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STATUTORY INSTRUMENTS

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**2013 No. 1046**

**The Energy Supply Company Administration Rules 2013**

**PART 7**

**Distribution to creditors**

**CHAPTER 3**

**Quantification of claims**

**Estimate of quantum**

**50.**—(1) The energy administrator must estimate the value of any debt which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value; and the energy administrator may revise any estimate previously made, if the energy administrator thinks fit by reference to any change of circumstances or to information becoming available.

(2) The energy administrator must inform the creditor as to the estimate under paragraph (1) and any revision of it.

(3) Where the value of a debt is estimated under this Rule, the amount provable in the energy supply company administration in the case of that debt is that of the estimate for the time being.

**Negotiable instruments, etc**

**51.** Unless the energy administrator allows, a proof in respect of money owed on a bill of exchange, promissory note, cheque or other negotiable instrument or security cannot be admitted unless there is produced the instrument or security itself or a copy of it, certified by the creditor or the creditor's authorised representative to be a true copy.

**Secured creditors**

**52.**—(1) If a secured creditor realises the secured creditor's security, the secured creditor may prove for the balance of the secured creditor's debt, after deducting the amount realised.

(2) If a secured creditor voluntarily surrenders a security for the general benefit of creditors, the secured creditor may prove for the secured creditor's whole debt, as if it were unsecured.

**Discounts**

**53.** There shall in every case be deducted from the claim all trade and other discounts which would have been available to the energy supply company but for its energy supply company administration except any discount for immediate, early or cash settlement.

**Mutual credits and set off**

54.—(1) This Rule applies where the energy administrator, being authorised to make the distribution in question, has pursuant to Rule 65, given notice that the energy administrator proposes to make it.

(2) In this Rule “mutual dealings” means mutual credits, mutual debts or other mutual dealings between the energy supply company and any creditor of the energy supply company proving or claiming to prove for a debt in the energy supply company administration but does not include—

- (a) any debt arising out of an obligation incurred after the energy supply company entered energy supply company administration;
- (b) any debt arising out of an obligation incurred at a time when the creditor had notice that—
  - (i) a meeting of creditors had been summoned under section 98 of the 1986 Act,
  - (ii) a petition for the winding up of the energy supply company was pending,
  - (iii) an application for an administration order under the 1986 Act was pending;
  - (iv) an application for an esc administration order was pending; or
  - (v) any person had given notice of intention to appoint an administrator under the 1986 Rules;
- (c) any debt which has been acquired by a creditor by assignment or otherwise, pursuant to an agreement between the creditor and any other party where that agreement was entered into—
  - (i) at a time when the creditor had notice that an application for an esc administration order was pending;
  - (ii) after the commencement of energy supply company administration,
  - (iii) at a time when the creditor had notice that a meeting of creditors had been summoned under section 98 of the 1986 Act, or
  - (iv) at a time when the creditor had notice that a winding up petition was pending, or
  - (v) at a time when the creditor had notice that an application for an administration order under the 1986 Act was pending.

(3) An account shall be taken as at the date of the notice referred to in paragraph (1) of what is due from each party to the other in respect of the mutual dealings and the sums due from one party shall be set off against the sums due from the other.

(4) A sum shall be regarded as being due to or from the energy supply company for the purposes of paragraph (3) whether—

- (a) it is payable at present or in the future;
- (b) the obligation by virtue of which it is payable is certain or contingent; or
- (c) its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion.

(5) Rule 50 shall apply for the purposes of this Rule to any obligation to or from the energy supply company which, by virtue of its being subject to any contingency or for any other reason, does not bear a certain value.

(6) Rules 55 to 57 shall apply for the purposes of this Rule in relation to any sums due to the energy supply company which—

- (a) are payable in a currency other than sterling;
- (b) are of a periodical nature; or
- (c) bear interest.

(7) Rule 75 shall apply for the purposes of this Rule to any sum due or from the energy supply company which is payable in the future.

(8) Only the balance (if any) of the account owed to the creditor is provable in the energy supply company administration.

(9) Alternatively the balance (if any) owed to the energy supply company shall be paid to the energy administrator as part of the assets except where all or part of the balance results from a contingent or prospective debt owed by the creditor and in such a case the balance (or that part of it which results from the contingent or prospective debt) must be paid if and when the debt becomes due and payable.

