

*Draft Regulations laid before Parliament under section 6(8) of the Energy Act 2013, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2014 No. 0000**

**ELECTRICITY**

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

*Made - - - - - th July*  
*Coming into force in accordance with regulation 1*

The Secretary of State has before making these Regulations—

- (a) consulted the persons listed in section 24(1)(a) to (g) of the Energy Act 2013<sup>(1)</sup> and such other persons as the Secretary of State considered it appropriate to consult; and
- (b) had regard to the matters in section 5(2) of that Act

In accordance with section 6(8) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Accordingly, the Secretary of State, in exercise of the powers conferred by sections 6(1), (5) and (6), 9(1), (2), (4) to (8), and (10), 17, 18(1), (2) and (4), 19, 21(1) and (3) and 22(1) of, and paragraph 16(2) of Schedule 2 to, the Energy Act 2013, makes the following Regulations:

**PART 1**

**Introduction**

**Citation and commencement**

1. These Regulations may be cited as the Contracts for Difference (Electricity Supplier Obligations) Regulations 2014 and come into force on the day after the day on which they are made.

**Interpretation**

2.—(1) In these Regulations—

“absolute value”, in relation to an amount, means the magnitude of that amount without regard to whether that amount is positive or negative;

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(1) 2013 c.32.

“the Act” means the Energy Act 2013;

“the Balancing and Settlement Code” means the code for the governance of electricity balancing and settlement in Great Britain which is maintained in accordance with the conditions of transmission licences granted under section 6(1)(b) of the Electricity Act 1989(2) as it was in force on 1st April 2014;

“BSC volume allocation run” means any one of the following—

- (a) an Initial Volume Allocation Run,
- (b) an Interim Information Volume Allocation Run,
- (c) a Reconciliation Volume Allocation Run (including a Final Reconciliation Volume Allocation Run or a Post-Final Volume Allocation Run);

“the BSCCo” means ELEXON Limited (or any successor to that company acting in the capacity of the BSCCo within the meaning given in the Balancing and Settlement Code);

“CFD counterparty payment” means any payment which the CFD counterparty must make—

- (a) under a CFD;
- (b) under a connected agreement;
- (c) to a CFD party for the purpose of compensating that person for any costs incurred by that person in respect of a breach of a CFD or a connected agreement,

and includes any payment made to a person to whom a benefit under a CFD or connected agreement has been assigned in accordance with the terms of that agreement;

“CFD party” means a person, other than the CFD counterparty, who is a party to a CFD or connected agreement and is entitled to payments under such an agreement;

“CFD party payment” means any payment which a CFD party must make to the CFD counterparty—

- (a) under a CFD;
- (b) under a connected agreement,

and includes a payment made to a person to whom a benefit under a CFD or connected agreement has been assigned in accordance with the terms of that agreement;

“CFD period contribution” is to be construed in accordance with regulation 3;

“connected agreement” means any agreement entered into by the CFD counterparty or a CFD party, pursuant to a CFD;

“electricity supplier” means a person who is the holder of a licence to supply electricity under section 6(1)(d) of the Electricity Act 1989;

“electricity supply” means a supply of electricity to any premises in Great Britain;

“estimated quarterly obligation period electricity supply”, “estimated quarterly obligation period income”, and “estimated quarterly obligation period payment cost” are to be construed in accordance with regulation 7;

“Final Reconciliation Volume Allocation Run” has the meaning given in the Balancing and Settlement Code (see section U of that code);

“first operational cost period” means the period beginning on 1st January 2015 and ending on 31st March 2015;

“Initial Volume Allocation Run” has the meaning given in the Balancing and Settlement Code (see section U of that code);

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(2) 1989 c.29.

“Interim Information Volume Allocation Run” has the meaning given in the Balancing and Settlement Code (see section U of that code);

“interim rate payment” is to be construed in accordance with regulation 8;

“investment contract” has the meaning given in Schedule 2 to the Act;

“letter of credit” means a letter from a person which contains an irrevocable and unconditional authorisation in favour of the CFD counterparty to be paid by that person on demand up to an amount stated in the letter;

“mutualisation amount” and “mutualisation notice” are to be construed in accordance with regulation 17;

“operational cost period” means—

(c) the first operational cost period, or

(d) any subsequent period beginning on 1st April in a year and ending on 31<sup>st</sup> March in the following year;

“Post-Final Volume Allocation Run” has the meaning given in the Balancing and Settlement Code (see section U of that code);

“quarterly obligation period” means a period of 3 months commencing after 31st March 2015 on 1st April, 1st July, 1st October or 1st January in any period of 12 months;

“reconciliation determination” and “reconciliation period” are to be construed in accordance with regulation 15(1);

“Reconciliation Volume Allocation Run” has the meaning given in the Balancing and Settlement Code (see section U of that code);

“reserve payment” means a payment an electricity supplier is required to make under regulation 11(1);

“total reserve amount” is to be construed in accordance with regulation 10;

“working day” means a day that is not a Saturday or Sunday, Christmas Day, Good Friday or any day that is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971(3).

(2) Any reference in these Regulations to an amount of electricity is a reference to that amount expressed in megawatt hours.

(3) Any reference in these Regulations to an amount to be paid or provided is a reference to that amount expressed in pounds sterling and rounded to the nearest whole penny with any half of a penny being rounded upwards.

(4) Any reference in these Regulations to a CFD includes a reference to an investment contract which was transferred to the CFD counterparty by virtue of paragraph 16(1) of Schedule 2 to the Act.

(5) For the purposes of sections 7, 8, 9, 17 to 21 and 26 of the Act an investment contract which was transferred to the CFD counterparty by virtue of paragraph 16(1) of Schedule 2 to the Act is to be treated as a CFD.

(6) Where more than one person is designated under section 7 of the Act as a CFD counterparty, the Schedule has effect and these Regulations have effect as set out in that Schedule.

## PART 2

### Supplier obligation

#### CHAPTER 1

#### The supplier obligation

##### The supplier obligation

3.—(1) Every electricity supplier who supplies electricity during a quarterly obligation period must, subject to paragraph (3), pay a CFD period contribution to the CFD counterparty in respect of that period.

(2) The CFD period contribution in relation to a supplier in respect of a quarterly obligation period is the sum of—

- (a) CFD daily contributions for each day on which that supplier supplies electricity in that period calculated in accordance with regulation 4; and
- (b) a CFD quarterly contribution for that period calculated in accordance with regulation 5.

(3) Where the amount of a supplier's CFD period contribution in respect of a quarterly obligation period is a negative number—

- (a) the amount the supplier must pay under paragraph (1) in respect of that period is zero; and
- (b) the CFD counterparty must pay the absolute value of that amount to that supplier.

(4) For the purpose of ensuring that the CFD period contribution is paid—

- (a) an electricity supplier must—
  - (i) make interim payments in accordance with regulations 8(1) and 11(1) and, where so required, regulation 14(3),
  - (ii) make supplier data reconciliation payments in accordance with regulation 9(2), and
  - (iii) make any required reconciliation payments in accordance with regulation 16(3)(a); and
- (b) the CFD counterparty must—
  - (i) make counterparty data reconciliation payments in accordance with regulation 9(3), and
  - (ii) make any required reconciliation payments in accordance with regulation 16(3)(b).

##### CFD daily contributions

4.—(1) The CFD daily contribution for a supplier for a day on which that supplier supplies electricity in a quarterly obligation period is the amount given by—

$$(GP - CP) \times \frac{SDS}{TDS}$$

where—

GP is the total amount of generation counterparty payments which the CFD counterparty is required to make in respect of electricity generation which occurred on that day;

CP is the total amount of generation party payments which the CFD counterparty has received from CFD parties in respect of electricity generation which occurred on that day;

SDS is the amount of electricity supplied by that supplier on that day;

TDS is the total amount of electricity supplied by all suppliers on that day.

(2) In this regulation and regulation 5—

“generation counterparty payment” means any CFD counterparty payment made under, or in respect of a breach of, a CFD or connected agreement which is calculated directly by reference to an amount of electricity generated by a generating station which is the subject of that CFD or connected agreement;

“generation party payment” means any CFD party payment made under a CFD or connected agreement which is calculated directly by reference to an amount of electricity generated by a generating station which is the subject of that CFD or connected agreement;

(3) For the purposes of this regulation and regulation 5, the amount of electricity supplied by a supplier is the amount of electricity which the BSCCo determines was supplied by that supplier on the basis of—

(a) a Final Reconciliation Volume Allocation Run; or

(b) where a Post-Final Volume Allocation Run has occurred in relation to the day on which the electricity was supplied, a Post-Final Volume Allocation Run.

### CFD quarterly contribution

5. The CFD quarterly contribution for a supplier for a quarterly period is the amount given by—

$$[NDS - (NGS + DI)] \times \frac{SQS}{TQS}$$

where—

NDS is the total amount of CFD counterparty payments which are not generation counterparty payments which the CFD counterparty was required to make during that period;

NGS is the total amount of CFD party payments which are not generation party payments which the CFD counterparty has received from CFD parties during that period;

DI is any amount of interest which was paid by virtue of regulation 8(6), 9(7), 11(2), 14(8), 16(5), 17(6) or 25(5) during that period, less any amount of that interest which was paid to electricity suppliers by virtue of regulation 18(2);

SQS is the amount of electricity supplied by that supplier in that period;

TQS is the total amount of electricity supplied in that period.

## CHAPTER 2

### Interim daily levy

#### Setting the interim levy rate

6.—(1) The CFD counterparty must, in respect of every quarterly obligation period determine an interim levy rate which is to apply for that period.

(2) The CFD counterparty must determine an interim levy rate for a quarterly obligation period (“the rate period”) before—

(a) where the rate period commences on 1<sup>st</sup> April 2015, 1st January 2015,

(b) for any other rate period, the commencement of the quarterly obligation period which immediately precedes the rate period.

(3) Where the CFD counterparty has determined an interim levy rate for a quarterly obligation period it must publish a notice setting out that rate and must—

(a) issue that notice to every electricity supplier, and

(b) issue that notice to any person who becomes an electricity supplier during that period.

(4) Subject to paragraph (5), the interim levy rate for a quarterly obligation period is to be determined as the amount given by—

$$\frac{EOC - EOI}{EOS}$$

where—

EOC is the estimated quarterly obligation period payment cost, estimated in accordance with regulation 7(1);

EOI is the estimated quarterly obligation period income, estimated in accordance with regulation 7(3); and

EOS is the estimated quarterly obligation period electricity supply, estimated in accordance with regulation 7(4).

(5) Where the amount given by the calculation in paragraph (4) in relation to a quarterly obligation period is less than zero, the interim levy rate shall be determined as zero for that period.

