

**Cadent Gas Limited, National Grid
Electricity Transmission plc,
National Grid Gas plc, Northern Gas
Networks Limited, Scottish Hydro
Electric Transmission plc, Southern
Gas Networks plc and Scotland Gas
Networks plc, SP Transmission plc,
Wales & West Utilities Limited
vs
the Gas and Electricity Markets
Authority**

**Final determination
Volume 4: Relief and glossary**

Issued: 28 October 2021

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The Competition and Markets Authority has excluded from this version of the final determination information which the inquiry group considers should be excluded having regard to section 23G Gas Act 1986 and section 11H Electricity Act 1989.
The omissions are indicated by [✂].

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17. Relief implementation

Introduction

- 17.1 We have found GEMA's decisions to proceed with licence modifications to be wrong on Joined Ground B (Outperformance wedge), on aspects of Joined Ground C (Ongoing efficiency), on aspects of SSEN-T and SPT's appeals in Joined Ground D (Licence modification process), and on aspects of two other grounds (being parts of Cadent 1A (LTS) and NGN 4 (BPI Stage 4)) where GEMA accepts that errors were made.
- 17.2 Where the CMA allows an appeal to any extent in relation to a price control decision, it must do one or more of the following:
- (a) quash the decision (to the extent that the appeal is allowed);
 - (b) remit the matter back to GEMA for reconsideration and determination in accordance with any directions given by the CMA; and/or
 - (c) substitute the CMA's decision for that of GEMA (to the extent that the appeal is allowed) and give any directions to GEMA or any other party to the appeal.¹
- 17.3 These actions, which include the design and implementation of any associated remedies to correct the identified errors, are together generally described by the parties as 'relief'. In this section we use both 'relief' and 'remedies' to describe decisions made by the CMA on the consequences for GEMA's licence modifications of our decisions in these appeals.
- 17.4 In coming to our decision on relief, we need to have regard to both our overriding objective of disposing of the appeals fairly and efficiently,² and GEMA's objectives and duties as set out in GA86 and EA89. In that context, we have to consider the practical aspects associated with the timetable of an appeal. Where in our final determination we find that GEMA made errors, we will decide which of the approaches outlined in paragraph 17.2 above to apply depending on a number of considerations, including:
- (a) the feasibility of identifying and implementing an effective remedy within the timetable for these appeals;

¹ GA86, section 23E(2) and EA89, section 11F(2).

² As described in paragraph 4 of the [Energy Licence Modification Appeals: CMA Rules](#) (CMA70).

- (b) the costs associated with remittal of the matter to GEMA, including any costs associated with further delay to the relevant aspects of the price control;
 - (c) the existence of interlinkages between any remedy and other parts of the price control framework that are not subject to these appeals, which will affect the feasibility of a remedy to effectively address the error identified without wider consequences; and
 - (d) the benefits (including for fairness) of any further consultation on the issues subject to the remedy, including consultation with third parties.
- 17.5 We note that if we decide to remit any matters to GEMA, we can do so with directions, which can be specific to the form of the remedy. Our assessment in relation to each error found therefore includes two decisions:
- (a) Whether the remedies process is able to identify an effective remedy that will address the errors found in these appeals.
 - (b) If so, whether the implementation of that remedy should be through remittal to GEMA, in order that GEMA can implement the remedy, or through substitution of our decision for that of GEMA.
- 17.6 On the grounds where we have found an error, we have already explained the nature of our remedy and the reasoning that supports it. In this chapter, we focus on how we implement these remedies for each relevant ground, including setting out the views of the parties, our assessments, and the reasons for our final decisions.

Application of relief across appellants

- 17.7 Our power to grant relief on allowing an appeal is limited to the company that made that appeal. Therefore, we are unable to make any orders for relief to companies which did not appeal Joined Ground C or did not successfully appeal Joined Ground D in particular.
- 17.8 We find that the decisions we set out below represent a comprehensive set of changes required to remedy the errors we have identified for the appellants.³

³ We note that the GDNs made submissions regarding the potential for GEMA to make changes to non-appealing companies' price controls as a result of our finding an error (for example see Cadent Response to PD, paragraph 1.34; NGN Response to PD, paragraph 9; SGN Response to PD, paragraph 49; WWU Response to PD, paragraph 7.6). Our vires are restricted to addressing the errors we have found in this appeal, and we make no comment on the potential for GEMA to make further or consequential changes to the licences of companies that did not appeal or did not appeal successfully any of the grounds in relation to which we have found an error.

Implementation of the relief

Overall comments which apply to multiple grounds

Appellants' submissions

- 17.9 The appellants largely supported an approach whereby the CMA quashed GEMA's decisions and substituted them with the CMA's own decision. They generally submitted that the necessary changes are limited in scope, straightforward to implement, largely independent from other grounds/changes, and mechanistic in nature (ie consequences flow directly from the changed inputs without requiring 'policy' decisions).⁴
- 17.10 The appellants generally emphasised that as well as being low risk for the reasons described above, a substitution approach would also bring the following key benefits:
- (a) **Timing:** The appellants emphasised that a substitution approach would be faster to implement than a remittal process. This would be consistent with the CMA's overriding objective, as well as ensuring that the changes could be incorporated in the 2022/23 Regulatory Year which would avoid unnecessary volatility in charges. A remittal to GEMA would require it to undertake a statutory licence modification process (including consultation), and even if it acted in all haste, GEMA may not be able to implement the changes in time to incorporate into Regulatory Year 2022/23.⁵
 - (b) **Clarity/certainty/finality:** The appellants emphasised that if the CMA implemented its relief by substitution this would represent an end to the price control process and appeal, bringing certainty to all involved (including customers and investors). In particular, the appellants raised concerns about the potential for GEMA to reopen other aspects of their

⁴ For example, Cadent Response to PD, paragraph 4.1; NGET/NGG Response to PD, paragraph 2.18; NGN Response to PD, paragraph 10; SGN Response to PD, paragraph 191; SPT Response to PD, paragraph 224; SSSEN-T Response to PD, paragraph 1.37; WWU Response to PD, paragraph 6.4; Joint response to CMA RFI on ongoing efficiency (innovation uplift) relief, response to Q8; Joint response to CMA RFI on outperformance wedge relief, paragraph 5.3.

⁵ For example, Cadent Response to PD, Chapter 6; NGET/NGG Response to PD, paragraph 2.20(c); NGN Response to PD, paragraph 11; SGN Response to PD, paragraph 192; SSSEN-T Response to PD, paragraph 3.9; WWU Response to PD, paragraph 6.4(b)(iii); Joint response to CMA RFI on ongoing efficiency (innovation uplift) relief, paragraph 12.1(a); Joint response to CMA RFI on outperformance wedge relief, paragraph 5.2(a).

price controls if the CMA's directions were insufficiently well specified/too broad.⁶

- (c) **Reduced risk of subsequent challenge:** The appellants stated that any remittal brought the risk of further disputes around the proper implementation of the relief which could in turn result in further appeals.⁷

17.11 Some appellants stated that if a remittal were ultimately required, it should be done on the clearest and narrowest of terms to avoid ambiguity and ensure that GEMA made only those changes necessary to correct the errors identified.⁸

17.12 Some appellants also noted that in the case of remittal, the formal process (statutory consultation, 56 days standstill period) required to change the values which are part of the licence could not be concluded in time for inclusion in the 2022/23 Regulatory Year (either as part of the annual iteration process that would take place in November 2021, or by GEMA republishing company revenue values, pursuant to a new licence provision, that would take place in January 2022). The only practicable way of incorporating a remittal into the 2022/23 charges would be for GEMA to make an exception to the rule (as it did in January 2021) and allow pricing changes notwithstanding that the commensurate licence modifications would still not be in force. These appellants stated that it would be in customers' interests if the CMA were to direct GEMA to make such an exception in the interests of customers.⁹

17.13 Cadent emphasised that the implementation of its relief for the different grounds that affected its totex allowance would need to be performed concurrently.¹⁰

GEMA's submissions

17.14 GEMA stated that remedies to grounds that affected totex allowances (ie Joined Ground C, Cadent 1A, and NGN4A(ii)) would be challenging for the CMA to 'quash and substitute' within the timeframe of the appeal. It submitted that doing so would require modifications to a number of spreadsheets that

⁶ For example, Cadent Response to PD, paragraph 1.31; NGET/NGG Response to PD, paragraph 2.22; NGN Response to PD, paragraph 27; SGN Response to PD, paragraph 194; SSEN-T Response to PD, paragraph 1.4(e); WWU Response to PD, paragraph 6.3; Joint response to CMA RFI on ongoing efficiency (innovation uplift) relief, paragraph 12.1(c); Joint response to CMA RFI on outperformance wedge relief, paragraph 5.2(c).

