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ELECTRICITY

**The Contracts for Difference (Supplier Obligation) Regulations
2014**

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The Secretary of State, in exercise of the powers conferred by sections 6(1) and (6); sections 9(1), (2), (4), (5), (6) to (8) and (10); sections 11(1), (2) and (3); sections 12(1), (2) and (4); sections 13(1) and (2); sections 15(1) and (3) and section 16(1) of, and paragraph 16(2) of Schedule 2 to, the Energy Act (a), makes the following Regulations:

PART 1

Introduction

Citation and commencement

1. These regulations may be cited as the Contracts for Difference (Supplier Obligation) Regulations 2014 and come into force on 1st July 2014.

Interpretation

2.—(1) In these regulations—

“the Act” means the Energy Act 2013

(a)Based upon the provisions of the Energy Bill as amended in Grand Committee.

“the Balancing and Settlement Code” means the code for governance of electricity balancing and settlement in Great Britain which is maintained in accordance with the conditions of licences granted under section 6(1) of the Electricity Act 1989 as it was in force on 1st April 2014;

“BSC volume allocation run” means—

- (a) an Interim Information Volume Allocation Run,
- (b) an Initial Volume Allocation Run, or
- (c) a Reconciliation Volume Allocation Run;

“the BSCCo” has the meaning given in the Balancing and Settlement Code;

“net CFD funding requirement” is to be construed in accordance with regulation 3(6)(d);

“CFD generator means” a person, other than a CFD counterparty, who is a party to a CFD and is entitled to payments under such a contract;

“electricity supplier” means a person who is a holder of a licence to supply electricity under section 6(1)(d) of the Electricity Act 1989(a);

“excluded electricity” is to be construed in accordance with regulation [Energy Intensive Industries](b);

“Final Reconciliation Volume Allocation Run” has the meaning given in the Balancing and Settlement Code (see section U of that code);

“first obligation period” means the supplier obligation period beginning on the coming into force of these regulations and ending on 31st March 2015;

“investment contract” has the meaning given in schedule 2 to the Act;

“Initial Volume Allocation Run” has the meaning given in the Balancing and Settlement Code (see section U of that code);

“Interim Information Volume Allocation Run” has the meaning given in the Balancing and Settlement Code (see section U of that code);

“levy rate payment” is to be construed in accordance with regulation 6;

“Reconciliation Volume Allocation Run” has the meaning given in the Balancing and Settlement Code (see section U of that code);

“reserve fund payment” is to be construed in accordance with regulation 12;

“reserve fund repayment” is to be construed in accordance with regulation 14;

“supplier obligation period” means a period—

- (a) beginning on the coming into force of these regulations and ending on 31st March 2015, or
- (b) a subsequent period beginning on 1st April in a year and ending on 31st March in the subsequent year;

“working day” means a day that is not a Saturday or Sunday, Christmas Day, Good Friday or any day that is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971(c).

(2) Any reference in these regulations to an amount of electricity is a reference to that amount expressed in megawatt hours.

(3) Any reference in these regulations to an amount to be paid or provided is a reference to that amount expressed in pound sterling.

(4) For the purposes of these regulations any reference to a CFD includes a reference to an investment contract which was transferred to the CFD counterparty by virtue of paragraph 16(1) of Schedule 2 to the Act.

(a) c. 29

(b) Provision about Energy Intensive Industries will be published later in the Autumn.

(c) c.80

(5) For the purposes of Sections 7, 8, 9, 12 to 15 and 20 of the Act an investment contract which was transferred to the CFD counterparty by virtue of paragraph 16(1) of Schedule 2 to the Act is to be treated as a CFD.

(6) For the purposes of these regulations an amount received from a CFD generator under a CFD does not include any amount which was paid by way of damages, or is otherwise designed to compensate the CFD counterparty for any costs incurred which were caused by the breach of the CFD by the generator.

PART 2

Supplier obligation

CHAPTER 1

The supplier obligation

The supplier obligation

3.—(1) Electricity suppliers must pay to the CFD counterparty the total amount which the CFD counterparty is required to pay to all CFD generators under every CFD to which it is a party during a supplier obligation period in accordance with this regulation.

(2) Subject to paragraph (3), the amount, if any, which an electricity supplier must pay in respect of an obligation period by virtue of paragraph (1) is the amount given by—

$$CF \times \frac{(SE - SX)}{(TE - TX)}$$

where—

CF is the net CFD funding requirement;

SE is the amount of electricity supplied by that supplier in that supplier obligation period;

SX is the amount of excluded electricity supplied by that supplier in that period;

TE is the amount of electricity supplied by all electricity suppliers in that period;

TX is the amount of excluded electricity supplied by all electricity suppliers in that period.

(3) Where the amount calculated under paragraph (2) is a negative number—

(a) the amount which an electricity supplier must pay under paragraph (2) is zero; and

(b) the CFD counterparty must pay to the electricity supplier the amount given by—

$$(0 - CF) \times \frac{(SE - SX)}{(TE - TX)}$$

where CF, SE, SX, TE and TX have the meanings given in paragraph (2).

(4) For the purposes of complying with the obligation under paragraph (1) an electricity supplier must—

(a) make interim payments to the counterparty in accordance with regulations 6 and 12;

(b) make interim reconciliation payments in accordance with regulation 9;

(c) pay a reconciliation amount, if any, in accordance with regulation 5;

(5) An electricity supplier must also—

(a) provide the CFD counterparty with collateral in respect of any payments required to be made by it, by virtue of regulation 6, in accordance with regulation 14;

(b) provide the CFD counterparty with shared collateral in respect of any interim payments to be made by any electricity supplier, by virtue of regulation 6, in accordance with regulation 16.

- (6) For the purposes of this regulation and regulations 4 and 5—
- (a) the amount of electricity supplied by a supplier in a supplier obligation period is the amount of electricity which the BSCCo determines, on the basis of Final Reconciliation Volume Allocation Runs, as the amount of electricity supplied by that supplier in that period;
 - (b) the total amount of electricity supplied by all electricity suppliers is the amount of electricity which the BSCCo determines, on the basis of Final Reconciliation Volume Allocation Runs, as total amount of electricity supplied by all electricity suppliers in that period;
 - (c) [provision about excluded electricity – qualifying electricity supplied to energy intensive industry consumers]; and
 - (d) “net CFD funding requirement” is the total amount which the CFD counterparty is required to pay to all CFD generators under every CFD to which it is a party during a supplier obligation period less any amount which the CFD counterparty received from generators under those contracts in relation to that period.

Determination of the supplier obligation

4.—(1) The CFD counterparty must issue a notice to each electricity supplier who supplied electricity in a supplier obligation period (“the relevant period”) setting out—

- (a) the CFD counterparty’s determination of the amount the supplier to whom the notice is issued must pay under regulation 3(2) in respect of the relevant period; and
- (b) the amount the CFD counterparty must pay under regulations 3(3)(b) in respect of that period.

(2) A notice under paragraph (1) must be issued to a supplier as soon as reasonably practicable after the earlier of—

- (a) 31st May in the second obligation period after the relevant period, or
- (b) where that supplier has ceased to hold a licence under section 6(1)(a) of the Electricity Act 1989, the date on which it ceased to hold that licence.

(3) A notice under paragraph (1) must also set out—

- (a) the aggregate amount of electricity supplied by all suppliers in the relevant period;
- (b) the net CFD funding requirement in relation to that period;
- (c) the amount of electricity supplied by the supplier to whom the notice is to be issued in the relevant period;
- (d) the CFD counterparty’s determination of the amount that supplier must pay the counterparty, or be paid by the counterparty (“the reconciliation amount”) in accordance with regulation 5.

(4) Where a notice is issued by virtue of paragraph (2)(b), the matters which are required to be set out in it may be determined by the CFD counterparty on the basis of its estimate of the amount of electricity supplied (or to be supplied) in the relevant period and of its estimate of the net CFD funding requirement in that period.

Reconciliation of the supplier obligation

5.—(1) Where the amount of a supplier’s reconciliation amount in respect of a supplier obligation period is greater than zero, that supplier must pay that sum to the CFD counterparty within 90 days of a notice under regulation 4(1) being issued to that supplier in respect of that period.

(2) Where the amount of a supplier’s reconciliation amount in respect of a supplier obligation period is less than zero, the CFD counterparty must pay that sum to the supplier within 90 days of a notice under regulation 4(1) being issued to that supplier in respect of that period.

(3) A supplier's reconciliation amount in respect of a supplier obligation period ("the relevant period") is to be determined by the CFD counterparty as the amount given by—

$$(RS + CP) - (LP + RF)$$

where—

RS is, subject to paragraph (5),—

- (a) where Final Reconciliation Volume Allocation Runs have occurred in relation to every day in the relevant period, the amount calculated in accordance with the formula in regulation 3(2); or
- (b) where Final Reconciliation Volume Allocation Runs have not occurred in relation to every day in the relevant period, the CFD counterparty's estimate of what the amount calculated in accordance with the formula in regulation 3(2) will be;

CP is the sum of payments made by the CFD counterparty to that supplier under regulations 11(1) and 11(5)(b) in respect of the relevant period less the sum of payments made by that supplier to the CFD counterparty by virtue of regulation 11(5)(a) in respect of the relevant period;

LP is the net levy rate payment in respect of that supplier in respect of the relevant period;

RF is the net reserve fund payment in respect of that supplier in respect of the relevant period.

