STATUTORY RULES OF NORTHERN IRELAND

2016 No. 174

ELECTRICITY

The Renewables Obligation Closure Order (Northern Ireland) 2016

Laid before the Assembly in draft

Made - - - - 16th March 2016

Coming into operation in accordance with Article 1

The Department of Enterprise, Trade and Investment ("the Department") makes the following Order in exercise of the powers conferred upon it by Articles 55D and 55EA of the Energy (Northern Ireland) Order 2003(**a**).

The Department has consulted the Northern Ireland Authority for Utility Regulation, the General Consumer Council for Northern Ireland, such generators of electricity from renewable sources in Northern Ireland and other persons as it considered appropriate in accordance with Article 55EB of that Order.

In accordance with Article 66(2) of that Order a draft of this instrument was laid before and approved by a resolution of the Assembly.

Citation, commencement and application

1. The Order may be cited as the Renewables Obligation Closure Order (Northern Ireland) 2016 and comes into operation on the day after the day on which it is made.

Interpretation

2.—(1) In this Order—

"additional capacity" in relation to a large onshore wind generating station, means any generating capacity which does not form part of the original capacity of the station;

"grid or radar delay condition", "approved development condition" and "investment freezing condition" have meanings given respectively by Articles 10, 11 and 12;

"large onshore wind generating station" means an onshore wind generating station where the total installed capacity of the station is more than 5 megawatts;

"licensed network operator" means a distribution licence holder or a transmission licence holder;

(**a**) S.I. 2003/419 (N.I.6) Articles 55EA and 55EB were inserted by S.R. 2015/247. Article 66(2) has been amended by S.R. 2015/247.

"relevant developer", in relation to a large onshore wind generating station or additional capacity, means a person who—

(a) applied for planning permission for the station or additional capacity,

(b) arranged for grid works to be carried out in relation to the station or additional capacity,

(c) arranged for the construction of any part of the station or additional capacity,

(d) constructed any part of the station or additional capacity, or

(e) operates, or proposes to operate, the station.

(2) Expressions used in this Order which are also used in the Renewables Obligation Closure Order (Northern Ireland) 2015(**a**) shall have the same meaning as in that Order.

(3) In this Order "distribution licence", "transmission licence", "high voltage line" and "low voltage line" have the same meaning as in the Electricity (Northern Ireland) Order 1992.

(4) In this Order, a reference to a generating station or additional capacity being connected to a cluster means that the station or capacity is connected to a substation either—

(a) via a high voltage line, or

(b) via a low voltage line where the charging principles to be applied, in the case of a low voltage line, are those set out in section 7 of the Distribution Charging Statement (Charging Arrangements for Authorised Generators connecting to the network as part of a generator cluster) and approved by the Authority under Condition 32 of the Distribution Licence held by Northern Ireland Electricity Networks Limited

and a reference to a generating station or capacity not being connected to a cluster should be construed accordingly.

No certificates to be issued in respect of electricity generated after 31st March 2016 by large onshore wind generating stations

3.—(1) Subject to paragraph (2), no renewables obligation certificates are to be issued under a renewables obligation order in respect of electricity generated after 31st March 2016 by a large onshore wind generating station.

(2) Paragraph (1) does not apply to electricity generated in any one or more of the circumstances set out in Articles 4 to 12.

Large onshore wind generating stations accredited, or additional capacity added, on or before 31st March 2016

4.—(1) The circumstances set out in this Article are where the electricity is—

(a) generated by a large onshore wind generating station which was accredited on or before 31st March 2016, and

(b) generated using—

(i) the original capacity of the station, or

(ii) additional capacity which in the Authority's view first formed part of the station on or before 31st March 2016.

(**a**) S.R. 2015/346

Large onshore wind generating stations accredited, or additional capacity added, between 1st April 2016 and 31st March 2017: grid or radar delay condition met

5.—(1) The circumstances set out in this Article are where the electricity is—

(a) generated using the original capacity of a large onshore wind generating station—

(i) which was accredited during the period beginning with 1st April 2016 and ending with 31st March 2017, and

(ii) in respect of which the grid or radar delay condition is met, or

(b) generating using additional capacity of a large onshore wind generating station, where—

(i) the station was accredited on or before 31st March 2016,

(ii) in the Authority's view, the additional capacity first formed part of the station during the period beginning with 1st April 2016 and ending with 31st March 2017, and

(iii) the grid or radar delay condition is met in respect of the additional capacity.

