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29 August 2017

Mr. Steven Preece
The Regulatory Appeal Team
Competition and Markets Authority
Victoria House
37 Southampton Row
London,
WC1B 4AD

Re: Response to CMA Consultation – Energy Licence Modification Appeals Rules and Guide

Dear Steven,

GNI (UK) Limited welcomes the opportunity to respond to the CMA Consultation – Energy Licence Modification Appeals Rules and Guide which was published by the Competition and Markets Authority (“CMA”) on 24th July, 2017. GNI (UK) Limited, holds a Gas Conveyance Licence in Northern Ireland together with an interconnector licence in the UK.

Overall we welcome the proposed changes to the licence modification appeal process, in particular the broader acknowledgment of “third party involvement” in appeals and the relevant eligibility criteria. On this point we believe that the Rules could benefit from further clarity on the time period in which to obtain permission to be an “intervener” and the contents of the third party’s submissions at the time a third party applies for permission to intervene.

On this subject and on other certain specific points we respectfully submit our comments as outlined in the attached document (CMA Rules and Guidelines_Revisions_170829).

Please do not hesitate to contact me if you require any further information.

Yours sincerely,

Celine Hayes
Regulatory & European Affairs Manager
Gas Networks Ireland on behalf of GNI (UK) Limited

Enclosures: CMA Rules and Guidelines_Revisions_170829

CMA Rules and Guidelines Consultation

Review of CMA Rules

	Heading	GNI (UK) Limited commentary
7	Application for suspension of decision	7.8 What will CMA consider when making a decision on suspension of the Authority's decision? GNI (UK) would welcome the inclusion of more detail in this regard.
8	Withdrawal of application	<p>8 General comment – No requirement is set out as to whether the appellant must send a copy of the application for permission to withdraw to the Authority and relevant licence holders, as is the case in clauses 5 and 7. This should be clarified either way so there is no doubt as to what the requirement is.</p> <p>8.3 Please provide more details regarding whether the CMA and other party costs orders may be made against appellants.</p>
10	Interveners	<p>10 – General comment – GNI (UK) Limited suggests that a timeframe be included within which the CMA is required to consider and make a decision on whether or not to grant permission to intervene. Otherwise, there is a concern that the process may be significantly delayed. It is noted that the administrative timetable may address this, however, further clarity in relation to this may be beneficial.</p> <p>10.2 GNI (UK) Limited suggests extending the time period of 10 working days, to 20 working days. It may not be reasonable to expect a third party with limited resources to review, seek assistance on if necessary respond to a detailed CMA decision within 10 days.</p> <p>10.4 Suggest expanding on the level of detail to be included in the “concise statement, identifying the facts and reasons for making the request”. Will the CMA expect detailed submissions from</p>

	Heading	GNI (UK) Limited commentary
		<p>interveners? If so, consideration will need to be given the timeframe within which interveners are required to submit.</p> <p>10.6 Suggest adding a “statement of truth” requirement for the intervener (as required under Rule 5.4).</p> <p>10.7 There may be a practical issue arising with respect to the timeframe here, in particular where there is a link of appeal party rights of representation with the date on which the Authority sends its response to the CMA under rule 9. The Authority could, for example, get its response in within 3 days of the decision and the intervener applies within 10 days. Appeal parties cannot respond by day 8 if the intervener has not yet even issued its application.</p> <p>10.8) Consider amending rule 10.8 to read as follows: “the CMA may consider an application for permission to intervene and any representations pursuant Rule 10.7.....”</p>
21	Costs	<p>21.1, 21.2 and 21.4: The definition of “CMA Group” is not defined in the Rules. However, it is described in footnote 46 of the Guide by reference to paragraph 4 of the Schedule. GNI (UK) Limited suggests that a footnote should be included under Rule 21.1 to explain who the CMA Group is and to expand on what is in paragraph 4 of the Schedule for ease of reference.</p>

Review of CMA Guide

	Heading	GNI (UK) Limited commentary
3	General observations on appeals	<p>3.9 Suggest incorporating 20 day required timeframe for bringing an appeal into clause 5 of Rules – Notice of Appeal. This is an important factor which should be set out as clearly as possible and may get lost in the Guide where most other timeframes are provided for in the Rules.</p> <p>3.10 Suggest reference to 4/6 month CMA turnaround be incorporated into clause 9 or elsewhere in the Rules. As per the above, this is an important piece of information and should be highlighted in the Rules where other similar information is included.</p> <p>3.19 Suggest including CMA required 10/14 day turnaround to decide whether to grant permission to appeal in clause 6 of the rules. This is also an important piece of information.</p> <p>3.22 GNI (UK) Limited considers that the reference to paragraph 2.2 may be inaccurate and may need to be deleted. Paragraph 2.2 does not appear to have any bearing on 3.22.</p>
5	Costs	<p>6.3 On reading 6.3, it is not clear whether the CMA may or may not issue cost orders against interveners. Although it does not have the express power to do so, is this a possibility?</p>
	Staff Meetings	<p>4.35 GNI (UK) would welcome the inclusion of more details or a further explanation regarding the meaning of “modelling issues”.</p>
	Confidentiality and Freedom of Information	<p>4.41 GNI (UK) Limited suggests that disclosure to “other participants” should only occur following receipt by CMA of consent from the relevant party who provided the information.</p>