



Competition Commission:
The Energy Code Modification Rules
July 2005



The Energy Code Modification Rules

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1. Interpretation

- 1.1 In these rules, and in any practice direction made by the Competition Commission pursuant to rule 27:

the Act	means the Energy Act 2004;
the Commission	means the Competition Commission;
GEMA	means the Gas and Electricity Markets Authority;
Schedule 22	means Schedule 22 to the Act;
sensitive information	means either commercial information the disclosure of which would, or might, significantly harm the legitimate business interests of an undertaking to which it relates, or information relating to the private affairs of an individual the disclosure of which would, or might, significantly harm the interests of that individual.

- 1.2 In these rules, unless the contrary intention appears, words in the singular include the plural and words in the plural include the singular.
- 1.3 These rules are to be known as the ‘Energy Code Modification Rules’.

2. Overriding objective

- 2.1 These rules are made by the Commission under paragraph 12(1) of Schedule 22 for the purpose of regulating the conduct and disposal of appeals brought under section 173 of the Act.
- 2.2 The overriding objective of these rules is to enable the Commission to dispose of appeals fairly and efficiently within the time periods prescribed by the Act. The Commission will apply these rules so as to give effect to the overriding objective.
- 2.3 Parties must assist the Commission to further the overriding objective.
- 2.4 In determining an appeal the Commission will proceed by way of a review of the decision subject to appeal.

Note on rule 2

Section 174 of the Act excludes code modification appeals from the general functions of the Commission regulated by Part 2 of Schedule 7 to the Competition Act 1998. Instead, Schedule 22 makes provision for the procedural aspects of code modification appeals. Paragraph 12(1) of Schedule 22 enables the Commission to make these rules.

3. The Commission’s address

- 3.1 The address of the Commission for service is: Inquiry Support Unit, Competition and Markets Authority, The Cabot, 25 Cabot Square, London, E14 4QZ.

Note on rule 3

These rules and Schedule 22 provide variously for documents to be given, lodged, provided or sent to the Commission.

4. Applications for permission to appeal

- 4.1 Any person who wishes to bring an appeal must make an application for permission to appeal to the Commission within the period allowed by paragraph 1(3) of Schedule 22. The application must contain:
- 4.1.1 the applicant's name and address and the name and address of the applicant's solicitors and, or alternatively, the name and address of the applicant's other legal representatives;
 - 4.1.2 an address for service in the United Kingdom;
 - 4.1.3 a copy of the decision to be appealed;
 - 4.1.4 the names and addresses of those persons to whom the application for permission has been sent;
 - 4.1.5 a statement of those interests of the applicant that it believes are materially affected by the decision, or a statement explaining why the applicant believes it is to be regarded as a body or association whose functions include the representation of persons whose interests are materially affected in respect of such interests;
 - 4.1.6 a statement explaining why the decision to be appealed is not to be regarded as excluded by an order made by the Secretary of State under section 173 of the Act;
 - 4.1.7 the applicant's statement of case, stating the grounds of appeal and the facts and reasons relied upon, together with a clear and concise summary of that statement of case;
 - 4.1.8 a statement identifying which, if any, of the facts relied upon were in the belief of the applicant not known to GEMA at the time of the decision and why they were not brought to the attention of GEMA before it made the decision; and
 - 4.1.9 a statement of the relief sought and any directions necessary to give effect to that relief.
- 4.2 The applicant should lodge with the Commission any written evidence that it wishes to adduce in support of the appeal when it makes its application for permission to appeal.
- 4.3 When the applicant makes its application for permission to appeal, it should, if it is able, lodge any application for a direction to be made at the first case management conference.
- 4.4 At the time that it makes its application for permission to appeal the applicant must send:
- (a) a copy of the application for permission;
 - (b) a copy of any written evidence; and
 - (c) a copy of any further application

to GEMA and to such other persons as appear to the applicant to be affected by the decision.

