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STATUTORY INSTRUMENTS

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**2014 No. 2043**

**The Electricity Capacity Regulations 2014**

**PART 6**

**Payments**

**CHAPTER 1**

**General**

**The settlement calculations**

**36.**—(1) The Settlement Body must make the calculations set out in this Part and Schedule 1 (the “settlement calculations”)—

- (a) by such date as may be specified or, where no date is specified, by such time as is necessary to enable the Settlement Body to comply with the regulations in this Part; and
- (b) so far as possible, using the required data.

(2) Where, by the time a settlement calculation is to be made, the Settlement Body has not been provided with any required data which is necessary for that calculation, the calculation must be made using the best data available to the Settlement Body.

(3) In this regulation, “required data” means data which is required to be provided to the Settlement Body under capacity market rules.

**Data default notices**

**37.**—(1) Where a capacity provider (“C”) fails to comply with a requirement in capacity market rules to provide data to the Settlement Body, the Settlement Body must give a notice to C that C is in default (a “data default notice”).

(2) A data default notice may be varied by the Settlement Body and must be revoked when C has provided all the data required by capacity market rules.

**Invoices and credit notes: general**

**38.**—(1) An invoice or credit note issued by the Settlement Body must set out the determination of the amount which the recipient is liable to pay, or is entitled to receive, in such detail as will readily show the recipient how the determination has been made.

(2) An invoice must specify the day by which it is to be paid, which must be not less than 3 working days after the date on which the invoice is issued.

(3) Each electricity supplier and capacity provider must provide the Settlement Body with an address for electronic service of invoices and credit notes.

(4) Where an electricity supplier or a capacity provider has complied with paragraph (3), the Settlement Body must send an invoice or credit note electronically to the address provided.

## CHAPTER 2

## Calculations and determinations: capacity providers

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

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

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

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

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

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

(5) In this regulation—

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

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

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

“volume reallocation window” means the period during which capacity providers may submit capacity market volume reallocation notifications under capacity market rules.

**Capacity payments**

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

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

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

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

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

- (a) by no later than the 26th working day after the end of month M; but
- (b) if C is liable to pay a capacity provider penalty charge in respect of month M, not earlier than the day after the day by which C is required to pay that charge.

(5) Paragraphs (1) to (4) do not apply unless by the 25th working day after the end of month M the Settlement Body has received capacity market supplier charges in respect of month M.

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

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

### Capacity provider penalty charges

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

(2) If one or more capacity providers are liable to pay a capacity provider penalty charge in respect of month M the Settlement Body must, by no later than the 21st working day after the end of month M—

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

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

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

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

### Over-delivery payments

**42.**—(1) A capacity provider is entitled to receive from the Settlement Body an over-delivery payment in respect of a delivery year (“year X”) if any capacity committed CMU (“CMU i”) for which C was the capacity provider over-delivered in any relevant settlement period in year X.

(2) For the purposes of this regulation CMU i over-delivers in a relevant settlement period if, for CMU i,  $AE_{ij}$  is greater than  $ALFCO_{ij}$  in that settlement period.

(3) The Settlement Body must, by not later than the 26th working day after the end of year X—

- (a) determine the amount, if any, of the over-delivery payment payable to each capacity provider in respect of year X; and
- (b) issue to each capacity provider which is entitled to an over-delivery payment a credit note for the amount determined for it.

- (4) The amount payable to C under paragraph (3)(a) is the sum of—
- (a)  $TODP_{ix}$ , as calculated in accordance with paragraph 7 of Schedule 1, for each capacity committed CMU for which C was registered on the capacity market register as the capacity provider for the whole of year X; and
  - (b) C's proportion of  $TODP_{ix}$ , as calculated in accordance with paragraphs 7 and 8 of Schedule 1, for each capacity committed CMU for which C was registered on the capacity market register as the capacity provider for part of year X.

### Termination fees

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

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

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

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

(3) Where capacity market rules specify that TF1 is payable, the amount must be determined in accordance with the formula—

$$TF1 = TF1_{rate} \times CO.$$

(4) Where capacity market rules specify that TF2 is payable, the amount must be determined in accordance with the formula—

$$TF2 = TF2_{rate} \times CO.$$

(5) In this regulation—

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

“ $TF1_{rate}$ ” means the rate in pounds per MW determined in accordance with regulation 32 and specified in the capacity market register as the rate at which TF1 is payable under the capacity agreement; and

“ $TF2_{rate}$ ” means the rate in pounds per MW determined in accordance with regulation 32 and specified in the capacity market register as the rate at which TF2 is payable under the capacity agreement.

## CHAPTER 3

### Calculations and determinations: electricity suppliers

#### Settlement costs levy: the first levy period

**44.**—(1) Each liable electricity supplier must pay to the Settlement Body a settlement costs levy calculated in accordance with this regulation in respect of the first levy period.

(2) Subject to paragraph (3), the prescribed amount is £1,374,000.

(3) If the appointment date is on or after 1st September 2014, the prescribed amount is to be reduced by £100,000 for each full calendar month between 31st July 2014 and the appointment date.

(4) The Settlement Body must, as soon as reasonably practicable after the end of the first levy period—

- (a) calculate the amount of the settlement costs levy to be paid by each liable electricity supplier; and
- (b) issue an invoice to each liable electricity supplier for the amount to be paid by that supplier.

(5) The calculation under paragraph (4)(a) must be made in accordance with paragraph 9 of Schedule 1.

