

**BEFORE THE COMPETITION AND MARKETS AUTHORITY**

**CADENT GAS LIMITED**

**Appellant**

**and**

**GAS AND ELECTRICITY MARKETS AUTHORITY**

**Respondent**

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**NOTICE OF APPEAL  
ENERGY LICENCE MODIFICATION  
RIIO-GD3 PRICE CONTROL**

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154863.00537/BRSH/TOFO/ LUCX/EAWO

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## SECTION 1: INTRODUCTION TO THE APPEAL

### A. THE APPELLANT'S DETAILS

1. Cadent Gas Limited, (“**Cadent**” or the “**Appellant**”) owns, manages and operates four of the eight regional gas distribution networks in Great Britain (“**Gas Distribution Networks** or **GDNs**”) and provides an essential service transporting gas to c. 11 million homes, schools, hospitals, offices and businesses.<sup>1</sup>
2. Cadent holds a gas transporter licence under section 7(2) of the Gas Act 1986 (“**GA 1986**”)<sup>2</sup> (the “**Licence**”) to transport gas via distribution networks in the following geographical areas, a map of which is provided at **Appendix 3**: (i) North London, (ii) Eastern, (iii) North-West and (iv) the West Midlands.
3. This appeal concerns the determinations made by the Gas and Electricity Markets Authority (“**GEMA**”)<sup>3</sup> in respect of Cadent as part of the RIIO-GD3 price control process. This process determines the revenue to which gas distributors, including Cadent, are entitled over the RIIO-3 period (which runs from 1 April 2026 to 31 March 2031) and the obligations they must comply with in connection with this Allowed Revenue.

### B. REQUEST FOR PERMISSION TO APPEAL

4. Cadent seeks permission under sections 23B(1) and (3) and paragraph 1 of Schedule 4A GA 1986 to bring an appeal against the decision of GEMA to modify conditions of Cadent’s Licence with effect from 1 April 2026 (the “**Decision**”). GEMA made the Decision under section 23(1) GA 1986. The Decision was published on 3 February 2026.<sup>4</sup>
5. The Decision and the corresponding changes to Cadent’s Licence set the RIIO-GD3 price control for Cadent, one aspect of which is challenged in this Notice of Appeal.
6. Cadent is a “*relevant licence holder*” within the meaning of section 23(10)(b) GA 1986 and therefore has standing to bring this appeal under section 23B(2) GA 1986.

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<sup>1</sup> Cadent Gas Limited, Annual Report and Accounts 2024/25 (23 June 2025), page 4 {**CGL1/B/2**}.

<sup>2</sup> As exhibited at {**CGL1/D/1**}.

<sup>3</sup> In this Notice of Appeal, references to GEMA include references to the Office of Gas and Electricity Markets (Ofgem) or its staff in their capacity as delegates of GEMA.

<sup>4</sup> RIIO-3 Licence Modification Decision {**CGL1/A/16**}.

## C. CONTEXT TO THIS APPEAL

7. Cadent is the UK's largest gas distribution company, and, as above, provides a critical service by transporting gas to c.11 million UK homes and businesses. During the RIIO-2 price control period, Cadent has finalised a transformational programme to deliver a step-change in its cost and service performance and close its efficiency gap compared with the other GDNs. Cadent considers this programme and its continued ambition for further improvement to have delivered for its customers. Cadent is the only company expected to meet all of GEMA's outputs for the RIIO-2 period and GEMA's Final Determinations for RIIO-GD3 ("FD") confirm that Cadent has established its Eastern and West Midlands networks as the frontier cost performers in the sector for the RIIO-3 price control period.<sup>5</sup>
8. Cadent put forward an efficient and challenging RIIO-3 Business Plan. This plan included an ambitious 0.5% per annum Ongoing Efficiency ("OE") challenge, based on expert economic analysis commissioned by all GDNs, supplemented with further consideration of a range of qualitative factors. This appeal relates to GEMA's decision to set the OE challenge at 1% per annum.
9. The RIIO price control framework is designed on the basis that companies are sufficiently funded to deliver required outputs for customers and so that shareholders have a reasonable opportunity to earn the cost of equity that GEMA has determined to be a fair return (known as investors having a "fair bet"). Unfunded efficient expenditure flows directly to the bottom line and reduces the return investors can earn, below that which GEMA has determined to be a fair return on equity. This is not in customers' interests as it reduces investor confidence in the UK regulatory framework and may lead to increased costs to end customers in the longer term. Cadent therefore seeks permission to appeal the Decision on this matter, so that it receives sufficient expenditure allowances to deliver for its existing and future customers.

## D. SCOPE OF THE APPEAL

10. Cadent is appealing GEMA's decision to set Cadent's OE challenge at 1% for RIIO-3.<sup>6</sup> As a result of this decision, Cadent's *ex-ante* totex allowances have been set at a level that is insufficient to fund the outputs that Cadent is required to deliver during RIIO-GD3.

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<sup>5</sup> FD, Cadent Annex, paragraph 3.6 {CGL1/A/11}.

<sup>6</sup> The substance and rationale for GEMA's decision on the OE assumption is set out in the FD, Overview, paragraph 8.20-8.55 {CGL1/A/15}. Ofgem's decision is effected in the Decision through the totex allowances set out in the Price Control Financial Model and via the licence conditions that reference those allowances, and where licence conditions contain figures derived from those allowances (e.g., mechanistic PCD unit rates and Volume Driver unit rates). The totex allowances, and impacted figures derived from those allowances, are primarily set out in Chapter 3

11. On this basis, Cadent considers that the Decision is wrong. It has a material impact on Cadent and raises important points of principle and regulatory precedent.
12. Cadent’s ground of appeal is described in full in Section 3 below.

## **E. KEY DOCUMENTS**

13. In addition to this Notice of Appeal, Cadent relies on the following written evidence by way of evidence supporting its appeal:
  - (a) A witness statement of fact from Richard Court, Director of Regulatory Strategy at Cadent, dated 2 March 2026 (“**1<sup>st</sup> Court**”); and
  - (b) An expert witness statement from Richard Druce, Director at NERA Economic Consulting (“**NERA**”), dated 27 February 2026 – to which an expert report prepared by NERA is exhibited as Exhibit RD1 (“**NERA Report**”).
14. GEMA’s reasoning for the Decision is contained primarily in the following documents, all of which were published on 4 December 2025 (and updated on 13 February 2026 to reflect the outcome of the Errata Process<sup>7</sup>):
  - (a) RIIO-3 Final Determinations: Overview Document {**CGL1/A/15**};
  - (b) RIIO-3 Final Determinations: Gas Distribution Annex {**CGL1/A/13**};
  - (c) RIIO-3 Final Determinations: Cadent Annex {**CGL1/A/11**}; and
  - (d) RIIO-3 Business Plan Financial Model: Gas Distribution {**CGL1/A/10**}.
15. Together with certain other supporting materials,<sup>8</sup> the documents listed above comprised GEMA’s Final Determinations. The Overview Document and the Gas Distribution Annex explain the rationale for GEMA’s decisions in respect of OE.
16. Cadent has also included other relevant documents to which the CMA should have regard which are set out in the bundle CGL1. The materials are divided into relevant volumes, and are tabbed within those volumes. A document index is provided as part of that bundle.

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(Totex Allowance adjustments) of Cadent’s Licence. See for example, Appendix 1 to Special Condition 3.1 {**CGL1/B/12**}.