Large onshore wind generating stations accredited, or additional capacity added, on or before 31st March 2017: approved development condition met

6.—(1) The circumstances set out in this Article are where the electricity is—

(a) generated using the original capacity of a large onshore wind generating station—

(i) which was accredited on or before 31st March 2017, and

(ii) in respect of which the approved development condition is met, or

(b) generated using additional capacity of a large onshore wind generating station, where—

(i) the station was accredited on or before 31st March 2016,

(ii) in the Authority's view, the additional capacity first formed part of the station on or before 31st March 2017, and

(iii) the approved development condition is met in respect of the additional capacity.

Large onshore wind generating stations accredited, or additional capacity added, between 1st April 2017 and 31st March 2018: grid or radar delay condition met

7.—(1) The circumstances set out in this Article are where the electricity is—

(a) generated using the original capacity of a large onshore wind generating station—

(i) which was accredited during the period beginning with 1st April 2017 and ending with 31st March 2018,

(ii) in respect of which the approved development condition is met, and

(iii) in respect of which the grid or radar delay condition is met, or

(b) generated using additional capacity of a large onshore wind generating station, where—

(i) the station was accredited on or before 31st March 2016,

(ii) in the Authority's view, the additional capacity first formed part of the station during the period beginning with 1st April 2017 and ending with 31st March 2018,

(iii) the approved development condition is met in respect of the additional capacity, and

(iv) the grid or radar delay condition is met in respect of the additional capacity.

Large onshore wind generating stations accredited, or additional capacity added, between 1st April 2017 and 31st December 2017: investment freezing condition met

8.—(1) The circumstances set out in this Article are where the electricity is—

(a) generated using the original capacity of a large onshore wind generating station—

(i) which was accredited during the period beginning with 1st April 2017 and ending with 31st December 2017, and

(ii) in respect of which both the approved development condition and the investment freezing condition are met, or

(b) generating using additional capacity of a large onshore wind generating station, where—

(i) the station was accredited on or before 31st March 2016,

(ii) in the Authority's view, the additional capacity first formed part of the station during the period beginning with 1st April 2017 and ending with 31st December 2017, and

(iii) both the approved development condition and the investment freezing condition are met in respect of the additional capacity.

Large onshore wind generating stations accredited, or additional capacity added, between 1st January 2018 and 31st December 2018: grid or radar delay condition met

9.—(1) The circumstances set out in this Article are where the electricity is—

(a) generated using the original capacity of a large onshore wind generating station—

(i) which was accredited during the period beginning with 1st January 2018 and ending with 31st December 2018,

(ii) in respect of which both the approved development condition and the investment freezing condition are met, and

(iii) in respect of which the grid or radar delay condition is met, or

(b) generated using additional capacity of an onshore wind generating station, where—

(i) the station was accredited on or before 31st March 2016,

(ii) in the Authority's view, the additional capacity first formed part of the station during the period beginning with 1st January 2018 and ending with 31st December 2018,

(iii) both the approved development condition and the investment freezing condition are met in respect of the additional capacity, and

(iv) the grid or radar delay condition is met in respect of the additional capacity.

The grid or radar delay condition

10.—(1) This Article applies for the purposes of Articles 5, 7 and 9.

(2) The grid or radar delay condition is met in respect of a large onshore wind generating station if, on or before the date on which the Authority made its decision to accredit the station, the documents specified in paragraph (4), (5) or (6) were—

(a) submitted by the operator of the station, and

(b) received by the Authority.

(3) The grid or radar delay condition is met in respect of additional capacity if, on or before the date on which the Authority made its decision that the additional capacity could form part of the large onshore wind generating station in question, the documents specified in paragraph (4), (5) or (6) were—

(a) submitted by the operator of the station, and

(b) received by the Authority.

(4) The documents specified in this paragraph are—

(a) evidence of an agreement with a network operator ("the relevant network operator") to carry out grid works in relation to the station or additional capacity ("the relevant grid works");

(b) a copy of a document written by, or on behalf of, the relevant network operator which confirms that at the date of receipt of the connection application from the generating station, it was the intention of the relevant network operator to complete the relevant grid works ("the planned grid works completion date") no later than the primary date;

(c) a letter from the relevant network operator confirming (whether or not such confirmation is subject to any conditions or other terms) that—

(i) the relevant grid works were completed after the planned grid works completion date, and

(ii) in the relevant network operator's opinion, the failure to complete the relevant grid works on or before the planned grid works completion date was not due to any breach by the generating station developer of any agreement with the relevant network operator; and

(d) a declaration by the operator of the station that, to the best of the operator's knowledge and belief, the station would have been commissioned, or the additional capacity would have formed part of the station, on or before the primary date if the relevant works had been completed on or before the planned grid works completion date.