(6) In this regulation—

“the appointment date” means the date on which the Secretary of State first appoints a Settlement Body under regulation 80;

“the first levy period” means the period commencing on the appointment date and ending on 31st March 2015; and

“liable electricity supplier” means an electricity supplier which supplied electricity to customers in Great Britain in the first levy period;

“the prescribed amount” means the total amount of the settlement costs levy to be invoiced to liable electricity suppliers in respect of the first levy period;

“settlement costs” means costs incurred by the Settlement Body in connection with the performance of its functions under electricity capacity regulations and capacity market rules;

“settlement costs levy” means the levy imposed by this regulation on liable electricity suppliers in respect of settlement costs.

## CHAPTER 4

### Payment and non-payment

#### General

**45.**—(1) In this Chapter—

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

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

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

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

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

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

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

#### Payment of invoices and accruing interest

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

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

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

- (a) if the decision of the Settlement Body under that Part is that the invoiced amount is reduced but not extinguished, late payment interest accrues on the reduced amount from and including the payment due date until the date of payment;
  - (b) if the decision of the Settlement Body under that Part is that the invoiced amount is extinguished, no late payment interest accrues in respect of the invoiced amount.
- (4) The rate at which late payment interest is payable is 5 per cent per annum over the Bank of England base rate in force on the 30th June (in respect of interest which starts to run between 1st July and 31st December) or the 31st December (in respect of interest which starts to run between 1st January and 30th June) immediately before the date on which the interest starts to run.
- (5) In paragraph (4), “Bank of England base rate” means—
- (a) the rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the money markets; or
  - (b) where an order under section 19 of the Bank of England Act 1998(1) is in force, any equivalent rate determined by the Treasury under that section.

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

- 47.—(1) The Settlement Body must maintain a register (“the non-payment register”) which is to include in respect of a payer (“P”) who has not paid an invoice by the payment due date—
- (a) the name of P;
  - (b) whether P is an electricity supplier or a capacity provider;
  - (c) the type of invoice in respect of which P is in default;
  - (d) the payment due date;
  - (e) the date or dates when any payment has been made by P in respect of the invoice, and whether it is a full or partial payment; and
  - (f) whether P has given a disputes notice to the Settlement Body in respect of the invoice;
  - (g) if P has given a disputes notice in respect of the invoice, whether the dispute has been determined under Chapter 2 of Part 10 and, if so, that determination.
- (2) The matters included on the non-payment register under paragraph (1) are a “relevant register entry” in relation to P.
- (3) The Settlement Body must—
- (a) make a relevant register entry as soon as possible after P is in default; and
  - (b) update the relevant register entry if a payment is subsequently made, or a dispute is raised or determined.
- (4) The Settlement Body must remove a relevant register entry—
- (a) if it is determined under Chapter 2 of Part 10 that the payment is not due, as soon as reasonably practicable after the Settlement Body makes that determination;
  - (b) in any other case, 12 months after the date on which P became in default.
- (5) The Settlement Body must publish the information contained in the non-payment register on a website.
- (6) The Settlement Body must retain the data contained in a relevant register entry for 5 years after the relevant register entry is made.

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(1) 1998 c.11.

### **Payment of credit notes**

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

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

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

- (2) If this regulation applies—
  - (a) the Settlement Body must ensure that the credit otherwise payable to C is reduced—
    - (i) by the amount of the unpaid penalty charge;
    - (ii) to nil, if the amount of the unpaid penalty charge is equal to or greater than the amount of the credit; and
  - (b) the amount by which the credit is reduced is to be treated as a payment or part payment of the unpaid penalty charge.
- (3) The Settlement Body must ensure that the credit note issued to C states the amount by which the credit is reduced, and the reason for the reduction.

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

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

- (a) a satisfactory performance requirement applies in respect of CMU i in year X; and
  - (b) the requirement has not been met by 30th April in year X.
- (2) If, by the end of a relevant month, the capacity provider in respect of CMU i (“C”) has not complied with the satisfactory performance requirement, no monthly capacity payment is to be paid in respect of CMU i for that month.
- (3) If C complies with the satisfactory performance requirement during a relevant month, the Settlement Body must ensure that the credit which would otherwise be payable to C in respect of the monthly capacity payment for CMU i for that month is reduced by the proportion  $\frac{A}{B}$ , where—
- (a) A is the number of days in the relevant month before the day on which C complies with the satisfactory performance requirement; and
  - (b) B is the number of days in the relevant month.
- (4) If C has not complied with the satisfactory performance requirement by the end of year X—
- (a) C must repay to the Settlement Body all capacity payments made in respect of CMU i and year X; and
  - (b) the Settlement Body must, as soon as reasonably practicable after the end of year X, issue an invoice to C for the amount of those capacity payments.
- (5) The Settlement Body must—
- (a) if paragraph (2) applies, give a notice to C which states that no monthly capacity payment is to be paid in respect of CMU i for the relevant month, and states the reason;

- (b) if paragraph (3) applies, ensure that the credit note issued to C for the relevant month states the amount by which the credit is reduced, and states the reason;
  - (c) if paragraph (4) applies, ensure that the invoice issued to C under paragraph (4)(b) states the reason for the issue of the invoice.
- (6) In this regulation—
- “relevant month” means May, June, July, August or September in year X;
  - “satisfactory performance day” has the meaning given in the Rules;
  - “satisfactory performance requirement” means a requirement in capacity market rules for a capacity provider to demonstrate satisfactory performance days in respect of a capacity committed CMU.

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

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

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

### **Payment of withheld credit**

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

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

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

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