<sup>7</sup> GEMA has accepted that there are errors in the cost models that underlie its Decision in respect of totex allowances. GEMA confirmed in a document dated 23 February 2026, titled “RIIO-GD3 snagging process outcomes”, the revised totex allowances following the correction of errors and committed to Cadent (and other licence holders) that it will launch a statutory consultation later this year to amend Cadent’s Licence (and other licences) by revising figures which are based on the erroneous cost models {**CGL1/C/11**}.

<sup>8</sup> FD: Finance Annex {**CGL1/A/12**} and FD: Impact Assessment {**CGL1/A/14**}.

References are made in this Notice of Appeal, witness statements and expert reports to the relevant volume and tab within Exhibit CGL1 using the convention {CGL1/Volume/Tab}.

17. All of the matters on which Cadent relies were, in Cadent's belief, matters that GEMA was entitled to have (and could have had) regard to in relation to the Decision.
18. Cadent has engaged with GEMA throughout the price control consultation process and has consistently raised concerns in written submissions and during in person meetings as to GEMA's proposed target rate of OE.<sup>9</sup>
19. Cadent and GEMA have exchanged pre-action correspondence, which was copied to the CMA, and is reproduced at {CGL1/B/9} and {CGL1/B/10}.

#### **F. CONTACT DETAILS**

20. The registered address of Cadent Gas Limited (company number 10080864) is:

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<sup>9</sup> For example, Cadent engaged on these topics in writing in the Cadent DD Response and via the CAWG and in bilateral meetings.

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## SECTION 2: KEY LEGAL AND REGULATORY PRINCIPLES RELEVANT TO THIS APPEAL

### A. LEGAL FRAMEWORK FOR THIS APPEAL

22. The CMA will be familiar with the legal framework for licence modification appeals from prior appeal decisions, including the appeals brought in respect of the RIIO-GD2 price control.<sup>10</sup> Since determining those appeals, the judgment of the High Court in *R (on the application of Wales & West Utilities Ltd) v Competition and Markets Authority*<sup>11</sup> (the “**WWU Judgment**”) has provided some clarification in relation to the standard of review to be adopted by the CMA when determining a licence modification appeal under GA 1986.
23. This section describes the statutory grounds on which the CMA may allow a licence modification appeal and, with reference to those grounds and duties which are directly relevant to this appeal, it sets out:
- (a) the scope of the duties to which GEMA (and the CMA in determining this appeal) must have regard in performing its primary and secondary duties; and
  - (b) the implications of the WWU Judgment on the CMA’s approach to this appeal.

#### **Legal test on appeal**

24. Section 23D(4) GA 1986 provides for the CMA to review an appeal on the merits in the following terms:

*“The CMA may allow the appeal only to the extent that it is satisfied that the decision appealed against was wrong on one or more of the following grounds—*

- (a) that the Authority failed properly to have regard to any matter mentioned in subsection (2);*
- (b) that the Authority failed to give the appropriate weight to any matter mentioned in subsection (2);*
- (c) that the decision was based, wholly or partly, on an error of fact;*
- (d) that the modifications fail to achieve, in whole or in part, the effect stated by the Authority by virtue of section 23(7)(b);*
- (e) that the decision was wrong in law.”* (the “**Statutory Grounds**”)

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<sup>10</sup> In its licence modification appeal brought in respect of the RIIO-GD2 price control, Cadent explained in Appendix 4 to its Notice of Appeal the relevant legal framework and summarised guidance on the operation of the statutory framework. A copy of this Appendix is provided in {CGL1/B/1}.

<sup>11</sup> [2026] EWHC 99, provided in {CGL1/D/10}.

25. So far as relevant to the appeal, these Statutory Grounds are briefly considered in further detail below.

**Section 23D(4)(a) and (b) GA 1986: GEMA failed properly to have regard to and to give appropriate weight to any matter mentioned in subsection 23D(2)**

26. Section 23D(2) GA 1986 provides that the matters to which GEMA must have regard, and to which it must give appropriate weight, are GEMA's carrying out of its principal objective under section 4AA and the performance of its duties under section 4AA, 4AB and 4A GA 1986. The main obligations imposed by these sections in so far as they relate to this appeal are considered in paragraphs 27 to 51 below.

27. Regarding the standard of review to be adopted by the CMA when assessing a decision against this Statutory Ground, the WWU Judgment confirms that the CMA must "*scrutinise GEMA's approach to matters that involve an element of judgment or evaluation*" to make its own assessment as to what is "*proper*" regard and "*appropriate*" weight and therefore whether there is an error in the approach chosen by GEMA. This will depend on the decision in question and the facts and circumstances.<sup>12</sup>

28. An appeal to the CMA does not involve a complete rehearing, but the CMA is required to consider whether the Decision is "wrong" on the basis of the specific errors alleged by the appellant(s).<sup>13</sup> Sections 23D(4)(a) and (b) involve consideration of whether GEMA got it "wrong" on matters of evaluation or judgment and are not limited to GEMA making an *irrational* evaluation or judgment.<sup>14</sup> Further, as the CMA has previously held, GEMA may be wrong if its decision "*is based on unreliable data or fails to take account of the relevant evidence*".<sup>15</sup>

29. To consider the adequacy of GEMA's approach, the CMA should consider its inherent merits, including by comparing it to any reasonable alternatives advanced by the appellant(s). In making its assessment, the CMA must have regard to the same extent as is required of GEMA to the matters to which GEMA must have regard under sections 4AA, 4AB and 4A GA 1986.<sup>16</sup> Where, having regard to those matters, the CMA concludes that an alternative is "materially better" than GEMA's approach, the relevant Statutory Ground will be established.

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<sup>12</sup> WWU Judgment, paragraphs 145-148 {CGL1/D/10}.

<sup>13</sup> WWU Judgment, paragraphs 140-141 {CGL1/D/10}.

<sup>14</sup> WWU Judgment, paragraph 149 {CGL1/D/10}.

<sup>15</sup> WWU Judgment, paragraph 25, citing paragraph 3.47 of the CMA's decision {CGL1/D/10}.

<sup>16</sup> WWU Judgment, paragraph 151 {CGL1/D/10}.

30. This was the test set out in the WWU Judgment. It was established by way of correction of the CMA's approach, which was to adopt a higher threshold of "clearly superior". The relevant passage of the WWU Judgment is set out in full below, with emphasis added:

*"154. The test that the CMA has adopted, and which is the subject of the challenge brought by WWU and supported by SSEN-T, is stated at paragraph 3.43 of the final determination:*

our starting point will be to consider the adequacy of GEMA's chosen approach rather than considering which approach we ourselves might have chosen had we been in GEMA's position. However, we agree that, in considering whether GEMA's chosen approach discloses an error, we will consider its inherent merits including by comparing its merits with those of any reasonable alternatives advanced by the appellants. If, out of the alternatives available, we conclude that some alternatives clearly had greater merit than the solution chosen by GEMA, then we are more likely to be persuaded that GEMA has erred. On the other hand, where the alternative options each have competing pros and cons, and none is clearly superior, it will be more difficult to persuade us that GEMA has erred.

