
DRAFT STATUTORY INSTRUMENTS

2014 No.

The Electricity Capacity Regulations 2014

PART 7

Credit cover

CHAPTER 1

General

Application of this Part and interpretation

53.—(1) This Part applies to a person who—

- (a) has applied to prequalify for a capacity auction; and
- (b) receives a notice from the Delivery Body under capacity market rules (a “conditional prequalification notice”) that it has prequalified in respect of that CMU subject to satisfying the requirements of this Part.

(2) In this Part, “A” means a person who is required to provide credit cover.

(3) In this Part—

“applicant credit cover” means credit cover provided, or required to be provided, by a person to which this Part applies;

“credit cover” means a letter of credit or cash deposit which meets the requirements in regulation 54;

“credit obligation period” means the period for which, under regulation 60, A is required to provide credit cover;

“draw down” means—

- (a) in relation to a cash deposit in a bank account, the withdrawal of funds from the account by the Settlement Body;
- (b) in relation to a letter of credit, the payment of funds by the issuing bank to the Settlement Body further to a notice of drawing;

“letter of credit” means a letter, in a form approved by the Settlement Body, which contains an irrevocable and unconditional authorisation in favour of the Settlement Body to be paid on demand up to an amount stated in the letter from an account held at a qualifying bank at any time during a period specified in the letter;

“notice of drawing” means a notice signed by or on behalf of the Settlement Body demanding payment under a letter of credit;

“qualifying bank” means—

- (a) a United Kingdom clearing bank;
- (b) any other bank which has a long term debt rating of—

- (i) not less than A– by Standard & Poor’s(1); or
 - (ii) not less than A3 by Moody’s(2); or
 - (c) such other bank as the Settlement Body may approve;
- “the required amount” means the amount of credit cover which A is required to provide, as determined in accordance with regulation 59(1) or, if applicable, regulation 60(2).

(4) In this Part, references to a prospective generating CMU are to be treated as including any generating CMU in respect of which a bidder is awarded, or an applicant pre-qualifies to bid for, a multi-year capacity obligation in a T-4 auction held on or before 31st July 2016.

- (5) In paragraph (3), in the definition of “qualifying bank”—
- “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 & Poor’s” means the corporation known as Standard & Poor’s Corporation, incorporated in the US State of Delaware with the file number 4621989.

Credit cover: requirements

- 54.—(1) A person who is under an obligation to provide credit cover must do so—
- (a) for at least the required amount; and
 - (b) in a permissible form (or partly in one permissible form and partly in the other).
- (2) The following are permissible forms of credit cover—
- (a) a letter of credit which meets the conditions in paragraph (3);
 - (b) a cash deposit in a bank account specified by the Settlement Body in accordance with paragraph (4).
- (3) The conditions in this paragraph are that the letter of credit is—
- (a) issued by a qualifying bank;
 - (b) in sterling;
 - (c) available for payment at a London branch of the issuing bank against a notice of drawing delivered by the Settlement Body; and
 - (d) valid—
 - (i) at least until the end of the credit obligation period; or
 - (ii) if the credit obligation period is more than 6 months, for a period of not less than 6 months.
- (4) A bank account specified by the Settlement Body for the purpose of paragraph (2)(b) must—
- (a) be an interest bearing account in the name of the Settlement Body;
 - (b) be used only for the purpose of holding credit cover provided under these Regulations; and
 - (c) be an account the funds in which may only be withdrawn by or on behalf of the Settlement Body.

Approval of credit cover

- 55.—(1) When credit cover is provided by A, the Settlement Body must—
- (a) determine whether the credit cover is—

(1) The register of rating is available from the following webpage: www.standardandpoors.com/home/en/eu.

(2) The register of ratings is available from the following webpage: www.moody.com/Pages/atc.aspx.

- (i) approved in full;
 - (ii) approved in part and not approved in part; or
 - (iii) not approved; and
- (b) give a notice to A of its determination.
- (2) The Settlement Body must approve credit cover if it meets the requirements in regulation 54, and must not approve it otherwise.
- (3) The notice under paragraph (1)(b) must be given—
- (a) in the case of additional credit cover provided by A under regulation 56(2), not later than 2 working days after the additional credit cover is provided; and
 - (b) in any other case, not later than 15 working days after the credit cover is provided.

