



LOW CARBON
CONTRACTS COMPANY

Guidance: Start Dates and Conditional Start Dates

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Version 1

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Version Control Table

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1 Introduction

- 1.1 This guidance provides you with an indication of the current approach and expectations of Low Carbon Contracts Company Ltd (“LCCC”) in relation to the Start Date provisions at Conditions 3.21 to 3.25 of the Contract for Difference (“CfD”). For Biomass Conversion projects with a State Aid Condition Precedent that has not yet been fulfilled (i.e. the Project has not as yet been given State Aid approval), this guidance also deals with the Conditional Start Date provisions at Clause 6 of the CfD Agreement.
- 1.2 This guidance does not and is not intended to supersede or replace the provisions of the CfD. Readers should not place reliance on this guidance and should refer to the CfD. This guidance does not constitute legal or investment advice and should not be relied up on as such. Generators should consult their professional advisors where they require advice whether legal or otherwise. We reserve the right to amend this guidance from time to time.
- 1.3 Defined terms used in this guidance and not defined herein should be given the meaning provided in the CfD (which is comprised of the CfD Agreement and the Conditions as published by the Department for Business, Energy and Industrial Strategy (formerly the Department of Energy and Climate Change on 29 August 2014)).
- 1.4 This guidance is also applicable to Investment Contracts, though Generators with Investment Contracts are advised to review the equivalent clauses in their contracts.

2 Start Dates – CfD requirements

- 2.1 Generators cannot receive payments under the CfD until after the Start Date. The CfD sets out the process by which Generators must notify LCCC of their Project’s Start Date. The notified Start Date must fall within the specified time parameters set out in the CfD (see paragraph 2.5 below). A Generator cannot issue a Start Date Notice specifying a Start Date until the Operational Conditions Precedent (“OCPs”) have been fulfilled. We would refer you to our separate Guidance on Operational Conditions Precedent in relation to fulfilment of the OCPs. However, it is worth drawing attention to the OCP at paragraph 2.4 of Schedule 1 Part B which requires Embedded Generators to give LCCC not less than 3 months’ notice of their *intended* Start Date. Further details can be found in the OCP Guidance.
- 2.2 The Start Date provisions are slightly different for Generators with Biomass Conversion Projects which are subject to a State Aid Condition Precedent which has not yet been fulfilled. Such Generators may serve a Conditional Start Date Notice which allows CfD payments to accrue until the State Aid Condition Precedent has been fulfilled. However, these accrued payments will not actually be paid to the Generator until after State Aid Condition Precedent has been fulfilled. Further information in relation to Conditional Start Date Notices is set out at paragraph 2.14 below.

2.3 Condition 3.21 of the CfD provides that:

“The Generator shall:

- (A) after giving the Operational CP Notice relating to the fulfilment of the final Operational Condition Precedent, and in any event no later than ten (10) Business Days after the CP Response Notice or the Further CP Response Notice confirming that the CfD Counterparty considers such Operational Condition Precedent to have been fulfilled is received, give a notice to the CfD Counterparty (provided that, if the Facility Generation technology is Biomass Conversion, the foregoing shall apply only if the State Aid Condition Precedent shall have been fulfilled prior to the delivery by the Generator of the Operational CP Notice relating the fulfilment of the final Operational Condition Precedent); and*
- (B) (if the Generator delivers the Operational CP Notice relating to the fulfilment of the final Operational Condition Precedent prior to the fulfilment of the State Aid Condition Precedent) give a notice to the CfD Counterparty following fulfilment of the State Aid Condition Precedent, and in any event no later than ten (10) Business Days following the later of: (i) the date on which the State Aid Condition Precedent is fulfilled; and (ii) receipt of the CP Response Notice or the Further CP Response Notice relating to such final Operational Condition Precedent (provided that this paragraph (B) shall apply to the Contract for Difference only if the Facility Generation Technology is Biomass Conversion)*

*(a “**Start Date Notice**”). A Start Date Notice shall specify the date that the Generator proposes to be the Start Date for the purposes of the Contract for Difference, such date being:*

