

**BEFORE THE COMPETITION AND MARKETS AUTHORITY**

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**AN APPEAL UNDER SECTION 173 ENERGY ACT 2004**

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BETWEEN:

(1) SSE GENERATION LIMITED

(2) THE ENTITIES LISTED IN THE SCHEDULE TO THE NOTICE OF APPEAL

Appellants

- and -

GAS AND ELECTRICITY MARKETS AUTHORITY

Respondent

- supported by –

NATIONAL GRID ELECTRICITY SYSTEM OPERATOR LIMITED

- and -

CENTRICA PLC AND BRITISH GAS TRADING LIMITED

Interveners

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**CONFIDENTIALITY RING ORDER**

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UPON reading the Notice of Appeal from SSE Generation Limited and the Entities listed in the Schedule to the Notice of Appeal (the Appellants) against the decision of the Gas and Electricity Markets Authority (GEMA) to approve Code Modification Proposal CMP317 and proposal CMP327, and the

consequential proposal CMP339 for modifications of the Connection and Use of System Code

UPON reading the Application of the Appellants dated 14 January 2021 for the establishment of a confidentiality ring

UPON hearing the legal representatives of the parties at a Case Management Conference held remotely on 11 February 2021

UPON the terms of this Order as set out below having been agreed between the Parties

AND HAVING REGARD TO the CMA's appeal management powers under Rule 10 of the Energy Code Modification Rules

## **IT IS ORDERED THAT:**

### **Confidentiality Ring**

1. This Order becomes effective in respect of each of the persons named in Part A of the Schedule to this Order only upon receipt by the CMA of a signed undertaking in the terms of Part B of the Schedule to this Order.
2. For the purposes of this Order:

**"Appellants' Advisers"** means a legal adviser advising the Appellants in connection with this appeal, including Addleshaw Goddard LLP and Kieron Beal QC.

**"Confidential Information"** means information contained in the Relevant Document where such information has been identified as such by the Appellants and is within the meaning of sensitive information as defined in Rule 1.1 of the Rules.

**"Relevant Advisers"** are those persons who have given a signed undertaking to the CMA in the terms of Part B of the Schedule to this Order and are either:

- a. listed in Part A of the Schedule to this Order; or
- b. authorised by the CMA upon further application.

**"Relevant Document"** means the witness statement of John Tindal on behalf of the Appellant dated 12 January 2021 ('Tindal 1').

3. The Appellants shall hereafter disclose to GEMA the unredacted version of the Relevant Document containing Confidential Information on the condition that such unredacted version shall be disclosed only to Appellants (or the Appellants' Advisers), the Relevant Advisers or any GEMA<sup>1</sup> employee who is for the time being working on these proceedings or the matters which have given rise to them and not to any other officer or employee of that party or to any other person.
4. Such unredacted version of the Relevant Document must be marked or highlighted so as to indicate the parts in relation to which confidential treatment is claimed.
5. If any party wishes to add any additional person as a Relevant Adviser for the purpose of this Order, they shall apply to the CMA in writing, copied to the other parties, indicating whether each of the other parties consents or does not consent to the addition of that person.
6. If any party wishes one of its Relevant Advisers to be removed as a Relevant Adviser for the purpose of this Order, they shall inform the CMA in writing (copying the representatives of the other parties).
7. Nothing in this Order prevents the disclosure of any information to GEMA (including any GEMA employee) to facilitate the exercise of its statutory functions.

Kirstin Baker

*Authorised Member of the CMA*

19 February 2021

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<sup>1</sup> The Office of Gas and Electricity Markets ("Ofgem") is the office of GEMA, i.e. the collective name for staff appointed by GEMA to carry out its day-to-day work. In the context of this Order, Ofgem officials act for GEMA.

## **SCHEDULE**

### **Part A**

This Part contains the names of Relevant Advisers:

#### **The Respondent**

##### **Monkton Chambers**

Kassie Smith QC

Ligia Osepciu

##### **Blackstone Chambers**

George Molyneaux

#### **External economic advisers**

##### **Frontier**

Dan Roberts

Sam Street

Luke Davison

##### **Lane Clark Peacock**

Chris Matson

**Part B: Form of undertakings**

In respect of any Confidential Information disclosed to them pursuant to this Order, each Relevant Adviser listed in Part A of this Order undertakes that they will comply with the following requirements in the following terms:

**UNDERTAKING**

I, *[name]*, of *[firm, company or establishment]* being *[legal or other qualification]* and regulated so far as my professional conduct is concerned by *[regulatory body, if any]* undertake to the CMA as follows:

1. I have read a copy of the CMA's Order of 19 February 2021 (the "**CMA's Order**") and understand the implications of the CMA's Order and the giving of this undertaking.
2. Save in respect of provision to the CMA, I will not disclose the Confidential Information (as defined in the CMA's Order) to any person who is not an Appellants' Adviser or a Relevant Adviser (as defined in the CMA's Order) or a GEMA employee who is for the time being working on these proceedings or the matters which have given rise to them without the consent of the party originally disclosing the Confidential Information or the permission of the CMA.
3. I will use the Confidential Information only for the purpose of these proceedings (and for no other proceedings or use).
4. The Relevant Documents (as defined in the CMA's Order) containing the Confidential Information will remain in my custody or the custody of another Appellants' Adviser, Relevant Adviser or GEMA employee at all times and be held in a manner appropriate to the circumstances so as to prevent unauthorised access or disclosure.
5. The production of further copies by me of the Relevant Documents containing the Confidential Information shall be limited to those required for the use of the Appellants' Advisers, Relevant Advisers or GEMA employees for the purposes of these proceedings and shall be held in accordance with paragraph 4 of this undertaking.
6. Any and all copies of the Relevant Documents containing the Confidential Information in paper form will be destroyed or otherwise returned to the party originally disclosing the documents at the conclusion of the present proceedings (including the determination of any appeals); any such copies and the Relevant Documents in electronic form will be returned where possible or, where that is not possible, will be securely disposed of insofar as technologically possible or rendered inaccessible from any computer systems, disk or device so that the Confidential Information is not readily available to any person at the conclusion of these proceedings. The destruction or return of documents pursuant to this paragraph shall take place within (i) three months after the CMA's decision in the present proceedings, unless any application for judicial review of the CMA's decision is made within

that time; or (ii) if there is a judicial review, after determination thereof and the expiry of time for all appeals against such determination.

7. Save that none of the requirements listed at paragraphs 2 to 6 above shall prevent the Relevant Advisers from disclosing to the party advised by them information (i) of which that party was the original provider in these proceedings, or (ii) which that party has already seen, or subsequently sees, in circumstances not subject to the provisions of the CMA's Order.

Name: .....

Signed: .....

Date: .....