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ELECTRICITY

The Electricity Capacity (Payment) Regulations 2014

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The Secretary of State [consultation]

Accordingly, the Secretary of State, in exercise of the powers conferred by section(s) [xx] of the Energy Act 2014(a), makes the following Regulations:

PART 1

Introduction

Citation, commencement and review

1.—(1) These Regulations may be cited as the Electricity (Capacity Market) Regulations 2014 and come into force on xx yy 2014.

(2) The Secretary of State must from time to time—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(3) The report must in particular—

(a) c. xx.

- (a) set out the objectives intended to be achieved by these Regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved in a less burdensome way.

(4) The first report under this regulation must be published before the end of the period of five years beginning with the date on which these Regulations come into force.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

Interpretation

2. In these Regulations—

“[]” means ;

“capacity market calculations” means the calculations and determinations required by chapters 5, 6, 7, 8, 9 and 10 of Part [X];

“settlement agent duties” means—

- (a) to carry out the capacity market calculations; and
- (b) to follow the procedures and refer to the matters set out in this Part [X] in relation to the capacity market calculations;

“settlement body duties” means the duties in the following chapters of Part [X]—

- (a) chapter 1, to ensure the settlement agent [def] complies with the settlement agent duties;
- (b) chapter 2, to make annual forecast budgets [def] in respect of a capacity year [def];
- (c) chapter 6, to issue invoices to suppliers;
- (d) chapter 7, to receive payments from suppliers, draw down on credit cover and maintain the non-payment register;
- (e) chapter 8, to issue credit notes and withhold payments;
- (f) chapter 9, to ensure the provision of credit cover, to release credit cover and to maintain the credit default register;
- (g) chapter 10, to make decisions in respect of disputes; and
- (h) chapter 11, to initiate reconciliation runs and to issue invoices and credit notes further to those runs;

“[]” means .

PART 2

Payment model

CHAPTER 1

Compliance with the settlement agent duties

Investigation

3.—(1) The settlement body may at any time investigate compliance by the settlement agent with the settlement agent duties.

(2) The settlement agent must assist the settlement body in any such investigation, including by the provision of such data in relation to the capacity market calculations as the settlement body may request.

Non-compliance notices

4.—(1) Where the settlement body is of the opinion that the settlement agent is not in compliance with the settlement agent duties or has failed to comply with a notice under regulation [10(3)], the settlement body must give the settlement agent a notice (“a non-compliance notice”).

(2) A non-compliance notice must set out—

- (a) those matters with which, in the opinion of the settlement body, the settlement agent is not in compliance;
- (b) the steps required to achieve compliance; and
- (c) the date by which compliance must be achieved (“the compliance date”), being a date no earlier than 7 days after the non-compliance notice is given.

(3) The settlement agent may make representations to the settlement body before the compliance date setting out—

- (a) if it disagrees that it is not in compliance, the reasons for that disagreement; or
- (b) if it agrees that it is in non-compliance, the steps taken or proposed to be taken to remedy the non-compliance and whether or not the non-compliance can be remedied by the compliance date.

(4) Before giving a notice under paragraph (5), the settlement body must take into account any representations received in accordance with paragraph (3) and may by notice to the settlement agent vary the compliance date.

(5) As soon as possible after the compliance date, the settlement body must give a notice to the Secretary of State which includes—

- (a) a copy of the non-compliance notice and any variation to it;
- (b) a copy of any representations received in accordance with paragraph (3);
- (c) the opinion of the settlement body on whether or not the settlement agent is, or was, in non-compliance;
- (d) the steps taken, or proposed to be taken, by the settlement agent to achieve compliance and whether or not the settlement body agrees with those steps; and
- (e) a recommendation to the Secretary of State on whether or not the Secretary of State should [replace] the settlement agent.

CHAPTER 2

Annual forecast budgets

General

5. In this chapter—

“annual forecast budget” means a budget which sets out the relevant forecast costs in respect of a capacity year;

“approved budget revision” has the meaning given by regulation [8(9)];

“budget revision” has the meaning given by regulation [8(1)];

“non-uniform forecast monthly costs” has the meaning given by regulation [6(5)];

“original annual forecast budget” has the meaning given by regulation [7(5)];

“relevant forecast costs” means the costs which the settlement body considers are likely to be incurred in a capacity year by—

- (a) the settlement body in carrying out the settlement body duties; and
- (b) the settlement agent in carrying out the settlement agent duties; and

“revised non-uniform forecast monthly costs” has the meaning given by regulation [8(2)].

Preparation of annual forecast budgets

6.—(1) Subject to paragraphs (3) to (5), no later than the 30th November before the commencement of a capacity year (“the relevant capacity year”) the settlement body must provide to the Secretary of State an annual forecast budget in relation to the relevant capacity year.

(2) No later than 13 months before the commencement of a relevant capacity year, the settlement body must—

- (a) provide a draft of the proposed annual forecast budget in relation to the relevant capacity year to suppliers and such other persons (other than the Secretary of State) as the settlement body considers may have an interest in the budget; and
- (b) give the persons to whom a draft is provided no less than 4 weeks and no longer than 6 weeks to make representations on the draft.

(3) The settlement body must take account of representations received in accordance with paragraph (2) before complying with paragraph (1).

(4) The duty in paragraph (1) applies in respect of the capacity year commencing on 1st October [2016] and each subsequent capacity year.

(5) Where the settlement body anticipates that the relevant forecast costs will be not be incurred uniformly by the settlement body or settlement agent during the relevant capacity year, the annual forecast budget may state the percentage of relevant forecast costs for the relevant capacity year which are likely to be incurred in each month of that year (“non-uniform forecast monthly costs”).

Original annual forecast budgets

7.—(1) Where the Secretary of State receives an annual forecast budget from the settlement body under regulation [6(1)], the Secretary of State must give a notice to the settlement body which—

- (a) states that the annual forecast budget received is the budget approved in respect of the relevant capacity year; or
- (b) directs changes to the budget (“a change notice”).

(2) Unless a notice is given under paragraph (1) by the 31st January before the commencement of the relevant capacity year, the annual forecast budget received by the Secretary of State from the settlement body is the budget approved in respect of the relevant capacity year.

(3) The settlement body must comply with a change notice and provide the changed annual forecast budget to the Secretary of State as soon as practicable after receipt of the change notice.

(4) An annual forecast budget changed in accordance with paragraph (3) is approved in respect of the relevant capacity year.

(5) An annual forecast budget approved in respect of a relevant capacity year under this regulation is the “original annual forecast budget”.

Revision of annual forecast budgets

8.—(1) Subject to paragraph (3), after the commencement of a capacity year the settlement body may revise, or further revise, the original annual forecast budget (“a budget revision”) for the remaining months of that year as stated in the budget revision (“the remaining months”).

(2) Where the settlement body anticipates that the relevant forecast costs will be not be incurred uniformly by the settlement body or settlement agent during the remaining months, the budget revision may state the percentage of relevant forecast costs which are likely to be incurred for the remaining months the (“revised non-uniform forecast monthly costs”).

(3) Paragraph (4) applies where the budget revision the settlement body intends to make, taking into account any previous approved budget revision in respect of the same capacity year, means that the relevant forecast costs for that year will constitute an increase of those costs compared to the costs as set out in the original annual forecast budget.

(4) Where this paragraph applies—

- (a) the settlement body must provide to the Secretary of State a draft of the budget revision no later than one month before the commencement of the remaining months; and
- (b) the Secretary of State must give a notice to the settlement body by no later than [?] before the commencement of the remaining months which—
 - (i) states that the annual forecast budget in respect of the relevant capacity year is approved as set out in the draft;
 - (ii) directs changes to the draft (“a change notice”); or
 - (iii) refuses the draft (“a refusal notice”).

(5) The Secretary of State and the settlement body may agree a shorter period than the periods stated in paragraph (4)(a) or (b).