- (i) no earlier than the date on which the Operational CP Notice relating to the fulfilment of the final Operational Condition Precedent was given;*
- (ii) no earlier than the date on which the State Aid Condition Precedent is fulfilled (provided that this paragraph (ii) shall apply to the Contract for Difference only if the Facility Generation Technology is Biomass Conversion);*
- (iii) no earlier than the first (1st) day of the Target Commissioning Window;*
- (iv) no later than the Longstop Date;*
- (v) no earlier than 01 April 2015,*

*(the date so notified being, subject to Condition 3.24, the “**Start Date**”).”*

- 2.4 A Generator effectively has a ‘window’ within which it must submit a Start Date Notice to LCCC:
- (a) The ‘window’ set out at part (A) of Condition 3.21 applies to all Generation Technologies, except to a Biomass Conversion Project which has not received State Aid approval prior to the delivery by the Generator of the Operational CP Notice stating that it has fulfilled its final OCP. The ‘window’ commences on the date the Generator issues the Operational CP Notice relating to the fulfilment of the final OCP and continues until ten (10) Business Days after LCCC’s CP Response Notice (or Further CP Response Notice, if applicable) confirming that LCCC considers that the final OCP has been fulfilled.
 - (b) The alternative ‘window’ set out at part (B) of Condition 3.21 applies to Biomass Conversion Projects where the Generator delivers the Operational CP Notice relating to fulfilment of the final OCP prior to fulfilment of the State Aid Condition Precedent. Note that the Generator may alternatively serve a Conditional Start Date Notice in accordance with Clause 6 of the CfD Agreement (see paragraph 2.14 below for further information on Conditional Start Date Notices).
- 2.5 Regardless of which of the “windows” above is applicable, the Start Date Notice must specify a Start Date which falls within the parameters set out at Condition 3.21(i) to (v) (see paragraph 2.3 above). In particular, the State Date can be no earlier than (i) the date on which the Operational CP Notice relating to the fulfilment of the final OCP was given and (ii) the first day of the Target Commissioning Window. In addition, the Start Date can be no later than the Longstop Date.

For convenience, a template Start Date Notice for a CFD is attached at Annex 1 to this guidance and a template Start Date Notice for an Investment Contract is attached at Annex 2 to this guidance.

- 2.6 A Generator will not be able to specify a Start Date which is prior to the date of the Start Date Notice. This is because there must be at least one Directors’ Certificate certifying the matters referred to in Condition 3.24(C), with the number of Director’s Certificates depending on the date of the Start Date Notice – see paragraph 2.7 below. In order for a Start Date Notice to be effective in determining the Start Date, the effect of Condition 3.24(A) is that a Directors’ Certificate must certify the relevant matters as being in fact the case at the Start Date. This will only be possible where the Start Date is a date which falls on or after the date of the Start Date Notice.

Directors’ Certificates

- 2.7 Two Directors’ Certificates are required in accordance with Conditions 3.22 and 3.23 in relation to the Start Date process. One must accompany the Start Date Notice (the “**Start Date Notice Directors’ Certificate**”) and the other must be provided on the Start Date that is specified in the Start Date Notice (“the **Start Date Directors’ Certificate**”). However, if the

Start Date is the date of the Start Date Notice, only the Start Date Notice Directors' Certificate is required. For the avoidance of doubt, the Directors' Certificates referred to in this paragraph are in addition to the Directors' Certificate required in relation to the final OCP¹.

Start Date Notice Directors' Certificate

2.8 Condition 3.22 provides that:

"Each Start Date Notice must be accompanied by a Directors' Certificate certifying that the matters provided for in Condition 3.24(C) are, as at the date of such notice, true, complete and accurate in all material respects and are not misleading, in each case by reference to the facts and circumstances then existing."

The matters provided for in Condition 3.24(C) are set out at paragraph 2.10 below. For convenience, a template Start Date Notice Directors' Certificate is attached at Annex 3 of this guidance.

Start Date Directors' Certificate

2.9 Condition 3.23 provides that:

"On the Start Date (unless the date of the Start Date Notice is the same as the Start Date), the Generator shall deliver to the CfD Counterparty a Directors' Certificate certifying that the information specified in Condition 3.24(C) is, as at that date, true, complete and accurate in all material respects and is not misleading, in each case by reference to the facts and circumstances then existing."

As mentioned in paragraph 2.6 above, this Directors' Certificate must be given on the Start Date unless the Start Date is the same as the date of the Start Date Notice, in which case it is not required. For convenience, a template Start Date Directors' Certificate is attached at Annex 4 of this guidance.

