

**(1) SSE GENERATION LIMITED**

**(2) THE ENTITIES LISTED IN THE SCHEDULE**

**-and-**

**GAS AND ELECTRICITY MARKETS AUTHORITY**

**Decision on Permission to Appeal**

1. SSE Generation Limited and the other entities listed in the Schedule below (SSE) have applied to the Competition and Markets Authority (CMA) for permission to appeal the decisions made by Ofgem, on behalf of the Gas and Electricity Markets Authority (GEMA), dated 17 December 2020, approving proposals of modification, proposal CMP317 and proposal CMP327, and the consequential proposal CMP339 for modifications of the Connection and Use of System Code (CUSC) (the Decisions).
2. SSE made its application on 12 January 2021, under section 173 of the Energy Act 2004 (the Act) as persons whose interests are materially affected by the Decisions, 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 Decisions are not of a description that is 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. The Decisions also satisfy the requirements of section 173(2)(a) to (c) of the Act concerning appealable decisions.
3. SSE wishes to challenge the Decisions on six grounds. Ground 1 claims that GEMA has made errors of law and/or fact in its construction and/or application of the 'Connection Exclusion' in Commission Regulation (EU) No 838/2010 (the ITC Regulation). Ground 2 claims that GEMA has breached public law

principles in that GEMA consciously adopted a construction of the 'Connection Exclusion' which it acknowledged was incorrect in order to avoid an impending breach of the ITC Regulation. Ground 3 claims that GEMA made errors of law in its construction of the 'Ancillary Services Exclusion' and its treatment of (i) the relevant Balancing Services Use of System charges and (ii) the relevant Balancing Settlement Code charges. Ground 4 claims that GEMA committed errors of factual appraisal, including its assessment of the consumer benefit and the generator detriment associated with the approved changes. Ground 5 claims that GEMA failed to have proper regard or give due weight to the statutory and CUSC objectives when setting a target towards €0.00/MWh for the annual average transmission charges paid by Generators in GB. Ground 6 claims that GEMA failed to have proper regard or give due weight to its statutory objectives by failing to put in place transitional arrangements for the introduction of the change to set the Transmission Generator Residual (TGR) at £0.

4. On 15 January 2021, 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 to bring an appeal only on one of the following grounds: (a) that the appeal is brought for reasons that are trivial or vexatious; (b) that the appeal has no reasonable prospect of success.
6. I consider that the issues raised in the notice of appeal are serious and of genuine concern to 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 of substance in support of each of the six main grounds of appeal. GEMA has notified the CMA that it does not contest the application, and without having formed a view on the merits of the submissions by SSE, my view is 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 SSE permission to appeal the Decisions on each of the six grounds set out in the Notice of appeal.

Kirstin Baker  
*Authorised Member of the CMA*  
21 January 2021

## **SCHEDULE**

### **LIST OF APPELLANT SSE ENTITIES**

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