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STATUTORY INSTRUMENTS

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**2014 No. 2014**

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

**PART 4**

Miscellaneous

**CHAPTER 10**

Effect of payment and interest

**Set-off of payments by the CFD counterparty**

**30.**—(1) This regulation applies where—

- (a) the CFD counterparty is liable to make a payment (“a relevant payment”) to an electricity supplier under these Regulations by a date (“the relevant date”); and
- (b) the amount it is liable to pay is equal to or less than the sum of all determined payments which that supplier is liable to pay at that date.

(2) Where this regulation applies the CFD counterparty may retain all or part of the relevant payment.

(3) Where the CFD counterparty does so, the amount retained is to be treated as if it was a payment made to it by the supplier on the relevant date.

(4) Where the CFD counterparty has retained all or part of a relevant payment under paragraph (2), it must, by the relevant date, issue a notice to the supplier stating the amount which has been retained.

(5) For the purposes of paragraph (1), a determined payment is a payment—

- (a) which a supplier must make to the CFD counterparty by virtue of these Regulations;
- (b) which the supplier has not yet made; and
- (c) the amount of which has been determined.

(6) The amount of a payment which a supplier must make by virtue of these Regulations has been determined if—

- (a) in the case of a payment which is calculated by reference to an amount of electricity determined by the BSCCo on the basis of a BSC volume allocation run, the BSCCo has carried out that BSC volume allocation run;
- (b) in the case of a payment where the amount of that payment must be determined by the CFD counterparty in accordance with these Regulations, the CFD counterparty has determined the amount of that payment;
- (c) in the case of a requirement to pay an amount of interest, the day by which that interest must be paid has passed.

(7) For the purposes of this regulation and regulation 31 a requirement to provide collateral under regulation 19(2) is not a requirement to make a payment by virtue of these Regulations.

### **Discharge of obligations by payment**

**31.**—(1) This regulation applies where an electricity supplier makes a payment to the CFD counterparty for the purpose of discharging its relevant obligations but that payment is insufficient to do so.

(2) The CFD counterparty must use the payment—

- (a) first, to discharge (in whole or in part) any relevant obligation of the supplier arising under regulation 23(1);
- (b) where part of the payment remains, secondly, to discharge any relevant obligation of the supplier which is not one arising under regulation 23(1); and
- (c) where part of the payment still remains, thirdly, to discharge any obligation of the supplier to make a payment of interest.

(3) Where more than one relevant obligation falls within a sub-paragraph of paragraph (2), the CFD counterparty must determine the order in which those obligations are to be discharged.

(4) On the day on which the CFD counterparty uses the payment it must issue a notice to the supplier which sets out the details of—

- (a) any relevant obligation which has been wholly discharged;
- (b) any relevant obligation which has been partially discharged, and the extent to which it has been discharged; and
- (c) any relevant obligation which has not been discharged.

(5) For the purposes of this regulation, any amount treated as a payment by an electricity supplier to the CFD counterparty by virtue of regulation 21(4) or (5) or regulation 30(3) is to be treated as a payment made by that supplier to the CFD counterparty for the purpose of discharging its relevant obligations.

(6) In this regulation—

“payment of interest” means a payment of interest which is required to be made by virtue of regulation 8(6), 9(7), 11(2), 14(8), 16(5), 17(6), 23(6) or 25(5);

“relevant obligation”, in relation to an electricity supplier, means any obligation of that supplier to make a payment under these Regulations where the date by which that payment should have been made has passed.

### **Use of payments**

**32.**—(1) Where the CFD counterparty receives a payment from an electricity supplier under regulation 23(1) or by virtue of regulation 23(6), the CFD counterparty may only use that payment for the purposes of meeting its costs.

(2) Where the CFD counterparty receives a payment from an electricity supplier under any regulation, other than regulation 23(1), the CFD counterparty may only use that payment for the purposes of making CFD counterparty payments or making payments to electricity suppliers under these Regulations.

(3) In this regulation, “costs” means any costs incurred by the CFD counterparty in connection with the performance by it of any function conferred on it by or by virtue of Chapter 2 of Part 2 of the Act.

### Apportioning sums to CFDs

**33.**—(1) This regulation applies where the CFD counterparty is unable fully to meet its liabilities under a CFD.

(2) For the purposes of this regulation the term “unable fully to meet its liabilities under a CFD” includes liabilities under a connected agreement.

(3) The CFD counterparty is unable fully to meet its liabilities under a CFD when the total amount held by the CFD counterparty at any time is less than the total amount of CFD counterparty payments it must pay at that time.

(4) Where this regulation applies, the amount which may be used to make CFD counterparty payments in relation to a particular CFD or connected agreement is the amount given by—

$$AH \times \left( \frac{OG}{OA} \right)$$

where—

AH is the total amount held by the CFD counterparty;

OG is the amount of CFD counterparty payments owed in relation to that CFD or connected agreement; and

OA is the total amount of CFD counterparty payments which the CFD counterparty owes.

(5) An amount is held by the CFD counterparty if it is in possession of that amount and—

- (a) it is an amount paid to it by electricity suppliers under these Regulations, other than an amount paid under or by virtue of regulation 23(1) or 23(6), or provided under regulation 19(2);
- (b) it is an amount treated as a payment by an electricity supplier to the CFD counterparty by virtue of regulation 21(4) or (5) or regulation 30(3);
- (c) it is an amount of collateral which was provided in the form of cash and the CFD counterparty is entitled to call that collateral by virtue of regulation 21;
- (d) it is an amount received as a CFD party payment by the CFD counterparty; or
- (e) it is any other amount provided to the CFD counterparty for the purpose of making CFD counterparty payments.

### Application of apportionment to CFDs

**34.**—(1) This regulation applies where a CFD or connected agreement contains a term that makes reference to amounts allocated pursuant to these Regulations (however that CFD or agreement describes these Regulations).

(2) Where both this regulation and regulation 33 apply, the amount allocated to that CFD or connected agreement, for the purposes of that term, is the amount calculated under regulation 33(4) which may be used by the CFD counterparty to make CFD counterparty payments in relation to that CFD or connected agreement.

(3) In all other cases where this regulation applies, the amount allocated to a CFD or connected agreement, for the purposes of that term, is the amount which is owed by the CFD counterparty in relation to that CFD or connected agreement.

### Interest

**35.**—(1) For the purposes of regulations 8(6), 9(7), 11(2), 14(8), 16(5), 17(6), 23(6) and 25(5), the rate of interest is 5 per cent per annum over the relevant Bank of England base rate.

- (2) The relevant Bank of England base rate—
  - (a) in respect of interest which starts to run on or after 1st January and before 1st July in any year, is the Bank of England base rate in force on 31st December in the previous year; and
  - (b) in respect of interest which starts to run on or after 1st July in any year, is the Bank of England base rate in force on 30th June in that year.
- (3) Any requirement to pay interest by virtue of these Regulations is a requirement to pay the amount of that interest by the first working day after the day on which that interest has accrued.
- (4) In this regulation, “Bank of England base rate” means—
  - (a) the rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the money markets; or
  - (b) where an order under section 19 of the Bank of England Act 1998<sup>(1)</sup> is in force, any equivalent rate determined by the Treasury under that section.

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<sup>(1)</sup> 1998 c. 11.