#### **Estimated cost, income & electricity supply**

7.—(1) The estimated quarterly obligation period payment cost in respect of a quarterly obligation period (“the rate period”) is the amount which the CFD counterparty estimates will be required to be paid by it to CFD parties under every CFD or connected agreement to which it is, or is likely to become, a party during the rate period, having regard to the matters set out in paragraph (2).

(2) The matters referred to in paragraph (1) are—

(a) the strike prices which, in the opinion of the CFD counterparty, will apply to CFDs in respect of which payments may become due during the rate period;

(b) the CFD counterparty’s estimate of—

(i) where payments under a CFD may become due in relation to the generation of electricity in a settlement hour by a CFD generating station, the amount of electricity generated by each such CFD generating station in each settlement hour in respect of which payments may become due during the rate period;

(ii) where payments under a CFD may become due in relation to the generation of electricity in a settlement period by a CFD generating station, the amount of electricity generated by each such CFD generating station in each settlement period in respect of which payments may become due during the rate period;

(iii) the market reference price which is to apply in relation to each settlement hour in respect of which a payment may become due during the rate period;

(iv) the market reference price which is to apply in relation to each settlement period in respect of which a payment may become due during the rate period;

(v) the total amount of payments which the CFD counterparty will be required to make under CFDs during the rate period which are not payments based on the difference between a strike price and a market reference price in relation to electricity generated.

(3) The estimated quarterly obligation period income in respect of the rate period is the amount which the CFD counterparty estimates it will receive from CFD parties during the rate period having regard to—

(a) the matters in paragraph (2)(a) and (b)(i) to (iv);

(b) the CFD counterparty’s estimate of the total amount of payments which the CFD counterparty will receive under CFDs during the rate period which are not payments

based on the difference between a strike price and a market reference price in relation to electricity generated;

(c) the CFD counterparty's estimate of the likelihood of the failure of CFD parties to make CFD party payments in accordance with CFDs.

(4) The estimated quarterly obligation period electricity supply in respect of the rate period is the amount of electricity which the CFD counterparty estimates will be supplied by all electricity suppliers in the rate period.

(5) In this regulation—

“CFD generating station” means any generating station which is the subject of a CFD;

“market reference price”, “settlement hour”, “settlement period” and “strike price” are to be construed in accordance with CFDs to which the CFD counterparty is a party.

(6) For the purposes of this regulation reference to a CFD includes reference to a connected agreement.

### **Interim rate payments**

**8.—**(1) An electricity supplier must make a payment (“an interim rate payment”) to the CFD counterparty in respect of each day on which that supplier supplies electricity in Great Britain during a quarterly obligation period.

(2) The amount of an interim rate payment to be paid by a supplier in respect of a day is equal to the amount of electricity supplied by that supplier on that day multiplied by the interim levy rate which applies in relation to that day.

(3) The interim levy rate which applies in relation to a day is—

(a) the rate determined under regulation 6, or

(b) where an adjusted interim rate which has been determined under regulation 12(1)(a) has effect in accordance with regulation 13(4), that rate.

(4) The CFD counterparty must, as soon as reasonably practicable after the BSCCo has carried out an Interim Information Volume Allocation Run in respect of a day in a quarterly obligation period, issue a notice to each electricity supplier who supplied electricity on that day stating the interim rate payment which the supplier to whom the notice is issued must pay in respect of that day.

(5) A supplier must make an interim rate payment in respect of a day by the 5th working day after the day on which the CFD counterparty has issued a notice under paragraph (4) to that supplier.

(6) Where a supplier fails to pay all or part of an interim rate payment by the day on which that payment must be made, that supplier must pay the CFD counterparty simple interest on any unpaid amount at the rate specified in regulation 35(1) from the day after the day on which that payment should have been made.

(7) For the purposes of paragraph (2), the amount of electricity supplied by an electricity supplier on a particular day is the amount of electricity which the BSCCo determines, on the basis of an Interim Information Volume Allocation Run in respect of that day, as the amount of electricity supplied by that supplier on that day.

### **Data reconciliation of interim rate payments**

**9.—**(1) This regulation applies where, before the conclusion of a quarterly obligation period, the BSCCo carries out a relevant allocation run in respect of a day in that period and the reconciled interim rate amount in relation to that day for an electricity supplier is different to the net levied interim rate payment for that supplier.

(2) Where that reconciled interim rate amount is more than the net levied interim rate payment the supplier must pay the difference to the CFD counterparty.

(3) Where that reconciled interim rate amount is less than the net levied interim rate payment the CFD counterparty must pay the difference to the supplier.

(4) The CFD counterparty must, as soon as reasonably practicable after the BSCCo has carried out a relevant allocation run in respect of a day, issue a notice to each electricity supplier which states the amount which must be paid by virtue of paragraph (2) or (3).

(5) An electricity supplier who is required to make payment by virtue of paragraph (2) must make that payment by the 5th working day after the day on which the CFD counterparty issues the notice to that supplier under paragraph (4).

(6) The CFD counterparty must make a payment it is required to make by virtue of paragraph (3) by the 8th working day after the day on which the BSCCo carried out the relevant allocation run following which the CFD counterparty is required to make that payment.

(7) Where a supplier fails to pay all or part of a payment it is required to make by virtue of paragraph (2) that supplier must pay the CFD counterparty simple interest at the rate specified in regulation 35(1) on any unpaid amount from the day after the 5th working day after the day referred to in paragraph (5).

(8) For the purposes of this regulation—

- (a) the reconciled interim rate amount for a supplier in relation to a day is equal to the amount of electricity supplied by that supplier on that day multiplied by the interim levy rate which applies to that day by virtue of regulation 8(3);
- (b) the net levied interim rate payment for a supplier in relation to a day is the sum of the interim rate payment that supplier was required to pay in respect of that day and any payments that supplier was previously required to pay in respect of that day by virtue of paragraph (2), less any payments the CFD counterparty was previously required to pay to that supplier in respect of that day by virtue of paragraph (3);
- (c) a relevant allocation run is an Initial Volume Allocation Run or a Reconciliation Volume Allocation Run; and
- (d) the amount of electricity supplied by an electricity supplier on a particular day is the amount of electricity which the BSCCo determines, on the basis of the most recent relevant allocation run in relation to that day, as the amount of electricity supplied by that supplier on that day.

## CHAPTER 3

### Payments for reserve

#### Reserve payments

10.—(1) The CFD counterparty must determine—

- (a) the total amount of reserve payments (“the total reserve amount”) to be collected from suppliers in respect of each quarterly obligation period; and
- (b) the amount of each electricity supplier’s reserve payment in respect of each quarterly obligation period calculated in accordance with regulation 11.

(2) The CFD counterparty must determine the total reserve amount and the amount of each electricity supplier’s reserve payment for a quarterly obligation period—

- (a) where that period commences on 1st April 2015, before 1st January 2015;
- (b) for any other quarterly obligation period, before the commencement of the quarterly obligation period which immediately precedes that period.



- (3) The CFD counterparty must publish its determination of the total reserve amount for a quarterly obligation period—
- (a) where that period commences on 1st April 2015, before 1st January 2015;
  - (b) for any other quarterly obligation period, before the commencement of the quarterly obligation period which immediately precedes that period.
- (4) The CFD counterparty must issue a notice to every electricity supplier which sets out the amount of that supplier’s reserve payment for a quarterly obligation period—
- (a) where that period commences on 1st April 2015, before 1st January 2015;
  - (b) for any other quarterly obligation period, before the commencement of the quarterly obligation period which immediately precedes that period.
- (5) The total reserve amount for a quarterly obligation period is the amount which the CFD counterparty determines it would need to be paid for there to be a 19 in 20 probability of it being able to make all the payments it is required to make to CFD parties during that period having regard to—
- (a) the amount of interim rate payments which it expects to be paid during the period;
  - (b) the likelihood of any supplier failing to make payments it is required to make under these Regulations during that period; and
  - (c) the estimated quarterly obligation period income, estimated quarterly obligation period electricity supply and the estimated quarterly period cost in respect of that period.

### **Individual suppliers’ reserve amounts**

**11.**—(1) An electricity supplier must make a reserve payment to the CFD counterparty in respect of a quarterly obligation period (“the relevant period”) by—

- (a) the 90th day after the day on which the CFD counterparty has issued a notice to that supplier under regulation 15(3) (notice of reconciliation payment) in the quarterly obligation period that immediately precedes the relevant period; or
- (b) the 7th working day of the relevant period where—
  - (i) there is no quarterly obligation period which immediately precedes that period, or
  - (ii) no notice was issued to that supplier under regulation 15(3) in the quarterly obligation period that immediately precedes the relevant period.

(2) Where a supplier fails to pay all or part of a reserve payment by the date by which it must be paid in accordance with paragraph (1), that supplier must pay the CFD counterparty simple interest on any unpaid amount at the rate specified in regulation 35(1) from the day after the date by which that amount should have been paid.

(3) The amount of a supplier’s reserve payment in respect of the relevant period is the amount given by—

$$TRA \times \left( \frac{SRE}{RE} \right)$$

where—

TRA is total reserve amount for that period;

SRE is the amount of electricity supplied by that supplier in the reference period as determined on the date on which that total reserve amount is determined; and

RE is the total amount of electricity supplied by all suppliers in the reference period as determined on the date on which that total reserve amount is determined.

(4) The reference period is the most recent period of 30 consecutive days in respect of which the BSCCo has carried out an Initial Volume Allocation Run before the commencement of the quarterly obligation period immediately prior to the relevant period.

(5) For the purposes of paragraph (3) and regulation 14(4) the amount of electricity supplied by an electricity supplier in a reference period is the amount of all electricity which the BSCCo determines was supplied by that supplier in that period, on the basis of the most recent BSC reconciliation run which the BSCCo has carried out.

## CHAPTER 4

### Adjustments to interim rate and additional reserve payments

#### In period adjustments

**12.**—(1) Where the CFD counterparty is of the opinion that there is a high degree of likelihood that it will be unable to make all payments it is required to make to CFD parties during a quarterly obligation period it may, if it thinks it expedient to do so—

- (a) determine an adjusted interim levy rate in respect of that period in accordance with regulation 13;
- (b) determine an additional total reserve amount in respect of that period in accordance with regulation 14;
- (c) determine an adjusted interim levy rate and an additional total reserve amount in respect of that period.

(2) The CFD counterparty must take such steps as it considers necessary to ensure that electricity suppliers are kept informed of the likelihood that it will be unable to make all payments it is required to make to CFD parties during a quarterly obligation period.

