

---

STATUTORY INSTRUMENTS

---

**2014 No. 2014**

**The Contracts for Difference (Electricity  
Supplier Obligations) Regulations 2014**

**PART 2**

Supplier obligation

**CHAPTER 1**

The supplier obligation

**The supplier obligation**

**3.—**(1) Every electricity supplier who supplies electricity during a quarterly obligation period must, subject to paragraph (3), pay a CFD period contribution to the CFD counterparty in respect of that period.

(2) The CFD period contribution in relation to a supplier in respect of a quarterly obligation period is the sum of—

- (a) CFD daily contributions for each day on which that supplier supplies electricity in that period calculated in accordance with regulation 4; and
- (b) a CFD quarterly contribution for that period calculated in accordance with regulation 5.

(3) Where the amount of a supplier's CFD period contribution in respect of a quarterly obligation period is a negative number—

- (a) the amount the supplier must pay under paragraph (1) in respect of that period is zero; and
- (b) the CFD counterparty must pay the absolute value of that amount to that supplier.

(4) For the purpose of ensuring that the CFD period contribution is paid—

- (a) an electricity supplier must—
  - (i) make interim payments in accordance with regulations 8(1) and 11(1) and, where so required, regulation 14(3),
  - (ii) make supplier data reconciliation payments in accordance with regulation 9(2), and
  - (iii) make any required reconciliation payments in accordance with regulation 16(3)(a); and
- (b) the CFD counterparty must—
  - (i) make counterparty data reconciliation payments in accordance with regulation 9(3), and
  - (ii) make any required reconciliation payments in accordance with regulation 16(3)(b).

**CFD daily contributions**

4.—(1) The CFD daily contribution for a supplier for a day on which that supplier supplies electricity in a quarterly obligation period is the amount given by—

$$(GP - CP) \times \frac{SDS}{TDS}$$

where—

GP is the total amount of generation counterparty payments which the CFD counterparty is required to make in respect of electricity generation which occurred on that day;

CP is the total amount of generation party payments which the CFD counterparty has received from CFD parties in respect of electricity generation which occurred on that day;

SDS is the amount of electricity supplied by that supplier on that day;

TDS is the total amount of electricity supplied by all suppliers on that day.

(2) In this regulation and regulation 5—

“generation counterparty payment” means any CFD counterparty payment made under, or in respect of a breach of, a CFD or connected agreement which is calculated directly by reference to an amount of electricity generated by a generating station which is the subject of that CFD or connected agreement;

“generation party payment” means any CFD party payment made under a CFD or connected agreement which is calculated directly by reference to an amount of electricity generated by a generating station which is the subject of that CFD or connected agreement;

(3) For the purposes of this regulation and regulation 5, the amount of electricity supplied by a supplier is the amount of electricity which the BSCCo determines was supplied by that supplier on the basis of—

(a) a Final Reconciliation Volume Allocation Run; or

(b) where a Post-Final Volume Allocation Run has occurred in relation to the day on which the electricity was supplied, a Post-Final Volume Allocation Run.

**CFD quarterly contribution**

5. The CFD quarterly contribution for a supplier for a quarterly period is the amount given by—

$$[NDS - (NGS + DI)] \times \frac{SQS}{TQS}$$

where—

NDS is the total amount of CFD counterparty payments which are not generation counterparty payments which the CFD counterparty was required to make during that period;

NGS is the total amount of CFD party payments which are not generation party payments which the CFD counterparty has received from CFD parties during that period;

DI is any amount of interest which was paid by virtue of regulation 8(6), 9(7), 11(2), 14(8), 16(5), 17(6) or 25(5) during that period, less any amount of that interest which was paid to electricity suppliers by virtue of regulation 18(2);

SQS is the amount of electricity supplied by that supplier in that period;

TQS is the total amount of electricity supplied in that period.

## CHAPTER 2

### Interim daily levy

#### Setting the interim levy rate

6.—(1) The CFD counterparty must, in respect of every quarterly obligation period determine an interim levy rate which is to apply for that period.

(2) The CFD counterparty must determine an interim levy rate for a quarterly obligation period (“the rate period”) before—

- (a) where the rate period commences on 1<sup>st</sup> April 2015, 1st January 2015,
- (b) for any other rate period, the commencement of the quarterly obligation period which immediately precedes the rate period.

(3) Where the CFD counterparty has determined an interim levy rate for a quarterly obligation period it must publish a notice setting out that rate and must—

- (a) issue that notice to every electricity supplier, and
- (b) issue that notice to any person who becomes an electricity supplier during that period.