- 4.5 If the Commission considers that the application for permission is incomplete, or is insufficiently clear, it may take this into account in considering whether to grant permission, or whether to grant permission subject to conditions.
- 4.6 The summary statement of case should be in a form suitable for publication on the Commission's web site.
- 4.7 Where the applicant believes that information contained in its application for permission, or any document lodged with that application, is sensitive information it may:
 - 4.7.1. make a non-disclosure application to the Commission at the same time that it makes its application for permission to appeal; and
 - 4.7.2. pending the Commission's direction, excise that information from the application for permission and other documents provided to GEMA and persons other than the Commission.
- 4.8 Each person who receives a copy of the application for permission to appeal should acknowledge receipt to the Commission not more than five days after receipt of the application.
- 4.9 The applicant should provide the Commission with five copies of the application for permission to appeal, and of any evidence in support, at the time that it makes its application for permission to appeal.

Note on rule 4

Section 173 of the Act provides for appeals to the Commission. There is a time limit of 15 working days after the earliest day on which the decision was published within which to make an appeal. Section 173 also provides that the Secretary of State may exclude by order decisions from the right of appeal. The order stating the decisions excluded is SI 2005 No.1646 The Electricity and Gas Appeals (Designation and Exclusion) Order 2005.

Section 173 provides criteria that must be met to establish standing to appeal. Because the permission of the Commission is required before an appeal can be brought, the first step in an appeal must be an application for permission to appeal. Paragraph 1 of Schedule 22 makes further provision about the way in which appeals are to be commenced. By paragraph 1(1) an application is made by sending a notice to the Commission requesting permission to appeal.

This rule and rules 7 and 8 indicate that the Commission expects parties to bring forward their case at the outset. Note that paragraph 7 of Schedule 22 enables the Commission to disregard matters not so brought forward in certain circumstances.

At the time that an application for permission to appeal is made, and before permission has been granted, there is not yet an appeal. If the Commission grants permission to appeal, it will treat the application for permission to appeal and supporting evidence as the appeal documents.

5. Permission applications

- 5.1 The Commission will normally consider applications for permission to appeal without a hearing.
- 5.2 Where permission to appeal is granted, the applicant, GEMA and each person to whom the applicant provided a copy of its application notice will be notified of the Commission's decision and a copy of the permission will be published on the Commission's web site.

- 5.3 If permission is refused, the applicant, GEMA and each person to whom the applicant provided a copy of its application notice will be notified of the Commission's decision and of the reasons for it. A copy of the refusal will be published on the Commission's web site.
- 5.4 The Commission may hold a hearing to determine an application for permission, either of its own motion or on application. Where the Commission decides of its own motion to hold a permission hearing the Commission may give notice to GEMA and such other persons as it considers appropriate.

Note on rule 5

Section 173(5) provides that an appeal can only be brought with the permission of the Commission, and states the grounds on which permission may be refused. These are either that the appeal is brought for reasons that are trivial or vexatious or that the appeal has no reasonable prospect of success. The Commission has ten working days in which to decide whether to grant permission.

6. Reply

- 6.1 Should GEMA wish to make representations or observations to the Commission about the decision subject to appeal, its reasons for that decision, or the grounds on which the appeal is brought, it must lodge its reply with the Commission within the period specified in paragraph 4(1) of Schedule 22.
- 6.2 GEMA's reply must contain:
- 6.2.1. GEMA's address and the name and address of its solicitors and, or alternatively, the name and address of GEMA's other legal representatives;
 - 6.2.2. GEMA's address for service in the United Kingdom;
 - 6.2.3. the names and addresses of those persons to whom GEMA has sent its reply;
 - 6.2.4. a statement in reply, identifying the facts and reasons why it believes the appeal should not succeed and, or alternatively, why it believes the relief sought should not be allowed, together with a clear and concise summary of the statement in reply; and
 - 6.2.5. a statement identifying which of the matters of fact relied upon by the appellant or any intervener were in its belief not known to it at the time of its decision and why they were not known.
- 6.3 If GEMA lodges a reply with the Commission it must at the same time lodge any written evidence it wishes to adduce in support of that reply.
- 6.4 At the time that GEMA lodges a reply it should, if it is able, lodge any application for directions.
- 6.5 At the time that it lodges its reply, or as soon as possible thereafter, GEMA must send:
- (a) a copy of the reply;
 - (b) a copy of any written evidence; and
 - (c) a copy of any other application

to the appellant, any intervener, any person who received a copy of the application for permission and any person who received a notice by which a person sought to intervene.