(3) Where the CFD counterparty is of the opinion that there is a high degree of likelihood that it will collect significantly more from suppliers under regulations 8(1) and 11(1) during a quarterly obligation period than the amount it requires to be able to make all payments it is required to make to CFD parties during that period it may, in accordance with regulation 13, determine an adjusted interim levy rate in respect of that period.

#### Adjusted interim levy rate

**13.**—(1) Subject to paragraph (2), an adjusted interim levy rate for a quarterly obligation period (“the rate period”) is to be determined as the amount given by—

$$\frac{EOC - (EOI + SPC)}{EPS}$$

where—

EOC is the estimated quarterly obligation period payment cost in respect of the rate period, estimated in accordance with regulation 7(1) as at the time of the determination of the adjusted interim levy rate;

EOI is the estimated quarterly obligation period income in respect of the rate period, estimated in accordance with regulation 7(3) as at the time of the determination of the adjusted interim levy rate;

SPC is the sum of—

- (i) the total amount of interim rate payments which have been received by the CFD counterparty in relation to the rate period as at the time of the determination of the adjusted interim levy rate; and

- (ii) the total amount of interim rate payments which the CFD counterparty estimates it will receive in relation to the rate period, in the period from the time of the determination of the adjusted interim levy rate until the adjusted interim levy rate has effect;

EPS is the amount of electricity which the CFD counterparty estimates will be supplied by all electricity suppliers from the time the adjusted interim levy rate has effect until the conclusion of the rate period.

(2) Where the rate determined in accordance with paragraph (1) would be a negative number, the CFD counterparty must determine the adjusted interim levy rate as zero.

(3) Where the CFD counterparty has determined an adjusted interim levy rate it must publish a notice setting out that rate and must—

- (a) issue that notice to every electricity supplier, and
  - (b) issue that notice to any person who becomes an electricity supplier during that period.
- (4) An adjusted interim levy rate has effect from the latest of—
- (a) the commencement of the rate period;
  - (b) the 30th day after the CFD counterparty has published the notice under paragraph (3);
  - (c) any later date in the rate period which the CFD counterparty specifies in the notice under paragraph (3).

#### **Additional total reserve amount**

**14.**—(1) An additional total reserve amount for a quarterly obligation period (“the reserve period”) is the amount which the CFD counterparty determines it would need to be paid, having regard to the matters set out in paragraph (2)—

- (a) to be able to make any CFD counterparty payments it has failed to make during the reserve period; and
  - (b) for there to be a 19 in 20 probability of it being able to make all payments it is required to make to CFD parties during the reserve period after the making of the determination.
- (2) The matters referred in paragraph (1) are—
- (a) the amount of interim rate payments which it expects to be paid during the reserve period after the making of the determination of the additional total reserve amount;
  - (b) any other amount which it expects to be paid by suppliers during the reserve period after the making of that determination;
  - (c) the likelihood of any supplier failing to make payments it is required to make under these Regulations during that period; and
  - (d) the estimated quarterly obligation period income, estimated quarterly obligation period electricity supply and the estimated quarterly period cost in respect of that period.

(3) Where the CFD counterparty determines an additional total reserve amount each electricity supplier must pay an additional reserve payment.

- (4) An electricity supplier’s additional reserve payment is the amount given by—

$$\left( TAA \times \frac{SRE}{RE} \right)$$

where—

TAA is the additional total reserve amount;

SRE is the amount of electricity (within the meaning given by regulation 11(5)) supplied by that supplier in the adjusted reference period as determined at the time that additional total reserve amount is determined;

RE is the total amount of electricity (within the meaning given by regulation 11(5)) supplied by all suppliers in the adjusted reference period, as determined at the time that additional total reserve amount is determined.

(5) For the purpose of paragraph (4), “the adjusted reference period” means the most recent period of 30 consecutive days in respect of which the BSSCo has carried out an Initial Volume Allocation Run.

(6) Where the CFD counterparty has determined an additional total reserve amount it must—

- (a) publish a notice setting out its determination of the additional total reserve amount, and
- (b) issue a notice to every electricity supplier setting out its determination of that supplier’s additional reserve payment.

(7) An electricity supplier must pay an additional reserve payment in respect of the reserve period by the later of—

- (a) the date by which a reserve payment is due from that supplier in respect of that period;
- (b) the 30th day after the CFD counterparty has published a notice under paragraph (6)(a); or
- (c) any later date which the CFD counterparty specifies in the notice published under paragraph (6)(a).

(8) Where a supplier fails to make all or part of an additional reserve payment by the date it must be paid in accordance with paragraph (7), that supplier must pay the CFD counterparty simple interest on any unpaid amount at the rate specified in regulation 35(1) from the day after the date by which that amount should have been paid.

## CHAPTER 5

### Reconciliation payments

#### **Reconciliation payments**

**15.—**(1) The CFD counterparty must calculate, in accordance with regulation 16(1), the amounts to be paid as reconciliation payments by electricity suppliers or by that counterparty (“a reconciliation determination”) in respect of a quarterly obligation period (“the reconciliation period”) —

- (a) as soon as reasonably practicable after the CFD counterparty has issued a notice under regulation 8(4) in respect of the day which is the last day of the reconciliation period, and in any event before the conclusion of the quarterly obligation period which immediately follows the reconciliation period; and
- (b) once in every subsequent quarterly obligation period until the final reconciliation determination has been carried out in respect of the reconciliation period, as soon as reasonably practicable after the CFD counterparty has issued a notice under regulation 8(4) in respect of the last day of the quarterly obligation period which concluded immediately prior to that subsequent period, and in any event before the conclusion of that subsequent period.

(2) The final reconciliation determination in respect of the reconciliation period is the 10th reconciliation determination made in respect of that period.

(3) Where the CFD counterparty makes a reconciliation determination it must, as soon as reasonably practicable, issue a notice to each electricity supplier setting out—

- (a) the amount of any reconciliation payment which the CFD counterparty must make to that supplier following that determination;
- (b) the amount of any reconciliation payment which that supplier must make to the CFD counterparty following that determination.

### **Determination of reconciliation payments**

**16.**—(1) The amount of a reconciliation payment to be paid to or by a supplier in respect of the reconciliation period is—

- (a) the CFD counterparty's calculation, at the time of making that calculation, of the CFD period contribution in relation to that supplier in respect of the reconciliation period, less
- (b) the net levied amount for that supplier in respect of that period.

(2) For the purposes of the calculation of a CFD period contribution, where a Final Reconciliation Volume Allocation Run or Post-Final Volume Allocation Run has not been carried out by the BSCCo in relation to a day in the reconciliation period, the amount of electricity supplied on that day by a supplier is to be determined on the basis of the most recent BSC reconciliation run which the BSCCo has carried out in relation to that day.

(3) Where the amount of a reconciliation payment in relation to an electricity supplier—

- (a) is a positive number that supplier must pay that amount to the CFD counterparty;
- (b) is a negative number the CFD counterparty must pay the absolute value of that amount to that supplier.

(4) Where, following a reconciliation determination, the CFD counterparty must make a reconciliation payment to an electricity supplier, or that electricity supplier must make a reconciliation payment to the CFD counterparty, that payment must be made by the 90th day after the day on which the CFD counterparty has issued a notice to that supplier under regulation 15(3) in respect of that reconciliation determination.

(5) Where an electricity supplier is required to pay a reconciliation payment and it fails to pay all or part of that payment by the day on which that payment must be made, that supplier must pay the CFD counterparty simple interest on any unpaid amount at the rate specified in regulation 35(1) from the day after the day on which the payment should have been made.

(6) For the purposes of paragraph (1), the net levied amount for a supplier in respect of a reconciliation period is the sum of—

- (a) any payment that supplier was required to make under regulation 8(1) in respect of a day in the reconciliation period;
- (b) the sum of any payments that supplier was required to make under regulation 9(2) in respect of days in the reconciliation period less the sum of any payments the CFD counterparty was required to make under regulation 9(3) in respect of days in that period;
- (c) any payment that supplier was required to make under regulation 11(1) in respect of the reconciliation period;
- (d) any payment that supplier was required to make under regulation 14(3) in respect of the reconciliation period;
- (e) the sum of any reconciliation payments which that supplier was required to make under paragraph (3)(a) in respect of any previous reconciliation determination made in relation to the reconciliation period less the sum of any reconciliation payments which the CFD counterparty was required to make under paragraph (3)(b) in respect of any previous reconciliation determination made in relation to the reconciliation period.

## CHAPTER 6

### Mutualisation

#### Mutualisation

17.—(1) Where an electricity supplier (“the defaulting supplier”) fails to make a relevant payment the CFD counterparty may, subject to paragraph (3), require every other electricity supplier (“the non-defaulting suppliers”) to pay a share of an amount equal to the amount which was not paid by issuing a notice (“a mutualisation notice”) to each non-defaulting supplier.

(2) A mutualisation notice must state—

- (a) the amount which the defaulting supplier failed to pay;
- (b) the date by which the defaulting supplier should have paid that amount;
- (c) the provision of these Regulations under which the defaulting supplier should have paid;
- (d) in the case of a payment under regulation 8(1), the day to which that payment relates;
- (e) the amount (“the mutualisation amount”) which the non-defaulting supplier to whom the notice is issued must pay, calculated in accordance with paragraph (7);
- (f) the date (“the mutualisation date”) by which the mutualisation amount must be paid, which must be no earlier than 5 working days after the date on which the notice was issued and must be the same for each mutualisation notice issued in respect of the amount which the defaulting supplier failed to pay.

(3) A mutualisation notice may only be issued where the CFD counterparty is of the opinion that it will not hold any collateral (within the meaning given by regulation 19) provided by the defaulting supplier by the 5th working day after the day on which the CFD counterparty intends to issue that notice.

(4) Where the CFD counterparty issues mutualisation notices to non-defaulting suppliers it must, at the same time, issue a notice to the defaulting supplier which states the matters mentioned in paragraphs (2)(a) to (d) and (f).

(5) Where the CFD counterparty has issued a mutualisation notice to an electricity supplier, that supplier must pay the mutualisation amount specified in the notice by the date specified in the notice.

(6) Where an electricity supplier fails to pay all or part of a mutualisation payment in accordance with paragraph (5), that supplier must pay the CFD counterparty simple interest on any unpaid amount at the rate specified in regulation 35(1) from the day after the day on which the payment should have been made.

(7) The mutualisation amount to be stated in a mutualisation notice to be issued to a non-defaulting supplier is the amount given by—

$$DA \times \left( \frac{SRES}{NDPE} \right)$$

where—

DA is the amount which the defaulting supplier failed to pay;

SRES is the amount of electricity supplied by the non-defaulting supplier in the reference period as determined immediately before the notice is issued; and

NDPE is the total amount of electricity supplied by all non-defaulting suppliers in the reference period as determined immediately before the notice is issued.