(4) Subject to paragraph (5), the interim levy rate for a quarterly obligation period is to be determined as the amount given by—

$$\frac{EOC - EOI}{EOS}$$

where—

EOC is the estimated quarterly obligation period payment cost, estimated in accordance with regulation 7(1);

EOI is the estimated quarterly obligation period income, estimated in accordance with regulation 7(3); and

EOS is the estimated quarterly obligation period electricity supply, estimated in accordance with regulation 7(4).

(5) Where the amount given by the calculation in paragraph (4) in relation to a quarterly obligation period is less than zero, the interim levy rate shall be determined as zero for that period.

#### Estimated cost, income & electricity supply

7.—(1) The estimated quarterly obligation period payment cost in respect of a quarterly obligation period (“the rate period”) is the amount which the CFD counterparty estimates will be required to be paid by it to CFD parties under every CFD or connected agreement to which it is, or is likely to become, a party during the rate period, having regard to the matters set out in paragraph (2).

(2) The matters referred to in paragraph (1) are—

- (a) the strike prices which, in the opinion of the CFD counterparty, will apply to CFDs in respect of which payments may become due during the rate period;
- (b) the CFD counterparty’s estimate of—
  - (i) where payments under a CFD may become due in relation to the generation of electricity in a settlement hour by a CFD generating station, the amount of electricity generated by each such CFD generating station in each settlement hour in respect of which payments may become due during the rate period;
  - (ii) where payments under a CFD may become due in relation to the generation of electricity in a settlement period by a CFD generating station, the amount of

- electricity generated by each such CFD generating station in each settlement period in respect of which payments may become due during the rate period;
- (iii) the market reference price which is to apply in relation to each settlement hour in respect of which a payment may become due during the rate period;
  - (iv) the market reference price which is to apply in relation to each settlement period in respect of which a payment may become due during the rate period;
  - (v) the total amount of payments which the CFD counterparty will be required to make under CFDs during the rate period which are not payments based on the difference between a strike price and a market reference price in relation to electricity generated.
- (3) The estimated quarterly obligation period income in respect of the rate period is the amount which the CFD counterparty estimates it will receive from CFD parties during the rate period having regard to—
- (a) the matters in paragraph (2)(a) and (b)(i) to (iv);
  - (b) the CFD counterparty's estimate of the total amount of payments which the CFD counterparty will receive under CFDs during the rate period which are not payments based on the difference between a strike price and a market reference price in relation to electricity generated;
  - (c) the CFD counterparty's estimate of the likelihood of the failure of CFD parties to make CFD party payments in accordance with CFDs.
- (4) The estimated quarterly obligation period electricity supply in respect of the rate period is the amount of electricity which the CFD counterparty estimates will be supplied by all electricity suppliers in the rate period.
- (5) In this regulation—
- “CFD generating station” means any generating station which is the subject of a CFD;
  - “market reference price”, “settlement hour”, “settlement period” and “strike price” are to be construed in accordance with CFDs to which the CFD counterparty is a party.
- (6) For the purposes of this regulation reference to a CFD includes reference to a connected agreement.

### **Interim rate payments**

- 8.—**(1) An electricity supplier must make a payment (“an interim rate payment”) to the CFD counterparty in respect of each day on which that supplier supplies electricity in Great Britain during a quarterly obligation period.
- (2) The amount of an interim rate payment to be paid by a supplier in respect of a day is equal to the amount of electricity supplied by that supplier on that day multiplied by the interim levy rate which applies in relation to that day.
- (3) The interim levy rate which applies in relation to a day is—
- (a) the rate determined under regulation 6, or
  - (b) where an adjusted interim rate which has been determined under regulation 12(1)(a) has effect in accordance with regulation 13(4), that rate.
- (4) The CFD counterparty must, as soon as reasonably practicable after the BSCCo has carried out an Interim Information Volume Allocation Run in respect of a day in a quarterly obligation period, issue a notice to each electricity supplier who supplied electricity on that day stating the interim rate payment which the supplier to whom the notice is issued must pay in respect of that day.
- (5) A supplier must make an interim rate payment in respect of a day by the 5th working day after the day on which the CFD counterparty has issued a notice under paragraph (4) to that supplier.

(6) Where a supplier fails to pay all or part of an interim rate payment by the day on which that payment must be made, that supplier must pay the CFD counterparty simple interest on any unpaid amount at the rate specified in regulation 35(1) from the day after the day on which that payment should have been made.

