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STATUTORY INSTRUMENTS

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**2005 No. 2483**

The Energy Administration Rules 2005

PART 7

DISTRIBUTION OF CREDITORS

CHAPTER 1

*Application of Part and general*

**Distribution to creditors generally**

**36.**—(1) This Part applies where the energy administrator makes, or proposes to make, a distribution to any class of creditors. Where the distribution is to a particular class of creditors, references in this Part to creditors shall, in so far as the context requires, be a reference to that class of creditors only.

(2) The energy administrator shall give notice to the creditors of his intention to declare and distribute a dividend in accordance with Rule 63.

(3) Where it is intended that the distribution is to be a sole or final dividend, the energy administrator shall, after the date specified in the notice referred to in paragraph (2)—

- (a) defray any items payable in accordance with the provisions of paragraph 99 of Schedule B1 to the 1986 Act;
  - (b) defray any amounts (including any debts or liabilities and his own remuneration and expenses) which would, if the energy administrator were to cease to be the energy administrator of the protected energy company, be payable out of the property of which he had custody or control in accordance with the provisions of paragraph 99 of Schedule B1 to the 1986 Act; and
  - (c) declare and distribute that dividend without regard to the claim of any person in respect of a debt not already proved.
- (4) The court may, on the application of any person, postpone the date specified in the notice.

**Debts of insolvent company to rank equally**

**37.** Debts other than preferential debts rank equally between themselves in the energy administration and, after the preferential debts, shall be paid in full unless the assets are insufficient for meeting them, in which case they abate in equal proportions between themselves.

**Supplementary provisions as to dividend**

**38.**—(1) In the calculation and distribution of a dividend the energy administrator shall make provision for—

- (a) any debts which appear to him to be due to persons who, by reason of the distance of their place of residence, may not have had sufficient time to tender and establish their proofs;

- (b) any debts which are the subject of claims which have not yet been determined; and
- (c) disputed proofs and claims.

(2) A creditor who has not proved his debt before the declaration of any dividend is not entitled to disturb, by reason that he has not participated in it, the distribution of that dividend or any other dividend declared before his debt was proved, but—

- (a) when he has proved that debt he 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 he has failed to receive; and
- (b) any dividends payable under sub-paragraph (a) shall be paid before the money is applied to the payment of any such further dividend.

(3) No action lies against the energy administrator for a dividend; but if he refuses to pay a dividend the court may, if it thinks fit, order him to pay it and also to pay, out of his own money—

- (a) interest on the dividend, at the rate for the time being specified in section 17 of the Judgments Act 1838(1), from the time when it was withheld; and
- (b) the costs of the proceedings in which the order to pay is made.

#### **Division of unsold assets**

**39.** The energy administrator may, with the permission of the creditors, divide in its existing form amongst the protected energy company's creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

## CHAPTER 2

### *Machinery of proving a debt*

#### **Proving a debt**

**40.—**(1) A person claiming to be a creditor of the protected energy company and wishing to recover his debt in whole or in part must (subject to any order of the court to the contrary) submit his claim in writing to the energy administrator.

(2) A creditor who claims is referred to as “proving” for his debt and a document by which he seeks to establish his claim is his “proof”.

(3) Subject to the next paragraph, a proof must—

- (a) be made out by, or under the direction of, the creditor and signed by him or a person authorised in that behalf; and
- (b) state the following matters—
  - (i) the creditor's name and address;
  - (ii) the total amount of his claim as at the date on which the protected energy company entered energy administration, less any payments that have been made to him after that date in respect of his claim and any adjustment by way of set-off in accordance with Rule 53;
  - (iii) whether or not the claim includes outstanding uncapitalised interest;
  - (iv) whether or not the claim includes value added tax;

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(1) 1838 c. 110, as amended by the Civil Procedure Acts Repeal Act 1879, section 2, Schedule 1, Part 1, the Statute Law Revision (No. 2) Act 1888, S.I. 1993/564, article 2, 1998/2940, article 3(a), (b) and (c).

- (v) whether the whole or any part of the debt falls within any, and if so, which categories of preferential debts under section 386(2) of the 1986 Act;
- (vi) particulars of how and when the debt was incurred by the protected energy company;
- (vii) particulars of any security held, the date on which it was given and the value which the creditor puts on it;
- (viii) details of any reservation of title in respect of goods to which the debt refers; and
- (ix) the name, address and authority of the person signing the proof (if other than the creditor himself).

(4) There shall be specified in the proof details of any documents by reference to which the debt can be substantiated; but (subject as follows) it is not essential that such document be attached to the proof or submitted with it.

(5) The energy administrator may call for any document or other evidence to be produced to him, where he thinks it necessary for the purpose of substantiating the whole or any part of the claim made in the proof.

#### **Claim established by affidavit**

**41.**—(1) The energy administrator may, if he thinks it necessary, require a claim of debt to be verified by means of an affidavit in Form EA18.

(2) An affidavit may be required notwithstanding that a proof of debt has already been lodged.