*155. I consider that the first part of this test is a correct statement of the CMA's powers. The statutory scheme does not require the CMA to start from scratch, adopting its own approach and then comparing the merits of that approach with that of GEMA. This respects the principle that GEMA is the primary decision-maker.*

*156. I consider, however, that the second part of the test – the threshold for evaluating GEMA's approach with that of any reasonable alternatives advanced by the appellants – runs the risk of affording too much deference to GEMA. The language of "clearly superior" calls for the alternative approach to be much better and not just better than the one adopted by GEMA if it is to persuade the CMA to intervene. In my judgment, that puts the matter too high.*

*157. I appreciate that the way in which the matter is put – that forensically an appellant will have a better chance of succeeding if it can show that its approach is "clearly superior" – is somewhat nuanced, but there is a real risk that this language will be regarded by a putative appellant as the hurdle that it must jump over, and will crystallise into the test that will actually be applied by the CMA. Moreover, the way in which the matter is put indicates that anything less than a "clearly superior" approach will have no real prospect of persuading the CMA that it should be adopted as compared to GEMA's approach.*

*158. In my judgment, what is required is that the alternative approach is "materially better than GEMA's approach: that is, the alternative approach is one which, weighing up the pros and cons of the different approaches, offers something more than GEMA's approach. That is all that is required for the CMA to adjudge that GEMA got it "wrong".*

159. *If, however, GEMA’s approach is equally good to the other approaches then it should be upheld by the CMA, even if the CMA would have preferred one of the other approaches.*”<sup>17</sup>

31. As is evident from the excerpt above, the court has clearly decided that the threshold at which GEMA’s decision will be wrong under sections 23D(4)(a) and (b) is lower than the CMA had previously determined. In considering whether GEMA’s Decision was wrong under sections 23D(4)(a) or (b) in this appeal, the CMA should apply the “*materially better*” standard confirmed in the WWU Judgment.

### **(1) The Principal Objective**

32. Section 4AA(1) GA 1986 sets out the principal objective of GEMA (the “**Principal Objective**”). It states that:

*“The principal objective of [GEMA] in carrying out [its] functions under this Part is to protect the interests of existing and future consumers in relation to gas conveyed through pipes” [emphasis added].*

33. Section 4AA(1A) GA 1986 clarifies that the “*interests of existing and future customers are their interests taken as a whole, including—*

(a) *their interests in the reduction of gas-supply emissions of targeted greenhouse gases;*

(b) *their interests in the security of the supply of gas to them; [...]*”.

34. Section 4AA(1B) GA 1986 requires that GEMA “*[...] shall carry out [its] functions under this [Part I] in the manner which [it] considers is best calculated to further the [P]rincipal [O]bjective, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the shipping, transportation or supply of gas conveyed through pipes*” [emphasis added].

35. GA 1986 goes on to prescribe a number of matters to which GEMA must have regard in performing this duty. The Government described the substance of a number of these matters as necessary aspects of the new “primary” or “consumer” duty in the green paper that led to the introduction of the Principal Objective:<sup>18</sup>

*“[...] Given the essential nature of the goods and services supplied by these industries, it is important that the effect of the new consumer duty should not be to lead regulators to tighten price controls to the point that investment and the continuity of supply by the industry is put at risk. The duty should therefore make clear that the interests of*

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<sup>17</sup> WWU Judgment, paragraphs 154-159 {CGL1/D/10}.

<sup>18</sup> A Fair Deal for Consumers: Modernising the Framework for Utility Regulation (25 March 1998), paragraph 3.7 {CGL1/C/1}.

*consumers should include their interests in quality, range of services, continuity and availability of supply as well as price, and their medium and longer term interests as well as their immediate or short term interests. In particular, we propose that the duty should make explicit the need to ensure that the regulated companies have sufficient finance to carry out their functions.”*

**(2) The need to secure that licence holders are able to finance their regulated activities**

36. In performing its duty to carry out its functions in the manner it considers is best calculated to further its Principal Objective, section 4AA(2)(b) requires GEMA to have regard to:

*“[...] the need to secure that licence holders are able to finance the activities which are the subject of obligations imposed by or under [Part I GA 1986 (among other legislative provisions)]” (the “Finance Duty”).*

37. Gas licences are granted under section 7(2) GA 1986 and modified under section 23 (which are each within Part 1 GA 1986). When setting price controls in GDNs’ licences, GEMA must therefore have regard to the need for licence holders to secure reasonable returns on their regulated capital.

38. The WWU Judgment clarifies that the Finance Duty requires GEMA to give some consideration to the ability of an individual licence holder to finance its activities – not just licence holders as a collective group.<sup>19</sup> The CMA should therefore allow this appeal if it is not satisfied that GEMA considered the impact of its Decision on Cadent’s financeability (albeit, the duty does not require GEMA to *ensure* that each individual licence holder *can* finance its activities).<sup>20</sup>

39. The Finance Duty is engaged in two ways in the present appeal:

- (a) First, it is engaged on the basis that aspects of the Decision that Cadent is appealing undermine confidence in the stability and fairness of the regulatory framework and thereby the confidence investors are able to place in energy network businesses. GEMA has itself consistently recognised the need to secure and maintain investor confidence through the price control. A number of relevant extracts from GEMA’s RIIO-3 publications are set out below by way of example:

*“We recognise that maintaining investor confidence and a low cost of finance overall will require consistent and proportionate regulation which evolves in a rational and predictable way. This means finding an appropriate balance of risk*

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<sup>19</sup> WWU Judgment, paragraph 161 {CGL1/D/10}.

<sup>20</sup> WWU Judgment, paragraph 170 {CGL1/D/10}.

*and reward in our price controls, and tackling directly any challenges to the investability or financeability of our network utilities.”<sup>21</sup>*

*“We set a financial framework, and associated policies and methodologies, for price controls that are broadly stable and predictable over time. This regulatory stability gives investors the confidence to continue to invest in the sector.”<sup>22</sup>*

*“Having a stable regulatory approach to determining the core funding for GDNs is also important in the context of the broader uncertainties that face the sector over the medium to long term”.<sup>23</sup>*

GEMA’s Decision infringes on these principles by setting *ex ante* allowances at a level that is insufficient to fund the investments that will be required during RIIO-GD3 to an extent that is very likely to erode investors’ expected returns. Specifically, GEMA’s decision to set an unreasonable OE assumption impacts on Cadent’s ability to deliver its required outputs without overspending its allowances and compromising its investors’ base rate of return.

- (b) Second, the Finance Duty is engaged on the basis that the setting of inadequate allowances leaves Cadent materially underfunded to carry out its distribution business in accordance with its regulatory obligations. This clearly does not align to GEMA’s own published principles for the RIIO price control framework:

*“The objective of cost assessment is to ensure that these allowances reflect an efficient level of costs that enables licensees to maintain a safe and reliable network and deliver an appropriate level of service.”<sup>24</sup>*

### **(3) Securing diversity and viability**

40. Section 4AA(5) GA 1986 provides that, subject to subsections 4AA(1B) and (2) GA 1986 and to section 132(2) Energy Act 2013<sup>25</sup> (GEMA’s duty to carry out functions in manner best calculated to further delivery of policy outcomes), GEMA shall carry out its functions under Part I GA 1986 in the manner which it considers “*is best calculated—*

[...]

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<sup>21</sup> SSMD: Overview, foreword, page 6 {CGL1/A/6}.

<sup>22</sup> SSMD: Overview, paragraph 1.44 {CGL1/A/6}.

<sup>23</sup> FD: GD Annex, paragraph 5.242 {CGL1/A/13}.

