
DRAFT STATUTORY INSTRUMENTS

2014 No.

The Electricity Capacity Regulations 2014

PART 5

Capacity agreements, capacity market register and termination

Capacity agreements

30.—(1) A “capacity agreement” is the term used to describe the rights and obligations accruing to a capacity provider under or by virtue of electricity capacity regulations and capacity market rules in relation to a particular capacity committed CMU and one or more delivery years.

(2) A capacity agreement accrues to each successful bidder in a capacity auction (unless the capacity auction is annulled under regulation 27), in relation to each CMU for which a successful bid was made, for—

- (a) the de-rated capacity of the CMU in the case of a generating CMU, or the DSR bid capacity of the CMU in the case of a demand side response CMU;
- (b) the delivery year for which the capacity auction was held in the case of a capacity agreement for a one year capacity obligation, or a period of two or more whole delivery years commencing with that delivery year in the case of a capacity agreement for a multi-year capacity obligation; and
- (c) the capacity cleared price.

(3) The “capacity cleared price” means the price which, subject to any provision for adjustment for inflation, is to be used for the purpose of calculating capacity payments in respect of a capacity obligation.

(4) The capacity cleared price is—

- (a) subject to sub-paragraphs (b) and (c), the auction clearing price;
- (b) in the case of a multi-year capacity obligation awarded in a capacity auction in which price duration equivalences are used, the price which is equivalent to the auction clearing price for the duration of the capacity obligation;
- (c) in the case of a time banded capacity obligation awarded in a DSR transitional auction, the percentage of the auction clearing price applicable under regulation 29(7) or (8).

(5) A capacity agreement—

- (a) may not be disclaimed; and
- (b) may not be transferred or terminated except as provided in these Regulations and capacity market rules.

(6) Unless terminated in accordance with these Regulations or capacity market rules, a capacity agreement remains in force until the expiry of the period of delivery years for which it is issued.

Capacity market register

31.—(1) The Delivery Body must, in accordance with this regulation and capacity market rules, establish and maintain a capacity market register containing details of—

- (a) in respect of each CMU that is the subject of an application to prequalify for a capacity auction—
 - (i) the prequalification decision; and
 - (ii) the de-rated capacity of the CMU; and
- (b) each capacity agreement.

(2) The Delivery Body must include on the capacity market register in respect of each capacity agreement—

- (a) a description of the CMU in respect of which the capacity agreement is issued;
- (b) the duration of the capacity agreement, and the delivery year or years for which it is issued;
- (c) the capacity obligation for which the capacity agreement is issued;
- (d) the capacity cleared price;
- (e) in the case of a capacity agreement issued following a T-4 auction, the base period applicable for the purpose of calculating capacity payments;
- (f) the annual penalty cap and monthly penalty cap applicable in accordance with the electricity capacity regulations in force at the date of issue of the capacity agreement, expressed respectively as percentages of the annual capacity payment and the monthly capacity payments payable under the capacity agreement;
- (g) whether the capacity provider is subject to a financial commitment milestone and, if so, the date by which that milestone must be met;
- (h) whether the capacity provider is subject to a minimum completion requirement and, if so, the long stop date in respect of that requirement;
- (i) the rates at which TF1 and TF2 are payable, which must be determined by the Delivery Body in accordance with regulation 32; and
- (j) such other matters as may be specified in capacity market rules.

(3) The matters referred to in sub-paragraphs (a) to (i) of paragraph (2) apply throughout the duration of the capacity agreement and may not be amended except—

- (a) by the Delivery Body to correct an administrative error;
- (b) in accordance with a direction of the Authority or the court under Chapter 1 of Part 10;
- (c) in accordance with any provision of electricity capacity regulations or capacity market rules for—
 - (i) the adjustment of amounts for inflation;
 - (ii) the extension of a date by which a milestone or other requirement must be met; or
 - (iii) the termination of capacity agreements.

(4) In paragraph (2)(h), “long stop date” and “minimum completion requirement” have the meanings given in the Rules.

Termination fee rates

32.—(1) In this regulation—

- “ *TF1_{rate}*” means the rate at which a termination fee is payable by a capacity provider if—
- (a) a capacity agreement is terminated on a ground specified in capacity market rules; and

- (b) capacity market rules specify that TF1 is payable in the event of the capacity agreement being terminated on that ground;

“ $TF2_{rate}$ ” means the rate at which a termination fee is payable by a capacity provider if—

- (a) a capacity agreement is terminated on a ground specified in capacity market rules; and
- (b) capacity market rules specify that TF2 is payable in the event of the capacity agreement being terminated on that ground.

