

# G22 – Capacity Market Settlement Restart

## EMRS Guidance

Public

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## 1. Change Amendment Record

| Version | Date            | Description  |
|---------|-----------------|--|
| 2.0     | 6 August 2019   | Go Live Version  |
| 3.0     | 7 August 2019   | Minor corrections  |
| 4.0     | 22 October 2019 | Update following Capacity Market Restart readiness                             |
| 5.0     | 4 November 2019 | Update following positive State Aid decision                                   |
| 6.0     | 17 January 2020 | Update following announcement that no supplementary mutualisation is required. |

## 2. Introduction and Purpose

On 15 November 2018 the General Court of the Court of Justice of the European Union annulled the European Commission's State Aid approval for the CM scheme and introduced a Standstill Period until the scheme could be approved again. Following an investigation, the European Commission confirmed that the Capacity Market (CM) scheme is compatible with EU State Aid rules.

On 25 October 2019, the Secretary of State confirmed the payments that should have been made during the Standstill Period were deemed valid and as such retrospective payments in respect of these agreements for the standstill period were made.

**i** – This guidance note gives Suppliers and Capacity Providers information on the Supplier and Capacity Provider Payments each should expect following the positive State Aid decision.

### Background

Following the decision made on 15 November 2018 resulting in the Capacity Market being placed into standstill, on 21 February 2019 the European Commission announced that they would conduct an in-depth investigation to determine whether the CM was in line with EU State Aid rules. This has now concluded confirming that the original State aid Decision was valid.

During the standstill period as part of the review, the Department for Business, Energy and Industrial Strategy (BEIS) made the necessary technical amendments to the CM Rules<sup>1</sup> and Regulations<sup>2</sup>, following consultation with industry<sup>3</sup>, to allow for the restart of the CM and the collection and payment of deferred capacity payments in respect of the Standstill Period. Included in these amendments were changes to allow for the collection of Supplier Charges from Suppliers and payment of Capacity Payments to Capacity Providers to cover the Standstill Period now the CM has restarted, as well as other amendments to allow for the smooth restart of the Capacity Market.

### CM Restart

Following, the positive State Aid decision which allowed for the collection and payment of Capacity Payments in respect of the Standstill Period, Suppliers were, prior to the end of the Standstill Period be issued a Standstill Collection Period Supplier Charge Invoice for each Delivery Year that formed part of the Standstill Period (SCP<sub>x</sub> for the part of the Standstill Period in a Delivery Year, DY<sub>x</sub>). Any Suppliers which failed to pay<sup>4</sup> the invoice in full within the payment term of the invoice were placed in post-standstill payment default and entered onto the non-payment register<sup>5</sup> with late payment interest accruing on the outstanding amount. Any outstanding Supplier Charges were subsequently mutualised between the non-defaulting Suppliers, meaning they received a mutualisation invoice, for each SCP<sub>x</sub>, for their share (based on SCP<sub>x</sub> Supplier Charges) of the outstanding amounts at that date (so allowing for any late payments by defaulting Suppliers since the due date).

After this initial post-standstill mutualisation process, in order to maximise funds available, Capacity Providers were issued a Standstill Capacity Payment Credit Note in respect of Capacity Payments for the Standstill Period. This was due 28 Working Days after the end of the Standstill Collection Period<sup>6</sup>.

<sup>1</sup> <https://www.gov.uk/government/publications/capacity-market-rules>

<sup>2</sup> <http://www.legislation.gov.uk/ukdsi/2019/9780111182437/contents>

<sup>3</sup> <https://www.gov.uk/government/consultations/capacity-market-further-technical-amendments>  
<https://www.emrsettlement.co.uk/publications/working-practices/>

<sup>5</sup> <https://www.lowcarboncontracts.uk/non-payment-registers>

<sup>6</sup> Please see section 5 of this document for more details on the Standstill Collection Period

Business-as-usual (BAU) Supplier Payments and Capacity Payments recommenced for the first delivery month after the end of the Standstill Period, using the normal timings for payment and Credit Cover Requirements. For more details on the BAU Payments please refer to EMRS Guidance G14 - Supplier CM Credit Cover, G15 - CM Supplier Payments, and G17 - Capacity Provider Payments<sup>7</sup>.

The timings of the scheduled Standstill Payments and first BAU Payments are provided as a timeline in Appendix 1 and described in the body of this guidance.