(8) For the purposes of paragraph (7)—

- (a) the reference period is—

- (i) in respect of a default which constituted a failure to make a payment under regulation 8(1), the day to which that payment relates, or
  - (ii) in respect of any other default, the most recent period of 30 consecutive days in respect of which the BSSCo has carried out an Initial Volume Allocation Run; and
- (b) the amount of electricity supplied by an electricity supplier in a reference period is the amount of electricity which the BSSCo determines, on the basis of the most recent BSC reconciliation run which the BSSCo has carried out in relation to each day in that period, as the amount of electricity supplied by that supplier in that reference period.
- (9) In this regulation and regulation 18 “relevant payment” means any payment which an electricity supplier is required to make by virtue of regulation 8(1), 9(2), 11(1), 14(3), 16(3)(a) or 17(5).

### Repayment of mutualised amounts

18.—(1) Where the CFD counterparty has issued a mutualisation notice in respect of a failure of an electricity supplier (“the defaulting supplier”) to make a relevant payment, and subsequently recovers any amount from that supplier in respect of that failure, that amount must be paid to electricity suppliers who were required to pay mutualisation amounts in respect of that failure, in accordance with paragraphs (2) and (3).

(2) The amount which the CFD counterparty must, by virtue of paragraph (1), pay an electricity supplier who was required to pay a mutualisation amount (“the non-defaulting supplier”) is the amount given by—

$$AR \times \left( \frac{SU}{AU} \right)$$

where—

AR is the amount recovered from the defaulting supplier in respect of the failure to make the relevant payment (“the relevant default”), including any interest paid by the defaulting supplier in respect of that failure;

SU is the mutualisation amount which the non-defaulting supplier was required to pay in respect of the relevant default; and

AU is the total amount of mutualisation payments which were required to be paid by all non-defaulting suppliers in respect of the relevant default.

(3) Any amount which the CFD counterparty is required to pay by virtue of paragraph (1) must be paid by the 5th working day after the day on which it recovers the amount to be paid.

## CHAPTER 7

### Collateral

#### Requirement to provide collateral

19.—(1) This regulation applies at all times after an electricity supplier makes an electricity supply in a quarterly obligation period in respect of which it is required to make an interim rate payment.

(2) Where this regulation applies the supplier must ensure that, on any day, the CFD counterparty holds sufficient collateral from the supplier to meet the supplier’s collateral requirement for that day.

(3) The supplier’s collateral requirement for a day (“the relevant day”) is determined by reference to the period beginning 26 days, and ending 5 days, before that day (“the relevant period”).

(4) For each day in the relevant period, the amount of electricity supplied by the supplier on that day (as determined on the day before the relevant day) multiplied by the interim levy rate which applies in relation to the relevant day gives a relevant amount.

(5) The sum of the relevant amounts is the supplier's collateral requirement for the relevant day.

(6) The supplier is not to be treated as having breached its obligation under paragraph (2) where, after the first occasion on which it provided sufficient collateral to the CFD counterparty to meet its collateral requirement for a day—

- (a) the amount of that supplier's collateral held by the CFD counterparty fell below that supplier's collateral requirement for a subsequent day; and
- (b) by the second working day ("the cure day") after that subsequent day, the supplier provides sufficient collateral to the CFD counterparty to meet its collateral requirement for the cure day.

(7) Collateral may be provided in the form of—

- (a) cash;
- (b) appropriate letters of credit; or
- (c) a combination of the two.

(8) For the purposes of this regulation—

- (a) collateral is held by the CFD counterparty where it is provided to the CFD counterparty and not called (within the meaning of regulation 22);
- (b) the amount of electricity supplied by a supplier on any day is the amount which the BSCCo determines, on the basis of the most recent BSC reconciliation run carried out by the BSCCo in relation to that day, as the amount of electricity that the supplier supplied on that day; and
- (c) the interim levy rate which applies in relation to a day is the interim levy rate which applies in relation to that day by virtue of regulation 8(3).

(9) In this regulation "appropriate letter of credit" is to be construed in accordance with regulation 20(1).

### **Appropriate letters of credit**

**20.**—(1) For the purposes of regulation 19, a letter of credit is appropriate if—

- (a) it is issued by a person who holds a required rating; and
- (b) it is provided on terms which the CFD counterparty considers are appropriate.

(2) The terms which the CFD counterparty may consider are appropriate under paragraph (1)(b) include terms relating to—

- (a) the manner in which any demand for payment under a letter of credit is to be made;
- (b) the manner in which any payment under a letter of credit is to be made;
- (c) requirements about the holding of funds to meet demands for payment under a letter of credit.

(3) Where an electricity supplier has provided the CFD counterparty with a letter of credit issued by a person who ceases to hold a required rating that letter will not constitute an appropriate letter of credit from the 10th working day after the day on which that person ceases to hold that rating.

(4) Subject to paragraph (5), a person holds a required rating if that person has been assessed by—

- (a) Fitch Ratings as having a short term debt rating of "F1" or better;
- (b) Moody's as having a short term debt rating of "P-1" or better; or



(c) Standard and Poor's as having a short term debt rating of "A-1" or better.

(5) Where the CFD counterparty is of the opinion that the requirement that appropriate letters of credit must be issued by persons holding a short term debt rating mentioned in paragraph (4)(a) to (c) is too onerous in the circumstances, and subject to having regard to its duty under regulation 28(1), it may issue a notice to electricity suppliers specifying alternative short term debt ratings, and that notice shall remain in force until such time as it is withdrawn.

(6) The CFD counterparty may withdraw a notice under paragraph (5) ("the first notice") by issuing a further notice ("the withdrawal notice") to electricity suppliers setting out the date from which the first notice is to be withdrawn (that date being no earlier than 10 working days after the day on which the withdrawal notice is issued).

(7) The CFD counterparty must, before 1<sup>st</sup> December 2014, publish a document setting out the terms of letters of credit which it is likely to regard as appropriate for the purposes of paragraph (1)(b), and must keep any such document under review and publish any revision from time to time.

(8) In this regulation—

"Fitch Ratings" means Fitch Ratings Limited (registered company number 01316230);

"Moody's" means the corporation known as Moody's Investors Service Inc. incorporated in the US State of Delaware with the file number 0577904;

"Standard and Poor's" means the corporation known as Standard & Poor's Financial Services LLC. incorporated in the US State of Delaware with the file number 4621989.

### **Calling of collateral**

**21.**—(1) Collateral provided by an electricity supplier is called by the CFD counterparty where the CFD counterparty issues a notice to that supplier which sets out the amount of collateral which is to be called.

(2) The CFD counterparty may issue a notice under in paragraph (1) to an electricity supplier if that supplier has failed to make a relevant payment and—

(a) 2 working days have passed since the day on which that supplier should have made that payment; or

(b) the CFD counterparty is of the opinion that there is no prospect of that supplier making that payment by 2 working days after the day on which that supplier should have made that payment.

(3) The amount of collateral which may be called by the CFD counterparty where a supplier has failed to make a relevant payment is the lesser of—

(a) the amount of collateral provided by that supplier; or

(b) the amount of that relevant payment or, where there is more than one relevant payment which that supplier has failed to make and in respect of which a notice under paragraph (1) could be issued, the sum of all relevant payments in respect of which a notice under paragraph (1) could be issued.

(4) Where the whole or part of a supplier's collateral which was provided in the form of cash has been called by the CFD counterparty that amount is to be treated as a payment made by that supplier to the CFD counterparty at the time that collateral was called.

(5) Where the whole or part of a supplier's collateral which was provided in the form of a letter of credit has been called by the CFD counterparty—

(a) the CFD counterparty must take steps to demand payment from the person who provided the letter in the amount of the lesser of—

- (i) the amount which can be demanded under that letter, or
  - (ii) the amount of collateral which has been called; and
- (b) the amount which has been paid to the CFD counterparty under that letter is to be treated as a payment by that supplier to the CFD counterparty made at the time that amount is received by the CFD counterparty.
- (6) In this regulation—
- “relevant payment” means any payment which a supplier is required to make by virtue of regulation 8(1), 9(2), 11(1), 14(3), 16(3)(a) or 17(5) which has not been made by that supplier by the time that payment should have been made, and which remains unpaid.

### **Withdrawal of collateral and payment of interest**

22.—(1) Where the collateral provided by an electricity supplier and held by the CFD counterparty is more than that supplier’s collateral requirement, that supplier may make a request that the CFD counterparty repay or return as much collateral as exceeds the supplier’s collateral requirement by giving a notice to the CFD counterparty.

(2) Where a request under paragraph (1) has been received by the CFD counterparty, it must, before the 2nd working day after the day on which the request was received, repay or return the lesser of—

- (a) the amount requested by the supplier; or
- (b) the amount of collateral which the CFD counterparty determines exceeds that supplier’s collateral requirement at the time the payment is to be made.

(3) Where a supplier has provided collateral in the form of cash, and the CFD counterparty holds that sum in an account which bears interest, it must pay to that supplier an amount equal to any such interest earned in relation to that sum within 5 working days of receiving that interest.

## **PART 3**

### **Operational costs**

#### **CHAPTER 8**

##### **The operational costs levy**

### **The operational costs levy**

23.—(1) An electricity supplier must make a payment (“an operational cost payment”) to the CFD counterparty for each day that supplier makes an electricity supply during an operational cost period.

(2) The amount of an operational cost payment to be paid by a supplier in respect of a day is equal to the amount of electricity supplied by that supplier on that day multiplied by the operational levy rate.

(3) The CFD counterparty must, as soon as reasonably practicable after the BSCCo has carried out an Initial Volume Allocation Run in respect of a day in an operational cost period, issue a notice to each electricity supplier who supplied electricity on that day stating the operational cost payment which the supplier to whom the notice is issued must pay in respect of that day.

(4) An electricity supplier must make an operational cost payment in respect of a day by the operational cost payment date in relation to that payment.

(5) The operational cost payment date in relation to an operational cost payment is—

- (a) in relation to an operational cost payment due in respect of any day in the first operational cost period, the 5th working day after the CFD counterparty has issued a notice under paragraph (3) to the supplier who must make that payment in respect of every operational cost payment due from that supplier in respect of that period;
  - (b) in relation to an operational cost payment due in respect of a day in any other operational cost period, the 5th working day after the day on which the CFD counterparty has issued a notice under paragraph (3) to the supplier who must make that payment.
- (6) Where an electricity supplier fails to make an operational cost payment by the operational cost payment date in relation to that payment, that supplier must pay the CFD counterparty simple interest on any unpaid amount at the rate specified in regulation 35(1) from the day after the operational cost payment date.
- (7) For the purposes of this regulation—
- (a) the operational levy rate is £0.079 per megawatt hour; and
  - (b) the amount of electricity supplied by an electricity supplier on a particular day is the amount of electricity which the BSCCo determines, on the basis of an Initial Volume Allocation Run carried out in relation to that day, as the amount of electricity which that supplier supplied on that day.

