

**BEFORE THE COMPETITION AND MARKETS AUTHORITY  
IN THE MATTER OF AN APPEAL UNDER SECTION 173 OF THE ENERGY ACT 2004**

**(1) SSE GENERATION LIMITED  
(2) THE ENTITIES IN SCHEDULE 1 TO THE NOTICE OF APPEAL**

**- AND -**

**GAS AND ELECTRICITY MARKETS AUTHORITY**

---

**SUMMARY OF INTERVENTION NOTICE**

---

1. Centrica plc (**'Centrica'**) and British Gas Trading Limited (**'BGT'**) are intervening in support of the Respondent, the Gas and Electricity Markets Authority (**'Ofgem'**), in the Appellant's appeal against GEMA's decision of 17 December 2020 to approve the code modifications CMP317 and CMP327 (the **'Decision'**). References to 'Centrica' include references to 'BGT' unless the context indicates otherwise. Centrica opposes the appeal in its entirety, including each ground of appeal. This is a summary of Centrica's submissions and evidence.
2. BGT is the UK's largest energy supplier and is part of the Centrica group. As an industry player which has investments in both energy generation and energy supply, Centrica is well-placed to explain that the Appellants have not correctly characterised the situation, and that:
  - a) the industry could reasonably have anticipated the Decision and Centrica did, in fact, anticipate the Decision and make business decisions accordingly; and
  - b) while the Appellants may benefit if the appeal succeeds, such an outcome would be unfair and contrary to regulatory certainty for those who correctly anticipated Ofgem's decisions in their forecasts and made business decisions accordingly.
3. In relation to ground 1 (error of law or fact in relation to the Connection Exclusion), the NoA claims that *'GEMA's repeated iterations of the "correct" construction of the Connection Exclusion since 2010 fail to give legal and regulatory certainty'*. However, Ofgem's decision on code modification CMP261 on 16 November 2017 addressed much of the regulatory uncertainty about the Connection Exclusion. It is noteworthy that the Appellants failed to have GEMA's decision on CMP261 overturned on appeal to the CMA

and that the CMA rejected the Appellants' argument that Ofgem's approach to CMP261 breached the principal of regulatory consistency. Centrica provides evidence that a reasonably prudent generator should – and Centrica did – take into account the likelihood of Ofgem's interpretation of the Connection Exclusion from at least February 2018.

4. Futhermore, the Connection Exclusion issue had a relatively immaterial effect in the short to medium term. The Decision explains that the difference in the value for the assets included in the Connection Exclusion under (i) the Original Proposal (i.e. all local assets excluded); and (ii) SSE's preferred option (i.e. only Generator Only Spurs excluded), is only around £3 million or under 1% of the total exclusion. Centrica considered this to be immaterial for forecasting purposes.
5. In relation to ground 4 (fundamental errors of appraisal) and ground 6 (failure to provide phase implementation), the Appellants argue that the Decision could not have been reasonably predicted and that they create regulatory uncertainty. While it appears clear that the Appellants failed to anticipate the Decision, the Decision, and its impact, was foreseeable. Centrica provides evidence that the Decision should have been anticipated by industry for many years. Indeed from November 2017, Centrica did in fact foresee, and acted on the basis, that the Decision would be made. The Appellants are therefore wrong to assume that their concerns with the Decision will be '*equally relevant to other Generators*'.
6. If the Appellants succeed, they will have achieved an advantage over their competitors in Capacity Market auctions. This would be unfair on those parties who properly reviewed GEMA's decisions and consequently participated in the auctions on the basis of more conservative – and more accurate – forecasts.

**Towerhouse LLP / Centrica plc and British Gas Trading Limited**  
**9 February 2021 (amended 10 February 2021)**