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STATUTORY INSTRUMENTS

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**2013 No. 1046**

**The Energy Supply Company Administration Rules 2013**

**PART 7**

Distribution to creditors

CHAPTER 1

Application of Part and general

**Distribution to creditors generally**

**38.**—(1) This Part applies where the energy administrator makes, or proposes to make, a distribution to any class of creditors other than secured creditors. Where the distribution is to a particular class of creditors, references in this Part to creditors shall, in so far as the context requires, be a reference to that class of creditors only.

(2) The energy administrator must give notice to the creditors of the energy administrator's intention to declare and distribute a dividend in accordance with Rule 64.

(3) Where it is intended that the distribution is to be a sole or final dividend, the energy administrator must, after the date specified in the notice referred to in paragraph (2)—

- (a) defray any items payable in accordance with the provisions of paragraph 99 of Schedule B1 to the 1986 Act;
- (b) defray any amounts (including any debts or liabilities and the energy administrator's own remuneration and expenses) which would, if the energy administrator were to cease to be the energy administrator of the energy supply company, be payable out of the property of which the energy administrator had custody or control in accordance with the provisions of paragraph 99 of Schedule B1 to the 1986 Act; and
- (c) declare and distribute that dividend without regard to the claim of any person in respect of a debt not already proved.

(4) The court may, on the application of any person, postpone the date specified in the notice.

**Debts of insolvent energy supply company to rank equally**

**39.** Debts other than preferential debts rank equally between themselves in the energy supply company administration and, after the preferential debts, must be paid in full unless the assets are insufficient for meeting them, in which case they abate in equal proportions between themselves.

**Supplementary provisions as to dividend**

**40.**—(1) In the calculation and distribution of a dividend the energy administrator must make provision for—

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- (a) any debts which appear to the energy administrator to be due to persons who, by reason of the distance of their place of residence, may not have had sufficient time to tender and establish their proofs;
  - (b) any debts which are the subject of claims which have not yet been determined; and
  - (c) disputed proofs and claims.
- (2) A creditor who has not proved the creditor's debt before the declaration of any dividend is not entitled to disturb, by reason that the creditor has not participated in it, the distribution of that dividend or any other dividend declared before the creditor's debt was proved, but—
- (a) when the creditor has proved that debt the creditor is entitled to be paid, out of any money for the time being available for the payment of any further dividend, any dividend or dividends which the creditor has failed to receive; and
  - (b) any dividends payable under sub-paragraph (a) must be paid before the money is applied to the payment of any such further dividend.
- (3) No action lies against the energy administrator for a dividend, but if the energy administrator refuses to pay a dividend the court may, if it thinks just, order the energy administrator to pay it and also to pay, out of the energy administrator's own money—
- (a) interest on the dividend, at the rate for the time being specified in section 17 of the Judgments Act 1838 <sup>M1</sup>, from the time when it was withheld; and
  - (b) the costs of the proceedings in which the order to pay is made.

#### **Marginal Citations**

**M1** 1838 c. 110, as amended by the Civil Procedure Acts Repeal Act 1879, section 2, Schedule 1, Part 1, the Statute Law Revision (No. 2) Act 1888, [S.I. 1993/564](#), [article 2](#), [1998/2940](#), article 3(a), (b) and (c).

#### **Division of unsold assets**

**41.**—(1) The energy administrator may, with the permission of the creditors, divide in its existing form amongst the energy supply company's creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

- (2) The energy administrator must—
  - (a) in the receipts and payments account included in the final progress report under Chapter 1 of Part 4, state the estimated value of the property divided amongst the creditors of the energy supply company during the period to which the report relates, and
  - (b) as a note to the account, provide details of the basis of the valuation.

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