### Repayment of excess

24.—(1) The CFD counterparty must determine, as soon as reasonably practicable after the conclusion of an operational cost period, whether the amounts received under regulation 23(1) in respect of that period and received by virtue of regulation 23(6) during that period are greater than the costs which it incurred in respect of the relevant period in relation to that operational cost period.

(2) Where the CFD counterparty determines that those amounts are greater than those costs it must pay the difference to electricity suppliers as soon as reasonably practicable after making that determination.

(3) Where the CFD counterparty must make a payment under paragraph (2), the amount which the CFD counterparty must pay to an electricity supplier in respect of an operational cost period is the amount given by—

$$(AR - CO) \times \left( \frac{SE}{ST} \right)$$

where—

AR is the sum of—

- (i) any amounts received by the CFD counterparty under regulation 23(1) in respect of that period,
- (ii) any amounts received by the CFD counterparty by virtue of regulation 23(6) during that period,
- (iii) any amounts which were paid to the CFD counterparty during the relevant period for the purpose of compensating it for any costs incurred by it in respect of a breach of any duty or obligation owed to it (whether or not under these Regulations);

CO is the costs the CFD counterparty determines it has incurred in respect of the relevant period;

SE is the amount of electricity supplied by the supplier in that period;

ST is the total amount of electricity supplied by all suppliers in that period.

(4) For the purposes of paragraph (3) the amount of electricity supplied by a supplier in an operational cost period is the amount of electricity which the BSCCo determines, on the basis of Initial Volume Allocation Runs, as the amount of electricity that supplier supplied in that period.

(5) In this regulation—

- (a) “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; and
- (b) “relevant period” in relation to an operational cost period means—
  - (i) in relation to the first operational cost period, the period beginning on the coming into force of these regulations and ending on 31st March 2015; or
  - (ii) in relation to any other operational cost period, that operational cost period.

## PART 4

### Miscellaneous

#### CHAPTER 9

#### Enforcement and disputes

#### **Enforcement of requirements**

**25.—**(1) Any requirement of an electricity supplier under these Regulations is enforceable by the Authority as if any such requirement was a relevant requirement on a regulated person for the purposes of section 25 of the Electricity Act 1989(4).

(2) Where the CFD counterparty determines that an electricity supplier has not complied with any requirement to pay an amount required under these Regulations it may issue a notice to that supplier setting out—

- (a) the amount which the CFD counterparty determines that supplier should have paid;
- (b) the basis on which the CFD counterparty determined the amount;
- (c) the date on which the amount should have been paid;
- (d) the rate, if any, of interest which applies to the amount; and
- (e) any amount of interest which has accrued as at the date of the notice.

(3) Where the CFD counterparty determines that an electricity supplier has not complied with a requirement to ensure that the CFD counterparty holds sufficient collateral to meet the supplier’s collateral requirement under regulation 19(2) it may issue a notice to that supplier setting out—

- (a) the amount of collateral which the CFD counterparty determines the supplier should have provided;
- (b) the date on which the amount should have been provided;
- (c) the rate of interest which the supplier is required to pay, under paragraph (5), on the amount it is required to pay under paragraph (4).

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(4) 1989 c.29. The definitions of “regulated person” and “relevant requirement” in section 25(8) of EA 1989 were amended by S.I. 2011/2704. Other amendments to section 25 of EA 1989 were made by section 54(3) of, and Schedule 10 to, the Competition Act 1998 (c.41); sections 3(2), 60 and 108 of, and Schedule 6 to, the Utilities Act 2000 (c.27); section 63(1) of, and Schedule 7 to, the Consumers, Estate Agents and Redress Act 2007 (c.17); section 51(5) of, and Schedule 14 to, the Enterprise and Regulatory Reform Act 2013 (c.24); and S.I. 2011/2704.

(4) Where the CFD counterparty has issued a notice to a supplier under paragraph (3) that supplier is required to pay the amount specified in the notice to the CFD counterparty in cash by the next working day after the notice has been issued.

(5) Where the CFD counterparty has issued a notice to a supplier under paragraph (3) and that supplier is required to make a payment under paragraph (4), that supplier must pay the CFD counterparty simple interest on any unpaid amount of that payment at the rate specified in regulation 35(1) from the second working day after the day on which the notice was issued.

(6) Where an electricity supplier makes a payment under paragraph (4) the amount of that payment constitutes collateral held by the CFD counterparty for the purposes of regulation 19.

- (7) Where the CFD counterparty issues a notice to a supplier under paragraph (2) or (3)—
- (a) it must also provide a copy of that notice to the Authority; and
  - (b) it may publish a copy of that notice, or a summary of that notice.

### **Dispute notices**

**26.**—(1) An electricity supplier may dispute any determination made by the CFD counterparty under these Regulations, other than a determination made under or by virtue of regulation 27, by giving a notice to the CFD counterparty setting out—

- (a) the determination the supplier is disputing; and
- (b) the basis on which the supplier disputes the determination.

(2) For the purposes of paragraph (1), a dispute about a determination made by the CFD counterparty includes a dispute about the failure of the CFD counterparty to make a determination.

- (3) A notice under paragraph (1) must be given by an electricity supplier before the later of—
- (a) the 28th day after the day on which the determination was made by the CFD counterparty;
  - (b) in the case of a determination in respect of which the CFD counterparty must issue a notice, the 28th day after the day on which that notice was issued;
  - (c) in the case of a dispute about the failure of the CFD counterparty to make a determination, the 28th day after the day on which the CFD counterparty should have made the relevant determination which is in dispute.

(4) An electricity supplier may not dispute a determination if and to the extent that the dispute is about a determination, made by the BSCCo, of an amount of electricity supplied (whether by that supplier or any other supplier).

(5) Where an electricity supplier has given a notice under paragraph (1) in respect of a determination, that determination still has effect notwithstanding the giving of that notice.

### **Determination of disputes**

**27.**—(1) Where the CFD counterparty receives a notice under regulation 26(1) (“a dispute notice”) about a determination (or a failure to make a determination) under any provision of these Regulations (“a relevant provision”) it must, by the 28th day after the day on which it receives that notice either—

- (a) reject the notice; or
- (b) accept the notice (in full or in part) and make such determination under that provision as it thinks is necessary in consequence.

(2) Whether the CFD counterparty rejects or accepts a dispute notice, it must, on the same day, issue a notice (“a decision notice”) to the person who gave that dispute notice, setting out its decision and the reasons for it.

(3) Where the CFD counterparty makes a determination under a relevant provision by virtue of paragraph (1)(b) it must, on the same day, issue to each electricity supplier who may be affected by the making of that determination a notice which sets out that determination.

(4) Where the CFD counterparty makes a determination under a relevant provision by virtue of paragraph (1)(b) and—

- (a) that provision requires the determination to be made by a particular time which has passed, that determination has effect notwithstanding that requirement;
- (b) that provision requires something to be done by it by a particular time which has passed, that thing must be done as soon as reasonably practicable after the determination.

(5) Where the CFD counterparty makes a determination under a relevant provision by virtue of paragraph (1)(b) and that provision requires an electricity supplier to make a payment, that payment must be made (notwithstanding what that provision says about the time by which a payment must be made) by the date specified by the CFD counterparty in the notice issued under paragraph (3) to that supplier, that date being no earlier than—

- (a) the date by which, in the opinion of the CFD counterparty, it would be reasonably practicable for that electricity supplier to make that payment; or
- (b) the earliest date by which that supplier would have had to have made that payment if the determination had been made at the time the determination which is the subject of the dispute notice was or (in the case where the CFD counterparty failed to make a determination) should have been made.

(6) Where an electricity supplier has paid an amount to the CFD counterparty, or the CFD counterparty has paid an amount to that electricity supplier, and a determination made under a relevant provision by virtue of paragraph (1)(b) means that that amount should not have been paid, that amount must be returned to the person who paid it by—

- (a) the 5th working day after the day on which the notice issued in respect of that determination was issued under paragraph (3);
- (b) where the CFD counterparty is of the opinion that it would not be reasonably practicable for that amount to be returned by that date, such later date as the CFD counterparty specifies in the notice issued under paragraph (3) to that supplier in respect of that determination.

### **Duties of the CFD counterparty to enforce and notify**

**28.—**(1) The CFD counterparty must exercise its functions in the manner best calculated to ensure the collection of all amounts which are required to be paid or provided by electricity suppliers under these Regulations.

(2) In paragraph (1) “functions” includes—

- (a) any function conferred under these Regulations; and
- (b) the recovery of any sum as a civil debt by virtue of section 9 of the Act.

(3) The CFD counterparty must take such steps as it considers necessary to ensure that electricity suppliers are—

- (a) informed of their liabilities under these Regulations; and
- (b) provided with information about liabilities which they may incur under these Regulations.

(4) Where the CFD counterparty writes-off any debt owed to it by an electricity supplier, it must issue a notice of that fact to every electricity supplier who was required to make a payment under regulation 17(5) in relation to that debt.

## Notices and publications

**29.**—(1) Where the CFD counterparty is permitted or required to issue a notice (including a copy of a notice) to a person, that notice must be in writing and is issued if it has been sent (by or on behalf of the CFD counterparty) by post or electronic means to that person’s proper address.

(2) In paragraph (1), “proper address” means—

(a) in the case of a body corporate—

- (i) the registered or principal office of that person, or
- (ii) an email address provided by that person;

(b) in the case of a partnership—

- (i) the principal office of the partnership, or
- (ii) an email address provided by—

(aa) that partnership,

(bb) a partner, or

(cc) a person having control or management of the partnership business;

(c) in the case of any other person, that person’s last known address, which includes an email address (where that email address was provided by that person).

(3) So as to enable the CFD counterparty to discharge its functions under these Regulations, an electricity supplier must, within 2 working days of first making an electricity supply after 1st January 2015, provide an email address to the CFD counterparty at which it can be contacted, and if that supplier subsequently changes that email address it must notify the CFD counterparty of that change.

(4) Where the CFD counterparty issues a notice to an electricity supplier under regulation 6(3)(a) or (b) it must set out an address and an email address for correspondence in that notice.

(5) An electricity supplier may give a notice to the CFD counterparty by sending it by post or electronic means to the address or email address contained in the most recent notice issued to that supplier under regulation 6(3)(a) or (b).