(7) For the purposes of paragraph (2), the amount of electricity supplied by an electricity supplier on a particular day is the amount of electricity which the BSCCo determines, on the basis of an Interim Information Volume Allocation Run in respect of that day, as the amount of electricity supplied by that supplier on that day.

### **Data reconciliation of interim rate payments**

9.—(1) This regulation applies where, before the conclusion of a quarterly obligation period, the BSCCo carries out a relevant allocation run in respect of a day in that period and the reconciled interim rate amount in relation to that day for an electricity supplier is different to the net levied interim rate payment for that supplier.

(2) Where that reconciled interim rate amount is more than the net levied interim rate payment the supplier must pay the difference to the CFD counterparty.

(3) Where that reconciled interim rate amount is less than the net levied interim rate payment the CFD counterparty must pay the difference to the supplier.

(4) The CFD counterparty must, as soon as reasonably practicable after the BSCCo has carried out a relevant allocation run in respect of a day, issue a notice to each electricity supplier which states the amount which must be paid by virtue of paragraph (2) or (3).

(5) An electricity supplier who is required to make payment by virtue of paragraph (2) must make that payment by the 5th working day after the day on which the CFD counterparty issues the notice to that supplier under paragraph (4).

(6) The CFD counterparty must make a payment it is required to make by virtue of paragraph (3) by the 8th working day after the day on which the BSCCo carried out the relevant allocation run following which the CFD counterparty is required to make that payment.

(7) Where a supplier fails to pay all or part of a payment it is required to make by virtue of paragraph (2) that supplier must pay the CFD counterparty simple interest at the rate specified in regulation 35(1) on any unpaid amount from the day after the 5th working day after the day referred to in paragraph (5).

(8) For the purposes of this regulation—

- (a) the reconciled interim rate amount for a supplier in relation to a day is equal to the amount of electricity supplied by that supplier on that day multiplied by the interim levy rate which applies to that day by virtue of regulation 8(3);
- (b) the net levied interim rate payment for a supplier in relation to a day is the sum of the interim rate payment that supplier was required to pay in respect of that day and any payments that supplier was previously required to pay in respect of that day by virtue of paragraph (2), less any payments the CFD counterparty was previously required to pay to that supplier in respect of that day by virtue of paragraph (3);
- (c) a relevant allocation run is an Initial Volume Allocation Run or a Reconciliation Volume Allocation Run; and
- (d) the amount of electricity supplied by an electricity supplier on a particular day is the amount of electricity which the BSCCo determines, on the basis of the most recent relevant allocation run in relation to that day, as the amount of electricity supplied by that supplier on that day.

## CHAPTER 3

### Payments for reserve

#### Reserve payments

- 10.**—(1) The CFD counterparty must determine—
- (a) the total amount of reserve payments (“the total reserve amount”) to be collected from suppliers in respect of each quarterly obligation period; and
  - (b) the amount of each electricity supplier’s reserve payment in respect of each quarterly obligation period calculated in accordance with regulation 11.
- (2) The CFD counterparty must determine the total reserve amount and the amount of each electricity supplier’s reserve payment for a quarterly obligation period—
- (a) where that period commences on 1st April 2015, before 1st January 2015;
  - (b) for any other quarterly obligation period, before the commencement of the quarterly obligation period which immediately precedes that period.
- (3) The CFD counterparty must publish its determination of the total reserve amount for a quarterly obligation period—
- (a) where that period commences on 1st April 2015, before 1st January 2015;
  - (b) for any other quarterly obligation period, before the commencement of the quarterly obligation period which immediately precedes that period.
- (4) The CFD counterparty must issue a notice to every electricity supplier which sets out the amount of that supplier’s reserve payment for a quarterly obligation period—
- (a) where that period commences on 1st April 2015, before 1st January 2015;
  - (b) for any other quarterly obligation period, before the commencement of the quarterly obligation period which immediately precedes that period.
- (5) The total reserve amount for a quarterly obligation period is the amount which the CFD counterparty determines it would need to be paid for there to be a 19 in 20 probability of it being able to make all the payments it is required to make to CFD parties during that period having regard to—
- (a) the amount of interim rate payments which it expects to be paid during the period;
  - (b) the likelihood of any supplier failing to make payments it is required to make under these Regulations during that period; and
  - (c) the estimated quarterly obligation period income, estimated quarterly obligation period electricity supply and the estimated quarterly period cost in respect of that period.