(4) Paragraph (5) applies where—

- (a) the CFD counterparty has issued a notice by virtue of regulation 4(2)(b) in relation to the relevant period; and
- (b) it has determined any of the matters in that notice on the basis of its estimate of—
 - (i) the amount of electricity supplied (or to be supplied) in the relevant period,
 - (ii) the net CFD funding requirement in the relevant period, or
 - (iii) what the amount calculated in accordance with the formula in regulation 3(2) or paragraph (6) in respect of the relevant period will be.

(5) Where this paragraph applies, the value of RS for the purposes of paragraph (3) is—

- (a) where Final Reconciliation Volume Allocation Runs have occurred in relation to every day in the relevant period, the amount calculated in accordance with the formula in paragraph (6); or
- (b) where Final Reconciliation Volume Allocation Runs have not occurred in relation to every day in the relevant period, the CFD counterparty's estimate of what the amount calculated in accordance with the formula in paragraph (6).

(6) The formula referred to in paragraph (5) is—

$$(CF - AP) \times \frac{(SE - SX)}{[(TE - TX) - AD]}$$

where—

AP is the sum of net payment amounts of suppliers in respect of the relevant period who were issued with notices issued by virtue of regulation 4(2)(b) which contained matters which were determined on the basis of the CFD counterparty's estimate of the matters mentioned in regulation 5(4)(b)(i) to (iii);

AD is the amount of electricity which was supplied by any electricity supplier who was issued with a notice by virtue of regulation 4(2)(b) in the period to which the notice relates which contained matters which were determined on the basis of the CFD counterparty's estimate of the matters mentioned in paragraphs (4)(b)(i) to (iii);

CF is the net CFD funding requirement;

SE is the amount of electricity supplied by that supplier in that supplier obligation period;

SX is the amount of excluded electricity supplied by that supplier in that period;

TE is the amount of electricity supplied by all electricity suppliers in that period;

TX is the amount of excluded electricity supplied by all electricity suppliers in that period.

(7) In this regulation—

“net reserve fund payments” means the sum of payments made by a supplier by virtue of regulation 12(1) in respect of a period less the sum of any payments made by the CFD counterparty to the supplier by virtue of regulation 13(1) in respect of that period;

“net levy rate payments” means the sum of payments made by a supplier by virtue of regulations 6(1) and 9(1) in respect of a period less the sum of any payments made by the CFD counterparty to that supplier by virtue of regulation 9(1) in respect of that period;

“net payment amount” of a supplier in respect of a supplier obligation period is the sum of amounts paid by that supplier to the CFD counterparty by virtue of regulations 5(1), 6(1), 9(1), 11(5)(a) and 12(1) in respect of that period less the sum of amounts paid by the CFD counterparty to that supplier by virtue of regulations 5(2), 9(1), 11(1), 11(5)(b) and 13(1) in respect of that period.

CHAPTER 2

Interim Payments - Levy Rate Payments

Levy rate payments

6.—(1) Subject to regulation 8(1) and paragraph (7), an electricity supplier must, in respect of a supplier obligation period, make a levy rate payment to the counterparty for each day that supplier supplies electricity in Great Britain during that period.

(2) A levy rate payment must be made before the 14th working day after the day to which the payment relates.

(3) Where a supplier fails to make a levy rate payment before the 14th working day after the day to which the payment relates, the supplier must pay the CFD counterparty simple interest on the amount of that payment at the rate specified in regulation 26 from the 14th working day after the day to which the payment relates.

(4) The CFD counterparty must ensure that suppliers have been notified of the amount of their levy rate payment before the 8th working day after the day to which a levy rate payment relates.

(5) The amount of a levy rate payment to be paid by a supplier in respect of a day is the amount equal to the amount of electricity supplied by that supplier on that day multiplied by the levy rate which applies in relation to that day.

(6) The levy rate is to be determined in accordance with regulation 7.

(7) Where the levy rate is determined as zero, paragraph (1) does not apply.

(8) For the purposes of paragraph (5), the amount of electricity supplied by an electricity supplier on a particular day is the amount of electricity which the BSCCo determines, on the basis of an Interim Information Volume Allocation Run in relation to that day, as the amount of electricity supplied by that supplier on that day less any amount of excluded electricity which was supplied by that supplier on that day.

Interim payments – levy rate calculations

7.—(1) The levy rate which applies in relation to a day is the rate which has been determined by the CFD counterparty to be the rate for the supplier obligation period in which that day falls.

(2) Except in relation to the first obligation period, the CFD counterparty must—

- (a) publish a notice before 6th January immediately before the commencement of a supplier obligation period setting out its determination of the levy rate for that period,
- (b) send that notice to every person who is the holder of a supply licence, and
- (c) send that notice to any person who subsequently becomes a supply licence holder prior to the conclusion of that obligation period.

(3) The levy rate for a supplier obligation period is to be determined as the amount given by—

$$\frac{EOC}{EOS}$$

where—

EOC is the estimated supplier obligation period payment cost; and

EOS is the estimated supplier obligation period electricity supply.

(4) For the purposes of paragraph (3), the estimated supplier obligation period payment cost is the total amount which the CFD counterparty estimates will be required to be paid by it to CFD generators under every CFD to which it is, or will be a party to in relation to the supplier obligation period in which the rate is to apply (“the relevant period”), having regard to the matters set out in paragraph (5).

(5) The matters referred to in paragraph (4) are—

- (a) the number of contracts to which the CFD counterparty is a party;
- (b) the number of contracts which, in the opinion of the CFD counterparty, it is likely to be directed to enter into by virtue of section 10(1) of the Act before the end of the relevant period;
- (c) the strike prices which apply to those contracts;
- (d) the likely amount of metered output generated by intermittent CFD generators in each settlement hour in the relevant period;
- (e) the likely amount of metered output generated by baseload CFD generators in each settlement period in the relevant period;
- (f) the baseload reference price which is most likely to apply in relation to each settlement period in the relevant period;
- (g) the intermittent reference price which is most likely to apply in relation to each settlement hour in the relevant period;
- (h) the likely amount of any payments which the CFD counterparty will be required to make under a CFD in the relevant period which are not payments based on the difference between a strike price and a baseload or intermittent reference price in relation to electricity generated.

(6) For the purposes of paragraph (3), the estimated supplier obligation period electricity supply is the amount of electricity which the CFD counterparty estimates will be supplied by all electricity suppliers in the supplier obligation period in which the rate is to apply, less its estimate of excluded electricity supplied by all suppliers in that period.

(7) In this regulation—

“baseload CFD generator” means any generating station which is operated by a CFD generator which is the subject of a CFD which deploys baseload generation technologies;

“baseload reference price” is to be construed in accordance with CFDs to which the CFD counterparty is a party;

“intermittent CFD generator” means any generating station which is operated by a CFD generator which is the subject of a CFD which deploys intermittent generation technologies;

“intermittent reference price” is to be construed in accordance with CFDs to which the CFD counterparty is a party;

“metered output” is to be construed in accordance with CFDs to which the CFD counterparty is a party;

“strike price” means a strike price specified in a CFD as amended in accordance with that CFD.

Interim payments – first obligation period

8.—(1) The obligation to make a levy rate payment to the counterparty under regulation 6(1) does not apply in relation to any day before 1st January 2015(a).

(2) The CFD counterparty must—

- (a) publish a notice before 1st October in the first supplier obligation period setting out its determination of the levy rate for that period;
- (b) send that notice to every person who is the holder of a supply licence; and
- (c) send that notice to any person who subsequently becomes a supply licence holder prior to the conclusion of that obligation period.

Interim Reconciliation

9.—(1) Where the BSCCo carries out a relevant allocation run in relation to a day (“the relevant day”) in respect of which a supplier was required to make a levy rate payment, that supplier must make a levy reconciliation payment to the CFD counterparty and the CFD counterparty must make a levy reconciliation payment to that supplier.

(2) Subject to regulation 10(7), a levy reconciliation payment must be made before the 8th working day after the BSCCo has carried out the relevant allocation run to which the payment relates.

(3) Subject to paragraph (5), the amount a supplier must pay as a levy reconciliation payment in respect of a relevant day is the amount given by—

$$RLA - NLP$$

where—

RLA is the reconciled levy amount for that supplier in respect of the relevant day; and

NLP is the net levy rate payment amount for that supplier in respect of the relevant day.

(4) Subject to paragraph (6), the amount the CFD counterparty must pay as a levy reconciliation payment in respect of a relevant day is—

$$(0 - RLA) + NLP$$

where RLA and NLP have the meanings given in paragraph (3).

(5) Where the amount given by the formula in paragraph (3) is a negative number, the amount a supplier must pay as a levy reconciliation payment is zero.

(6) Where the amount given by the formula in paragraph (4) is a negative number, the amount the CFD counterparty must pay as a levy reconciliation payment is zero.

(7) The CFD counterparty must ensure that suppliers have been notified of the amount of any levy reconciliation payment before the 3rd working day after the day on which the BSCCo carries out the relevant allocation run to which the payment relates.

