
STATUTORY INSTRUMENTS

2014 No. 2043

The Electricity Capacity Regulations 2014

PART 6

Payments

CHAPTER 2

Calculations and determinations: capacity providers

Determination of adjusted load-following capacity obligation, net output and adjusted net output

39.—(1) For each relevant settlement period in a month (“month M”), the Settlement Body must determine for each capacity committed CMU—

- (a) the adjusted load-following capacity obligation of the CMU in the settlement period (“ $ALFCO_{ij}$ ”);
- (b) the net output of the CMU in the settlement period (“ E_{ij} ”); and
- (c) adjusted E_{ij} (“ AE_{ij} ”).

(2) The Settlement Body must make the determinations under paragraph (1) in accordance with capacity market rules.

(3) The determinations under paragraph (1)(a) and (b) must be made by no later than 10 working days after the end of month M.

(4) The determination under paragraph (1)(c) must be made after the close of the volume reallocation window for month M, but by no later than 20 working days after the end of month M.

(5) In this regulation—

“adjusted E_{ij} ”, in relation to a capacity committed CMU and a relevant settlement period, means E_{ij} with any adjustment made to it as a result of volume reallocation;

“capacity market volume reallocation notifications” has the meaning given in the Rules;

[^{F1}“net output”, in relation to a demand side response CMU, means DSR volume (as defined in capacity market rules);]

“volume reallocation” means the procedure in capacity market rules by which part of the net output of a ^{F2}... CMU in a relevant settlement period may be reallocated to another ^{F2}... CMU for the purpose of the settlement calculations; and

“volume reallocation window” means the period during which [^{F3}persons qualified to do so (within the meaning given in regulation 42(2)(c))] may submit capacity market volume reallocation notifications under capacity market rules.

Textual Amendments

- F1** Words in reg. 39(5) inserted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 51**
- F2** Words in reg. 39(5) omitted (14.7.2016) by virtue of The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 24(a)** (with reg. 1(4))
- F3** Words in reg. 39(5) substituted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 24(b)** (with reg. 1(4))

Capacity payments

40.—(1) A capacity provider (“C”) is entitled, subject to paragraphs (5) and (6) and to regulations 49 to 51, to receive from the Settlement Body a capacity payment determined in accordance with this regulation in respect of each month of a delivery year (“month M”) for the capacity committed CMUs for which C was the capacity provider during month M.

(2) The Settlement Body must, after the end of month M—

- (a) determine the amount of the capacity payment which is payable to C in respect of month M (“ MCP_{cm} ”); and
- (b) issue a credit note to C for the amount determined for it.

(3) MCP_{cm} must be calculated in accordance with paragraph 4 of Schedule 1.

(4) The Settlement Body must issue a credit note to C under paragraph (2)(b)—

- (a) by no later than the [^{F4}28th] working day after the end of month M; but
- (b) if C is liable to pay a capacity provider penalty charge in respect of month M, not earlier than the day after the day by which C is required to pay that charge.

(5) Paragraphs (1) to (4) do not apply unless by the [^{F5}26th] working day after the end of month M the Settlement Body has received capacity market supplier charges in respect of month M.

(6) If by the day referred to in paragraph (5) the Settlement Body has received capacity market supplier charges in respect of month M the total of which is less than the sum of MCP_{cm} for all capacity providers, the amount of each capacity payment which would otherwise be determined under paragraph (2) must be reduced by the same proportion so that the total amount of capacity payments payable to capacity providers is equal to the total amount of capacity market supplier charges received.

(7) In this regulation, “capacity market supplier charges” means charges which electricity suppliers are required to pay under electricity capacity regulations to meet the cost of funding capacity payments.

Textual Amendments

- F4** Word in reg. 40(4)(a) substituted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 52(a)**
- F5** Word in reg. 40(5) substituted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 52(b)**

Capacity provider penalty charges

41.—(1) A capacity provider (“C”) must pay to the Settlement Body a capacity provider penalty charge in respect of any month of a delivery year (“month M”) if, in respect of month M, a settlement period penalty applies to one or more capacity committed CMUs for which C was the capacity provider during month M.

(2) If one or more capacity providers are liable to pay a capacity provider penalty charge in respect of month M the Settlement Body must, by no later than the ^[F6]35th] working day after the end of month M—

- (a) determine the amount, if any, payable by each capacity provider in respect of capacity provider penalty charges incurred in month M; and
- (b) issue to each capacity provider which is liable to pay capacity provider penalty charges an invoice for the amount determined for it.