<sup>24</sup> FD: GD Annex, paragraph 5.1 {CGL1/A/13}.

<sup>25</sup> As exhibited at {CGL1/D/2}.

(c) *to secure a diverse and viable long-term energy supply*” (the “**Diversity and Viability Duty**”).

41. When faced with a range of possible approaches to an issue, GEMA must act in the manner “best calculated” to achieve the applicable duty. GEMA should not select an approach that is materially inferior to another available option.

#### **(4) Regulatory Best Practice**

42. Section 4AA(5A) GA 1986 requires that GEMA, in carrying out its functions under Part I GA 1986, must “*have regard to—*

(a) *the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and*

(b) *any other principles appearing to [GEMA] to represent the best regulatory practice*” (the “**Best Practice Duty**”).

43. The principles specified in Section 4AA(5A)(a) GA 1986 were originally devised by the Better Regulation Task Force. Guidance published by that task force<sup>26</sup> provides further colour on what these principles entail; the following are particularly relevant to this appeal:

(a) **Accountability:** “*Regulators must be able to justify decisions, and be subject to public scrutiny.*” This includes the requirement that “*regulators should clearly explain how and why final decisions have been reached*”;

(b) **Consistency:** “*Government rules and standards must be joined up and implemented fairly.*” This includes the requirement that “*regulation should be predictable in order to give stability and certainty to those being regulated*”; and

(c) **Targeted:** “*Regulation should be focused on the problem, and minimise side effects.*” This includes the need to “*avoid a scattergun approach*”.

44. The principles specified in section 4AA(5A)(b) GA 1986 are more general in nature. Further guidance as to the scope of the duty can be drawn from the Behaviours of Smarter Regulation which are discussed below, in the context of the Growth Duty.

45. The relevance of the Best Practice Duty to the present appeal is further outlined in Section 3 below.

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<sup>26</sup> Better Regulation Task Force, Principles of Good Regulation (2003) pages 4 to 6 {CGL1/C/2} Cf Section 21, Legislative and Regulatory Reform Act 2006 {CGL1/D/4}.

## (5) Growth Duty

46. Finally, pursuant to section 108 Deregulation Act 2015<sup>27</sup>, GEMA must have regard to the desirability of promoting economic growth in exercising its regulatory functions under GA 1986. The duty requires that when taking licence modification decisions (among other relevant functions) GEMA must consider the importance of the promotion of economic growth and ensure that any regulatory action is taken only where it is necessary and proportionate (the “**Growth Duty**”).
47. GEMA has in its price control publications stated that “[o]ur primary contribution to economic growth is through regulation that minimises energy costs, keeps supply resilient and energy markets functioning effectively.”<sup>28</sup>
48. Statutory guidance on the Growth Duty<sup>29</sup> sets out a number of indicators that would support the conclusion that a regulator is setting regulatory policy in accordance with the Growth Duty, both by making decisions informed by “Drivers of Economic Growth” in their sectors and more broadly by exhibiting “Behaviours of Smarter Regulation” that create an environment that fosters the business confidence needed for economic growth. The indicators of regulatory actions informed by Drivers of Economic Growth are stated to include:<sup>30</sup>
- (a) “Removing regulatory barriers to investments and the building of infrastructure”;
  - and
  - (b) “Reducing regulatory complexity, e.g. in price reviews for economic regulators to encourage greater investment”.
49. Among the Behaviours of Smarter Regulation is the requirement to ensure consistent, transparent and accountable decision-making, indicators of which are stated to include:<sup>31</sup>
- (a) “The regulator explains their approach to promoting economic growth, including in relation to promoting and supporting business innovation, and setting out what businesses and others can expect from them in relation to the Growth Duty.”
  - (b) “Clear and consistent overall approach to regulating and intervention that is understood by stakeholders”;

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<sup>27</sup> As exhibited at {CGL1/D/3}.

<sup>28</sup> SSMD: Overview, paragraph 2.5 {CGL1/A/6}.

<sup>29</sup> Growth Duty: Statutory Guidance – Refresh (21 May 2024) {CGL1/D/8}.

<sup>30</sup> Ibid., page 14.

<sup>31</sup> Ibid., page 34.

- (c) *“Rationale for changes are clearly and timely communicated when rapid changes have occurred”*; and
  - (d) *“A stable environment for investment and stakeholders that is reflected in plans and regulation”*.
50. The role of regulators in driving economic growth and investment has been further emphasised in the Government’s “Smarter Regulation” workstream. For example, a 2023 consultation paper provides useful guidance on the scope of the Growth Duty, by:
- (a) noting that *“regulators play a core role in determining how much investment takes place and where it is allocated. For example, through price reviews where Ofwat and Ofgem approve and reject prospective investments, as well as setting the parameters through which investors can receive returns.”*<sup>32</sup>
  - (b) explaining how *“a more certain and transparent decision-making process [...] can improve the risk-reward ratio through reducing the risk component”*<sup>33</sup> for investors.
  - (c) underscoring the importance of ensuring that *“the regulatory environment continues to incentivise the investment needed to deliver growth and, therefore, it is important that regulators minimise complexity [in price control reviews] where possible and practical.”*<sup>34</sup>
51. The Growth Duty is engaged in the present appeal because by failing to set a price control under which incentives focus on realistic efficiency, GEMA is (i) eroding confidence in the predictability of the regulatory regime; and (ii) undermining incentives to invest in Cadent. These actions have created a regulatory barrier to investment which conflicts with GEMA’s Growth Duty.

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<sup>32</sup> Department for Business & Trade, Smarter Regulation: Strengthening the economic regulation of the energy, water and telecoms sectors (November 2023), page 16 {CGL1/C/5}.

<sup>33</sup> Department for Business & Trade, Smarter Regulation: Strengthening the economic regulation of the energy, water and telecoms sectors (November 2023), page 16 {CGL1/C/5}.

<sup>34</sup> Department for Business & Trade, Smarter Regulation: Strengthening the economic regulation of the energy, water and telecoms sectors (November 2023), page 25 {CGL1/C/5}.

**Section 23D(4)(c) GA 1986: GEMA’s decision was based wholly, or partly, on an error of fact**

52. The WWU Judgment clarifies that the CMA must apply the test in *E v Secretary of State for the Home Department*<sup>35</sup> to determine whether GEMA has based its decision wholly or partly on an error of fact. GEMA’s decision will be “wrong” where:
- (a) There is a mistake as to an existing fact, including a mistake as to the availability of evidence on a particular matter;
  - (b) The fact or evidence was “established”, in the sense that it was uncontentious and objectively verifiable;
  - (c) The appellant (or their advisers) was not responsible for the mistake; and
  - (d) The mistake played a material (though not necessarily decisive) part in GEMA’s reasoning for its decision.<sup>36</sup>

**Section 23D(4)(e) GA 1986: GEMA’s decision was wrong in law**

53. This Statutory Ground of appeal will involve the CMA determining whether there has been an error in construction, or whether GEMA has reached a conclusion that was irrational: including whether GEMA reached a conclusion that was not open to it on the evidence.<sup>37</sup>

**B. OVERVIEW OF THE RIIO-GD3 FRAMEWORK AND CORE RIIO PRINCIPLES**

54. As the GDNs in Great Britain are natural monopolies, they are regulated by GEMA in the interests of consumers through the conditions GEMA imposes in the licences GDNs are required to hold.
55. A licence granted to a GDN by GEMA includes a “price control” under which GEMA sets the “Allowed Revenue” the GDN can earn via its network charges in order to recover the costs of constructing, operating, repairing and maintaining those networks, as well as the return to equity and debt investors.
56. RIIO-GD3 is the ex-ante price control for the GDNs for the five-year period 1 April 2026 to 31 March 2031. It forms part of GEMA's RIIO framework (Revenues = Incentives + Innovation + Outputs), and for this control period GEMA decided to proceed with a medium

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<sup>35</sup> WWU Judgment, paragraph 142 {CGL1/D/10} citing *E v Secretary of State for the Home Department* [2004] QB 1044, paragraph 66 {CGL1/D/9}.

