

(1) EDF ENERGY (WEST BURTON POWER) LIMITED

(2) SSE GENERATION LIMITED

(3) THE ENTITIES LISTED IN SCHEDULE 1

-and-

GAS AND ELECTRICITY MARKETS AUTHORITY

Decision on Permission to Appeal

1. EDF Energy (West Burton Power) Limited and the other entities listed in paragraph 1 of the Schedule (EDF) and SSE Generation Limited and the other entities listed in paragraph 2 of the Schedule (SSE) have applied to the Competition and Markets Authority (CMA) for permission to appeal the decision made by Ofgem, on behalf of the Gas and Electricity Markets Authority (GEMA), dated 16 November 2017, to reject the majority recommendation of CUSC Panel Members as to Code Modification Proposal CMP261 - modification of the Connection and Use of System Code (the Decision).
2. EDF and SSE made their application on 6 December 2017, under section 173 of the Energy Act 2004 (the Act) as persons whose interests are materially affected by the Decision, in accordance with section 173(3)(a) of the Act, and within the time period allowed by paragraph 1(3) of Schedule 22 to the Act. The Decision has not been excluded from the right of appeal pursuant to section 173(2)(d) of the Act and the Electricity and Gas Appeals (Designation and Exclusion) Order 2014.
3. EDF and SSE wish to challenge the Decision on four grounds. Ground 1, claims that GEMA has made errors of law in the construction of the provisions

setting a range for average transmission charges set out in Commission Regulation (EU) No 838/2010. Ground 2, claims that GEMA committed errors of fact, including in its evidential assessment of which charges should be within the exclusion for connection charges. Ground 3 claims that the Decision constitutes an abuse of process and/or infringes the principle of regulatory consistency. Ground 4 claims the Decision infringes a number of general principles of EU law.

4. On 11 December 2017, GEMA notified the CMA that it did not intend to contest the application for permission to bring an appeal.
5. By virtue of section 173(5) of the Act, the CMA may refuse permission for EDF and SSE to bring this appeal only on the grounds that the appeal: (a) is brought for reasons that are trivial or vexatious; or (b) has no reasonable prospect of success.
6. It appears to me that the issues raised in the notice of appeal are serious and of genuine concern to EDF and SSE, so that the appeal is not being brought for reasons that are trivial or vexatious.
7. The Notice of appeal raises a number of matters in support of each of the four main grounds of appeal. GEMA has indicated that it does not contest the application, and without having formed a view on the merits of the submissions by EDF and SSE, it appears to me that it cannot be said that any of the grounds of appeal has no reasonable prospect of success.
8. I have therefore decided, within the time limit set by paragraph 1(8) of Schedule 22 to the Act, to grant EDF and SSE permission to appeal the Decision on each of the four grounds set out in the Notice of appeal.

John Wotton
Authorised Member of the CMA
19 December 2017

SCHEDULE

LIST OF APPELLANT ENTITIES

1. EDF ENERGY ENTITIES

- (a) EDF Energy (West Burton Power) Limited
- (b) EDF Energy (Cottam Power) Limited136
- (c) EDF Energy Nuclear Generation Limited

2. SSE ENTITIES

- (a) SSE Generation Limited
- (b) SSE Renewables (UK) Limited
- (c) Griffin Windfarm Limited
- (d) Keadby Windfarm Limited
- (e) Keadby Developments Limited
- (f) Medway Power Limited
- (g) Abernedd Power Company Limited