(10) In this Rule “obligation” means an obligation however arising, whether by virtue of an agreement, rule of law or otherwise.

### **Debt in foreign currency**

**55.** For the purpose of proving a debt incurred or payable in a currency other than sterling, the amount of the debt shall be converted into sterling at such rate as is agreed between the relevant creditor and the energy administrator or, where no agreement can be reached, as the court determines.

### **Payments of a periodical nature**

**56.—(1)** In the case of rent and other payments of a periodical nature, the creditor may prove for any amounts due and unpaid up to the date when the energy supply company entered energy supply company administration.

(2) Where at that date any payment was accruing due, the creditor may prove for so much as would have fallen due at that date, if accruing from day to day.

### **Interest**

**57.—(1)** Where a debt proved in the energy supply company administration bears interest, that interest is provable as part of the debt except in so far as it is payable in respect of any period after the energy supply company entered energy supply company administration.

(2) In the following circumstances the creditor’s claim may include interest on the debt for periods before the energy supply company entered energy supply company administration, although not previously reserved or agreed.

(3) If the debt is due by virtue of a written instrument, and payable at a certain time, interest may be claimed for the period from that time to the date when the energy supply company entered energy supply company administration.

(4) If the debt is due otherwise, interest may only be claimed if, before that date, a demand for full payment of the debt was made in writing by or on behalf of the creditor, and notice given that interest would be payable from the date of the demand to the date of payment.

(5) Interest under paragraph (4) may only be claimed for the period from the date of the demand to that of the energy supply company’s entering energy supply company administration and for all the purposes of the 1986 Act and these Rules shall be chargeable at a rate not exceeding that mentioned in paragraph (6).

(6) The rate of interest to be claimed under paragraphs (3) and (4) is the rate specified in section 17 of the Judgments Act 1838 on the date when the energy supply company entered energy supply company administration.

(7) Any surplus remaining after payment of the debts proved shall, before being applied for any purpose, be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the energy supply company entered energy supply company administration.

(8) All interest payable under paragraph (7) ranks equally whether or not the debts on which it is payable rank equally.

(9) The rate of interest payable under paragraph (7) is whichever is the greater of the rate specified under paragraph (6) or the rate applicable to the debt apart from the energy supply company administration.

#### **Debt payable at future time**

**58.** A creditor may prove for a debt of which payment was not yet due on the date when the energy supply company entered energy supply company administration, subject to Rule 75 (adjustment of dividend where payment made before time).

#### **Value of security**

**59.**—(1) A secured creditor may, with the agreement of the energy administrator or the permission of the court, at any time alter the value which the secured creditor's proof of debt puts upon the secured creditor's security.

(2) However, if a secured creditor has voted in respect of the unsecured balance of the secured creditor's debt the secured creditor may re-value the secured creditor's security only with permission of the court.

#### **Surrender for non-disclosure**

**60.**—(1) If a secured creditor omits to disclose a security in the secured creditor's proof of debt, the secured creditor must surrender that security for the general benefit of creditors, unless the court, on application by the secured creditor, relieves the secured creditor from the effect of this Rule on the ground that the omission was inadvertent or the result of honest mistake.

(2) If the court grants that relief, it may require or allow the creditor's proof of debt to be amended, on such terms as may be just.

(3) Nothing in this Rule or the following two Rules may affect rights in rem of creditors or third parties in respect of tangible or intangible, moveable or immoveable assets (including both specific assets and collections of indefinite assets as a whole which change from time to time) belonging to the debtor that are situated outside the United Kingdom.

#### **Redemption by energy administrator**

**61.**—(1) The energy administrator may at any time give notice to a creditor whose debt is secured that the energy administrator proposes, at the expiration of 28 days from the date of the notice, to redeem the security at the value put upon it in the creditor's proof.

(2) The creditor then has 21 days (or such longer period as the energy administrator may allow) in which, if the creditor so wishes, to exercise the right to revalue the creditor's security (with the permission of the court, where Rule 60(2) applies). If the creditor re-values the creditor's security, the energy administrator may only redeem at the new value.

(3) If the energy administrator redeems the security, the cost of transferring it is payable out of the assets.