(6) Where the CFD counterparty is required to publish any information under these Regulations the CFD counterparty must publish that information in such manner as the CFD counterparty considers appropriate for the purpose of bringing it to the attention of persons who may be affected by that information.

## 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(5) is in force, any equivalent rate determined by the Treasury under that section.

Date

Name  
[Minister][Secretary] of State  
Department of Energy and Climate Change

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(5) 1998 c. 11.

## SCHEDULE

Regulation 2(6)

1. Regulation 2 has effect as if—
  - (a) every reference to “the CFD counterparty”, except the reference in the definition of “letter of credit” in paragraph (1), is to “a CFD counterparty”; and
  - (b) the words “to whom it is provided” appeared after the words “the CFD counterparty” in the definition of “letter of credit” in paragraph (1).
2. Regulation 3 has effect as if—
  - (a) the reference in paragraph (1) to “the CFD counterparty” is to “each CFD counterparty”;
  - (b) any reference to “the CFD period contribution” in paragraphs (2) and (4) is to “a CFD period contribution in respect of a CFD counterparty”;
  - (c) the reference to “a supplier’s CFD period contribution” in paragraph (3) is to “a supplier’s CFD contribution in respect of a CFD counterparty”; and
  - (d) the reference to “the CFD counterparty” in paragraph (3)(b) is to “that CFD counterparty”.
3. Regulation 4 has effect as if the reference to “the CFD daily contribution” in that regulation is to “a CFD daily contribution in respect of a CFD counterparty” and every reference to “the CFD counterparty” in that regulation is to “that CFD counterparty”.
4. Regulation 5 has effect as if the reference to “the CFD quarterly contribution” is to “the CFD quarterly contribution in respect of a CFD counterparty” and every reference in that regulation to “the CFD counterparty” is to “that CFD counterparty”.
5. Regulation 6 has effect as if—
  - (a) every reference to “the CFD counterparty” is a reference to “a CFD counterparty”; and
  - (b) in relation to a CFD counterparty designated under section 7 of the Act on or after 1st January 2015, there is no requirement for that CFD counterparty to determine a levy rate in respect of the first quarterly obligation period which commences after its designation.
6. Regulation 7 has effect as if—
  - (a) any reference in paragraphs (1) and (4) to “the CFD counterparty” is to “a CFD counterparty”;
  - (b) any reference in paragraph (2) to—
    - (i) “the CFD counterparty” is to “that CFD counterparty”,
    - (ii) “a CFD” is to “a CFD to which that CFD counterparty is a party”, and
    - (iii) “CFDs” is to “CFDs to which that CFD counterparty is a party”; and
  - (c) the first reference to “the CFD counterparty” in paragraph (3) is to “a CFD counterparty” and every subsequent reference in that paragraph is to “that CFD counterparty”.
7. Regulation 8 has effect as if—
  - (a) the reference in paragraphs (1) and (4) to “the CFD counterparty” is to “each CFD counterparty”;
  - (b) in paragraph (2)—
    - (i) the words “to a counterparty” appeared after the words “by a supplier”,
    - (ii) the words “which that CFD counterparty determined and” appeared after the words “interim levy rate”;
  - (c) there appeared after paragraph (2) the following provision—

“(3A) Where a CFD counterparty has not determined an interim levy rate which applies in relation to a day, there is no requirement to make an interim rate payment to that CFD counterparty in respect of that day.”;

- (d) in paragraph (4), the words “to that CFD counterparty” appeared after the words “must pay”; and
  - (e) in paragraphs (5) and (6) the words “to a CFD counterparty” appeared after the words “interim rate payment” in both paragraphs and the reference to “the CFD counterparty” in those paragraphs is a reference to “that CFD counterparty”.
- 8.** Regulation 9 has effect as if—
- (a) the words “in relation to a CFD counterparty” appeared after the words “regulation applies” in paragraph (1) and after the words “net levied interim rate payment” in paragraphs (2) and (3);
  - (b) the words “in relation to that CFD counterparty” appeared after the words “that day” and after the words “that supplier” in paragraph (1);
  - (c) the references in paragraph (2) and (3) to “the CFD counterparty” are to “that CFD counterparty”;
  - (d) the reference in paragraph (4) and the first reference in paragraph (6) to “the CFD counterparty” are to “a CFD counterparty” and the second reference to it in paragraph (6) is to “that CFD counterparty”;
  - (e) the words “to a CFD counterparty” appeared after the words “make payment” in paragraph (5) and after the word “make” in paragraph (7), and the references in those paragraphs to “the CFD counterparty” are to “that CFD counterparty”;
  - (f) the words “in relation to a CFD counterparty” appeared after the words “in relation to a day” in paragraph (8)(a) and (b);
  - (g) the words “which that CFD counterparty determined and” appeared after the words “interim levy rate” in paragraph (8)(a); and
  - (h) the words “to that CFD counterparty” appeared after the words “in respect of that day” in each place they appear in paragraph (8)(b), and the reference in that paragraph to “the CFD counterparty” is to “that CFD counterparty”.
- 9.** Regulation 10 has effect as if—
- (a) every reference to “the CFD counterparty” is a reference to “a CFD counterparty”;
  - (b) the words “by it” appeared after the words “to be collected” in paragraph (1)(a);
  - (c) the words “to it” appeared after the words “reserve payment” in paragraph (1)(b) and in paragraph (4); and
  - (d) in relation to a CFD counterparty designated under section 7 of the Act on or after 1st January 2015 there is no requirement for that CFD counterparty to determine a total reserve amount or the amount of each supplier’s reserve payment in respect of the first quarterly obligation period which commences after its designation, and therefore no such payments are required to be made to it in respect of that period.
- 10.** Regulation 11 has effect as if—
- (a) the first reference to “the CFD counterparty” in paragraph (1) is to “a CFD counterparty” and the second reference is to “that CFD counterparty”;
  - (b) the words “by that CFD counterparty” appeared after the words “regulation 15(3)” in paragraph (1)(b)(ii);

- (c) the words “to a CFD counterparty” appeared after the words “reserve payment” in paragraph (2) and the reference to “the CFD counterparty” in that paragraph is to “that CFD counterparty”; and
  - (d) in paragraph (3), the words “in relation to a CFD counterparty” appeared after the words “in respect the relevant period” and the words “determined by that CFD counterparty” appeared after the words “total reserve amount for that period”.
11. Regulation 12 has effect as if every reference to “the CFD counterparty” is to “a CFD counterparty”.
12. Regulation 13 has effect as if—
- (a) the words “in relation to a CFD counterparty” appeared after the words “(“the rate period”)” in paragraph (1) and every reference to “the CFD counterparty” in that paragraph is to “that CFD counterparty”;
  - (b) the words “by a CFD counterparty” appeared in paragraph (2) after the words “paragraph (1)”, and the reference to “the CFD counterparty” in that paragraph is to “that CFD counterparty”;
  - (c) the reference to “the CFD counterparty” in paragraph (3) is to “a CFD counterparty”; and
  - (d) in paragraph (4), the words “determined by a CFD counterparty” appeared after the words “adjusted interim levy rate” and any reference to “the CFD counterparty” in that paragraph is to “that CFD counterparty”.
13. Regulation 14 has effect as if—
- (a) in paragraph (1), the words “in relation to a CFD counterparty” appeared after the words “(“the reserve period”)” and the reference to “the CFD counterparty” in that paragraph is to “that CFD counterparty”;
  - (b) the reference to “the CFD counterparty” in paragraph (3) is to “a CFD counterparty” and the words “to that CFD counterparty” appeared after the words “additional reserve payment” in that paragraph;
  - (c) in paragraph (4), the words “in relation to a CFD counterparty” appeared after the words “An electricity supplier’s additional reserve payment” and the words “determined by that CFD counterparty” appeared after the words “the additional total reserve amount”;
  - (d) the reference to “the CFD counterparty” in paragraph (6) is a reference to “a CFD counterparty”; and
  - (e) the words “to a CFD counterparty” appeared after the words “adjusted reserve payment” in paragraphs (7) and (8) and every reference in those paragraphs to “the CFD counterparty” is to “that CFD counterparty”.
14. Regulation 15 has effect as if—
- (a) the first reference in paragraph (1) to “the CFD counterparty” is to “a CFD counterparty” and every subsequent such reference in that paragraph is to “that CFD counterparty”;
  - (b) the first reference in paragraph (3) to “the CFD counterparty” is to “a CFD counterparty” and the other reference to it in that paragraph is to “that CFD counterparty”.
15. Regulation 16 has effect as if—
- (a) the words “in relation to a CFD counterparty” appeared after the words “by a supplier” in paragraph (1) and the words “in respect of that CFD counterparty” appeared after the words “CFD period contribution” in that paragraph;
  - (b) any reference to “the CFD counterparty” in paragraphs (1)(a), (3) and (5) are to “that CFD counterparty”;

- (c) the words “in relation to that CFD counterparty” appeared after the words “for that supplier” in paragraph (1)(b);
  - (d) the words “and a CFD counterparty” appeared after the words “an electricity supplier” in paragraph (3);
  - (e) the words “to a CFD counterparty” appeared after the words “reconciliation payment” in paragraph (5); and
  - (f) in paragraph (6)—
    - (i) the words “in relation to a CFD counterparty” appeared after the words “net levied amount for a supplier”,
    - (ii) the words “to that CFD counterparty” appeared after the words “to make” in sub-paragraphs (a), (b), (c) and (d), and after the first appearance of those words in sub-paragraph (e), and
    - (iii) the reference in sub-paragraph (e) to “the CFD counterparty” is to “that CFD counterparty”.
- 16.** Regulation 17 has effect as if—
- (a) the words “to a CFD counterparty” appeared after the words “make a relevant payment” in paragraph (1), and the reference in that paragraph to “the CFD counterparty” is a reference to “that CFD counterparty”;
  - (b) the words “by a CFD counterparty” appeared after the words “may only be issued” in paragraph (3) and the references in that paragraph to “the CFD counterparty” are to “that CFD counterparty”;
  - (c) the references to “the CFD counterparty” in paragraphs (4) and (5) are to “a CFD counterparty”;
  - (d) the words “to that CFD counterparty” appeared in paragraph (5) after the words “amount specified in the notice”; and
  - (e) the words “to a CFD counterparty” appeared after the words “mutualisation payment” in paragraph (6) and the reference in that paragraph to “the CFD counterparty” is a reference to “that CFD counterparty”.
- 17.** Regulation 18 has effect as if the references to “the CFD counterparty” in that regulation are to “a CFD counterparty”.
- 18.** Regulation 19 has effect as if—
- (a) the reference to “the CFD counterparty” in paragraph (2) is to “each CFD counterparty” and the words “in relation to that CFD counterparty” appeared after the words “for that day” in that paragraph;
  - (b) the words “in relation to a CFD counterparty” appeared before the words—
    - (i) “is determined by” in paragraph (3), and
    - (ii) “where, after” in paragraph (6);
  - (c) the words “determined by that CFD counterparty” appeared after the words “interim levy rate” in paragraph (4);
  - (d) the first reference to “the CFD counterparty” in paragraph (6) is to “a CFD counterparty” and every other such reference in that paragraph is to “that CFD counterparty”;
  - (e) the words “in relation to that CFD counterparty” appeared after the words “collateral requirement” where they appear in paragraph (6)(a) and (b); and
  - (f) the first reference to “the CFD counterparty” in paragraph (8) is to “a CFD counterparty” and the subsequent reference is to “that CFD counterparty”.

