

Tempus state aid judgment

Advice for capacity agreement holders and capacity market applicants

19 November 2018

Document version control

#	Changes	Pages	Date
1.0	Original document	-	15 Nov 2018
1.1	Procedure changed from WP45 to WP35	8	19 Nov 2018

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

Today the General Court of the Court of Justice of the European Union 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.

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

We've included a set of FAQs as part of this announcement and we will continue to provide further updates as the situation becomes clearer.

Information on the impacts of the judgment

What does this judgment mean for the UK capacity market?

- The judgment suspends the state aid approval for, and therefore the legality of granting aid through, the capacity market. The capacity market will enter a 'standstill period' which prevents the UK Government from holding any capacity auctions, making any capacity payments under existing agreements, or undertaking any other action which could be seen as granting state aid, until the scheme can be approved again.

Information on the impacts of the judgment

What happens next?

- We are still able to continue with activities which do not involve granting state aid, including completing the Prequalification process for 2019 in case it is required for future capacity market auctions.
- BEIS are doing everything they can to re-obtain state aid approval from the European Commission as soon as possible. The Commission will now need to undertake a formal investigation before providing state aid approval for the capacity market. BEIS will support the Commission's investigation where required. As part of this process BEIS will carefully consider whether any changes to the design of the capacity market are required.
- We can't speculate on how long it will take the Commission to conclude their formal investigation into this case. However, BEIS will work closely with them to ensure the process runs smoothly and that state aid for the capacity market can be approved as soon as possible.

Information on the impacts of the judgment

Will the next round of auctions go ahead?

- The Secretary of State has today instructed us to postpone indefinitely the upcoming T-4 and T-1 Auctions for Delivery Years 2022/23 and 2019/20 respectively, in accordance with Regulation 26(3)(a) of the Electricity Capacity Regulations 2014.
- The Government is intending to seek separate state aid approval from the Commission to run a one-off 'replacement' T-1 Auction. The postponed T-4 is intended to be run as a T-3 Auction in next year's auction round, subject to the Commission completing its formal investigation and providing state aid approval for the main capacity market scheme.

Further information for capacity agreement holders

Will capacity agreement holders be paid?

- Whilst the capacity market is in standstill, no capacity payments can be made. The Government hopes that capacity payments will resume as soon as possible but these are subject to the Commission providing state aid approval for the capacity market and agreeing that the UK can make payments under existing capacity agreements.

What happens if a capacity provider does not comply with their agreement during the standstill period? Will they still be subject to penalty payments or termination fees?

- BEIS is reviewing the judgment, including its implications for capacity providers, and will provide guidance to the Delivery Body as soon as possible.

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

- BEIS will provide guidance to the Delivery Body as soon as possible.

Further information for capacity agreement holders

Will applicant credit cover for the postponed T-1 and/or T-4 Auctions and/or for future Delivery Years continue to be held?

- All credit cover that is currently being held in relation to the postponed auctions will be returned.
- Agreement holders may also request the return of credit cover for capacity agreements arising from past auctions.

How do I request the return of credit cover that's just been paid for the T-1 and T-4 auctions and/or credit cover lodged for future Delivery Years?

- Please follow the procedure in [WP35 – CM Applicant/Capacity Provider Credit Cover Process](#) to request the return of credit cover detailed on page 24 for the return of cash credit cover or page 26 for the return of Letter of Credit. Please email the [EMRS Service Desk](#) with your request to return credit cover.
- Please note that due to the large volume of credit cover to be returned it may take longer than the standard 11 working days to return payment. EMRS will contact capacity providers if there will be a delay.

Further information for capacity agreement holders

Will the UK Government recover capacity payments already made?

- The Government is taking no steps to recover payments at this stage, and hopes that this can be avoided. BEIS will discuss with the Commission the extent to which aid already paid may need to be recovered, as part of the Commission's formal investigation. The final position will need to await the results of the Commission's investigation.

What about new build projects expecting to participate in the upcoming T-4 Auction?

- Subject to the Commission completing its formal investigation and providing State aid approval for the main capacity market scheme, the postponed T-4 auction will be run as a T-3 Auction in next year's auction round. BEIS appreciates this has the potential to be problematic for certain construction lead times.

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