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STATUTORY INSTRUMENTS

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**2014 No. 2043**

**The Electricity Capacity Regulations 2014**

**PART 6**

**Payments**

**CHAPTER 4**

**Payment and non-payment**

**General**

**45.—**(1) In this Chapter—

“draw down” has the same meaning as it has in Part 7;

“in default” means a failure to pay in full an invoiced amount by the payment due date;

“invoiced amount” means the total amount payable by a payer as stated in the invoice issued to that payer under regulation 41, 43 or 44;

“payer” means a person to whom an invoice is issued under regulation 41, 43 or 44;

“payment due date” means the day specified in an invoice in accordance with regulation 38(2) as the date by which it is to be paid.

(2) Where this Chapter requires a payer to make a payment by no later than a stated day, the payment must be made by no later than 5.00 p.m. on that day.

(3) A payment made after 5.00 p.m. is to be treated as having been made on the following day.

**Payment of invoices and accruing interest**

**46.—**(1) A payer must pay the invoiced amount to the Settlement Body by no later than the payment due date.

(2) Where a payer has not paid in full the invoiced amount to the Settlement Body as required by paragraph (1), the payer must pay the Settlement Body simple interest at the rate specified in paragraph (4) (“late payment interest”) on the outstanding balance of the invoiced amount from and including the payment due date until the date of payment.

(3) Where a payer disputes an invoiced amount under Chapter 2 of Part 10—

(a) if the decision of the Settlement Body under that Part is that the invoiced amount is reduced but not extinguished, late payment interest accrues on the reduced amount from and including the payment due date until the date of payment;

(b) if the decision of the Settlement Body under that Part is that the invoiced amount is extinguished, no late payment interest accrues in respect of the invoiced amount.

(4) The rate at which late payment interest is payable is 5 per cent per annum over the Bank of England base rate in force on the 30th June (in respect of interest which starts to run between 1st

July and 31st December) or the 31st December (in respect of interest which starts to run between 1st January and 30th June) immediately before the date on which the interest starts to run.

- (5) In paragraph (4), “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.

### **The non-payment register**

**47.**—(1) The Settlement Body must maintain a register (“the non-payment register”) which is to include in respect of a payer (“P”) who has not paid an invoice by the payment due date—

- (a) the name of P;
- (b) whether P is an electricity supplier or a capacity provider;
- (c) the type of invoice in respect of which P is in default;
- (d) the payment due date;
- (e) the date or dates when any payment has been made by P in respect of the invoice, and whether it is a full or partial payment; and
- (f) whether P has given a disputes notice to the Settlement Body in respect of the invoice;
- (g) if P has given a disputes notice in respect of the invoice, whether the dispute has been determined under Chapter 2 of Part 10 and, if so, that determination.

(2) The matters included on the non-payment register under paragraph (1) are a “relevant register entry” in relation to P.

- (3) The Settlement Body must—
- (a) make a relevant register entry as soon as possible after P is in default; and
  - (b) update the relevant register entry if a payment is subsequently made, or a dispute is raised or determined.
- (4) The Settlement Body must remove a relevant register entry—
- (a) if it is determined under Chapter 2 of Part 10 that the payment is not due, as soon as reasonably practicable after the Settlement Body makes that determination;
  - (b) in any other case, 12 months after the date on which P became in default.

(5) The Settlement Body must publish the information contained in the non-payment register on a website.

(6) The Settlement Body must retain the data contained in a relevant register entry for 5 years after the relevant register entry is made.

### **Payment of credit notes**

- 48.** Subject to regulations 49 to 52, the Settlement Body must pay the amount due to—
- (a) each capacity provider issued with a credit note for a capacity payment, by no later than the 29th working day after the end of the month to which the payment relates; and
  - (b) each capacity provider issued with a credit note for an over-delivery payment, by no later than the 29th working day after the end of the delivery year to which the payment relates.

(1) 1998 c.11.