(6) The settlement body must comply with a change notice and provide the budget revision as so changed to the Secretary of State as soon as possible after receipt of the change notice.

(7) A budget revision changed in accordance with paragraph (6) is approved in respect of the capacity year to which it applies.

(8) Where a refusal notice is given, the budget revision is not approved and has no effect.

(9) A budget revision approved under this regulation is, in respect of the capacity year to which the revision relates, an “approved budget revision”.

Recovery of relevant forecast costs

9.—(1) As soon as possible after an annual forecast budget is approved, the settlement body must give a notice to the settlement agent which—

- (a) sets out the costs which are to be recovered from each supplier for the capacity year to which the budget relates; and
- (b) states whether or not non-uniform forecast monthly costs apply and, where they do apply, states the adjustment factor (“F”) to be applied to each month of the capacity year^(a).

(2) In paragraph (1)(a), the costs set out in the notice must be the relevant forecast costs included in the approved annual forecast budget.

(3) Where a budget revision is approved, the settlement body must comply with paragraph (1) as if reference—

- (a) in paragraph (1) to “an annual forecast budget is approved” were to “a budget revision is approved”;
- (b) in paragraph (1)(b) to—
 - (i) “each month of the capacity year” were to “the remaining months of the capacity year to which the budget revision applies”; and
 - (ii) “non-uniform forecast monthly costs” were to “revised non-uniform forecast monthly costs set out in the budget revision”; and
- (c) in paragraph (2) to “approved annual forecast budget” were to “approved budget revision”.

CHAPTER 3

Data processing by the settlement agent

Settlement agent: data processing

10.—(1) The settlement agent must ensure that it has the necessary systems in place to enable it to process the data needed to perform capacity market calculations (“the CM data”), including systems to enable the exchange of CM data between the settlement agent and—

(a) Regulation [25] applies to the calculation of costs payable by each supplier where a notice is given.

- (a) [BSCCo] [Elexon: def];
- (b) capacity providers who—
 - (i) are not a party to the balancing and settlement code [def]; or
 - (ii) are a party to that code but do not provide data to [BSCCo] under that code;
- (c) [Ofgem];
- (d) suppliers; and
- (e) the system operator [def].

(2) To the extent the CM data held by the settlement agent is confidential, the settlement agent must process that data such that its confidentiality is maintained.

(3) The settlement body may by a notice given to the settlement agent, require the settlement agent to provide the CM data described in the notice—

- (a) held by the settlement agent; or
- (b) not held by the settlement body but which the settlement body considers the settlement agent can reasonably—
 - (i) obtain from a person listed in paragraph (1); or
 - (ii) produce by processing the CM data it holds or obtains under subparagraph (i).

(4) In this regulation, “process” in relation to data means obtaining, recording or holding the data or carrying out any operation or set of operations on the data.

CHAPTER 4

Provision of data

General

11.—(1) The requirements to provide data set out in this chapter apply in respect of the capacity year commencing 1st October [2016] and to each subsequent capacity year except as provided by regulations [?].

(2) Where a person (“P”)—

- (a) has provided data in respect of a matter under this chapter and more accurate data becomes available to P in respect of that matter; or
- (b) has not provided data by the date required by this chapter but is able to provide the missing data after that date,

subject to paragraph (3), P must provide the more accurate or missing data to the settlement agent as soon as practicable.

(3) The requirement in paragraph (2) does not apply after the period of 28 months from the date the data is required (other than under paragraph (2)) to be provided under this chapter.

[BSCCo]: data provision

12.—(1) The [BSCCo] must provide to the settlement agent—

- (a) in respect of each settlement period [def] in which a stress event [def] occurs, the data described in paragraph (2) for each capacity provider who is a party to the balancing and settlement code; and
- (b) in respect of each settlement period, BM Unit Metered Volume (BSC value: QM_{ij}) as described in the BSC technical glossary, table X-2 (version 33)(a) for each BM unit [def] for which a supplier is the BSC Lead Party [def].

(a) Table X-2 (version 33) is available at:

(2) The data referred to in paragraph (1)(a) means the following as described in the BSC technical glossary, table X-2 (version 33)—

- (a) BM Unit Applicable Balancing Services Volume (BSC value: QAS_{ij});
- (b) Period Accepted Bid Volumes (BSC value: QAB_{ij}^{kn});
- (c) Period Accepted Offer Volumes (BSC value: QAO_{ij}^{kn});
- (d) Period FPN (Final Physical Notification) (BSC value: $FPN_{ij}(t)$); and
- (e) the System Buy Price (BSC value: SBP_j).

(3) [BSCCo] must provide the data to which paragraph (1) applies—

- (a) by no later than 17 working days after the end of the month in which the settlement period occurs; and
- (b) where after the provision of the data under subparagraph (a) [BSCCo] revises that data, as soon as practicable after the revision.

System operator: data provision

13.—(1) The system operator must provide to the settlement agent in respect of each settlement period [def] in which a stress event [def] occurs (“the relevant settlement period”), the following data—

- (a) the volume of BMU specific trades in respect of each CM unit [def] ($QBST_{ij}$);
- (b) the volume of Balancing Services Contract Capacity Credit in respect of each CM unit ($BSCCC_{ij}$); and
- (c) any instruction given under a balancing services agreement [def] by the system operator to the owner of a CM unit to change the output of that unit where the owner has not agreed to comply with the BSC framework agreement(a) in respect of that unit.

(2) The system operator must provide to the settlement agent in respect of each settlement period the following data—

- (a) the times (if any) given by the system operator of the—
 - (i) issue and expiry of a capacity market warning [def];
 - (ii) commencement and completion of a stress event; and
- (b) the identity of any capacity provider who is—
 - (i) ineligible to receive a capacity market payment [def] (in whole or part) by reason of [[regulations [X - Y] or rules [A - B]]; or
 - (ii) liable to surrender a bid bond [def] under regulation [X];
- (c) any Physical Notification [def] which applies in respect of a CM unit where the notification is given during a settlement period which—
 - (i) commences within four hours after the issue by the system operator of a CM warning notification [def]; and
 - (ii) is within the period of a stress event;
- (d) details of any notice given by the system operator to a capacity provider that—
 - (i) a Termination Fee [def] is payable;
 - (ii) credit must be lodged with the settlement body in respect of a Bid Bond [def] or a Termination Fee Bond [def]; and
- (e) outturn electrical demand in MWh.

(3) The data described in paragraphs (1) and (2) must be provided as soon as practicable and no later than 5 working days after the end of the calendar month in which the relevant settlement period occurs.

(a) [Link to agreement].

(4) The system operator must notify the settlement agent by no later than 1st March in a capacity year] of the three settlement periods between 1st November and the last day of February which constituted the TRIAD periods [def] between (and including) those dates.

(5) The system operator must provide to the settlement agent, by no later than the 30th November before the commencement of a capacity year, the data necessary to enable the settlement agent to calculate the weighting factor under regulation [21].

(6) The system operator must give a notice (“a spot test default notice”) to the settlement body and the settlement agent which states the days, if any, during a calendar month in which a [CM unit] failed a spot test and states the capacity provider in respect of that unit.

(7) A notice under paragraph (6) must be given by no later than 5 working days after the end of the month in which the failure of the spot test occurs.

Ofgem: data provision

14.—(1) [Ofgem] must provide to the settlement agent data concerning the Value of Lost Load [def] by the 30th November before the commencement of a capacity year.

(2) Where the data concerning the Value of Lost Load in respect of a capacity year is amended after [Ofgem] complies with paragraph (1), [Ofgem] must provide that amended data to the settlement agent as soon as practicable.

Suppliers: data provision

15.—(1) A supplier (“J”) must in respect of a capacity year (“X”) forecast the likely—

- (a) TRIAD periods during X; and
- (b) the average demand in MWh for electricity by J’s customers during those TRIAD periods (“SSPD_{Jx}”).