⁷ For example, Cadent Response to PD, paragraph 1.8; NGN Response to PD, paragraph 12; SPT Response to PD, paragraph 226; SSEN-T Response to PD, paragraph 3.8; Joint response to CMA RFI on ongoing efficiency (innovation uplift) relief, paragraph 12.1(c); Joint response to CMA RFI on outperformance wedge relief, paragraph 5.2(c).

⁸ For example, Cadent Response to PD, paragraph 1.8; NGN Response to PD, paragraph 12; SGN Response to PD, paragraph 34; SSEN-T Response to PD, paragraph 1.37; WWU Response to PD, paragraph 8.1(d).

⁹ Transcript of OE Relief Roundtable, footnote 15.

¹⁰ Cadent response to RFI Cadent 009, Cadent Note.

carry over into the appellants' licences and PCFMs. GEMA submitted that this would involve relatively complex calculations that would be difficult to complete and validate in the compressed timescales in which the CMA was operating, and that GEMA's experience from its own processes was that trying to complete these steps in a compressed timetable significantly increased the risk of errors and subsequent disputes with companies.¹¹

- 17.15 GEMA also noted that where a single appellant was successful on more than one of these totex grounds (eg Cadent), there would be interactions between the grounds which would need to be managed. GEMA would prefer to implement all these remedies concurrently; it said that this would best be accomplished through remittal.¹²
- 17.16 GEMA therefore submitted that its preferred approach to these totex grounds would be for the CMA to remit with clear directions and for GEMA to make the necessary modifications to the appellants' licences, price control financial instruments (the PCFM and Price Control Financial Handbook (**PCFH**) and related documents). It stated that it believed this to be the only feasible option due to the complexity and compressed timescale.¹³
- 17.17 GEMA stated that if the CMA were to provide clear and unambiguous specifications of the remedies, the subsequent implementation of those remedies should be a 'mechanistic' process with little room for subjective judgement to be applied. It stated that if the CMA were to adopt a 'quash and remit' approach, GEMA would undertake the following four step process:¹⁴
- (a) **Step 1:** GEMA to develop its view of the necessary changes to the spreadsheet models, providing the relevant appellants with the opportunity to provide input and feedback as part of the development process (separate from the consultation required as part of the formal licence modification).
 - (b) **Step 2:** Once the necessary changes were finalised, GEMA would run the regression model and post-modelling spreadsheets and share a draft set of results with the relevant appellants for review and feedback.

¹¹ GEMA response to RFI GEMA 029, Qs 6–12, Introductory Comments; Transcript of OE Relief Roundtable, page 9 line 23 to page 10 line 2.

¹² GEMA response to PD, paragraph 398; GEMA response to RFI GEMA 029, Qs 6–12, Introductory Comments.

¹³ GEMA response to PD, paragraphs 396–399; GEMA response to RFI GEMA 029, Qs 6–12, Introductory Comments.

¹⁴ GEMA response to RFI GEMA 029, Qs 6–12, Introductory Comments; Transcript of OE Relief Roundtable, page 10, lines 5–13.

(c) **Step 3:** Once the results were finalised, GEMA would share a draft of the necessary modifications to the Special Conditions of the licence and the PCFMs with the relevant appellants for review and feedback.

(d) **Step 4:** Once the necessary licence and PCFM modifications were finalised, GEMA would initiate the statutory licence modification process to implement the modifications.

17.18 Regarding timings, GEMA stated that it recognised the companies' desire to recover these updated revenues in 2022/2023 and would run its process on that basis, even if potentially some changes were still in draft form subject to statutory consultation. GEMA stated that, assuming it received clear directions defining exactly how to correct the errors such that it was just taking updated inputs and running through the consequential implications, GEMA was confident that it could work with the companies to ensure that they were in a position to be setting their charges for next year in line with the outcome of the CMA final determinations.¹⁵

17.19 GEMA also raised concerns about an approach whereby the CMA partially substituted its decision (eg setting baseline totex but not updating the other parts of the PCFM) and directed GEMA to make consequential changes following from this partial substitution. GEMA stated that in those circumstances the companies' licence documents would be inconsistent, and GEMA would still need to undertake a statutory consultation to put all of the consequential changes through, which did not appear to GEMA to be a desirable outcome.¹⁶

17.20 However, subsequent to its provisional determination response, we asked GEMA to further consider some of the proposals from the appellants which would allow for relief of these totex grounds to be directly implemented by the CMA through substitution. Although GEMA maintained a broad preference that the CMA should quash and remit to GEMA, it also agreed that the appellants had identified workable approaches to substitution, in particular for Grounds B and C. We discuss this below in coming to our decisions on relief for each of the individual grounds.¹⁷

Joined Ground B – Outperformance wedge

17.21 We have found that GEMA was wrong to implement an outperformance wedge on the cost of equity for RIIO-2,¹⁸ and that the appropriate remedy is to

¹⁵ Transcript of OE Relief Roundtable, page 13 line 24 to page 14 line 5 and page 26, lines 9–20.

¹⁶ Transcript of OE Relief Roundtable, page 14, lines 5–10 and page 20, lines 5–16.

¹⁷ GEMA response to RFI GEMA 037, Qs 1 and 2.

¹⁸ See paragraph 6.182.

remove this outperformance wedge and associated backstop for all appellants.¹⁹

Appellants' submissions

17.22 All appellants submitted that the CMA should quash GEMA's decision and substitute its own decision to remove the outperformance wedge, setting out that this approach would bring benefits such as those explained in paragraph 17.10 above.²⁰ The appellants emphasised the importance of timing to ensure that the changes could be made in time to be included in their charges for next year.²¹

17.23 The appellants produced a joint proposal setting out the changes to the relevant licence Special Conditions, PCFHs and PCFM that they considered would be required to remove the outperformance wedge.²²

17.24 The appellants submitted that the CMA should also include additional notes and directions to GEMA related to the implementation of these changes. In particular, the appellants submitted that the CMA should include:

- (a) a paragraph specifying that the CMA's substituted decision would take effect seven days after the date of the Order;
- (b) a direction that no further changes to any other part of the licence (including any document incorporated by reference) are to be made as a consequence of the CMA's final determination on Joined Ground B (Outperformance Wedge) other than any administrative changes that are necessary to give effect to the CMA's determination on this ground that the outperformance wedge should be removed.²³

GEMA's submissions

17.25 GEMA agreed that the appellants' joint proposal would represent a good approach for the CMA to follow if it decided to substitute its own decision for that of GEMA.²⁴ GEMA stated that, unlike the totex grounds that raised issues discussed in paragraphs 17.14 to 17.19 above, for this ground it preferred an approach whereby the CMA substituted its decision rather than remitting to

¹⁹ See paragraph 6.183.

²⁰ Joint response to CMA RFI on outperformance wedge relief, responses to Q3 and Q5.

²¹ Transcript of OPW Relief Roundtable, page 10 lines 12–15, and page 11 line 23.

²² Joint response to CMA RFI on outperformance wedge relief, Annexes 2 to 4; Appellants' letter to Hogan Lovells (OPW) dated 17 September 2021.

²³ Joint response to CMA RFI on outperformance wedge relief, response to Q3, as updated based on the joint email from appellants on OPW relief dated 4 October 2021.

²⁴ GEMA response to RFI GEMA 029, response to Q1.

GEMA because it would be quicker and easier for all involved.²⁵ However, GEMA noted that it was still undertaking additional work to check all the details on this initial joint proposal.²⁶

17.26 GEMA disagreed that it was necessary to include a 'direction on no further changes' (eg as set out at paragraph 17.24(b) above). GEMA stated that it had confirmed that it did not intend to make further amendments to these licence instruments as a result of the CMA's determination on this issue. GEMA submitted that, therefore, the direction sought by the appellants was unnecessary and inappropriate.²⁷

17.27 GEMA stated that it expected to be able to include any changes associated with this relief in its annual iteration process that would be completed in November 2021.²⁸

Our assessment and decision

17.28 In the period leading up to our final determination, GEMA and the appellants have worked together to produce a set of revisions to the licence and related documents (specifically the PCFM and PCFH) for each company that they consider would give effect to our decision to remove the outperformance wedge and associated backstop. All parties agreed with this approach to implementation,²⁹ and stated that there were no (or limited) residual implementation risks.³⁰

17.29 We have reviewed these proposed changes. On the basis of our review, and the agreement of all parties, we find that this would have the effect of implementing our decision on outperformance wedge and the residual risk of implementation errors is low. In this case, we find that the benefits of implementing the decision by substitution outweigh the risks of doing so.

