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Electricity Market Reform

Help or Hindrance?

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The Burges Salmon team advises on all types of renewable energy project including wind (onshore and offshore), wave and tidal, hydro, solar, biomass and innovative waste to electricity technologies.

The team works with developers, investors, funders, landowners and the supply chain bringing projects to fruition. Our expertise has been recognised by UK awards such as Energy/Infrastructure Law Firm of the Year at The Lawyer Awards.

If you would like more information on the services Burges Salmon can offer to the sector or discuss any of the areas covered by this article please contact **Ross Fairley on ross.fairley@burges-salmon.com or (0117) 902 6351.**

The much heralded and eagerly awaited Government proposals to reform the electricity market found their way into the public domain just before Christmas in the form of the Electricity Market Reform Consultation ("EMR Consultation"). These proposals have been billed as the most comprehensive reform of the electricity market since electricity privatisation in 1989. The main aims of the reforms are to (i) secure electricity supply in future years in the knowledge that approximately 19 gigawatts of power generation capacity needs to be replaced by 2020; (ii) help the UK meet its binding legal commitments to de-carbonise; (iii) increase renewable energy consumption; and (iv) improve affordability of electricity for the end consumer. The EMR Consultation proposes numerous measures which this brief commentary does not intend to cover but should the renewable energy sector be encouraged by these proposals or will they have an unwanted impact on renewable energy promotion and generation in the UK?

All Change on Support

There is to be a fundamental change in the way in which renewable generation is supported going forward. Having promoted Feed-In Tariffs heavily as a means to encourage householders and others to install small-scale renewable (5MW or less) such as solar panels and small-scale wind, the Government now proposes a Feed-In Tariff for large scale low carbon generation with its preference, among a host of different options debated, being for a Feed-In Tariff based on a contract for difference. Under this system, generators sell their electricity into the market and then receive a top-up payment or are required to repay revenues for the difference by which the average market wholesale price is below or above (respectively) a "strike price" set under the contract for difference.

So the Renewables Obligation will come to an end. Talk to many in the industry and although the Renewables Obligation is not perfect it has provided a measure of certainty and comfort and has been responsible for bringing forward considerable amounts of renewable generation capacity over a relatively short period of time. What one can certainly say is that it has been much more successful than its predecessor, the Non Fossil Fuel Obligation, which was the last attempt at a Feed-In Tariff.

Any change in a system brings uncertainty and the EMR is no different. Granted, recent tinkering with the Renewables Obligation has meant generators and developers could never relax (e.g. banding reviews and grandfathering). But this will be uncertainty on a grander scale. Renewables projects currently being considered or coming to fruition over the next few years will have to face considerable debate and uncertainty over:

- *what incentives and returns they will have available in years to come;*
- *whether they can meet deadlines to take advantage of the old Renewables Obligation (which the EMR proposes keeping open until 2017) or whether they will fall under the new Feed-In Tariff which the Government intends to implement from 2013 or 2014;*
- *whether they have the option to choose between the two and what will happen to existing Renewables Obligation projects over the lifetime of the project. How will funders view this uncertainty?*

Speculation is also mounting regarding what power purchase agreements will look like in years to come? Will there actually be power purchase agreements with licensed suppliers as we know them for renewables projects? If you have a power purchase agreement that is currently being negotiated what will happen when the new provisions arrive? Will the old contract be ripped up and will there be an ability on the part of the supplier to walk away from the contract? All of these issues will be keenly debated and no doubt hotly negotiated for renewables projects over the course of the next few years.

If a Feed-In Tariff is to be paid by a central body such as Ofgem, what is the incentive on an electricity supplier to purchase the electricity from a renewable energy generator and if an electricity supplier is not going to purchase this where is the route to market to sell that electricity and what guarantee of electricity sales is provided to third party investors?

The revised Feed-In Tariffs are supposed to benefit all forms of low carbon investment, including nuclear. Will the inclusion of nuclear in a Feed-In Tariff based around low carbon have an unwanted effect on renewables?

The proposals make a big play of seeking to provide certainty of support as quickly as possible for renewables projects so as not to hinder investment between now and the new Feed-In Tariff system coming into force. In fact, the rumblings of uncertainty had been there even prior to the announcement and publication of the EMR and they will no doubt continue whilst the consultation is open and the proposals are further developed.

As highlighted above, there are plenty of concerns regarding the EMR, however, if we were to take a wider and longer term view there are some good news stories for renewables coming out of these proposals. It is clear that there is a commitment to continue to promote renewable energy although it is equally clear that the Government wants to reduce the cost of electricity for the end consumer and reduce the overall level of support that is required to bring renewables to market. The old conventional generation technology such as coal does not fare well under the Government's proposals - a carbon tax is suggested and emissions performance standards will now be imposed at a level which would make it impossible to commission new coal fired power stations without them being fitted with carbon capture and storage technology.

Renewables developers and those involved in the sector need to roll their sleeves up, become involved and take an interest in the consultation and during the interim period find solutions to ensure that the flow of renewables projects continues whilst the proposals find their way into the statute books.

Lastly and for good measure, we have the potential glitch that Scotland and Northern Ireland through devolved powers can decide on different regimes.

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