(2) J must provide SSPD_{Jx} to the settlement agent by no later than the 1st June before the commencement of a capacity year..

(3) In this regulation—

“months of peak demand” means the months of X commencing on 1st November and ending on the last day of February;

“TRIAD periods” means, during the months of peak demand, the following three periods as notified to the supplier under regulation [X]—

- (a) the settlement period [def] (“PD”) of highest demand for electricity by customers on the GB electricity system; and
- (b) the two settlement periods of next highest demand for electricity by customers on the GB electricity system which are at least 10 days separate from each other and from PD.

Capacity providers: data provision

16.—(1) Paragraph (2) applies to a capacity provider who has not agreed to comply with the BSC framework agreement.

(2) Where this paragraph applies, the capacity provider must provide to the settlement agent the following data—

- (a) for each generating CMU [def] owned by the capacity provider, the metered volume of electricity produced measured in MWh in respect of each relevant settlement period;
- (b) for each DSR CMU [def] owned by the capacity provider, the metered demand value [def] measured in MWh in respect of—
 - (i) each relevant settlement period; and
 - (ii) the settlement period immediately before and immediately after each relevant settlement period.

- (3) Paragraph (4) applies where—
- (a) a capacity provider has agreed to comply with the BSC framework agreement and compliance with that agreement does not require the capacity provider to provide data to [BSCCo] in relation to the compilation of the data described in regulation [12(2)] which other capacity providers are required to provide (“the missing data”); and
 - (b) [BSCCo] has provided one or more of the items of data described in regulation [12(2)].
- (4) Where this paragraph applies, the capacity provider must provide to the settlement agent data which is equivalent to the missing data.
- (5) The data in paragraphs (2) and (4) must be provided—
- (a) as soon as practicable and no later than 5 working days after the end of the calendar month in which the relevant settlement period occurs; and
 - (b) in accordance with [standard?].
- (6) In this regulation, “relevant settlement period” means a settlement period [def] in which a stress event occurs [def].

Capacity provider: default in data provision

17.—(1) Where a capacity provider (“C”) to whom regulation [16] applies fails to comply with that regulation, the settlement body give a notice to C that C is in default (a “data default notice”)(a).

(2) A data default notice may be varied by the settlement body and must be revoked when the settlement body is satisfied that C is in compliance with regulation [16].

CHAPTER 5

Capacity market calculations

Calculations: general

18.—(1) The calculations required by this chapter are required in respect of the capacity year commencing on 1st October [2016] and each subsequent capacity year except as provided by [].

(2) The settlement agent must make the calculations required by this chapter using the data provided to it under chapter 4.

(3) Where the settlement agent has not been provided by the time required under chapter 4 with the data required to be provided by that chapter, the settlement agent must as soon as possible give a notice of that fact to the settlement body and describe in the notice the data which has not been provided (“the missing data”).

(4) Where the settlement agent has given a notice under paragraph (3), the settlement agent must—

- (a) make such of the calculations required by this chapter as it is able to make using the data provided to it under chapter 4; and
- (b) give a notice to the settlement body of any calculations it is unable to make.

(5) In this chapter—

“ \sum_i ” means the sum in respect of all capacity providers;

“ \sum_j ” means the sum in respect of all suppliers;

“ACMP_{ix}” means the annual capacity market provider payment defined in regulation [21];

“ACMSC_{jx}” means the annual capacity market supplier charge defined in regulation [20];

“capacity market penalty charge” has the meaning given [?];

(a) See regulations [40] and [66] concerning payments to a capacity provider to whom a data default notice applies.

“CMODP_{im}” means an over-delivery payment;

“over-delivery payment” has the meaning given by [?];

“SSPD_{jx}” has the meaning given by regulation [15(1)(b)];

“WF_{mx}” means the weighting factor in respect of a calendar month of a capacity year calculated under regulation [21].

Annual capacity market supplier charges

19.—(1) The settlement agent must calculate the annual amount payable by each supplier to fund the capacity market [def] in a capacity year (“the annual capacity market supplier charge”).

(2) The annual capacity market [supplier] charge (“ACMSC_{jx}”) must be calculated in accordance with the formula—

$$(\sum_i \text{ACMP}_{ix}) \times (\text{SSPD}_{jx} / \sum_j \text{SSPD}_{jx})$$

(3) The calculation required by this regulation must be made by no later than 3 months before the commencement of a capacity year.

Annual capacity market capacity provider payments

20.—(1) The settlement agent must calculate the annual amount payable to each capacity provider (“C”) for a capacity year (“X”) in respect of each relevant capacity agreement (“the annual capacity market provider payment”).

(2) The annual capacity market provider payment (“ACMP_{ix}”) must be calculated in accordance with the formula—

$$C_{ix} \times P_{ix}$$

(3) In this regulation—

“C_{ix}” means the capacity obligation (in MWh) under each relevant capacity agreement for X;

“P_{ix}” means the price payable, as shown on the capacity agreement register(a), for each MWh applicable to C_{ix} for X;

“relevant capacity agreement” means a capacity agreement held by C where a capacity obligation applies for X.

(4) The calculation required by this regulation must be made by no later than 3 months before the commencement of a capacity year.

Weighting factor

21.—(1) The settlement agent must calculate the factor (“the weighting factor”) by which the proportion of—

(a) ACMSC_{jx} is to be paid by a supplier; and

(b) ACMP_{ix} is to be paid to a capacity provider,

in respect of each calendar month of a capacity year.

(2) The weighting factor in respect of a calendar month (“M”) of a capacity year (“X”)(“WF_{mx}”) must be calculated to 3 decimal places in accordance with the formula—

$$A/B$$

(3) In paragraph (2) the following apply—

(a) “A” means the sum of the amount of electrical demand in GWh in Great Britain during M in the 3 capacity years immediately before the capacity year in which X occurs;

(a) The capacity agreement register is maintained by [] under [].

(b) “B” means the sum of the amount of electrical demand in GWh in Great Britain during the 3 capacity years immediately before the capacity year in which X occurs.

(4) The calculation required by this regulation must be made by no later than 3 months before the commencement of a capacity year.

Monthly capacity market supplier charges

22.—(1) The settlement agent must calculate the amount of $ACMSC_{jx}$ payable by each supplier in respect of each calendar month of a capacity year (“the monthly capacity market supplier charge”).

(2) The monthly capacity market supplier charge (“ $MCMSC_{jm}$ ”) must be calculated in accordance with the formula—

$$WF_{mx} \times ACMSC_{jx}$$

(3) The calculation required by this regulation must be made—

(a) by no later than 3 months before the commencement of a capacity year; and

(b) [where ?], by no later than the first working day of the calendar month to which the charge applies.

Monthly capacity market capacity provider payments

23.—(1) The settlement agent must calculate the amount of $ACMP_{ix}$ payable to each capacity provider in respect of each calendar month of a capacity year (“the monthly capacity market capacity provider payment”).

(2) The monthly capacity market capacity provider payment (“ $MCMP_{im}$ ”) must be calculated in accordance with the formula—

$$WF_{mx} \times ACMP_{ix}$$

(3) The calculation required by this regulation must be made by no later than 23 working days after the end of each calendar month to which the payment applies.

Penalty residual supplier amounts

24.—(1) The settlement agent must calculate the amount payable to each supplier in respect of each calendar month of a capacity year where a capacity market penalty charge [def] has been paid in respect of that month (“the penalty residual supplier amount”).

(2) The penalty residual supplier amount (“ $PRSA_{jm}$ ”) must be calculated in accordance with the formula—

$$(\sum_i CMPP_{im}) \times (SSPD_{jx} / \sum_j SSPD_{jx})$$

(3) In paragraph (2), “ $CMPP_{im}$ ” means the capacity market penalty charge paid by a capacity provider in respect of the calendar month.