17.30 Regarding the potential for additional notes and direction, our decision is as follows:

- (a) **Timing:** We include a paragraph stating that all changes being implemented by substitution will take effect seven days after the date of

²⁵ Transcript of OPW Relief Roundtable, page 9, lines 8–11.

²⁶ GEMA response to RFI GEMA 029, response to Q2.

²⁷ GEMA response to RFI GEMA 029, response to Q3; email from GEMA on OPW relief dated 4 October 2021.

²⁸ Transcript of OPW Relief Roundtable, page 13, lines 6–12.

²⁹ Joint email from appellants on OPW relief dated 4 October 2021; email from GEMA on OPW relief dated 4 October 2021; joint email from appellants on OPW relief dated 7 October 2021.

³⁰ Transcript of OPW Relief Roundtable, page 13 lines 20 to page 14 line 16.

the Order. We note that GEMA intends to incorporate any changes from this ground into its annual iteration process in November 2021.

- (b) **Further changes:** We do not consider it appropriate to include a direction to GEMA to make no further changes as a consequence of this ground. While we understand the appellants' concerns about GEMA potentially making wider changes to the price control, GEMA has explicitly confirmed that it does not intend to make further amendments to these licence instruments as a result of the CMA's determination on this issue.³¹ In addition, any such decisions would be subject to appeal by the affected companies. We also recognise there may be circumstances in which GEMA making further changes would be appropriate (eg if any further necessary changes to the models were identified subsequent to this determination) and so including a direction of this sort may introduce other risks. However, unlike on the totex-related grounds which are more complex to implement and where the parties have agreed that there will be some consequential changes in other related documents (see paragraph 17.50(c) below), we do not consider it necessary to include a direction to GEMA to make further changes where required.

17.31 We therefore decide to quash GEMA's decision to introduce the outperformance wedge and associated backstop, and substitute our own decision to remove this. The Order which implements these changes is published alongside this final determination and the changes by substitution take effect seven days after the date of the Order. We note that the timing of the Order taking effect will apply to all grounds where we are implementing our decision by substitution.

Joined Ground C – Ongoing efficiency (OE)

17.32 We have found that GEMA was wrong to set the OE innovation uplift at 0.2%,³² and that the appropriate remedy is to set this innovation uplift to zero.³³ The effect of this is to reduce the OE challenge applied to the relevant companies from 1.15% for capex and repex and 1.25% for opex to 0.95% for capex and repex and 1.05% for opex. This change applies to Cadent, NGN, SGN, SPT, and WWU.

³¹ Email from GEMA on OPW relief dated 4 October 2021.

³² See paragraph 7.807.

³³ See paragraph 7.867.

17.33 As stated in paragraph 17.9 above, the appellants generally favoured an approach whereby the CMA quashed GEMA's decisions and substituted it with the CMA's own decision. However, the relevant appellants' submissions on this ground differed somewhat depending on their specific circumstances:

- (a) **SPT:** SPT submitted that the CMA should substitute its own decision rather than remitting the matter to GEMA. It stated that removing the innovation uplift would result in its allowances being uplifted by £11.99 million (£11.75 million from the direct removal and a further uplift to RPEs of £0.24 million).³⁴ SPT was able to provide a nearly complete list of the changes required to its licence and Associated Documents. The one exception was the Network Asset Risk Workbook since the final version of this was still under consultation. SPT therefore requested that the CMA direct GEMA to make and consult on the required changes to remove the innovation uplift from the Network Asset Risk Workbook before issuing the final version.³⁵
- (b) **Cadent:** Cadent stated that, due to the interactions of this relief with relief for other grounds and the need to undertake all changes concurrently, it was more appropriate and efficient for the CMA to conduct a separate process when implementing relief for Cadent's Appeal.³⁶
- (c) **Other GDNs (NGN, SGN, and WWU):** These GDNs submitted that, unlike SPT, they initially did not have all the necessary modelling files to allow them to trace all the changes through.³⁷ They stated that if GEMA shared these files then they would be able to undertake the work necessary to allow the CMA to implement its remedy by substitution.³⁸ The GDNs stated that they would work with GEMA during the remaining time of the appeal to try and develop a set of substitutions that would work, and only move to a direction-based approach if this could not be completed in time.³⁹ The GDNs stated that while they had a preference for substitution, if the process was well specified and the revised level of totex was known, then they would expect to be able to work with GEMA to implement the changes in time to be included in the charges for the

³⁴ Email from SPT on OE relief dated 11 October 2021 and SPT Annex – OE Remedy – V2 (Highlighted).

³⁵ SPT Annex - Ongoing Efficiency Remedy; Transcript of OE Relief Roundtable, page 21, lines 17–24.

³⁶ Email from Cadent on OE relief dated 5 October 2021; Transcript of OE Relief Roundtable, page 8, lines 17–20. We note that this submission was made before Cadent was aware that our final decision on Cadent's Embedded OE was to not find an error (see paragraphs 7.649–7.737). However, as we have found an error in part of Cadent Ground 1A, this point still stands.

³⁷ Transcript of OE Relief Roundtable, page 5, lines 23–25.

³⁸ Transcript of OE Relief Roundtable, page 7, lines 12–20.

³⁹ Transcript of OE Relief Roundtable, page 23, lines 1–4.

2022/23 Regulatory Year, even if the CMA implemented its decision by remitting to GEMA with directions rather than substitution.⁴⁰

- 17.34 The appellants submitted that the CMA's decision (whether by substitution or direction) should specify the £ million value by which the CMA expected totex allowances would change, and include a direction to GEMA to ensure that any consequential changes that were required to implement the CMA's decision (eg to the PCFM and licences) maintained this aggregate effect on totex allowances.⁴¹
- 17.35 The appellants stated that if the CMA specified the change in OE and the change in totex allowances then everything flowed from those in a very mechanistic way.⁴²
- 17.36 The appellants noted that an approach of partial substitution would still help the remedy to flow into 2022/23 revenue, if companies were allowed to adjust charges to reflect the remedy while waiting for the licence modification process to complete.⁴³ They also stated that working with GEMA in the period leading up to the final determination to identify a proposed approach to allow for substitution would be beneficial in ensuring that the changes could be incorporated into the coming year's bills, even if the relief was ultimately implemented by direction.⁴⁴

GEMA's submissions

- 17.37 GEMA submitted that the OE challenge was not explicitly set out in the licence or associated instruments. The level of the OE challenge was incorporated within the totex allowances, PCD allowances and unit cost figures set out in the licence and PCFM. In order to fully 'quash and substitute', the CMA would need to specify the consequential changes to these values in the Special Conditions of each licence and PCFMs.⁴⁵
- 17.38 The remedy for this ground affects the level of baseline totex allowances for the relevant companies, and so GEMA's overall comments on the complexity of implementation and associated risks (as set out in paragraphs 17.14 to 17.20 above) would apply. GEMA therefore submitted that its preferred

⁴⁰ Transcript of OE Relief Roundtable, page 16 line 3 to page 18 line 7.

⁴¹ Joint response to CMA RFI on OE innovation uplift relief, response to Q6; Transcript of OE Relief Roundtable, page 12, lines 13–19 and page 18, lines 14–25.

⁴² Transcript of OE Relief Roundtable, page 16, lines 6–10.

⁴³ Transcript of OE Relief Roundtable, footnote 9.

⁴⁴ Transcript of OE Relief Roundtable, page 24, lines 16–21.

⁴⁵ GEMA response to RFI GEMA 029, response to Q6.

approach to this ground would be for the CMA to remit the matter with clear directions.⁴⁶

17.39 GEMA stated that its preference would be for the CMA to focus on the inputs, providing a figure for the innovation uplift and direct GEMA to make the mechanistic, consequential changes to the licences and PCFMs for SPT and the GDNs. GEMA would then implement the change as described in paragraph 17.17 above. GEMA provided an example of the wording for this direction:⁴⁷

GEMA shall amend the ongoing efficiency challenge applied to the appellants as follows:

- The OE challenge applied to opex to be reduced from 1.25% to [x%]
- The OE challenge applied to capex and repex to [be]⁴⁸ reduced from 1.15%⁴⁹ to [x%]

GEMA shall make all consequential changes to the appellants' licences and associated instruments to give effect to the amendments set out above.

17.40 GEMA stated that there was a danger associated with the CMA directing a specific figure for the companies' updated totex allowances in the short timeframes available, which might require 'rushing' the analysis. If the directed figure subsequently turned out to be incorrect, then there would be an inconsistency, and the CMA should be aware of this risk.⁵⁰

17.41 Subsequently, GEMA stated that the work undertaken by GEMA and the appellants since the remedies roundtable had alleviated some (but not all) of GEMA's concerns with the 'quash and substitute' approach. In particular, GEMA believed that trying to implement full substitution before the CMA's deadline of 30 October 2021 created unnecessary and avoidable risk of errors and inconsistencies being introduced in the licences and associated

⁴⁶ GEMA response to RFI GEMA 029, Qs 6–12, Introductory Comments.

