EXEMPTION FROM THE REQUIREMENT FOR A LICENCE TO GENERATE ELECTRICITY


AUGUST 2008
The Secretary of State, pursuant to the terms of section 5(2) of the Electricity Act 1989 ("the Act") as amended by the Utilities Act 2000, hereby gives notice that he proposes to make an order under section 5(1) of the Act granting exemption from paragraph (a) of section 4(1) of the Act to Rhyl Flats Wind farm Ltd in respect of the Rhyl Flats offshore wind farm. The reasons why the Secretary of State proposes to make such an order in the terms proposed are set out in the attached document entitled "Exemption from the requirement for a licence to generate electricity: proposal to make the Electricity Act 1989 (Exemption from the Requirement for a Generation Licence) (England and Wales) (No.[ ]) Order 2008" ("the Document"). The terms of the proposed draft Order (which subject to representations is in substantially final form) are set out in the Appendix to the Document.

Representations may be made with respect to the proposal in the Document by 8 September 2008 to Chris Chown, Energy Markets Unit, Department of Business, Enterprise and Regulatory Reform, Bay 137, 1 Victoria Street, London SW1H 0ET (telephone: 020-7215 2766; e-mail: chris.chown@berr.gsi.gov.uk)

Steve Davies

An official of the Department of Business, Enterprise and Regulatory Reform authorised to act on behalf of the Secretary of State

11 August 2008
EXEMPTION FROM THE REQUIREMENT FOR A LICENCE TO GENERATE ELECTRICITY: PROPOSAL TO MAKE THE ELECTRICITY ACT 1989 (EXEMPTION FROM THE REQUIREMENT FOR A GENERATION LICENCE) (ENGLAND AND WALES) (NO. [__]) ORDER 2008

INTRODUCTION
1. The Secretary of State proposes to make an Order under section 5(1) of the Electricity Act 1989 (“the Electricity Act”), as amended by the Utilities Act 2000, granting exemption from the requirement to hold a generation licence to:

   - Rhyl Flats Wind Farm Ltd (company registration 05485961), in respect of an offshore wind farm to be constructed at Rhyl Flats, near Rhyl, North Wales with a maximum installed capacity of 90MW.

   - Rhyl Flats Wind Farm Ltd is a wholly owned subsidiary of Npower Renewables Limited (company registration 02550622) which is in turn a wholly owned subsidiary of RWE Innogy Ltd (company registration 06451278).

2. It is intended that the Rhyl Flats station should be connected to SP Manweb’s distribution system and become fully operational in August 2009.

3. The Secretary of State proposes to make the Order subject to the conditions specified in the attached draft Order and in paragraph 9 below, and to the views of consultees. This document explains why the Secretary of State proposes to make such an Order.

4. Section 4(1)(a) of the Electricity Act makes it an offence for a person to generate electricity for the purpose of giving a supply to any premises or enabling a supply to be so given unless he is authorised to do so by a licence or exemption. Section 5(1) of the Electricity Act provides that the Secretary of State may, by order, grant exemption from section 4(1)(a). Section 5(2) of the Electricity Act sets out the procedure for making such an order.

5. On 1 October 2001, the Electricity (Class Exemptions from the Requirement for a Licence) Order 2001 (“the Class Exemptions Order”)
came into force. Among other things, the Class Exemptions Order indefinitely extended the exemptions in the Electricity (Class Exemptions from the Requirement for a Licence) (England and Wales) Order 1997 as amended for persons operating generating stations with existing energised connections on 30 September 2000 that did not provide more than 100 MW of power to the total system (Schedule 2, Class C of the Class Exemptions Order). Whilst the starting assumption is that all generation of electricity should be licensed, in practice this is considered to be less necessary if activity is at a low level and there is no threat to the safe and secure operation of the electricity system or the interests of customers. Exemptions are attractive for generators as it enables them to avoid the administrative costs associated with licensing.

6. The Class Exemptions Order did not exempt those who propose to operate plant that provides not more than 100 MW, but did not have existing energised connections on 30 September 2000. This was because, pending proposed changes to the Connection and Use of System Agreement (CUSC), the connection of new generating plant of a similar size to that set out in Schedule 2, Class C of the Class Exemptions Order might adversely affect network operation. Consequently, the desirability and timing of making such connections must be considered by the Secretary of State. For the time being, therefore, operators with new plant similar in size to that set out in Schedule 2, Class C of the Class Exemptions Order must seek individual exemption under the Electricity Act from the Secretary of State.

7. In deciding whether and, if so, when, to grant an exemption, the Secretary of State will serve notice of his intention on the Gas and Electricity Markets Authority, which trades as the Office of Gas and Electricity Markets (OFGEM), and the Gas and Electricity Consumer Council (GECC), which trades as Energywatch. He will also bring the proposal to the attention of other interested parties, including the transmission licence holder (National Grid Electricity Transmission or NGET), and the distribution licence holder to whose network the generator proposes to connect.