(4) The calculation required by this regulation must be made by no later than 23 working days after the end of each calendar month to which the payment applies.

Supplier: payment of relevant forecast costs

25.—(1) Where the settlement agent receives a notice under regulation [9(1)], the settlement agent must calculate the amount of the costs set out in the notice (“the monthly settlement costs”) which is payable by each supplier in respect of each calendar month (or remaining calendar months) of a capacity year.

(2) The monthly settlement costs (“ $SSBC_{jm}$ ”) must be calculated in accordance with the formula—

$$(SBC_m) \times (SSPD_{jx} / \sum_j SSPD_{jx}) \times F$$

(3) In paragraph (2)—

“F” means the adjustment factor set out in the notice under regulation [9(1)(b)] which applies to a calendar month of the capacity year and if no such factor is set out in the notice, F=1;

“SBC_m” means the costs set out in the notice apportioned equally—

- (a) where a notice is given further to the approval of the annual forecast budget, to each calendar month of the capacity year;
- (b) where a notice is given further to the approval of a budget revision, to each calendar month of the capacity year to which that revision relates.

(4) The calculation required by this regulation must be made by no later than the first working day of the calendar month to which the charge applies.

CHAPTER 6

Determinations and invoicing

General

26. In this chapter—

“capacity provider penalty charge” has the meaning given by [?];

“MCMSC_{jm}” has the meaning given in chapter 5;

“monthly portfolio adjustment payer adjustment” has the meaning given by [?];

“portfolio adjustment payer” has the meaning given by [?];

“SSBC_{jm}” has the meaning given in chapter 5.

Determinations: suppliers

27.—(1) The settlement agent must—

- (a) in accordance with paragraph (2), determine the amount payable by each supplier in respect of each calendar month of a capacity year in respect of—
 - (i) the monthly capacity market supplier charge (MCMSC_{jm}); and
 - (ii) the monthly settlement costs (SSBC_{jm}); and
- (b) calculate the total amount under subparagraph (a) payable to all suppliers.

(2) In making the determination required by paragraph (1)(a)—

- (a) the settlement agent must use the calculations made under chapter 5 but make any adjustments under paragraph (5);
- (b) separate determinations must be made for MCMSC_{jm}, and SSBC_{jm}; and
- (c) except where the amount payable by a supplier is zero, the determinations must be made in the form of a separate invoice for each charge from the settlement body to the supplier.

(3) The settlement agent must set out the determination required by paragraph (1)(a) in such detail as will readily show the supplier how the determination has been made including.

(4) The determination and calculation required by paragraph (1) must be provided by the settlement agent to the settlement body by no later than the first working day of the month to which the determination relates.

(5) The adjustments referred to in paragraph (2)(a) are—

- (a) an increase in the charges payable under paragraph (1)(a) as required by regulation [48]; and
- (b) [?].

Determinations: capacity providers

28.—(1) The settlement agent must—

- (a) in accordance with paragraph (2), determine the amount payable by each capacity provider in respect of each calendar month of a capacity year in respect of any capacity provider penalty charge [def] which applies to the CM units [def] which are owned by each capacity provider; and
- (b) calculate the total amount under subparagraph (a) payable by all capacity providers.

(2) In making the determination required by paragraph (1)(a)—

- (a) the settlement agent must use the calculations made under [?] but make any adjustments under paragraph (5); and
- (b) except where the amount payable by a capacity provider is zero, the determination required by paragraph (1)(a) must be made in the form of an invoice from the settlement body to the capacity provider.

(3) The settlement agent must set out the determination required by paragraph (1)(a) in such detail as will readily show the capacity provider how the determination has been made.

(4) The determination and calculation required by paragraph (1) must be provided by the settlement agent to the settlement body by no later than the 18th working day after the end of the month to which the determination relates.

(5) The adjustments referred to in paragraph (2)(a) are—

- (a) any Termination Fee [def] payable by the capacity provider;
- (b) [].

Determinations: portfolio adjustment payers

29.—(1) The settlement agent must—

- (a) in accordance with paragraph (2), determine the amount payable by each portfolio adjustment payer in respect of each calendar month of a capacity year in respect of any monthly portfolio adjustment payer adjustment; and
- (b) calculate the total amount under subparagraph (a) payable by all portfolio adjustment payers.

(2) In making the determination required by paragraph (1)(a)—

- (a) the settlement agent must use the calculations made under [?] but make any adjustments under paragraph (5); and
- (b) except where the amount payable by a portfolio adjustment payer is zero, the determination required by paragraph (1)(a) must be made in the form of an invoice from the settlement body to the portfolio adjustment payer.

(3) The settlement agent must set out the determination required by paragraph (1)(a) in such detail as will readily show the portfolio adjustment payer how the determination has been made.

(4) The determination and calculation required by paragraph (1) must be provided by the settlement agent to the settlement body by no later than the 18th working day after the end of the month to which the determination relates.

(5) The adjustments referred to in paragraph (2)(a) are—

- (a) [?].

Issue of invoices

30. Where the settlement body is provided with the determination and calculation under—

- (a) regulation [27(4)], the settlement body must issue an invoice separately for MCMSC_{jm}, and SSBC_{jm} to the supplier in the form required by regulation [27(2)(c)] by no later than the second working day of the month to which the charges relate;

- (b) regulation [28(4)], the settlement body must issue an invoice for the capacity provider penalty charge to the capacity provider in the form required by regulation [28(2)(b))] by no later than the 19th working day after the end of the month to which the charge relates; and
- (c) regulation [29(4)], the settlement body must issue an invoice for that adjustment to the portfolio adjustment payer in the form required by regulation [29(2)(b)] by no later than the 19th working day after the end of the month to which the adjustment relates.

CHAPTER 7

Payment and non-payment

General

31.—(1) In this chapter—

“credit cover” has the same meaning as it has in chapter 9;

“credit default notice” has the meaning given by regulation [33(2)];

“draw down” has the same meaning as it has in chapter 9;

“in default” means a failure to pay in full an invoiced amount by the date required by regulation [32(1)];

“invoiced monthly capacity market supplier charge” means the monthly capacity market supplier charge stated in the invoice issued to a supplier under regulation [30(a)];

“invoiced monthly settlement costs” means the monthly settlement costs stated in the invoice issued to a supplier under regulation [30(a)];

“invoiced amount” means the total amount payable by a payer as stated in the invoice issued to that payer under regulation [30];

“payer” means a supplier, a capacity provider or a portfolio adjustment payer to whom an invoice is issued under regulation [30].

(2) Where in this chapter a payer is required to make payment by no later than a stated day, that means by no later than 5pm on that day.

Payment of invoices and accruing interest

32.—(1) A payer must pay the invoiced amount to the settlement body by no later than three working days after receipt of the invoice.

(2) Unless a payer provides evidence to the contrary which satisfies the settlement body, an invoice is received by a payer the same working day it is issued by the settlement body.

(3) Where a payer has not paid in full the invoiced amount to the settlement body as required by paragraph (1), late payment interest [def] accrues on the outstanding balance of the invoiced amount from and including the date by which it is required to be paid until the date of payment (“accruing interest”).

(4) Where a payer disputes an invoiced amount under chapter 10 and the decision of the settlement body under that chapter is that—

(a) the invoiced amount is reduced but not extinguished, late payment interest accrues on the reduced amount from and including the date by which it should have been paid until the date of payment;

(b) the invoiced amount is extinguished, no late payment interest accrues in respect of the invoiced amount.

