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31 January 2022

By email to: licenceappealsproject@cma.gov.uk

Dear Gavin,

CMA open letter on licence modification appeal rules and guidance

Centrica welcomes the opportunity to respond to your call for views on the new rules and guidance that the CMA should adopt for the new appeals functions, and whether there should be any changes to the rules and guidance in the other sectors where the CMA follows a similar process. This response provides our views on the existing rules and guidance on energy licence modification appeals¹ specifically.

Overall, we consider that the existing rules and guidance work well. However we would like to make the following observations and suggestions, which may be taken into account as a matter of the CMA's broad discretionary appeal management powers. Our views are made in the interests of facilitating and furthering the objective of managing appeals in a fair, expeditious and proportionate manner.

Interveners

Where the CMA has granted permission to appeal, the CMA may grant permission to intervene to a person materially interested in the outcome of the appeal, in accordance with Rule 10². The application for permission to intervene must be made within 15 working days from the day after the CMA publishes its decision to grant permission to allow the appeal. This presents challenges for potential interveners as although they will have access to a non-sensitive version of the application for permission to appeal, they may likely not have access to Gas and Electricity Markets Authority's ('the Authority') responses where provided. For example, under the administrative timetable for the RIIO-2 Energy Licence Modification Appeal³, the CMA granted

¹ As set out in the energy licence modification appeals rules: CMA70, and energy licence modification appeals guide for participants: CMA71, which apply in licence modification appeals made to the CMA under any of the Gas Act 1986, the Electricity Act 1989, the Electricity (Northern Ireland) Order 1992, or the Gas (Northern Ireland) Order 1996.

² Rule 10 of the Energy Licence Modification Appeals: Competition and Markets Authority Rules (CMA70)

³ [Energy Licence Modification Appeals 2021 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/energy-licence-modification-appeals-2021)

permission to appeal on 31 March 2021, the deadline for an application to intervene was therefore 23 April which was also the deadline for the Authority's response.

Interveners perform an important role in assisting the CMA to determine an appeal, and it is important therefore that they are best able to do so by having appropriately early access to information that may assist third parties to better understand the issue in the round and enable them to submit evidence. A better understanding of the matters set out in the Authority's response would better enable an intervener to assist the CMA in focusing the scope of the appeal. Therefore, in our view, it would be better if interveners could submit a full application to intervene after they have had the opportunity to review the Authority's response.

Further, we note that the CMA's guidance states that it will look for a high degree of cooperation from participants⁴. However, Centrica also believes that the CMA should set an expectation that the Authority will share relevant non-sensitive material with interested third parties as early as possible, which would also aid transparency.

Hearings

The practices adopted by the CMA in the conduct of regulatory appeals during the onset of COVID-19 should be retained where they assist fair and expeditious case management. In our view this includes that hearings be held virtually where appropriate, including dealing with procedural questions and clarifications, and service and sharing of documentation by electronic means where appropriate.

We are happy to contribute to any further consultation or engagement on the licence modification appeal rules and guidance should this be helpful to the CMA.

Yours sincerely,

Julie Uys
Associate General Counsel British Gas Services and Regulatory

⁴ Para 1.5, Energy licence modification appeals guide for participants: CMA71
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