Draft Regulations laid before Parliament under section 40(5) of the Energy Act 2013, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2014 No. 0000

ELECTRICITY

The Electricity Capacity (Supplier Payment etc.) Regulations 2014

Made - - - - 2014

Coming into force in accordance with regulation 1

The Secretary of State has before making these Regulations—

(a) consulted the persons listed in section 40(2)(a) and (b) of the Energy Act 2013(**1**) and such other persons as the Secretary of State considered it appropriate to consult; and

(b) had regard to the matters in section 5(2) of that Act.

In accordance with section 40(5) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Accordingly, the Secretary of State, in exercise of the powers conferred by sections 27, 28, 30 to 33, 36 and 40(1) of the Energy Act 2013, makes the following Regulations:

PART 1

Introduction

Citation and commencement

1.—(1) These Regulations may be cited as the Electricity Capacity (Supplier Payment etc.) Regulations 2014.

(2) These Regulations come into force on the day after the day on which they are made.

Interpretation

2.—(1) In these Regulations—

"the Act" means the Energy Act 2013;

(**1**) 2013 c.32.

"EA 1989" means the Electricity Act 1989(**2**);

"the Principal Regulations" means the Electricity Capacity Regulations 2014(**3**);

"capacity market stage 2 credit default" has the meaning given by paragraph (2);

"capacity market supplier charge" means the charge payable by electricity suppliers to the Settlement Body under regulation 6(1);

"credit cover" has the meaning given in regulation 53(3) of the Principal Regulations;

"credit default register" means the register maintained by the Settlement Body under regulation 30;

"creditor" means an electricity supplier who is entitled to receive a payment from the Settlement Body;

"draw down" has the meaning given in regulation 53(3) of the Principal Regulations;

"electricity supplier" means—

(a) a person supplying electricity to premises in Great Britain under a supply licence; or

(b) a person who has supplied electricity to premises in Great Britain under a supply licence and who, by virtue of regulation 16, is liable to make or entitled to receive a payment following the termination of that supply licence;

"financial year" means a period of one year commencing with 1st April;

"invoiced amount" means the total amount payable by a payer as stated in an invoice issued to that payer under regulation 6, 9, 20 or 21;

"late payment interest", unless specified otherwise, has the meaning given in regulation 11(3);

"monthly capacity market supplier charge" means the charge payable by electricity suppliers to the Settlement Body under regulation 6(3) or (4);

"mutualisation credit" has the meaning given in regulation 7(6);

"net demand" has the meaning given by paragraphs (3) and (4);

"payer" means an electricity supplier to whom an invoice is issued under regulation 6, 9, 20 or 21;

"payment due date", in relation to an invoiced amount, means the day specified in the invoice in accordance with regulation 5(2) as the day by which it is to be paid;

"penalty residual supplier amount" has the meaning given in regulation 8(1);

"period of high demand" means 4 p.m. to 7 p.m. on any working day in November, December, January or February;

"reconciliation payment" means a payment under Part 5;

"reconciliation run" means the process of recalculating and redetermining the amounts of payments due to or from electricity suppliers set out in Part 5;

"relevant financial year" means a financial year commencing in 2015 or in any subsequent year;

"settlement costs" means any costs incurred by the Settlement Body in connection with the performance of any function conferred on it by these Regulations, the Principal Regulations or capacity market rules, and includes the cost of payments made by the Settlement Body to any person who provides services to it in connection with the performance of its functions;

"settlement costs levy" means the levy payable by electricity suppliers to the Settlement Body under regulation 9 to meet its settlement costs;

(**2**) 1989 c.29.
(**3**) S.I. 2014/2043.

"supplier credit cover" means credit cover provided, or required to be provided, by an electricity supplier under regulation 28;

"supply", and cognate terms, are to be interpreted in accordance with the meaning given to "supply" in section 4(4) of EA 1989(**4**);

"supply licence" means a licence granted or treated as granted under section 6(1)(d) of EA 1989(**5**).

(2) For the purposes of these Regulations an electricity supplier is in capacity market stage 2 credit default, in relation to a month of a delivery year, if an entry in respect of that electricity supplier and that month has been made on the credit default register under regulation 29(2).

(3) In these Regulations "net demand", in relation to an electricity supplier ("S"), means the difference (expressed in MWh) between—

(a) the amount of electricity supplied by S to premises in Great Britain, and

(b) the amount of generated electricity for which S is responsible,

except that where that difference is a negative amount the net demand is zero.

(4) For the purposes of paragraph (3), S is responsible for an amount of generated electricity if—

(a) S is responsible for the export of that electricity, for the purposes of Section K of the Balancing and Settlement Code as it was in force on 8th September 2014, by virtue of paragraph 1.2.2(a)(ii) of that Section (Export from Exemptable Generating Plant); and

(b) the electricity so exported is generated by a plant that is not directly connected to the GB transmission system.