- 6.6 The summary statement in reply should be in a form suitable for publication on the Commission's web site.
- 6.7 Where GEMA believes that information contained in its reply, or any document lodged with that reply is sensitive information it may:
 - 6.7.1. make a non-disclosure application to the Commission at the same time that it provides the Commission with its reply; and
 - 6.7.2. pending the Commission's direction, excise that information from the reply provided to the appellant, any intervener, and any person other than the Commission who either received a copy of the application for permission or who received a notice by which a person sought to intervene.
- 6.8 Each person who receives a copy of the reply should acknowledge receipt to the Commission not more than five days after receipt of the reply.
- 6.9 GEMA should provide the Commission with five copies of the reply, and of any evidence in support, at the same time that it lodges its reply.

Note on rule 6

Paragraph 4 of Schedule 22 gives GEMA the right to defend its decision. It has 15 working days after the day on which permission is applied for to do so.

7. Intervention

- 7.1 Any person wishing to become a party to the appeal must give an intervention notice to the Commission.
- 7.2 An intervention notice must contain:
 - 7.2.1. the intervener's name and address and the name and address of its solicitors and, or alternatively, the name and address of its other legal representatives;
 - 7.2.2. the intervener's address for service in the United Kingdom;
 - 7.2.3. the names and addresses of those persons, including GEMA, to whom the intervener has sent copies of its intervention notice;
 - 7.2.4. a statement of those interests of the intervener that it believes are materially affected by the decision, or a statement explaining why the intervener believes it is to be regarded as a body or association whose functions include the representation of persons whose interests are materially affected in respect of such interests;
 - 7.2.5. the intervener's statement of intervention, stating whether it supports or opposes the appeal; and
 - 7.2.5.1. if the intervention is in support of the appeal, identifying the grounds of appeal in relation to which the intervention is made, together with the facts and reasons relied on; or

7.2.5.2. if the intervention opposes the appeal, identifying the facts and reasons why it believes the appeal should not succeed, or why it believes the relief sought should not be allowed,

together, in either case, with a clear and concise summary of the statement of intervention; and

7.2.6. a statement identifying which, if any, of the facts relied upon were in the intervener's belief not known to GEMA at the time of GEMA's decision and why they were not brought to the attention of GEMA before it made its decision.

7.3 The intervener should lodge with the Commission any written evidence that it wishes to adduce in the appeal at the same time that it gives its intervention notice.

7.4 When the intervener gives its intervention notice it should at the same time lodge an application for any directions it wishes the Commission to make.

7.5 At the same time that it gives its intervention notice, or as soon as reasonably possible thereafter, the intervener must send:

(a) a copy of the intervention notice;

(b) a copy of any written evidence; and

(c) a copy of any application

to each party to the appeal, and to such other persons as appear to the intervener to be affected by the decision under appeal.

7.6 The Commission will normally consider an application to intervene without a hearing.

7.7 The intervener and the parties will be notified of the Commission's decision and a copy of the notice will be published on the Commission's web site.

7.8 The Commission may hold a hearing to decide whether to allow an intervention either of its own motion or on application. Notice of a hearing will be given to the person wishing to intervene, but will not normally be given to the parties to the appeal.

7.9 In deciding whether to allow an intervention, or to allow an intervention subject to conditions, the Commission will consider all the circumstances, including in particular the extent to which the intervention will assist the Commission to dispose of the appeal fairly and efficiently within the time allowed by the Act.

7.10 In deciding whether to extend the period in which an intervention notice must be given to the Commission, the Commission will consider all the circumstances, including in particular any reason why the intervention notice could not have been given within the period prescribed by paragraph 2(1)(a) of Schedule 22.

7.11 If the Commission considers that the intervention notice is incomplete or is insufficiently clear, it may take this into account in considering whether to allow the intervention, or whether to allow the intervention subject to conditions.