- 19.** Regulation 20 has effect as if—
- (a) the words “to which it is to be provided” appeared after the words “the CFD counterparty” in paragraph (1)(b);
  - (b) every reference to “the CFD counterparty” in paragraphs (2), (3) and (5) to (7) is to “a CFD counterparty”;
  - (c) the words “which apply to letters of credit which are to be provided to it” appeared after the words “alternative short term debt ratings” in paragraph (5); and
  - (d) the requirement in paragraph (7) to publish a document applies to a CFD counterparty who was designated after 1st December 2014 as if the reference to “1st December 2014” in that paragraph is to “as soon as reasonably practicable after that CFD counterparty is designated under section 7 of the Act.
- 20.** Regulation 21 has effect as if—
- (a) the first reference to “the CFD counterparty” in paragraphs (1), (2), (4) and (5), and the reference to it in paragraph (3), are to “a CFD counterparty” and all other references in that regulation to “the CFD counterparty” are to “that CFD counterparty”; and
  - (b) the words “to that CFD counterparty” appeared—
    - (i) after the words “relevant payment” in paragraph (2),
    - (ii) before the words “is the lesser of” in paragraph (3),
    - (iii) after the words “collateral provided” in paragraph (3)(a), and
    - (iv) after the words “failed to make” in paragraph (3)(b).
- 21.** Regulation 22 has effect as if—
- (a) the first reference to “the CFD counterparty” in paragraphs (1) and (2), and the reference to it in paragraph (3), is to “a CFD counterparty” and every other reference in paragraphs (1) and (2) to “the CFD counterparty” is to “that CFD counterparty”; and
  - (b) the words “in relation to that CFD counterparty” appeared after the words “collateral requirement” where those words appear in that regulation.
- 22.** Regulation 23 has effect as if every reference to “the CFD counterparty” is to “the first CFD counterparty designated under section 7 of the Act”.
- 23.** Regulation 24 has effect as if any reference in paragraphs (1), (2) and (5), and the first reference in paragraph (3), to “the CFD counterparty” is to “the first CFD counterparty designated under section 7 of the Act” and every other reference to “the CFD counterparty” is to “that CFD counterparty.
- 24.** Regulation 25 has effect as if—
- (a) the first reference to “the CFD counterparty” in paragraphs (2), (3), (4), (5) and (7) is to “a CFD counterparty” and every other reference in that regulation to “the CFD counterparty” is to “that CFD counterparty; and
  - (b) the words “to a CFD counterparty” appeared after the words “makes a payment” in paragraph (6).
- 25.** Regulation 26 has effect as if the first reference to “the CFD counterparty” in paragraphs (1), (2) and (3)(c), and the reference to it in paragraph (3)(a) and (b), is to “a CFD counterparty” and every other reference in that regulation to “the CFD counterparty” is to “that CFD counterparty.
- 26.** Regulation 27 has effect as if the first reference to “the CFD counterparty” in paragraphs (5) and (6) is to “a CFD counterparty”, every other reference to it in those paragraphs is to “that CFD counterparty”, and every other reference in that regulation to “the CFD counterparty” is to “a CFD counterparty”.

- 27.** Regulation 28 has effect as if—
- (a) every reference in that regulation to “the CFD counterparty” is a reference to “a CFD counterparty”;
  - (b) the words “to it” appeared—
    - (i) after the words “paid or provided” in paragraph (1), and
    - (ii) after the words “their liabilities” in paragraph (3)(a); and
  - (c) in paragraph (3)(b) the words “to that CFD counterparty” appeared after the word “liabilities”.
- 28.** Regulation 29 has effect as if—
- (a) the first reference in paragraphs (1) and (6), and the reference in paragraphs (4) and (5), to “the CFD counterparty” is to “a CFD counterparty”;
  - (b) each reference in paragraph (3) to “the CFD counterparty” is to “each CFD counterparty” and the words “and where a CFD counterparty was not designated at the time of making that first supply that supplier must provide that email address to that CFD counterparty within 2 working days of its designation under section 7 of the Act” appeared after the words “be contacted”;
  - (c) every other reference to “the CFD counterparty” in that regulation is to “that CFD counterparty”; and
  - (d) the words “by that CFD counterparty” appeared after the words “notice issued” in paragraph (5).
- 29.** Regulation 30 has effect as if—
- (a) the first reference in that regulation to “the CFD counterparty” is to “a CFD counterparty” and every other reference to “the CFD counterparty” in that regulation is to “that CFD counterparty”;
  - (b) the words “to that CFD counterparty” appeared after the words “liable to pay” in paragraph (1)(b).
- 30.** Regulation 31 has effect as if—
- (a) the first reference in that regulation, and the first reference in paragraph (5) of that regulation, to “the CFD counterparty” is to “a CFD counterparty” and every other reference to “the CFD counterparty” in that regulation is to “that CFD counterparty”;
  - (b) the words “owed to that CFD counterparty” appeared in paragraph (2) after each reference to “supplier”.
- 31.** Regulation 32 has effect as if—
- (a) the first reference to “the CFD counterparty” in paragraph (1) and the reference to it in paragraph (3) is to “the first CFD counterparty designated under section 7 of the Act”;
  - (b) the first reference to “the CFD counterparty” in paragraph (2) is to “a CFD counterparty”; and
  - (c) every other reference to “the CFD counterparty” in that regulation is to “that CFD counterparty”.
- 32.** Regulation 33 has effect as if—
- (a) the first reference in that regulation, and the first reference in paragraphs (3) and (5), to “the CFD counterparty” is to “a CFD counterparty” and every other reference to “the CFD counterparty” in that regulation is to “that CFD counterparty”; and



- (b) the words “by a CFD counterparty that is unable fully to meet its liabilities under a CFD” appeared after the words “which can be used” in paragraph (4).

33. Regulation 34 has effect as if the words “which is a party to that CFD or connected agreement” appeared after the words—

- (a) “used by the CFD counterparty” in paragraph (2); and
- (b) “owed by the CFD counterparty” in paragraph (3).

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations impose a number of obligations on persons who supply electricity in Great Britain pursuant to an electricity supply licence (granted by the Gas and Electricity Markets Authority under section 6 of the Electricity Act 1989). Those obligations principally consist of requirements to make payments to the CFD counterparty, a person who is designated as such under section 7 of the Energy Act 2013. The payments are made to enable the CFD counterparty to meet its costs, and these include the costs it incurs in meeting obligations it has under CFDs. CFDs are contracts which the CFD counterparty must enter into by virtue of section 10 or 14 of the Energy Act 2013 with eligible generators (see the Contracts for Difference (Definition of Eligible Generator) Regulations 2014 which defines that term).

A CFD (or Contract for Difference) will set out circumstances when the CFD counterparty will have to make payments to the eligible generator who is a party to that contract, and for circumstances when that eligible generator will have to make payments to that CFD counterparty. It is therefore possible that there will be times when CFDs will not operate as a cost to the CFD counterparty, but instead will provide a benefit to it. In those circumstances that benefit will be passed on to electricity suppliers through a reduction in the payments they must make, or through payments these Regulations require the CFD counterparty to make to those suppliers.

### Part 1

Regulation 2 contains definitions used in these Regulations. There are terms used in these Regulations which are defined in the Balancing and Settlement Code (as that code was in force on 1st April 2014). A copy of that code may be requested from Elexon Limited (4th Floor, 350 Euston Road London NW1 3AW). The Balancing and Settlement Code Company makes determinations under that code about the amount of electricity supplied in Great Britain, and these determinations are relied upon for various purposes in these Regulations. Every licensed electricity supplier is a party to that code.

### Part 2

Regulation 3 sets out the obligation of electricity suppliers to contribute towards the costs of CFDs and connected agreements (which are contracts entered into pursuant to CFDs – this will include, for example arrangements with a financial institution who has an interest in a generating station which is the subject of a CFD) in respect of a quarterly obligation period. There are 4 such periods a year each lasting 3 months, the first such period commencing on 1st April 2015. The regulation also

provides the obligation of the CFD counterparty to make payments to suppliers where a supplier's contribution in respect of a period is calculated as being a negative number.

Whilst this regulation sets out the principal obligation to make such payments, the obligation will actually be made by the making of interim payments and reconciliation payments. The final amount may not be known until 28 months after the period in respect of which they are due. This is because the amount of the payments are calculated by reference to the supply of electricity which may take up to 28 months after such supply occurred to be finally determined.

The contribution for a period is composed of contributions calculated in respect of each day in the period, and an additional contribution for the entire period.

Regulation 4 sets out the calculation for an electricity supplier's contribution in respect of a day in a quarterly obligation period. This is calculated on the basis of the payments the CFD counterparty must make under CFDs and connected agreements and the payments the CFD counterparty receives under those agreements where those payments are dependent upon the amount of electricity generated on that day.

Regulation 5 sets out the calculation for an electricity supplier's additional contribution for the period which is calculated on the basis of all payments the CFD counterparty must make and receives under CFDs and connected agreements which are paid during that period and which are not dependent upon the amount of electricity generated on a particular day.

Regulation 6 requires the CFD counterparty to determine a rate which applies to a quarterly obligation period. That rate will be the basis on which electricity suppliers make interim daily payments to that CFD counterparty during that period. The rate is set on the basis of the amount of money which the CFD counterparty believes it will need to make payments under CFDs during that period less the amount of money which it believes it will be paid under CFDs during that period. The rate is then arrived at by dividing that amount by the amount of electricity which the CFD counterparty estimates will be supplied during that period.

Regulation 7 sets out the basis on which the CFD counterparty must estimate the matters referred to in regulation 6 (such as the amount of money which it believes it will need).

