

**WALES & WEST UTILITIES LIMITED**

**Appellant**

**-and-**

**GAS AND ELECTRICITY MARKETS AUTHORITY**

**Respondent**

**ELECTRICITY NORTH WEST LIMITED**

**Applicant to intervene**

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**Decision on permission to intervene**

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1. On 31 March 2021, the Competition and Markets Authority (CMA) granted the Appellant permission to appeal, pursuant to section 23B of the Gas Act 1986, against the decisions by the Gas and Electricity Markets Authority (GEMA), dated 3 February 2021, to modify the conditions of the Appellant's licence to give effect to the RIIO-GD2 price control decision (the Decision).
2. On 23 April 2021, Electricity North West Limited (ENWL) applied for permission to intervene in relation to the appeal brought by Wales & West Utilities Limited on the cost of debt allowance ground.

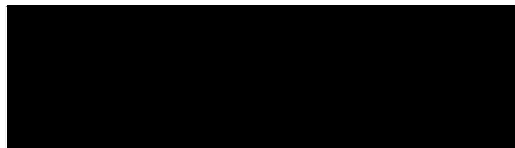
### **Requirement for permission to intervene**

3. Under Rule 10.1 of the Competition and Markets Authority Rules for Energy Licence Modification Appeals, 2017 (the Rules), the CMA's permission is required to intervene.
4. Under Rule 10.3, in considering whether to give permission to intervene, the CMA shall take account of all the circumstances including:
  - (a) whether the applicant is materially interested in the outcome of the appeal;
  - (b) whether the applicant's intervention in the appeal will assist the CMA to determine the appeal; and
  - (c) whether the nature and extent of the intervention sought is proportionate to the matters to be determined.

### **Decision on permission**

5. The CMA recognises that ENWL may have an interest in the outcome of the appeals on the ground above based on potential impacts of the CMA's decision on this ground on GEMA's RIIO-2 framework, which applies to RIIO-ED2, the price control review for electricity distribution network companies which is planned to conclude in 2023. However, the CMA also recognises that ENWL would not be directly affected by the CMA's decision. As such, the CMA is not satisfied that ENWL has a material interest in the outcome itself.
6. ENWL offered evidence in relation to the debt structure and history of electricity network companies, and other information. The CMA recognises that such evidence may provide some assistance to the CMA in determining the appeal. However, the CMA has also taken into account the risk that permitting the intervention will create a proliferation of documents or evidence or otherwise risks having an adverse effect on the CMA's ability to determine the appeal in accordance with the overriding objective set out in Rule 4 of the CMA Rules.

7. The CMA considers that the nature and extent of ENWL's proposed intervention, which is based solely on the cost of debt ground, would be proportionate to the matters to be determined (as set out in Rule 10.3(c)).
8. However, as part of taking account of all the circumstances under Rule 10.3, the CMA has considered whether admitting ENWL's intervention would be appropriate in light of there being alternative means for the CMA to consider evidence from ENWL. For example, it is open to the CMA to invite representations from ENWL under Rule 14.4(e) that would be treated as evidence in the appeal without permitting ENWL to intervene. The CMA considers that this approach would be more consistent with the CMA's overriding objective.
9. The CMA has therefore concluded, in light of the ability to invite a submission under Rule 14.4(e), that it is not appropriate or proportionate to admit ENWL as an intervener.
10. Accordingly, taking all the relevant circumstances into account pursuant to Rule 10.3 of the Rules, the CMA has decided not to grant ENWL permission to intervene in the appeals on the ground above.



Kirstin Baker  
*Group chair*  
6 May 2021