7.12 The summary of the intervention notice should be in a form suitable for publication on the Commission's web site.

- 7.13 Where the intervener believes that information contained in its intervention notice, or any document lodged with that intervention notice, is sensitive information, it may:
- 7.13.1. make a non-disclosure application to the Commission at the same time that it gives its intervention notice; and
 - 7.13.2. pending the Commission's direction, excise that information from the intervention notice or other document provided to each party to the appeal, and to such other persons as appear to the intervener to be affected by the decision under appeal.
- 7.14 Each person who receives a copy of the intervention notice should acknowledge receipt to the Commission no more than five days after receipt of the notice.
- 7.15 The intervener should provide five copies of the intervention notice to the Commission, and of any evidence in support, at the same time that gives its intervention notice.

Note on rule 7

Paragraph 2 of Schedule 22 enables a person to ask the Commission for a direction allowing it to intervene in an appeal, either to support or oppose it. There are requirements as to standing. The direction must be sought within 20 working days after permission to appeal is applied for, though the Commission has discretion to consider a request for permission made later. Intervention in support of the appeal cannot raise new grounds of appeal. The Commission must not allow an intervention if it would prevent the determination of the appeal within the period allowed.

8. Amendment of application for permission to appeal, reply or intervention notice

- 8.1 An application for permission to appeal, a reply or an intervention notice may on application be amended with the permission of the Commission.

Note on rule 8

Permission to amend should be sought on an application under rule 15.

9. Consolidation

- 9.1 Where there are two or more appeals pending in respect of the same decision, or in respect of decisions which in the view of the Commission are closely related, the Commission may order that the appeals, in whole or part, should be consolidated and considered or heard together.

10. Case management

- 10.1 The Commission may at any time on the application of a party or of its own motion give such directions as it considers necessary for the conduct of the appeal.
- 10.2 The Commission may give directions:
- 10.2.1. as to the manner in which proceedings are to be conducted, including time limits to be observed and the conduct of hearings;
 - 10.2.2. as to the filing of a further statement of case, statement of reply or statement of intervention;

- 10.2.3. as to the preparation and exchange of skeleton arguments;
 - 10.2.4. requiring persons to attend and give evidence or to produce documents;
 - 10.2.5. as to further evidence that may be required;
 - 10.2.6. as to the submission of further witness statements or expert reports;
 - 10.2.7. as to the examination or cross examination of witnesses;
 - 10.2.8. as to the fixing of time limits in respect of any aspect of the proceedings;
 - 10.2.9. as to the disclosure or the production of documents, or classes of documents, between the parties or otherwise, including directions as to the treatment of sensitive information;
 - 10.2.10. as to the appointment and instruction of experts, whether by the Commission or by the parties, and as to the manner in which expert evidence is to be given;
 - 10.2.11. for the hearing of a person who is not a party where it is proposed to make an order or give a direction in relation to that person;
 - 10.2.12. for the production of interim statements of costs;
 - 10.2.13. as to the variation of the provisions of these rules in relation to the service of documents; and
 - 10.2.14. for such other matters as appear to the Commission to be necessary to meet the overriding objective.
- 10.3 Where necessary written notice shall be given of the Commission's directions.
- 10.4 The Commission may at any time put questions to the parties, invite the parties to make written or oral submissions on aspects of the proceedings, ask the parties or third parties for information or particulars, ask for documents or papers relating to the case to be produced and require the parties' representatives or the parties in person to attend meetings or hearings.

Note on rule 10

One of the reasons why the Commission is the appeal body in relation to energy code modifications is because it has the resources—members and staff—to reach a determination in a short period of time. The Commission will be able to deploy resources quickly and expertly in active case management to further this end. However, appeals are adversarial proceedings. The Commission will not act as an investigating body conducting an inquiry. Nonetheless this rule gives the Commission power to initiate lines of inquiry and to appoint experts. Because appeals are adversarial and because of the short time period in which the Commission must reach a decision, it is envisaged that the Commission will normally use its case management powers to request parties to produce further evidence, for example, rather than to appoint experts of its own.

