



Department for  
Business, Energy  
& Industrial Strategy

Rachel Reeves  
Chair, BEIS Select Committee  
House of Commons  
London  
SW1A 0AA

The Rt Hon Claire Perry MP  
Minister of State for Energy and Clean Growth

Department for Business, Energy &  
Industrial Strategy  
1 Victoria Street  
London  
SW1H 0ET

T +44 (0) 20 7215 5000  
E [enquiries@beis.gov.uk](mailto:enquiries@beis.gov.uk)  
W [www.gov.uk](http://www.gov.uk)

3 January 2019

Dear Rachel,

Thank you for your letter of 18 December regarding the European Court of Justice ruling on the Capacity Market.

The Government continues to believe that the Capacity Market is the right mechanism for delivering security of supply at the lowest cost to consumers. My Department are therefore working closely with the European Commission to ensure that the Capacity Market can be reinstated swiftly.

National Grid have already made clear that there is no risk to security of supply this winter.

Following two previous Ministerial Statements, I updated the House again on 6 December setting out the latest actions that the Government is taking. On 19 December, the Government then published a technical consultation in order to ensure the Capacity Market can continue to operate as fully as possible during this standstill period. My Department are also regularly engaging with generators, suppliers and the investment community to ensure they are kept fully informed and maintain market confidence.

I am grateful for your detailed questions to which I have responded to below. My Department would be happy to provide further information as needed and will ensure that the House is kept fully informed over the coming months.

**What discussions have you had with the Commission about the timescale for the investigation and re-approval of the Capacity Market?**

My Department has been in regular discussion with the Commission since the judgment to better understand the process they are following, in order to ensure that we can support it in the most effective and timely way as possible. While it is for the Commission to establish their own timetable, we expect the Commission to publish an Opening Decision on the Capacity Market investigation early this year, with their final decision following later in the year.

**Do you expect that Capacity Market payments missed during the suspension will be paid to capacity providers retrospectively?**

We expect that a positive final decision by the Commission after its formal investigation would mean that past aid granted under the scheme (agreements and payments) can be honoured, including those for the current 2018/19 period. In that case we would expect to make deferred payments to those capacity agreement holders who have continued to meet their obligations during the standstill period.

**What actions are you taking to address concerns by Tempus Energy regarding the Capacity Market's design, so that any modifications required following the Commission's investigation can be implemented as quickly as possible?**

The Court did not rule that aspects of the scheme design were incompatible with State aid rules or question the necessity of having a Capacity Market. The judgement related to the process followed by the Commission in approving the scheme in 2014. The Government consistently reviews the operation and design of the Capacity Market and has regularly consulted on amendments in the light of new evidence. Most recently we have begun a statutory review of the mechanism, as required by law at the five year stage. As a first step in that process we published a Call for Evidence on 8 August 2018. This asked a number of questions relevant to the DSR sector and provided an opportunity for all stakeholders to submit views. We are considering these responses and will publish our response next year.

**Under what conditions are auctions already held likely to be rerun?**

We expect that a positive final decision by the Commission after its formal investigation would mean that agreements awarded as a result of past auctions can be honoured.

**(i) BEIS has recommended that energy suppliers should reduce consumer bills, to reflect the non-collection of capacity market payments. Does this mean that you will expect suppliers to retrospectively collect these payments if and when the suspension is lifted?**

**ii) What actions are you taking, if any, to explore alternative routes to recover capacity payments during the suspension?**

While the collection of the charge by the Electricity Settlements Company (ESC) was suspended following the judgement, the Government has considered this position further in light of our discussions with the Commission about the making of deferred payments (subject to State aid approval). In light of representations from industry, the Government is now minded to continue to collect payments during the standstill period. Our consultation of 19 December discusses two options for doing so and we plan to make a final decision early this year.

Yours ever,

A handwritten signature in black ink, appearing to read 'C. Perry', with a long horizontal flourish extending to the right.

**THE RT HON CLAIRE PERRY MP**  
Minister of State