(8) For the purposes of this regulation the reconciled levy amount for a supplier in respect of a relevant day is the amount equal to the amount of electricity supplied by that supplier on that day multiplied by—

- (a) the reconciliation levy rate which applies to that day by virtue of regulation 10(1) on the day on which the BSCCo carried out the relevant allocation run; or
- (b) where no reconciliation levy rate applies to that day, the levy rate which applies to that day by virtue of regulation 7(1).

(9) In this regulation—

(a) This date and the date in regulation 8(2)(a) are currently indicative only. The provisions relating to the first obligation period may not be required where payment of the levy is not to commence until 1st April 2015 (which is the current proposal in the consultation).

“net levy rate payment amount” for a supplier in respect of a relevant day means the sum of the levy rate payment and any levy reconciliation payments made by that supplier in respect of that day, less the sum of any levy reconciliation payments made by the CFD counterparty to that supplier in respect of that day.

“relevant allocation run” means an Initial Volume Allocation Run or a Reconciliation Volume Allocation Run.

(10) For the purposes of paragraph (8), the amount of electricity supplied by an electricity supplier on a particular day is the amount of electricity which the BSCCo determines, on the basis of the most recent relevant allocation run in relation to that day, as the amount of electricity supplied by that supplier on that day less any amount of excluded electricity which was supplied by that supplier on that day.

Reconciliation Levy Rate

10.—(1) The CFD counterparty must, on three occasions, determine the reconciliation levy rate which applies for each day in a supplier obligation period (“the relevant period”) on three occasions by the following dates—

- (a) 30th June in the following supplier obligation period;
- (b) 30th September in the following supplier obligation period; and
- (c) 31st March in the following supplier obligation period.

(2) The CFD counterparty must—

- (a) publish a notice setting out its determination of the reconciliation levy rate by the date it must determine that rate, and
- (b) send that notice to every person who was required to make a levy rate payment in relation to the relevant period.

(3) A reconciliation levy rate is determined as the amount given by—

$$\frac{SOC}{AOS}$$

where—

SOC is the supplier obligation period payment cost; and

AOS is the supplier obligation period electricity supply.

(4) For the purposes of paragraph (3),—

- (a) the supplier obligation period payment cost is the total amount which the CFD counterparty has paid to CFD generators in respect of the relevant period under every CFD to which it was a party to in the relevant period; and
- (b) the supplier obligation period electricity supply is amount of electricity which was supplied by all electricity suppliers in the relevant period, less any amount of excluded electricity supplied by all suppliers in that period.

(5) For the purposes of paragraph (4)(b), the amount of electricity supplied by all electricity suppliers in the relevant period is the sum of the amounts of electricity supplied on each day in that period by all suppliers as determined by the BSCCo on the basis of the most recent BSC reconciliation run which the BSCCo has carried out in relation to each day in that period as at the day the CFD counterparty determines the levy reconciliation rate.

(6) Where the CFD counterparty has determined a levy reconciliation rate in accordance with paragraph (1), the rate determined will apply from the day after the day by which the CFD counterparty was required to determine it until a new rate is determined and applies.

(7) Subject to paragraph (8), where a reconciliation rate applies, neither the CFD counterparty or a supplier must make a levy reconciliation payment, but the amount of any payment that would have been due, but for the application of this paragraph,—

- (a) to the CFD counterparty from a supplier is to be subtracted from the amount which the CFD counterparty must pay to that supplier by virtue of regulation 13(1) in respect of the obligation period which immediately follows the relevant period; and
- (b) to a supplier from the CFD counterparty is to be added to the amount which the CFD counterparty must pay to the supplier by virtue of regulation 13(1) in respect of the obligation period which immediately follows the relevant period.

(8) If the application of paragraph (7)(a) would cause the amount to be paid to a supplier by virtue of regulation 13(1) to be less than zero, then the amount to be paid by the CFD counterparty by virtue of that regulation is zero.

(9) Any amount which, by virtue of paragraph (7)(a), is subtracted from an amount to be paid to a supplier by virtue of regulation 13(1) in respect of the obligation period which immediately follows the relevant period is to be treated as an amount paid by that supplier by virtue of regulation 9(1) in respect of the relevant period for the purposes of regulation 5.

(10) Any amount which, by virtue of regulation paragraph (7)(b), is added to an amount to be paid to a supplier by virtue of regulation 13(1) in respect of the obligation period which immediately follows the relevant period is to be treated as an amount paid by the CFD counterparty by virtue of regulation 9(1) in respect of the relevant for the purposes of regulation 5.

(11) Where, by virtue of paragraph (7), an amount (“the adjustment amount”) is subtracted or added to an amount (“the repayment amount”) which is to be paid to a supplier by virtue of regulation 13(1) in respect of the obligation period (“the later period”) which immediately follows the relevant period, and the CFD counterparty pays the repayment amount as varied by the adjustment amount to that supplier, that payment is to be treated as if it were a payment in the amount of the repayment amount by virtue of regulation 13(1) in respect of the later period for the purposes of regulation 5.

Interim Payments to suppliers

11.—(1) Subject to paragraph (4), where the CFD counterparty has received any amount (a “relevant amount”) from a CFD generator under a CFD in respect of a supplier obligation period (“the relevant period”) it must determine and pay that amount, if any, to suppliers as soon as reasonably practicable after the end of that period in accordance with this regulation.

(2) The amount which the CFD counterparty must pay a supplier is the amount given by—

$$RA \times \frac{(SE - SX)}{(TE - TX)}$$

where—

RA is the relevant amount;

SE is the amount of electricity supplied by that supplier in the relevant period;

SX is the amount of excluded electricity supplied by that supplier in that period;

TE is the amount of electricity supplied by all electricity suppliers in that period;

TX is the amount of excluded electricity supplied by all electricity suppliers in that period.

(3) For the purposes of paragraph (2)—

- (a) the amount of electricity supplied by that supplier in the relevant period is the sum of the amounts of electricity supplied on each day in that period by that supplier as determined by the BSCCo on the basis of the most recent BSC reconciliation run which the BSCCo has carried out in relation to each day in the period as at the day the CFD counterparty determines the relevant amount; and
- (b) the amount of electricity supplied by all electricity suppliers in that period is the sum of the amounts of electricity supplied on each day in that period by all suppliers as determined by the BSCCo on the basis of the most recent BSC reconciliation run which the BSCCo has carried out in relation to each day in the period as at the day the CFD counterparty determines the relevant amount.

(4) Where the CFD counterparty determines that the making of a payment by virtue of paragraph (1) would cause it to be unable to meet its liabilities to CFD generators under a CFD, it would not be reasonably practicable, for the purposes of paragraph (1), for the CFD to make that payment at that time.

(5) Where the BSCCo carries out a BSC reconciliation run (“the relevant reconciliation run”) in relation to any day in the relevant period after the CFD counterparty has paid electricity suppliers an amount by virtue of paragraph (1)—

- (a) electricity suppliers who were entitled to a payment by virtue of paragraph (1) must make a reconciliation payment to the CFD counterparty; and
- (b) the CFD counterparty must make a reconciliation payment to each supplier who was entitled to a payment by virtue of paragraph (1).

(6) A reconciliation payment under paragraph (5) must be paid before the 8th working day after the BSCCo has carried out the relevant reconciliation run.

(7) Subject to paragraph (9), the amount the CFD counterparty must pay as a reconciliation payment to a supplier is the amount given by—

$$RPA - PRA$$

where—

PRA is the sum of amounts which the CFD counterparty paid that supplier by virtue of paragraphs (1) and (5) in relation to the relevant period; and

RPA is the amount given by the formula in paragraph (2) following the relevant reconciliation run.

(8) Subject to paragraph (10), the amount a supplier must pay as a reconciliation payment to the CFD counterparty is—

$$(0 - RPA) + PRA$$

where RPA and PRA have the meanings given in paragraph (7).

(9) Where the amount given by the formula in paragraph (7) is a negative number, the amount the CFD counterparty must pay to a supplier as a reconciliation payment is zero.

(10) Where the amount given by the formula in paragraph (8) is a negative number, the amount a supplier must pay to the CFD counterparty as a reconciliation payment is zero.

(11) The CFD counterparty must ensure that suppliers have been notified of the amount of any reconciliation payment before the 3rd working day after the day on which the BSCCo carries out a relevant reconciliation run.

CHAPTER 3

The reserve fund

Reserve fund payments

12.—(1) An electricity supplier must make a reserve fund payment to the counterparty in respect of each supplier obligation period, before the reserve payment date for that supplier in relation to that period.

(2) Where a supplier fails to make a reserve fund payment by the reserve payment date, the supplier must pay the CFD counterparty simple interest on the amount of that payment at the rate specified in regulation 26 from the day after the reserve payment date.

(3) Subject to paragraph (10), the reserve payment date for a reserve fund payment is

- (a) in relation to a payment in respect of the first obligation period, 16th December^(a) in that period, and

(a) This date and the date in regulation 12(5)(a) are currently indicative only.

