



Making a positive difference  
for energy consumers

Capacity Market stakeholders and  
other interested parties

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Dear Applicants,

**Update letter on Ofgem's role in the Capacity Market prequalification dispute resolution following the judgement of Tempus on State aid.<sup>1</sup>**

On 15 November 2018 the General Court of the Court of Justice of the European Union found in favour of Tempus Energy, against the European Commission, removing the Commission's State aid approval for the UK Capacity Market. The Court held that the Commission should have consulted more fully before granting State aid approval in 2014. Following this decision the Secretary of State has postponed the upcoming T-4 and T-1 Capacity Market Auctions for Delivery Years 2022/23 and 2019/20 respectively. This is in accordance with Regulation 26(3)(a) of the Electricity Capacity Regulations 2014.

It is important to note that the judgment was decided on procedural grounds. It was not a challenge to the nature of the Capacity Market mechanism itself.

The Government is seeking immediate State aid approval for a T-1 auction that will cover winter 2019/20. Alongside this, the Government are working to reinstate the full Capacity Market regime and are discussing the swiftest means of doing so with the Commission. Therefore Ofgem will still be undertaking the disputes resolution process for both T-1 and T-4 prequalification applications. Any appeal notices must be submitted to us within five working days of the date on which the appellant received a Tier 1 reconsidered decision notice from NGET, in accordance with Regulation 70(2).

The deadline for submission of an appeals notice remains as **5pm Friday 23 November 2018**. This the final opportunity to dispute a Tier 1 decision from the Delivery Body.

If you have any questions on this letter or the Capacity Market dispute resolution process, please get in touch with Chris Thackeray: Chris.Thackeray@ofgem.gov.uk or 020 3263 2701.

**Chris Thackeray**  
**Head of GB Wholesale Markets, Systems and Networks**

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<sup>1</sup> [Tempus Energy Ltd and Tempus Energy Technology Ltd v. European Commission T-793/14](#)