REASONS
8. Following initial informal consultation with interested parties, and taking account of the level of the electrical power that could be exported to the total system in England and Wales by the proposed station, the

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1 S.I. 2001/3270
2 S.I. 1997/4089
3 Amended by S.I. 2000/2424
Secretary of State has concluded that the connection of the plant to the system would not adversely affect network operation. As it is the general position, where possible, to provide these smaller stations with an exemption to put them in an equivalent position to generating stations which were connected before 30th September 2000, he has taken the view that it would not be appropriate to require Rhyl Flats Wind Farm Ltd to obtain an electricity generation licence in respect of the proposed wind farm. He therefore proposes to make the exemption.

**CONDITIONS**

9. The conditions of granting the exemption are that the Rhyl Flats generating Station is (a) connected to the total system in England and Wales (this will occur when Rhyl Flats Wind Farm Ltd has reached a bilateral connection agreement with SP Manweb; and (b) not normally capable of exporting more electrical power than 100 megawatts to that system disregarding power temporarily provided in excess of 100 megawatts due to circumstances outside the reasonable control of Rhyl Flats Wind Farm Ltd.

Under section 5(8)(c) of the Electricity Act the Secretary of State may by order revoke an order by which an exemption was granted to a person if it appears to the Secretary of State inappropriate that the exemption should continue to have effect.

**REPRESENTATIONS AND TIMETABLE**

10. Representations on the issues raised in this document and the proposal are invited by 8 September 2008 and should be made to Chris Chown, Energy Markets Unit, Department for Business, Enterprise and Regulatory Reform, Bay 137, 1 Victoria Street, London SW1H 0ET (telephone: 020-7215 2766; e-mail: chris.chown@berr.gsi.gov.uk).

**ENFORCEMENT**

11. Complaints may be made by the customer of an exempt generator to Energywatch or OFGEM. It will be for OFGEM to determine whether the generator has infringed the conditions of its exemption.

**REGULATORY IMPACT ASSESSMENT**

or obtained from Chris Chown, Energy Markets Unit, Department for Business, Enterprise and Regulatory Reform, Bay 137, 1 Victoria Street, London SW1H 0ET.
2008 No. 0000

ELECTRICITY, ENGLAND AND WALES


The Secretary of State makes the following Order in exercise of the powers conferred by section 5 of the Electricity Act 1989(3).

In accordance with section 5(2) of that Act he has given notice of the proposal to make the Order and has considered the representations made in relation to that proposal.

Citation, commencement and extent

1.—(1) This Order may be cited as the Electricity Act 1989 (Exemption from the Requirement for a Generation Licence) (England and Wales) Order 2008 and shall come into force on *** 2008.

(2) This Order does not extend to Scotland.

Interpretation

2. In this Order—

“the Act” means the Electricity Act 1989;

“Rhyl Flats Offshore Wind Farm” means the wind farm known as Rhyl Flats Wind Farm close to Rhyl, North Wales - OS map reference 290500, 388300;

“Rhyl Flats Wind Farm Ltd” means Rhyl Flats Wind Farm Ltd, registered in England and Wales with number 05624371;

“total system in England and Wales” has the same meaning as it has in the Electricity (Class Exemptions from the Requirement for a Licence) Order 2001(4).

Exemption from section 4(1)(a) of the Act

3. Exemption is granted from section 4(1)(a) of the Act (prohibition of unlicensed generation of electricity for supply) to Rhyl Flats Wind Farm Limited in respect of the Little Cheyne Court Wind Farm.

(3) 1989 c.29; section 5 was substituted by section 29 of the Utilities Act 2000 (c.27).
(4) S.I. 2001/3270; amended by the Electricity (Class Exemptions from the Requirement for a Licence) (Amendment) Order 2005 (S.I. 2005/488) which added the definition of the total system in England and Wales; see article 3.
Conditions on exemption

4. The exemption granted by article 3 to Rhyl Flats Wind Farm Ltd is subject to compliance with the conditions specified in sub-paragraphs (a) and (b) below—

(a) that Rhyl Flats Wind Farm Ltd does not hold a licence under section 6(1)(a) of the Act (licence authorising generation of electricity for supply); (5)

(b) that the Rhyl Flats Wind Farm is connected to the total system in England and Wales and (except in circumstances outside the reasonable control of Rhyl Flats Wind Farm Limited) does not export more than 100 megawatts of electrical power to it.

Malcolm Wicks
Minister of State for Energy,

Date

Department for Business, Enterprise and Regulatory Reform

(5) Section 6 was substituted by section 30 of the Utilities Act 2000.
EXPLANATORY NOTE
(This note is not part of the Order)

This Order grants an exemption from the requirements of section 4(1)(a) of the Electricity Act 1989 (which prohibits the generation of electricity for supply without a licence or exemption) to Rhyl Flats Wind Farm Ltd in respect of plant known as the Rhyl Flats Wind Farm. The Order does not extend to Scotland.

A regulatory impact assessment in respect of exemptions from the requirements of section 4(1)(a) of the Electricity Act 1989 was prepared in 2001 and can be obtained from the Energy Markets Unit, Bay 137, BERR, 1 Victoria Street, London, SW1H 0ET. Copies have been placed in the libraries of both Houses of Parliament.