#### Individual suppliers’ reserve amounts

- 11.**—(1) An electricity supplier must make a reserve payment to the CFD counterparty in respect of a quarterly obligation period (“the relevant period”) by—
- (a) the 90th day after the day on which the CFD counterparty has issued a notice to that supplier under regulation 15(3) (notice of reconciliation payment) in the quarterly obligation period that immediately precedes the relevant period; or
  - (b) the 7th working day of the relevant period where—
    - (i) there is no quarterly obligation period which immediately precedes that period, or
    - (ii) no notice was issued to that supplier under regulation 15(3) in the quarterly obligation period that immediately precedes the relevant period.

(2) Where a supplier fails to pay all or part of a reserve payment by the date by which it must be paid in accordance with paragraph (1), that supplier must pay the CFD counterparty simple interest on any unpaid amount at the rate specified in regulation 35(1) from the day after the date by which that amount should have been paid.

(3) The amount of a supplier's reserve payment in respect of the relevant period is the amount given by—

$$TRA \times \left( \frac{SRE}{RE} \right)$$

where—

TRA is total reserve amount for that period;

SRE is the amount of electricity supplied by that supplier in the reference period as determined on the date on which that total reserve amount is determined; and

RE is the total amount of electricity supplied by all suppliers in the reference period as determined on the date on which that total reserve amount is determined.

(4) The reference period is the most recent period of 30 consecutive days in respect of which the BSCCo has carried out an Initial Volume Allocation Run before the commencement of the quarterly obligation period immediately prior to the relevant period.

(5) For the purposes of paragraph (3) and regulation 14(4) the amount of electricity supplied by an electricity supplier in a reference period is the amount of all electricity which the BSCCo determines was supplied by that supplier in that period, on the basis of the most recent BSC reconciliation run which the BSCCo has carried out.

## CHAPTER 4

### Adjustments to interim rate and additional reserve payments

#### **In period adjustments**

**12.**—(1) Where the CFD counterparty is of the opinion that there is a high degree of likelihood that it will be unable to make all payments it is required to make to CFD parties during a quarterly obligation period it may, if it thinks it expedient to do so—

- (a) determine an adjusted interim levy rate in respect of that period in accordance with regulation 13;
- (b) determine an additional total reserve amount in respect of that period in accordance with regulation 14;
- (c) determine an adjusted interim levy rate and an additional total reserve amount in respect of that period.

(2) The CFD counterparty must take such steps as it considers necessary to ensure that electricity suppliers are kept informed of the likelihood that it will be unable to make all payments it is required to make to CFD parties during a quarterly obligation period.

(3) Where the CFD counterparty is of the opinion that there is a high degree of likelihood that it will collect significantly more from suppliers under regulations 8(1) and 11(1) during a quarterly obligation period than the amount it requires to be able to make all payments it is required to make to CFD parties during that period it may, in accordance with regulation 13, determine an adjusted interim levy rate in respect of that period.



### Adjusted interim levy rate

13.—(1) Subject to paragraph (2), an adjusted interim levy rate for a quarterly obligation period (“the rate period”) is to be determined as the amount given by—

$$\frac{EOC - (EOI + SPC)}{EPS}$$

where—

EOC is the estimated quarterly obligation period payment cost in respect of the rate period, estimated in accordance with regulation 7(1) as at the time of the determination of the adjusted interim levy rate;

EOI is the estimated quarterly obligation period income in respect of the rate period, estimated in accordance with regulation 7(3) as at the time of the determination of the adjusted interim levy rate;

SPC is the sum of—

- (i) the total amount of interim rate payments which have been received by the CFD counterparty in relation to the rate period as at the time of the determination of the adjusted interim levy rate; and
- (ii) the total amount of interim rate payments which the CFD counterparty estimates it will receive in relation to the rate period, in the period from the time of the determination of the adjusted interim levy rate until the adjusted interim levy rate has effect;

EPS is the amount of electricity which the CFD counterparty estimates will be supplied by all electricity suppliers from the time the adjusted interim levy rate has effect until the conclusion of the rate period.

(2) Where the rate determined in accordance with paragraph (1) would be a negative number, the CFD counterparty must determine the adjusted interim levy rate as zero.

(3) Where the CFD counterparty has determined an adjusted interim levy rate it must publish a notice setting out that rate and must—

- (a) issue that notice to every electricity supplier, and
- (b) issue that notice to any person who becomes an electricity supplier during that period.

(4) An adjusted interim levy rate has effect from the latest of—

- (a) the commencement of the rate period;
- (b) the 30th day after the CFD counterparty has published the notice under paragraph (3);
- (c) any later date in the rate period which the CFD counterparty specifies in the notice under paragraph (3).