Non-payment: draw down of credit cover

33.—(1) Paragraph (2) applies where a supplier (“S”) is in default in respect of an—

- (a) invoiced monthly capacity market supplier charge; or
 - (b) invoiced monthly settlement costs.
- (2) Where this paragraph applies the settlement body must—
- (a) give a notice (“a credit default notice”) to S which states that the settlement body intends to draw down on S’s credit cover to pay the outstanding invoiced amount and the accruing interest which applies to that amount (“the debt plus interest”) if S does not pay the debt plus interest in full by the 9th working day of the month to which the invoice relates; and
 - (b) give the credit default notice by the 8th working day of the month to which the invoice relates.
- (3) Where S does not pay the debt plus interest in accordance with the default notice, the settlement body must draw down on S’s credit cover for the debt plus interest by no later than by the 11th working of the month to which the invoice relates.

The non-payment register

34.—(1) The settlement body must maintain a register (“the non-payment register”) which includes in respect of a payer (“P”) who has not paid an invoice by the time required—

- (a) the name of P;
- (b) whether P is a supplier, a capacity provider or a portfolio adjustment payer;
- (c) the type of invoice in respect of which P is in default;
- (d) the date when P became in default;
- (e) the date or dates when any payment has been made by P in respect of the invoice in respect of which P is in default; and
- (f) whether or not P disputes the invoice in respect of which P is in default.

(2) The matters set out in paragraph (1) on the non-payment register are “a relevant register entry” in relation to P.

(3) The settlement body must make each relevant register entry as soon as possible after P is in default.

(4) The settlement body must remove a relevant register entry 12 months after the date on which P became in default.

(5) The non-payment register must be made publicly available.

CHAPTER 8

Credit notes

Suppliers: credit notes – penalty residual supplier amounts

35.—(1) The settlement agent must—

- (a) in accordance with paragraph (2), determine the amount payable to each supplier in respect of each calendar month of a capacity year in respect of the penalty residual supplier amount (PRSA_{jm}); and
- (b) calculate the total amount under subparagraph (a) payable to all suppliers.

(2) In making the determination required by paragraph (1)(a)—

- (a) the settlement agent must use the calculations made under chapter 5 but make any adjustments under paragraph (5); and
- (b) except where the amount payable to a supplier is zero, the determination required by paragraph (1) must be made in the form of a credit note from the settlement body to the supplier.

(3) The settlement agent must set out the determination required by paragraph (1)(a) in such detail as will readily show the supplier how the determination has been made.

(4) The determination and calculation required by paragraph (1) must be provided by the settlement agent to the settlement body by no later than the 29th working day after the end of the month to which the determination relates.

(5) The adjustments referred to in paragraph (2)(a) are—

(a) where over-delivery payments (“OP”) are due to capacity providers in respect of the month to which the payment relates, the amount of PRSA_{jm} to be paid to the supplier is—

$$\text{PRSA}_{jm} - (\text{OP} \times \text{SSPD}_{jx} / \sum_j \text{SSPD}_{jx})$$

(b) where portfolio adjustment payer adjustments (“PH”) are due to portfolio adjustment payers in respect of the month to which the payment relates, the amount of PRSA_{jm} to be paid to the supplier is—

$$\text{PRSA}_{jm} - (\text{PH} \times \text{SSPD}_{jx} / \sum_j \text{SSPD}_{jx}).$$

(6) Where subparagraphs (a) and (b) of paragraph (5) apply, the amount of PRSA_{jm} referred to in subparagraph (b) is after adjustment under subparagraph (a).

Capacity providers: credit notes – capacity provider payments and over-delivery payments

36.—(1) The settlement agent must—

(a) in accordance with paragraph (2), determine the amount payable to each capacity provider in respect of each calendar month of a capacity year in respect of—

- (i) a capacity provider payment [def]; and
- (ii) a capacity provider over-delivery payment [def]; and

(b) calculate the total amount under subparagraph (a) payable to all capacity providers.

(2) In making the determination required by paragraph (1)(a)—

- (a) separate calculations must be made for each payment;
- (b) the settlement agent must use the calculations made under [?] but make any adjustments under paragraph (5); and
- (c) except where the amount payable to a supplier is zero, the determination required by paragraph (1) must be made in the form of a credit note from the settlement body to the supplier.

(3) The settlement agent must set out the determination required by paragraph (1)(a) in such detail as will readily show the capacity provider how the determination has been made.

(4) The determination and calculation required by paragraph (1) must be provided by the settlement agent to the settlement body by no later than the 30th working day after the end of the month to which the determination relates.

(5) The adjustments referred to in paragraph (2)(a) are—

(a) subject to paragraph (6), where the capacity provider has not paid any capacity provider penalty charge which applies to it, any payment due under paragraph (1) must be reduced by the amount unpaid; and

(b) [?].

Total credit payments

37.—(1) The settlement agent must calculate the total payments paid further to regulation [32] (excluding payments of invoiced monthly settlement costs) by the 30th working day after the end of the month to which the total credits relate (“total payments paid”).

(2) Where the total under regulation [36(1)(b)] (“total credits”) exceeds total payments paid, the settlement agent must—

- (a) reduce each capacity provider payment and capacity provider over-delivery payment rateably such that the total (“reduced total credits”) equals total payments paid; and
 - (b) revise each credit note made under regulation [36(2)(c)] to show the reduction made to each payment.
- (3) Where paragraph (2) applies, the settlement agent must provide—
- (a) credit notes as revised under paragraph (2)(b); and
 - (b) the total of the amount of reduced total credits,

to the settlement body by no later than the 30th working day after the end of the month to which the credits relate.

Issue of credit notes

- 38.** Subject to regulations [39] to [43], the settlement body must—
- (a) issue credit notes to all suppliers and capacity providers to whom a payment is due, by no later than the 34th working day after the end of the month to which the payment relates; and
 - (b) subject to regulation [43], pay each supplier and capacity provider issued with a credit note the amount due to it by no later than the 37th working day after the end of the month to which the payment relates

Withholding credit payments: failure of spot tests

39.—(1) This regulation applies where a capacity provider to whom a credit is due is subject to a spot test default notice in respect of a month to which a credit note applies.

(2) The settlement body must ensure that the credit otherwise payable to the capacity provider is withheld by the fraction—

$$X/Y$$

- (3) In paragraph (2)—
- “X” means the number of days stated in the notice for which the spot test is failed; and
 - “Y” means the number of days in the calendar month to which the credit note applies.
- (4) The settlement body must ensure that the credit note states the number of days for which credit is withheld and states the reason why.
- (5) In this regulation, “spot test default notice” has the meaning given by regulation [13(6)].

Withholding credit payments: data default

40.—(1) This regulation applies where a capacity provider to whom a credit is due is subject to a data default notice at the time the determination of the credit is made under regulation [36].

- (2) The settlement body must ensure that—
- (a) the credit is withheld; and
 - (b) the credit note states that the payment is withheld and states the reason why.
- (3) In this regulation, “data default notice” has the meaning given by regulation [17(1)].

Withholding credit payments: insolvency of capacity providers

- 41.—**(1) Where—
- (a) a capacity provider (“P”) is a corporate body; and
 - (b) at the time a credit is to be paid to P, the settlement body has been given a notice from the administrator of P that P is in administration,

the settlement body must withhold the credit from P.

(2) Where a credit is withheld, until payment is made, the settlement body may deduct all or part of the credit from an amount invoiced to C under regulation [30].

Withholding credit payments: capacity market stage 2 credit default

42.—(1) This regulation applies where a supplier to whom a credit is due is in capacity market stage 2 credit default in the month in which the credit is payable.

(2) The settlement body must ensure that—

- (a) the credit is withheld; and
- (b) the credit note states that the payment is withheld and states the reason why.

(3) Where a credit is withheld, the settlement body may during the period in which the supplier is in capacity market stage 2 credit default, deduct all or part of the credit from an amount invoiced to the supplier under regulation [30].

(4) In this regulation, “capacity market stage 2 credit default” has the meaning given by chapter 9.

