

Offtaker of Last Resort Advisory Group
23/05/2014

Advisory Group Attendees

Dima Rifai, Paradigm Change Capital Partners
 LLP
 María Paz García Alajarin, EDP Renewables
 David Handley, RES
 Phil Broom, GDF Suez

Stewart Noble, Scottish Power
 Keith Patterson, Brodies LLP
 Guy Buckenham, EDF

DECC Attendees

Tim Warham, DECC
 Matt Coyne, DECC
 Helena Crow, DECC
 Adam Harper, DECC (chair)

Darryl Croft, DECC
 Michelle Toussaint-Bourne, DECC
 Paul Morgan, DECC Legal

OLR Regulations	
<p>Adam Harper explained that the OLR Regulations will be in place by the start of the first allocation round in Autumn 2014. This requires the statutory instruments to be laid in Parliament 21 days before, although there may be some overlap between this 21 day period and the start of the first allocation round, depending on the outcome of DECC's June consultation. This consultation will cover the implementation of the Offtaker of Last Resort policy, including the secondary legislation and Backstop PPA Contract. It will begin in late June and run for 4 weeks.</p> <p>AH explained that the documents for the June consultation will be sent to Ministers on Friday 30 May. He therefore requested that the group send through any urgent comments by this date, in addition to responding to the consultation directly.</p>	
<p>Michelle Toussaint-Bourne presented the proposed application process that generators will need to follow in order to obtain a Backstop PPA. This is laid out in Regulations 3-6. This process is similar to that outlined in DECC's March consultation.</p> <p>The group had no comments.</p>	
<p>MTB presented the proposed auction process that suppliers will need to follow in order to bid for a Backstop PPA. This is laid out in Regulations 8 – 13. Again, this process is similar to that outlined in DECC's March consultation.</p> <p>The group had no comments.</p>	
<p>MTB presented the proposed timeline in which Backstop PPAs will be allocated. This is outlined across the Regulations and License Conditions.</p> <p>The group emphasised the need for firm assurance from Ofgem on its ability to fulfil its obligations within the required timescale, as without this the Backstop PPA may not be bankable. They added that it would be preferable for the timescale to be longer but fixed, than for it to be shorter but less fixed / more subject to delays from Ofgem. They queried when they could expect such assurance from Ofgem and when a final decision on the allocation timeline would be reached. DECC confirmed that the final decision would be detailed in the June consultation, and that it is trying to make all the requirements on Ofgem as mechanistic and formulaic as possible, so that Ofgem feel able to legally commit to the timescale.</p>	

The group highlighted that the Regulations do not currently obligate Ofgem to let suppliers and generators know the outcome of a Backstop PPA auction within a certain amount of time. DECC agreed that this should be included in Regulation 11.6.

The group queried whether the commencement date for a Backstop PPA could be pushed back further than 20 days, which is the time limit specified in the Regulations. DECC confirmed that this would be possible if it were mutually agreed by both parties, seeing as the Backstop PPA is a Private Law Contract.

DECC asked the group to highlight any points in the allocation process where there could be some flexibility. The group confirmed that most stages could be flexed if needed, but that it is very important that the overall timeline remains fixed. This is because generators and their lenders need certainty over when their revenues will start flowing.

The group questioned whether the No Regrets Period (in which generators can express their interest in accessing the OLR and then withdraw it) could end after a generator has submitted its Project Information, so as to make the allocation process as efficient as possible. DECC agreed to look into this but highlighted that Ofgem have requested time in the allocation process for them to gear up their resources and systems for processing OLR requests, particularly as the OLR may not be used for some time.

MTB presented the proposed terms of the Backstop PPA Contract, which are outlined in Regulations 14-16.

The group commented that the wording of these Regulations needs tightening to better reflect a generator's right for the terms of their Backstop PPA to be grandfathered from the point at which they sign their CfD. Members highlighted that this will be critical for enabling generators to secure project finance. DECC agreed to look into this.

The group also highlighted some possible inconsistency between Regulations 15.1 and 15.2 concerning the terms of particular Backstop PPA Contracts. DECC agreed to look into this.

MTB presented the proposed information requirements that Ofgem must report to the Secretary of State on an annual basis, during the annual review of each Offtaker of Last Resort Year. These are covered in Regulation 20.

The group queried the meaning of the term 'other' in Regulation 20(d). DECC welcomed suggestions for what this should include.

MTB presented Regulations 21-22, which cover the right for Ofgem to enforce any of the requirements placed on licensed suppliers, and the right of the Secretary of State to review the Offtaker of Last Resort scheme.

The group highlighted that Regulation 22.1 needs to be drafted more clearly to reflect the process for determining a mandatory offtaker.

MTB presented the levelisation process for the Offtaker of Last Resort, which is covered by Regulations 23-29.

The group queried whether energy intensive users would be exempt from the levelisation process, as in the CfD FIT levelisation process. DECC replied that they had discussed this matter with the Department for Business Innovation and Skills and were not aware of any evidence to suggest energy intensive industries should not be subject to levelisation costs.

MTB presented Regulations 30-31 which cover Mutualisation.

The group queried what the threshold would be for mutualisation. DECC replied that they were working

<p>through this with lawyers and that the threshold would be included in the June consultation.</p>
<p>MTB presented Regulations 32-33 which cover the termination of a supplier's license and also late payments.</p> <p>The group queried whether dormant licensed suppliers would be included as well as live ones in Ofgem's distribution of late payments to all licensed suppliers: whether Ofgem would need to include dormant licensed suppliers in their calculations here and notify them. DECC agreed to discuss this with Ofgem.</p>
<p>DECC asked the group whether they had any further questions or queries.</p> <p>The group asked what the process would be for levelisation under negative bidding and suggested that the Regulations may need to be changed to reflect a new process here. They queried whether the money should go to generators in such a process, as this could create a perverse market incentive for them to enter into the OLR, as well as offering poorer value for consumers than if the money went to suppliers. The group also queried whether there should be a limit below which money is not levelised, given that some payments could be too small to warrant the administrative resource. DECC said they would look into both of these points.</p> <p>DECC then asked the group whether it was reasonable to assume that all suppliers above a certain market share threshold would be operational in all GSPs. The group replied that it would be better not to assume this, given that suppliers' domestic portfolios can be highly regionalised and it should not be assumed that all would be operational in the more remote regions (eg: the north of Scotland). DECC then discussed the possibility of excusing the rare mandatory offtakers who are not active in specific GSPs but this arrangement could vulnerable to abuse from offtakers.</p>
<p>Next Steps</p>
<p>DECC asked the group to let them know if they know of anything more DECC could do to get lenders engaged in the design of the OLR and its secondary legislation.</p> <p>DECC reiterated their request for any urgent comments by Friday 30 May, and for the group to respond to the consultation on secondary legislation due in late June.</p> <p>DECC said that they were open to bilateral meetings as required.</p> <p>DECC confirmed that there are no structural differences in the BPPA since the last version was sent out to the group.</p>