11. Case management conferences

- 11.1 The Commission will hold a case management conference or pre-hearing review where it considers that to do so would further the overriding objective.
- 11.2 The Commission will fix a case management conference, if it considers one to be necessary, once it has given permission to appeal.

Note on rule 11

A case management conference is an opportunity for the Commission to manage the case. In straightforward cases this may be no more than the Commission arranging site visits, hearings and so on. But it may be more: for example case management conferences will normally be the forum in which the Commission will give directions about the treatment of confidential information, and a case management conference is an opportunity for the Commission to discuss the case with the parties and, if necessary to indicate where it requires further evidence etc. Active case management will be an important tool in ensuring that the Commission makes the right decision in the time allowed.

A pre-hearing review may be held where the Commission wishes to review developments in an appeal before a hearing. It is likely to be necessary in cases of particular complexity.

12. The production of documents, calling witnesses and the production of written statements

- 12.1 Where the Commission wishes to require a person to produce a document, to attend and give evidence or to produce a written statement pursuant to paragraphs 8, 9 and 10 of Schedule 22, it will provide a copy of the notice to each party.

Note on rule 12

The Commission has powers to require the production of documents, the attendance of witnesses and the production of written statements. Because of the appellate nature of these proceedings these powers will rarely if ever be used.

13. Non-compliance

- 13.1 If any party fails to comply with any direction given by the Commission under these rules, the Commission may either order that such party be debarred from taking further part in the proceedings without the permission of the Commission or make such other order as appears necessary.

14. Suspension applications

- 14.1 An application to the Commission for the suspension of a decision by GEMA to give a consent must contain the following information:
- 14.1.1. the applicant's name and address and the name and address of its solicitors and, or alternatively, the name and address of its other legal representatives;
 - 14.1.2. the applicant's address for service in the United Kingdom;
 - 14.1.3. if the applicant is not the appellant or otherwise a party to the appeal, a statement of those interests of the applicant that are materially affected by the decision, or a statement explaining why the applicant is a body or association whose functions include the representation of persons whose interests are materially affected;
 - 14.1.4. the names and addresses of those persons to whom copies of the application have been sent;
 - 14.1.5. a statement of the costs that the applicant will incur if the application is not granted;
 - 14.1.6. a statement of any further considerations that the applicant believes that the Commission should take into account in deciding the application;

- 14.1.7. a clear and concise summary of the statements of costs and further considerations; and
- 14.1.8. a statement of the relief sought.
- 14.2 The applicant must lodge with the Commission any written evidence that it wishes to adduce at the same time that it lodges the application, unless the applicant will rely on evidence already lodged by it with the Commission. Such evidence must be in the form of a witness statement.
- 14.3 At the same time that the suspension application is lodged with the Commission, the application, and any evidence in support (unless the applicant relies on evidence already served on them), must be served on GEMA, each party to the appeal, and such other persons as appear to the applicant to be affected by the suspension application.
- 14.4 The Commission will give directions for further steps in the disposal of the application, including directions as to the submission of further evidence and hearings.
- 14.5 The Commission will normally hold a hearing to determine an application for suspension.
- 14.6 Each person who receives a copy of the suspension application should acknowledge receipt to the Commission no more than three days after receipt of the application.
- 14.7 The applicant should provide the Commission with five copies of its suspension application, and of any evidence in support, at the same time that it lodges its suspension application with the Commission.

Note on rule 14

Where GEMA has allowed a modification, and there is an appeal, the Commission may suspend the modification pending determination of the appeal. Before such a decision can be taken, the applicant must show that inter alia the modification will lead to the applicant incurring significant costs, and that the balance of convenience does not otherwise require the consent to be given effect pending determination of the appeal.

15. Other applications

- 15.1 Any person who wishes to make an application to the Commission in respect of an appeal or an application for permission to appeal should file an application notice.
- 15.2 The Commission may dispense with the requirement for an application notice.
- 15.3 A copy of the application notice must be provided to each party to the appeal.
- 15.4 An application notice must state what order the applicant is seeking and why the applicant is seeking the order.
- 15.5 The Commission will normally consider an application without a hearing.