Maintenance of credit cover

- 56.**—(1) A must maintain credit cover equal to or more than the required amount at all times during the credit obligation period.
- (2) If the Settlement Body gives notice to A that any credit cover provided by A is not approved, A must within 5 working days provide additional credit cover so that the total amount of credit cover provided (excluding credit cover which is not approved or has been drawn down) is equal to or more than the required amount.
- (3) Where a letter of credit which A has provided as credit cover is due to expire on a date before the end of the credit obligation period (“the expiry date”), A must, not later than 10 working days before the expiry date, provide to the Settlement Body—
- (a) written confirmation from the issuing bank that the letter of credit will be extended by a further period of not less than—
 - (i) 6 months; or
 - (ii) the remaining duration of the credit obligation period, if less; or
 - (b) replacement credit cover.
- (4) A may at any time during the credit obligation period provide additional credit cover, whether or not A needs to provide the additional credit cover in order to comply with paragraphs (1) to (3).

Downgrade of letter of credit

- 57.**—(1) If A becomes aware that the bank issuing the letter of credit ceases to be a qualifying bank (a “downgrade”), then A must give notice to the Settlement Body as soon as it becomes so aware.
- (2) If the Settlement Body becomes aware of a downgrade, the Settlement Body may give notice to A to that effect.
- (3) A must within 8 days of the giving of such notice by the Settlement Body or A, whichever is the earlier, provide replacement credit cover so that the total amount of credit cover provided which conforms with regulation 54 is equal to or more than the secured amount.
- (4) If A does not comply with paragraph (3)—
- (a) the Settlement Body may immediately draw down on the letter of credit to the full amount stated in the letter of credit and on receipt of funds from the paying bank place the funds in a bank account which satisfies the conditions in regulation 54(4); and
 - (b) funds placed in a bank account under sub-paragraph (a) shall continue to be treated as credit cover provided by A.

Release of credit cover

58.—(1) This paragraph applies if A has provided credit cover and one of the following circumstances applies—

- (a) A is no longer required, under regulation 60, to maintain any credit cover;
 - (b) A has provided further credit cover under regulation 57(3) to replace the credit cover previously provided, and the Settlement Body has approved the replacement credit cover; or
 - (c) the amount of credit cover provided by A and approved by the Settlement Body exceeds the required amount.
- (2) Where paragraph (1) applies—
- (a) A may, by giving notice in writing to the Settlement Body, request the Settlement Body to release—
 - (i) if paragraph (1)(a) applies, all or part of the credit cover;
 - (ii) if paragraph (1)(b) applies, the credit cover that has been replaced;
 - (iii) if paragraph (1)(c) applies, an amount of credit cover not exceeding the amount by which the credit cover referred to in paragraph (1)(c) exceeds the required amount; and
 - (b) the Settlement Body must release that amount of credit cover as soon as reasonably practicable.
- (3) Credit cover is released—
- (a) in the case of a cash deposit, by repaying the principal to A; and
 - (b) in the case of a letter of credit, by issuing notice to A confirming that the letter of credit is no longer required.

CHAPTER 2

Applicant credit cover

Requirement to provide applicant credit cover

59.—(1) An applicant to prequalify for a capacity auction in respect of a CMU (“CMU i”) must, if the applicant receives from the Delivery Body a conditional prequalification notice under capacity market rules, provide applicant credit cover in the amount determined in accordance with paragraph (2).

- (2) The amount of applicant credit cover to be provided is—
- (a) in the case of an application to prequalify for a T-4 auction or a T-1 auction, an amount equal to £5,000 per MW of the de-rated capacity of CMU i;
 - (b) in the case of an application to prequalify for a DSR transitional auction, an amount equal to £500 per MW of the de-rated capacity of CMU i.
- (3) If A is required to provide credit cover under paragraph (1), A must do so within 5 working days after receiving the conditional prequalification notice.

Credit obligation period

60.—(1) Where A provides applicant credit cover in respect of a CMU (“CMU i”), A must maintain credit cover in the amount calculated in accordance with regulation 59 until the earliest of the following events has occurred—