### Additional total reserve amount

14.—(1) An additional total reserve amount for a quarterly obligation period (“the reserve period”) is the amount which the CFD counterparty determines it would need to be paid, having regard to the matters set out in paragraph (2)—

- (a) to be able to make any CFD counterparty payments it has failed to make during the reserve period; and
- (b) for there to be a 19 in 20 probability of it being able to make all payments it is required to make to CFD parties during the reserve period after the making of the determination.

(2) The matters referred in paragraph (1) are—



- (a) the amount of interim rate payments which it expects to be paid during the reserve period after the making of the determination of the additional total reserve amount;
  - (b) any other amount which it expects to be paid by suppliers during the reserve period after the making of that determination;
  - (c) the likelihood of any supplier failing to make payments it is required to make under these Regulations during that period; and
  - (d) the estimated quarterly obligation period income, estimated quarterly obligation period electricity supply and the estimated quarterly period cost in respect of that period.
- (3) Where the CFD counterparty determines an additional total reserve amount each electricity supplier must pay an additional reserve payment.
- (4) An electricity supplier's additional reserve payment is the amount given by—

$$\left( TAA \times \frac{SRE}{RE} \right)$$

where—

TAA is the additional total reserve amount;

SRE is the amount of electricity (within the meaning given by regulation 11(5)) supplied by that supplier in the adjusted reference period as determined at the time that additional total reserve amount is determined;

RE is the total amount of electricity (within the meaning given by regulation 11(5)) supplied by all suppliers in the adjusted reference period, as determined at the time that additional total reserve amount is determined.

(5) For the purpose of paragraph (4), “the adjusted reference period” means the most recent period of 30 consecutive days in respect of which the BSSCo has carried out an Initial Volume Allocation Run.

- (6) Where the CFD counterparty has determined an additional total reserve amount it must—
- (a) publish a notice setting out its determination of the additional total reserve amount, and
  - (b) issue a notice to every electricity supplier setting out its determination of that supplier's additional reserve payment.

(7) An electricity supplier must pay an additional reserve payment in respect of the reserve period by the later of—

- (a) the date by which a reserve payment is due from that supplier in respect of that period;
- (b) the 30th day after the CFD counterparty has published a notice under paragraph (6)(a); or
- (c) any later date which the CFD counterparty specifies in the notice published under paragraph (6)(a).

(8) Where a supplier fails to make all or part of an additional reserve payment by the date it must be paid in accordance with paragraph (7), that supplier must pay the CFD counterparty simple interest on any unpaid amount at the rate specified in regulation 35(1) from the day after the date by which that amount should have been paid.

## CHAPTER 5

### Reconciliation payments

#### Reconciliation payments

15.—(1) The CFD counterparty must calculate, in accordance with regulation 16(1), the amounts to be paid as reconciliation payments by electricity suppliers or by that counterparty (“a

reconciliation determination”) in respect of a quarterly obligation period (“the reconciliation period”)

- (a) as soon as reasonably practicable after the CFD counterparty has issued a notice under regulation 8(4) in respect of the day which is the last day of the reconciliation period, and in any event before the conclusion of the quarterly obligation period which immediately follows the reconciliation period; and
  - (b) once in every subsequent quarterly obligation period until the final reconciliation determination has been carried out in respect of the reconciliation period, as soon as reasonably practicable after the CFD counterparty has issued a notice under regulation 8(4) in respect of the last day of the quarterly obligation period which concluded immediately prior to that subsequent period, and in any event before the conclusion of that subsequent period.
- (2) The final reconciliation determination in respect of the reconciliation period is the 10th reconciliation determination made in respect of that period.
- (3) Where the CFD counterparty makes a reconciliation determination it must, as soon as reasonably practicable, issue a notice to each electricity supplier setting out—
- (a) the amount of any reconciliation payment which the CFD counterparty must make to that supplier following that determination;
  - (b) the amount of any reconciliation payment which that supplier must make to the CFD counterparty following that determination.