### **Reducing capacity payments: unpaid capacity provider penalty charges**

**49.**—(1) This regulation applies if, at the time when a credit note is issued to a capacity provider (“C”) for a capacity payment, C is in default in respect of a capacity provider penalty charge (an “unpaid penalty charge”).

(2) If this regulation applies—

(a) the Settlement Body must ensure that the credit otherwise payable to C is reduced—

(i) by the amount of the unpaid penalty charge;

(ii) to nil, if the amount of the unpaid penalty charge is equal to or greater than the amount of the credit; and

(b) the amount by which the credit is reduced is to be treated as a payment or part payment of the unpaid penalty charge.

(3) The Settlement Body must ensure that the credit note issued to C states the amount by which the credit is reduced, and the reason for the reduction.

### **Reducing capacity payments: failure to demonstrate satisfactory performance**

**50.**—(1) This regulation applies in relation to a capacity committed CMU (“CMU i”) and a delivery year (“year X”) if—

(a) a satisfactory performance requirement applies in respect of CMU i in year X; and

(b) the requirement has not been met by 30th April in year X.

(2) If, by the end of a relevant month, the capacity provider in respect of CMU i (“C”) has not complied with the satisfactory performance requirement, no monthly capacity payment is to be paid in respect of CMU i for that month.

(3) If C complies with the satisfactory performance requirement during a relevant month, the Settlement Body must ensure that the credit which would otherwise be payable to C in respect of the

monthly capacity payment for CMU i for that month is reduced by the proportion  $\frac{A}{B}$ , where—

(a) A is the number of days in the relevant month before the day on which C complies with the satisfactory performance requirement; and

(b) B is the number of days in the relevant month.

(4) If C has not complied with the satisfactory performance requirement by the end of year X—

(a) C must repay to the Settlement Body all capacity payments made in respect of CMU i and year X; and

(b) the Settlement Body must, as soon as reasonably practicable after the end of year X, issue an invoice to C for the amount of those capacity payments.

(5) The Settlement Body must—

(a) if paragraph (2) applies, give a notice to C which states that no monthly capacity payment is to be paid in respect of CMU i for the relevant month, and states the reason;

(b) if paragraph (3) applies, ensure that the credit note issued to C for the relevant month states the amount by which the credit is reduced, and states the reason;

(c) if paragraph (4) applies, ensure that the invoice issued to C under paragraph (4)(b) states the reason for the issue of the invoice.

(6) In this regulation—

“relevant month” means May, June, July, August or September in year X;

“satisfactory performance day” has the meaning given in the Rules;

“satisfactory performance requirement” means a requirement in capacity market rules for a capacity provider to demonstrate satisfactory performance days in respect of a capacity committed CMU.

#### **Withholding credit payments to capacity providers**

**51.**—(1) This regulation applies where, at the time when a credit note is issued to a capacity provider (“C”) under this Part—

- (a) C is subject to a data default notice; or
  - (b) the Settlement Body is aware that C is insolvent.
- (2) The Settlement Body must ensure that—
- (a) the credit is withheld; and
  - (b) the credit note states that the payment is to be withheld and states the reason why.
- (3) In this regulation, “data default notice” has the meaning given by regulation 37(1).

#### **Payment of withheld credit**

**52.**—(1) Paragraphs (2) and (3) apply where a credit is withheld from a capacity provider (“C”) under regulation 51.

(2) If, where the credit is withheld for the reason in regulation 51(1)(b), an invoice is due to be issued to C, the Settlement Body may deduct all or part of the withheld credit from the amount invoiced, and the amount so deducted is to be treated as having been paid to C.

(3) Except where the withheld credit has been deducted from an invoice in accordance with paragraph (2), the Settlement Body must pay the withheld credit on the next occasion which the Settlement Body considers practicable when—

- (a) credit payments are made under this Part; and
- (b) the Settlement Body is not required to withhold a credit from C under regulation 51.