### **3. Who is this document for?**

This document is for Suppliers and Capacity Providers.

### **4. Associated Documents**

This document should be read in conjunction with the following Working Practices<sup>8</sup> and Guidance<sup>9</sup> documents:

- EMRS Guidance G11 - Termination of Capacity Agreements.
- EMRS Guidance G14 - Supplier CM Credit Cover.
- EMRS Guidance G15 - CM Supplier Payments.
- EMRS Guidance G17 - Capacity Provider Payments.
- EMRS Working Practice WP35 - CM Applicant/Capacity Provider Credit Cover Process.
- EMRS Working Practice WP48 - Volume Reallocation.

### **5. When does Standstill Period end?**

Following a positive State Aid decision, the Secretary of State initiated the trigger for deferred Capacity Payments, conditional agreement Capacity Payments and the restart of the CM on the 25 October 2019.

As the Standstill Period came to an end on 25 October 2019 when the payment trigger occurred<sup>10</sup>, and all Standstill Months form part of the Standstill Collection Period (SCP), the SCP covers the period from 1 October 2018 until the last day of the month following the trigger month, 30 November 2019. Therefore, the Standstill Period is divided into SCP<sub>1</sub> for DY18/19 and a SCP<sub>2</sub> for October and November of DY19/20. Additionally, the first BAU month was December 2019.

<sup>7</sup> <https://www.emrsettlement.co.uk/publications/guidance/>

<sup>8</sup> <https://www.emrsettlement.co.uk/publications/working-practices/>

<sup>9</sup> <https://www.emrsettlement.co.uk/publications/guidance/>

<sup>10</sup> Regulation 3 of The Electricity Capacity (No. 1) Regulations 2019

## 6. What Supplier payments are required to fund the CM Standstill Collection Period CM Payments? What are they for?

An overview of the CM payments for Suppliers, including brief descriptions, is given below.

### Standstill Supplier Charge (SSC)

- This SSC payment covers the forecast Capacity Payments to Capacity Providers for their commitment to meet their Capacity Obligation during the Standstill Collection Period.
- There will be one invoice for each Delivery Year, or part of which (SCP<sub>x</sub>), that fell within the Standstill Collection Period i.e. the Standstill Collection Period spanned two Delivery Years so there were two invoices with line items for each Standstill Month.

### SSC Mutualisation

- This payment covers outstanding (defaulting) Suppliers Standstill Supplier Charges.
- There was one invoice for each Delivery Year, or part of which (SCP<sub>x</sub>), that falls within the Standstill Period i.e. the Standstill Collection Period spanned two Delivery Years so there were two invoices.

### Standstill Reconciliation

- Standstill Supplier Payments will be reconciled no later than 90, 160 and 295 WDs after Standstill Capacity Payment.
- Reconciliations will take into account latest available Supplier demand volume data, late payments and late payment interest received.
- Unlike BAU, the Standstill Reconciliation is for each SCP<sub>x</sub> rather than individual Delivery Months.
- Like BAU months, the Standstill Reconciliation can be "overtaken" by the Annual Reconciliation.

Figure 1 CM Standstill Supplier Payments.

## 7. When can I expect to receive my first Standstill Supplier Charge Invoice?

The Standstill Supplier Charge Invoice was issued on 14 November 2019, which was no later than 12 working days before the commencement of the Post Standstill Collection Month<sup>11</sup> (this being the second month after the month in which the trigger events occurred). This invoice was due to be paid within five working days (as is the case with standard CM invoices). Note that if a Supplier had paid into the voluntary payment scheme, those amounts were offset against amounts owed under any Standstill Supplier Charge Invoice.

Following the triggers occurring, a Standstill Settlement Calendar was published on the EMRS website<sup>12</sup> showing all the relevant Standstill settlement dates.

Credit Cover for the monthly BAU Supplier Charges had to be lodged on 14 November 2019, 12 working days before the Post Standstill Collection Month<sup>13</sup> as highlighted in the timeline in Appendix 1 and Section 16.

## 8. What is the Standstill Capacity Provider Payment?

An overview of the Standstill CM payment for Capacity Providers, including brief description, is given in Figure 2: CM Standstill Capacity Provider Payment.