Note on rule 15

This note provides machinery by which parties can, for example, seek a direction under rule 10. It is not the procedure by which an application for permission to appeal is made, nor is it the procedure by which a suspension application is made.

16. Evidence

- 16.1 The Commission may control the evidence by giving directions as to:
- 16.1.1. the issues on which it requires evidence;
 - 16.1.2. the nature of the evidence that it requires to decide those issues;
 - 16.1.3. the way in which evidence is to be placed before the Commission.
- 16.2 Evidence in the appeal will normally be written evidence. Without the permission of the Commission evidence may not be relied on in the appeal unless it has been lodged with the Commission and served in accordance with these rules or with an order of the Commission.
- 16.3 The Commission may admit in evidence a matter that was not adduced to GEMA at the time that GEMA made its decision only if, in the opinion of the Commission, the matter could not, on the exercise of reasonable diligence, have been adduced to GEMA before GEMA made the decision subject to appeal and if the evidence may be expected to have a real influence on the outcome of the appeal.
- 16.4 The Commission may use its powers under this rule to exclude evidence that would otherwise be admissible.

Note on rule 16

This rule contains further provision about evidence. The Commission may provide guidance about the way in which evidence is to be presented.

17. Written evidence

- 17.1 Subject to the direction of the Commission, written evidence must be in the form of a witness statement.
- 17.2 A witness statement must be verified by a statement of truth signed by the witness.
- 17.3 The statement of truth verifying a witness statement should be 'I believe that the facts stated in this witness statement are true'.
- 17.4 If a person wishes to rely on facts contained in an application for permission to appeal, a reply, an intervention notice, or in any other application, those facts must be verified by a statement of truth. The statement of truth must be signed by the applicant, GEMA or the intervener, as the case may be, or by their legal representative.
- 17.5 The statement of truth verifying any of the documents referred to in paragraph 17.4 should be '[I believe] [The (applicant or as the case may be) believes] that the facts stated in this [name the document verified] are true'.

18. Hearings

- 18.1 Hearings will normally be held in public.
- 18.2 Proceedings will be opened and directed by the Chairman of the Group or by such other member of the Commission as is appropriate.

- 18.3 If no previous direction has been made, at the start of the hearing the parties will be directed as to the length of their oral submissions, the issues on which the Commission wishes to concentrate at the hearing, and the order in which the Commission wishes to hear the parties.
- 18.4 Hearings will consist of submissions by the parties and questioning by members of the Commission.
- 18.5 The Commission may hold one or more hearings for the purpose of determining the appeal and any related matter.
- 18.6 The Commission may direct that a hearing or part of a hearing will not be held in public.
- 18.7 Where the Commission holds a hearing or part of a hearing other than in public, it will take such steps as are necessary to minimize the prejudice caused to any person.
- 18.8 Subject to these rules and any direction made by the Commission, the procedure at a hearing shall be such as the Chairman of the Group, or other member of the Commission, shall direct.

Note on rule 18

Hearings may be held to decide permission applications, intervention applications, suspension applications, and the appeal. Applications for permission, intervention and suspension can be heard by the Chairman of the Commission, a member authorized by the Chairman of the Commission for that purpose, or the Chairman of the group which will determine the appeal. However, the consideration and determination of the appeal is the function of a group of three members selected by the Chairman of the Commission. A decision of the group is only effective if all members of the group are present when it is made, and at least two members of the group are in favour of it. The group must normally reach its decision on the appeal within 30 working days after GEMA's reply.

The Commission will not normally hold hearings to determine permission applications. Suspension applications and the appeal itself will normally require a hearing. Hearings will be in public, so far as that is consistent with the Commission's obligations in respect of confidentiality.

19. Representation at hearings

- 19.1 At a hearing a party may be represented by:
- 19.1.1. a qualified lawyer having a right of audience before a court in the United Kingdom; or
 - 19.1.2. such other person as the Commission allows.

Note on rule 19

Code modification appeals are adversarial in nature. The Commission expects each party normally to have only one spokesperson at a hearing.