#### **Costs of proving**

**42.** Unless the court otherwise orders—

- (a) every creditor bears the cost of proving his own debt, including costs incurred in providing documents or evidence under Rule 40(5); and
- (b) costs incurred by the energy administrator in estimating the quantum of a debt under Rule 49 are payable out of the assets as an expense of the energy administration.

#### **Energy administrator to allow inspection of proofs**

**43.** The energy administrator shall, so long as proofs lodged with him are in his hands, allow them to be inspected, at all reasonable times on any business day, by any of the following persons—

- (a) any creditor who has submitted a proof of debt (unless his proof has been wholly rejected for purposes of dividend or otherwise);
- (b) any contributory of the protected energy company; and
- (c) any person acting on behalf of either of the above.

#### **New energy administrator appointed**

**44.**—(1) If a new energy administrator is appointed in place of another, the former energy administrator shall transmit to him all proofs which he has received, together with an itemised list of them.

(2) The new energy administrator shall sign the list by way of receipt for the proofs, and return it to his predecessor.

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(2) 1986 c. 45, as amended by the Pension Schemes Act 1993 c. 48, section 190 and Schedule 8, paragraph 18 and the Enterprise Act 2002 c. 40, section 251(3).

### **Admission and rejection of proofs for dividend**

**45.**—(1) A proof may be admitted for dividend either for the whole amount claimed by the creditor, or for part of that amount.

(2) If the energy administrator rejects a proof in whole or in part, he shall prepare a written statement of his reasons for doing so, and send it as soon as reasonably practicable to the creditor.

### **Appeal against decision on proof**

**46.**—(1) If a creditor is dissatisfied with the energy administrator's decision with respect to his proof (including any decision on the question of preference), he may apply to the court for the decision to be reversed or varied. The application must be made within 21 days of his receiving the statement sent under Rule 45(2).

(2) Any other creditor may, if dissatisfied with the energy administrator's decision admitting or rejecting the whole or any part of a proof, make such an application within 21 days of becoming aware of the energy administrator's decision.

(3) Where application is made to the court under this Rule, the court shall fix a venue for the application to be heard, notice of which shall be sent by the applicant to the creditor who lodged the proof in question (if it is not himself) and the energy administrator.

(4) The energy administrator shall, on receipt of the notice, file with the court the relevant proof, together (if appropriate) with a copy of the statement sent under Rule 45(2).

(5) After the application has been heard and determined, the proof shall, unless it has been wholly disallowed, be returned by the court to the energy administrator.

(6) The energy administrator is not personally liable for costs incurred by any person in respect of an application under this Rule unless the court otherwise orders.

### **Withdrawal or variation of proof**

**47.** A creditor's proof may at any time, by agreement between himself and the energy administrator, be withdrawn or varied as to the amount claimed.

### **Expunging of proof by the court**

**48.**—(1) The court may expunge a proof or reduce the amount claimed—

- (a) on the energy administrator's application, where he thinks that the proof has been improperly admitted, or ought to be reduced; or
- (b) on the application of a creditor, if the energy administrator declines to interfere in the matter.

(2) Where application is made to the court under this Rule, the court shall fix a venue for the application to be heard, notice of which shall be sent by the applicant—

- (a) in the case of an application by the energy administrator, to the creditor who made the proof; and
- (b) in the case of an application by a creditor, to the energy administrator and to the creditor who made the proof (if not himself).

## CHAPTER 3

### *Quantification of claims*

#### **Estimate of quantum**

**49.**—(1) The energy administrator shall 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 he may revise any estimate previously made, if he thinks fit by reference to any change of circumstances or to information becoming available to him. He shall inform the creditor as to his estimate and any revision of it.

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

#### **Negotiable instruments, etc**

**50.** 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 his authorised representative to be a true copy.

#### **Secured creditors**

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

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

#### **Discounts**

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

#### **Mutual credits and set-off**

**53.**—(1) This Rule applies where the energy administrator, being authorised to make the distribution in question, has pursuant to Rule 63, given notice that he proposes to make it.

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

- (a) any debt arising out of an obligation incurred after the protected energy company entered energy administration;
- (b) any debt arising out of an obligation incurred at a time when the creditor had notice that an application for an energy administration order was pending;
- (c) any debt which has been acquired by a creditor by assignment or otherwise, pursuant to an agreement where that agreement was entered into between the creditor and any other party—
  - (i) after the protected energy company entered energy administration; or
  - (ii) at a time when the creditor had notice that an application for an energy administration order 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 protected energy 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 as a matter of opinion.

(5) Rule 49 shall apply for the purposes of this Rule to an obligation to or from the protected energy company which, by virtue of its being subject to any contingency or for any other reason, does not bear a certain value.

(6) Rules 54 to 56 shall apply for the purposes of this Rule in relation to any sums due to the protected energy company which—

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

(7) Rule 73 shall apply for the purposes of this Rule to any sum due to or from the protected energy 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 administration. Alternatively the balance (if any) owed to the protected energy 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) shall be paid if and when the debt becomes due and payable.

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

### **Debt in foreign currency**

**54.**—(1) 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 the official exchange rate prevailing on the date when the protected energy company entered energy administration.