⁴⁷ GEMA response to RFI GEMA 029, response to Q11; Transcript of OE Relief Roundtable, page 11 line 6 to page 12 line 6, page 13 lines 19–23.

⁴⁸ This word was omitted in GEMA's original submission; however we consider this to be a typographical error and have corrected.

⁴⁹ We note that in GEMA's original submission this figure was given as 1.05%; however we consider this to be a typographical error and have corrected.

⁵⁰ Transcript of OE Relief Roundtable, page 21, lines 7–14.

instruments. GEMA believed that this risk is greatest in relation to the GDNs.⁵¹

Our assessment and decision

17.42 We agree with Cadent that it is appropriate to consider the implementation of its relief separately due to the interaction between the OE remedies and remedies on other totex-related grounds. We therefore discuss this separately in paragraphs 17.52 to 17.70 below.

17.43 In the period leading up to our final determination, GEMA and the appellants have worked together to identify the full list of changes that would result from a change in the OE challenge, and how this should be reflected in the appellants' licences and Associated Documents.

17.44 For SPT, the company and GEMA were able to agree an almost full list of changes that would give effect to our decision to remove the innovation uplift, reducing the level of OE to 0.95% for capex and repex and 1.05% for opex.⁵² The one exception to this is the Network Asset Risk Workbook, since GEMA has not yet published a final version of it.

17.45 We have reviewed these proposed changes. On the basis of our review, and the agreement of both GEMA and SPT, we find that this would have the effect of implementing our decision on OE and the residual risk of implementation errors is low. In this case, we find that the benefits of implementing the decision by substitution outweigh the risks of doing so.

17.46 We note that we still need to include a direction to GEMA to update SPT's Network Asset Risk Workbook before it publishes the final version of it. We note that since the final version of it is not yet published it does not suffer from concerns about inconsistency of the type that GEMA explained in paragraph 17.19 above.

17.47 For NGN, SGN, and WWU, the parties similarly collaborated to produce a set of updated figures and other changes that all agreed would reflect the removal of the innovation uplift.⁵³ Both GEMA and the GDNs noted that there were two issues which prevented 'full substitution', and although these would not affect

⁵¹ GEMA response on Ongoing Efficiency (Innovation Uplift) relief dated 11 October 2021.

⁵² Email from SPT on OE relief dated 11 October 2021; email from GEMA on OE relief dated 11 October 2021; GEMA response on Ongoing Efficiency (Innovation Uplift) relief dated 11 October 2021; GEMA response to RFI GEMA 037, Q1.

⁵³ Change process note: removal of the 0.2% innovation uplift, received 12 October 2021; GEMA response to RFI GEMA 037, Q2.

the companies' totex allowances they would require GEMA to make changes to the appellants' licences subsequently.⁵⁴

17.48 While we recognise GEMA's general concern about the possibility of introducing inconsistencies into the companies' licences (see paragraph 17.19), GEMA described the specific outstanding points which would require directions here as 'minor'. Furthermore, the nature of these outstanding changes would appear to be less time-sensitive than the updating of the companies' totex. Finally, we note that GEMA is revising the relevant files due to issues unrelated to this appeal,⁵⁵ and so there is limited additional burden/cost from its undertaking the final consistency corrections at the same time as it makes other changes to these documents. Therefore, we expect the concerns associated with any inconsistencies in the companies' licences would be low.

17.49 We have reviewed the parties' proposed changes. On the basis of our review, and the agreement of GEMA, NGN, SGN, and WWU, we find that these would have the effect of implementing our decision on OE and the residual risk of implementation errors is low. Furthermore, there are benefits in providing certainty on the outcome of the appeal, as well as ensuring the timeliness of the implementation (eg ensuring that our final determination is reflected in the charges for Regulatory Year 2022/23). In the circumstances, we find that the benefits of implementing the large majority of the decision by substitution outweigh the risks of doing so.

17.50 Having determined that we will make the majority of changes for NGN, SGN and WWU by substitution, we then assess the need to supplement this with additional directions to GEMA (including those directions raised by the appellants) as set out below:

(a) **Direction to update figures and use updated figures:** The appellants submitted that we should direct GEMA regarding the timeliness of the implementation and that the updated documents should act as the basis of any future changes.⁵⁶ We do not consider this to be necessary since we are making our changes by substitution, and so the previous version of the relevant documents will have been replaced with ones that include our corrections.

(b) **No further changes in totex:** The appellants submitted that we should direct GEMA that the CMA requires no further changes to the final totex

⁵⁴ Change process note: removal of the 0.2% innovation uplift, received 12 October 2021, paragraphs 6c, 6d and 7; GEMA response to RFI GEMA 037, Q2.

⁵⁵ GEMA response to RFI GEMA 037, Q2.

⁵⁶ Change process note: removal of the 0.2% innovation uplift, received 12 October 2021, paragraphs 6a and 6b.

figure in relation to this ground.⁵⁷ We do not consider this to be necessary, as all the changes that affect totex are being made by substitution. Therefore, there should be no ambiguity as to whether the CMA requires further changes in totex.

- (c) **Other consequential changes:** As stated in paragraph 17.47 above, both GEMA and the appellants noted that there were minor consequential changes that GEMA would be required to implement subsequently. These relate to Special Condition 3.13 for all three of these appellants and Special Condition 3.16 for SGN specifically.⁵⁸ We do not currently envisage any other consequential changes; but given the relatively wide-ranging consequential effects of this decision, to the extent that GEMA or the appellants identify further consequential changes which result directly from the substitution decision, then it is appropriate that our final Order allows GEMA to implement such changes to ensure consistency with our final determination to remove the innovation uplift. We therefore include a direction to GEMA to this effect.

17.51 We find that this approach as set out above is the most efficient and effective approach for implementing relief under Ground C.

Cadent (including Ground 1A – large, atypical LTS rechargeable diversions)

17.52 As discussed in paragraph 17.33 above, it is appropriate to consider the implementation of Cadent's relief separately from implementation in relation to the other appellants due to the interaction between the OE remedies and remedies on other totex-related grounds.

17.53 The other Cadent totex-related ground where we have found an error is our conclusion that GEMA was wrong in including large, atypical LTS rechargeable diversions projects in the econometric model,⁵⁹ and that the appropriate remedy is to remove the projects listed in Table 9-1 from GEMA's econometric model.⁶⁰ This was referred to as Cadent Ground 1A, and the change applies only to Cadent.

⁵⁷ Change process note: removal of the 0.2% innovation uplift, received 12 October 2021, paragraph 6f.

⁵⁸ Change process note: removal of the 0.2% innovation uplift, received 12 October 2021, paragraphs 6c and 6d.

⁵⁹ See paragraph 9.119.

⁶⁰ See paragraph 9.144.

Appellants' submissions

- 17.54 Cadent emphasised the importance of concurrently implementing the relief across its different grounds.⁶¹
- 17.55 Cadent submitted that there were two possible approaches to implementation which the CMA could adopt:⁶²
- (a) **Approach 1 (Cadent's preference):** the CMA itself would make pre-modelling changes, run the regression and thereafter apply post-modelling adjustments in order to arrive at revised baseline allowances for Cadent's networks.
 - (b) **Approach 2:** GEMA would carry out the same steps described above under clear and precise directions.
- 17.56 Cadent stated that it preferred Approach 1 above (whereby the CMA carried out the revised modelling and determined updated baseline totex allowances for Cadent's four networks) for reasons of certainty.⁶³ Cadent stated that while GEMA's modelling infrastructure was complex, substitution was eminently achievable and necessary if further disputes were to be avoided and to ensure that the revised allowances were reflected in the gas transportation charges for 2022/23.⁶⁴
- 17.57 Cadent stated that certain additional directions would be required to supplement its proposed Approach 1:
- (a) The requirement for GEMA to ensure that the relief directed by the CMA had an NPV neutral impact (particularly where the revised allowances could not be reflected in the charges for the 2022/23 Regulatory Year).⁶⁵
 - (b) A requirement that GEMA finalise the implementation in time to ensure that the revised allowances were reflected in the charges for 2022/23.⁶⁶
- 17.58 Cadent stated that if Approach 2 were used it would be critical that:⁶⁷

⁶¹ For example, see Cadent response to RFI Cadent 009, OE Innovation Uplift Response.

⁶² Cadent response to RFI Cadent 009, LTS RD Response, Cadent Introductory Note; email from Cadent on OE relief dated 5 October 2021.

⁶³ Cadent response to RFI Cadent 009, response to Q20.