- (b) in respect of any subsequent supplier obligation period, 1st July in that period.
- (4) The CFD counterparty must—
- (a) publish a notice by the notification date setting out its determination of the reserve fund requirement for a supplier obligation period, and
- (b) send a notice to every person who is the holder of a supply licence setting out its determination of that electricity supplier's reserve fund payment for that period.
- (5) For the purposes of this regulation, the notification date is—
- (a) in relation to the reserve fund requirement for the first obligation period, 1st October in that period, or
- (b) in relation to any subsequent supplier obligation period, 20th May in that period.
- (6) The amount of a supplier's reserve fund payment in respect of a supplier obligation period ("the relevant period") is the amount given by—

$$RR \times \left(\frac{SRE}{RE} \right)$$

where—

RR is the reserve fund requirement in respect of that period;

SRE is the amount of electricity supplied in the reference period which applied to that supplier in relation to the relevant period; and

RE is the sum of the amounts of electricity supplied by every supplier in whichever reference period applied to them in relation to relevant supplier obligation period.

(7) The amount of the reserve fund requirement for an obligation period is the amount determined by the CFD counterparty as the amount given by—

$$LPE - EOC$$

where—

EOC is the estimated supplier obligation period payment cost for the relevant period determined under regulation 6; and

LPE is the reserve estimated payment cost.

(8) For the purposes of paragraph (7) the reserve estimated payment cost is the total amount which the CFD counterparty estimates will be required to be paid by it to CFD generators under every CFD to which it is, or will be a party to in relation to the relevant period, having regard to the matters set out in regulation 7(5), but on the basis that—

- (a) baseload reference prices and intermittent reference prices are likely to be low within the range of reference prices which could be expected to occur; and
- (b) the amount of metered output generated by baseload CFD generators and intermittent CFD generators is likely to be high within the range of the amount of metered output generated which could be expected to occur.

(9) Subject to paragraph (10), for the purposes of this regulation the reference period which applies to an electricity supplier is the period which commences on 1st November and ends on 30th November immediately before the supplier obligation period to which the reserve fund payment relates.

(10) In relation to a supplier who was not the holder of a supply licence on the notification date for a supplier obligation period but subsequently becomes the holder of a licence at any time before the end of that period—

- (a) the CFD counterparty must send a notice to that supplier within 60 working days of that supplier commencing a supply of electricity setting out—
- (i) the amount of the reserve fund requirement for that obligation period, and

- (ii) the amount of that supplier’s reserve fund payment which that supplier must pay for that obligation period;
 - (b) the reserve payment date in relation to that supplier for that period is 5 working days after the giving of that notice; and
 - (c) the reference period in relation to that supplier is the 30 day period which commences on the first day of the month prior to the CFD counterparty giving that notice to that supplier.
- (11) For the purposes of paragraph (6)—
- (a) the amount of electricity supplied by an electricity supplier in a reference period is—
 - (i) the amount of electricity which the BSCCo determines, on the basis of the most recent BSC reconciliation run which the BSCCo has carried out in relation to each day in that period as at the date the CFD counterparty determines a suppliers reserve fund payment, as the amount of electricity supplied by that supplier in that reference period,
 - (ii) less any amount of excluded electricity supplied by that supplier in that period; and
 - (b) the sum of electricity supplied by every supplier in whichever reference period applied to them in relation to that supplier obligation period is—
 - (i) the sum of the amounts of electricity, which the BSCCo determines on the basis of the most recent BSC reconciliation run which the BSCCo has carried out in relation to each day in that period as at the date the CFD counterparty determines a suppliers reserve fund payment, which were supplied by all suppliers in the reference periods which applied to them,
 - (ii) less any amount of excluded electricity supplied in those periods by suppliers to which those periods apply.

Repayment of unused reserve payments

13.—(1) In respect of every supplier obligation period, the CFD counterparty must in accordance with this regulation make a reserve fund repayment to each electricity supplier who made a reserve fund payment in respect of that period.

(2) The CFD counterparty must make reserve fund repayments in respect of a supplier obligation period as soon as reasonably practicable after it has determined the matters in paragraphs (3)(a) to (c).

(3) As soon as reasonably practicable after supplier obligation period in respect of which reserve fund repayments must be made the CFD counterparty must determine—

- (a) the total amount that it has paid to CFD generators under every CFD to which it was a party during that period (the “relevant funding amount”);
- (b) the sum of all levy rate payments received by the CFD counterparty in respect of the period (the “collected levy”);
- (c) the sum of all reserve fund payments received by the CFD counterparty in respect of the period (the “received reserve amount”).

(4) Subject to regulations 10(7) and 10(8), the amount which the CFD counterparty must pay an electricity supplier who made a reserve fund payment in respect of a supplier obligation period is the amount given by—

$$TR \times \left(\frac{RFC}{TFC} \right)$$

where—

TR is the total repayment amount in respect of that period;

RFC is amount that supplier paid to the CFD counterparty by virtue of regulation 12(1) in respect of that period; and

TFC is the sum of amounts paid by all electricity suppliers to the CFD counterparty by virtue of regulation 12(1) in respect of that period.

(5) For the purposes of paragraph (4) the “total repayment amount” is to be determined by the CFD counterparty in accordance with paragraphs (6) to (8).

(6) Where the collected levy in respect of a supplier obligation period is greater than, or equal to, the relevant funding amount in respect of that period, the total repayment amount is the amount of the received reserve amount.

(7) Where the sum of the collected levy and the received reserve amount in respect of a supplier obligation period is less than, or equal to, the relevant funding amount in respect of that period, the total repayment amount is zero.

(8) Where the collected levy in respect of a supplier obligation period is less than the relevant funding amount in respect of that period, but the sum of the collected levy and the received reserve amount in respect of that period is greater than the relevant funding amount in respect of that period the total repayment amount is the amount given by—

$$RR - (RF - CL)$$

where—

RR is the received reserve amount in respect of that period;

RF is the relevant funding amount in respect of that period; and

CL is the collected levy in respect of that period.

CHAPTER 4

Collateral and mutualised Collateral

Collateral

14.—(1) In relation to any period where an electricity supplier is required to make levy rate payments, that supplier must provide appropriate collateral to the CFD counterparty.

(2) Appropriate collateral means the provision of collateral which would enable the CFD counterparty to draw down the amount of an electricity supplier’s collateral requirement which has been provided as—

- (a) amounts of cash;
- (b) appropriate letters of credit; or
- (c) any combination of cash and letters of credit.

(3) Appropriate collateral must be provided before the 3rd working day after the first day an electricity supplier makes an electricity supply in an obligation period in respect of which it is required to make a levy rate payment.

(4) A letter of credit is appropriate if—

- (a) it is issued by an institution which holds a long term debt rating ranked as
 - (i) “A3” or better by Moody’s KMV, or
 - (ii) “A-“ or better by Standard and Poor’s; and
- (b) it is provided on terms which the CFD counterparty has determined to be sufficient to ensure that in the case of non-payment by the electricity supplier of levy rate payments the counterparty or its agents will be able to use sums provided by the institution under the letter to make payments to CFD generators up to the extent of the amount stated in the letter.

(5) The CFD counterparty must, before 1st December 2014, publish a document setting out the terms of letters of credit which it determines it is likely to regard as sufficient for the purposes of paragraph (4)(b), and must keep any such document under review and publish any revision from time to time.

(6) An electricity supplier must ensure, at all times after it is first required to provide appropriate collateral by virtue of paragraph (3) until it ceases to be under any obligation to make levy rate payments, that the amount of that supplier's collateral held by the CFD counterparty is no less than the amount of that supplier's collateral requirement.

(7) An electricity supplier is not in breach of the obligation in paragraph (6) where, by the collateral default time, it has ensured that amount of that supplier's appropriate collateral held by the CFD counterparty is equal to, or greater than, that supplier's collateral requirement.

(8) For the purposes of paragraph (7), the collateral default time is 2pm on the 2nd working day after the amount of an electricity supplier's collateral held by the CFD counterparty falls below the amount of that supplier's collateral requirement.

(9) For the purposes of paragraph (6), where appropriate collateral has been used by the CFD counterparty it is not held by it.

(10) For the purposes of paragraph (9) and regulation 16(13)(b) and 16(14)(b), appropriate collateral is used by the CFD counterparty if—

- (a) in the case of any collateral which is held in cash, it is used to make a payment to a CFD generator,
- (b) in the case of a letter of credit, the counterparty makes a request to the institution providing the letter to make a payment under it to the CFD counterparty or its agents and that payment is to be used to make a payment to a CFD generator.

(11) A CFD counterparty may only use any amount of a supplier's collateral which the counterparty determines is equal to, or less than, any amount of levy rate payments that supplier has failed to pay in accordance with regulation 6.

(12) Where the CFD counterparty uses any amount of a supplier's collateral, the CFD counterparty must ensure that the supplier has been notified of the amount of that collateral which was used within 24 hours of it being used.

(13) Where a supplier has provided the CFD counterparty with a letter of credit issued by an institution which ceases to hold a long term debt rating ranked as "A3" or better by Moody's KMV, or "A-" or better by Standard and Poor's, that letter will not constitute appropriate collateral from the 8th working day after the day the institution ceased to hold that long term debt rating.

