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 Gunfleet Sands II Limited in respect of the Gunfleet Sands II 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 3 September 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

Steve Davies

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

6 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:

   - Gunfleet Sands II Limited (company registration 06114226), in respect of a wind farm to be constructed on the sand bank known as Gunfleet Sand (which lies approximately 7 kilometres south east of Clacton-on-Sea, Essex) with a maximum installed capacity of 64MW.

   - Gunfleet Sands II Limited is a wholly owned subsidiary of DONG Energy A/S (a company registered in Denmark with registration number 36213728).

2. It is intended that the Gunfleet Sands II wind farm should be connected to Gunfleet Grid Company Limited (company registration number 06280053), also a wholly owned subsidiary of DONG Energy A/S. Gunfleet Grid Company will in turn be connected to the distribution system of EDF Energy Networks (EPN) PLC. Gunfleet Sands II wind farm is expected to become fully operational in October 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 1997¹ as amended² 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

¹ S.I.1997/4089
² Amended by S.I. 2000/2424
to the total system in England and Wales by the proposed station, the 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 Gunfleet Sands II Limited 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 Gunfleet Sands II wind farm is (a) connected to the total system in England and Wales (this will occur when Gunfleet Sands II Limited has reached a bilateral connection agreement with Gunfleet Grid Company Limited and Gunfleet Grid Company Limited has in turn reached a bilateral connection agreement with EDF Energy Networks; 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 Gunfleet Sands II Limited.

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 3 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**

may be viewed at: http://www.berr.gov.uk/energy/markets/electricity-markets/licence-exemp/page34529.html

or obtained from Chris Chown, Energy Markets Unit, Department for Business, Enterprise and Regulatory Reform, Bay 137, 1 Victoria Street, London SW1H 0ET.
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;

“Gunfleet Sands II wind farm” means the offshore wind farm known as Gunfleet Sands II Offshore Wind Farm situated on the sand bank known as Gunfleet Sand, approximately 7km south-east of Clacton-on-Sea, Essex - OS map reference TM 2506 0922;

“Gunfleet Sands II Limited” means Gunfleet Sands II Limited, registered in England and Wales with number 06114226;

“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 Gunfleet Sands II Limited in respect of the Gunfleet Sands II Wind Farm.

Conditions on exemption

4. The exemption granted by article 3 to Gunfleet Sands II Limited is subject to compliance with the conditions specified in sub-paragraphs (a) and (b) below—

(a) that Gunfleet Sands II Limited does not hold a licence under section 6(1)(a) of the Act (licence authorising generation of electricity for supply)(5);

(b) that the Gunfleet Sands II Wind Farm is connected to the total system in England and Wales and (except in circumstances outside the reasonable control of Gunfleet Sands II 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 Gunfleet Sands II Limited in respect of plant known as the Gunfleet Sands II 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.