

BEFORE THE COMPETITION AND MARKETS AUTHORITY

B E T W E E N : -

SCOTTISH HYDRO ELECTRIC TRANSMISSION PLC

and

Appellant

THE GAS AND ELECTRICITY MARKETS AUTHORITY

Respondent

**APPLICATION BY SP TRANSMISSION PLC
FOR PERMISSION TO INTERVENE IN
ENERGY LICENCE MODIFICATION APPEAL**

1. By this notice, SP Transmission plc (**the Intervener**) applies to the Competition and Markets Authority (**CMA**) pursuant to Rule 10.4 of the Energy Licence Modification Rules 2017 for permission to intervene in relation to Ground 4 of the appeal brought by Scottish Hydro Electric Transmission plc (**SHE-T**) under section 11C of the Electricity Act 1989 (**EA89**) against the decision by the Gas and Electricity Markets Authority (**GEMA**) dated 3 February 2021 giving effect to the RII0-ET2 price control determination (**the Decision**).
2. The Intervener's registered address is 320 St. Vincent Street, Glasgow G2 5AD.
3. The Intervener's solicitors are:

Allen & Overy LLP One Bishops Square London E1 6AD (Ref.: Mark Friend / Dominic Long)	and	Shepherd & Wedderburn LLP 1 West Regent Street Glasgow G2 1RW (Ref.: John Grady)
--	-----	---
4. Documents relating to this application and/or appeal should be sent to Allen & Overy LLP at the above London postal address and by email to [REDACTED] and [REDACTED].

5. The Intervener is materially interested in the outcome of SHE-T's appeal:
- (1) Like SHE-T, the Intervener holds an electricity transmission licence under section 6(1)(b) EA89 which is modified by the Decision. The licence condition under review as part of Ground 4 of SHE-T's appeal, standard licence condition B12, is the same in both SHE-T and the Intervener's licence.
 - (2) The Intervener has brought its own appeal against the Decision. It is already being treated by the CMA equivalently to an intervener in relation to Grounds 1 to 3 of SHE-T's appeal, as a result of those grounds having been joined to grounds on which the Intervener has itself appealed.¹
 - (3) This application relates to Ground 4 of SHE-T's appeal, which is not a joined ground of appeal. This concerns GEMA's decision to transfer the revenue collection cash-flow risk relating to Transmission Network Use of System (TNUoS) charges from the Electricity System Operator (ESO) to the onshore transmission operators (TOs), of which the Intervener is one.
 - (4) The relief sought by SHE-T under Ground 4 is "*that the CMA remove GEMA's modification of the TO and ESO standard licence condition B12 insofar as this gives effect to GEMA's Decision on TNUoS charges.*"² The grant of that relief would plainly affect the Intervener, because the Intervener is subject to that standard licence condition and the modification relates to the way in which the risk of under-/over- recovery of revenue via TNUoS charges is borne by and shared between the TOs (of which the Intervener is one).
6. The Intervener does not intend to duplicate submissions made by SHE-T but merely to make submissions, for the purposes of assisting the CMA, on the impact on the Intervener as another TO subject to standard licence condition B12, in particular in relation to relief if the CMA is minded to allow Ground 4 of SHE-T's appeal.

¹ Note from Lesley Moore (CMA Appeal Director) dated 7 April 2021 entitled "*Energy licence modification appeals 2021: Note to parties on the appeal process*", para. 6.


² SHE-T Notice of Appeal, para. 9.21.

7. As noted above, the Intervener is already a party to the joined appeals for Grounds 1 to 3 of SHE-T's appeal, so the potential additional cost to the parties and the CMA of its participation on Ground 4 should be minimal.
8. If granted permission to intervene on Ground 4, the Intervener would envisage active participation only on issues relating to remedy. Whilst it may ultimately prove possible for the Intervener to confine its participation to written submissions, the Intervener requests the option to make oral submissions in respect of remedy. In the circumstances, the nature and extent of the intervention sought is proportionate to the matters to be determined.
9. The Intervener supports Ground 4 of SHE-T's appeal, for the reasons given by SHE-T in the non-confidential version of its Notice of Appeal.
10. A copy of this Intervention Notice has been sent to:
 - (1) The Appellant (SHE-T), by email care of Freshfields Bruckhaus Deringer LLP.
 - (2) The Respondent (GEMA), by email care of Hogan Lovells LLP.

DANIEL JOWELL Q.C.
GERARD ROTHSCILD

STATEMENT OF TRUTH

SP Transmission plc believes that the facts stated in this Application are true. I am duly authorised to sign this statement on behalf of SP Transmission plc.

Signed: 

Name: Frank Mitchell

Position: Chief Executive Officer of SP Energy Networks

Dated: 23 April 2021