⁶⁴ Cadent response to RFI Cadent 009, LTS RD Response, Cadent Introductory Note and response to Q23.

⁶⁵ Cadent response to RFI Cadent 009, response to Q22.

⁶⁶ Cadent response to RFI Cadent 009, response to Q22; email from Cadent on OE relief dated 5 October 2021.

⁶⁷ Cadent response to RFI Cadent 009, response to Q24.

- (a) The CMA's directions were drafted clearly and precisely such that there was no room for interpretation by GEMA when it carried out each of the implementation steps;
- (b) The CMA's final decision and relief clearly and accurately specified which projects must be excluded from the regression by GEMA (and their associated costs), and the projects were excluded in the manner that Cadent proposed during the pre-modelling adjustments;
- (c) The CMA directed GEMA to give Cadent the opportunity to review and comment at each step that was carried out by GEMA (and that GEMA took such comments into account acting in good faith); and
- (d) The directions specified in paragraph 17.57 above were also included.

17.59 Cadent clarified that under either of these approaches, it would propose that GEMA undertook the process of modifying Cadent's licence and Associated Documents/models (under direction from the CMA).⁶⁸

17.60 Cadent subsequently provided a note that it said outlined the steps it believed were required to implement the relief for Cadent's grounds of appeal.⁶⁹

GEMA's submissions

17.61 GEMA said that the remedy for this ground affected the level of baseline totex allowances for Cadent, and so GEMA's overall comments regarding the complexity of implementation and associated risks (as set out in paragraphs 17.14 to 17.19 above) would apply.⁷⁰ Therefore, GEMA submitted that its preferred approach to this ground would be for the CMA to remit the matter with clear directions.⁷¹

17.62 GEMA also stated that where an appellant was successful in more than one ground, GEMA's preferred approach was to implement all of the remedies that apply to that appellant concurrently. If the CMA were to decide to remit the implementation of remedies to GEMA, GEMA would be able to make the necessary modifications to the licences, PCFM, PCFH and related documents at the same time – taking account of the CMA's FDs and associated directions.⁷²

⁶⁸ Cadent response to RFI Cadent 009, LTS RD Response, Cadent Introductory Note; email from Cadent on OE relief dated 5 October 2021.

⁶⁹ Cadent relief note – updated, received 11 October 2021.

⁷⁰ GEMA response to RFI GEMA 029, Qs 19–27, Introductory Comments.

⁷¹ GEMA response to RFI GEMA 029, Qs 19–27, Introductory Comments.

⁷² GEMA response to RFI GEMA 029, Qs 19–27, Introductory Comments.

17.63 GEMA provided the list of steps that it considered necessary to update Cadent's totex allowances and to reflect the consequential adjustments in Cadent's licences and PCFMs.⁷³

17.64 GEMA provided example text for a direction, were the CMA to decide to adopt the 'quash and remit' approach to this appeal ground:⁷⁴

GEMA shall exclude the following projects from the GDNs' submitted costs ahead of performing the regression analysis:

[table of projects]

GEMA shall make amendments to the corresponding GDNs' Normalisation files based on updated BPDTs. Then GEMA shall rerun the totex model to derive updated totex allowances. GEMA shall update PCFMs and licences accordingly.

Our assessment and decision

17.65 In the period leading up to our final determination, GEMA and Cadent have worked together to identify the full list of changes that would result from our relief across Cadent's totex-related grounds, and how this should be reflected in the appellant's licences and Associated Documents. We note that the final note of the collaboration did not include updated output figures.⁷⁵

17.66 Both GEMA and Cadent agreed that it would be necessary for us to remit some elements of the relief to GEMA with directions to implement the relevant changes. Cadent's proposed approach involved the CMA undertaking a partial substitution itself and remitting only certain elements. However, in the time available neither the parties nor we have been able to produce the set of figures that would be needed to allow for substitution of the main elements of our relief for Cadent, particularly as a result of the complexity of the relief required. As a result, Cadent's proposed 'Approach 1' is not possible in the circumstances. Instead we decide that the most appropriate approach is to remit this matter to GEMA with clear directions. This is consistent with Cadent's proposed Approach 2.

17.67 We also note that Cadent emphasised that the implementation of its relief for the different grounds that affected its totex allowance would need to be

⁷³ GEMA response to RFI GEMA 029, response to Q20.

⁷⁴ GEMA response to RFI GEMA 029, response to Q24.

⁷⁵ Cadent relief note – updated, received 11 October 2021.

performed concurrently. Therefore, if we decided to remit one totex-related ground to GEMA, this would require all totex-related grounds to be remitted.

17.68 In paragraph 17.58 we noted Cadent's submission of a list of points that it considered to be critical if we decided not to substitute any elements ourselves when implementing the relief for Ground Cadent 1A. We agree that the directions we issue should be clear, precise, and unambiguous and that this includes clearly and accurately specifying which projects (and their associated costs) must be excluded from the regression by GEMA.

17.69 In light of this, we reviewed the list of directions that we should include with this remittal and decide the following:

- (a) **OE change to inputs:** Wording substantively similar to GEMA's proposal in paragraph 17.39 above is included in the Order. This specifies the change in annual OE that we decide for each component, ensuring that the new inputs that GEMA should use are clear and unambiguous.
- (b) **List of projects to be excluded:** Wording substantively similar to GEMA's proposal in paragraph 17.64 above should be included in the Order. However, we agree with Cadent that we should also specify the costs associated with each of the excluded projects. This ensures that the new inputs that GEMA must use for its modelling are clear and unambiguous.⁷⁶
- (c) **NPV neutral:** We agree with Cadent's point that the implementation approach to our relief should have an NPV neutral impact. However, we do not consider it necessary to include a direction on this since GEMA's regulatory framework already recognises the time-value of money, and it would be inconsistent to act differently in the implementation of this relief. Further, we note Cadent's statement that this would be most important if the changes were not reflected in the charges for the 2022/23 Regulatory Year, which we address by directing GEMA to ensure that charges for the 2022/23 Regulatory Year reflect the outcome of the CMA final determination.
- (d) **Timing:** In order to implement our directions, GEMA will need to undertake a statutory licence modification process. We place weight on GEMA's statement that, if it received clear directions on inputs it was confident that it could work with the companies to ensure that their 2022/23 Regulatory Year's charges were in line with the outcome of our

⁷⁶ We note that Cadent and GEMA agreed the final gross and net costs for the relevant projects, see responses to RFI GEMA 040 and RFI Cadent 014.

final determination (see paragraph 17.18). We note that this could include approaches such as allowing the charges to reflect our decisions before the licences have been formally changed (eg see paragraph 17.12). In these circumstances, we decide it is appropriate to include a direction to GEMA to ensure that charges for the 2022/23 Regulatory Year reflect the outcome of the CMA final determination.

- (e) **Process:** We do not direct GEMA in the specific steps it should take during its process of implementing the changes we have directed. However, we are aware that GEMA and the appellants have worked together collaboratively on relief implementation in the period leading up to the final determination, and we note in paragraph 17.17 the overall approach GEMA stated it would take. We would strongly support GEMA's proposal to continue to engage with Cadent specifically on implementation of relief on its grounds as well as more generally with all appellants as part of the broader remedy processes.

17.70 We find that the above approach is consistent with both GEMA and Cadent's views that by setting narrow, clear, and unambiguous directions to change the relevant inputs, all subsequent changes would flow 'mechanistically' and hence with no room for subsequent dispute. Given GEMA's statements to us, and our inclusion of a direction that GEMA ensure that charges for the 2022/23 Regulatory Year reflect the outcome of the CMA final determination, this should also allow for these changes to be incorporated into the 2022/23 Regulatory Year's charges.

Joined Ground D – Licence modification process

17.71 We have found that GEMA was wrong in the way it decided to provide for self-modification of certain Special Licence Conditions and amendment of certain Associated Documents by directions,⁷⁷ and the appropriate remedy is to quash these decisions to the extent that these Special Licence Conditions are found to be ultra vires in our Final Determination.⁷⁸ This change applies to SSEN-T and SPT.

⁷⁷ See paragraphs 8.331, 8.332, 8.334 and 8.335.

⁷⁸ See paragraph 8.337.

