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STATUTORY INSTRUMENTS

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**2019 No. 862**

**The Electricity Capacity (No. 1) Regulations 2019**

**PART 4**

Capacity agreements: miscellaneous

**CHAPTER 1**

Amendment of Principal Regulations

**Secretary of State’s discretion concerning non-completion fees: amendments**

**24.** In regulation 43A (non-completion fee) of the Principal Regulations, after paragraph (5), insert—

“(6) Regulation 33 applies (except for paragraphs (2)(b), (3) and (5)(b)) to a non-completion notice as it applies to a termination notice, and for that purpose, a reference in regulation 33 to—

- (a) a “termination fee” is to be construed as a reference to a non-completion fee; and
- (b) a “termination notice” is to be construed as a reference to a non-completion notice.”.

**Delivery Body reviewable decision: amendments**

**25.** In regulation 68 of the Principal Regulations, in paragraph (2), in the table, after “issue of” insert “a non-completion notice,”.

**CHAPTER 2**

Modifications of Principal Regulations

**Secretary of State’s discretion: modifications**

**26.—**(1) The modifications in paragraph (2) apply only in relation to a capacity agreement that existed on 15th November 2018.

(2) Regulation 33 (termination of capacity agreements: Secretary of State’s discretion) of the Principal Regulations applies as if—

(a) in paragraph (2)—

- (i) in sub-paragraph (a), “or” were omitted;
- (ii) at the end of sub-paragraph (b), for “.” there were substituted “; or”; and
- (iii) after sub-paragraph (b), there were inserted—

“(c) if the termination notice is given during the standstill period, direct the Delivery Body to—

- (i) withdraw the termination notice given to the capacity provider (“P”); and
  - (ii) terminate the capacity agreement on the ground specified in capacity market rules that it would involve undue financial hardship to require P to pay a termination fee in respect of the termination of the capacity agreement, owing to the exceptional circumstances of P’s particular case arising from the non-payment to P of capacity payments (which were prevented from being paid by the law relating to state aid) during the standstill period.”;
- (b) in paragraph (3), for “6” there were substituted “12”; and
  - (c) at the end of paragraph (9), there were inserted “, and “standstill period” has the meaning given in regulation 3 of the Electricity Capacity (No. 1) Regulations 2019”.

**Non-completion fees: modifications**

- 27.—(1) The modifications in paragraph (2) apply in respect of—
- (a) the conditional agreement auction, including the rights and obligations arising out of, or in relation to, this auction; and
  - (b) capacity agreements that existed on 15th November 2018.
- (2) Regulation 43A (non-completion fee) of the Principal Regulations applies as if in paragraph (6)—
- (a) in paragraph (a), “; and” were omitted;
  - (b) in paragraph (b), for “.” there were inserted “; and”; and
  - (c) after paragraph (b), there were inserted—
    - “(c) if a non-completion notice is issued during the standstill period, a direction to the Delivery Body to withdraw the termination notice and to terminate a capacity agreement on the ground specified in capacity market rules is to be construed as a reference to a direction to the Delivery Body to withdraw the non-completion notice.”.