Payment of withheld credit

43.—(1) Paragraph (2) applies where a credit is withheld further to regulation [39, 40, or 42].

(2) Where this paragraph applies, the settlement body must pay the withheld credit—

- (a) on the next occasion which the settlement body considers practicable when credit payments are made under—
 - (i) regulation [38(b)]; or
 - (ii) a reconciliation run under chapter 11; but
- (b) only where on that occasion the settlement body is not required to withhold a credit under—
 - (i) regulation [39, 40, 41 or 66] to the capacity provider to whom the credit is due; or
 - (ii) regulation [42 or 66] to the supplier to whom the credit is due.

(3) Regulation [68] applies where credit is withheld further to regulation [41].

CHAPTER 9

Credit cover in respect of non-payments

General

44. In this chapter—

“capacity market stage 2 credit default” means, in relation to a supplier, a supplier who has failed to comply with regulation [47(1)] or to whom a notice is given under regulation [47(2)(b)];

“credit cover” means an escrow account or a letter of credit;

“credit default register” has the meaning given by regulation [51];

“credit period” has the meaning given by regulation [46(1)(b)];

“default amounts” has the meaning given by regulation [47(3)(b)];

“default month” means a month in respect of which a supplier is in capacity market stage 2 credit default;

“draw down” means—

- (a) in the case of an escrow account, the withdrawal of funds from the account by the settlement body;
- (b) in the case of a letter of credit, the payment from a relevant account to the settlement body further to a demand for payment from the settlement body;

“escrow account” means an account established at a bank in the name of the settlement body—

- (a) which contains funds representing the whole or part of the required amount of credit cover; and
- (b) where the funds in the account may be accessed exclusively by or on behalf of the settlement body during the credit period;

“letter of credit” means a letter given by a person (“P”) to the settlement body which contains an irrevocable authorisation in favour of the settlement body to be paid on demand up to an amount stated in the letter from a relevant account held by P during the credit period;

“relevant account” means an account established with a bank which has a long term debt rating of at least—

- (a) “A-” as rated by Standard and Poor’s Corporation(**a**); or
- (b) “A3” as rated by Moody’s Investor Services(**b**);

“required amount of credit cover” means the amount of credit cover which, on draw down, is sufficient to pay—

- (a) the monthly capacity market supplier charge ($MCMSC_{jm}$);
- (b) the monthly settlement costs ($SSBC_{jm}$); and
- (c) an additional 10% of the total of $MCMSC_{jm}$ and $SSBC_{jm}$;

“provide credit cover” means—

- (a) in the case of an escrow account, to provide to the settlement body written confirmation from the bank which holds the account that the account satisfies the definition of “escrow account”;
- (b) in the case of a letter of credit, that the letter is in the possession of the settlement body;

“schedule of estimated monthly credit cover” has the meaning given by regulation [45(1)(b)].

Calculation of credit cover

45.—(1) Subject to paragraph (3), the settlement agent must—

- (a) estimate for each month of a capacity year the required amount of credit cover for each supplier; and
- (b) produce the estimate for each supplier in the form of a schedule (“a schedule of estimated monthly credit cover”).

(2) No later than 2 months before the commencement of a capacity year to which paragraph (1) applies, the settlement agent must give a notice to—

- (a) the settlement body of all schedules of estimated monthly credit cover; and
- (b) each supplier of the schedule of estimated monthly credit cover which applies to it.

(3) The requirements in paragraphs (1) and (2) apply in respect of the capacity year commencing on 1st October 2016 and each subsequent capacity year.

Provision of credit cover

46.—(1) No later than 12 working days before the commencement of a calendar month (“M”) of a capacity year, a supplier (“S”) must provide to the settlement body credit cover—

- (a) to at least the required amount of monthly credit cover which applies to S in respect of M as shown in the schedule of estimated monthly credit cover; and

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

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

- (b) which the settlement body may draw down during the period commencing on the date it is provided and ending no earlier than the 11th working day of M] (“the credit period”).
- (2) By no later than 9 working days before the commencement of M, the settlement body must give a notice to S—
 - (a) that the credit cover provided is approved as credit cover in respect of M; or
 - (b) that—
 - (i) no credit cover has been provided; or
 - (ii) the credit cover provided is not approved, in whole or part.
- (3) Where a notice is given under paragraph (2)(b)—
 - (a) S must be entered by the settlement body on the credit default register as a being in “capacity market stage 1 credit default”; and
 - (b) regulation [47] applies.

Non-provision of credit cover

- 47.**—(1) Where this regulation applies, the supplier (“S”) must provide credit cover (or further credit cover) to the settlement body which satisfies the requirements of regulation [46(1)] by no later than 6 working days after the notice is given under regulation [46(2)(b)].
- (2) Where credit cover is provided under paragraph (1), the settlement body must give a notice to S by no later than 3 working days before the month (“M”) for which the credit cover is required—
- (a) that the credit cover provided is approved as credit cover in respect of M; or
 - (b) that the credit cover provided is not approved, in whole or part.
- (3) Where S fails to comply with paragraph (1) or a notice is given under paragraph (2)(b)—
- (a) S must be entered by the settlement body on the credit default register as a being in “capacity market stage 2 credit default” in respect of M;
 - (b) the settlement body must give a notice to the settlement agent that regulation [48] applies to the total amounts payable by S in respect of the default month (“the default amounts”) in respect of—
 - (i) the monthly capacity market supplier charge ($MCMSC_{jm}$); and
 - (ii) the monthly settlement costs ($SSBC_{jm}$).
- (4) The settlement body must give S notice of the default amounts as soon as reasonably practicable after invoices are issued under regulation [30(a)].
- (5) S—
- (a) must pay the default amounts by no later than 3 working days after the notice is given under paragraph (4); and
 - (b) is liable for the default amounts notwithstanding that those amounts are paid by other suppliers further to regulation [48].
- (6) S is not liable to another supplier in respect of any of the default amounts paid by that supplier.
- (7) Where S pays to the settlement body all the default amounts payable by S and any late interest [def] on those amounts (“the refunded default amounts”), the settlement body must give a notice to the settlement agent that the refunded default amounts are a matter for recalculation under regulation [61(2)(b)(ii)].

Apportionment

- 48.**—(1) Where this regulation applies further to regulation [47(3)(b)], the settlement agent must in accordance with paragraph (2) make an apportionment for the default month such that the default amounts (“D”) are payable by each supplier who is not in capacity market stage 2 credit default for the default month (“a non-defaulting supplier”).

(2) The invoice to each non-defaulting supplier under regulation [27(2)(c)] must include a payment in respect of the default amounts calculated by the formula—

$$D \times (\text{SSPD}_{jx} / \sum_j \text{SSPD}_{jx}).$$

Letters of credit

49.—(1) Paragraph (2) applies where—

- (a) a letter of credit has been approved;
- (b) the account to which the letter applies ceases to be a relevant account; and
- (c) the credit period in respect of which the letter was provided has not expired.

(2) Where this paragraph applies, by no later than 10 working days after the account to which the letter of credit applies ceases to be a relevant account, the supplier must provide additional credit cover which, together with any existing credit cover approved under regulation [46(2)(a)], meets the requirements of regulation [46(1)].

(3) Where a supplier fails to comply with paragraph (2), 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 an escrow account which—

- (a) is approved under regulation [46(2)(a)]; or
- (b) the settlement body establishes.

Release of credit cover

50.—(1) Paragraph (2) applies where the settlement body is provided with credit cover by a supplier (“S”) and—

- (a) credit cover is no longer required to be provided by S; or
- (b) S considers the amount of credit cover provided is greater than that required to meet the estimated monthly credit cover.

(2) Where this paragraph applies, S may give a notice to the settlement body to request the release to S of some or all of the credit provided.

(3) A notice under paragraph (2) must, as appropriate, identify—

- (a) any escrow account from which the credit is to be paid; or
- (b) any letter of credit which S wishes the settlement body to release.

