

BEFORE THE COMPETITION AND MARKETS AUTHORITY

AN APPEAL UNDER SECTION 173 ENERGY ACT 2004

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

and

THE GAS AND ELECTRICITY MARKETS AUTHORITY Respondent

NATIONAL ELECTRICITY SYSTEM OPERATOR LIMITED Intervening

SUMMARY OF INTERVENTION NOTICE BY
NATIONAL GRID ELECTRICITY SYSTEM OPERATOR LIMITED
DATED 9 FEBRUARY 2021

1. The proposed intervener (the “**Intervener**”) is National Grid Electricity System Operator Limited (“**NGESO**”), the GB transmission system operator. The interests of the Intervener are materially affected by the Decision under appeal in that:
 - (a) As the operator of the electricity transmission system in Great Britain (“**GB**”), the Intervener has an interest in the orderly functioning of the GB transmission system.
 - (b) As part of its Transmission Licence obligations to maintain the Connection and Use of System Code (“**CUSC**”) the Intervener has an interest in the proper and orderly function of the CUSC. Section 1 (Introduction), paragraph 1.1.1 of the CUSC explains that “*The [Intervener] is obliged by the Transmission Licence to maintain the CUSC and to enter into arrangements for connection and use of system with Users pursuant to its terms*”.
 - (c) The decision of the Gas and Electricity Markets Authority (“**GEMA**”) dated 17 December 2020 (“**Decision**”), and specifically those aspects under appeal, concerns the charges which the Intervener as GB transmission system operator will be entitled and required to levy on generators in accordance with the CUSC in the charging year 2021/22 and in future charging years.
 - (d) Insofar as any appeal against the Decision succeeds on the merits:

- i. The Intervener will be responsible for the application of the ultimate consequences of the CMA's decision (including the consequences of any quashing of the Decision and/or any modification to the CUSC arising (whether by decision of the Competition and Markets Authority ("CMA") or GEMA)).
 - ii. The Intervener has an interest in any relief granted and the overall outcome for the industry framework (including the CUSC) being in compliance with Commission Regulation (EU) No. 838/2010 (the "**Limiting Regulation**").
2. This document sets out a summary of the Intervener's position on the appeal in question. The Intervener's intervention notice ("**Intervention Notice**") sets out its position in more detail.
3. On the substance of the appeal, insofar as the Intervener is required to support or oppose the appeal, the Intervener opposes the appeal for the reasons set out in paragraph 6 of the Intervention Notice.
4. On remedy, the Intervener notes that the Appellant proposes a number of alternatives in the event that its appeal is successful. These alternatives are summarised in paragraph 9 of the Intervention Notice and set out in further detail in the Notice of Appeal.
5. In respect of remedy, the Intervener agrees and adopts paragraphs 156 to 164 of the Respondent's Reply to the Notice of Appeal.
6. Further, the Intervener's position is that it is apparent from the Decision that GEMA was mindful of the impact of any outcome of the Decision on "*imminent risk of a breach of the Limiting Regulation that is posed by the status quo*". A breach of the Limiting Regulation would have had a material effect on the Intervener. In that context, and in the context that it did "*not consider that any of the proposals incorporate the correct interpretation of the Connection Exclusion*", GEMA's "*approval of the Original Proposal [was] on the express basis that it is a 'stop-gap' measure which should avert an imminent risk of breach of the Limiting Regulation*". The CMA is invited to ensure that all of the material consequences of any successful appeal are properly understood in considering the merits and granting any relief should the Appellant be successful on the merits.
7. Beyond that, the Intervener may wish to make more detailed submissions in due course, as explained in the Intervention Notice.

9 February 2021