<sup>36</sup> WWU Judgment, paragraph 143 {CGL1/D/10}.

<sup>37</sup> WWU Judgment, paragraph 144 {CGL1/D/10}.

term, steady-state settlement amid uncertainty about the long-term future of gas.<sup>38</sup> It is expected to be the last steady-state settlement for the GDNs.<sup>39</sup> RIIO-GD3's stated aims are to maintain safety and resilience, protect current and future consumers, and preserve investability while enabling adaptation to policy decisions on the future of gas. In substance, it represents an evolution of RIIO-GD2, retaining a fixed five-year control with in-period mechanisms to address uncertainty, and a finance framework calibrated to be "*transparent, stable and predictable*" to help "*attract continued investment into the sector and set fair returns for network companies and investors which, in turn, lowers costs to consumers*".<sup>40</sup>

57. RIIO-GD3, as with previous price controls, is built on a set of interlocking "building blocks":
- (a) Outputs, or what GDNs are expected to deliver for customers, are set in the form of licence obligations, price control deliverables, use-it-or-lose-it allowances and output delivery incentives.<sup>41</sup>
  - (b) Baseline totex and other allowances are set to meet the cost of delivering outputs through cost assessment, using normalisations, comparative benchmarking and technical assessment that seek to identify efficient costs.
  - (c) Uncertainty mechanisms are included to manage the balance of risk between consumers and network companies, including reopeners and volume drivers, and are designed to flex allowances within a price control period where there is uncertainty over need or scale of funding required when setting the price control *ex ante*.
58. Final determinations are reached through a staged and consultative process intended to ensure procedural fairness and robust evidential testing. Following a cross-sector framework decision, GEMA consults on sector methodologies and then issues its sector-specific methodology decision and business plan guidance.<sup>42</sup> Licensees submit business plans, data and models and GEMA undertakes a cost assessment, financeability testing based on notional capital structure, and a calibration of outputs, incentives and uncertainty mechanisms.<sup>43</sup> Draft determinations are published for consultation, after which GEMA

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<sup>38</sup> Decision – Open Letter on Future of Gas Price Controls (26 July 2023), paragraph 2.16 {CGL1/A/5}.

<sup>39</sup> FD: GD Annex, paragraph 2.5 {CGL1/A/13}.

<sup>40</sup> FD: Finance Annex, paragraph 1.4 {CGL1/A/12}.

<sup>41</sup> FD: GD Annex, paragraph 3.1 {CGL1/A/13}.

<sup>42</sup> FD: Overview, paragraphs 1.6-1.8 {CGL1/A/15}.

<sup>43</sup> FD: Overview, paragraph 1.8 {CGL1/A/15}.

issues final determinations and carries out statutory consultation on licence modifications.<sup>44</sup>  
The price control then takes effect from the start of the next price control period.<sup>45</sup>

59. The RIIO framework is designed to secure that, *ex ante*, an efficiently managed notional company should expect to earn a return commensurate with its risk, be financeable and investable, retaining access to debt markets and equity capital on reasonable terms, and face balanced incentives where outperformance is possible but not guaranteed.
60. The price control should provide the GDNs' investors with a fair opportunity to earn the defined base return on equity, which is ultimately in the best interests of consumers as it promotes investor confidence in the UK framework and avoids higher consumer costs in the long term. In practice, this requires GEMA to give GDNs a fair opportunity to recover their efficient costs, including a return equal to the weighted average cost of capital.

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<sup>44</sup> FD: Overview, paragraph 1.8 {CGL1/A/15}.

<sup>45</sup> FD: Overview, paragraph 1.8 {CGL1/A/15}.

### SECTION 3: THE ONGOING EFFICIENCY (OE) ERROR

61. GEMA erred in its decision to set Cadent’s OE challenge at 1% per annum for RIIO-3. As a result of this decision, Cadent’s *ex-ante* totex allowances have been set at a level that is insufficient to fund the outputs that Cadent is required to deliver during RIIO-GD3.
62. The most recent economic evidence clearly demonstrates that GEMA is not able to justify a 1% OE assumption. The reports prepared by Grant Thornton for GEMA indicate total factor productivity (“TFP”) growth of 0.1% over 2008-2019.<sup>46</sup> This is the most recent of the periods considered by Grant Thornton<sup>47</sup> and the most relevant to the RIIO-3 price control, as it fully reflects the well-recognised structural changes to the economy caused by the global financial crisis (“GFC”) in 2008. Within the ‘*broad feasible range of 0.1%-1.3%*’ that GEMA accepts as the starting point for determining OE,<sup>48</sup> the UK economy currently sits close to the 0.1% mark. Forward-looking independent evidence from the Office of Budget Responsibility (“OBR”) and Bank of England (“BoE”) suggests that, even though some recovery in productivity is forecast, average productivity estimates are between 0.07% and 0.51% for the period to which the OE assumption applies (2024/25-2030/31).<sup>49</sup>
63. In wrongly determining the OE assumption of 1%, GEMA made a series of errors, which are described as sub-grounds below:
- (a) GEMA erred in moving the **lower bound or ‘floor’ of the ‘plausible range’** up from 0.1% to 0.7%, thereby entirely disregarding the lower part of the ‘plausible range’ found by its own appointed experts;
  - (b) GEMA’s decision to set the OE assumption at 1% was inconsistent with, and/or failed to take account of, and/or failed to have sufficient regard to, the **slowdown in productivity growth since 2008** (for which the economic evidence is clear);
  - (c) GEMA’s decision to set the OE assumption at 1% was inconsistent with, and/or failed to take account of, and/or failed to have sufficient regard to, **independent productivity forecasts** evidencing that the OE assumption should fairly and realistically be set at a rate well below 1%;

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<sup>46</sup> Grant Thornton Second Report, paragraphs 3.21-3.24 and table 2 {CGL1/C/13}; NERA Report, paragraphs 24-25, table 3.1 and figure 3.1.

<sup>47</sup> Grant Thornton removed the years considered to be outliers associated with the COVID-19 pandemic (2020-2022) (Grant Thornton First Report, footnote 4 and page 18, section 3.5.1 {CGL1/C/10} and Grant Thornton Second Report, paragraphs 3.17-3.19 {CGL1/C/13}).

<sup>48</sup> FD: Overview, paragraph 8.23 {CGL1/A/15}.

<sup>49</sup> NERA Report, paragraphs 71-72 and table 3.2.