(4) Where the settlement body receives a notice under paragraph (2), the settlement body must give a notice to S as soon as practicable in which the settlement body—

- (a) agrees to the request and, as appropriate, transfers the credit to S or provides written confirmation to S of the release of any letter of credit identified in the request; or
- (b) refuses the request and gives reasons for that refusal.

(5) Where paragraph (4)(a) applies, the settlement body must, as appropriate, make the transfer or provide the confirmation of release to S by no later than 5 working days after the date of the notice under paragraph (4).

The credit default register

51.—(1) The settlement body must maintain a register (“the credit default register”) which includes—

- (a) where credit cover has been drawn down—
 - (i) the name of a supplier whose credit cover has been drawn down;
 - (ii) the date of draw down;
 - (iii) the amount of credit drawn down; and

- (iv) whether or not the supplier disputes that the credit cover was required to be drawn down; and
 - (b) the details required by regulation [46(3)(a)] and [47(3)(a)] (including the default month to which the entry on the register applies) and whether or not the supplier disputes that entry.
- (2) The settlement body must ensure the register is kept up to date with regard to the matters which the register is required to contain.
- (3) The settlement body must remove an entry from the register as soon as practicable—
- (a) after the settlement body makes a decision under chapter 10 that, as applicable, no entry should have been entered on the register in respect of, as applicable—
 - (i) the draw down on credit cover; or
 - (ii) capacity market stage 1 or stage 2 credit default;
 - (b) where capacity market stage 1 credit default is entered against a supplier pursuant to regulation [46(3)(a)] and credit cover is approved under regulation [47(2)(a)], after that credit cover is approved;
 - (c) where capacity market stage 2 credit default is entered against a supplier pursuant to regulation [47(3)(a)], after the settlement body gives a notice under regulation [47(7)]; or
 - (d) where a previous subparagraph does not apply, after the last reconciliation run under chapter 11 which applies to the month for which the draw down of credit was made.
- (4) The credit default register must be made publicly available.

CHAPTER 10

Dispute resolution

Disputes

52. In this chapter—

“data matter” means the provision to the settlement agent of data by—

- (a) [BSCCo] under regulation [12];
- (b) the system operator under regulation [13];
- (c) [Ofgem] under regulation [14];

“dispute” means a dispute in respect of the capacity market calculations (except any calculations required under this chapter) other than in respect of a data matter; and

“disputing party” means, as appropriate, a supplier, a capacity provider or a portfolio adjustment payer.

Notice of disputes

53.—(1) A disputing party may give a notice (“a disputes notice”) to the settlement agent of a dispute.

(2) A disputes notice must—

- (a) set out the matters giving rise to the dispute and the outcome sought by the disputing party; and
- (b) be given within three months of the making of the calculation or determination giving rise to the dispute.

(3) Where the settlement agent receives a disputes notice, the settlement agent must as soon as practicable recommend to the settlement body that the dispute—

- (a) be refused because it has not been given in accordance with paragraph (2)(b)(“a late dispute”);

- (b) be investigated by the settlement agent; or
- (c) be decided by the settlement body without investigation.

(4) Where paragraph (3)(c) applies, the recommendation must include a recommended decision for the resolution of the dispute.

(5) Where the settlement body receives a recommendation under paragraph (3), the settlement body must have regard to that recommendation before taking one of the steps described in paragraph (6).

- (6) After receiving a recommendation under paragraph (3), the settlement body must—
 - (a) as soon as practicable, instruct the settlement agent—
 - (i) to investigate the dispute and to give a notice to the disputing party that the dispute is to be investigated; or
 - (ii) to give a notice to the disputing party that the dispute is refused as a late dispute; or
 - (b) make a decision in respect of the dispute and comply with regulation [56].

Investigation by the settlement agent

54.—(1) This regulation applies where the settlement agent is instructed to investigate a dispute under regulation [53(6)(a)(ii)].

(2) The settlement agent must investigate the dispute and provide to the settlement body a report (“a disputes report”) of its investigation, including a recommendation as to the resolution of the dispute.

(3) Subject to paragraph (4) and regulation [55], a disputes report must be provided by no later than 40 working days after the settlement agent received the disputes notice (“the report date”).

(4) The settlement agent may agree that the report date may be extended to no later than 80 working days after the settlement agent received the disputes notice if that is agreed by the disputing party.

(5) Where the settlement body receives a disputes report, it must make a decision in respect of the dispute and comply with regulation [56].

Interims reports

55.—(1) Where—

- (a) the report date is not extended under regulation[54(4)]; and
- (b) the settlement agent is unable to provide a disputes report by the report date,

the settlement agent must provide a report (“an interim report”) to the settlement body by the report date.

(2) An interim report must set out the extent to which the settlement agent has been able to investigate the dispute and include—

- (a) a recommendation to allow further time to make a disputes report; or
- (b) a preliminary recommendation for the resolution of the dispute.

(3) Where the settlement body receives an interim report, the settlement body must have regard to the recommendation it includes before taking one of the steps described in paragraph (4).

(4) After receiving an interim report, the settlement body must—

- (a) as soon as practicable, instruct the settlement agent to continue the investigation and to provide the disputes report by a date specified in the notice, being a date no later than 80 working days after the settlement agent received the disputes notice; or
- (b) make a decision in respect of the dispute and comply with regulation [56].

(5) Where paragraph (4)(a) applies, the settlement agent must provide a copy of the instruction and the interim report to the disputing party as soon as practicable after receiving the instruction.

Decisions of the settlement body

56.—(1) This regulation applies where the settlement body makes a decision under regulation [53(6)(b)], [54(5)] or [55(4)(b)].

(2) The settlement body must give a notice—

- (a) to the settlement agent of its decision; and
- (b) to the disputing party which includes—
 - (i) subject to paragraph (4), any interim report or disputes report;
 - (ii) the settlement body’s decision;
 - (iii) the reason for that decision and, where applicable, why the settlement body differed in its decision from a recommendation or preliminary recommendation of the settlement agent.

(3) The settlement body must comply with paragraph (2)—

- (a) where regulation 53(6)(b) applies, as soon as practicable;
- (b) where regulation [54(5)] or [55(4)(b)] applies, by no later than 20 working days after receipt of, as appropriate, the interim report or the disputes report.

(4) The settlement body must, when it provides to a disputing party an interim report or a disputes report, exclude any information which is confidential, except such information provided by the disputing party to the settlement agent.

Confidentiality and reports

57.—(1) Paragraph (2) applies to the extent that any of the following contains confidential information—

- (a) an interim report;
- (b) a disputes report; or
- (c) a notice of a settlement body’s decision.

(2) Where this paragraph applies, a document listed in paragraph (1) must only include the confidential information in an annex to the document (“a confidential annex”).

The disputes register

58.—(1) The settlement agent must maintain a register (“the disputes register”) which includes details of all—

- (a) interim reports;
- (b) disputes reports; and
- (c) decisions of the settlement body in relation to disputes.

(2) The matters set out in paragraph (1) are “a relevant register entry”.

(3) The settlement agent must make each relevant register entry as soon as possible after—

- (a) a report has been received by the settlement body; or
- (b) a notice is given which includes the decision of the settlement body.

(4) Subject to paragraph (5), the disputes register must be made publicly available.

(5) The settlement agent must exclude from the register made available to the public the information contained in a confidential annex.

CHAPTER 11

Reconciliation

General

59. In this chapter—

“credit cover” has the meaning given by chapter 9;

“creditor” means a supplier or a capacity provider who is entitled to receive a payment from the settlement body;

“draw down” has the meaning given by chapter 9;

“M” means a calendar month of a capacity year;

“MD” means the last day of M;

“payer” means a supplier or a capacity provider who is required to make a payment to the settlement body;

“reconciliation report” has the meaning given by regulation [62(2)];

“reconciliation run” means the process described in regulations [60 to 68];

“revised relevant amount” has the meaning given by regulation [61(4)];

“T” has the meaning given by regulation [60(3)];

“T-n” means the nth working day before T, where “n” is a whole number.

