Draft Regulations laid before Parliament under section 40(5) of the Energy Act 2013, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2020 No. XXXX

ELECTRICITY

The Electricity Capacity (Amendment etc.) (Coronavirus) Regulations 2020

Made - - - - ***

Coming into force in accordance with regulation 1(2)

The Secretary of State has before making these Regulations—

(a) consulted in accordance with section 40(2) of the Energy Act 2013(**a**); and

(b) had regard to the matters in section 5(2) of that Act.

In accordance with section 40(5) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Accordingly, the Secretary of State, in exercise of the powers conferred by sections 27 to 32, 36 and 40(1) of the Energy Act 2013, makes the following Regulations:

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Electricity Capacity (Amendment etc.) (Coronavirus) Regulations 2020.

(2) These Regulations come into force on the day after the day on which they are made.

(3) The amendments made by paragraph 1 of Schedule 1 do not apply in respect of a capacity agreement awarded as a result of a capacity auction held before these Regulations come into force.

(4) In these Regulations—

"capacity agreement" has the meaning given in regulation 30(1) of the Principal Regulations;

"capacity auction" has the meaning given in regulation 2(1) of the Principal Regulations; and

"Principal Regulations" means the Electricity Capacity Regulations 2014(**b**).

Amendments to the Principal Regulations

2.—(1) The Principal Regulations are amended as set out in Schedule 1.

(**a**) 2013 c. 32.

(**b**) S.I. 2014/2043; relevant amending instruments are S.I. 2014/3354, 2015/875, 2015/1974, 2016/742, 2017/1053, and 2019/1139. S.I.2019/862 makes relevant modifications to the application of the Principal Regulations.

(2) Any reference in that Schedule to a numbered regulation is to the regulation so numbered in the Principal Regulations.

Amendments to the Electricity Capacity (No. 1) Regulations 2019

3. Omit regulations 26 and 35 (Secretary of State's discretion: modifications) of the Electricity Capacity (No. 1) Regulations 2019(**a**).

Modifications to the application of the Principal Regulations

4.—(1) The application of the Principal Regulations is modified as set out in Schedule 2.

(2) Any reference in that Schedule to a numbered regulation is to the regulation so numbered in the Principal Regulations.

Name
Minister of State for Business, Energy and Clean Growth
Date
Department for Business, Energy and Industrial Strategy

SCHEDULE 1

Regulation 2(1)

Amendments to the Principal Regulations

PART 1

Demand side response CMUs

Regulation 5 ("demand side response CMU")

1.—(1) In regulation 5(2)(a)(i), at the beginning insert "subject to paragraph (2A),".

(2) After regulation 5(2), insert—

"(2A) For the purposes of this regulation, the reference in regulation 5(2)(a)(i) to a "DSR customer's import of electricity" does not include import of electricity primarily for the conversion of electricity into a form of energy which can be stored by a storage facility."

PART 2

Auction parameters

Regulation 11 (meaning of auction parameters)

2.—(1) In regulation 11(1)(b), before "target capacity" insert "auction".

(2) In regulation 11(3)—

(a) in the definition of "15 year minimum £/kW threshold", after "a generating CMU" insert "or an unproven demand side response CMU";

(**a**) S.I. 2019/862.

(b) in the definition of "3 year minimum £/kW threshold", after "a generating CMU" insert "or an unproven demand side response CMU"; and

(c) after the definition of "3 year minimum £/kW threshold" insert—

""auction target capacity" means, in respect of a capacity auction, the portion of the target capacity in relation to the capacity year corresponding to the delivery year for which the capacity auction is to be held which should be used for that capacity auction. "

Regulation 12 (determination of auction parameters by Secretary of State)

3.—(1) After regulation 12(2), insert—

"(2A) When determining under paragraph (1) the auction parameter referred to in regulation 11(1)(b) (auction target capacity) in respect of a T-4 auction and the delivery year for which that T-4 auction is to be held ("delivery year x"), the Secretary of State must—

(a) determine the target capacity for the capacity year corresponding to delivery year x;

(b) determine the target capacity for the capacity year corresponding to delivery year x that should be set aside for the T-1 auction for delivery year x ("the T-1 auction set aside") in accordance with paragraph (2B); and

(c) deduct the T-1 auction set aside from the target capacity for the capacity year corresponding to delivery year x.

(2B) For the purposes of paragraph (2A)(b), the Secretary of State must determine the T-1 auction set aside by applying a 95% confidence interval around the target capacity for the capacity year corresponding to delivery year x.