Appellants' submissions

- 17.72 SPT in its NoA asked that we substitute the provisions in the conditions it appealed such that GEMA might make changes only by the SLMP procedure.⁷⁹
- 17.73 SSEN-T in its NoA asked us to remit the matter to GEMA, requiring it to introduce a mechanism that would ensure that any decisions would be implemented in a way sufficient to ensure that SSEN-T's rights under sections 11A and 11C of EA89 were preserved.⁸⁰
- 17.74 In its response to the provisional determination, SPT repeated its position that we should substitute new conditions for those which we found to be ultra vires.⁸¹ SPT considered that this would bring 'finality' to the appeals, to the extent possible.
- 17.75 In its response to the provisional determination, SSEN-T proposed that we should quash the ultra vires licence conditions, and substitute modification using SLMP. Without prejudice to its position that we were applying incorrect principles to determine whether certain conditions were ultra vires, SSEN-T said that if we maintained that decision, we should quash the ultra vires conditions, and remit to GEMA the task of re-writing conditions.⁸²

GEMA's submissions

- 17.76 GEMA, in its response to the provisional determination, said it supported the provisional proposal to remit the ultra vires conditions to it to update. It said it did not consider it necessary for the CMA to provide detailed directions as to how it should update the conditions.⁸³

Correspondence with the parties

- 17.77 Following a hearing held with the parties on relief, we asked SPT, SSEN-T and GEMA to comment on the feasibility of an 'interim' substitution.⁸⁴ Under this approach, the CMA would substitute modification by SLMP for those conditions found to be ultra vires, and additionally direct GEMA to update those conditions that could be re-written such that modification using s7(5)(b) would be within the power of that section.

⁷⁹ [SPT NoA](#), paragraph 81(4).

⁸⁰ [SSEN-T NoA](#), paragraph 9.20.

⁸¹ SPT response to the PD, paragraphs 224–226.

⁸² SSEN-T response to the PD, paragraphs 4.58 and 4.59.

⁸³ GEMA response to the PD, paragraphs 288 and 289.

⁸⁴ RFI to SPT (005), SSEN-T (003) and GEMA (031), 21 September 2021.

17.78 SPT and SSEN-T made proposals to GEMA for changes to their licence conditions that would have the effect of substitution, and GEMA commented on these. The three parties also made the following points on the approach itself:

- (a) SPT said that remitting to GEMA the task of updating conditions would prolong uncertainty, increase costs and carry the risk of further legal proceedings. In its view, the relevant conditions could not be updated satisfactorily, so the substitution of SLMP modification should be permanent. However, as a 'bare minimum alternative', if the CMA decided to remit the matter back to GEMA to attempt to re-draft the licence conditions to meet the legal requirements, then the CMA should at least impose SPT's suggested modification as an interim measure to achieve some degree of effective remedy;⁸⁵
- (b) SSEN-T said that the right course was for the CMA to adopt the straightforward remedy of substituting a decision that the power of modification by direction in the relevant licence conditions be replaced with a power of modification under section 11A EA89, with no time limit. This would not preclude GEMA from making an attempt in the future to introduce new licence conditions which complied with the requirements of section 7(5)(b) and the CMA's final determination. However, it maintained that the level of specificity in the conditions implied by the CMA's decision was impossible to supply. It also said that an interim substitution would be missing 'the key element of finality' in the CMA's decision;⁸⁶
- (c) GEMA did not consider that the proposed substitution approach, even as an interim measure as suggested by the CMA, would be effective or necessary. It considered that the effect of such an approach would be licence conditions that were unclear, contradictory, and inaccurate. Furthermore, GEMA subsequently told us that it intended to complete the process of updating the licence conditions by April 2022, and it had discussed this timeline with SPT and SSEN-T, although the precise timelines would be subject to further discussions.⁸⁷

Our assessment and decision

17.79 In the period leading up to our final determination, GEMA and the appellants have worked together to propose wording that would allow us to substitute text such that each Special Condition that had been found to be ultra vires

⁸⁵ SPT RFI 005 response, paragraphs 1–4.

⁸⁶ SSEN-T RFI 003 response, paragraphs 14–15.

⁸⁷ GEMA response to request on relief timeline, 20 October 2021.

would be subject to modification by SLMP. They have also collaborated to propose wording for directions to GEMA to remedy the identified errors.⁸⁸

- 17.80 In light of the work that the parties have carried out, we have assessed the potential for us to substitute language in the relevant Special Conditions to include a temporary SLMP mechanism. We appreciate the work that the parties have undertaken to propose potential wording. However, the language provided illustrates the complexity involved in substituting our decision, and we have serious concerns around the risk of errors or unforeseen consequences, if we chose to do so. This concern is reinforced by the fact that, despite their efforts, GEMA and the appellants have not been able to agree a set of wording to achieve this aim. In addition, we consider that directing GEMA to use SLMP in the conditions should also be effective in implementing our decisions in respect of Joined Ground D, and with lower risk. Accordingly, we do not consider it appropriate to implement our decision by substitution in this way.
- 17.81 Having established that substitution is not appropriate, we therefore decide to quash GEMA's decisions to use 7(5)(b) Direction powers in the relevant licence modifications, and to direct GEMA to use the SLMP in place of Direction powers, pending any revisions to the licence conditions which are consistent with our determination.
- 17.82 In making such revisions to the licence conditions, we direct GEMA to redraft any self-modification provisions that are capable of being brought within the powers conferred by s7(5)(b) of EA89 and to replace any self-modification provisions that are not capable of being brought within the powers conferred by s7(5)(b) with the SLMP.
- 17.83 GEMA and the appellants have proposed wording for these directions to address the identified errors. We have assessed this wording and largely agree with the proposals, so have included substantively similar text in the directions to GEMA in our Order.
- 17.84 We have also considered the need for additional directions around implementation timing. Unlike the totex-related grounds, there is no concern about incorporating the changes into next year's charges. However, we note the need for continuing clarity and certainty as to the process appropriate to each Special Condition and we would be concerned were there to be unnecessary delays in the implementation of our directions. We note GEMA's statement that it currently intends to complete the process of updating the

⁸⁸ SSEN-T RFI 003 response, draft wording including comments from SPT and SSEN-T; GEMA RFI 031 response, draft wording with GEMA comments.

licence conditions in accordance with our determination by April 2022. We recognise that there may be unforeseen circumstances that result in delays to GEMA's process, and therefore some flexibility will be necessary. In that context, we have included a direction to GEMA to implement these changes within a period of nine months. Our view is that this time period best balances these risks against the risks associated with lengthy delays. We also note that if GEMA failed to make these changes for any individual Special Condition, the effect would be that GEMA would need to continue using the SLMP (in accordance with the direction referred to in paragraph 17.81 above).

NGN Ground 4A(ii)

17.85 We have found that GEMA was wrong in its calculation of NGN's BPI Stage 4 reward,⁸⁹ and that the appropriate remedy is to amend NGN's BPI Stage 4 reward to £8,525,771.⁹⁰ This change applies only to NGN.

Appellants' submissions

17.86 NGN stated that the CMA should either implement this change directly or direct GEMA to specifically increase NGN's BPI Stage 4 reward to £8,525,771.⁹¹

17.87 NGN submitted that similar timing considerations to those discussed in paragraph 17.10(a) above would also be relevant for this ground, and the CMA could substitute its decision with directions to GEMA to implement the decision in time to be reflected in the 2022/23 Regulatory Year.⁹²

17.88 NGN stated that two cells would be needed to be changed in the PCFM spreadsheet to achieve a change in NGN's BPI Stage 4 reward to reflect the agreed higher amount. These changes would then flow through the rest of the PCFM. No changes would be required to the licence or PCFH.⁹³

17.89 NGN stated that were the CMA to decide not to correct the error conceded by GEMA in relation to the BPI Stage 3 calculation, then its decision with respect to the BPI Stage 4 relief should allow GEMA to subsequently correct the manifest error that it made in relation to NGN's BPI Stage 3.⁹⁴

⁸⁹ See paragraph 11.27.

⁹⁰ See paragraph 11.31.

⁹¹ NGN response to PD, paragraph 29.

⁹² NGN response to RFI NGN 004, response to Q14.

⁹³ NGN response to RFI NGN 004, response to Q13.

⁹⁴ NGN response to RFI NGN 004, response to Q15.

GEMA's submissions

17.90 GEMA said that the remedy for this ground affected the level of baseline totex allowances for NGN, and so GEMA's overall comments on the complexity of implementation and associated risks (as set out in paragraphs 17.14 to 17.19 above) would apply. Therefore, GEMA submitted that its preferred approach to this ground would be for the CMA to remit the matter with clear directions.⁹⁵

17.91 GEMA provided example text for a direction, were the CMA to decide to adopt the 'quash and remit' approach to this appeal ground:

GEMA shall determine the correct value for NGN's BPI reward by correcting the formula errors identified in its correspondence to the CMA, and make the necessary and consequential changes to the licence and associated instruments to give effect to the correction.⁹⁶

17.92 GEMA stated that to implement this change by substitution would require the CMA to update certain spreadsheets to correct formula errors which should result in a BPI Stage 4 reward of £8,525,771. This would be aggregated with the rewards and penalties from all four stages of the BPI, and this aggregate figure would be used in the PCFM (which is a licence instrument and has the status of a licence condition).⁹⁷ GEMA provided the specific changes to the spreadsheets required to correct the error.⁹⁸

Our assessment and decision

17.93 NGN and GEMA both provided potential methods for correcting the error in this ground. The GEMA approach provided additional details on correcting the underlying calculations of the BPI reward, while NGN focused on updating the relevant licence documents. We consider both of these approaches below, and the option to use substitution and/or directions for each.