(4) A secured creditor may at any time, by notice in writing, call on the energy administrator to elect whether the energy administrator will or will not exercise the power to redeem the security at the value then placed on it; and the energy administrator then has 3 months in which to exercise the power or determine not to exercise it.

### **Test of security's value**

**62.**—(1) Subject as follows, the energy administrator, if dissatisfied with the value which a secured creditor puts on the creditor's security (whether in the creditor's proof or by way of revaluation under Rule 59), may require any property comprised in the security to be offered for sale.

(2) The terms of the sale shall be such as may be agreed, or as the court may direct; and if the sale is by auction, the energy administrator on behalf of the energy supply company, and the creditor on the creditor's own behalf, may appear and bid.

(3) This Rule does not apply if the security has been re-valued and the revaluation has been approved by the court.

### **Realisation of security by creditor**

**63.** If a creditor who has valued the creditor's security subsequently realises it (whether or not at the instance of the energy administrator)—

- (a) the net amount realised shall be substituted for the value previously put by the creditor on the security; and
- (b) that amount shall be treated in all respects as an amended valuation made by the creditor.

### **Notice of proposed distribution**

**64.**—(1) Where an energy administrator is proposing to make a distribution to creditors the energy administrator must give notice of the fact.

(2) The notice given pursuant to paragraph (1) must—

- (a) be sent to all creditors whose addresses are known to the energy administrator;
- (b) state whether the distribution is—
  - (i) to preferential creditors; or
  - (ii) preferential creditors and unsecured creditors; and
- (c) where the energy administrator proposes to make a distribution to unsecured creditors, state the value of the prescribed part, except where the court has made an order under section 176A(5) of the 1986 Act<sup>(1)</sup>.

(3) Subject to paragraph (5)(b), before declaring a dividend the energy administrator must by notice invite the creditors to prove their debts. Such notice—

- (a) must be gazetted; and
- (b) may be advertised in such other manner as the energy administrator thinks fit.

(4) A notice pursuant to paragraph (1) or (3) must, in addition to the standard contents—

- (a) state that it is the intention of the energy administrator to make a distribution to creditors within the period of 2 months from the last date for proving;
- (b) specify whether the proposed dividend is interim or final;
- (c) specify a date up to which proofs may be lodged being a date which—
  - (i) is the same date for all creditors; and
  - (ii) is not less than 21 days from that of the notice.

(5) Where a dividend is to be declared for preferential creditors—

- (a) the notice pursuant to paragraph (1) need only be given to those creditors in whose cases the energy administrator has reason to believe that their debts are preferential; and

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(1) 1986 c. 45; section 176A inserted by the Enterprise Act 2002 (c. 40), section 252.

- (b) the notice pursuant to paragraph (3) need only be given if the energy administrator thinks fit.

#### **Admission or rejection of proofs**

**65.**—(1) Unless the energy administrator has already dealt with them, within 5 business days of the last date for proving, the energy administrator must—

- (a) admit or reject (in whole or in part) proofs submitted to the energy administrator; or
- (b) make such provision in respect of them as the energy administrator thinks fit.

(2) The energy administrator is not obliged to deal with proofs lodged after the last day for proving, but may do so, if the energy administrator thinks fit.

(3) In the declaration of a dividend no payment shall be made more than once by virtue of the same debt.

#### **Postponement or cancellation of dividend**

**66.** If in the period of 2 months referred to in Rule 64(4)(a)—

- (a) the energy administrator has rejected a proof in whole or in part and application is made to the court for that decision to be reversed or varied, or
- (b) application is made to the court for the energy administrator’s decision on a proof to be reversed or varied, or for a proof to be expunged, or for a reduction of the amount claimed,

the energy administrator may postpone or cancel the dividend.

#### **Declaration of dividend**

**67.**—(1) Subject to paragraph (2), within the 2 month period referred to in Rule 64(4)(a), the energy administrator must proceed to declare the dividend to one or more classes of creditor of which the energy administrator gave notice.

(2) Except with the permission of the court, the energy administrator must not declare a dividend so long as there is pending any application to the court to reverse or vary a decision of the energy administrator’s on a proof, or to expunge a proof or to reduce the amount claimed.

(3) If the court gives permission under paragraph (2), the energy administrator must make such provision in respect of the proof in question as the court directs.

