STATUTORY INSTRUMENTS

2024 No. 168

ELECTRICITY

The Electricity (Criteria for Relevant Electricity Projects) (Transmission) Regulations 2024

Made - - - - at 9:34 a.m. on 20th February 2024

Laid before Parliament at 3:00 p.m. on 20th February 2024

Coming into force - - 12th March 2024

The Secretary of State makes these Regulations in exercise of the powers conferred by section 6BA(1)(b) and (5) of the Electricity Act 1989(**a**).

In accordance with section 6BA(6) of that Act, the Secretary of State has consulted the Authority, such holders of relevant licences as the Secretary of State considers appropriate, and such other persons as the Secretary of State considers appropriate.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Electricity (Criteria for Relevant Electricity Projects) (Transmission) Regulations 2024 and come into force on 12th March 2024.

(2) These Regulations extend to England and Wales and Scotland.

Interpretation

2. In these Regulations—

"the Act" means the Electricity Act 1989;

"early-model tender exercise" means a tender exercise which relates to a project before the completion of preliminary works;

"electricity solution" means an asset or service delivered by a project;

"late-model tender exercise" means a tender exercise which relates to a project after the completion of preliminary works;

"network need" means a constraint on, or a requirement of, a transmission system(**b**);

"preliminary works" means—

(a) in respect of a project's electricity solution which principally comprises an asset—

(**a**) 1989 c. 29. Section 6BA was inserted by section 203 of, and paragraph 2 of Schedule 15 to, the Energy Act 2023 (c. 52).

(**b**) "Transmission system" is defined in section 64(1) of the Act (c. 29).

(i) the completion of the detailed design of the asset, and

(ii) the acquisition of all necessary planning consents and property rights for its construction and maintenance; or

(b) in respect of a project's electricity solution which is a service—

(i) the completion of the detailed design of the service, and

(ii) where relevant, the acquisition of any necessary property rights for maintenance of any assets associated with the service;

"tender exercise" has the meaning given in section 6CD(3) of the Act(**a**).

Criteria for projects

3.—(1) Subject to paragraphs (2) to (4), the criteria in regulations 4 to 8 are specified in respect of a project that relates to a transmission system, for the purposes of section 6BA(1)(b) of the Act.

(2) These Regulations do not apply to a project or any part of a project which is or may be subject to determination on a competitive basis of the person to whom an offshore transmission licence(**b**) is to be granted under the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2015(**c**).

(3) The criterion in regulation 7 applies only to early-model tender exercises.

(4) The criterion in regulation 8 applies only to late-model tender exercises.

Network Need criterion

4. A project's electricity solution must be capable, with reasonable certainty, of addressing a network need.

Novelty criterion

5.—(1) A project's electricity solution must, in respect of the transmission system and network need to which it relates, be wholly new.

(2) In this regulation "wholly new", in respect of an asset, includes the entire replacement of an asset which forms part of a transmission system.

Separability criterion

6.—(1) A project's electricity solution must be capable of being clearly distinguishable from any other part of the transmission system to which it relates and from any other electricity solution related to that transmission system.

(2) In respect of an early-model tender exercise, the ownership and control of a project's electricity solution (including relevant planning consents and property rights) must be capable of being separable from the ownership and control of any part of the transmission system to which it relates and any other electricity solution which relates to that transmission system.

(3) In respect of a late-model tender exercise, the ownership and control of a project's electricity solution (including relevant planning consents and property rights) must be separable from the ownership and control of any part of the transmission system to which it relates and any other electricity solution which relates to that transmission system.

(**a**) 1989 c. 29. Section 6CD was inserted by section 203 of, and paragraph 3 of Schedule 15 to, the Energy Act 2023 (c. 52).
(**b**) "Offshore transmission licence" is defined in section 64(1) of the Act (c. 29).
(**c**) S.I. 2015/1555.

Consumer benefit criterion in respect of an early-model tender exercise

7.—(1) A cost-benefit analysis in respect of a project must demonstrate that the non-tendered consumer impact does not outweigh the tendered consumer impact.

(2) In this regulation—

"cost-benefit analysis" means—

(a) an analysis of the costs and of the benefits to consumers; and

(b) a reasonable estimate of those costs and of those benefits;

"non-tendered consumer impact" means the estimated overall impact of a network need being addressed otherwise than through a tender exercise;

"tendered consumer impact" means the estimated overall impact of a network need being addressed by a project through a tender exercise.

High value criterion in respect of a late-model tender exercise

8.—(1) A project must have an estimated capital expenditure equal to or greater than £100,000,000.

(2) In this regulation "estimated capital expenditure" means an estimate of the total costs of a project, calculated by reference to one or more of the following—

(a) any costs relating to the purchase of component parts;

(b) construction costs;

(c) the costs of the acquisition of land on which it is to be situated;

(d) the costs of compliance with the conditions attached to planning consents and property rights;

(e) the costs of third-party works upon which a project's electricity solution's operation depends;

(f) project management costs;

(g) itemised risk and contingency allowances;

(h) costs relating to the procurement of itemised goods, services and works;

(i) any other costs that are reasonably integral or relevant to the arrangement, construction, commissioning, procurement, operation or function of the project's electricity solution.

Graham Stuart
Minister of State for Energy Security and Net Zero
Department for Energy Security and Net Zero

At 9.34 a.m. on 20th February 2024

EXPLANATORY NOTE

(This note is not part of these Regulations)

Section 6C of the Electricity Act 1989 ("the Act") gives the Gas and Electricity Markets Authority ("the Authority") the power to make regulations in respect of competitive tenders for any "relevant electricity project", which is described in section 6BA(1).

In order for the Authority to determine whether a project is a "relevant electricity project" under section 6BA(1) of the Act, a project must satisfy the criteria specified in this instrument.

Different criteria apply to different types of project. In the case of competitive tenders where the design, construction and delivery of a project is tendered for, the applicable criteria are network need (regulation 4), novelty (regulation 5), separability (regulation 6) and consumer benefit (regulation 7). In the case of competitive tenders where the construction and delivery of a project is tendered for, the applicable criteria are network need (regulation 4), novelty (regulation 5), separability (regulation 6) and high value (regulation 8).

An impact assessment of the effect that this instrument will have on the costs to business and the voluntary sector is available from the Department for Energy Security and Next Zero at 3-8 Whitehall Place, London, S1A 2EG and is published with the Explanatory Memorandum alongside the instrument on legislation.gov.uk.

© Crown Copyright 2024

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of His Majesty's Stationery Office and King's Printer of Acts of Parliament.

ISBN 978-0-34-825767-0

9 780348 257670

£5.78

http://www.legislation.gov.uk/id/uksi/2024/168