(2C) For each T-1 auction, where the delivery year corresponds with delivery year x, the Secretary of State must determine the auction parameter referred to in regulation 11(1)(b) (auction target capacity) to be an amount equal to or greater than 50% of the T-1 auction set aside if previously determined under paragraph (2A)(b) for the T-1 auction for delivery year x.".

(2) For regulation 12(6), substitute—

"(6) If the auction target capacity determined by the Secretary of State for a T-1 auction or a T-4 auction is different from a recommendation in the electricity capacity report as to the portion of the target capacity that should be used in that capacity auction, the determination must include an explanation of—

(a) the Secretary of State's reasons for not following that recommendation; and

(b) the basis upon which the Secretary of State has made the determination.".

(3) After regulation 12(6), insert—

"(7) In this regulation—

"the 95% confidence interval" means the range of values within which the target capacity for a capacity year may be expected to lie with a 0.95 level of probability;

"auction target capacity" has the meaning given in regulation 11(3).".

Regulation 13 (adjustment of auction parameters following prequalification)

4.—(1) In regulation 13(1), at the beginning insert "Subject to paragraph (1A),".

(2) After regulation 13(1), insert—

"(1A) If the Secretary of State adjusts the auction parameter referred to in regulation 11(1)(b) (auction target capacity) for a T-1 auction, that auction target capacity must remain equal to or greater than 50% of the T-1 auction set aside if previously determined under regulation 12(2A)(b) for that T-1 auction and delivery year.".

(3) After regulation 13(2), insert—

"(3) In this regulation, "the T-1 auction set aside" has the meaning given in regulation 12(2A)(b).".

PART 3

General eligibility criteria

Regulation 15 (general eligibility criteria)

5.—(1) In regulation 15(4)(a), for "2MW" substitute "1MW".

(2) In regulation 15(5), for "to 18", substitute "and 17".

PART 4

Long term STOR CMUs

Regulation 18 (excluded capacity: long term STOR CMUs)

6. Omit regulation 18 (excluded capacity: long term STOR CMUs).

Regulation 19 (Regulations 16 to 18: interpretation)

7.—(1) In the heading of regulation 19, for "to 18", substitute "and 17".

(2) In regulation 19, for "to 18", substitute "and 17".

PART 5

Demand side response CMUs and applicant credit cover

Regulation 59 (requirement to provide applicant credit cover)

8.—(1) In regulation 59(2)—

(a) for "and (2B)", substitute ", (2B) and (2C)";

(b) at the beginning of sub-paragraph (a)(i) insert "subject to paragraph (ia),";

(c) at the end of paragraph (i) omit "and"; and

(d) after paragraph (i) insert—

"(ia) if CMU i is an unproven demand side response CMU, in respect of which the applicant has applied to prequalify to bid for a multi-year capacity obligation and has not yet met the requirements for DSR partial credit cover release in accordance with the Rules, an amount equal to £10,000 per MW of the de-rated capacity of CMU i; and".

(2) After regulation 59(2B), insert—

"(2C) The applicant credit cover provided under paragraph (1) must, where an applicant which applied to prequalify to bid for a multi-year capacity obligation in respect of an unproven demand side response CMU has met the requirements for DSR partial credit cover release in accordance with the Rules, be reduced to an amount equal to £5,000 per MW of the de-rated capacity of the CMU.".

(3) After regulation 59(6), insert—

"(7) In this regulation, "DSR partial credit cover release" has the meaning given in the Rules.".

PART 6

Applicant credit cover provided in respect of the T-3 auction

Regulation 87C (transitory provisions: the T-3 auction)

9. In regulation 87C(2)(c), omit paragraph (i).

SCHEDULE 2

Regulation 4(1)

Modifications to application of Principal Regulations

Interpretation

1. In this Schedule—

"the Rules" means the Capacity Market Rules 2014(**a**);

"affected person" is to be interpreted in accordance with regulation 68(2) of the Principal Regulations;

"capacity obligation" has the meaning given in regulation 2(1) of the Principal Regulations;

"capacity provider" has the meaning given in regulation 2(1) of the Principal Regulations;

"coronavirus" means severe acute respiratory syndrome coronavirus 2;

"Delivery Body" has the meaning given in regulation 2(1) of the Principal Regulations;

"delivery body reviewable decision" has the meaning given in regulation 68(1) of the Principal Regulations;

"delivery year" has the meaning given in regulation 2(1) of the Principal Regulations;

"multi-year capacity obligation" has the meaning given in regulation 2(1) of the Principal Regulations; and

"termination notice" has the meaning given in the Rules.