(3) The amount payable by C under paragraph (2)(a) is the sum of—

- (a) ^[F7]MPSA_{imj}, as calculated under paragraph 6 of Schedule 1, for each capacity committed CMU for which C was registered on the capacity market register as the capacity provider for the whole of month M; and
- (b) C’s proportion of ^[F8]MPSA_{imj}, as calculated under paragraphs 6 and 8 of Schedule 1, for each capacity committed CMU for which C was registered on the capacity market register as the capacity provider for part of month M.

^[F9](3A) The percentages to be included in the capacity market register under regulation 31(2) (f) are—

- (a) for the annual penalty cap, 100%; and
- (b) for the monthly penalty cap, 200%.]

(4) In paragraph (1), “settlement period penalty” means a penalty calculated under paragraph 5 of Schedule 1.

Textual Amendments

- F6** Word in reg. 41(2) substituted (22.7.2023) by [The Electricity Capacity \(Amendment\) Regulations 2023](#) (S.I. 2023/860), reg. 1(2), **5**
- F7** Word in reg. 41(3)(a) substituted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016](#) (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 25** (with reg. 1(4))
- F8** Word in reg. 41(3)(b) substituted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016](#) (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 25** (with reg. 1(4))
- F9** Reg. 41(3A) inserted (18.12.2014) by [The Electricity Capacity \(Supplier Payment etc.\) Regulations 2014](#) (S.I. 2014/3354), reg. 1(2), **Sch. 2 para. 5**

^[F10]Over-delivery payments

42.—(1) A person (“P”) is entitled to receive from the Settlement Body an over-delivery payment in respect of a delivery year (“year X”) if—

- (a) any capacity committed CMU (“CMU i”) for which P was the capacity provider over-delivered in any relevant settlement period in year X; or
- (b) P has made a qualifying delivery in any such settlement period.

(2) For the purposes of this regulation—

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- (a) CMU i over-delivers in a relevant settlement period j if AE_{ij} is greater than $ALFCO_{ij}$ in that settlement period;
 - (b) P makes a qualifying delivery in a relevant settlement period j if—
 - (i) P was a qualified person (but not a capacity provider) in respect of a CMU (“CMU i”) during that period, and
 - (ii) in that period, AE_{ij} is greater than zero;
 - (c) a “qualified person” is a person who—
 - (i) has registered with the delivery body under capacity market rules in respect of a CMU for the purpose of participating in volume reallocation, and
 - (ii) is an “acceptable transferee” within the meaning of capacity market rules; and
 - (d) “volume reallocation” has the meaning given in regulation 39(5).
- (3) The Settlement Body must, by not later than the 28th working day after the end of year X—
- (a) determine the amount, if any, of the payments payable to each person under this regulation in respect of year X; and
 - (b) issue to each person who is entitled to such a payment a credit note for the amount determined for it.
- (4) The amount payable to P under paragraph (3)(a) is the sum of—
- (a) $TODP_{ix}$, as calculated in accordance with paragraph 7 of Schedule 1, for each CMU—
 - (i) for which P was registered on the capacity market register as the capacity provider for the whole of year X, or
 - (ii) in respect of which P was a qualified person for the whole of year X; and
 - (b) P’s proportion of $TODP_{ix}$, as calculated in accordance with paragraphs 7 and 8 of Schedule 1, for each CMU—
 - (i) for which P was registered on the capacity market register as the capacity provider for part of year X, or
 - (ii) in respect of which P was a qualified person for part of year X.]

Textual Amendments

F10 Reg. 42 substituted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), reg. 1(2), [Sch. 1 para. 26](#) (with reg. 1(4))

Termination fees

43.—(1) A capacity provider must pay to the Settlement Body a termination fee, by way of a financial penalty, if—

- (a) a capacity agreement is terminated on a ground specified in capacity market rules; and
- (b) capacity market rules specify that a termination fee is payable in the event of the capacity agreement being terminated on that ground.

[^{F11}(1A) A termination fee is payable in accordance with paragraph (1) if the capacity agreement is terminated in accordance with capacity market rules, notwithstanding that the termination does not take effect until after the expiry of the delivery year, or period of delivery years, to which the capacity agreement relates (“the relevant period”).]

(2) The Settlement Body must, as soon as reasonably practicable after receiving notice of the termination of a capacity agreement on a ground for which a termination fee is payable—

- (a) determine the amount in pounds of the termination fee that is payable; and
- (b) issue to the capacity provider an invoice for that amount.

^{F12}(3) Where capacity market rules specify that [^{F13}TFx is payable (for any value of x from x = 1 to x = 5)], the amount must be determined in accordance with the formula—

$$TFx = TFx_{rate} \times CO.$$

^{F14}(4)

(5) In this regulation—

“CO” means the capacity obligation in MW for which the capacity agreement was issued, as specified in the capacity market register;

[^{F15}“TFx_{rate}” (for any value of x from x = 1 to x = 5) means the rate in pounds per MW determined in accordance with regulation 32 and specified on the capacity market register as the rate at which TFx is payable under the capacity agreement.]