20. Publication on the Commission's web site

- 20.1 In each appeal the Commission will publish on its web site:
- 20.1.1. a notice stating that it has received an application for permission to appeal;
 - 20.1.2. a summary of each statement of case, statement of reply and statement of intervention;

- 20.1.3. the Commission's decision on the application for permission to appeal and on any application to intervene;
- 20.1.4. a summary of any application for suspension of the decision of GEMA and the Commission's decision on that application;
- 20.1.5. the directions given and other orders made during the appeal; and
- 20.1.6. the Commission's decision on the appeal.

Note on rule 20

The Commission's web site is at www.competition-commission.org.uk. The summaries referred to at 20.1.2 are those provided by the parties subject to any necessary amendment thereto.

21. Decision

- 21.1 The Commission's decision will be given in public.
- 21.2 A copy of that decision will be provided to the parties and will be published on the Commission's web site.

22. Inter partes costs

- 22.1 When it determines an appeal, the Commission will normally order an unsuccessful party to pay the costs of the successful party, but may make a different order.
- 22.2 In deciding what order to make, the Commission will have regard to all the circumstances including:
 - 22.2.1. the conduct of the parties, including:
 - 22.2.1.1 the extent to which each party has assisted the Commission to meet the overriding objective;
 - 22.2.1.2 whether it was reasonable for a party to raise, pursue or contest a particular issue;
 - 22.2.1.3 the manner in which a party has pursued its case or a particular aspect of its case; and
 - 22.2.2. whether a party has succeeded wholly or in part; and
 - 22.2.3. the proportionality of the costs claimed having regard to the matters in issue and the resources of all the parties.

23. The Commission's own costs

- 23.1 When it determines an appeal the Commission will make an order for the payment of its own costs.

24. Withdrawal

- 24.1 An appellant may apply to the Commission for the summary determination and dismissal of its appeal.

- 24.2 GEMA may apply to the Commission for a summary determination allowing the appeal.

Note on rule 24

The purpose of this rule is to provide a mechanism by which a party may abandon its pursuit or defence of an appeal and thereby, for example, limit its liability to costs. Although this is a summary procedure it may nevertheless be the case that a hearing and detailed argument is necessary. This would be likely where the remedy is contentious, for example should GEMA agree that the appeal should be allowed but dispute the remedy or where there is to be argument about costs.

25. Access to the Commission's record

- 25.1 Any person may apply to the Commission for permission to inspect the Commission's record pending the determination or other conclusion of the appeal, and the Commission will grant permission if it believes that the applicant has good reason.
- 25.2 Permission shall not be given to inspect any document for which an application for non-disclosure is pending, or any document in relation to which the Commission made a non-disclosure order.
- 25.3 The Commission's record in each case will normally comprise the application for permission to appeal, any reply and intervention notice, applications and orders, interim statements of costs, and correspondence between the Commission and parties and third parties.

Note on rule 25

The purpose of this rule is to enable persons not served with applications for permission to appeal etc to review the Commission's file so that they can consider whether to intervene.

26. Slip rule

- 26.1 Where any order or decision of the Commission contains a clerical error, or a slip or omission, that error, slip or omission may be corrected and a further order or decision issued by any person who could have made the original order or decision.

27. Practice directions

- 27.1 The Commission may issue practice directions to regulate further the conduct and disposal of appeals.
- 27.2 The Commission may amend these rules and any practice direction made under rule 27.1.

28. Miscellaneous

- 28.1 The Commission may appoint counsel to assist it with an appeal or any related proceedings.
- 28.2 Subject to the provisions of these rules, the Commission may determine its own procedure.

29. Commencement

- 29.1 These rules shall come into force on 14 July 2005 or when SI 2005 No 1646 The Electricity and Gas Appeals (Designation and Exclusion) Order 2005 comes into force, whichever is later.

A handwritten signature in black ink, appearing to read 'Peter Freeman', with a long horizontal stroke extending to the right and a curved line underneath.

Peter Freeman

Deputy Chairman

Competition Commission