(5) The documents specified in this paragraph are—

(a) evidence of an agreement between a generating station developer and a person who is not a generating station developer ("the radar works agreement") for the carrying out of radar works ("the relevant radar works");

(b) a copy of a document written by, or on behalf of, a party to the radar works agreement (other than a generating station developer) which estimated or set a date for completion of the relevant radar works ("the planned radar works completion date") which was no later than the primary date;

(c) a letter from a party to the radar works agreement (other than a generating station developer) confirming, whether or not such confirmation is subject to any conditions or other terms, that—

(i) the relevant radar works were completed after the planned radar works completion date, and

(ii) in that party's opinion, the failure to complete the relevant radar works on or before the planned radar works completion date was not due to any breach of the radar works agreement by a generating station developer; and

(d) a declaration by the operator of the station that, to the best of the operator's knowledge and belief, the station would have been commissioned, or the additional capacity would have formed part of the station, on or before the primary date if the relevant radar works had been completed on or before the planned radar works completion date.

(6) The documents specified in this paragraph are—

(a) the documents specified in paragraph (4)(a), (b) and (c);

(b) the documents specified in paragraph (5)(a), (b) and (c); and

(c) a declaration by the operator of the station that, to the best of the operator's knowledge and belief, the station would have been commissioned, or the additional capacity would have formed part of the station, on or before the primary date if—

(i) the relevant grid works had been completed on or before the planned grid works completion date, and

(ii) the relevant radar works had been completed on or before the planned radar works completion date.

(7) In this Article—

"the primary date" means—

(a) in a case within Article 5(a)(i) or (b)(i) and (ii), 31st March 2016;

(b) in a case within Article 7(a)(i) and (ii) or (b)(i) to (iii), 31st March 2017;

(c) in a case within Article 9(a)(i) and (ii) or (b)(i) to (iii), 31st December 2017;

"generating station developer" in relation to an onshore wind generating station or additional capacity, means—

(a) the operator of the station, or

(b) a person who arranged for the construction of the station or additional capacity.

The approved development condition

11.—(1) This Article applies for the purposes of Articles 6 to 9.

(2) The approved development condition is met in respect of a large onshore wind generating station if the documents specified in paragraphs (4), (5) and (6) were provided to the Authority with the application for accreditation of the station.

(3) The approved development condition is met in respect of additional capacity if the documents specified in paragraphs (4), (5) and (6) were provided to the Authority on or before the date on which the Authority made its decision that the additional capacity could form part of the large onshore wind generating station in question.

(4) The documents specified in this paragraph are—

(a) evidence that—

(i) planning permission for the station or additional capacity was granted on or before the relevant eligibility date, and

(ii) any conditions as to the time period within which the development to which the permission relates must be begun have not been breached, or

(b) a declaration by the operator of the station that, to the best of the operator's knowledge and belief, planning permission is not required for the station or additional capacity.

(5) The documents specified in this paragraph are—

(a) a copy of an offer from a licensed network operator made on or before the relevant eligibility date to carry out grid works in relation to the station or additional capacity, and evidence that the offer was accepted on or before the date (whether or not the acceptance was subject to any conditions or other terms), or

(b) a declaration by the operator of the station that, to the best of the operator's knowledge and belief, no grid works were required to be carried out by a licensed network operator in order to enable the station to be commissioned or the additional capacity to form part of the station.

(6) The documents specified in this paragraph are a declaration by the operator of the station that, to the best of the operator's knowledge and belief, as at the relevant eligibility date a relevant developer of the station or additional capacity (or a person connected, within the meaning of section 1122 of the Corporation Tax Act 2010(**a**), with a relevant developer of the station or additional capacity)—

(a) was an owner or lessee of the land on which the station or additional capacity is situated,

(b) had entered into an agreement to purchase or lease the land on which the station or additional capacity is situated,

(c) had an option to purchase or to lease the land on which the station or additional capacity is situated, or

(**a**) 2010 c.4

(d) was a party to an exclusivity agreement in relation to the land on which the station or additional capacity is situated.

