

NATIONAL GRID GAS PLC

-and-

GAS AND ELECTRICITY MARKETS AUTHORITY

Decision on Permission to Appeal

1. Under cover of a Notice of Appeal received by the Competition and Markets Authority (CMA) on 3 March 2021, National Grid Gas plc (NGG) sought permission to bring an appeal under section 23B of the Gas Act 1986 against the decision by the Gas and Electricity Markets Authority (GEMA), dated 3 February 2021, under section 23 of the Gas Act 1986 to modify the conditions of the NGG licence to give effect to the RIIO-GT2 price control determination (the Decision).

Requirement for permission to appeal

2. Under section 23B(3) of the Gas Act 1986, the CMA's permission is required before such an appeal may be brought.
3. I make this decision on permission to appeal in my capacity as an authorised member of the CMA (see paragraph 1(8) of Schedule 4A to the Gas Act 1986).
4. In making this decision I have had regard to NGG's Notice of Appeal.

Decision on permission

5. On 3 March 2021 NGG's Notice of Appeal was received by the CMA within the period prescribed by paragraph 1(3) of Schedule 4A to the Gas Act 1986.
6. Section 23B(2)(a) of the Gas Act 1986 provides that an appeal may be brought by a relevant licence holder (within the meaning of section 23(10) of the Gas Act 1986). The Decision relates to the modification of the conditions of the NGG licence. I am therefore satisfied that NGG is a relevant licence holder affected by the Decision.

7. Under section 23B(4) of the Gas Act 1986, the CMA may refuse permission to bring an appeal only on one of a number of specified grounds. The potentially relevant grounds in the present case are (i) that the appeal is brought for reasons that are trivial or vexatious, or (ii) that the appeal has no reasonable prospect of success.
8. NGG seeks permission to appeal the Decision on the following two grounds:
 - (a) Ground 1: Cost of equity. NGG submitted that the cost of equity set by GEMA is significantly below any reasonable measure of the sufficient equity return when proper account is taken of all of the available evidence and proper regard is had to the harm of setting the cost of equity too low.
 - (b) Ground 2: Outperformance wedge. NGG submitted that GEMA's decision to introduce and apply the outperformance wedge relies on flawed assumptions and evidence, and further that there is already a range of regulatory tools available to address the same point.
9. GEMA did not make any submissions in relation to NGG's application for permission to appeal.
10. I am satisfied that each of NGG's grounds of appeal are substantive arguments that are clearly not trivial or vexatious. I am also satisfied that none of the specific grounds of appeal identified by NGG can be said to have no reasonable prospect of success.

Grant of permission and conditions

11. Under paragraph 1(11) of Schedule 4A to the Gas Act 1986, the CMA's grant of permission may be made subject to conditions, which may include:
 - (a) conditions which limit the matters that are to be considered on the appeal in question;
 - (b) conditions for the purpose of expediting the determination of the appeal; and
 - (c) conditions requiring that appeal to be considered together with other appeals (including appeals relating to different matters or decisions and appeals brought by different persons).
12. I have therefore considered whether, in granting permission to appeal, any grant of permission should be subject to particular conditions. The CMA received seven other applications for permission to appeal the Decision, and sought representations from the appellants and the respondent in this regard.

13. NGG and National Grid Electricity Transmission plc have requested that their appeals be joined because their grounds of appeal are the same, subject to permission to appeal being granted.
14. I have decided to grant permission to NGG to bring the appeal on all grounds set out in its Notice of Appeal, pursuant to section 23B and paragraph 1 of Schedule 4A to the Gas Act 1986.
15. Pursuant to paragraph 1(11)(c) of Schedule 4A to the Gas Act 1986, this grant of permission is conditional upon the following:
 - (a) The appeals of NGG and National Grid Electricity Transmission plc shall be considered together.
 - (b) Ground 1 (Cost of equity) of this appeal shall be considered with the cost of equity grounds pleaded by Cadent Gas Limited (Ground 2), National Grid Electricity Transmission plc (Ground 1), Northern Gas Networks Limited (Ground 1), Southern Gas Networks plc and Scotland Gas Networks plc (joint application) (Ground 1), Scottish Hydro Electric Transmission plc (Ground 1), SP Transmission plc (Ground 1) and Wales & West Utilities Limited (Head B).
 - (c) Ground 2 (Outperformance wedge) of this appeal shall be considered with the outperformance wedge grounds pleaded by Cadent Gas Limited (Ground 3), National Grid Electricity Transmission plc (Ground 2), Northern Gas Networks Limited (Ground 2), Southern Gas Networks plc and Scotland Gas Networks plc (joint application) (Ground 2), Scottish Hydro Electric Transmission plc (Ground 2) and SP Transmission plc (Ground 2).
16. I consider that the above conditions will enable the CMA to dispose of the appeals fairly and efficiently and at proportionate cost.

Kirstin Baker
Authorised Member of the CMA
31 March 2021