LOW CARBON
CONTRACTS COMPANY

[redacted]

By email.

[redacted]

8 June 2016

Dear [redacted]

Request for Information

We refer to your email dated 20 May 2016 requesting information in relation to CFDs.

We are treating your request as a request for information under the Freedom of Information Act 2000 and/or under the Environmental Regulations 2004.

We should mention that the relevant legislation relates to recorded information i.e. to matters set down in recorded form. While your questions are more in the nature of requests for clarification of how the CFDs work, rather than relating to our recorded information, we are happy to provide such clarifications.

For ease of reference we have copied out your numbered questions. Responses are given in bold.

1. **If a Developer or Company that was awarded and signed a CfD in the first allocation round, in 2015, fails to provide the contractually required evidence of the estimated 10% of investment costs in actual windfarm construction by March 2016, a year after the contract was signed, what action will LCCC take?**

The CFD requires generators, within 12 months of signing the CFD, to demonstrate their commitment to delivering the project. This is known as the 'Milestone Requirement', and is set out in Condition 4 of the CFD. The Milestone Requirement can be satisfied in one of the following ways:

- By incurring actual spend equal to at least 10% of the total expected project development and construction costs relating to the relevant technology ('the '10% route'). The total expected costs are calculated based on a set per MW figure applicable to the relevant technology.

OR

- By evidencing various commitments, including that contracts are in place to buy all the material equipment (e.g. turbines), the generator has sufficient means to finance the project, there are available to the facility site such rights, easements and services as are necessary to undertake the project and operate the facility, the site is not subject to any restrictions or conditions that materially inhibit the use of the site for the purposes of the project and the generator has identified all necessary consents and planning permissions to undertake the project and has a credible strategy in place to obtain them. This route of achieving the Milestone Requirement is known as the 'project commitments' route.

The failure by a generator to demonstrate that it has met the Milestone Requirement by the due date for doing so gives LCCC the right (but not the obligation) to terminate the CFD.

2. **Will failure to abide by the terms of the signed contract invalidate the contract, as would be expected under Contract Law?**

The CFD lists the circumstances where a right to terminate may arise. These are the only termination rights contemplated by the CFD. The list is set out in Condition 51.

3. **How is this process publicly accountable and transparent?**

The CFD Agreement and CFD Terms and Conditions can be found here:

https://www.gov.uk/government/publications/contracts-for-difference-standard-terms-and-conditions

LCCC is obliged to maintain a CFD Register which must contain specified information. The CFD Register contains a list of CFD projects. The CFD Register can be found here: https://lowcarboncontracts.uk/cfds

Information on the CFD Register includes:

- the start date when the generator expects to commence generation; and
- where a CFD is terminated, the date on which termination occurs.

4. **The CfD has defined dates by which a Developer is expected to begin commissioning /production of electricity and a set date by which a Developer is required to be fully commissioned and exporting electricity to the grid. If a developer fails to meet these targets for whatever reason, for example because planning conditions require noise compliance monitoring to be conducted before electricity can be exported to the grid, what penalties will the LCCC impose? Will this invalidate the signed contract?**

The CFD contains certain key dates e.g. the end of the Target Commissioning Window and the Longstop Date. If a generator has not commissioned at least 80% of its expected capacity by the end of the Target Commissioning Window, the CFD operational support period will reduce day for day for each day of delay. If the generator has not commissioned its minimum full capacity obligation by its Longstop Date, LCCC will have the right (but not the obligation) to terminate the CFD. However, both the end of the Target Commissioning Window and the Longstop Date may be postponed by the period of any delay to the Project due to force majeure or grid connection delays. Grid connection delays can arise because of a failure by any Transmission System Operator, Transmission Licensee or Licensed Distributor to carry out any required system reinforcement or connection works.

5. **What rights of Appeal does the developer have if it fails to meet contractual obligations and how is this appeal process publicly accountable and recorded?**

LCCC has certain rights under the CFD which it is entitled to exercise if the circumstances relating to those rights arises. If there is a dispute or disagreement between the generator and LCCC under the CFD, either party may refer the matter to the dispute resolution process set out in the CFD. If, in accordance with the dispute resolution process, the dispute or disagreement cannot be resolved by further discussion at a senior level between the parties, either party may refer the matter to arbitration

We would be grateful if you could quote the reference number set out above in any future communications.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Yours sincerely,

[redacted]

Matthew Taylor
Head of Strategy and External Relations