Termination of capacity agreements and Secretary of State's discretion: modifications

2. Regulation 33 applies as if—

(a) in paragraph (2)—

(i) at the end of sub-paragraph (b), for "." there were substituted "; or"; and

(ii) after sub-paragraph (b), there were inserted—

"(c) if the conditions in paragraph (3A) are met, and the termination notice was given on the ground that the capacity provider ("P") failed to meet a specified requirement, direct the Delivery Body to—

(i) withdraw the termination notice given to P; and

(ii) terminate the capacity agreement on the ground specified in the Rules that P failed to meet the specified requirement owing to the exceptional circumstances of P's particular case arising from the effects of coronavirus";

(b) in paragraph (3), after "6 months" there were inserted "or, if the conditions in paragraph (3A) are met, 12 months";

(c) after paragraph (3), there were inserted—

(**a**) A consolidated version of the Capacity Market Rules 2014 are at https://www.ofgem.gov.uk/publications-and-updates/publication-consolidated-capacity-market-rules-0. Copies are available from the Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London, SW1H 0ET.

"(3A) The conditions referred to in paragraphs (2)(c) and (3) are that—

(a) the Delivery Body has given a termination notice to a capacity provider under the Rules in respect of a capacity agreement awarded as a result of a capacity auction held before 1st April 2020; and

(b) the capacity provider has made representations to the Secretary of State requesting the exercise of the discretion under paragraph (2)(b) or (2)(c) (as the case may be) before the end of—

(i) the delivery year for which the capacity provider holds the capacity agreement in the case of a capacity agreement for a one year capacity obligation; or

(ii) the first delivery year for which the capacity provider holds the capacity agreement in the case of a capacity agreement for a multi-year capacity obligation.";

(d) in paragraph (5)—

(i) in sub-paragraph (a), after "20 working days" there were inserted "or, if the conditions in paragraph (5A) are met, 30 working days"; and

(ii) in sub-paragraph (b), at the end, there were inserted ", unless the capacity provider is making representations to the Secretary of State requesting the exercise of the discretion under paragraph (2)(c)";

(e) after paragraph (5), there were inserted—

"(5A) The conditions referred to in paragraph (5)(a) are that—

(a) the Delivery Body has given a termination notice to a capacity provider under the Rules in respect of a capacity agreement awarded as a result of a capacity auction held before 1st April 2020; and

(b) the Delivery Body gave that termination notice before 1st May 2021."; and

(f) in paragraph (8), before sub-paragraph (a) there were inserted—

"(za) "coronavirus" means severe acute respiratory syndrome coronavirus 2;".

Failure to demonstrate satisfactory performance: modifications

3. Regulation 50 (reducing capacity payments: failure to demonstrate satisfactory performance) of the Principal Regulations applies as if—

(a) in paragraph (1), after "regulation applies" there were inserted ", subject to paragraph (7),"; and

(b) after paragraph (6), there were inserted—

"(7) (a) This paragraph applies where year X is the delivery year starting on 1st October 2019.

(b) Where this paragraph applies, this regulation applies as if—

(i) in paragraph (2), at the beginning, there were inserted "Subject to paragraphs (3A) and (3B),";

(ii) paragraphs (2A) and (3) were omitted;

(iii) after paragraph (3) there were inserted—

"(3A) If the capacity agreement in respect of which the satisfactory performance requirement applies to CMU i was awarded before 21st December 2017 and C complies with the requirement by the end of September 2020, a monthly capacity payment is to be paid in respect of CMU i for the relevant month in which C complied with the requirement and each relevant month preceding that month.

(3B) If the capacity agreement in respect of which the satisfactory performance requirement applies to CMU i was awarded on or after 21st December 2017 and C complies with the requirement by the end of July 2020, a monthly capacity payment

is to be paid in respect of CMU i for the relevant month in which C complied with the requirement and each relevant month preceding that month.";

(iv) for paragraph (5) there were substituted—

"(5) The Settlement Body must—

(a) if paragraph (2) applies, give a notice to C which states that no monthly capacity payment is to be paid in respect of CMU i for the relevant month, and states the reason;

(b) if paragraph (3A) or (3B) applies, ensure a credit note is issued to C for the monthly capacity payment for any relevant month for which a monthly capacity payment has not yet been paid; and

(c) if paragraph (4) applies, ensure that the invoice issued to C under paragraph (4)(b) states the reason for the issue of the invoice."; and

(v) in paragraph (6), in the definition of "relevant month", after "year x" there were inserted ", where year x is the delivery year starting on 1st October 2019".".

