

Tempus state aid judgment

Advice for capacity agreement holders and capacity market applicants v2.0

20 December 2018

Document version control

#	Changes	Pages	Date
1.0	Original document	-	15/11/18
1.1	Procedure changed from WP45 to WP35	8	19/11/18
2.0	<ul style="list-style-type: none"> Added contents page Updated all responses made in conjunction with UK Government 	-	21/12/18

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The following message is being sent to all capacity agreement holders and capacity market applicants

The General Court of the Court of Justice of the European Union has found in favour of Tempus Energy, against the European Commission, annulling the Commission's decision not to raise objections to the aid scheme establishing a capacity market in the UK.

This document provides information for capacity agreement holders and capacity market applicants to the upcoming capacity market auctions on the impacts of this judgment.

The UK Government have released a statement on their website about the judgment which you can find [here](#).

More recently, the UK Government have published a consultation outlining proposals for technical amendments to the capacity market. You can find more information [here](#).

The FAQ responses in this document have been updated and drafted in conjunction with the UK Government.



Management of capacity agreements

Will capacity agreements continue to be managed during the standstill period?

- National Grid, in its role as Delivery Body, is continuing to administer the capacity market and as part of this shall support capacity providers with meeting their current obligations. However, capacity payments shall not be made to capacity agreement holders by the Settlement Body (the Electricity Settlements Company) until state aid approval has been granted. Continuing to meet obligations under existing capacity agreements will enable capacity providers to be in a position to be eligible for the deferred payments due in relation to the standstill period should state aid approval be granted.
- The UK Government is consulting on whether some of the obligations and delivery milestones with which existing capacity agreement holders need to comply during the standstill period can be changed, recognising the standstill period could impact certain milestones. This consultation also proposes that the collection of termination fees and capacity provider penalty charges should be suspended until after the standstill period.



Termination notices and fees

Will termination fees apply during the standstill period?

- The UK Government is consulting on the proposal that termination fees should only be collected once the standstill period ends.
- We shall continue to manage capacity agreements, including the issuing of termination notices where required to do so in accordance with the Capacity Market Rules (the 'Rules') and the Electricity Capacity Regulations 2014 (the 'Regulations'), when obligations have not been met and/or key deadlines missed.
- The Secretary of State will continue to consider any termination notice appeals including directing withdrawals of termination notices or granting extensions of time to comply with the requirements in termination notices.

Will termination fees collected prior to the standstill period be refunded to providers?

- No.



Current capacity agreements and obligations

Can a capacity provider withdraw from their agreement during the standstill period?

- The UK Government advises that capacity agreements awarded under past auctions are still capable of being administered and enforced during the standstill period, unless terminated in accordance with the Regulations and Rules.
- You may (subject to meeting the requirements in the Regulations and the Rules) continue to secondary trade, and apply to change the location of your CMU (note this applies in respect of new build and DSR CMUs only). We will continue to review submission of documents in relation to milestone obligations and shall issue termination notices where required to do so in accordance with the Rules and Regulations.
- We will support you with meeting these obligations including issuing reminders, providing guidance updates and holding webinar learning sessions where necessary.



Credit cover

Will reclaiming applicant credit cover during the standstill period invalidate the relevant capacity agreement when the scheme is reinstated?

- Existing capacity agreements shall not be invalidated if you decide to request the return of credit cover during the standstill period, however you will need to be prepared to re-post credit cover when the capacity market is reinstated, if required to do so in accordance with the Rules and Regulations.
- The UK Government is consulting on proposals to amend credit cover requirements for prequalified applicants for the proposed rearranged T-1 auction in 2019 and for the re-posting of credit cover related to outstanding obligations (i.e. financial commitment milestone and connection arrangements) following the standstill period.



Stress events and CMNs

Do providers still have to deliver in the event of a system stress event?

- National Grid Electricity System Operator (NG ESO) will continue to operate the capacity market notice process and communicate to the market cases of tight electricity margins.
- Capacity providers should respond as normal, and if they fail to meet their obligations during a system stress event, should expect any deferred capacity payments (to be paid subject to state aid approval) to be reduced taking into account capacity provider penalty charges in line with current Rules and Regulations.

Will National Grid ESO continue to issue capacity market notices (CMNs)?

- Yes, NG ESO will continue to issue capacity market notices (CMN), and capacity agreement holders should be ready to respond as normal, for more information [click here](#).



SPDs

Do capacity providers still have to meet satisfactory performance day (SPD) requirements?

- Capacity agreements awarded under past auctions are still capable of being administered and enforced during the standstill period. Therefore, to support capacity providers with meeting their current obligations, we will continue to review any SPD submissions that you make for the current period.

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