the LCCC or by Ofgem.

Consultation on arrangements

21. One respondent noted that the detail of the arrangements to be agreed between Ofgem and the LCCC should be subject to consultation in order to allow industry to ensure that the arrangements made are consistent both with the existing arrangements under the RO and with the requirements under the CFD.

22. The proposal seeks to enable Ofgem to provide advice to the LCCC in relation to FMS and sustainability. The relevant provisions within the CFD contract therefore naturally constrain what the LCCC must achieve, in what order and to what timescales, with Ofgem's advisory role not impacting upon this. In all cases, the contract itself provides the core obligations that the parties will need to conform to and has been consulted upon twice previously. Further, the Energy Act 2013 requires that it be consulted upon again if an amendment to the contract is proposed in future.³

23. As a result, generators and other stakeholders already hold a formal means of providing their views on the actions that will ultimately be undertaken by the LCCC and any party acting on its behalf, including Ofgem.

³ Section 24(2)

Annex A: List of consultation respondents

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EDF Energy

Energy UK

Environmental Services Association

Enviro Power

E.ON Energy

Renewable Energy Association

Spark Energy

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