Reconsideration by Delivery Body: modifications

4. Regulation 69 (requesting reconsideration by the Delivery Body) of the Principal Regulations applies as if—

(a) in paragraph (2)(a), after "5 working days" there were inserted "or, if the condition in paragraph (3A) is met, 10 working days";

(b) in paragraph (3), after "15 working days" there were inserted "or, if the condition in paragraph (3A) is met, 25 working days"; and

(c) after paragraph (3), there were inserted—

"(3A) The condition referred to in paragraphs (2)(a) and (3) is that the affected person was given notice of the decision before 1st May 2021.".

Appeals to the Authority: modifications

5. Regulation 70 (appeals to the Authority) of the Principal Regulations applies as if—

(a) in paragraph (2), after "5 working days" there were inserted "or, if the condition in paragraph (2A) is met, 10 working days"; and

(b) after paragraph (2) there were inserted—

"(2A) The condition referred to in paragraph (2) is that the Delivery Body gave the affected person notice of the delivery body reviewable decision before 1st May 2021.".

Review by Secretary of State: modifications

6. Regulation 81 (review by Secretary of State) of the Principal Regulations applies as if, in paragraph (1)(a)(i), after "these Regulations" there were inserted ", the Electricity Capacity (Amendment etc.) (Coronavirus) Regulations 2020,".

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments and modifications to the application of the Electricity Capacity Regulations 2014 (S.I. 2014/2043) ("the Principal Regulations") and revoke provisions of the Electricity (No. 1) Capacity Regulations 2019 (S.I. 2019/862).

The Principal Regulations make provision for the purpose of meeting consumers' demands for electricity in Great Britain by establishing a Capacity Market ("the scheme") under which those who make capacity available ("capacity providers") can obtain capacity agreements which give capacity providers rights to receive capacity payments ("capacity payments") and which also impose obligations on capacity providers to provide capacity during one or more specified years ("delivery year"). Capacity agreements are awarded in competitive auctions ("capacity auctions") held four years ahead of a delivery year ("T-4 auction") and one year ahead of a delivery year ("T-1 auction"). Demand side response ("DSR") capacity market units ("CMUs") can be used to participate in the scheme and may provide capacity by reducing demand for electricity by turning down electricity consuming equipment. Further detailed and technical provision is made by the Capacity Market Rules 2014 ("the Rules")(**a**).

Regulation 2 and Schedule 1 to these Regulations amend the Principal Regulations to give effect to commitments made by the UK, which are recorded in the decision of the European Commission on 24th October 2019 (Commission Decision SA.35980 – 2019/C). Part 1 amends the description of a DSR CMU to clarify that a DSR CMU cannot provide capacity primarily by using a storage facility which reduces its import of electricity when charging. Part 2 amends how the Secretary of State determines "target capacity" for auctions including the minimum target capacity to be set aside for each T-1 auction. Part 3 amends the "minimum capacity threshold", which must be met for a CMU to participate in the scheme, from 2MW to 1MW. Part 4 revokes an exclusion which prevented CMUs which were also subject to long-term short term operating reserve ("STOR") agreements from participating in the scheme. Part 5 amends provisions relating to the credit cover that must be provided by an unproven DSR CMU which applies to prequalify for a multi-year capacity agreement. Part 6 omits certain modifications made by regulation 87C of the Principal Regulations to relax credit cover requirements for new build CMUs awarded capacity agreements in the one-off three-year ahead auction ("T-3 auction").

Regulation 3 omits regulations 26 and 35 of the Electricity Capacity (No. 1) Regulations 2019, which modified the application of the Secretary of State's discretion in regulation 33 of the Principal Regulations in dealing with termination notices and non-completion notices given to capacity providers during the State aid standstill period for the scheme (ended by the Commission Decision referred to above).

Regulation 4 and Schedule 2 modifies the application of the Principal Regulations in respect of the operation of the scheme to take into account the effects of coronavirus on capacity providers' ability to comply with obligations under capacity agreements. The modifications to regulations 33, 50, 69 and 70 of the Principal Regulations concern, respectively: the exercise of the Secretary of State's discretion in relation to termination notices; the consequences of failing to meet satisfactory performance requirements; reconsideration by the Delivery Body of "delivery body reviewable decisions" (defined in regulation 68(1) of the Principal Regulations); and appeals of delivery body reviewable decisions to the Gas and Electricity Markets Authority. As some modifications will still apply at the time the Secretary of State is required to undertake the next five-year review of the scheme, regulation 81 of the Principal Regulations is also modified to ensure these Regulations are reviewed in the next review.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

(**a**) A consolidated version of the Capacity Market Rules 2014 are at https://www.ofgem.gov.uk/publications-and-updates/publication-consolidated-capacity-market-rules-0. Copies are available from the Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London, SW1H 0ET.

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