### Standstill Capacity Payment

- These are payments made to a Capacity Provider for its commitment to meet a Capacity Obligation (when required) during the Standstill Collection Period. Payments are based on the Capacity Cleared Price achieved in the auction that the Capacity Agreement was awarded from (adjusted for inflation for T-4 auctions only).
- Where a Capacity Provider has declared Relevant Expenditure to the Delivery Body, this amount is deducted from the Standstill Capacity Payments.
- There will be one credit note for each Delivery Year SCP<sub>x</sub>, since the Standstill Collection Period spans two Delivery Years there will be two credit notes.

Figure 2 CM Standstill Capacity Payment.

## 9. When will Capacity Providers receive their first Capacity Payment after the market restarts?

The Standstill Capacity Payment Credit Notes were issued on 13 January 2020, the 28th working day after the end of Standstill Collection Period<sup>14</sup>. Since the Standstill Collection Period spanned more than one Delivery Year (DY<sub>x</sub>) a separate Standstill Capacity Payment Credit Note issued for the SCP<sub>x</sub> for each DY<sub>x</sub>.

<sup>11</sup> Regulation 6A(5) of The Electricity Capacity (No. 1) Regulations 2019

<http://www.legislation.gov.uk/ukdsi/2019/9780111182437/contents>

<sup>12</sup> <https://www.emrsettlement.co.uk/settlement-data/settlement-data-roles/>

<sup>13</sup> Regulation 28 the Electricity Capacity (Supplier Payment etc.) Regulations 2014 as amended by Regulation 62(4) of The Electricity Capacity (No. 1) Regulations 2019

<sup>14</sup> Regulation 40(4) of The Electricity Capacity (No. 1) Regulations 2019

<http://www.legislation.gov.uk/ukdsi/2019/9780111182437/contents>

## 10. What happens if a Supplier does not pay the Standstill Supplier Charge?

Any Supplier which failed to pay its Standstill Supplier Charge invoice in full by the due date of the invoice, were placed in post-standstill payment default. This meant that the Supplier will have been entered on the non-payment register<sup>15</sup> and that late payment interest will have been applied to the outstanding amount. Where appropriate and necessary, ESC will have taken robust debt recovery action to collect any outstanding amounts with interest, in line with its regulatory duties. In addition, ESC monitored the CM restart closely and Ofgem may take enforcement action if necessary.

In terms of settlement, outstanding amounts for each SCP<sub>x</sub> were mutualised in accordance with the regulations between non-defaulting Suppliers, meaning the non-defaulting Suppliers received a mutualisation invoice for each SCP<sub>x</sub>, for their share of any outstanding amounts for SCP<sub>x</sub> at the date the Standstill Mutualisation invoice is calculated, (i.e. any late payments and interest collected from defaulting Suppliers will reduce the amount to be mutualised). Note that payments from Suppliers that were not attributed to specific invoices by remittance advice were allocated to the earliest invoice number first and so to the earliest SCP<sub>x</sub>. The initial post-standstill mutualisation invoice was issued no later than the 10<sup>th</sup> working day of the Post Standstill Collection Month<sup>16</sup> (13 December 2020).

Following the payment triggers occurring, a Standstill Settlement Calendar was published on the EMRS Website<sup>17</sup> showing scheduled Standstill Payments dates.

## 11. How do I validate my CM Standstill Period Payments?

All of the payments listed in the purple information box were issued with accompanying backing data in **CSV format**<sup>18</sup> (based on the format of T-Files<sup>19</sup> which are currently provided to EMR Parties).

However, backing data for the Standstill Supplier Charge is not available over the **Data Transfer Network (DTN)** because some of the Data Item definitions in the Data Transfer Catalogue are inconsistent with how those Data Items will be populated for these one-off CM Restart transactions.

The Standstill backing data formats are based on the T-Files which are currently provided to EMR Parties.

 – The below Standstill Collection Period transactions will receive backing data

- Standstill Supplier Charge
- Standstill Mutualisation
- Standstill Capacity Payments
- Standstill Reconciliations

## 12. Are Standstill Supplier Charges Reconciled?

The Supplier Standstill Reconciliations will take into account the Revised Supplier Charge; calculated using the following data:

- Latest metered data (used to determine the Supplier Market Share);
- Mutualisation Credits; and
- Any Late Payment Interest.

