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DRAFT STATUTORY INSTRUMENTS

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**2019 No.**

**The Electricity Capacity (No. 1) Regulations 2019**

**PART 5**

**Conditional agreement auction**

**Payments and penalties: adjustments for DSR providers**

**45.** The Principal Regulations apply as if, after regulation 43C (repayment of capacity payments: metering fault) there were inserted—

**“Reducing capacity payments: recovery of overpayments to DSR providers**

**43D.**—(1) This regulation applies where a capacity provider (“C”) in respect of a demand side response CMU (“CMU i”)—

- (a) has been issued a credit note for a capacity payment in respect of CMU i;
  - (b) had not, at the time the amount in this credit note was determined by the Settlement Body, provided to the Delivery Body, in accordance with capacity market rules, a DSR test certificate in respect of CMU i evidencing CMU i’s proven DSR capacity; and
  - (c) has subsequently provided the Delivery Body with a DSR test certificate which evidences CMU i’s proven DSR capacity is an amount less than CMU i’s unproven DSR capacity.
- (2) Where this regulation applies—
- (a) C is liable to pay to the Settlement Body the amount of capacity payment overpaid to C in respect of CMU i (the “overpaid amount”); and
  - (b) the Settlement Body must, as soon as reasonably practicable after this regulation becomes applicable in respect of C—
    - (i) determine the overpaid amount; and
    - (ii) issue C with an invoice for the overpaid amount.
- (3) The overpaid amount must be calculated in accordance with the following formula—

$$\text{Overpaid amount} = A - B$$

(4) In paragraph (3)—

“A” means the amount of capacity payment paid to C in respect of CMU i pursuant to the credit note in paragraph (1)(a);

“B” means the amount of capacity payment which would have been payable to C in respect of CMU i for the period to which the credit note referred to in paragraph (1) (a) relates if the DSR test certificate referred to in paragraph (1)(c) had been provided before the amount in this credit note was determined.

(5) C is not liable to pay the overpaid amount under paragraph (2)(a) if C has repaid the capacity payment in respect to which the credit note referred to in paragraph (1)(a) was issued under regulation 43B or 43C.

**Capacity provider penalty charges: repaying overcharged DSR providers**

**43E.**—(1) This regulation applies where a capacity provider (“C”) in respect of a demand side response CMU (“CMU i”)—

- (a) has been issued an invoice for a capacity provider penalty charge in respect of CMU i;
- (b) had not, at the time the amount in this invoice was determined by the Settlement Body, provided to the Delivery Body, in accordance with capacity market rules, a DSR test certificate in respect of CMU i evidencing CMU i’s proven DSR capacity; and
- (c) has subsequently provided the Delivery Body with a DSR test certificate which evidences CMU i’s proven DSR capacity is an amount less than CMU i’s unproven DSR capacity.

(2) Where this regulation applies the Settlement Body must, as soon as reasonably practicable after this regulation becomes applicable in respect of C—

- (a) determine the amount of capacity provider penalty charge repayable to C in respect of CMU i (the “repayable amount”); and
- (b) issue to C a credit note for the repayable amount.

(3) The repayable amount must be calculated in accordance with the following formula—

$$\text{Repayable amount} = AP \times ((UC - PC)/UC)$$

(4) In paragraph (3)—

“AP” means the amount of capacity provider penalty charge paid by C in respect of CMU i pursuant to the invoice referred to in paragraph (1)(a);

“PC” means CMU i’s proven DSR capacity;

“UC” means CMU i’s unproven DSR capacity at the time the amount of capacity provider penalty charge payable under the invoice referred to in paragraph (1)(a) was determined.”.