

BEFORE THE COMPETITION AND MARKETS AUTHORITY

AN APPEAL UNDER SECTION 173 ENERGY ACT 2004

BETWEEN:

(1) SSE GENERATION LIMITED

(2) THE ENTITIES LISTED IN THE SCHEDULE TO THE NOTICE OF APPEAL

Appellants

- and -

GAS AND ELECTRICITY MARKETS AUTHORITY

Respondent

- supported by –

NATIONAL GRID ELECTRICITY SYSTEM OPERATOR LIMITED

- and -

CENTRICA PLC AND BRITISH GAS TRADING LIMITED

Interveners

ORDER

UPON reading the Notice of Appeal from SSE Generation Limited and the Entities listed in the Schedule to the Notice of Appeal (the Appellants) against the decisions of the Gas and Electricity Markets Authority (GEMA) dated 17 December 2020 to approve Connection and Use of System Code Modification Proposals CMP317/327 and CMP339

AND UPON granting the Appellants on 21 January 2021 permission to appeal

AND UPON granting National Grid Electricity System Operator Limited and Centrica plc and British Gas Trading Limited on 10 February 2021 permission to intervene in the appeal

AND UPON extending the period for determination of the appeal by ten working days, pursuant to paragraph 6(2) of Schedule 22 to the Energy Act 2004

AND UPON considering the grounds of appeal and the representations and submissions of the parties

AND UPON considering the Court of Appeal's judgment in *R (on the application of SSE Generation Limited & Others) v The Competition and Markets Authority and The Gas and Electricity Markets Authority & Others* [2022] EWCA Civ 1472 (the **Court of Appeal Judgment**)

AND UPON being directed by Order of the Court of Appeal dated 8 November 2022 to make certain decisions with consequential relief

IT IS ORDERED THAT

(1) The appeal is allowed against the Respondent's decisions dated 17 December 2020 approving Connection and Use of System Code proposals CMP317/327 and CMP339 on Ground 3(i) in the appeal (as defined in paragraphs 1.5 and 4.94(c) of the decision of the CMA by its judicial panel in 'SSE Code Modifications Appeal 2021', dated 30 March 2021).

(2) The Respondent's decision dated 17 December 2020 in CMP 317/327 is quashed in so far as it purported to exclude charges relating to the costs of congestion management (as referred to in the Court of Appeal Judgment) from the calculation of average annual transmission charges under Regulation 838/2010, and that matter is remitted to the Respondent for reconsideration and determination.

(3) Costs be reserved

Kirstin Baker (Chair)
12 December 2022

Colleen Keck

Frances McLeman