

CADENT GAS LIMITED

NATIONAL GRID ELECTRICITY TRANSMISSION PLC

NATIONAL GRID GAS PLC

NORTHERN GAS NETWORKS LIMITED

**SOUTHERN GAS NETWORKS PLC AND SCOTLAND GAS
NETWORKS PLC**

SCOTTISH HYDRO ELECTRIC TRANSMISSION PLC

SP TRANSMISSION PLC

WALES & WEST UTILITIES LIMITED

Appellants

-and-

GAS AND ELECTRICITY MARKETS AUTHORITY

Respondent

THE WATER SERVICES REGULATORY AUTHORITY

Applicant to intervene

Decision on permission to intervene

1. On 31 March 2021, the Competition and Markets Authority (CMA) granted the Appellants permission to appeal, pursuant, variously, to section 11C of the Electricity Act 1989 and 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 Appellants' licences to give effect to the RIIO-ET2 price control decision, the RIIO-GT2 price control decision and the RIIO-GD2 price control decision (the Decisions).
2. On 31 March 2021, the CMA granted permission to the Appellants on condition that the following common grounds of appeal were joined across Appellants which pleaded the ground:
 - Cost of equity
 - Outperformance wedge
 - Ongoing efficiency
 - Licence modification process
3. Other grounds pleaded by individual Appellants are to be heard between the CMA, GEMA and the relevant Appellant.
4. On 23 April 2021, The Water Services Regulatory Authority (Ofwat) applied for permission to intervene in the appeals on the following grounds:
 - Cost of equity
 - Cost of debt

Requirement for permission to intervene

5. 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.
6. Under Rule 10.3, in considering whether to give permission to intervene, the CMA shall take account of all the circumstances including:

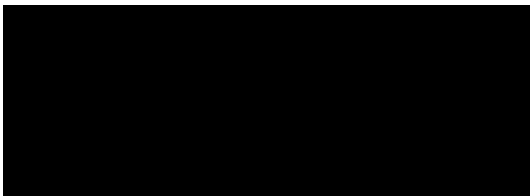
- (a) whether the applicant is materially interested in the outcome of the appeal;
- (b) whether the applicant's intervention in the appeal will assist the CMA to determine the appeal; and
- (c) whether the nature and extent of the intervention sought is proportionate to the matters to be determined.

Decision on permission

7. The CMA has decided that while Ofwat may have a general interest in the outcome of the appeals on these two grounds, it has not demonstrated a material interest for the purposes of Rule 10.3(a). These appeals concern the price control for energy networks. Ofwat has recently concluded a price control review in the water sector, and will not implement decisions on the cost of equity or cost of debt to companies in the water sector until 2024, following the conclusion of the next price control review.
8. The CMA has considered whether Ofwat's intervention would assist it to determine the appeal on the grounds above. Ofwat has recently carried out extensive work on the cost of capital in its regulated sector, and has been actively engaged in discussion of this issue during the CMA determination of the water price control. Owing to similarities between the water and energy networks which are relevant to the cost of capital, the CMA considers that Ofwat's knowledge and perspective may assist it in determining the appeal on these grounds. However, the CMA has also taken into account the fact that permitting the intervention risks creating 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.
9. Ofwat's proposed intervention is focused on two grounds, the cost of equity and the cost of debt. As such, the CMA considers that Ofwat's proposed

intervention would be proportionate to the matters to be determined (as set out in Rule 10.3(c)).

10. However, as part of taking account of all the circumstances under Rule 10.3, the CMA has considered whether admitting Ofwat's intervention would be appropriate in light of there being alternative means for the CMA to consider evidence from Ofwat. For example, it is open to the CMA to invite representations from Ofwat under Rule 14.4(e) that would be treated as evidence in the appeal without permitting Ofwat to intervene. The CMA considers that this approach would be more consistent with the CMA's overriding objective.
11. 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 Ofwat as an intervener.
12. Accordingly, taking all the relevant circumstances into account pursuant to Rule 10.3, the CMA has decided not to grant Ofwat permission to intervene in the appeals.



Kirstin Baker
Group chair
6 May 2021