

SCOTTISH HYDRO ELECTRIC TRANSMISSION PLC

Appellant

-and-

GAS AND ELECTRICITY MARKETS AUTHORITY

Respondent

SP TRANSMISSION PLC

Applicant to intervene

Decision on permission to intervene

1. On 31 March 2021, the Competition and Markets Authority (CMA) granted the Appellant permission to appeal, pursuant to section 11C of the Electricity Act 1989, 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-ET2 price control decision (the Decision).
2. On 23 April 2021, SP Transmission plc (SPT) applied for permission to intervene in relation to the appeal brought by Scottish Hydro Electric Transmission plc against the modifications concerning Transmission Network Use of System Charges.

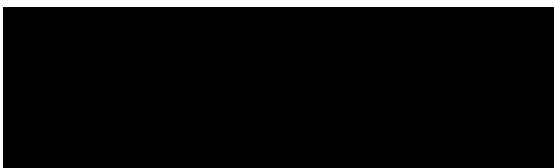
Requirement for permission to intervene

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 considers that SPT has a material interest in the outcome of the appeals on the ground above for the purposes of Rule 10.3(a), based on the potential impact of the CMA's decision on this ground on all transmission licensees. Furthermore, it could itself have appealed against the decision that is the subject of its application to intervene.
6. The CMA has considered whether SPT's intervention would assist it to determine the appeal on the ground above. SPT has not offered evidence on the ground itself, but has offered to provide evidence on the materiality and nature of the impact of the change and in relation to any remedies, as relevant depending on the CMA's finding on the ground. While the CMA recognises that such evidence may provide some assistance to the CMA in determining the appeal, the CMA has also taken into account 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.

7. SPT has focused its application and supporting material solely on the one ground. The CMA considers that its proposed intervention would be proportionate to the matters to be determined under this ground (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 SPT's intervention would be appropriate in light of there being alternative means for the CMA to consider evidence from SPT. For example, it is open to the CMA to invite representations from SPT under Rule 14.4(e) that would be treated as evidence in the appeal without permitting SPT 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 SPT 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 SPT permission to intervene in the appeals.



Kirstin Baker
Group Chair
6 May 2021