Effectiveness of Start Date Notice

2.10 Condition 3.24 provides that:

"A Start Date Notice shall be effective in determining the Start Date only if:

(A) the Generator complies with its obligations pursuant to Conditions 3.22 and 3.23;

¹ Condition 3.9 states that each Operational CP Notice relating to the fulfilment of an OCP shall be accompanied by a Directors' Certificate certifying the information contained in, and enclosed, with, the Operational CP Notice.

- (B) *the CfD Counterparty specifies in a CP Response Notice or Further CP Response Notice (as relevant) that it has determined that all of the Operational Conditions Precedent have been satisfied or waived in accordance with Condition 3.26; and*
- (C) *on the date such Start Date Notice is given and on the proposed Start Date specified in the Start Date Notice:*
 - (i) *the Generator Repeating Representations are true, accurate and not misleading by reference to the facts and circumstances then existing;*
 - (ii) *the representations set out in Conditions 28.1(G), 28.1(H) and 28.2 are true, accurate and not misleading by reference to the facts and circumstances then existing;*
 - (iii) *no Default has occurred which is continuing unremedied and which has not been waived by the CfD Counterparty in accordance with Condition 3.26; and*
 - (iv) *all Conditions Precedent (except those waived by the CfD Counterparty in accordance with Condition 3.26) continue to be fulfilled”.*

2.11 Condition 3.25 provides that:

“If the Generator gives a Start Date Notice to the CfD Counterparty and such notice is, pursuant to Condition 3.24, ineffective, this shall not, subject to Part 12 (Termination), preclude the Generator from giving a further Start Date Notice to the CfD Counterparty. Conditions 3.21 to 3.24 (inclusive) shall apply, with the necessary modifications, to any such further Start Date Notice.”

2.12 A Start Date Notice will not be effective in determining a Start Date unless the requirements at Condition 3.24 are complied with. If a Start Date Notice is ineffective, a Generator may submit a further Start Date Notice, in which case the further Start Date Notice must comply with the requirements at Conditions 3.21 to 3.24 (inclusive). Generators cannot, in a new Start Date Notice, specify a Start Date which is prior to the date of such Start Date Notice – see paragraph 2.6 above.

We have set out some illustrative examples below to give some guidance as to when a Start Date Notice may and may not be ineffective:

Example 1: A Generator has submitted a Start Date Notice specifying a Start Date which is the same as the date of the Start Date Notice but has failed to provide the accompanying Start Date Notice Directors’ Certificate required by Conditions 3.24(A) and 3.22.

In this case the Start Date Notice would not be effective as the Generator has failed to provide the required Directors’ Certificate. However, the Generator

may submit a further Start Date Notice this time with the required Start Date Notice Directors' Certificate, as long as the further Start Date Notice complies with the requirements of Conditions 3.21 to 3.24 inclusive.

Example 2: A Generator has submitted a Start Date Notice specifying a Start Date which is the same as the date of the Start Date Notice and has provided a Start Date Notice Directors' Certificate in accordance with Condition 3.24(A) and 3.22. However, the matter at Condition 3.24(iii) is untrue as there is a Default which is continuing unremedied and which has not been waived by LCCC.

In this case, the Start Date Notice will not be ineffective. However, the Generator may (after it has remedied the Default or the Default has been waived by LCCC) submit a further Start Date Notice, as long as the further Start Date Notice complies with the requirements at Conditions 3.21 to 3.24 inclusive.

Example 3: A Generator has submitted a Start Date Notice specifying a Start Date which is the same as the date of the Start Date Notice. The Generator has provided the Start Date Notice Directors' Certificate required by Condition 3.24(A) and 3.22 and the matters at Condition 3.24(C) are all true and accurate etc. The Generator has given its Operational CP Notice in relation to the final OCP. However, as at the date of the Start Date Notice, LCCC has not issued a CP Response Notice (or Further CP Response Notice, as applicable) in relation to the final OCP. LCCC has issued CP Response Notices in relation to all other OCPs confirming that it is satisfied that they have been fulfilled.