(14) Where the appropriate collateral provided by an electricity supplier and held by the CFD counterparty is more than that supplier's collateral requirement, that supplier may make a request in writing that the CFD counterparty repay or return as much collateral as exceeds the supplier's collateral requirement.

(15) Where a request under paragraph (14) has been received by the CFD counterparty the counterparty must, before the 2nd working day after the request has been received, repay or return the lesser of—

- (a) the amount requested by the supplier, or
- (b) the amount of appropriate collateral which the CFD counterparty determines exceeds that supplier's collateral requirement at the time the payment is to be made.

(16) In this regulation and regulation 16 "draw down" means—

- (a) in the case of cash, the use of that cash; and
- (b) in the case of a letter of credit; the payment by the institution who issued the letter of credit of the amount stated in the latter.

(17) For the purposes of this regulation, an electricity supplier's collateral requirement is to be construed in accordance with regulation 15.

Calculation of a supplier's collateral requirement

15.—(1) An electricity supplier's collateral requirement on any day is the sum of relevant supplier amounts for that supplier for each of the first 21 days of the previous 26 days.

(2) For the purposes of paragraph (1), the relevant supplier amount for a day for an electricity supplier is the amount of electricity supplied by that supplier multiplied by the levy rate which applies in relation to that day by virtue of regulation 7(1).

(3) For the purposes of paragraph (2) the amount of electricity supplied by a supplier on a day is the amount of electricity as determined by the BSCCo on the basis of the most recent BSC reconciliation run which the BSCCo has carried out in relation to that day.

Mutualised collateral

16.—(1) In relation to any period where an electricity supplier is required to make levy rate payments, that supplier must provide appropriate insolvency reserve collateral to the CFD counterparty.

(2) Appropriate insolvency reserve collateral means the provision of collateral which would enable the CFD counterparty to draw down the amount of a supplier's insolvency reserve requirement which has been provided as—

- (a) amounts of cash;
- (b) appropriate letters of credit; or
- (c) any combination of cash and letters of credit.

(3) Appropriate insolvency reserve collateral must be provided before the 3rd working day after the first day an electricity supplier makes an electricity supply in an obligation period in respect of which it is required to make a levy rate payment.

(4) A letter of credit is appropriate if—

- (a) it is issued by an institution which holds a long term debt rating ranked as
 - (i) "A3" or better by Moody's KMV, or
 - (ii) "A-" or better by Standard and Poor's; and
- (b) it is provided on terms which the CFD counterparty has determined to be sufficient to ensure that in the case of non-payment by any electricity supplier of levy rate payments the counterparty or its agents will be able to use sums provided by the institution under the letter to make payments to CFD generators up to the extent of the amount stated in the letter.

(5) The CFD counterparty must, before 1st December 2014, publish a document setting out the terms of letters of credit which it determines it is likely to regard as sufficient for the purposes of paragraph (4)(b), and must keep any such document under review and publish any revision from time to time.

(6) An electricity supplier must ensure, at all times after it is first required to provide appropriate insolvency reserve collateral by virtue of paragraph (3) until it ceases to be under any obligation to make levy rate payments, that the amount of that supplier's insolvency reserve collateral held by the CFD counterparty is no less than the amount of that supplier's insolvency reserve requirement.

(7) An electricity supplier is not in breach of the obligation in paragraph (6) where, by the relevant time, it has provided the CFD counterparty with any additional insolvency reserve collateral required to be provided by virtue of paragraphs (8) to (10).

(8) Where any insolvency reserve collateral held by the CFD counterparty provided by a supplier ceases to be appropriate—

- (a) that supplier must provide additional insolvency reserve collateral equal to the amount of collateral which has ceased to be appropriate, and
- (b) for the purposes of paragraph (7), the relevant time is 2pm on the 2nd working day after the collateral ceased to be appropriate.

(9) Where the insolvency reserve requirement of a supplier has increased—

- (a) that supplier must provide additional insolvency reserve collateral equal to the amount by which its requirement has increased; and

- (b) for the purposes of paragraph (7) the relevant time is 2pm on the 5th working day after the day the supplier's insolvency reserve requirement increased.
- (10) Where any amount of a suppliers insolvency reserve collateral has been used by the CFD counterparty—
- (a) that supplier must provide additional insolvency reserve collateral equal to the amount which the CFD counterparty used; and
 - (b) for the purposes of paragraph (7) the relevant time is—
 - (i) in relation to collateral which was used by virtue of paragraph (13), 2pm on the 2nd working day after the collateral was used.
 - (ii) in relation to collateral which was used by virtue of paragraph (14), 2pm on the 8th working day after the day the CFD counterparty issued a notice under paragraph (15).
- (11) For the purposes of paragraph (6), where insolvency reserve collateral has been used by the CFD counterparty it is not held by it.
- (12) For the purposes of paragraphs (10), (11) and (19), insolvency reserve collateral is used by the CFD counterparty if—
- (a) in the case of any collateral which is held in cash, it is used to make a payment to a CFD generator,
 - (b) in the case of a letter of credit, the CFD counterparty has made a request to the institution providing the letter to make a payment under it to the CFD counterparty or its agents and that payment is to be used to make a payment to a CFD generator.
- (13) The CFD counterparty may use insolvency reserve collateral provided by an electricity supplier where—
- (a) that supplier has failed to make a levy rate payment in accordance with regulation 6;
 - (b) the CFD counterparty has used, within the meaning given by regulation 14(10), all appropriate collateral which may have been provided by that supplier by virtue of regulation 14(1) and 14(6); and
 - (c) the amount of insolvency reserve collateral to be used is less than or equal to the amount which the supplier has failed to pay, less any amount of appropriate collateral provided by that supplier which was used in respect of that failure.
- (14) Subject to paragraph (16), the CFD counterparty may use insolvency reserve collateral provided by an electricity supplier (the “collateral provider”) where—
- (a) the counterparty determines that an electricity supplier (the “defaulting supplier”) has failed to make a levy rate payment in accordance with regulation 6;
 - (b) the CFD counterparty has used, within the meaning given by regulation 14(10), all appropriate collateral which may have been provided by the defaulting supplier by virtue of regulation 14(1) and 14(6);
 - (c) the CFD counterparty has, by virtue of paragraph (13), used all insolvency reserve collateral provided by the defaulting supplier;
 - (d) it is after the 2nd working day after the CFD counterparty has issued a notice under paragraph (15); and
 - (e) in the case of the use of a letter of credit—
 - (i) it is at least 24 hours since the CFD counterparty has issued a notice under paragraph (17), and
 - (ii) the collateral provider has not made a payment in accordance with paragraph (18).
- (15) Where the CFD counterparty intends to use insolvency reserve collateral by virtue of paragraph (14), it must send a notice to the electricity supplier who provided the collateral which the CFD counterparty intends to use setting out—
- (a) the amount of insolvency reserve collateral which that supplier provided which the CFD counterparty intends to use; and

(b) the amount of additional insolvency reserve collateral which the CFD counterparty determines that supplier would be required to provide by virtue of paragraph (10)(a).

(16) Where the conditions in paragraph (14) are met, the CFD counterparty may use any amount of a collateral provider's insolvency reserve collateral which the counterparty determines is equal to, or less than, the amount given by—

$$LD \times \left(\frac{CPR}{TCR} \right)$$

where—

LD is the amount of levy rate payment (or payments) which the defaulting supplier has failed to pay;

CPR is the collateral provider's insolvency reserve requirement; and

TCR is sum of all suppliers' insolvency reserve requirements.

(17) Where the CFD counterparty intends to use insolvency reserve collateral by virtue of paragraph (14) which was provided by an electricity supplier as a letter of credit, it must issue a notice to that supplier which—

(a) identifies the letter of credit; and

(b) specifies the amount the CFD counterparty intends to request under the letter of credit.

(18) Where the CFD counterparty has issued a notice under paragraph (17) and recipient of the notice does not wish the CFD counterparty to use the letter of credit identified in that notice it may make a payment to the CFD counterparty of the amount specified in that notice by virtue of paragraph (17)(b) within 24 hours of the notice being issued.

(19) Where the CFD counterparty uses any insolvency reserve collateral which has been provided by an electricity supplier, it must ensure that the supplier who provided that collateral has been notified of the amount of that collateral which was used within 24 hours of it being used.

(20) Where an electricity supplier has provided the CFD counterparty with a letter of credit issued by an institution which ceases to hold a long term debt rating ranked as "A3" or better by Moody's KMV, or "A-" or better by Standard and Poor's, that letter will not constitute appropriate insolvency reserve collateral from the 8th working day after the day the institution ceased to hold that long term debt rating.

(21) Where the appropriate insolvency reserve collateral provided by an electricity supplier and held by the CFD counterparty is more than that supplier's insolvency reserve requirement, that supplier may make a request in writing that the CFD counterparty repay or return as much collateral as exceeds that supplier's insolvency reserve requirement.

(22) Where a request under paragraph (21) has been received by the CFD counterparty the counterparty must, before the 5th working day after the request has been made, repay or return the lesser of—

(a) the amount requested by the supplier, or

(b) the amount of appropriate insolvency reserve collateral which the counterparty determines exceeds that supplier's insolvency reserve requirement at the time the payment is to be made.