#### **Determination of reconciliation payments**

**16.**—(1) The amount of a reconciliation payment to be paid to or by a supplier in respect of the reconciliation period is—

- (a) the CFD counterparty’s calculation, at the time of making that calculation, of the CFD period contribution in relation to that supplier in respect of the reconciliation period, less
  - (b) the net levied amount for that supplier in respect of that period.
- (2) For the purposes of the calculation of a CFD period contribution, where a Final Reconciliation Volume Allocation Run or Post-Final Volume Allocation Run has not been carried out by the BSCCo in relation to a day in the reconciliation period, the amount of electricity supplied on that day by a supplier is to be determined on the basis of the most recent BSC reconciliation run which the BSCCo has carried out in relation to that day.
- (3) Where the amount of a reconciliation payment in relation to an electricity supplier—
- (a) is a positive number that supplier must pay that amount to the CFD counterparty;
  - (b) is a negative number the CFD counterparty must pay the absolute value of that amount to that supplier.
- (4) Where, following a reconciliation determination, the CFD counterparty must make a reconciliation payment to an electricity supplier, or that electricity supplier must make a reconciliation payment to the CFD counterparty, that payment must be made by the 90th day after the day on which the CFD counterparty has issued a notice to that supplier under regulation 15(3) in respect of that reconciliation determination.
- (5) Where an electricity supplier is required to pay a reconciliation payment and it fails to pay all or part of that payment by the day on which that payment must be made, that supplier must pay the CFD counterparty simple interest on any unpaid amount at the rate specified in regulation 35(1) from the day after the day on which the payment should have been made.

(6) For the purposes of paragraph (1), the net levied amount for a supplier in respect of a reconciliation period is the sum of—

- (a) any payment that supplier was required to make under regulation 8(1) in respect of a day in the reconciliation period;
- (b) the sum of any payments that supplier was required to make under regulation 9(2) in respect of days in the reconciliation period less the sum of any payments the CFD counterparty was required to make under regulation 9(3) in respect of days in that period;
- (c) any payment that supplier was required to make under regulation 11(1) in respect of the reconciliation period;
- (d) any payment that supplier was required to make under regulation 14(3) in respect of the reconciliation period;
- (e) the sum of any reconciliation payments which that supplier was required to make under paragraph (3)(a) in respect of any previous reconciliation determination made in relation to the reconciliation period less the sum of any reconciliation payments which the CFD counterparty was required to make under paragraph (3)(b) in respect of any previous reconciliation determination made in relation to the reconciliation period.

## CHAPTER 6

### Mutualisation

#### **Mutualisation**

17.—(1) Where an electricity supplier (“the defaulting supplier”) fails to make a relevant payment the CFD counterparty may, subject to paragraph (3), require every other electricity supplier (“the non-defaulting suppliers”) to pay a share of an amount equal to the amount which was not paid by issuing a notice (“a mutualisation notice”) to each non-defaulting supplier.

(2) A mutualisation notice must state—

- (a) the amount which the defaulting supplier failed to pay;
- (b) the date by which the defaulting supplier should have paid that amount;
- (c) the provision of these Regulations under which the defaulting supplier should have paid;
- (d) in the case of a payment under regulation 8(1), the day to which that payment relates;
- (e) the amount (“the mutualisation amount”) which the non-defaulting supplier to whom the notice is issued must pay, calculated in accordance with paragraph (7);
- (f) the date (“the mutualisation date”) by which the mutualisation amount must be paid, which must be no earlier than 5 working days after the date on which the notice was issued and must be the same for each mutualisation notice issued in respect of the amount which the defaulting supplier failed to pay.

(3) A mutualisation notice may only be issued where the CFD counterparty is of the opinion that it will not hold any collateral (within the meaning given by regulation 19) provided by the defaulting supplier by the 5th working day after the day on which the CFD counterparty intends to issue that notice.

(4) Where the CFD counterparty issues mutualisation notices to non-defaulting suppliers it must, at the same time, issue a notice to the defaulting supplier which states the matters mentioned in paragraphs (2)(a) to (d) and (f).

(5) Where the CFD counterparty has issued a mutualisation notice to an electricity supplier, that supplier must pay the mutualisation amount specified in the notice by the date specified in the notice.

(6) Where an electricity supplier fails to pay all or part of a mutualisation payment in accordance with paragraph (5), that supplier must pay the CFD counterparty simple interest on any unpaid amount at the rate specified in regulation 35(1) from the day after the day on which the payment should have been made.

(7) The mutualisation amount to be stated in a mutualisation notice to be issued to a non-defaulting supplier is the amount given by—

$$DA \times \left( \frac{SRES}{NDPE} \right)$$

where—

DA is the amount which the defaulting supplier failed to pay;

SRES is the amount of electricity supplied by the non-defaulting supplier in the reference period as determined immediately before the notice is issued; and

NDPE is the total amount of electricity supplied by all non-defaulting suppliers in the reference period as determined immediately before the notice is issued.

