

CfD Dispute Resolution Procedures

Allocation Appeals Process

CfD Contract Terms Dispute

CfD Allocation Appeals Process

- To be included in the Regulations
- Two stages
 - NGET
 - Informal review
 - Two weeks
 - Ofgem
 - 6 weeks
 - On the papers
 - May refer the decision to an expert or panel of experts for recommendation

What can be appealed?

- Clause 10(6) of the Energy Bill provides that the Regulations may make provision about appeals against a decision of NGET not to issue a direction to the CPB to offer a CfD to a specified person.
- NGET's decision must be made in 'accordance with provision made by regulations'.
- Thus, the issue for appeal is **whether NGET has made its decision in accordance with provision made by regulations.**

Why Ofgem?

- Ofgem has oversight of NGET's performance of its functions as the Delivery Body as these are licence obligations
- Public body
- Capacity to deliver in a short period
- Independent third party
- Industry confidence
- More cost effective and therefore accessible
- Synergies with Capacity Markets Appeals process

Judicial Review

- Decision of a public body therefore a right to JR
- Ofgem is concerned about the award of compensation in JR cases following *Infinis v GEMA*
 - Right to ROCs was sufficiently established
 - Right to property per A1P1 of ECHR was deprived
- CfD can be distinguished from ROCS
 - Subject to funding

CfD Dispute Resolution Procedure

- Based on private law remedies
- Addresses any dispute or claim relating to, in connection with or arising out of the Agreement
 - Except metering data issues
- 2 stage process
 - Resolution by Senior Representatives
 - Expert Determination **OR** Arbitration
- Protocol process
 - Address common issues across CfDs

Resolution by Senior Representatives

- Meet within 10 days, resolve within 30 days
- Without prejudice discussions
- Can apply to Courts for a judgement to enforce settlement
- Each party pays own costs

Expert Determination

- Limited to specified technical issues
- Parties agree to Expert
- Cannot amend contract
- Expert can award costs
 - Reflect parties relative success and failure in determination
- Can apply to Courts for a judgement to enforce decision

Arbitration

- London Court of International Arbitration (LCIA)
- Arbitration rules of LCIA apply
- One or three arbitrators
- Cannot amend contract
- Expert can award costs
 - Reflect parties relative success and failure in determination
- Can apply to Courts for a judgement to enforce decision

Protocol arrangement

- Multilateral private law agreement between all CfD generators and CPB
- Required by a term of contract to accede to the Protocol
- Limited to specified circumstances where a common change is required between all CfDs or like technologies
 - Change in Reference Price
- London Court of International Arbitration to administer
- Can change contract