(23) For the purposes of this regulation, an electricity supplier's insolvency reserve requirement is to be construed in accordance with regulation 17.

Calculation of a supplier's insolvency reserve requirement

17.—(1) An electricity supplier's insolvency reserve requirement is the amount determined by the CFD counterparty in accordance with this regulation for a supplier obligation period.

(2) The CFD counterparty must determine, in accordance with paragraph (6), the amount of each supplier's insolvency reserve requirement—

- (a) for the first supplier obligation period, before 1st October^(a) in the first supplier obligation period;
- (b) for each subsequent supplier obligation period, before 6th January immediately before the commencement of that period.

(3) The CFD counterparty must re-determine, in accordance with paragraph (8), the insolvency reserve requirement of every electricity supplier in relation to a supplier obligation period where—

- (a) an electricity supplier who was required to provide insolvency reserve collateral ceases to hold a licence under section 6(1)(a) of the Electricity Act 1989 after the determination of suppliers' insolvency reserve requirements but prior to the end of that supplier obligation period; or
- (b) a supplier who had not supplied electricity prior to the determination of the insolvency reserve requirement for a supplier obligation period commences a supply of electricity before the end of that period.

(4) Where the CFD counterparty determines electricity suppliers' insolvency reserve requirements by virtue of paragraph (2), or re-determines electricity supplier's insolvency reserve requirements by virtue of paragraph (3) it must issue a notice to each electricity supplier setting out that supplier's current insolvency reserve requirement.

(5) Where the CFD counterparty re-determines insolvency reserve requirements by virtue of paragraph (3), those requirements apply from the working day after the CFD counterparty gives notice of those requirements to suppliers.

(6) The CFD counterparty must determine a supplier's insolvency reserve requirement as the amount given by—

$$SMS \times \left(REOC \times \frac{38}{365} \right)$$

where—

SMS is the sum of the amounts of electricity supplied by that supplier on each day in the month of November immediately prior to the determination, divided by the sum of the amounts of electricity supplied by all suppliers on each day in that month; and

REOC is the relevant estimated supplier obligation period payment cost calculated in accordance with paragraph (7).

(7) For the purposes of paragraph (6), the relevant estimated supplier obligation period payment is the amount determined by the CFD counterparty as the EOC for the purposes of the calculation in regulation 7(3) for that supplier obligation period, multiplied by the sum of the 7th, 8th and 9th largest SMSs of all suppliers for that period.

(8) The CFD counterparty must re-determine a supplier's insolvency reserve requirement as the amount given by the formula in paragraph (6) where—

- (a) the reference to the month of November immediately prior to the determination is construed as a reference to the month of November immediately prior to the re-determination except where the re-determination occurs between 1st November and 15th December; and
- (b) the amount of electricity supplied by a supplier who ceased to hold a licence is treated as zero for the purposes of the calculation of SMS.

(9) For the purposes of paragraph (6), the amount of electricity supplied by a supplier on a day is the amount of electricity as determined by the BSCCo on the basis of the most recent BSC reconciliation run which the BSCCo has carried out in relation to that day at the time the determination or redetermination is to be made.

(a) This date is currently indicative only.

Repayment of mutualised collateral

18.—(1) Where the CFD counterparty uses insolvency reserve collateral due to the failure of an electricity supplier to make a payment in accordance with regulation 6 and subsequently recovers any amount from that supplier in respect of that failure, that amount must be paid to electricity suppliers who provided the insolvency reserve collateral that was used, in accordance with paragraphs (2) and (3).

(2) The amount which the CFD counterparty must, by virtue of paragraph (1), pay an electricity supplier (“the insolvency reserve provider”) who provided insolvency reserve collateral that was used because of a failure of another supplier (“the defaulting supplier”) to make a payment in accordance with regulation 6 is—

- (a) where the amount recovered is greater than the amount of insolvency collateral used, the amount given by—

$$AU \times \left(\frac{SU}{AU} \right)$$

where—

AU is the total amount of insolvency reserve collateral which was used in respect of the failure of the defaulting supplier, and

SU is the amount of the insolvency reserve provider’s insolvency reserve collateral used in respect of the failure of the defaulting supplier; or

- (b) where the amount recovered is less than the amount of insolvency reserve collateral used, the amount given by—

$$AR \times \left(\frac{SU}{AU} \right)$$

where—

AR is the amount recovered from the defaulting supplier,

AU is the total amount of insolvency reserve collateral which was used in respect of the failure of the defaulting supplier, and

SU is the amount of the insolvency reserve provider’s insolvency reserve collateral used in respect of the failure of the defaulting supplier.

(3) Any amount which the CFD counterparty is required to pay by virtue of paragraph (1) must be paid by the 5th working day after the counterparty has recovered the amount to be paid.

CHAPTER 5

Enforcement and disputes

Enforcement of requirements

19.—(1) Any requirement of an electricity supplier to which this paragraph applies, is enforceable by the Authority as if any such requirement was a relevant requirement on a regulated person for the purposes of section 25 of the Electricity Act 1989.

(2) Paragraph (1) applies to any requirement—

- (a) that is a requirement under regulations 5(1), 6(1), 6(3), 9(1), 11(5)(a), 12(1), 12(2), 14(1), 14(6), 16(1), 16(6), 27(1), 27(4) or 30(1); and
- (b) in respect of which the CFD counterparty has issued a notice under paragraph (3), (4) or (5).

(3) Where the CFD counterparty determines that an electricity supplier has not complied with any requirement to pay an amount required under regulations 5(1), 6(1), 6(3), 9(1), 11(5)(a), 12(1), 12(2), 27(1), 27(4) or 30(1) it may issue a notice setting out—

- (a) the amount which the CFD counterparty determines the supplier should have paid;
- (b) the basis on which the counterparty determined the amount;
- (c) the date on which the amount should have been paid;
- (d) the rate, if any, of interest which applies to the amount; and
- (e) any amount of interest which has accrued as at the date of the notice.

(4) Where the CFD counterparty determines that an electricity supplier has not complied with a requirement to provide appropriate collateral required under regulation 14(1) or is in breach of the requirement under regulation 14(6) it may issue a notice setting out—

- (a) the amount of collateral which the CFD counterparty determines the supplier should have provided;
- (b) the date on which the amount should have been provided;
- (c) the rate of interest which the supplier is required to pay by virtue of paragraph (9).

(5) Where the CFD counterparty determines that an electricity supplier has not complied with a requirement to provide appropriate insolvency reserve collateral required under regulation 16(1), or is in breach of the requirement under regulation 16(6) it may issue a notice setting out—

- (a) the amount of insolvency reserve collateral which the CFD counterparty determines the supplier should have provided;
- (b) the date on which the amount should have been provided; and
- (c) the rate of interest which the supplier is required to pay by virtue of paragraph (9).

(6) Where the counterparty has issued a notice to a supplier under paragraph (4) or (5), that supplier is required to pay the amount specified in the notice to the CFD counterparty as cash.

(7) For the purposes of section 9(9)(b) of the Act (sums recoverable as civil debt) only, any sum which is required to be paid under regulation 5(1), 6(1), 6(3), 9(1), 11(5)(a), 12(1), 12(2), 27(1), 27(4) or 30(1) is not paid by the date on which it is required if a notice under paragraph (3) has been issued.

(8) For the purposes of section 9(9)(b) of the Act, any amount of cash which was required to be paid by virtue of paragraph (6) is not paid by the date on which it is required if it has not been paid before 2pm on the next working day after the notice has been issued.

(9) Where the counterparty has issued a notice to a supplier under paragraph (4) or (5) and that supplier is required to make a payment by virtue of paragraph (6), that supplier must pay the CFD counterparty simple interest on the amount of that payment at the rate specified in regulation 27 from the day after the notice was issued.

(10) Where the CFD counterparty issues a notice to a supplier under paragraph (3), (4) or (5) the counterparty—

- (a) must also provide a copy of that notice to the Authority; and
- (b) may publish a copy of that notice, or a summary of that notice in such manner as it thinks appropriate.

Disputes – supplier notices

20.—(1) An electricity supplier may dispute a relevant notice by giving a notice to the CFD counterparty setting out—

- (a) the details of the notice the supplier is disputing, and
- (b) the basis on which the supplier disputes the notice.

(2) A notice under paragraph (1) may only be given by an electricity supplier before the 28th day after the day the relevant notice was issued by the CFD counterparty.

(3) An electricity supplier may dispute a relevant determination made by the CFD counterparty by giving a notice to the CFD counterparty setting out—

- (a) the details of the determination the supplier is disputing, and

(b) the basis on which the supplier disputes the determination.

(4) For the purposes of paragraph (3), a dispute about a relevant determination made by the CFD counterparty includes a dispute about the failure of the CFD counterparty to make such a determination.

(5) A notice under paragraph (3) may only be given by an electricity supplier before the 28th day after—

- (a) the day on which the CFD counterparty made the relevant determination which is in dispute, or
- (b) in the case of a dispute about the failure of the CFD counterparty to make a relevant determination, the day on which the CFD counterparty should have made the relevant determination which is in dispute.