(2) “The official exchange rate” is the middle exchange rate on the London Foreign Exchange Market at the close of business, as published for the date in question. In the absence of any such published rate, it is such rate as the court determines.

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

**55.**—(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 protected energy company entered energy 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**

**56.**—(1) Where a debt proved in the energy 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 protected energy company entered energy administration.

(2) In the following circumstances the creditor's claim may include interest on the debt for periods before the protected energy company entered energy 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 protected energy company entered energy administration.

(4) If the debt is due otherwise, interest may only be claimed if, before that date, a demand for 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 protected energy company's entering energy administration and for all the purposes of the 1986 Act and the 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 protected energy company entered energy 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 protected energy company entered energy 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 administration.

## **Debt payable at future time**

**57.** A creditor may prove for a debt of which payment was not yet due on the date when the protected energy company entered energy administration, subject to Rule 73 (adjustment of dividend where payment made before time).

## **Value of security**

**58.**—(1) A secured creditor may, with the agreement of the energy administrator or the leave of the court, at any time alter the value which he has, in his proof of debt, put upon his security.

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

## **Surrender for non-disclosure**

**59.**—(1) If a secured creditor omits to disclose his security in his proof of debt, he shall surrender his security for the general benefit of creditors, unless the court, on application by him, relieves him 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.

### **Redemption by energy administrator**

**60.**—(1) The energy administrator may at any time give notice to a creditor whose debt is secured that he 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 he so wishes, to exercise his right to revalue his security (with the permission of the court, where Rule 58(2) applies).

If the creditor re-values his 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 a notice in writing, call on the energy administrator to elect whether he will or will not exercise his 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**

**61.**—(1) Subject as follows, the energy administrator, if he is dissatisfied with the value which a secured creditor puts on his security (whether in his proof or by way of re-valuation under Rule 58), may require any property comprised in the security to be offered for sale.

(2) The terms of 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 protected energy company, and the creditor on his own behalf, may appear and bid.

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

**62.** If a creditor who has valued his 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 him.

### **Notice of proposed distribution**

**63.**—(1) Where an energy administrator is proposing to make a distribution to creditors he shall give 28 days' notice of that fact.

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

- (a) be sent to all creditors whose addresses are known to the energy administrator;
- (b) state whether the distribution is to preferential creditors or 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>(3)</sup>.

(3) Subject to paragraph (5), the energy administrator shall not declare a dividend unless he has by public advertisement invited creditors to prove their debts.

(4) A notice pursuant to paragraphs (1) or (3) shall—

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(3) 1986 c. 45; section 176A inserted by the Enterprise Act 2002 c. 40, section 252.



- (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) A notice pursuant to paragraph (1) where a dividend is to be declared for preferential creditors, need only be given to those creditors in whose case he has reason to believe that their debts are preferential and public advertisement of the intended dividend need only be given if the energy administrator thinks fit.

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

**64.**—(1) Unless he has already dealt with them, within 7 days of the last date for proving, the energy administrator shall—

- (a) admit or reject proofs submitted to him; or
- (b) make such provision in respect of them as he thinks fit.

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

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

#### **Declaration of dividend**

**65.**—(1) Subject to paragraph (2), within the 2 month period referred to in Rule 63(4)(a) the energy administrator shall proceed to declare the dividend to one or more classes of creditor of which he gave notice.

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

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

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

(2) The notice shall include the following particulars relating to the energy administration—

- (a) amounts raised from the sale of assets, indicating (so far as 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 proposes 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) how he proposes to distribute the dividend; and
- (g) whether, and if so when, any further dividend is expected to be declared.

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

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

(2) Payment of dividend may be made by post, or arrangements may be made with any creditor for it to be paid to him in another way, or held for his 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**

68. If the energy administrator gives notice to creditors that he is unable to declare any dividend or (as the case may be) any further dividend, the notice shall 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 administration.

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

69.—(1) If after payment of dividend the amount claimed by a creditor in his proof is increased, the creditor is not entitled to disturb the distribution of the dividend; but he 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 he has failed to receive.

(2) Any dividend or dividends payable under paragraph (1) shall 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**

70.—(1) The following applies where a creditor re-values his security at a time when a dividend has been declared.

(2) If the revaluation results in a reduction of his unsecured claim ranking for dividend, the creditor shall forthwith repay to the energy administrator, for the credit of the energy administration, any amount received by him as dividend in excess of that to which he would be entitled having regard to the revaluation of the security.

(3) If the revaluation results in an increase of his 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 he 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**

71. If a creditor contravenes any provision of the 1986 Act or the 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**

72.—(1) If a person entitled to a dividend gives notice to the energy administrator that he wishes the dividend to be paid to another person, or that he has assigned his entitlement to another person, the energy administrator shall pay the dividend to that other accordingly.

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

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

73.—(1) Where a creditor has proved for a debt of which payment is not due at the date of the declaration of dividend, he 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 him, the amount remaining outstanding in respect of his 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 relevant date 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.

(3) In paragraph (2) "relevant date" means the date that the protected energy company entered energy administration.