



# Energy Resource Appeal Tribunal

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## Stays Pending a Decision on the Appeal

### **An appeal generally does not prevent the decision from taking effect**

Most of the time, the appealed decision will still take effect. This means that, apart from two exceptions, you must comply with the decision under appeal, while the appeal takes place.

The first exception is for administrative penalties. An administrative penalty is stayed automatically when the penalty is appealed to the Energy Resource Appeal Tribunal (the “Tribunal”). This means that the administrative penalty does not have to be paid, unless and until the Tribunal confirms that a penalty should have been imposed.

The other exception is where the Energy Resource Appeal Tribunal (the “Tribunal”) orders that a decision is stayed while it is being appealed.

### **How to get a stay**

If you want a decision you have appealed to be suspended while the appeal is underway, you should ask the Tribunal for a stay. [Rule 18](#) sets requirements for these applications. They must be in writing, explain why you want a stay, and indicate whether the other parties agree (if you know). You must include any evidence that supports your application.

When deciding whether to stay a decision, the Tribunal considers three factors. Those are whether the:

- appeal raises a serious issue;
- person applying for the stay will, if the stay is denied, likely suffer “irreparable harm” that cannot be fixed if they succeed in the appeal; and
- irreparable harm that the applicant will suffer is worse than any harm that may occur if the stay is granted.

You may want to look at previous stay decisions made by the Tribunal to understand how this test is applied. There are many examples on the Tribunal’s website under the heading “Decisions”. For each stay decision, “Stay Application” is written beneath the appeal name. For more information, see also page 17 of the [Practice and Procedure Manual](#).

### **What happens when someone asks for a stay?**

The Tribunal will share the application with the other parties. Each will have a chance to respond. They can say whether the Tribunal should stay the decision, referring to the three-part test described above.

Normally, an application for a stay is decided in writing, rather than in an oral hearing.

Once it reaches its decision, the Tribunal will inform the parties of its decision and give written reasons.