17.94 Given the relatively straightforward nature of implementing the necessary changes to the licence documents (specifically the PCFM), we consider that the implementation risk of our doing this by substitution is low. Furthermore, there are likely to be benefits to this approach (eg the certainty and timeliness that NGN raised). We therefore decide to implement this relief by substitution.

⁹⁵ GEMA response to RFI GEMA 029, Qs 28–30, Introductory Comments.

⁹⁶ GEMA response to RFI GEMA 029, response to Q29.

⁹⁷ GEMA response to RFI GEMA 029, response to Q29.

⁹⁸ GEMA response to RFI GEMA 037, response to Q3.

- 17.95 We note that GEMA has identified non-licence documents that would need to be updated in order to correctly reflect the calculation of BPI Stage 4. Consistent with our approach to Ground C where we have also implemented our decision by substitution (see paragraph 17.50(c)), we have included a direction to GEMA to implement any other necessary changes to ensure consistency with our final determination, in this case to correct the error in NGN's BPI Stage 4 reward calculation.
- 17.96 We note that any changes should be made concurrently with our relief for other NGN grounds, in particular the OE error.
- 17.97 For the reasons explained in paragraphs 11.25, we do not make any decision or reference to an alleged error in NGN's BPI Stage 3 calculation as part of our relief.

Order

- 17.98 We have published the Order which implements these changes alongside this final determination. The Order takes effect on the date of the Order except that all changes being made by substitution shall take effect seven days from the date of the Order.

Glossary

2009 Open Letter	Letter from GEMA setting out its policy on tax clawback, following consultation process
2015 Letter	Response from GEMA to WWU regarding the correct treatment of inflation expense on RPI derivatives for tax clawback purposes
AAA corporate bonds	Bonds issued by companies that have a AAA credit rating
AICR	Adjusted Interest Cover Ratio
AIP	Annual Iteration Process; the process by which GEMA re-calculates annually each licensee's allowed revenue
Alliance Contract	Repex contract of WWU with external contractors
AR-ER dataset	GEMA dataset of the allowed and expected returns of companies in previous price controls. Published with GEMA's DD .
AROC	Allowed Return on Capital
ARP	Asset Risk Premium
August 2019 Decision and Further Consultation	GEMA , 2019, <i>RIIO-2 methodology for the Electricity System Operator</i> , Decision and further consultation, 28 August 2019 (relevant to TNUoS risk)
BAU	Business as usual
BMCS	Broad Measure of Customer Satisfaction
Beta	An asset's (or portfolio of assets') exposure to systematic (or common) risks relevant to the broader market
BETTA	British Electricity Trading and Transmission Arrangements
BGT	British Gas Trading Limited
BNRO	Baseline Network Risk Outputs

BoE	Bank of England
BPDT	Business Plan Data Template
BPG	Business Plan Guidance
BPI	Business Plan Incentive
BPI Stage 4	Business Plan Incentive Stage 4
bps	Basis Points: one hundredth of one percentage point
Bristol Water	Bristol Water plc
<i>Bristol Water (2010)</i>	CC's final determination of 4 August 2010 of the reference of Ofwat's price determination for Bristol Water
<i>Bristol Water (2015)</i>	CMA's final determination of 6 October 2015 of the reference of Ofwat's price determination for Bristol Water
business plans	Information submitted to GEMA by the gas and electricity network companies on the activities that they intended to undertake in RIIO-2 , and their associated costs and outputs
CA03	Communications Act 2003
CAA	Civil Aviation Authority
Cadent	Cadent Gas Limited
capex	Capital Expenditure
CAPM	Capital Asset Pricing Model
CAT	Competition Appeal Tribunal
CC	Competition Commission
CED	Consumption Expenditure Deflator
Centrica	Centrica plc group
CEPA	Cambridge Economic Policy Associates Ltd; economic advisers to GEMA
Closing Statement	Closing statements submitted by the parties in writing on 23 July 2021 after the completion of all the main hearings

Close-out	The RIIO-2 price control sets out what network companies must deliver, and the revenue they can collect to deliver this. As a result of these mechanisms, some areas of the RIIO-2 price control need to be settled ('closed-out') once the price control has ended
CMA70	Energy Licence Modification Appeals: Competition and Markets Authority Rules (The Rules)
CMA71	Energy Licence Modification Appeals: Competition and Markets Authority Guide (The Guidance)
CMA PR19 Provisional Findings	Provisional findings of the CMA PR19 Redetermination , published 29 September 2020 (at times this is referred to as 'PR19 PFs', 'Provisional PR19 Redetermination', 'CMA PR19 Redetermination Provisional Findings', and 'CMA's provisional findings in the PR19 redetermination').
CMA PR19 Redetermination	CMA final report of the Redetermination of Ofwat's PR19 price control, published 9 April 2021 (at times this is referred to as 'PR19 Redetermination', 'PR19 Final Determination', 'PR19 FD', 'CMA's PR19 Determination', 'PR19 water appeals', 'PR19 decision', 'CMA's findings in PR19', and 'CMA's PR19 Redetermination Final Report').
CPIH	Consumer Prices Index (inflation measure) including owner occupiers' housing costs
CSV	Composite Scale Variable; a cost driver calculated from a combination of workload and scale variables to reflect a measure of the key cost drivers faced by the GDNs
CUSC	Connection and Use of System Code
DD	Draft determinations in GEMA's RIIO-2 price control process, published 9 July 2020
DDM	Dividend Discount Model
December 2019 Consultation	GEMA , 2019, <i>TNUoS Revenue Collection Risk Consultation</i> , 18 December 2019
Decision	GEMA's decision dated 3 February 2021, modifying licence conditions to give effect to the FD

DGM	Dividend Growth Model
DMS	Dimson, Marsh and Staunton
DNO	Distribution Network Operator
DRP	Debt Risk Premium
DSAP	Digitalisation Strategy and Action Plan
EA04	Energy Act 2004
EA89	Electricity Act 1989
ED	Electricity Distribution
ED1 Determinations	CMA's final determination of 29 September 2015 of the appeals of the RIIO-1 price control decision
EE	Europe Economics
EEI	Environmental Emissions Incentives
EJP	Engineering Justification Packs
Embedded OE	The amount of OE that the networks included in their business plans to reflect the OE improvements they expected to make
ENA	Energy Network Association
ENWL	Electricity North West Limited
ERP	Equity Risk Premium
ESO	Electricity Systems Operator
EU KLEMS	A database on measures of economic growth, productivity, employment, capital formation, and technological change at the industry level for all European Union member states, the UK, Japan, and the US
EV	Enterprise Value
Evaluative PCDs	PCDs where the allowance for licensees is contingent upon the delivery of a consumer outcome for which they were funded

FD	Final determinations in GEMA's RIIO-2 price control process, published on 8 December 2020, as revised on 3 February 2021
FFO	Funds from Operations
<i>Firmus</i>	CMA's final determination of 26 June 2017 of Firmus's appeal of Northern Ireland Authority for Utility Regulation's price control
Frontier	Frontier Economics Ltd; economic advisers to NGET , NGG , NGN and SGN
Frontier Catch-up Efficiency Report	Catch-up efficiency report submitted by Frontier on behalf of SGN in support of SGN Ground 4: Efficiency benchmark
FRS102	Financial Reporting Standard 102
FYE	Financial year end
GA86	Gas Act 1986
GARCH	Generalised AutoRegressive Conditional Heteroskedasticity; a statistical model used in analysing time-series data where the variance error is believed to be serially autocorrelated
GD1	The RIIO-1 decision as applied to GDNs (also used to refer to the RIIO-1 price control period)
GD2	The Decision as applied to GDNs (also used to refer to the RIIO-2 price control period)
GDN	Gas Distribution Network
GDPCR1	The relevant price control immediately prior to RIIO-1
GD&T	Gas Distribution and Transmission
GEMA	The Gas and Electricity Markets Authority
GEMA FD	See FD
GO	Gross Output
GSRD	LOTI Guidance and Submissions Requirements Document