(8) For the purposes of paragraph (7)—

(a) the reference period is—

(i) in respect of a default which constituted a failure to make a payment under regulation 8(1), the day to which that payment relates, or

(ii) in respect of any other default, the most recent period of 30 consecutive days in respect of which the BSSCo has carried out an Initial Volume Allocation Run; and

(b) the amount of electricity supplied by an electricity supplier in a reference period is the amount of electricity which the BSSCo determines, on the basis of the most recent BSC reconciliation run which the BSSCo has carried out in relation to each day in that period, as the amount of electricity supplied by that supplier in that reference period.

(9) In this regulation and regulation 18 “relevant payment” means any payment which an electricity supplier is required to make by virtue of regulation 8(1), 9(2), 11(1), 14(3), 16(3)(a) or 17(5).

### Repayment of mutualised amounts

18.—(1) Where the CFD counterparty has issued a mutualisation notice in respect of a failure of an electricity supplier (“the defaulting supplier”) to make a relevant payment, and subsequently recovers any amount from that supplier in respect of that failure, that amount must be paid to electricity suppliers who were required to pay mutualisation amounts in respect of that failure, in accordance with paragraphs (2) and (3).

(2) The amount which the CFD counterparty must, by virtue of paragraph (1), pay an electricity supplier who was required to pay a mutualisation amount (“the non-defaulting supplier”) is the amount given by—

$$AR \times \left( \frac{SU}{AU} \right)$$

where—

AR is the amount recovered from the defaulting supplier in respect of the failure to make the relevant payment (“the relevant default”), including any interest paid by the defaulting supplier in respect of that failure;

SU is the mutualisation amount which the non-defaulting supplier was required to pay in respect of the relevant default; and

AU is the total amount of mutualisation payments which were required to be paid by all non-defaulting suppliers in respect of the relevant default.

(3) Any amount which the CFD counterparty is required to pay by virtue of paragraph (1) must be paid by the 5th working day after the day on which it recovers the amount to be paid.

## CHAPTER 7

### Collateral

#### Requirement to provide collateral

**19.**—(1) This regulation applies at all times after an electricity supplier makes an electricity supply in a quarterly obligation period in respect of which it is required to make an interim rate payment.

(2) Where this regulation applies the supplier must ensure that, on any day, the CFD counterparty holds sufficient collateral from the supplier to meet the supplier’s collateral requirement for that day.

(3) The supplier’s collateral requirement for a day (“the relevant day”) is determined by reference to the period beginning 26 days, and ending 5 days, before that day (“the relevant period”).

(4) For each day in the relevant period, the amount of electricity supplied by the supplier on that day (as determined on the day before the relevant day) multiplied by the interim levy rate which applies in relation to the relevant day gives a relevant amount.

(5) The sum of the relevant amounts is the supplier’s collateral requirement for the relevant day.

(6) The supplier is not to be treated as having breached its obligation under paragraph (2) where, after the first occasion on which it provided sufficient collateral to the CFD counterparty to meet its collateral requirement for a day—

- (a) the amount of that supplier’s collateral held by the CFD counterparty fell below that supplier’s collateral requirement for a subsequent day; and
- (b) by the second working day (“the cure day”) after that subsequent day, the supplier provides sufficient collateral to the CFD counterparty to meet its collateral requirement for the cure day.

(7) Collateral may be provided in the form of—

- (a) cash;
- (b) appropriate letters of credit; or
- (c) a combination of the two.

(8) For the purposes of this regulation—

- (a) collateral is held by the CFD counterparty where it is provided to the CFD counterparty and not called (within the meaning of regulation 22);
- (b) the amount of electricity supplied by a supplier on any day is the amount which the BSCCo determines, on the basis of the most recent BSC reconciliation run carried out by the BSCCo in relation to that day, as the amount of electricity that the supplier supplied on that day; and
- (c) the interim levy rate which applies in relation to a day is the interim levy rate which applies in relation to that day by virtue of regulation 8(3).

(9) In this regulation “appropriate letter of credit” is to be construed in accordance with regulation 20(1).

