

**UTILITA ENERGY LIMITED ('Utilita')**

**Appellant**

and

**GAS AND ELECTRICITY MARKETS AUTHORITY ('GEMA')**

**Respondent**

**EDF ENERGY CUSTOMERS LIMITED**

**Intervener**

---

**PERMISSION TO INTERVENE**

---

1. On 21 September 2023, the CMA granted the Appellant permission to appeal, pursuant to section 11C of the Electricity Act 1989 ('**EA 89**') and section 23B of the Gas Act 1986 ('**GA86**'), against the decision of GEMA, dated 26 July 2023 to, among other things, modify licences to introduce a common minimum capital requirement for gas and electricity suppliers<sup>1</sup> (the '**Decision**').
2. On 12 October 2023, EDF Energy Customers Limited ('**EDFE**') applied for permission to intervene in the appeal in support of GEMA and in opposition to the grounds of appeal ('**Grounds**') advanced by the Appellant in their notice of appeal ('**NoA**').

**Requirement for permission to intervene**

3. Under Rule 10.1 of the Competition and Markets Authority Rules for Energy Licence Modification Appeals<sup>2</sup> (the '**Rules**'), the CMA's permission is required to intervene.

---

<sup>1</sup> Ofgem's Decision on Strengthening Financial Resilience Minimum Capital Requirements and Ringfencing CCBs by Direction, 26 July 2023.

<sup>2</sup> Energy Licence Modification Appeals: Competition and Markets Authority Rules, 27 October 2022 (CMA70)

4. Under Rule 10.2, in considering whether to give permission to intervene, the CMA shall take account of all the circumstances including:
  - (a) whether the applicant is materially interested in the outcome of the appeal;
  - (b) whether the applicant's intervention in the appeal will assist the CMA to determine the appeal; and
  - (c) whether the nature and extent of the intervention sought is proportionate to the matters to be determined.

### **Decision on permission**

5. On 12 October 2023, the application by EDFE for permission to intervene in the appeal was received by the CMA within the period prescribed by Rule 10.3.<sup>3</sup>
6. As a licensed electricity supplier and gas supplier, EDFE would have been able to bring an appeal against the Decision under s11C(2)(b) EA89 and s23B(2)(b) GA86 as a person who holds a licence under section 6(1) EA89 and s7A GA86 whose interests are materially affected by the decision. The CMA therefore considers that EDFE is a business which is directly and materially impacted by the outcome of the appeals. Accordingly, the CMA is satisfied that EDFE has a material interest in the outcome of the appeals for the purposes of Rule 10.3(a).
7. The CMA notes that EDFE's application expresses opposition to a number of the arguments advanced by the Appellant in the NoA. However, having carefully considered the arguments and evidence set out in EDFE's application, the CMA considers that EDFE's intervention will assist the Group in determining Grounds 1 (*'The Authority erred in concluding that the Capital Target would further the objective it was intended to achieve.'*<sup>4</sup>) and 3 (*'The Capital Target (at any level, and certainly at the designated level) is unnecessary and disproportionate.'*<sup>5</sup>)

---

<sup>3</sup> Rule 10.3 provides that an application for permission to intervene must be made before the end of the period of 15 working days beginning with the first working day after the day on which the CMA's decision to grant permission to appeal is published on the CMA's website. That decision was published on 21 September 2023 in the present case.

<sup>4</sup> NoA, paragraph 8.1.

<sup>5</sup> NoA, paragraph 8.3.

of the NoA.

8. In the CMA's view, EDFE's proposed intervention, if limited in scope to Grounds 1 and 3 of the NoA, is proportionate to the matters to be determined.
9. Accordingly, taking all the relevant circumstances into account pursuant to Rule 10.3, the CMA grants EDFE permission to intervene in the appeal in support of GEMA in relation to Grounds 1 and 3 of the NoA only.

Richard Feasey

**Group Chair**

**19 October 2023**