(5) In these Regulations, the following expressions have the meanings given in regulation 2(1) of the Principal Regulations—

"the Balancing and Settlement Code";

"capacity agreement";

"capacity committed CMU";

"capacity payment";

"capacity provider penalty charge";

"capacity year";

"delivery year";

"GB transmission system";

"MWh";

"Settlement Body";

"working day".

(6) Any reference in these Regulations to an amount to be paid or provided is a reference to an amount in pounds sterling and rounded to the nearest whole penny with any half of a penny being rounded upwards.

(7) For the purposes of these Regulations, an invoice, credit note or other document is issued or given when it is given in accordance with the provisions of Schedule 2 to the Principal Regulations.

(8) Where anything is required or permitted by these Regulations to be done on or by a working day—

(**4**) The definition of "supply" in section 4(4) of EA 1989 was substituted by section 179(1) of the Energy Act 2004 (c.20). Other amendments have been made to section 4 which are not relevant.

(**5**) Section 6(1)(d) of EA 1989 was substituted by section 30 of the Utilities Act 2000 (c.27). Other amendments have been made to section 6 which are not relevant.

(a) such thing must be done by 5.00 p.m. on that day; and

(b) if the thing is done—

(i) after 5.00 p.m. on a working day; or

(ii) on a day which is not a working day,

it is to be treated as having been done on the next working day.

PART 2

General

The supplier settlement calculations

3.—(1) The Settlement Body must make the calculations set out in Parts 3 and 5 and Schedule 1 ("the supplier settlement calculations")—

(a) by such date as may be specified in those provisions or, where no date is specified, by such time as is necessary to enable the Settlement Body to comply with these Regulations; and

(b) so far as possible, using the required data.

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

(3) In this regulation, "required data" means data which is required to be provided to the Settlement Body under these Regulations, the Principal Regulations or capacity market rules.

Forecast of net demand

4.—(1) Paragraph (2) applies to a person ("S") who, on the 1st June before the start of a capacity year ("year X"), is an electricity supplier.

(2) S must, by no later than the 1st June before the start of year X—

(a) forecast its total net demand during periods of high demand in year X; and

(b) provide the forecast to the Settlement Body.

Invoices and credit notes etc: general

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

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

(3) Where an electricity supplier has provided the Settlement Body with an address for the electronic service of invoices and credit notes, the Settlement Body must in addition send an invoice or credit note electronically to the address provided.

(4) Any invoice, credit note or other document issued or given under these Regulations must be in writing and dated.

PART 3

Calculations, determinations and invoicing

Capacity market supplier charge

6.—(1) An electricity supplier ("S") must pay a capacity market supplier charge to the Settlement Body in respect of a delivery year ("year X"), if S supplies electricity to premises in Great Britain in the period commencing with 1st November and ending with the last day of February in year X, or any part of that period.

(2) The capacity market supplier charge is a charge to meet the cost of making capacity payments to capacity providers under the Principal Regulations, calculated in accordance with paragraphs 2 and 3 of Schedule 1.

(3) Where, under regulation 4, S provided to the Settlement Body a forecast of net demand for year X (other than a forecast of zero net demand) S must make a monthly payment to the Settlement Body in each month of year X on account of its liability under paragraph (1) (a "monthly capacity market supplier charge").

(4) Where, in respect of year X—

(a) S supplies electricity as mentioned in paragraph (1), but

(b) S did not provide to the Settlement Body a forecast as mentioned in paragraph (3) because it was not an electricity supplier on the 1st June before the start of year X,

S must pay a monthly capacity market supplier charge to the Settlement Body in each month of year X for which the calculation of such charges is carried out using actual supplier shares.

(5) The Settlement Body must, by no later than the first working day of each month of year X ("month M")—

(a) determine the amount of the monthly capacity market supplier charge payable by each electricity supplier for month M; and

(b) issue to each electricity supplier an invoice for the amount determined for that supplier under sub-paragraph (a) and (where necessary) under regulation 7(3).

(6) The amount payable by S under paragraph (5)(a) is the amount of $MCMSC_{sm}$ calculated for S under paragraph 4 of Schedule 1.

(7) If the amount of the capacity market supplier charge payable under paragraph (1) by S for year X is greater or less than the total of the monthly capacity market supplier charges paid by S for each month of year X, the difference is to be calculated and paid as part of the annual reconciliation runs for year X to be carried out under Part 5.

(8) In paragraph (4), "actual supplier shares" means shares calculated under paragraph 3 of Schedule 1.

Capacity market supplier charge: mutualisation

7.—(1) Paragraphs (2) to (4) apply in relation to a month of a delivery year ("month M") in respect of which an electricity supplier is in capacity market stage 2 credit default (a "defaulting supplier").

(2) Where this paragraph applies, each electricity supplier who—

(a) is liable to pay a monthly capacity market supplier charge in respect of month M; and

(b) is not a defaulting supplier,

must make an additional payment (a "mutualisation payment") to the Settlement Body in month M.