

SCHEDULE 2

Regulation 4(1)

Modifications to application of Principal Regulations

Interpretation

1. In this Schedule—

“the Rules” means the Capacity Market Rules 2014(1);

“affected person” is to be interpreted in accordance with regulation 68(2) of the Principal Regulations;

“capacity obligation” has the meaning given in regulation 2(1) of the Principal Regulations;

“capacity provider” has the meaning given in regulation 2(1) of the Principal Regulations;

“coronavirus” means severe acute respiratory syndrome coronavirus 2;

“Delivery Body” has the meaning given in regulation 2(1) of the Principal Regulations;

“delivery body reviewable decision” has the meaning given in regulation 68(1) of the Principal Regulations;

“delivery year” has the meaning given in regulation 2(1) of the Principal Regulations;

“multi-year capacity obligation” has the meaning given in regulation 2(1) of the Principal Regulations; and

“termination notice” has the meaning given in the Rules.

Termination of capacity agreements and Secretary of State’s discretion: modifications

2. Regulation 33 applies as if—

(a) in paragraph (2)—

(i) at the end of sub-paragraph (b), for “.” there were substituted “; or”; and

(ii) after sub-paragraph (b), there were inserted—

“(c) if the conditions in paragraph (3A) are met, and the termination notice was given on the ground that the capacity provider (“P”) failed to meet a specified requirement, direct the Delivery Body to—

(i) withdraw the termination notice given to P; and

(ii) terminate the capacity agreement on the ground specified in the Rules that P failed to meet the specified requirement owing to the exceptional circumstances of P’s particular case arising from the effects of coronavirus”;

(b) in paragraph (3), after “6 months” there were inserted “or, if the conditions in paragraph (3A) are met, 12 months”;

(c) after paragraph (3), there were inserted—

“(3A) The conditions referred to in paragraphs (2)(c) and (3) are that—

(a) the Delivery Body has given a termination notice to a capacity provider under the Rules in respect of a capacity agreement awarded as a result of a capacity auction held before 1st April 2020; and

(1) A consolidated version of the Capacity Market Rules 2014 are at <https://www.ofgem.gov.uk/publications-and-updates/publication-consolidated-capacity-market-rules-0>. Copies are available from the Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London, SW1H 0ET.

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- (b) the capacity provider has made representations to the Secretary of State requesting the exercise of the discretion under paragraph (2)(b) or (2)(c) (as the case may be) before the end of—
 - (i) the delivery year for which the capacity provider holds the capacity agreement in the case of a capacity agreement for a one year capacity obligation; or
 - (ii) the first delivery year for which the capacity provider holds the capacity agreement in the case of a capacity agreement for a multi-year capacity obligation.”;
- (d) in paragraph (5)—
 - (i) in sub-paragraph (a), after “20 working days” there were inserted “or, if the conditions in paragraph (5A) are met, 30 working days”; and
 - (ii) in sub-paragraph (b), at the end, there were inserted “, unless the capacity provider is making representations to the Secretary of State requesting the exercise of the discretion under paragraph (2)(c)”;
- (e) after paragraph (5), there were inserted—
 - “(5A) The conditions referred to in paragraph (5)(a) are that—
 - (a) the Delivery Body has given a termination notice to a capacity provider under the Rules in respect of a capacity agreement awarded as a result of a capacity auction held before 1st April 2020; and
 - (b) the Delivery Body gave that termination notice before 1st May 2021.”; and
- (f) in paragraph (8), before sub-paragraph (a) there were inserted—
 - “(za) “coronavirus” means severe acute respiratory syndrome coronavirus 2;”.

Failure to demonstrate satisfactory performance: modifications

3. Regulation 50 (reducing capacity payments: failure to demonstrate satisfactory performance) of the Principal Regulations applies as if—

- (a) in paragraph (1), after “regulation applies” there were inserted “, subject to paragraph (7),”; and
- (b) after paragraph (6), there were inserted—
 - (a) “(7) This paragraph applies where year X is the delivery year starting on 1st October 2019.
 - (b) Where this paragraph applies, this regulation applies as if—
 - (i) in paragraph (2), at the beginning, there were inserted “Subject to paragraphs (3A) and (3B),”;
 - (ii) paragraphs (2A) and (3) were omitted;
 - (iii) after paragraph (3) there were inserted—
 - “(3A) If the capacity agreement in respect of which the satisfactory performance requirement applies to CMU i was awarded before 21st December 2017 and C complies with the requirement by the end of September 2020, a monthly capacity payment is to be paid in respect of CMU i for the relevant month in which C complied with the requirement and each relevant month preceding that month.
 - (3B) If the capacity agreement in respect of which the satisfactory performance requirement applies to CMU i was awarded on or after 21st

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December 2017 and C complies with the requirement by the end of July 2020, a monthly capacity payment is to be paid in respect of CMU i for the relevant month in which C complied with the requirement and each relevant month preceding that month.”;

(iv) for paragraph (5) there were substituted—

“(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 (3A) or (3B) applies, ensure a credit note is issued to C for the monthly capacity payment for any relevant month for which a monthly capacity payment has not yet been paid; and
 - (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.”;
- and

(v) in paragraph (6), in the definition of “relevant month”, after “year x” there were inserted “, where year x is the delivery year starting on 1st October 2019”.”.

Reconsideration by Delivery Body: modifications

4. Regulation 69 (requesting reconsideration by the Delivery Body) of the Principal Regulations applies as if—

- (a) in paragraph (2)(a), after “5 working days” there were inserted “or, if the condition in paragraph (3A) is met, 10 working days”;
- (b) in paragraph (3), after “15 working days” there were inserted “or, if the condition in paragraph (3A) is met, 25 working days”; and
- (c) after paragraph (3), there were inserted—

“(3A) The condition referred to in paragraphs (2)(a) and (3) is that the affected person was given notice of the decision before 1st May 2021.”.

Appeals to the Authority: modifications

5. Regulation 70 (appeals to the Authority) of the Principal Regulations applies as if—

- (a) in paragraph (2), after “5 working days” there were inserted “or, if the condition in paragraph (2A) is met, 10 working days”; and
- (b) after paragraph (2) there were inserted—

“(2A) The condition referred to in paragraph (2) is that the Delivery Body gave the affected person notice of the delivery body reviewable decision before 1st May 2021.”.

Review by Secretary of State: modifications

6. Regulation 81 (review by Secretary of State) of the Principal Regulations applies as if, in paragraph (1)(a)(i), after “these Regulations” there were inserted “, the Electricity Capacity (Amendment etc.) (Coronavirus) Regulations 2020,”.