#### **Notice of declaration of a dividend**

**68.**—(1) Where the energy administrator declares a dividend the energy administrator must give notice of that fact to all creditors who have proved their debts.

(2) The notice must include the following particulars relating to the energy supply company administration—

- (a) amounts raised from the sale of assets, indicating (so far as is practicable) amounts raised by the sale of particular assets;
- (b) payments made by the energy administrator when acting as such;
- (c) where the energy administrator proposed to make a distribution to unsecured creditors, the value of the prescribed part, except where the court has made an order under section 176A(5) of the 1986 Act;
- (d) provision (if any) made for unsettled claims, and funds (if any) retained for particular purposes;

- (e) the total amount of dividend and the rate of dividend;
- (f) whether, and if so when, any further dividend is expected to be declared.

#### **Payments of dividends and related matters**

**69.**—(1) The dividend may be distributed simultaneously with the notice declaring it.

(2) Payment of the dividend may be made by post, or arrangements may be made with any creditor for it to be paid to the creditor in another way, or held for the creditor's collection.

(3) Where a dividend is paid on a bill of exchange or other negotiable instrument, the amount of the dividend shall be endorsed on the instrument, or on a certified copy of it, if required to be produced by the holder for that purpose.

#### **Notice of no dividend, or no further dividend**

**70.** If the energy administrator gives notice to creditors that the energy administrator is unable to declare any dividend or (as the case may be) any further dividend, the notice must contain a statement to the effect either—

- (a) that no funds have been realised; or
- (b) that the funds realised have already been distributed or used or allocated for defraying the expenses of energy supply company administration.

#### **Proof altered after payment of dividend**

**71.**—(1) If after payment of dividend the amount claimed by a creditor in the creditor's proof is increased, the creditor is not entitled to disturb the distribution of the dividend; but the creditor is entitled to be paid, out of any money for the time being available for the payment of any further dividend, any dividend or dividends which the creditor has failed to receive.

(2) Any dividend or dividends payable under paragraph (1) must be paid before the money there referred to is applied to the payment of any such further dividend.

(3) If, after a creditor's proof has been admitted, the proof is withdrawn or expunged, or the amount is reduced, the creditor is liable to repay to the energy administrator any amount overpaid by way of dividend.

#### **Secured creditors**

**72.**—(1) The following applies where a creditor re-values the creditor's security at a time when a dividend has been declared.

(2) If the revaluation results in a reduction of the creditor's unsecured claim ranking for dividend, the creditor must as soon as reasonably practicable repay to the energy administrator, for the credit of the energy supply company administration, any amount received by the creditor as dividend in excess of that to which the creditor would be entitled having regard to the revaluation of the security.

(3) If the revaluation results in an increase of the creditor's unsecured claim, the creditor is entitled to receive from the energy administrator, out of any money for the time being available for the payment of a further dividend, before any such further dividend is paid, any dividend or dividends which the creditor has failed to receive, having regard to the revaluation of the security. However, the creditor is not entitled to disturb any dividend declared (whether or not distributed) before the date of the revaluation.

**Disqualification from dividend**

73. If a creditor contravenes any provision of the 1986 Act or these Rules relating to the valuation of securities, the court may, on the application of the energy administrator, order that the creditor be wholly or partly disqualified from participation in any dividend.

**Assignment of right to dividend**

74.—(1) If a person entitled to a dividend gives notice to the energy administrator that the person wishes the dividend to be paid to another person, or that the person has assigned the person's entitlement to another person, the energy administrator must pay the dividend to that other accordingly.

(2) A notice under this Rule must specify the name and address of the person to whom payment is to be made.

**Adjustment where dividend paid before time**

75.—(1) Where a creditor has proved for a debt of which payment is not due at the date of the declaration of dividend, the creditor is entitled to dividend equally with other creditors, but subject as follows.

(2) For the purpose of dividend (and no other purpose), the amount of the creditor's admitted proof (or, if a distribution has previously been made to the creditor, the amount remaining outstanding in respect of the creditor's admitted proof) shall be reduced by applying the following formula—

$$\frac{X}{1.05^n}$$

where—

- (a) "X" is the value of the admitted proof; and
- (b) "n" is the period beginning with the date that the energy supply company entered energy supply company administration and ending with the date on which the payment of the creditor's debt would otherwise be due expressed in years and months in a decimalised form.