Regulation 8 requires an electricity supplier who supplies electricity on a day in a quarterly obligation period to make a payment in respect of that day (an interim rate payment). The payment is calculated by multiplying the rate determined by the CFD counterparty by the amount of electricity supplied by that supplier on that day. The CFD counterparty must issue a notice to that supplier once the first information about electricity supply on that day is available (this will be available once the Balancing and Settlement Code Company has carried out the Interim Information Volume Allocation Run in relation to that day). The supplier must then pay the amount within 5 working days after the day that notice was issued. As a consequence the payments are likely to be daily payments (subject to how working days fall). The regulation also provides that interest must be paid on amounts which are not paid on time.

Regulation 9 provides for payments to be made by a supplier to that CFD counterparty, or by the CFD counterparty to that supplier where the Balancing and Settlement Code Company revises its determination of an amount of electricity supplied following the carrying out of an Initial Volume Allocation Run or Reconciliation Volume Allocation Run. The payments are made for the purpose of ensuring that the amount paid by a supplier as an interim rate payment reflects, as much as possible, the amount of electricity actually supplied. These payments will not be made after the conclusion of a quarterly obligation period as amounts will be subsequently reconciled once every quarter.

Regulation 10 requires the CFD counterparty to calculate a "total reserve amount" to be paid to it in respect of a quarterly obligation period and the share of that amount which each supplier must pay (that supplier's reserve payment). The counterparty must make those determinations at least 3 months before that period.

The CFD counterparty will determine the total reserve amount by modelling how much money it would need to have during a period to meet all payments it might have to make under CFDs. Unlike its determination of the interim rate, which is done on the basis of its best (or central) estimate, this determination is based upon a probabilistic assessment of the amount it would need in 95% of possible cases. This therefore covers the amount that would be needed in many extreme scenarios, but not the most extreme scenarios.

Regulation 11 sets out the time by which a reserve payment must be made, which is either the 7th working day after the commencement of the period to which the payment relates, or where a reconciliation payment is to be made in that period, at the same time as that supplier must make a reconciliation payment. This is so that the amounts can be offset against one another so a supplier only has to make a single payment (or may receive a single payment).

Regulation 12 allows the CFD counterparty to vary an interim levy rate, and/or require a further reserve payment from suppliers where, after setting the rate and determining the total reserve amount, it later appears that it will not receive enough money to make all the CFD payments it must make during that period. The regulation also allows the CFD counterparty to reduce the interim levy rate if it appears that it will receive significantly more than enough money to make CFD payments during that period.

Regulation 13 sets out the means for determining an adjusted interim rate. The rate is arrived at in the same manner as the rate determined under regulation 6, but taking into account such payments as have already been made and may be made before the coming into effect of the adjusted rate. An adjusted rate will not have effect before at least 30 days after that rate has been determined.

Regulation 14 sets out the means for determining an additional total reserve amount for a quarterly obligation period, and the share of that amount which each supplier must pay. An additional total reserve amount is arrived at in a similar manner to the total reserve amount. The same probabilistic assessment is made in respect of the payments which must be made by the CFD counterparty for as much of the that period as remains after the making of the determination. The determination should also take into account any payments which the CFD counterparty has failed to make during the period. A supplier will have to pay its share of the amount no earlier than 30 days after it has been notified of the amount it has to pay.

Regulation 15 makes provision for the CFD counterparty to calculate reconciliation payments which must be made by it to a supplier, or by that supplier to it. Reconciliation payments must be determined in respect of a quarterly obligation period once in every subsequent quarterly obligation and paid 90 days after the CFD counterparty has issued a notice which sets out the amount of that payment. This will happen 10 times, by which point the Balancing and Settlement Code Company will have carried out all reconciliation volume allocation runs in respect of every day in a quarterly obligation period.

Regulation 16 sets out the means for calculating a reconciliation payment. To calculate such a payment the CFD counterparty must calculate the CFD period contribution of a supplier using the latest data available. This is then compared against the total amount of payments under Chapter 2 and 3 which that supplier was required to pay to the CFD counterparty, and which were required to be paid by the CFD counterparty to that supplier. The difference between the two determines the amount and direction of a reconciliation payment.

Regulation 17 makes provision for the circumstances in which an electricity supplier defaults on a payment it was required to make. In those circumstances other electricity suppliers can be required to pay further amounts to cover the amount of that default (a mutualisation of that default).

Regulation 18 makes provision for the circumstances where, following a mutualisation of a default, the CFD counterparty is able to recover amounts from the supplier who defaulted in respect of that default. In those circumstances, suppliers who were subject to the obligation to pay in respect of that default must be paid a share of the amount recovered, and a share of any default interest which was paid in respect of that default.

Regulation 19 imposes a requirement on electricity suppliers to provide collateral in respect of their obligations under this Part. The amount of collateral which must be provided by a supplier is calculated by reference to the amount of electricity supply for a recent period of 21 days. A supplier may choose to provide collateral as cash or as letters of credit. As that requirement is calculated daily the requirement may fluctuate and electricity suppliers may have to provide additional collateral. Suppliers will also have to provide additional collateral where their collateral is used (“called”) by the CFD counterparty.

Regulation 20 makes provision about the terms of letters of credit which may be provided by electricity suppliers to meet their collateral requirement. The CFD counterparty may determine whether the terms of a letter of credit are appropriate. The regulation also makes provision about the required credit rating of a person issuing such a letter.

Regulation 21 contains provision about how collateral is called by the CFD counterparty. It may be called by the CFD counterparty when an electricity supplier fails to make a payment it is required to make under this Part. The CFD counterparty may then issue a notice to that supplier informing it that an amount of that supplier’s collateral is called. This may trigger the requirement to provide further collateral. Where collateral was provided as cash this cash is treated as having been paid to the CFD counterparty and will discharge that supplier’s obligations as a payment would have done. Where collateral was provided as a letter of credit, the obligations of a supplier will only be discharged where the person issuing the letter of credit has paid the CFD counterparty under it.

Regulation 22 allows an electricity supplier to request the return of collateral where the amount provided exceeds the amount of that supplier’s collateral requirement at that time. The regulation also provides that any interest which has been earned on the holding of cash collateral by the CFD counterparty must be paid to the supplier who provided that collateral.

### **Part 3**

Regulation 23 requires electricity suppliers to make operational cost payments to the CFD counterparty for the purpose of allowing it to meet its costs (apart from making payments under CFDs which are dealt with in Part 2). The payments are calculated by reference to the amount of electricity supplied on a day, and a rate specified in this regulation. The rate specified in this regulation was arrived at by dividing the anticipated annual budget of the counterparty and dividing by the expected amount of electricity to be supplied in the first operational cost period. This number was then rounded to 4 decimal places. This gives £0.0790 per megawatt hour. Payments must be made daily, except in relation to the first operational costs period (which runs from 1st January 2015 until 31st March 2015 – every subsequent period will last a year) where the sum of the payments for that period must be made after the CFD counterparty has given notice of the amounts of all the payments which are due in respect of that period, so they are, in effect, required to be paid by the same date which will be after the conclusion of that period.

It is anticipated that this regulation will be amended annually to vary the rate.

Regulation 24 makes provision about the circumstances where the CFD counterparty has received more in operational cost payments than the amount of its costs. In those circumstances the CFD counterparty must pay electricity suppliers any excess based on the amount of electricity supplied over the operational cost period.

### **Part 4**

Regulation 25 makes provision about enforcement of the requirements of electricity suppliers under these Regulations. It enables the Gas and Electricity Markets Authority to deal with any breach of such requirements as if those requirements were, in effect, requirements under an electricity supply licence. It also provides for notices to be issued by the CFD counterparty where a supplier has

breached a requirement to make a payment, or a requirement to provide collateral. In the case of a breach of a collateral requirement, a supplier will then have to provide that collateral as cash.

Regulation 26 enables an electricity supplier to dispute any determination made by the CFD counterparty. Determinations about an amount of electricity supplied which is determined by the BSCCo are excluded from this provision, as there are processes in the BSC for determining such disputes and once those disputes are determined, the results would flow through reconciliation.

Regulation 27 sets out the duties of the CFD counterparty in relation to the determination of disputes including the steps it must take if it accepts a dispute. It also makes provision dealing with the effect of determinations made following the determination of a dispute.

Regulation 28 imposes some general duties of the CFD counterparty including a duty in relation to the collection of sums to be paid under these Regulations, and duties to keep electricity suppliers informed of their liabilities under these Regulations.

Regulation 29 makes provision about the issuing of notices by the CFD counterparty under these Regulations and the giving of notices by electricity suppliers, including provision about the giving and issuing of notices electronically.

Regulation 30 is provision enabling the CFD counterparty to set off amounts it has to pay to a supplier against amounts that supplier must pay.

Regulation 31 deals with the circumstances where an electricity supplier makes a partial payment such that not all of its liabilities at that time will be discharged by the making of that payment. In those circumstances that payment will be allocated to the outstanding debts of that supplier in an order determined partially by this regulation and partially by the CFD counterparty in its discretion.

Regulation 32 prohibits the CFD counterparty from using payments from suppliers except for the purpose for which they were raised – either to make payments under CFDs (or connected agreements) or to pay for the costs of the CFD counterparty.

Regulation 33 deals with the circumstances where the CFD counterparty does not hold enough money to make all payments it is required to make under CFDs (or connected agreements). In those circumstances the amount that the CFD counterparty holds will be divided between the CFDs (and connected agreements) such that a proportional share of the total available may be paid under each CFD (and connected agreement).

Regulation 34 contains provision designed to have effect in relation to the terms of CFDs and connected agreements. The terms of CFDs and connected agreements are likely to include limited recourse provisions which prevent a party to those agreements from taking steps to recover more from the CFD counterparty than it has raised under these Regulations (or is available from other sources). Regulation 34 applies the apportionment provision in regulation 33 to such CFDs (or connected agreements) in accordance with those terms.

Regulation 35 sets out the rate of interest which applies to a requirement of a supplier to pay interest under these Regulations.

## **Schedule**

The Schedule sets out the way the provisions of these Regulations will operate when there is more than one CFD counterparty designated. The Energy Act 2013 limits the circumstances when this may occur but these provisions are required if it was ever necessary for the Secretary to designate additional CFD counterparties. In those circumstances electricity suppliers would be required to contribute separately to the costs of CFDs in relation to each CFD counterparty.

The operational costs provisions in Part 3 would only apply in those circumstances to the CFD counterparty which was designated first however, as the rate for the levy under that Part is set out in these Regulations at the level it has been set at in order to recover the anticipated costs of that person

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The Contracts for Difference (Electricity Supplier Obligations) Regulations 2014 No. 2014

and other arrangements would have to made to fund the costs of additional CFD counterparties until such time as these Regulations may be amended to provide for a levy for those costs.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Department of Energy and Climate Change at 3 Whitehall Place, London, SW1A 2AW and is published with the Explanatory Memorandum alongside this instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).