
STATUTORY INSTRUMENTS

2005 No. 2483

The Energy Administration Rules 2005

PART 2

APPOINTMENT OF ENERGY ADMINISTRATOR BY COURT

Affidavit in support of energy administration application

4. Where it is proposed to apply to the court for an energy administration order to be made in relation to a protected energy company, the energy administration application shall be in Form EA1 and an affidavit complying with Rule 6 must be prepared and sworn, with a view to its being filed with the court in support of the application.

Form of application

5.—(1) The application shall state by whom it is made and the applicant's address for service.

(2) Where it is made by GEMA, the application shall contain a statement that it is made with the consent of the Secretary of State.

(3) There shall be attached to the application a written statement which shall be in Form EA2 by each of the persons proposed to be energy administrator stating—

- (a) that he consents to accept the appointment; and
- (b) details of any prior professional relationship(s) that he has had with the protected energy company to which he is to be appointed as energy administrator.

Contents of application and affidavit in support

6.—(1) The energy administration application shall state that the company is a protected energy company.

(2) The application shall state one or both of the following—

- (a) the applicant's belief that the protected energy company is, or is likely to be, unable to pay its debts;
- (b) the Secretary of State has certified that it would be appropriate for him to petition for the winding up of the protected energy company under section 124A of the 1986 Act⁽¹⁾ (petition for winding up on grounds of public interest).

(3) There shall be attached to the application an affidavit in support which shall contain—

- (a) a statement of the protected energy company's financial position, specifying (to the best of the applicant's knowledge and belief) the company's assets and liabilities, including contingent and prospective liabilities;

(1) 1986 c. 45; section 124A was inserted by the Companies Act 1989 c. 40, section 60(3) and amended by S.I. 2001/3649, article 305, and the Companies (Audit, Investigations and Community Enterprise) Act 2004 c. 27, section 25(1), Schedule 2, paragraph 27.

- (b) details of any security known or believed to be held by the creditors of the protected energy company and whether in any case the security is such as to confer power on the holder to appoint an administrative receiver or to appoint an administrator under paragraph 14 of Schedule B1 to the 1986 Act, without the modifications made by Schedule 20 to the 2004 Act. If an administrative receiver has been appointed, that fact shall be stated;
- (c) details of any insolvency proceedings in relation to the protected energy company including any petition that has been presented for the winding up of the protected energy company so far as within the immediate knowledge of the applicant;
- (d) details of any notice served in accordance with section 164 of the 2004 Act by any person intending to enforce any security over the protected energy company's assets, so far as within the immediate knowledge of the applicant;
- (e) details of any step taken to enforce any such security, so far as within the immediate knowledge of the applicant;
- (f) details of any application for leave of the court to pass a resolution for the voluntary winding up of the protected energy company, so far as within the immediate knowledge of the applicant;
- (g) where it is intended to appoint a number of persons as energy administrators, details of the matters set out in section 158(5) of the 2004 Act regarding the exercise of the powers and duties of the energy administrator;
- (h) any other matters which, in the opinion of those intending to make the application for an energy administration order, will assist the court in deciding whether to make such an order, so far as lying within the knowledge or belief of the applicant.

Filing of application

7.—(1) The application (and all supporting documents) shall be filed with the court, with a sufficient number of copies for service and use as provided by Rule 8.

(2) Each of the copies filed shall have applied to it the seal of the court and be issued to the applicant; and on each copy there shall be endorsed the date and time of filing.

(3) The court shall fix a venue for the hearing of the application and this also shall be endorsed on each copy of the application issued under paragraph (2).

(4) After the application is filed, it is the duty of the applicant to notify the court in writing of the existence of any insolvency proceedings, in relation to the protected energy company, as soon as the applicant becomes aware of them.

Service of application

8.—(1) In the following paragraphs of this Rule, references to the application are to a copy of the application issued by the court under Rule 7(2) together with the affidavit in support of it and the documents attached to the application.

(2) Notification for the purposes of section 156(2) of the 2004 Act shall be by way of service in accordance with Rule 10, verified in accordance with Rule 11.