- (d) GEMA erred in assuming that **regulated network companies are insulated from wider productivity slowdowns in the UK economy**; and
  - (e) GEMA’s decision to pinpoint the OE assumption (within GEMA’s plausible range) at 1% was not reasonably open to it on its assessment of the **qualitative factors** cited in the FD.
64. Each of these errors, or any combination of them, is demonstrably wrong under section 23D(4) GA 1986 (such that the Statutory Grounds for this appeal are established). More particularly, GEMA erred in that:
- (a) It failed to have proper regard to, or give appropriate weight to, the factors in s4AA GA 1986 pursuant to section 23D(4) GA 1986. In particular, in setting the OE assumption at a level which was unsupported by the evidence, GEMA failed properly to have regard to its Principal Objective, Finance Duty, Growth Duty, Diversity and Viability Duty and Best Practice Duty. In so doing, GEMA adopted a flawed approach, when there was a materially better approach available to it;<sup>50</sup>
  - (b) Its decision was based on errors of fact (section 23D(4)(c) GA 1986); and/or
  - (c) It acted irrationally (and thereby was wrong in law) (section 23D(4)(e) GA 1986).

### **Background to GEMA’s approach**

65. In its FD, GEMA set out its approach and rationale for proposing an OE assumption of 1%. GEMA outlined that its economic adviser, Grant Thornton, had identified a ‘*broad feasible range of 0.1-1.3%*,’ based on quantitative analysis of historically observed productivity growth.<sup>51</sup> GEMA then narrowed this to a plausible range of 0.7-1.3% and selected the mid-point of this range (1%) as its OE assumption.<sup>52</sup> The same approach and rationale to the OE assumption had also been adopted by GEMA in its Draft Determinations published on 1 July 2025 (“**DD**”).<sup>53</sup>
66. GEMA started the RIIO-3 process from the position of testing the 1% OE challenge adopted in RIIO-2,<sup>54</sup> rather than considering the appropriate level of OE challenge for RIIO-3 from the evidence afresh:

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<sup>50</sup> WWU Judgment, paragraphs 149-159 {**CGL1/D/10**}.

<sup>51</sup> FD: Overview, paragraph 8.23 {**CGL1/A/15**}.

<sup>52</sup> FD: Overview, paragraph 8.23 {**CGL1/A/15**}.

<sup>53</sup> DD: Overview, paragraphs 8.24-8.36 {**CGL1/A/8**}.

<sup>54</sup> Following the CMA’s final determination on the RIIO-2 appeals, the OE challenge applied to opex was 1.05%, whilst the OE challenge applied to capex and repex was 1.15% to 0.95%, such that a 1% challenge was applied at a totex level. See CMA RIIO-2 Final Determination Order 2021, paragraph 12 {**CGL1/A/4**}.

- (a) In its Sector Specific Methodology Decision (published in July 2024), GEMA noted that it would “*consider whether the OE assumption of 1% per annum at the totex level implemented in RIIO-2 is still a reasonable starting point for RIIO-3*”.<sup>55</sup>
- (b) This approach filtered through into GEMA’s instructions to GEMA’s economic adviser, Grant Thornton, which stated that it was seeking to “*test whether GEMA’s initial starting point proposed for the OE target (of 1%, contained in its Sector Specific Methodology Decision (“SSMD”) and consistent with RIIO-2) is consistent with the range of evidence.*”<sup>56</sup>

67. In its FD, GEMA commits a series of clear errors that led it to ignore and/or clearly misevaluate the relevant evidence in favour of carrying the 1% OE assumption it applied in the RIIO-2 price control across into RIIO-3.

68. The remainder of this section follows the order of the five sub-grounds referred to at paragraphs 63(a) to (e) above.

**Sub-ground 1: Error in moving the lower bound of the plausible range up from 0.1% to 0.7%**

69. GEMA erred in moving the lower bound of the ‘plausible range’ up from 0.1% to 0.7%, thereby entirely disregarding the lower part of the ‘plausible range’ found by its own appointed experts.

70. As GEMA notes in its FD, on the basis of the quantitative assessment of backward-looking productivity data, Grant Thornton identified a ‘broad feasible range’ of 0.1% to 1.3%.<sup>57</sup>

71. However, GEMA then altered the range to a different so-called plausible range of 0.7% to 1.3%, on the principal basis that “*The lower bound of 0.7% represents the highest estimate submitted by one of the network companies in its business plan.*”<sup>58</sup> The lower bound estimate of 0.7% was obtained from the Business Plan of National Grid Electricity Transmission (“**NGET**”) submitted in December 2024 (“**NGET Business Plan**”).<sup>59</sup> GEMA considered that this should be “*...the minimum level of annual OE improvement all network companies*

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<sup>55</sup> SSMD: Overview, paragraph 9.31 {CGL1/A/6}.

<sup>56</sup> Grant Thornton First Report, page 3, section 1 and page 31, section 5.1 {CGL1/C/10}.

<sup>57</sup> FD: Overview, paragraph 8.23 {CGL1/A/15}.

<sup>58</sup> FD: Overview, paragraph 8.23 {CGL1/A/15}.

<sup>59</sup> NGET Business Plan, page 76 {CGL1/C/8}.

*should be able to achieve, given the implicit incentives on them to ‘aim down’ in proposing OE targets”<sup>60</sup> (emphasis added).*

72. Using the NGET Business Plan submission of 0.7% as a lower bound or floor for the plausible range of the OE assumption is plainly irrational and wrong.
73. **First**, GEMA ignores significant economic evidence from its own expert that OE could plausibly be lower than 0.7% and plausibly as low as 0.1%. Two of the three business cycles that Grant Thornton assessed (1970-1996 and 2008-2019) and the longest averaging time period (1970-2019) derived estimates of productivity growth of between 0.1% and 0.5%.<sup>61</sup>
74. **Second**, GEMA misconstrues NGET’s estimate of 0.7%. As outlined in the NGET Business Plan, NGET’s estimate of 0.7% was selected from the very top of the 0.1%-0.7% range derived from Frontier Economics’ benchmarking exercise of comparator sectors.<sup>62</sup> NGET referred to its OE estimate of 0.7% as a “challenging and bold” commitment that was significantly above recent productivity growth and the BoE’s forecast for TFP of 0.5%.<sup>63</sup> Therefore NGET’s estimate cannot reasonably be interpreted as a lower bound, but rather represents an estimate of the upper bound of the plausible range.<sup>64</sup>
75. **Third**, GEMA fails to have any, or any proper, regard to energy networks’ estimates and incorrectly assumes they necessarily all must have ‘aimed down’ to a minimum level:
  - (a) GEMA ignores entirely the range of estimates provided by all of the other energy networks, which estimate OE at between 0.1 % and 0.5%.<sup>65</sup> No explanation is given for favouring the range provided by NGET (other than that it is the highest) or for disregarding the other estimates.
  - (b) Cadent’s OE assumption of 0.5% ought to have been given appropriate weight. As noted by GEMA,<sup>66</sup> when drafting their Business Plans, the GDNs and NGT jointly commissioned an independent report from Economic Insight published on 13 May 2024 (the “**Economic Insight Report**”).<sup>67</sup> Mr Court explains that Cadent took the mid-point of the OE range identified by Economic Insight from its independent,

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<sup>60</sup> FD: Overview, paragraph 8.23 {CGL1/A/15}.

<sup>61</sup> Grant Thornton First Report, section 3.5.2, pages 19-21 {CGL1/C/10}; Grant Thornton Second Report, paragraphs 3.21-3.24 and table 2 {CGL1/A/13}.

<sup>62</sup> NGET Business Plan, page 76 {CGL1/C/8}.

<sup>63</sup> NGET Business Plan, page 76 {CGL1/C/8}.