[^{F16}(6) In this regulation, references to the termination of a capacity agreement include references to the termination of a transferred part; and for that purpose—

- (a) the reference to the relevant period in paragraph (1A) is to be construed as a reference to the transfer period as defined in regulation 30A(1)(b); and
- (b) “CO” in paragraph (5) means the capacity obligation in MW comprised in that transferred part as specified on the capacity market register.]

Textual Amendments

- F11** Reg. 43(1A) inserted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 27(1)** (with reg. 1(4))
- F12** Formula in reg. 43(3) substituted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 11(1)(b)** (with reg. 1(3))
- F13** Words in reg. 43(3) substituted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 11(1)(a)** (with reg. 1(3))
- F14** Reg. 43(4) omitted (14.7.2016) by virtue of The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 11(2)** (with reg. 1(3))
- F15** Words in reg. 43(5) substituted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 11(3)** (with reg. 1(3))
- F16** Reg. 43(6) inserted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 27(2)** (with reg. 1(4))

[^{F17}Termination fees: adjustment for DSR providers

43ZA.—(1) This regulation applies where—

- (a) a termination fee is payable by a DSR provider;
- (b) before that termination fee became payable, the Settlement Body had drawn down applicant credit cover provided by the DSR provider in accordance with regulation 60(3) or regulation 61(1)(a)(ii);
- (c) the termination fee and the applicant credit cover relate to the same unproven demand side response CMU; and
- (d) either—

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- (i) the termination fee and the applicant credit cover relate to the same capacity auction; or
 - (ii) the termination fee relates to a capacity auction for which no further applicant credit cover was required to be provided because of regulation 59(1B).
- (2) The amount of the termination fee to be determined and invoiced under regulation 43 is reduced by the amount of the credit cover drawn down.]

Textual Amendments

F17 Reg. 43ZA inserted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), reg. 1(2), [Sch. 1 para. 12](#)

[^{F18}Non-completion fee

43A.—(1) A capacity provider in respect of a new build interconnector CMU must pay to the Settlement Body a fee (a “non-completion fee”) by way of a financial penalty if, in circumstances specified for the purposes of this regulation by capacity market rules, the capacity provider fails to meet the completion requirements of the capacity agreement.

(2) For the purposes of paragraph (1)—

“completion requirements” are requirements to reach a level of operational capability specified in capacity market rules by the end of a delivery year;

“new build interconnector CMU” means a prospective interconnector CMU which has not been commissioned.

(3) The Settlement Body must, as soon as reasonably practicable after receiving notice in accordance with capacity market rules of the imposition of a non-completion fee—

- (a) determine the amount in pounds of the non-completion fee that is payable; and
- (b) issue to the capacity provider an invoice for that amount.

(4) Paragraphs (3) to (5) of regulation 43 apply to the determination of the amount of a non-completion fee as they apply to the determination of the amount of a termination fee.

(5) For the purposes of this regulation, references in regulation 32(1)—

- (a) to a “termination fee” are to be construed as references to a non-completion fee; and
- (b) to termination on a ground specified in capacity market rules are to be construed as references to a failure to meet completion requirements in circumstances so specified.]

[^{F19}(6) Regulation 33 applies (except for paragraphs (2)(b), (3) and (5)(b)) to a non-completion notice as it applies to a termination notice, and for that purpose, a reference in regulation 33 to—

- (a) a “termination fee” is to be construed as a reference to a non-completion fee; and
- (b) a “termination notice” is to be construed as a reference to a non-completion notice.]

Textual Amendments

F18 Reg. 43A inserted (24.3.2015) by [The Electricity Capacity \(Amendment\) Regulations 2015 \(S.I. 2015/875\)](#), reg. 1(2), [Sch. 1 para. 8](#)

F19 Reg. 43A(6) inserted (10.4.2019) by [The Electricity Capacity \(No. 1\) Regulations 2019 \(S.I. 2019/862\)](#), regs. 1(2), [24](#)

Modifications etc. (not altering text)

- C1** Reg. 43A applied (with modifications) (10.4.2019) by [The Electricity Capacity \(No. 1\) Regulations 2019 \(S.I. 2019/862\)](#), regs. 1(2), **27**

[^{F20}Repayment of capacity payments: termination

43B.—(1) A capacity provider must repay capacity payments to the Settlement Body if—

- (a) a capacity agreement is terminated on a ground specified in capacity market rules; and
- (b) capacity market rules specify that capacity payments are repayable in the event of the capacity agreement being terminated on that ground.

