
STATUTORY INSTRUMENTS

2013 No. 1046

The Energy Supply Company Administration Rules 2013

PART 7

Distribution to creditors

CHAPTER 2

Machinery of proving a debt

Proving a debt

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

(2) A creditor who claims is referred to as "proving" for their debt and a document by which the creditor seeks to establish their claim is the creditor's "proof".

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

(a) be made out by, or under the direction of, the creditor and authenticated by the creditor or a person authorised in that behalf; and

(b) state the following matters—

(i) the creditor's name and address;

(ii) if the creditor is a company, its registered number;

(iii) the total amount of the creditor's claim (including value added tax) as at the date on which the energy supply company entered energy supply company administration, less any payments made after that date in respect of the claim, any deduction under Rule 53 and any adjustment by way of set off in accordance with Rule 54;

(iv) whether or not the claim includes outstanding uncapitalised interest;

(v) particulars of how and when the debt was incurred by the energy supply company;

(vi) particulars of any security held, the date on which it was given and the value which the creditor puts on it;

(vii) details of any reservation of title in respect of goods to which the debt refers; and

(viii) the name, address and authority of the person signing the proof (if a person other than the creditor).

(4) There must 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 the energy administrator, where the energy administrator thinks it necessary for the purpose of substantiating the whole or any part of the claim made in the proof.

Costs of proving

43. Unless the court otherwise orders—

- (a) every creditor bears the cost of proving the creditor's own debt, including costs incurred in providing documents or evidence under Rule 42(5); and
- (b) costs incurred by the energy administrator in estimating the quantum of a debt under Rule 50 are payable out of the assets as an expense of the energy supply company administration.

Energy administrator to allow inspection of proofs

44. The energy administrator must, so long as proofs lodged with the energy administrator are in the energy administrator's 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 the creditor's proof has been wholly rejected for purposes of dividend or otherwise);
- (b) any contributory of the energy supply company; and
- (c) any person acting on behalf of either of the above.

New energy administrator appointed

45.—(1) If a new energy administrator is appointed in place of another, the former energy administrator must as soon as reasonably practicable transmit to the new energy administrator all proofs which the former energy administrator has received, together with an itemised list of them.

(2) The new energy administrator must authenticate the list by way of receipt for the proofs, and return it to the former energy administrator.

(3) From then on, all proofs of debt must be sent to and retained by the new energy administrator.

Admission and rejection of proofs for dividend

46.—(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, the energy administrator must prepare a written statement of the energy administrator's reasons for doing so, and send it as soon as reasonably practicable to the creditor.

Appeal against decision on proof

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

(2) A member or 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 must fix a venue for the application to be heard, notice of which must be sent by the applicant to the creditor who lodged the proof in question (if the applicant is not the creditor who lodged the proof) and the energy administrator.

(4) The energy administrator must, on receipt of the notice, file in court the relevant proof, together (if appropriate) with a copy of the statement sent under Rule 46(2).

(5) Where the application is made by a member, the court must not disallow the proof (in whole or in part) unless the member shows that there is (or would be but for the amount claimed in the proof), or that it is likely that there will be (or would be but for the amount claimed in the proof), a surplus of assets to which the energy supply company would be entitled.

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

(7) 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

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

Expunging of proof by the court

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

- (a) on the energy administrator's application, where the energy administrator 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 must fix a venue for the application to be heard, notice of which must 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 that creditor is not the applicant).