<sup>64</sup> NERA Report, paragraphs 56-59.

<sup>65</sup> DD: Overview, paragraph 8.30 {CGL1/A/8}.

<sup>66</sup> DD: Overview, footnote 40 {CGL1/A/8}.

<sup>67</sup> The Economic Insight Report is exhibited at {CGL1/C/6}.

principles-based benchmarking exercise.<sup>68</sup> This was then cross-checked against a re-run of the methodology used by GEMA in RIIO-2 (with an updated dataset).<sup>69</sup> Cadent then considered a range of qualitative factors to determine whether there was evidence to justify an assumption towards the upper or lower end of the estimated range.<sup>70</sup> The approach taken by Cadent to estimating its OE assumption was outlined in its Business Plan.<sup>71</sup>

- (c) Cadent did not ‘aim down’. Mr Court’s evidence is that an OE assumption of 0.5% was a stretching estimate.<sup>72</sup> In fact, 0.5% was the mid-point of the plausible range considered by Cadent.<sup>73</sup> Indeed, Mr Court explains that Cadent selected the mid-point of the range despite evidence set out in its Business Plan indicating that the true level of OE potential could be lower than 0.5%.<sup>74</sup>
- (d) Furthermore, the analysis of GEMA’s own adviser, Grant Thornton, suggests that the Cadent Business Plan submission of 0.5% was ambitious, given that recent productivity growth in comparator sectors has been significantly lower than this, at only 0.1% for the period 2008-2019.<sup>75</sup>
- (e) GEMA is also wrong to suggest that the estimates provided by all of the other networks aimed down. SPT suggested a figure in the top half of their estimated range,<sup>76</sup> whilst NGT, NGN, SGN and WWU all selected the mid-point of their estimated range.<sup>77</sup> Only the lowest of the networks’ estimates, SHET’s estimate of 0.1%, was selected from the bottom of their estimated range.<sup>78</sup> Thus, even if it were reasonable for GEMA to derive a lower bound from the networks’ OE estimates, that should have been set only at the level of the energy network that might plausibly be considered “*the minimum level of annual OE improvement all network companies should be able to achieve*”<sup>79</sup> – i.e. 0.1%.

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<sup>68</sup> 1st Court ¶¶ 37-38.

<sup>69</sup> 1st Court ¶ 38.

<sup>70</sup> 1st Court ¶¶ 39-40.

<sup>71</sup> Cadent Business Plan, Appendix 3, pages 85 to 90, sections 6.1.1 and 6.1.2 {CGL1/B/4}.

<sup>72</sup> 1st Court ¶ 41.

<sup>73</sup> Cadent Business Plan, Appendix 3, page 90-91, section 6.1.3, {CGL1/B/4}.

<sup>74</sup> 1st Court ¶ 41.

<sup>75</sup> NERA Report, paragraph 35, table 3.1 and figure 3.1.

<sup>76</sup> 0.4% within a range of 0.0-0.5% (SPT Business Plan, page 82 {CGL1/C/7}).

<sup>77</sup> Each of these companies proposed an OE assumption of 0.5%, the mid-point of Economic Insight’s range of 0.2-0.8% (Economic Insight Report, section 1C, page 13 {CGL1/C/6}).

<sup>78</sup> 0.2% to be applied only to business-as-usual cost areas or 0.1% if applied to the totex baseline, within a range of 0.1% to 0.5% (DD: Overview, paragraph 8.30 {CGL1/A/8} and Grant Thornton First Report, Section 4.3.1, pages 27-28 and table 3 {CGL1/C/10}).

<sup>79</sup> FD: Overview, paragraph 8.23 {CGL1/A/15}.

- (f) Finally, even if, in selecting the ultimate OE target, it were reasonable for GEMA to give more weight to the higher of the energy networks' estimates, it is not reasonable to treat the very highest estimate as the lowest end of the plausible range. Even more so when that estimate expressly represented an upper bound (see paragraph 74 above). By so doing, GEMA ensured that its ultimate OE assumption would inevitably be significantly higher than even the very highest of the energy networks' estimates.
76. **Fourth**, GEMA's approach of taking NGET's 0.7% OE estimate as the minimum level of OE improvement, on the basis that network companies are incentivised to aim down, is at odds with GEMA's use of energy network estimates in RIIO-2 and thereby contrary to its Best Practice Duty, whereby regulation should be consistent and predictable in order to give stability and certainty to those being regulated.<sup>80</sup>
77. In RIIO-2, GEMA referred to the OE estimates of the most ambitious companies to support a more stretching challenge, noting "*indeed NGET proposed 1.1% ongoing efficiencies which is only marginally lower than our Final Determination*"<sup>81</sup> and "*We note that the most ambitious energy companies suggested they could achieve ongoing efficiencies of 1.0% Totex (SGN and SPT), and 1.1% opex (NGET and NGGT)*".<sup>82</sup> Those estimates were consistent with GEMA's OE assumption. GEMA did not, on that occasion, suggest that even these higher estimates aimed down and thereby represented the lowest bound of its adjusted plausible range, ensuring a mid-point well above those estimates. Rather, it relied on the consistency of the higher OE estimates with its own preferred assumption in justifying its decision to aim up.
78. By contrast, in the present decision, GEMA proposes to adopt an OE assumption of 1% that is more than 40% higher than the very highest OE estimate proposed by any network company. It appears that GEMA has altered its position on the value of energy networks' OE estimates from RIIO-2 in order to justify maintaining a 1% assumption for RIIO-3.
79. **Fifth**, GEMA's approach also runs contrary to its own guidance, which sets standards to ensure that Business Plan submissions are accurate, ambitious, efficient and in the consumer interest, and accordingly its Best Practice Duty.

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<sup>80</sup> See paragraphs 42 to 45 above.

<sup>81</sup> RIIO-2 FD: Core Document, paragraph 5.27 {CGL1/A/2}.

<sup>82</sup> RIIO-2 FD: Core Document, paragraph 5.29 {CGL1/A/2}.

- (a) GEMA’s own Business Plan Guidance requires companies to have appropriate assurance and governance of their Business Plan submissions to ensure that (i) GEMA can have confidence in the information presented to it; (ii) the submission is complete and of high quality; and (iii) the cost proposals have been appropriately challenged:

*“Robust assurance and governance of business plan submissions is vital if stakeholders, including GEMA, are to have **confidence in the information presented in them. The submission can only be complete and of high quality** where there are assurance checks on the systems and processes for developing and producing the business plan, and when stakeholders have confidence that a company’s board has been integral to the governance surrounding the submission.*

*It is for the companies and their boards to determine the precise role that assurance plays in this process. **We expect company boards to own and be accountable for their submissions and the business planning processes that underpin all aspects of the business plan.***

*All assurance processes undertaken by the company should be clearly set out in the company’s Assurance Statement. The Assurance Statement should include a statement from sufficiently independent directors that they are satisfied that **the business plan and the associated proposed costs and financial package have been appropriately challenged for accuracy, ambition, efficiency and customer interest...**”<sup>83</sup> (emphasis added).*

- (b) The Business Plan Incentive is also designed to “*motivate companies to develop high-quality, ambitious, business plans that embed efficiency and represent value for money for consumers.*”<sup>84</sup>
- (c) GEMA has not provided any evidence to suggest that the energy networks’ OE estimates have not met these standards. As such, whilst GEMA’s role is to test the quality and ambition of Business Plan submissions, it is clearly irrational and wrong for it simply to assume that network companies always underestimate critical aspects of their Business Plans, without providing any evidence for this assertion. Such an approach is contrary to the Best Practice Duty, requiring rules and standards to be joined up and implemented fairly to ensure consistency of regulation.<sup>85</sup>
- (d) Paradoxically, GEMA’s approach of taking the highest common denominator as the floor of the OE estimate would also incentivise regulated companies to aim down in

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<sup>83</sup> RIIO-3 Business Plan Guidance, paragraphs 8.11-8.13 {CGL1/A/7}.

