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RENEWABLES INDUSTRY NEWS – JUNE 2015

Onshore Wind - Closure of the RO Early for Onshore Wind

In a written ministerial statement of 18 June, the Secretary of State for Energy and Climate Change Amber Rudd MP set forth the Government's intentions to end subsidies for onshore wind. The statement sets out the department's plans to introduce primary legislation to close the Renewables Obligation to onshore wind projects as of 1 April 2016 (a year earlier than planned), whilst leaving details of how the Contracts for Difference and the Feed-in Tariff schemes will be dealt with for a later announcement. Included in the statement was a mention of grace periods for projects that already have planning consent, an accepted grid connection offer, and evidence of land rights, albeit only for projects that had these in place as of 18 June 2015. This was followed up by debates in both the House of Commons and the House of Lords on 22 June indicating both that support under the Contracts for Difference and the Feed-in Tariff were also under review.

PEL Note: Given the manifesto commitment of the Conservatives in regards to onshore wind this will not have come as a shock to many, although to have an announcement with very little detail, but that sets the deadline for the grace period criteria to that day, is potentially damaging to investor confidence. The lack of detail confirming the FIT and CfD scheme is certainly disappointing, although in the House of Commons on 22 June Amber Rudd MP did say "*I said in my statement that, in respect of contracts for difference, we would be implementing the terms of our manifesto.*" This appears to be a clear indication that the CfD budget may exclude onshore wind. The fate of onshore wind under the feed-in tariff is still unknown, but the outlook is not good. Many stories are already circulating about possible legal challenges following this announcement.

PLL Note: Whilst Prospect Law does not often directly comment in this update, this announcement has led to a number of rumours of legal challenges appearing in the press, rumoured to being brought by parties ranging from the Scottish Government

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through to developers. Previous challenges against sudden and/or retrospective changes to the RO/FIT schemes have all been based on changes to be introduced by secondary legislation following the release of a consultation. The difference here is that the Government is proposing using primary legislation, passed directly by Parliament, to achieve its ends, which is likely more difficult to challenge owing to Parliamentary sovereignty. Whilst we have yet to look at this in great detail, given the devastation the statement alone has had on the sector, even before any firm proposals or draft legislation is put forward, the statement itself may be open to legal challenge as a 'decision', especially if the final legislation does not cover projects that have been shelved owing to the announcement. The possibility of applying for a declaration of incompatibility and taking the case to the European Court of Human Rights (as a breach of the right to peaceful enjoyment of possessions, contrary to Article 1 of the first protocol, as established in earlier challenges against unlawful changes to the subsidy schemes brought by us) as an arguable route to a claim for damages remains open to consideration, given that a mere declaration of incompatibility cannot be a suitable remedy for any financial losses incurred.

Onshore Wind - Changes to Planning Regime

In a further written ministerial statement of 18 June, the Secretary of State for Communities and Local Government Greg Clark MP set out the Government's intentions to impose new requirements for local planning authorities to consider when determining applications for onshore wind developments. These proposals, which take effect from the date of the statement, require that consent only be given when the development is in an area identified on the local plan as being suitable for wind development and when the planning impacts have been fully addressed and it therefore has the backing of the local community. For applications already in the system only the requirement to have addressed the planning impacts and to have the backing of the community will be required.

PEL Note: This story was somewhat overshadowed by the announcement regarding subsidies, however it could be even more important for onshore wind developers. The details of the updated guidance have not been released, however whilst the



requirement for councils to have agreed (and approved) areas for wind development could prove difficult this could give potential investors useful information before money is spent – assuming such areas do materialise on local plans. The real concern seems to be the obligation for the project to have ‘the backing of the local community’ and the uncertainty as to just how easy it may be for a small group of local opposition to torpedo a project. It is not unusual, even when all local concerns have been diligently addressed, for there to be a few people who just do not want the project to go ahead, and if these individuals are allowed to prevent development the industry could have a serious problem.

Contracts for Difference - Consultation Response re Negative Pricing Released

On 29 June DECC released the Government response to the 9 March 2015 consultation on updates to the standard CfD contract terms. Alongside this the commissioned report on the likelihood of negative pricing events is also published. Owing to the state aid requirement the proposals regarding negative pricing (i.e. not paying generators if there is a 6+ hour negative pricing period) will be implemented, but with a promise to engage with the industry further. The negative pricing report gives low estimates for the probability of such events, with a conservative estimate of 0.5% of generation given for a ‘high renewables’ scenario.

PEL Note: The main area of interest in this response is likely to be the negative pricing issue, with the rest being small technical changes. The addition of a clause to the CfD contract stating that payments will not be made on generation occurring during a 6+ hour adds a risk to CfD generators that is difficult to quantify and price, however the published report gives relatively good news on the magnitude of this risk. It is worth noting that energy storage, interconnectors between countries and an increase in smart grids (that may also back onto an increase in the number of electric cars on the road) will all have a mitigating effect on the negative pricing risk. Whilst energy storage and interconnector projects are expected to go forward as planned, any curtailment of this type of investment will lead to this risk increasing and so is worth monitoring.



Capacity Market - 2015 Auction Parameters Published

On 29 June DECC published the letter to National Grid setting the parameters for the 2016 Capacity Market auction. Derating factors for interconnectors are also given as the scheme opens up to bids from such installations. The letter also sets out the parameters of the first Transitional Arrangement auction, which specifically targets demand-side response bidders.

PEL Note: Aside from the introduction of interconnectors, the December 2015 Capacity Market auction looks as if it is going to be similar to the first carried out at the end of 2014.

If you would like to find out more about any of the points raised in this newsletter please contact us at updates@prospectenergy.co.uk or call us on +44 (0)20 3427 5955.