(7) In this Article—

"2011 Act permission" means planning permission under the Planning Act (Northern Ireland) 2011(**a**) (except outline planning permission, within the meaning of section 62 of that Act);

"exclusivity agreement", in relation to land, means an agreement by the owner or a lessee of the land not to permit any person (other than the persons identified in the agreement) to construct a large onshore wind generating station on the land;

"planning permission" means—

(a) consent under section 39 of the Electricity (Northern Ireland) Order 1992(**b**), or

(b) 2011 Act permission.

"relevant eligibility date", in relation to a large onshore wind generating station or additional capacity means—

(a) 30th September 2015 where the generating station is not connecting to a cluster, or

(b) 30th October 2015 where the generating station is connecting to a cluster.

The investment freezing condition

12.—(1) This Article applies for the purposes of Articles 8 and 9.

(2) The investment freezing condition is met in respect of a large onshore wind generating station if the documents specified in paragraph (4) were provided to the Authority with the application for accreditation of the station.

(3) The investment freezing condition is met in respect of additional capacity if the documents specified in paragraph (4) were provided to the Authority on or before the date on which the Authority made its decision that the additional capacity could form part of the large onshore wind generating station in question.

(4) The documents specified in this paragraph are—

(a) a declaration by the operator of the station that, to the best of the operator's knowledge and belief, as at the date on which this Order is made—

(i) the relevant developer required funding from a recognised lender before the station could be commissioned or additional capacity could form part of the station,

(ii) a recognised lender was not prepared to provide that funding until this Order is made, because of uncertainty over whether the Order would be made and its wording if made, and

(iii) the station would have been commissioned, or the additional capacity would have formed part of the station, on or before 31st March 2017 if the funding had been provided before this Order is made, and

(b) a letter or other document, dated on or before the date which is 28 days after the date on which this Order is made, from a recognised lender confirming (whether or not the confirmation is subject to any conditions or other terms) that the lender was not prepared to provide funding in respect of the station or additional capacity until enactment of this Order, because of uncertainty over whether this Order would be made and its wording if made.

(5) In this Article "recognised lender" means a provider of debt finance which has been issued with an investment grade credit rating by a registered credit rating agency.

(6) For the purposes of paragraph (5)—

(**a**) 2011 c.25
(**b**) S.I. 1992/231 (N.I.1)

"investment grade credit rating" means a credit rating commonly understood by registered credit rating agencies to be investment grade;

"registered credit rating agency" means a credit rating agency registered in accordance with Regulation (EC) No. 1060/2009 of the European Parliament and the Council of 16 September 2009(**a**) on credit rating agencies.

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on
16th March 2016

J Mills
A senior officer of the
Department of Enterprise, Trade & Investment

(**a**) OJ L 302, 17.11.2009

EXPLANATORY NOTE

(This note is not part of the Regulations)

This Order makes provision for no new renewables obligation certificates (ROCs) to be issued under a renewables obligation order in respect of electricity generated by a large onshore wind generating station after 31st March 2016 unless the electricity is generated in any one of the circumstances provided for in this Order.

Article 2 defines a large onshore wind generating station as an onshore wind generating station where the total installed capacity of the station is more than 5 megawatts.

Article 3 prevents ROCs from being issued for electricity generated by a large onshore wind station after 31st March 2016. A number of exemptions to this restriction on the issue of ROCs are set out in Articles 4 to 12.

Article 5 sets out exceptions for large onshore wind stations accredited or additional capacity added between 1st April 2016 and 31st March 2017.

Article 6 sets out exceptions for large onshore wind stations accredited or additional capacity added on or before 31st March 2017 where the approved development condition is met.

Article 7 sets out exceptions for large onshore wind stations accredited or additional capacity added between 1st April 2017 and 31st March 2018 where the approved development condition and the grid or radar delay condition are met.

Article 8 sets out exceptions for large onshore wind stations accredited or additional capacity added between 1st April 2017 and 31st December 2017 where the approved development condition and the investment freezing condition are met.

Article 9 sets out exceptions for large onshore wind stations accredited or additional capacity added between 1st January 2018 and 31st December 2018 where the approved development condition, the investment freezing condition and the grid or radar delay condition are met.

Article 10 specifies the grid or radar delay condition documents that must be provided to the Authority by a large onshore wind station with the application for accreditation of the station.

Article 11 specifies the approved development condition documents that must be provided to the Authority by a large onshore wind station with the application for accreditation of the station.

Article 12 specifies the investment freezing condition documents that must be provided to the Authority by a large onshore wind station with the application for accreditation of the station.

An explanatory memorandum is available alongside this Order on www.legislation.gov.uk.

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