In this case, (assuming the other requirements of Condition 3.24 have been satisfied and that the Generator has indeed fulfilled the final OCP), the effectiveness of the Start Date Notice will only be confirmed when (and if) LCCC issue the CP Response Notice (or Further CP Response Notice) that it has determined that all of the OCPs have been satisfied or waived in accordance with Condition 3.26. If, on the other hand, the Generator had not fulfilled the final OCP as at the date of the Start Date Notice, the Start Date Notice will be ineffective (albeit that LCCC may only become aware of this after assessing the information provided by the Generator as part of its Operational CP Notice). In such a case, LCCC will issue a CP Response Notice informing the Generator that the final OCP has not been satisfied (thereby making it clear that the Start Date Notice is ineffective).

Example 4: A Generator has submitted a Start Date Notice specifying a Start Date which is a date falling 14 days after the date of the Start Date Notice. The Generator has provided the Start Date Notice Directors' Certificate required by Condition 3.24(A) and 3.22 and the matters set out at Condition 3.24(C) are all true and accurate etc. However, because the Start Date has not yet occurred, the Generator has not yet provided the Start Date Directors' Certificate required by

Condition 3.24(A) and 3.23. In addition, LCCC has not issued a CP Response Notice (or Further CP Response Notice, as applicable).

In this case, (assuming the other requirements of Condition 3.24 have been satisfied), the Start Date Notice will be effective if the following two events have occurred:

- (i) on the Start Date, the Generator provides the Start Date Directors' Certificate; and
- (ii) the Generator has indeed fulfilled the final OCP. In such a case LCCC will sue the CP Response Notice (or Further CP Response Notice) in this regard.

Biomass Conversion Projects and Conditional Start Date Notices

- 2.13 A Generator with a Biomass Conversion Project that has a State Aid Condition Precedent which has not yet been fulfilled may, in accordance with Clause 6 of the CfD Agreement, opt to issue a Conditional Start Date Notice specifying a Conditional Start Date. If an effective Conditional Start Date Notice is provided, payments will start to accrue after the Conditional Start Date, though they cannot actually be paid to the Generator until after the State Aid Condition Precedent has been fulfilled.
- 2.14 If a Generator with a Biomass Conversion Project has not served a Conditional Start Date Notice, then Condition 3.21 of the CfD will apply and the Generator will be required to provide a Start Date Notice within the relevant 'window' specified at Condition 3.21. Please refer to paragraphs 2.3 and 2.4 above for information relating to the 'window' will apply for Biomass Conversion Projects.

3 LCCC Process

- 3.1 We encourage Generators to engage with us as early as possible to discuss their Start Date or Conditional Start Date and the process for submission of your Start Date Notice or Conditional Start Date Notice. If you wish to opt for the earliest possible Start Date allowed under the CfD, you may find that the optimal approach is to submit, on the same day as you submit an Operational CP Notice relating to the fulfilment of the final OCP, a Start Date Notice specifying a Start Date which is the same date as the date of the Start Date Notice. You will also need to submit the Start Date Notice Directors' Certificate required by Condition 3.22 (see paragraph 2.8 above for details). For completeness, we would point out that in submitting an Operational CP Notice relating to the final OCP, Generators should ensure that they have indeed fulfilled the final OCP.
- 3.2 We recommend that you submit your Start Date Notice and relevant Directors' Certificate(s) to us in draft form first so that we have an opportunity to give you our comments before you proceed with the formal submission. It would be useful to factor in time to do this.

4 CfD Register – publication of Start Dates

- 4.1 Regulation 12 of the *Contracts for Difference (Standard Terms) Regulations 2014* (as amended by Regulation 23 of the *Electricity Supplier Payments (Amendment) Regulations 2016*) requires LCCC to publish in the CfD Register “the date that a generator proposes to be the start date for the purposes of its CFD”. Regulation 12 requires LCCC to update this information each quarter.
- 4.2 Under Condition 32.1(A) of the CfD, the Generator is required, on the date of the CfD and at monthly intervals thereafter, to provide LCCC with the Generator’s estimate of the expected Start Date. This information is generally provided by the Generator to LCCC in a monthly report.
- 4.3 In order to comply with its obligation to publish proposed Start Dates under Regulation 12, LCCC shall, on a quarterly basis, publish the Generator’s most recent estimate of the expected Start Date which shall generally be taken from the Generator’s monthly report.