(2) $TF1_{rate}$ is £5,000/MW.

(3) $TF2_{rate}$ is £25,000/MW.

(4) References in this regulation to a rate expressed as £/MW are to that amount in pounds per MW of de-rated capacity or DSR bid capacity for which the capacity agreement is issued, as specified in the capacity market register.

Termination of capacity agreements: Secretary of State’s discretion

33.—(1) This regulation applies where the Delivery Body gives a termination notice to a capacity provider under capacity market rules.

(2) The Secretary of State may, if the Secretary of State thinks fit, within 3 months of the date on which the termination notice is given—

- (a) direct the Delivery Body to withdraw the termination notice; or
- (b) if the termination notice was given on the ground that the capacity provider has failed to meet a specified requirement, extend the date by which the capacity provider must meet that requirement.

(3) The date to which a requirement is extended under paragraph (2)(b) must not be later than 6 months after the date on which the termination notice was given.

(4) A capacity provider may make representations to the Secretary of State requesting the Secretary of State to exercise the discretion in paragraph (2).

(5) Representations under paragraph (4)—

- (a) must be made in writing within 20 working days after the date on which the termination notice is given; and
- (b) if the termination notice was given on the ground that the capacity provider has failed to meet a specified requirement, must specify a cure plan.

(6) The Secretary of State must consider any representations made in accordance with paragraph (5).

(7) A capacity provider may not use the procedure in paragraphs (4) and (5) to dispute whether a termination event has occurred, and may only dispute that matter in accordance with Chapter 1 of Part 10.

(8) In this regulation—

- (a) a “cure plan” means proposals by the capacity provider demonstrating how and when it will comply with the specified requirement (except as to any provision in capacity market rules about the time for compliance with the specified requirement);
- (b) a “specified requirement” means a requirement in capacity market rules, the non-compliance with which is specified in capacity market rules as a termination event.

(9) In this regulation, “termination event” and “termination notice” have the meanings given in the Rules.

Termination of capacity agreements: CFDs and ROO conversions

34.—(1) The Delivery Body must terminate a capacity agreement (“A”) issued following a T-4 capacity auction where, by no later than 16 months before the start of the delivery period, the Delivery Body receives in respect of A—

- (a) a CFD transfer notice; or
- (b) a ROO conversion notice.

(2) The Delivery Body must—

- (a) comply with paragraph (1) immediately it receives the notice; and
- (b) as soon as reasonably practicable, give a notice that it has terminated A to—
 - (i) the capacity provider in respect of A;
 - (ii) the Settlement Body; and
 - (iii) the CFD counterparty in respect of a CFD transfer notice or the Authority in respect of a ROO conversion notice.

(3) In this regulation—

“CFD transfer notice” means a notice from the CFD counterparty which—

- (a) identifies A;
- (b) states that the CFD counterparty intends to grant a CFD in respect of CMU i for any of the delivery period; and
- (c) gives the date on which the CFD is intended to be granted;

“CMU i” means the CMU to which A applies;

“the delivery period” means the delivery year or the period of delivery years for which A imposes a capacity obligation;

“ROO conversion notice” means a notice from the capacity provider in respect of A which—

- (a) identifies A;
- (b) states that the capacity provider intends to claim ROCs in respect of CMU i as a unit conversion or as part of a station conversion for any of the delivery period; and
- (c) includes a written confirmation from the Authority that at least one ROC has been issued in respect of CMU i as a unit conversion or as part of a station conversion since the date A was awarded;

“station conversion” has the same meaning as it has in the ROO(1); and

“unit conversion” has the same meaning as it has in the ROO(2).

Null and void capacity agreements

35.—(1) Any capacity agreement issued in respect of a CMU which, at the date on which the capacity agreement was issued, did not meet the general eligibility criteria is null and void.

(2) Where the Delivery Body becomes aware that a capacity agreement is null and void by reason of paragraph (1), the Delivery Body must as soon as reasonably practicable give a notice to the capacity provider and the Settlement Body which—

- (a) identifies the capacity agreement; and

(1) The definition of “station conversion” was inserted into [S.I. 2009/785](#) by [S.I. 2013/768](#), and into [S.S.I. 2009/140](#) by [S.S.I. 2013/116](#).

(2) The definition of “unit conversion” was inserted into [S.I. 2009/785](#) by [S.I. 2013/768](#), and into [S.S.I. 2009/140](#) by [S.S.I. 2013/116](#).

(b) states that the capacity agreement is null and void.