#### Appropriate letters of credit

**20.**—(1) For the purposes of regulation 19, a letter of credit is appropriate if—

- (a) it is issued by a person who holds a required rating; and

- (b) it is provided on terms which the CFD counterparty considers are appropriate.
- (2) The terms which the CFD counterparty may consider are appropriate under paragraph (1)(b) include terms relating to—
- (a) the manner in which any demand for payment under a letter of credit is to be made;
  - (b) the manner in which any payment under a letter of credit is to be made;
  - (c) requirements about the holding of funds to meet demands for payment under a letter of credit.
- (3) Where an electricity supplier has provided the CFD counterparty with a letter of credit issued by a person who ceases to hold a required rating that letter will not constitute an appropriate letter of credit from the 10th working day after the day on which that person ceases to hold that rating.
- (4) Subject to paragraph (5), a person holds a required rating if that person has been assessed by—
- (a) Fitch Ratings as having a short term debt rating of “F1” or better;
  - (b) Moody’s as having a short term debt rating of “P-1” or better; or
  - (c) Standard and Poor’s as having a short term debt rating of “A-1” or better.
- (5) Where the CFD counterparty is of the opinion that the requirement that appropriate letters of credit must be issued by persons holding a short term debt rating mentioned in paragraph (4)(a) to (c) is too onerous in the circumstances, and subject to having regard to its duty under regulation 28(1), it may issue a notice to electricity suppliers specifying alternative short term debt ratings, and that notice shall remain in force until such time as it is withdrawn.
- (6) The CFD counterparty may withdraw a notice under paragraph (5) (“the first notice”) by issuing a further notice (“the withdrawal notice”) to electricity suppliers setting out the date from which the first notice is to be withdrawn (that date being no earlier than 10 working days after the day on which the withdrawal notice is issued).
- (7) The CFD counterparty must, before 1<sup>st</sup> December 2014, publish a document setting out the terms of letters of credit which it is likely to regard as appropriate for the purposes of paragraph (1)(b), and must keep any such document under review and publish any revision from time to time.
- (8) In this regulation—
- “Fitch Ratings” means Fitch Ratings Limited (registered company number 01316230);
- “Moody’s” means the corporation known as Moody’s Investors Service Inc. incorporated in the US State of Delaware with the file number 0577904;
- “Standard and Poor’s” means the corporation known as Standard & Poor’s Financial Services LLC. incorporated in the US State of Delaware with the file number 4621989.

### **Calling of collateral**

- 21.**—(1) Collateral provided by an electricity supplier is called by the CFD counterparty where the CFD counterparty issues a notice to that supplier which sets out the amount of collateral which is to be called.
- (2) The CFD counterparty may issue a notice under in paragraph (1) to an electricity supplier if that supplier has failed to make a relevant payment and—
- (a) 2 working days have passed since the day on which that supplier should have made that payment; or
  - (b) the CFD counterparty is of the opinion that there is no prospect of that supplier making that payment by 2 working days after the day on which that supplier should have made that payment.

(3) The amount of collateral which may be called by the CFD counterparty where a supplier has failed to make a relevant payment is the lesser of—

- (a) the amount of collateral provided by that supplier; or
- (b) the amount of that relevant payment or, where there is more than one relevant payment which that supplier has failed to make and in respect of which a notice under paragraph (1) could be issued, the sum of all relevant payments in respect of which a notice under paragraph (1) could be issued.

(4) Where the whole or part of a supplier's collateral which was provided in the form of cash has been called by the CFD counterparty that amount is to be treated as a payment made by that supplier to the CFD counterparty at the time that collateral was called.

(5) Where the whole or part of a supplier's collateral which was provided in the form of a letter of credit has been called by the CFD counterparty—

- (a) the CFD counterparty must take steps to demand payment from the person who provided the letter in the amount of the lesser of—
  - (i) the amount which can be demanded under that letter, or
  - (ii) the amount of collateral which has been called; and
- (b) the amount which has been paid to the CFD counterparty under that letter is to be treated as a payment by that supplier to the CFD counterparty made at the time that amount is received by the CFD counterparty.

(6) In this regulation—

“relevant payment” means any payment which a supplier is required to make by virtue of regulation 8(1), 9(2), 11(1), 14(3), 16(3)(a) or 17(5) which has not been made by that supplier by the time that payment should have been made, and which remains unpaid.

### **Withdrawal of collateral and payment of interest**

**22.—**(1) Where the collateral provided by an electricity supplier and held by the CFD counterparty is more than that supplier's collateral requirement, that supplier may make a request that the CFD counterparty repay or return as much collateral as exceeds the supplier's collateral requirement by giving a notice to the CFD counterparty.

(2) Where a request under paragraph (1) has been received by the CFD counterparty, it must, before the 2nd working day after the day on which the request was received, repay or return the lesser of—

- (a) the amount requested by the supplier; or
- (b) the amount of collateral which the CFD counterparty determines exceeds that supplier's collateral requirement at the time the payment is to be made.

(3) Where a supplier has provided collateral in the form of cash, and the CFD counterparty holds that sum in an account which bears interest, it must pay to that supplier an amount equal to any such interest earned in relation to that sum within 5 working days of receiving that interest.