(3) The application shall be served in addition to those persons referred to in section 156(2) of the 2004 Act—

- (a) if an administrative receiver has been appointed, on him;
- (b) if there is pending an administration application under Schedule B1 to the 1986 Act, without the modifications made by Schedule 20 to the 2004 Act, on the applicant;

- (c) if there is pending a petition for the winding-up of the protected energy company, on the petitioner (and also on the provisional liquidator, if any);
- (d) on any creditor who has served notice in accordance with section 164 of the 2004 Act of his intention to enforce his security over property of the protected energy company;
- (e) on the person proposed as energy administrator;
- (f) on the protected energy company;
- (g) if the applicant is the Secretary of State, on GEMA;
- (h) if the applicant is GEMA, on the Secretary of State;
- (i) if a supervisor of a voluntary arrangement under Part I of the 1986 Act has been appointed, on him.

Notice to officers charged with execution of writs or other process, etc

9. The applicant shall as soon as reasonably practicable after filing the application give notice of its being made to—

- (a) any enforcement officer or other officer who to the applicant's knowledge is charged with an execution or other legal process against the protected energy company or its property; and
- (b) any person who to the applicant's knowledge has distrained against the protected energy company or its property.

Manner in which service to be effected

10.—(1) Service of the application in accordance with Rule 8 shall be effected by the applicant, or the applicant's solicitor, or by a person instructed by the applicant or the applicant's solicitor, not less than 2 days before the date fixed for the hearing.

(2) Service shall be effected as follows—

- (a) on the protected energy company (subject to paragraph (3) below), by delivering the documents to its registered office;
- (b) on any other person (subject to paragraph (4) below), by delivering the documents to his proper address;
- (c) in either case, in such other manner as the court may direct.

(3) If delivery to a protected energy company's registered office is not practicable or if the protected energy company is an unregistered company, service may be effected by delivery to its last known principal place of business in England and Wales.

(4) Subject to paragraph (5), for the purposes of paragraph (2)(b) above, a person's proper address is any which he has previously notified as his address for service; but if he has not notified any such address, service may be effected by delivery to his usual or last known address.

(5) In the case of a person who—

- (a) is an authorised deposit-taker or a former authorised deposit-taker;
- (b) (i) has appointed, or is or may be entitled to appoint, an administrative receiver of the protected energy company, or
(ii) is, or may be entitled to appoint an administrator of the protected energy company under paragraph 14 of Schedule B1 to the 1986 Act, without the modifications made by Schedule 20 to the 2004 Act; and
- (c) has not notified an address for service,

the proper address is the address of an office of that person where, to the knowledge of the applicant, the protected energy company maintains a bank account or, where no such office is known to the applicant, the registered office of that person, or, if there is no such office, his usual or last known address.

(6) Delivery of the documents to any place or address may be made by leaving them there, or sending them by first class post.

Proof of service

11.—(1) Service of the application shall be verified by an affidavit of service in Form EA3, specifying the date on which, and the manner in which, service was effected.

(2) The affidavit of service, with a sealed copy of the application exhibited to it, shall be filed with the court as soon as reasonably practicable after service, and in any event not less than 1 day before the hearing of the application.

The hearing

12.—(1) At the hearing of the energy administration application, any of the following may appear or be represented—

- (a) the Secretary of State;
- (b) GEMA;
- (c) the protected energy company;
- (d) one or more of the directors;
- (e) if an administrative receiver has been appointed, that person;
- (f) any person who has presented a petition for the winding-up of the protected energy company;
- (g) the person proposed for appointment as energy administrator;
- (h) any person that is the holder of a qualifying floating charge;
- (i) any person who has applied to the court for an administration order under Schedule B1 to the 1986 Act, without the modifications made by Schedule 20 to the 2004 Act;
- (j) any creditor who has served notice in accordance with section 164 of the 2004 Act of his intention to enforce his security over the protected energy company's property;
- (k) any supervisor of a voluntary arrangement under Part I of the 1986 Act;
- (l) with the permission of the court, any other person who appears to have an interest justifying his appearance.

(2) If the court makes an energy administration order, it shall be in Form EA4.

(3) If the court makes an energy administration order, the costs of the applicant, and of any person whose costs are allowed by the court, are payable as an expense of the energy administration.

Notice of energy administration order

13.—(1) If the court makes an energy administration order, it shall as soon as reasonably practicable send two sealed copies of the order to the person who made the application.

(2) The applicant shall send a sealed copy of the order as soon as reasonably practicable to the person appointed as energy administrator.

(3) If the court makes an order under section 157(1)(d) of the 2004 Act or any other order under section 157(1)(f) of the 2004 Act, it shall give directions as to the persons to whom, and how, notice of that order is to be given.