Handbook	Price Control Financial Handbook
<i>Heathrow Airport Ltd and Gatwick Airport Ltd (2007)</i>	CC's report of 28 September 2007 of the CAA's reference on the economic regulation of the London airports companies (Heathrow Airport Ltd and Gatwick Airport Ltd)
HSE	Health and Safety Executive
iBoxx AAA indices	A measure of the price and performance of certain bonds with a AAA rating
IFRS	International Financial Reporting Standards
ILD	Index-linked Debt, where the value of the principal rises on the basis of a stated measure of inflation
ILG	Index-linked Gilt
IQI	Information Quality Incentive
IRP	Inflation Risk Premium
IRR	Internal Rate of Return, a rate of return (discount rate) that makes the net present value of all cash flows equal to zero in a discounted cashflow analysis
IT	Information Technology
Joined Ground A	Cost of equity (all appellants: Cadent 2, NGET 1, NGG 1, NGN 1, SGN 1, SSEN-T 1, SPT 1 and part of WWU B).
Joined Ground B	Outperformance wedge (all appellants: Cadent 3, NGET 2, NGG 2, NGN 2, SGN 2, SSEN-T 2, SPT 2 and the remainder of WWU B)
Joined Ground C	Ongoing efficiency (Cadent 1C, NGN 3, SGN 3, SPT 3 and WWU E).
Joined Ground D	Licence modification process (SSEN-T 3, SPT 4 and WWU D).
KPMG	KPMG LLP, economic advisers to Cadent and NGN
KPMG Associated Documents Report	Report commissioned by WWU for the appeal – as evidence of the potential impact on WWU of GEMA's approach to the use of Associated Documents

LCNF	Low Carbon Networks Fund
LIBOR	London Interbank Offered Rate; the basic rate of interest used in lending between banks on the London interbank market and also used as a reference for setting the interest rate on other loans. One of the main interest rate benchmarks used in financial markets
LOTI	Large Onshore Transmission Investment; a special condition re-opener allowing licensees to apply for funding for large investment projects
LOTI GSRD	LOTI Re-opener Guidance and Submissions and Requirements Document
LTS	Local Transmission System; the high-pressure tier of the gas distribution network
LP	Labour Productivity
MAR	Market Asset Ratio
MEAV	Modern Equivalent Asset Value
MOBs	Multi-occupancy buildings
MPW	Mason, Pickford and Wright; three of the four authors of the UKRN Report
MRP	Market Risk Premium
MSIP	Medium Sized Investment Projects; a special condition re-opener
NAO	National Audit Office
NARM	Network Asset Risk Metric; a measure of network asset risk that relates to the consequence of failure of network assets and the likelihood of failure occurring
National Grid	National Grid plc; also used to denote the wider corporate group

NATS	CMA's final report of 23 July 2020 of the <i>National Air Traffic Services (En Route) Plc /Civil Aviation Authority Regulatory Appeal</i>
NAV	Net Asset Value - the book value of assets minus liabilities. Typically describing the net value of assets in an investment fund
NERA	NERA Economic Consulting; advisers to Cadent and SPT
Net Zero	Statutory requirement for at least 100% reduction of greenhouse gas emissions by 2050, compared to the 1990 levels (Climate Change Act 2008, as amended in 2019)
NG	See National Grid
NGESO	National Grid Electricity System Operator Limited
NGET	National Grid Electricity Transmission plc
NGG	National Grid Gas plc
NGN	Northern Gas Networks Limited
NIA	National Innovation Allowance
NIC	Network Innovation Competition
NoA	Notice of Appeal
<i>Northern Powergrid</i>	CMA's final determination of 25 September 2015 of Northern Powergrid's appeal of GEMA's ED1 price control
NPV	Net Present Value - the difference between the present (today's) value of cash inflows and the present value of cash outflows over a period of time
OBR	Office for Budget Responsibility
ODI	Output Delivery Incentive
Ofcom	The regulator and competition authority for the UK communications industries
Ofgem	The Office of Gas and Electricity Markets

OFTOs	Offshore Transmission Owners
Ofwat	The Water Services Regulation Authority
OE	Ongoing Efficiency
OLS	Ordinary Least Squares
ONS	Office for National Statistics
opex	Operating Expenditure
ORR	Office of the Rail Regulator
OT	Operational Technology
Oxera	Oxera Consulting LLP, economic advisers to SSEN-T and WWU
PAYG	Pay as You Go
PCD	Price Control Deliverable
PCFH	Price Control Financial Handbook
PCFI	Price Control Financial Instruments
PCFM	Price Control Financial Model
PD	CMA's provisional determination dated 11 August 2021
PE	Polyethylene
PNN	Pennon Group plc
Policy Decision	GEMA , 2020, <i>Decision on re reallocation of TNUoS risk</i> , 9 July 2020
PR19	The price control in place for the water sector between 2020 and 2025
PRE	Public Reported Escape of gas
PRMD	PCD Reporting Requirements and Methodology Document
PSUP	Physical Security Upgrade Programme

PwC	PricewaterhouseCoopers
RAR	Regulatory Allowed Return; WACC adjusted for any expectation for outperformance
RAV	Regulatory Asset Value (also known as the Regulated Asset Base or the Regulatory Capital Value); the value ascribed to the capital employed in a licensee's regulated business
RCF	Revolving Credit Facility; a flexible lending arrangement that allows business to draw down and repay debt as required – akin to an overdraft facility in personal banking
RCV	Regulatory Capital Value; the water sector's equivalent to RAV
RER	Regulatory Expected Return
repex	Replacement Expenditure
Reply/ies	Appellants' replies dated 10 May 2021 to GEMA's Response to the NoAs
Response	GEMA's response dated 23 April 2021 to the NoAs
RFI	Request for Information
RFPR	Regulatory Financial Performance Reporting
RFPR Decision	RIIO Regulatory Financial Performance Reporting – Regulatory Instructions and Guidance (30 April 2019)
RFR	Risk Free Rate
RIGs	Regulatory Instructions and Guidance; a long-established regulatory reporting mechanism for network operators
RIIO-1	GEMA's first RIIO price control, which ran from 1 April 2013 to 31 March 2021 for the gas transmission and distribution networks as well as the electricity transmission networks
RIIO-2	GEMA's second RIIO price control, which sets the revenue that the energy companies will be entitled to collect from their customers in respect of their regulated activities over the period 1 April 2021 to 31 March 2026. See also FD

RIIO-ED1	The RIIO-1 price control as applied to electricity DNOs
RIIO-ED2	The Decision as applied to electricity DNOs
RIIO-GD1	The RIIO-1 price control as applied to GDNs (also used to refer to the RIIO-1 price control period)
RIIO-GD2	The Decision as applied to GDNs
RIIO-GT2	The Decision as applied to the gas transmission network operator
RIIO-T1	The RIIO-1 price control as applied to TOs
RIIO-T2	The Decision as applied to TOs
RMA	Retail Margin Adjustment
RoRE	Return on Regulatory Equity
RPE	Real Price Effect
RPI	Retail Price Index; an inflation measure
SARA	Shrinkage Allowance Revenue Adjustment
SGB	Smart Grid Benefits
SGN	Southern Gas Networks plc and Scotland Gas Networks plc
SHET	See SSEN-T
SHE-T	See SSEN-T
SLC	Standard Licence Condition
SLMP	Statutory Licence Modification Procedure
SONI	CMA's final determination of 10 November 2017 of <i>SONI Limited v Northern Ireland Authority for Utility Regulation</i>
SONIA	Sterling Overnight Index Average - the average of the interest rates that banks pay to borrow sterling overnight from other financial institutions and other institutional investors
SpC	Special Condition

SPT	SP Transmission plc
SSC	Standard Special Condition
SSEN-T	Scottish Hydro Electric Transmission plc (trading as SSEN Transmission)
SSMC	Sector Specific Methodology Consultation
SSMD	Sector Specific Methodology Decision
SVT	Severn Trent
Swap	A derivative contract through which two parties exchange the cash flows or liabilities from two different financial instruments
TCR	Targeted Charging Review (of charging framework for network charges)
TFP	Total Factor Productivity
TMR	Total Market Return
TNUoS	Transmission Network Use of System (as in TNUoS charges)
TO	Transmission Owners
totex	Total Expenditure
UKRN Report	UK Regulators Network report on how to set cost of capital for regulated companies (2018)
UM	Uncertainty Mechanisms
UU	United Utilities
VA	Value Added
WACC	Weighted Average Cost of Capital; costs of equity and debt weighted by respective weight of equity and debt within the capital structure
WBS	Whole business securitisation

WCF	Working Capital Facility; normally takes the form of a RCF from a bank or other lender. The role of a WCF is to provide financing for everyday business operations and help businesses to avoid the need to keep large cash deposits on hand at all times
WIA91	Water Industry Act 1991
WPD	Western Power Distribution
WWU	Wales & West Utilities Limited