Setting reconciliation runs

60.—(1) The settlement body must by giving a notice (“a reconciliation notice”) to the settlement agent instruct the settlement agent to carry out a reconciliation run in respect of M.

(2) The settlement body must give at least 3 reconciliation notices in respect of M.

(3) A reconciliation notice must specify in respect of each reconciliation run a date (“T”) by which payments due by the settlement body to a supplier or a capacity provider are to be made.

(4) A reconciliation notice must be given by no later than T-24.

(5) The settlement body must ensure that there are reconciliation runs where T is specified as a date—

(a) no earlier than 81 working days and no later than 85 working days after MD;

(b) no earlier than 151 working days and no later than 155 working days after MD; and

(c) no earlier than 289 working days and no later than 293 working days after MD.

(6) The settlement body—

(a) may give a reconciliation notice in respect of M where T is specified as a date other than as provided by paragraph (5); but

(b) must not give a reconciliation notice in respect of M where T is specified as a date later than that provided by paragraph (5)(c).

Recalculations by the settlement agent

61.—(1) Where the settlement agent receives a reconciliation notice, by no later than T-21 the settlement agent must, in accordance with paragraph (2) and subject to paragraph (3), make a re-determination in respect of M of—

(a) the amount payable by the following to whom an invoice has been issued—

(i) a supplier;

(ii) a capacity provider; or

(iii) a portfolio adjustment payer; and

- (b) the amount payable to the following to whom a credit note has been issued—
 - (i) a supplier; or
 - (ii) a capacity provider.
- (2) The re-determination required by paragraph (1) must—
 - (a) make use of any more accurate data provided under chapter 4 than the data previously used by the settlement agent to make a calculation or determination;
 - (b) include such re-calculations as may be required by reason of—
 - (i) a decision of the settlement body under chapter 10, where that decision affects a calculation or determination previously made by the settlement agent;
 - (ii) any refunded default amounts of which the settlement agent has had notice under regulation [47(7)]; and
 - (iii) payments made by payers after the due date for payment under regulation [32(1)] or, in the case of a second or subsequent reconciliation run, under the previous reconciliation run.
- (3) The settlement agent must calculate—
 - (a) the total payments due to the settlement body (“P”); and
 - (b) the total credits payable by the settlement body (“C”),
 and where C exceeds P, the settlement body must rateably reduce each credit payable such that C equals P.
- (4) An amount re-determined under this regulation is a “revised relevant amount”.

Reconciliation reports and invoices

- 62.**—(1) The settlement agent must comply with the requirements in paragraph (2) by no later than T-19.
- (2) The settlement agent must produce a report (“a reconciliation report”) which sets out—
 - (a) in respect of each supplier, capacity provider and portfolio adjustment payer each revised relevant amount and where that amount is not zero, set out the revised relevant amount in the form of, as appropriate, an invoice or a credit note from the settlement body to the supplier, capacity provider or portfolio adjustment payer; and
 - (b) the total payments due to, and payable by, the settlement body.
 - (3) An invoice or credit note under paragraph (2) must set out the re-determination in such detail as will readily show the supplier, capacity provider or portfolio adjustment payer how the re-determination has been made.
 - (4) The settlement body must send each invoice to the payer by no later than [T-19].
 - (5) A payer must pay the amount invoiced by T-16.

Payments and credit draw down

- 63.**—(1) Paragraph (2) applies where a supplier (“S”) does not comply with regulation [62(5)] in respect of—
- (a) the monthly capacity market supplier charge ($MCMSC_{jm}$); or
 - (b) the monthly settlement costs ($SSBC_{jm}$).
- (2) Where this paragraph applies, the settlement body must by T-9 draw down on any existing credit cover of S for the amount due.
- (3) In paragraph (2), “existing credit cover” means the credit cover (if any) of S which applies at the time the draw down is made.
- (4) Where a payer does comply with regulation [62(5)], regulation [34(1)] applies to the payer.

Recalculation of credit amounts

64.—(1) Where by T-7 the total amount received (“R”) by the settlement body from payers (including by credit draw down) is less than the total amount payable (“C”) by the settlement body as set out in the reconciliation report, the settlement body must give a notice to the settlement agent—

- (a) to recalculate the amounts due to each creditor shown in the reconciliation report; and
- (b) to provide the recalculations to the settlement body in the form of a credit note, which complies with regulation [62(3)] from the settlement body to the creditor.

(2) The recalculation required by paragraph (1)(a) must rateably reduce each credit payable such that C equals R.

Issue of credit notes

65. Subject to regulation [66], the settlement body must—

- (a) send a credit note to each creditor which states the amount due to the creditor as provided by regulation [62(2)(a)] or, where applicable, regulation [64(1)(b)]; and
- (b) pay the amount shown in the credit note by no later than T.

Withholding credit payments

66.—(1) Paragraph (2) applies where, in respect of the month (“M”) in which the credit note is sent to the creditor, the creditor is in relevant default.

(2) Where this paragraph applies, the settlement body must ensure that the credit note includes a statement that the payment is withheld and states the reason why.

(3) In this regulation, “relevant default” means—

- (a) where the creditor is a supplier (“S”), that S is in capacity market stage 2 credit default in respect of M; or
- (b) where the creditor is a capacity provider (“P”), in respect of M—
 - (i) a spot test default notice applies to P;
 - (ii) a data default notice applies to P; or
 - (iii) the settlement body has been given notice from the administrator of P that P is in administration.

Payment of withheld credit (except capacity provider insolvency)

67.—(1) Paragraph (2) applies where a credit is withheld further to regulation [66] except for a “relevant default” described in regulation [66(3)(b)(iii)].

(2) Where this paragraph applies, the settlement body must pay the withheld credit—

- (a) on the next occasion which the settlement body considers practicable when credit payments are made under—
 - (i) regulation [38(b)]; or
 - (ii) a reconciliation run; but
- (b) only where on that occasion the settlement body is not required to withhold a credit under—
 - (i) regulation [39 or 40] to the capacity provider to whom the credit is due;
 - (ii) subject to paragraph (3), regulation [66] to the capacity provider to whom the credit is due; or
 - (iii) regulation [42 or 66] to the supplier to whom the credit is due.

(3) Regulation [68] applies where—

- (a) the settlement body is required to withhold a credit from a capacity provider (“P”) by reason of paragraph (2)(b)(ii); and
- (b) the reason is that on the occasion the payment would otherwise be paid, the settlement body has been given notice from the administrator of P that P is in administration.

Payment of withheld credit (capacity provider insolvency)

68.—(1) This regulation applies further to—

- (a) regulation [43(3)];
- (b) a “relevant default” described in regulation [66(3)(b)(iii)]; or
- (c) regulation [67(3)].

(2) After a relevant event occurs, the settlement body must pay the withheld credit (or the balance of it) to the capacity provider (“P”) on the occasion described in paragraph (3).

(3) The occasion referred to in paragraph (2) is the next occasion which the settlement body considers practicable when credit payments are made under—

- (a) regulation [38(b)]; or
- (b) a reconciliation run.

(4) In paragraph (2), “relevant event” means the earliest of the following—

- (a) the end of the capacity year;
- (b) the transfer of the capacity agreement; or
- (c) receipt of a notice from the liquidator of P that P is being wound-up.

| | |
|------|---|
| | <i>Name</i> |
| | Secretary of State |
| Date | Department of Energy and Climate Change |

EXPLANATORY NOTE

(This note is not part of the Regulations)

An impact assessment []. An Explanatory Memorandum is published alongside the instrument on www.legislation.gov.uk.