

# Tempus State aid judgment

Advice for capacity agreement holders and capacity market applicants v3.0

22 March 2019



## Document version control

#	Changes	Page	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"><li>• Added contents page</li><li>• Updated all responses made in conjunction with UK Government</li></ul>	-	21/12/18
3.0	<ul style="list-style-type: none"><li>• Updated all relevant sections following the outcome of the capacity market: technical amendments consultation</li><li>• New section – (2) Replacement T-1 capacity auction</li><li>• New section – (5) DSR test</li><li>• New section – (6) Secondary trading</li></ul>	-	22/03/19



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# Introduction

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.

The UK Government have published the outcome of a consultation outlining proposals for technical amendments to the Capacity Market Rules (as amended) (the "Rules") and Electricity Capacity Regulations (2014) (as amended) (the "Regulations"). You can find more information [here](#).

This document provides information for capacity agreement holders and capacity market applicants in relation to amendments that have been made to the Rules and Regulations.

Certain amendments to the Rules came in to effect from **6 March 2019** as a result of the outcome of the consultation. An additional suite of amendments was published on **19 March 2019** and shall be effective once Parliament has approved the proposed amendments to the Regulations .

Please note that **text in purple** identifies answers to questions about changes to the Rules that require Parliamentary approval of amendments to the Regulations.

Further updates to this document shall be periodically issued to ensure that capacity agreement holders and applicants are aware of developments that could affect them.

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



## Replacement T-1 2019 capacity auction

- The UK Government has indicated in the consultation response that a replacement T-1 auction will be held this summer by rearranging the T-1 auction that was previously scheduled for January 2019.
- Conditional capacity agreements shall be awarded following the replacement T-1 auction that would convert to full capacity agreements following State aid approval (unless, in the unlikely event, a State aid decision has not been made by 1 October 2020).\*

The consultation document mentions that updates can be made to information provided at prequalification. Does this include an option to increase connection capacity?

- No, the Delivery Body is unable to accept an increase to connection capacity for a CMU that has already prequalified.
- 2.2.1 of the consultation document states that some administrative changes can continue to be submitted to the Delivery Body for review such as registering a change of company address.
- In line with the existing Rules and as part of the confirmation of entry process for any potential auction, the Delivery Body is able to consider requested amendments e.g. changes to DSR capacity.
- The UK Government is intending to run the T-1 auction using the existing prequalification results from last year's assessment and not re-open prequalification to new CMUs.

Will there be a requirement to provide credit cover to enter into the replacement T-1 auction?

- Applicant credit cover shall no longer be required for conditionally prequalified units (prospective and unproven DSR CMUs) entering into the replacement T-1 auction.\*



## Replacement T-1 2019 capacity auction (cont.)

Is there an option to withdraw a prequalified CMU before the replacement T-1 auction?

- Prospective and DSR CMUs have the option of not confirming entry to the replacement T-1 auction as per the existing Rules.
- There shall be a new option for an applicant to submit an auction withdrawal notice for any CMU that initially prequalified but that the applicant would now like to withdraw from the auction process.\*
- Applicants shall have an option to submit an auction withdrawal notice during a window that shall be open before the replacement T-1 auction (this window shall close 31 days before the replacement T-1 auction). Further details relating to timings for the auction withdrawal window shall be communicated once the date and time of the replacement T-1 auction have been confirmed.\*
- Mandatory CMUs that wish to withdraw from the replacement T-1 auction must state in an auction withdrawal notice whether the CMU will be closed down/temporarily non-operational or will remain operational during the delivery year and include a summary of the reason.\*
- The Delivery Body shall issue further guidance on the auction withdrawal process in due course.\*

If a CMU has withdrawn from the replacement T-1 auction, is it able to secondary trade?

- Applicants that have submitted (and had approved) an auction withdrawal notice for the replacement T-1 auction shall no longer be considered an acceptable transferee but shall be able to apply to be an eligible secondary trading entrant (subject to relevant checks).\*



## Replacement T-1 2019 capacity auction (cont.)

Have there been any changes made to the provision of milestone obligations deferred at prequalification?

- **Financial commitment milestone (FCM)** – capacity providers awarded a conditional capacity agreement following the replacement T-1 auction will have been considered to have met their FCM on provision of the funding declaration (exhibit J) only (rather than the full ITE report confirming total project spend and provision of a directors certificate).\*
- **Metering assessment and metering test** – capacity providers that have been awarded a conditional capacity agreement following the replacement T-1 auction shall be required to complete a metering assessment before the start of the delivery year and where applicable provide a metering test certificate. Capacity providers should ensure that they have adequate time to submit a meter test request to the Settlement Body if this is applicable.\*
- **Relevant planning consents** – applicants that have deferred the provision of relevant planning consent documentary evidence at prequalification are required to submit documents to the Delivery Body for assessment by 22 working days before the replacement T-1 auction (subject to existing Rules).