- (a) where CMU i is an unproven demand side response CMU, A nominates before the capacity auction, in accordance with capacity market rules, a DSR bid capacity for CMU i which is less than the de-rated capacity of CMU i;
 - (b) where A is required by capacity market rules to provide confirmation to the Delivery Body of its intention to bid in the capacity auction in respect of CMU i, it does not provide such confirmation within the time required by capacity market rules;
 - (c) the capacity auction is—
 - (i) cancelled; or
 - (ii) postponed or stopped, and rearranged, and A gives notice to the Delivery Body (where permitted to do so by capacity market rules) that it does not intend to bid in the rearranged auction in respect of CMU i;
 - (d) A is unsuccessful in its bid at the capacity auction in respect of CMU i;
 - (e) A has transferred its capacity agreement in respect of CMU i to another person in accordance with capacity market rules and the transferee has provided replacement credit cover which the Settlement Body has approved;
 - (f) where CMU i is a demand side response CMU, A has in accordance with capacity market rules provided to the Delivery Body a DSR test certificate which evidences—
 - (i) a proven DSR capacity equal to or greater than CMU i’s unproven DSR capacity; or
 - (ii) a proven DSR capacity less than CMU i’s unproven DSR capacity, but equal to or greater than 90% of that capacity;
 - (g) where CMU i is a prospective generating CMU—
 - (i) A has achieved its financial commitment milestone in accordance with capacity market rules; and
 - (ii) if CMU i is a distribution CMU in respect of which A did not provide a copy of a distribution connection agreement with its application for prequalification, A has provided a copy of its distribution connection agreement to the Delivery Body in accordance with capacity market rules; or
 - (h) the credit cover is drawn down under regulation 61.
- (2) Where paragraph (1)(a) applies, A must thereafter maintain credit cover in an amount equal to £5,000 per MW of the amount of the DSR bid capacity of CMU i until the earliest of the events in sub-paragraphs (b) to (h) of paragraph (1) has occurred.
- (3) Where paragraph (1)(f)(ii) applies—
- (a) the Settlement Body must draw down part of the credit cover calculated in accordance with paragraph (5); and
 - (b) the applicant must maintain credit cover in the amount so calculated until it has been drawn down, but is no longer required to maintain the remainder of the credit cover.
- (4) Where any other sub-paragraph of paragraph (1) applies, the applicant is no longer required to maintain any credit cover.
- (5) The amount of credit cover to be drawn down under paragraph (3)(a) (“DD”) must be calculated in accordance with the formula—
- $$DD = RA \times \frac{UC - PC}{UC}.$$
- (6) In paragraph (5)—
- “PC” means CMU i’s proven DSR capacity;
 - “RA” means the required amount for CMU i as calculated under regulation 59;

“UC” means CMU i’s unproven DSR capacity.

(7) In this regulation “the capacity auction” means the capacity auction in relation to which applicant credit cover has been provided in respect of CMU i.

Draw down of applicant credit cover

61.—(1) The Settlement Body must draw down applicant credit cover provided by A in respect of a CMU (“CMU i”) if—

- (a) where CMU i is an unproven demand side response CMU—
 - (i) the credit obligation period has not ended by the date on which the delivery year of A’s capacity agreement in respect of CMU i commences; or
 - (ii) the Settlement Body receives a notice from the Delivery Body that A has provided a DSR test certificate which evidences a proven DSR capacity less than 90% of CMU i’s unproven DSR capacity;
- (b) where CMU i is a prospective generating CMU, the credit obligation period has not ended by the latest of the date in paragraph (i) and such of the dates in paragraphs (ii) and (iii) as are applicable—
 - (i) the date falling 18 months after the date on which A was awarded a capacity agreement in respect of CMU i;
 - (ii) if CMU i is a distribution CMU in respect of which regulation 60(1)(g)(ii) applies, the date 18 months prior to the commencement of the first delivery year of A’s capacity agreement in respect of CMU i;
 - (iii) if the date by which a financial commitment milestone is required by capacity market rules to be met or a copy of a distribution connection agreement is required by capacity market rules to be provided in respect of CMU i is extended under regulation 33(2)(b), the date to which the requirement is extended; or
- (c) payment of a termination fee has become due pursuant to an invoice issued under regulation 43, and the termination fee is unpaid.

(2) Where the Settlement Body is required to draw down applicant credit cover—

- (a) under sub-paragraph (a)(i) or (b) of paragraph (1), it must do so within 60 days from the date specified in that sub-paragraph;
- (b) under sub-paragraph (a)(ii) of paragraph (1), it must do so within 60 days from the date on which the Settlement Body receives the notice referred to in that sub-paragraph;
- (c) under sub-paragraph (c) of paragraph (1), it must do so as soon as reasonably practicable after the date on which payment of the termination fee becomes due.

(3) Subject to paragraph (4), applicant credit cover which is drawn down in accordance with this regulation is forfeited by A.

(4) If, after applicant credit cover has been drawn down, it is determined under Chapter 2 of Part 10 that the credit cover should not have been drawn down, the Settlement Body must pay to A the amount of the credit cover that was wrongly drawn down.

Effect of non-compliance

62. A may not bid in a capacity auction in respect of a CMU for which applicant credit cover is required, if A has not complied with this Part in relation to the provision of applicant credit cover in respect of that CMU.