<sup>15</sup> Details published on the non-payment register <https://www.lowcarboncontracts.uk/non-payment-registers>

<sup>16</sup> Regulation 6A(6) of The Electricity Capacity (No. 1) Regulations 2019

[https://www.legislation.gov.uk/ukdsi/2019/9780111182437/pdfs/ukdsi\\_9780111182437\\_en.pdf](https://www.legislation.gov.uk/ukdsi/2019/9780111182437/pdfs/ukdsi_9780111182437_en.pdf)

<sup>17</sup> <https://www.emrsettlement.co.uk/settlement-data/settlement-data-roles/>

<sup>18</sup> Invoices, credit notes and backing data can also be viewed on the EMR Settlement Portal

<https://www.emrsettlementportal.co.uk/>

<sup>19</sup> T-Files is the term used for the csv files which are provided with most invoices and credit notes and allow EMR Parties to validate their charges

The reconciliation runs are normally for each month of a Delivery Year but, for Standstill the reconciliation will be conducted for each SCP<sub>x</sub> within the Standstill Collection Period. They will include not only BAU transactions impacting the SCP<sub>x</sub> but also new Standstill transaction types.

- Standstill Capacity Payments
- DSR Unproven Capacity Recovery of Overpaid Capacity Payments
- BAU recovery of Capacity Payments arising from Metering Fault, Suspension or Termination
- BAU Ad hoc Capacity Provider invoices to allow correction of Standstill Capacity Payments
- Standstill Supplier Charge and Mutualisation
- Late Payment Interest received as a result of late payment of any Standstill Supplier invoices
- BAU Ad hoc Supplier Charge invoices to allow correction of Standstill Supplier Charges or related Late Payment Interest.

The Standstill Reconciliation runs have been “overtaken” by the relevant Supplier Annual Reconciliation runs, such that all, Standstill Reconciliation runs have become part of the Supplier Annual Reconciliations. In those Annual Reconciliations any SCP<sub>x</sub> will still be treated as a separate period in its own right.

Following the trigger event, a Standstill Settlement Calendar was published on the EMRS Website<sup>20</sup> showing scheduled Standstill Payments dates including the Standstill Reconciliations dates.

### **13. Following a positive State Aid Approval, when do Capacity Providers with Credit Cover Requirements for agreements held on the 15 November 2018 need to lodge Credit Cover?**

Capacity Providers must lodge Credit Cover with EMRS upon receipt of a conditional pre-qualification notice from the Delivery Body that states Prequalification of their CM Unit(s) (CMU(s)) is conditional on providing Credit Cover.

During the Standstill Period, Capacity Providers were not required to provide or maintain such credit cover. Since the Standstill Period has ended, the Delivery Body issued credit cover notices where the Credit Cover was still required, i.e. prequalification conditions were not met.

Capacity Providers then had to ensure that Credit Cover was lodged within 40 working days (rather than the 15 working days which is typical in BAU) from the day that the Delivery Body sent notices in respect of agreements held on 15 November 2018.

Capacity Providers, upon lodging Credit Cover, received a ‘Notice of Approved Credit Cover’ or a ‘Notice of Rejected Credit Cover’ per CMU from EMRS on behalf of the Electricity Settlement Company (ESC). EMRS emailed the Applicant with the relevant Credit Cover notice and the Delivery Body was included in the email for reference of the Credit Cover acceptance for each CMU.

Capacity Providers who received a ‘Notice of Rejected Credit Cover’ for their CMU within the Credit Cover collection period had their Credit Cover submission rejected. Applicants had up to the latter of the Credit Cover deadline or five working days after their rejection notice to resubmit Credit Cover.

Further information on the process to lodge Credit Cover and also the release of Credit Cover can be found in WP35 – CM Applicant/Capacity Provider Credit Cover Process<sup>8</sup>.

<sup>20</sup> <https://www.emrsettlement.co.uk/settlement-data/settlement-data-roles/>

## **14. What happens if an agreement was terminated during CM Standstill or incurs any penalties?**

Recovery of Capacity Payments – If a Capacity Provider’s agreement was subject to recovery of Capacity Payments during the Standstill Period, the amount of any deferred Standstill Capacity Payments due to the Capacity Provider were calculated by reference to when payments should have been paid, allowing for any suspension or terminations.