Where a conditional capacity agreement has been awarded but a CMU triggers concurrent termination events for the same deadline, how will the relevant termination fees be applied?

- Recent amendments to the Capacity Market Rules define an order in which to apply the final termination event fee, where multiple termination notices expire on the same day.\*



# 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 any deferred payments due in relation to the standstill period should State aid approval be granted.
- The UK Government has made amendments to the Rules following the recent consultation. This means that certain obligations and delivery milestones with which existing capacity agreement holders need to comply during the standstill period have been delayed.
- The Capacity Market (Amendment) Rules 2019 were effective from **6 March 2019** and further amendments to Rules were laid on **19 March 2019** (please note that these particular changes to Rules shall only come into force once Parliamentary approval has been granted for amendments made to the Capacity Market Regulations). Both of these amendments to the Rules can be viewed [here](#).





## Termination notices and fees

### Will termination fees apply during the standstill period?

- In the consultation response, the UK Government has stated that termination fees shall only be collected once the standstill period ends.
- The Delivery Body shall continue to manage capacity agreements, including the issuing of termination notices where required to do so in accordance with the Rules and 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.

### Will failure to increase credit cover for a T-4 2021 CMU that has not yet achieved the Financial Commitment Milestone constitute a termination event?

- No.\*



## Termination notices and fees (cont.)

What would happen to my capacity agreement(s) in the event that the capacity market is not granted State aid approval?

- Should the capacity market not be granted State aid approval, new termination events have been laid in the Rules that would result in the termination of active or conditional Capacity Agreements based on an instruction from the Secretary of State. The instruction will only follow a negative decision from the State aid authority or the unlikely event that a decision has not been made by 1 October 2020.\*

Are there any changes to requesting an extension to a termination notice?

- A capacity provider will be able to request an extension to a termination notice of up to 12 months rather than 60 working days from the Secretary of State. This can only be exercised in respect of agreements that existed on 15 November i.e. not conditional capacity agreements issued following the replacement T-1 auction.\*

What happens if I am unable to prove full capacity for a DSR CMU in a DSR test certificate?

- If the DSR CMU is above 2MW of proven capacity - a new DSR unproven capacity fee is applicable based on the proven capacity level.
- If the DSR CMU is below 2MW of proven capacity – a new termination fee of TF1 (£5,000 per mw) will apply.
- If credit cover is in place against your DSR CMU, these fees can be drawn down against that credit cover.\*



## DSR test

- Applicants are now able to request for a DSR test to be carried out for any prequalified or conditionally prequalified T-1 2019 DSR CMU applications.
- Certificates shall be issued following the completion of the replacement T-1 2019 auction and the subsequent issue of a conditional capacity agreement notice for successful qualifying applicants.
- Guidance on how to complete a DSR test can be found [here](#).



## Secondary trading

- The secondary trading window for delivery 2019/2020 was open from 6 March 2019 to enable trades to take place. Further guidance on secondary trading can be found [here](#).

If a conditional capacity agreement has been terminated, is there still an option to secondary trade the CMU?

- A CMU transferee is not prevented from taking on a capacity obligation as part of a secondary trade, in the event that they have had a conditional capacity agreement terminated due to a TEC related termination event.\*



# 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 Rules and Regulations.
- You may (subject to meeting the requirements in the Rules and Regulations) 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.

## What changes to the Rules have been implemented that could affect information I need to supply to the Delivery Body for review of current agreement management processes?

- **Monitoring construction progress** - amendments to the Capacity Market Rules state that any prospective CMU required to provide a construction progress report, no longer needs to provide an ITE report where any material change has occurred.



## 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 (subject to the below) you will need to be prepared to re-post credit cover when the capacity market is reinstated (subject to State aid approval), if required to do so in accordance with the Rules and Regulations.
- In the UK Government's response to its consultation, it stated that for the replacement T-1 auction only, it intends to waive the requirement for applicants to resubmit credit cover following the end of the standstill period.
- For all other agreements, upon reinstatement of the capacity market, any capacity provider who has had credit cover returned during the standstill period, shall be contacted by the Delivery Body to notify them that they need to re-post with the Settlement Body within 40 working days of receiving that notice.\*



# 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?

- Yes, 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 all SPD submissions.



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