(6) An electricity supplier may not dispute a relevant notice or any relevant determination to the extent the dispute is about a determination made by the BSCCo about an amount of electricity supplied.

(7) For the purposes of this regulation and regulations 21 and 22—

a “relevant determination” is any determination made by the CFD counterparty under these regulations except for a determination made under regulation 21 or 22; and

a “relevant notice” is a notice given to a supplier under regulation 19(3), 19(4) or 19(5).

(8) Where an electricity supplier has given a notice by virtue of paragraph (1) or (3), that electricity supplier must still comply with any requirement imposed by these regulations notwithstanding the requirement may be in dispute.

Disputes – relevant notices

21.—(1) Where the CFD counterparty receives a notice under regulation 20(1) it must determine whether it should have—

- (a) issued the relevant notice at all, or
- (b) issued the relevant notice but on different terms.

(2) Where the CFD counterparty must make a determination under paragraph (1), it must make that determination and issue a notice to the supplier who gave the notice under regulation 20(1) setting out that determination before the 28th day after the day on which it received the notice under regulation 20(1).

(3) Where the CFD counterparty determines under paragraph (1) that it should not have issued a relevant notice it must—

- (a) notify the Authority that the notice should not have been issued;
- (b) pay the supplier who received the notice, before the 5th working day after the day the CFD counterparty made the determination,—
 - (i) any amount which the supplier has paid in respect of the notice, and
 - (ii) any amount which the counterparty has recovered as a civil debt in respect of the notice; and
- (c) notify any other electricity supplier which, in the opinion of the CFD counterparty, is likely to be affected by the determination.

(4) Where the CFD counterparty determines under paragraph (1) that it should have issued a relevant notice but on different terms it must—

- (a) issue a new notice under the relevant regulation to the supplier who received the relevant notice;
- (b) notify the authority that the notice was incorrect and provide a copy of the new notice;
- (c) pay the supplier who received the notice, before the 5th working day after the day the CFD counterparty made the determination,—

- (i) any amount which the supplier has paid in respect of the notice less any amount which that supplier is required to pay by virtue of the new notice, and
 - (ii) any amount which the counterparty has recovered as a civil debt in respect of the notice less any amount that supplier is required to pay by virtue of the new notice; and
 - (d) send a copy of that notice to every other electricity supplier which, in the opinion of the CFD counterparty, is likely to be affected by the determination.
- (5) For the purposes of this regulation—
- (a) the terms of a relevant notice are the matters required to be set out in that notice by virtue of the relevant regulation, and
 - (b) the relevant regulation is the regulation under which the relevant notice was issued.

Disputes – relevant determinations

22.—(1) Where the CFD counterparty receives a notice under regulation 20(3) it must determine whether it should have—

- (a) made a relevant determination where it did not make a relevant determination,
- (b) not made a relevant determination where it did make a relevant determination, or
- (c) made a different relevant determination to any relevant determination it made.

(2) Where the CFD counterparty must make a determination under paragraph (1) it must, before the 28th day after the day on which it received the notice under regulation 20(3),—

- (a) make that determination;
- (b) issue a notice to the supplier who gave the notice under regulation 20(3) setting out that determination;
- (c) send a copy of that notice to every other electricity supplier which, in the opinion of the CFD counterparty, is likely to be affected by the determination;
- (d) publish a notice setting out that determination where it concerns a relevant determination which is otherwise required by virtue of these regulations to be published in a notice.

(3) Where the CFD counterparty determines under paragraph (1) that it should have made a relevant determination where it did not make such a determination it must make that relevant determination.

(4) Where the CFD counterparty determines under paragraph (1) that it should have not made a relevant determination that relevant determination is void.

(5) Where the CFD counterparty determines under paragraph (1) that it should have made a different relevant determination to the relevant determination it made (“the original determination”)—

- (a) it must make a new relevant determination and
- (b) the original relevant determination is void.

(6) Where a relevant determination is required, by virtue of these regulations, to be published in a notice by a particular date and it is a relevant determination made by virtue of paragraph (3), or is a new determination made by virtue of paragraph (5)(a) the fact that determination may have been made after that date does not make that determination ineffective.

(7) Where a supplier has received any amount by virtue of a void determination and it receives a notice under paragraph (2)(b) or (c), it must pay that amount to the CFD counterparty before the 5th working day after that notice was sent to it.

Duties of the counterparty to enforce

23.—(1) The CFD counterparty must exercise its functions in the manner best calculated to collect all amounts which are required to be—

- (a) paid by electricity suppliers under regulations 5(1), 6(1), 6(3), 9(1), 11(5)(a), 12(1), 12(2), 27(1), 27(4) and 30(1), and
 - (b) provided by virtue of regulations 14(1), 14(6), 16(1), and 16(6).
- (2) In paragraph (1) “functions” includes—
- (a) any function conferred under these regulations, and
 - (b) the recovery of any sum referred to in regulations 19(7) and 19(8) as a civil debt.

CHAPTER 6

Miscellaneous

Discharge of obligations by payment

24.—(1) Any payment made by an electricity supplier to the CFD counterparty will be applied to discharge the obligations of that supplier to make payments, or provide collateral which are due, under these regulations in the general order of priority set out in paragraph (6);

(2) Where the counterparty is under an obligation to make a payment to an electricity supplier under these regulations and the supplier has obligations to make payments, or provide collateral which are due, the CFD counterparty may use as much of the payment it is required to make to that supplier as is equal to, or less than, the amount of the supplier’s obligations.

(3) Where the CFD counterparty uses a payment which is due to a supplier as described in paragraph (2)—

- (a) it will be applied to discharge the obligations of that supplier to make payments, or provide collateral which are due, under these regulations in the general order of priority set out in paragraph (6);
- (b) such amount will be treated as having been paid to that supplier by the CFD counterparty for the purposes of these regulations; and
- (c) the CFD counterparty must issue a notice to that supplier setting out—
 - (i) the amount the CFD counterparty has used,
 - (ii) the obligations of the supplier which have been discharged by the use of that payment, and
 - (iii) any amount which was not used and is to be paid to that supplier.

(4) For the purposes of this regulation an obligation to make a payment or provide collateral is due—

- (a) in relation to an obligation in respect of which a notice has been issued under regulation 19(3), 19(4), or 19(5), when that notice was issued;
- (b) in relation to an obligation to make payment under regulation 5(1), if it has not been paid before the 90th day after the notice under regulation 4(1) which relates to that payment is issued;
- (c) in relation to an obligation to make a payment under regulation 12(1), if it has not been paid before the reserve payment date for that supplier in relation to that period;
- (d) in relation to an obligation to make a payment under regulation 6(1), if it has not been paid before the 14th working day after the day to which the payment relates;
- (e) in relation to an obligation to provide collateral under regulation 14(1) or an obligation to provide insolvency reserve collateral under regulation 16(1), if it has not been provided before the 3rd working day after the first day the supplier makes an electricity supply in an obligation period in respect of which it is required to make a levy rate payment;
- (f) in relation to an obligation to maintain collateral under regulation 14(6) or an obligation to maintain insolvency reserve collateral under regulation 16(6), from the point at which the supplier’s collateral or insolvency reserve requirement exceeds its appropriate collateral or appropriate insolvency reserve collateral held by the CFD counterparty;

- (g) in relation to an obligation to make a payment under regulation 27(1), if it has not been paid by the operational costs payment date for that payment;
- (h) in relation to an obligation to make any payment under regulation 9(1), 11(5)(a) or 30(1), if it has not been paid by the 8th working day after the BSCCo has carried out the BSC volume allocation run to which that payment relates.

(5) For the purposes of this regulation, any amount of interest which is required to be paid under these regulations is due, on the day after any amount of interest was incurred.

(6) For the purposes of this regulation, the general order of priority is as follows:

- (a) subject to paragraph (7), any obligation in respect of which a notice has been issued under regulation 19(3), 19(4), or 19(5) in the order in which those notices were issued;
- (b) an obligation to make a payment under regulation 5(1);
- (c) an obligation to make a payment under regulation 12(1);
- (d) an obligation to make a payment under regulation 6(1);
- (e) an obligation to provide collateral under regulation 14(1);
- (f) an obligation to maintain collateral under regulation 14(6)
- (g) an obligation to provide insolvency reserve collateral under regulation 16(1);
- (h) an obligation to maintain collateral under regulation 16(6);
- (i) an obligation to make a payment under regulation 9(1);
- (j) an obligation to make a payment under regulation 11(5)(a);
- (k) an obligation to make a payment under regulation 27(1);
- (l) an obligation to make a payment under regulation 30(1);
- (m) any obligation to pay interest under these regulations.

(7) For the purposes of paragraph (6)(a), where more than one notice was issued under regulation 19(3), 19(4), or 19(5), or where a notice sets out more than one obligation which has not been complied with by an electricity supplier a payment by that supplier will be applied to discharge those obligations in the order in which they first became due, and then in the order of paragraphs (b) to (m) of the general order of priority.

(8) Where any amount is applied to discharge an obligation under a particular regulation by virtue of paragraph (1) or (2) it is to be treated, for the purposes of these regulations, as an amount received by virtue of that particular regulation.