Termination - Consequently there can be no recovery of Capacity Payments on invoices relating to Termination during the Standstill Period. Termination invoices were issued as soon as reasonably practicable after the payment trigger<sup>21</sup>, but containing only Termination Fees due. These fees were then offset against any Standstill Capacity Payments owed to the Capacity Provider.

Non-completion fees – if the Delivery Body issued a notice to a Capacity Provider during the Standstill Period, requiring EMRS to raise a Non-completion Fee, EMRS raised these invoices after the Standstill Period ended.

Capacity Penalties – any Capacity Penalty charges incurred by Capacity Providers because of non-delivery during any Stress Events during a Standstill Month were not invoiced during the Standstill Months. Invoices for any such Capacity Penalties were instead issued 21 working days after the end of the last Standstill Month, and 7 working days before the deferred Standstill Capacity Payment Credit Notes were issued. As is the case in BAU, any non-payment of such Capacity Penalty invoices were reflected in a reduction to the deferred Standstill Capacity Payments.

Following the trigger event, a Standstill Settlement Calendar was published on the EMRS website<sup>22</sup> showing all the Standstill Payments dates.

## **15. What happens if a Capacity Provider is unable to pay termination fees due to exceptional circumstances associated with CM Standstill Period?**

In the event the Delivery Body issued a Termination Notice to terminate a Capacity Agreement that existed on 15 November 2018 or a T-1 2019 Conditional Capacity Agreement, a Capacity Provider could appeal against the decision.

Under the amended Regulation 33 in the Principal Regulations, following a Termination Event, a Capacity Provider could within 20 working days apply to the Secretary of State at BEIS to have the agreement terminated due to a new Termination Event reason, namely "6.10.1AA -Undue Financial Hardship relating to Non-Payment of Capacity Payments during Standstill Period".

The new ground for termination only arises in exceptional circumstances where a Capacity Provider can demonstrate it would involve undue financial hardship to require them to pay a Termination Fee owing to the exceptional circumstances of their particular case arising from the non-payment of Capacity Payments during the Standstill Period. Should an agreement be terminated on this new ground, the Capacity Provider must have repaid all Capacity Payments it had received under the relevant Capacity Agreement.

<sup>21</sup> Regulation 16 (6) of The Electricity Capacity (No. 1) Regulations 2019

<http://www.legislation.gov.uk/ukdsi/2019/9780111182437/contents>

<sup>22</sup> <https://www.emrsettlement.co.uk/settlement-data/settlement-data-roles/>

## 16. When do BAU CM charges/payments commence for Suppliers and Capacity Providers?

Suppliers had to lodge Credit Cover for BAU Supplier Payments on 14 November 2019, 12 working days before the start of the Post Standstill Collection Month<sup>23</sup> (this requirement to lodge Credit Cover fell on the same day as the Standstill Supplier Charge Invoice was issued). The first BAU Supplier Charge amount was included on the BAU monthly Supplier invoice issued on the first working day of the Post Standstill Collection Month<sup>24</sup>.

Capacity Providers will receive their first BAU monthly Capacity Payment Credit Note on 10 February 2020, 28 working days after the end of the first month of the Post Standstill Collection Month.

Capacity Providers with Credit Cover Requirements for agreements held on the 15 November 2018 will need to lodge Credit Cover within the time-frames described in Section 13.

Following the trigger event a Standstill Settlement Calendar was published on the EMRS website<sup>25</sup> showing all the Standstill Payments dates and the restart of BAU timings.

## 17. Need more information?

For more information, please visit our website [www.emrsettlement.co.uk](http://www.emrsettlement.co.uk) or email us at [contact@emrsettlement.co.uk](mailto:contact@emrsettlement.co.uk).

## 18. Acronyms and Definitions

A list of acronyms and definitions can be found in the 'Acronyms and Definition' document on our website<sup>26</sup>

<sup>23</sup> EMRS Guidance G14 – Supplier CM Credit Cover  
<https://www.emrsettlement.co.uk/publications/guidance/>

<sup>24</sup> EMRS Guidance G15 – CM Supplier Payments  
<https://www.emrsettlement.co.uk/publications/guidance/>

<sup>25</sup> <https://www.emrsettlement.co.uk/settlement-data/settlement-data-roles/>