Annex 1: Start Date Notice – Contract for Difference

To: Low Carbon Contracts Company Limited (the “CfD Counterparty”)
Fleetbank House
2-6 Salisbury Square
London EC4Y 8JX

From: [●] (the “Generator”)
Unique reference number: [●]

Dated: [●]

CONTRACT FOR DIFFERENCE – START DATE NOTICE

Dear Sirs,

1. We refer to the agreement dated [●] between you as the CfD Counterparty and us as the Generator (the “Agreement”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 3.21.
3. This is a Start Date Notice.
4. We propose that the Start Date shall be: [●].
5. We enclose a Directors’ Certificate certifying that the matters provided for in Condition 3.24(C) are, as at the date of this notice, true, complete and accurate in all material respects and are not misleading.

Yours faithfully

.....

For and on behalf of
the **Generator**

Annex 2: Start Date Notice – Investment Contract

To: Low Carbon Contracts Company Limited (the “**CfD Counterparty**”)
Fleetbank House
2-6 Salisbury Square
London EC4Y 8JX

From: [●] (the “**Generator**”)
Unique reference number: [●]

Dated: [●]

INVESTMENT CONTRACT – START DATE NOTICE

Dear Sirs,

1. We refer to the agreement dated [●] between you as the CfD Counterparty and us as the Generator (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 3.24.
3. This is a Start Date Notice.
4. We propose that the Start Date shall be: [●].
5. We enclose a Directors’ Certificate certifying that the information specified in Condition 3.29(C) is, as at the date of this notice, true, complete and accurate in all material respects and is not misleading.

Yours faithfully

.....

For and on behalf of
the **Generator**

Annex 3: Start Date Notice Directors' Certificate

Directors' Certificate

[Company Name]

Unique Reference Number: [●]

(the "Company")

[CONTRACT FOR DIFFERENCE/ INVESTMENT CONTRACT²] – DIRECTORS' CERTIFICATE

To: **Low Carbon Contracts Company Ltd.** (the "CfD Counterparty")

I, **[●]**, being a Director of the Company, refer to the [contract for difference/ investment contract³] entered into by the Company and the CfD Counterparty on **[●]** (the "Agreement"). Terms defined in or incorporated into the Agreement have the same meanings when used in this Certificate.

I hereby certify that, having made all due and careful enquiries, that the matters provided for in Condition [3.24(C)/3.29(C)⁴] are, as at the date of this certificate, being the date of the Start Date Notice dated **[●]**, true, complete and accurate in all material respects and are not misleading, in each case by reference to the facts and circumstances then existing.

This Certificate is governed by and construed in accordance with English law.

.....
Name: **[●]**

Position: Director

Dated: **[●]**

.....
Name: **[●]**

Position: Director

Dated: **[●]**

² Delete as applicable

³ Delete as applicable

⁴ Delete as applicable

OR:

.....

Name: [●]

Position: Director

Dated: [●]

in the presence of:

.....

Witness's name: [●]

Occupation: [●]

Address: [●]

Dated: [●]

Annex 4: Start Date Directors' Certificate

Directors' Certificate

[Company Name]

Unique Reference Number: [●]

(the "Company")

[CONTRACT FOR DIFFERENCE/ INVESTMENT CONTRACT⁵] – DIRECTORS' CERTIFICATE

To: **Low Carbon Contracts Company Ltd.** (the "CfD Counterparty")

I, [●], being a Director of the Company, refer to the [contract for difference/ investment contract⁶] entered into by the Company and the CfD Counterparty on [●] (the "Agreement"). Terms defined in or incorporated into the Agreement have the same meanings when used in this Certificate.

I hereby certify that, having made all due and careful enquiries, that the information specified in Condition [3.24(C)/3.29(C)⁷] is, as at the date of this certificate, being the Start Date specified in the Start Date Notice dated [●], true, complete and accurate in all material respects and is not misleading, in each case by reference to the facts and circumstances then existing.

This Certificate is governed by and construed in accordance with English law.

.....
Name: [●]

Position: Director

Dated: [●]

.....
Name: [●]

Position: Director

Dated: [●]

⁵ Delete as applicable

⁶ Delete as applicable

⁷ Delete as applicable

OR:

.....
Name: [●]

Position: Director

Dated: [●]

in the presence of:

.....
Witness's name: [●]

Occupation: [●]

Address: [●]

Dated: [●]