(9) Where a payment made by an electricity supplier is applied to discharge an obligation to provide collateral or insolvency reserve collateral, and that supplier subsequently provides an appropriate letter of credit in order to discharge that obligation that payment shall be applied to discharge any other obligation of the supplier which is due, applied in the general order of priority set out in paragraph (5).

Use of amounts and pro-rating

25.—(1) The CFD counterparty may only use any amount it has received by virtue of regulation 5(1), 6(1), 6(3), 9(1), 11(5)(a), 12(1), or 12(2) to make payments to CFD generators which are required under a CFD to which the counterparty is a party.

(2) The CFD counterparty may only use any collateral provided to it by virtue of regulation 14(1) or 14(6) where—

- (a) the use is in accordance with regulation 14(11), and
- (b) the collateral is used to make payments to CFD generators which are required under a CFD to which the CFD counterparty is a party.

(3) The CFD counterparty may only use insolvency reserve collateral provided to it by virtue of regulation 16(1) or 16(6)—

- (a) the use is in accordance with regulation 16(13), or 16(14) and 16(16), and

(b) the collateral is used to make payments to CFD generators which are required under a CFD to which the CFD counterparty is a party.

(4) Where the CFD counterparty is unable fully to meet its liabilities under a CFD it may only use such amount as is calculated under paragraph (5) to make payments to a CFD generator.

(5) The amount which can be used to make payments to a CFD generator where paragraph (4) applies is the amount given by—

$$AH \times \left(\frac{OG}{OA} \right)$$

where—

AH is the amount held by the CFD counterparty,

OG is the amount owed to that generator, and

OA is the amount that is owed to all CFD generators under every CFD to which the CFD counterparty is a party.

(6) For the purposes of paragraph (4) the CFD counterparty is unable fully to meet its liabilities under a CFD when the amount held by the CFD counterparty is less than the amount it must pay, at that time, to all CFD generators under every CFD to which it is a party

(7) For the purposes of paragraphs (5) and (6), an amount is held by the CFD counterparty if the CFD counterparty is in possession of that amount and—

- (a) it is an amount received by virtue of regulation 5(1), 6(1), 6(3), 9(1), 11(5)(a), 12(1), or 12(2);
- (b) it is an amount the CFD counterparty is entitled to use by virtue of paragraphs (2) or (3),
- (c) it is any amount received by the CFD counterparty from a CFD generator under a CFD, or
- (d) it is any other amount which the counterparty has been provided for the purpose of making payments to CFD generators.

(8) Where paragraph (4) applies, for the purposes of a CFD, the amount allocated to it in accordance with these regulations is the the amount calculated under paragraph (5).

(9) Where paragraph (4) does not apply, for the purposes of a CFD ,the amount allocated to it in accordance with these regulations is the amount which is owed by the CFD counterparty under that CFD.

Interest rate

26.—(1) The rate of interest for the purposes of regulations 5(3), 9(4), 17(10) and 28(4) is 3.5 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 day on which interest starts to run under those regulations.

(2) In this regulation, “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(a) is in force, any equivalent rate determined by the Treasury under that section.

(a) c. 11

PART 3

Operational costs

CHAPTER 7

The operational costs levy

The operational costs levy

27.—(1) An electricity supplier must, in respect of a supplier obligation period, make an operational levy payment to the counterparty for each day that supplier supplies electricity in Great Britain during that period.

(2) An operational levy payment must be made before the operational costs payment date which relates to that payment.

(3) Subject to regulation 28(1), the operational costs payment date is the 14th working day after the day to which the payment relates.

(4) Where a supplier fails to make an operational levy payment before the operational costs payment date, the supplier must pay the CFD counterparty simple interest on the amount of that payment at the rate specified in regulation 26 from the day after the operational costs payment date.

(5) The CFD counterparty must notify suppliers, or ensure that suppliers have been notified, of the amount of their operational levy payment before the 8th working day after the day to which a levy rate payment relates.

(6) The amount of an operational levy payment to be paid by a supplier in respect of a day is equal to the amount of electricity supplied by that supplier on that day multiplied by the operational levy rate.

(7) For the purposes of paragraph (7)—

(a) the operational levy rate is £X.XX; and

(b) subject to regulation 28(2), the amount of electricity supplied by an electricity supplier on a particular day is the amount of electricity which the BSCCo determines, on the basis of an Interim Information Volume Allocation Run in relation to that day, as the amount of electricity which that supplier supplied on that day less any amount of excluded electricity which was supplied by that supplier on that day.

First obligation period

28.—(1) In relation to any day before 1st January 2015(a), the operational costs payment date is—

(a) 31st January 2015 in relation to a day in the period commencing on 1st July 2014 and ending on 31st August 2014;

(b) 28th February 2015 in relation to a day in the period commencing on 1st September 2014 and ending on 30th October 2014;

(c) 31st March 2015 in relation to a day in the period commencing on 1st November 2014 and ending on 31st December 2014.

(2) In relation to any operational levy payment which relates to any day before 1st January 2015, regulation 27(7)(b) is to be read as if the reference to an Interim Information Volume Allocation Run was a reference to an Initial Volume Allocation Run.

(a) The dates in this regulation are currently indicative only.

Repayment of excess

29.—(1) Where the CFD counterparty determines that the amounts received by the CFD counterparty by virtue of regulation 27(1) in respect of a supplier obligation period is greater than the costs which the CFD counterparty has incurred in respect of that period the CFD counterparty must pay the difference between the amount received and the costs which it has incurred to electricity suppliers as soon as reasonably practicable after the end of that period in accordance with paragraph (2).

(2) Where this paragraph applies, the amount which the CFD counterparty must pay to an electricity supplier is the amount given by—

$$(AR - CO) \times \left(\frac{SE}{ST} \right)$$

where—

AR is the sum of—

- (a) any amount received by the CFD counterparty by virtue of regulation 27(1) in respect of a supplier obligation period;
- (b) any amounts which were paid to the CFD counterparty by a CFD generator which were paid by way of damages, or were otherwise designed to compensate the CFD counterparty for any costs incurred which were caused by the breach of a CFD by a generator in respect of that period;
- (c) any amounts which were paid to the CFD counterparty by any other person which were paid by way of damages, or were otherwise designed to compensate the CFD counterparty for any costs incurred which were caused by the breach of any obligation or duty owed to the CFD counterparty by that person, which was paid to it in that period; and
- (d) any amounts which were paid to the CFD counterparty as a charge in respect of the carrying out of any function;

CO is the amount of costs the CFD counterparty determines it has incurred in respect of that period;

SE is the amount of electricity supplied by the supplier in that period less any amount of excluded electricity supplied by that supplier in that period;

ST is the amount of electricity supplied by all suppliers in that period less any amount of excluded electricity supplied by all suppliers in that period;

(3) For the purposes of paragraph (2)—

- (a) the amount of electricity supplied by a supplier in a supplier obligation period is the amount of electricity which the BSCCo determines, on the basis of Initial Volume Allocation Runs, as the amount of electricity that supplier supplied in that period less any amount of excluded electricity which was supplied by that supplier in that period; and
- (b) the amount of electricity supplied by all suppliers in a supplier obligation period is the amount of electricity which the BSCCo determines, on the basis of Initial Volume Allocation Runs, as the amount of electricity supplied by all suppliers in that period, less any amount of excluded electricity which was supplied by those suppliers in that period.

(4) For the purposes of this regulation “costs” means any costs incurred by the CFD counterparty in connection with the performance of any function conferred by or by virtue of Chapter 2 of Part 2 of the Act.

Reconciliation of amounts for the operational costs levy

30.—(1) Where the BSCCo carries out an Initial Volume Allocation Run in relation to a day after 31st December 2014 (“the relevant day”) in respect of which a supplier was required to make an operational levy payment, that supplier and the CFD counterparty must make a reconciliation

payment before the 8th working day after the BSCCo has carried out that Initial Volume Allocation Run.

(2) Subject to paragraph (4), the amount a supplier must pay as a reconciliation payment in respect of a relevant day is the amount given by—

$$REA - OLP$$

where—

REA is the reconciled amount for that supplier in respect of the relevant day; and

OLP is the amount of operational levy payment made by that supplier and received by the CFD counterparty in respect of the relevant day.

(3) Subject to paragraph (5), the amount the CFD counterparty must pay as a reconciliation payment to an electricity supplier in respect of a relevant day is—

$$(0 - REA) + OLP$$

where REA and OLP have the meanings given in paragraph (3).

(4) Where the amount given by the formula in paragraph (2) is a negative number, the amount a supplier must pay as a reconciliation payment is zero.

(5) Where the amount given by the formula in paragraph (3) is a negative number, the amount the CFD counterparty must pay as a reconciliation payment is zero.

(6) For the purposes of this regulation the reconciled amount for a supplier in respect of a relevant day is the amount equal to the amount of electricity supplied by that supplier on that day multiplied by the operational levy rate specified in regulation 27(7)(a).

(7) For the purposes of paragraph (6) the amount of electricity supplied by an electricity supplier on a particular day is the amount of electricity which the BSCCo determines, on the basis of an Initial Volume Allocation Run in relation to that day, as the amount of electricity supplied by that supplier on that day less any amount of excluded electricity which was supplied by that supplier on that day.