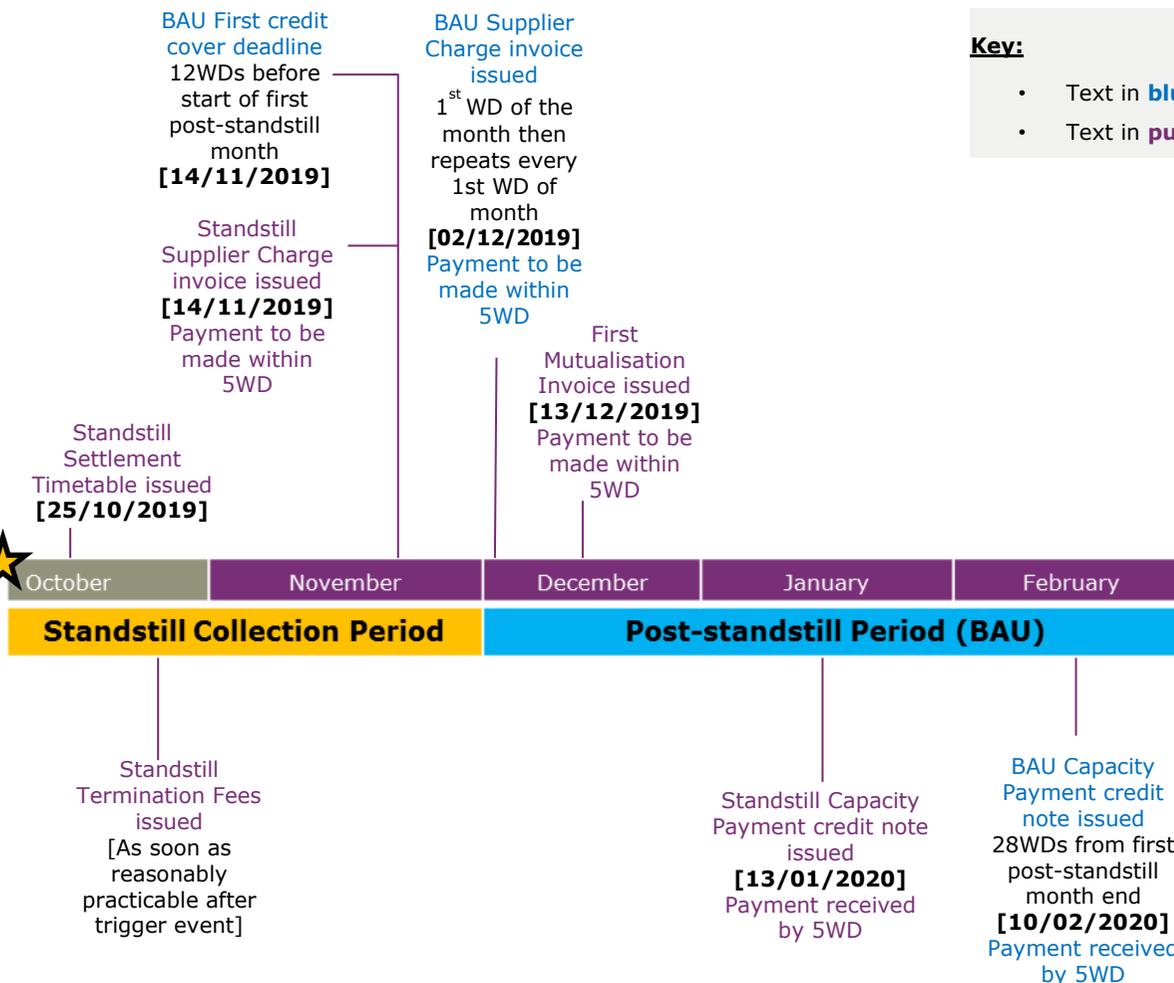
<sup>26</sup> <https://emrsettlement.co.uk/publications/>

## 19. Appendix 1 – Key Timings for CM Settlement Restart

Supplier Activity

Trigger Event  
25/10/2019

Capacity Provider Activity



**Key:**

- Text in **blue** denotes BAU processes.
- Text in **purple** denotes CM Restart related activities.

**N.B.**

- This timeline does not include Stress Event related Payments, Reconciliations or Capacity Provider credit cover.
- Standstill Supplier Charge payment will be reconciled no later than 90WD, 160WD and 295WD after Standstill Capacity Payment credit note issued.



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