(2) The Settlement Body must, as soon as reasonably practicable after receiving final notice of termination of the capacity agreement—

- (a) determine the amount in pounds of the capacity payments that are repayable; and
- (b) issue to the capacity provider an invoice for that amount.

(3) Where capacity market rules specify that capacity payments are repayable in respect of—

- (a) the period TP1, the capacity payments that must be repaid are those made in respect of the period beginning with the date of the termination notice and ending with the date of termination of the relevant capacity agreement;
- (b) the period TP2, the capacity payments that must be repaid are those made in respect of the period beginning with the date of the termination event and ending with the date of termination of the relevant capacity agreement;

[the period TP3, the capacity payments that must be repaid are those made in respect of
^{F21}(c) the period beginning with the date on which capacity payments began under the relevant capacity agreement and ending with the date of termination of the relevant capacity agreement [^{F22}.]]

[the period TP4, the capacity payments that must be repaid are those made in respect of the
^{F23}(d) period beginning on 1st October, and ending on 1st May, of the relevant delivery year.]

(4) In this regulation—

- (a) “final notice of termination” means a notice given by the Delivery Body in accordance with capacity market rules that the capacity agreement has terminated; and
- (b) “termination event” and “termination notice” have the meaning given in the Rules.

[
^{F24}(5) This regulation applies to the termination of a transferred part as it applies to the termination of a capacity agreement.]

Textual Amendments

- F20** Regs. 43B, 43C inserted (24.3.2015) by [The Electricity Capacity \(Amendment\) Regulations 2015 \(S.I. 2015/875\)](#), reg. 1(2), **Sch. 1 para. 16**
- F21** Reg. 43B(3)(c) inserted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), reg. 1(2), **Sch. 1 para. 13** (with reg. 1(3))
- F22** Reg. 43B(3)(c): semicolon substituted for full stop (18.7.2019) by [The Electricity Capacity \(No. 2\) Regulations 2019 \(S.I. 2019/1139\)](#), regs. 1(2), **2(6)(a)**
- F23** Reg. 43B(3)(d) inserted (18.7.2019) by [The Electricity Capacity \(No. 2\) Regulations 2019 \(S.I. 2019/1139\)](#), regs. 1(2), **2(6)(b)**

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F24 Reg. 43B(5) inserted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), reg. 1(2), [Sch. 1 para. 28](#) (with reg. 1(4))

Repayment of capacity payments: metering fault

- 43C.**—(1) A capacity provider must repay capacity payments to the Settlement Body if—
- (a) a metering test certificate or DSR test certificate is, in accordance with capacity market rules, determined to be invalid on a ground specified in those rules; and
 - (b) capacity market rules specify that capacity payments are repayable in the event that a metering test certificate or DSR test certificate is determined to be invalid on that ground.
- (2) The Settlement Body must, as soon as reasonably practicable after the relevant date—
- (a) determine the amount in pounds of the capacity payments that are repayable; and
 - (b) issue to the capacity provider an invoice for that amount.
- (3) In paragraph (2) the “relevant date” means the date on which, in accordance with capacity market rules—
- (a) in the case of a metering test certificate, the certificate was determined by the Settlement Body to be invalid; or
 - (b) in the case of a DSR test certificate, the Settlement Body received notice of the invalidity of the certificate.
- (4) Where capacity market rules specify that capacity payments are repayable in respect of—
- (a) the period MP1, the capacity payments that must be repaid are those made in respect of the period beginning with the relevant invalidation date and ending with the date on which the relevant metering recovery payment notice is issued;
 - (b) the period MP2, the capacity payments that must be repaid are those made in respect of the period beginning with the relevant invalidation date and ending with the date on which the relevant completion notice is issued;
 - (c) the period MP3, the capacity payments that must be repaid are those made in respect of the period beginning with the first day of the relevant delivery year and ending with the date on which the relevant metering recovery payment notice is issued.
- (5) In this regulation, “completion notice”, “invalidation date”, “metering recovery payment notice” and “metering test certificate” have the meaning given in the Rules.]

Textual Amendments

F20 Regs. 43B, 43C inserted (24.3.2015) by [The Electricity Capacity \(Amendment\) Regulations 2015 \(S.I. 2015/875\)](#), reg. 1(2), [Sch. 1 para. 16](#)

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Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Sch. 1 para. 2(5) words substituted by [S.I. 2024/434 reg. 12\(a\)](#)
- reg. 3(3) words inserted by [S.I. 2024/434 reg. 8](#)
- reg. 4(b) word substituted by [S.I. 2024/434 reg. 9\(c\)](#)
- reg. 4(2)(aa) inserted by [S.I. 2024/434 reg. 9\(b\)\(iii\)](#)
- reg. 19(aa) inserted by [S.I. 2024/434 reg. 11\(b\)](#)