<sup>84</sup> RIIO-3 Business Plan Guidance, paragraphs 9.2 {CGL1/A/7}.

<sup>85</sup> See paragraphs 42 to 45 above.

their future Business Plans, since they would know that their honest best estimates would simply be taken by the regulator as a ‘lower bound’ for its plausible range, and invariably used to justify a higher (and unattainable) OE assumption.<sup>86</sup> This would clearly be contrary to the Best Practice Duty and the interests of existing and future consumers.

**Sub-ground 2: Error in setting the OE assumption at a level inconsistent with the slowdown in productivity growth since 2008**

80. GEMA’s decision to set the OE assumption at 1% was inconsistent with, and/or failed to take account of, and/or failed to have sufficient regard to, the slowdown in productivity growth since 2008 (for which the economic evidence is clear).
81. As noted in the Economic Insight Report, the weight placed on productivity data pre- and post-2008 should depend on the extent to which it is expected that those periods are reflective of productivity growth over the relevant period to which the OE assumption applies, i.e. 2024/2025 to 2030/31.<sup>87</sup> There is a wide body of academic and economic evidence suggesting that the slowdown in economic productivity following the GFC is not temporary but based on entrenched structural factors and has led to fundamentally different economic conditions, which will continue into RIIO-3.<sup>88</sup>
- (a) GEMA’s own adviser, Grant Thornton, referred to the views of “observers” that the period following the GFC “*represents a ‘new normal’ of persistent low productivity growth*”.<sup>89</sup>
  - (b) The Economic Insight Report concludes that there has been a structural break in UK productivity growth, which has flatlined since the GFC in 2008 and which is unlikely to improve in the near future.<sup>90</sup>
  - (c) In November 2025, the OBR further noted that whilst it was initially assumed that the slowdown was due to temporary factors whose effects would fade, “*It now appears more likely that the slowdown was also underpinned by structural changes with impacts lasting into the medium term. [...] given that UK productivity growth remains subdued some 17 years on from the financial crisis, a strong rebound – like*

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<sup>86</sup> NERA Report, paragraphs 62-64.

<sup>87</sup> Economic Insight Report, section 3A, page 37 {CGL1/C/6}. See also NERA Report, paragraph 34.

<sup>88</sup> NERA Report, paragraphs 48-53.

<sup>89</sup> Grant Thornton First Report, section 3.5.2, page 21 {CGL1/C/10}.

<sup>90</sup> Economic Insight Report, section 3A, pages 36-41 {CGL1/C/6}.

*those seen after previous shocks – appears increasingly unlikely.” Accordingly, it concluded that “[t]he balance of evidence suggests that deep-rooted structural factors will continue to drag on growth over our forecast period [2025-2030]”.*<sup>91</sup>

82. Grant Thornton assessed historical productivity growth over three business cycles (1970-1996, 1997-2007 and 2008-2019), as well as across the full period of the three business cycles (1970-2019).<sup>92</sup> The business cycles 1970-1996 and 2008-2019 derive estimates of productivity growth of 0.5% and 0.1% respectively, whilst the longest averaging time period (1970-2019) gives rise to an estimate of 0.5%.<sup>93</sup> It is only the business cycle of 1997-2007, in other words the period preceding the GFC, that produces an estimate above 0.5% (that higher estimate being 1.3%).<sup>94</sup>
83. By altering the plausible range to 0.7% to 1.3%, GEMA derives its range solely from NGET’s estimate of 0.7% (which is above the long range average estimate and the two other business cycles considered by Grant Thornton) and the 1997-2007 time period estimate of 1.3%. In doing so, GEMA effectively discounts all other evidence provided to it by its adviser Grant Thornton. In particular, Grant Thornton’s estimates of productivity showing that in the most recent 11 years of data (2008-2019), a period over which there has been a significant and persistent decline in productivity growth, the average productivity growth rate has been a mere 0.1%.<sup>95</sup> In determining its plausible range, GEMA thereby ignores that the GFC gave rise to structural changes to the economy, which ought to be properly reflected.
84. GEMA’s approach is irrational and wrong. GEMA’s OE challenge of 1% is divorced from current and expected future economic conditions.<sup>96</sup> As outlined by Mr Court, the impact of an unreasonable OE assumption is to increase the extent to which Cadent will overspend its allowances and its investors will not be able to earn the base rate of return.<sup>97</sup> This undermines the balance of risk and return, discouraging investors from supporting the sector and raising financing costs in the future,<sup>98</sup> and as such fails to have regard or give appropriate weight to GEMA’s Finance Duty, Growth Duty, Diversity and Viability Duty and Best Practice Duty and ultimately the interests of existing and future consumers.

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<sup>91</sup> OBR, Briefing Paper No.9 (26 November 2025): Forecasting Productivity, box 3.2, page 16-17 {CGL1/C/14}, as referred to in NERA Report, paragraph 51.

<sup>92</sup> Grant Thornton First Report, page 21, section 3.5.2 and table 2 {CGL1/C/10}; Grant Thornton Second Report, paragraphs 3.21-3.24 and table 2 {CGL1/C/13}; NERA Report, paragraphs 24-25.

<sup>93</sup> NERA Report, paragraphs 24-25, 35, table 3.1 and figure 3.1.

<sup>94</sup> NERA Report, paragraph 35, table 3.1 and figure 3.1.

<sup>95</sup> NERA Report, paragraph 35, table 3.1 and figure 3.1.

<sup>96</sup> NERA Report, paragraphs 38-39.

<sup>97</sup> 1st Court ¶ 79.

<sup>98</sup> 1st Court ¶ 80.

85. Furthermore GEMA's approach departs from regulatory precedent, in a way which fails under sections 23D(4)(a) and (b) GA 1986, properly to have regard to and/or give appropriate weight to its Best Practice Duty, under which regulatory activities should be transparent, accountable and consistent.
86. In the CMA RIIO-2 Final Determination, the CMA agreed with the appellants that an approach which placed insufficient weight on lower productivity growth since 2008 could lead to an overestimate of the appropriate OE challenge.<sup>99</sup> In the context of RIIO-2, GEMA's economic adviser, CEPA, took account of the period of lower productivity post-2008 by calculating a reference range for the OE challenge over a longer averaging time period of between 1997 to 2016.<sup>100</sup>
87. GEMA's approach at RIIO-3 departs from the approach taken at RIIO-2, as GEMA derives its plausible range solely on the basis of NGET's estimate of 0.7% and the 1997-2007 time period estimate of 1.3%. A materially better and more reliable approach would be to derive the plausible range on the basis of the longer averaging period (averaging period 1970-2019) and more recent historic productivity data (for the averaging period 2008-2019), which indicate TFP growth of at most 0.5% and at the lowest 0.1%. If appropriate weight had been given to this evidence, the OE assumption would fairly and realistically have been set at a rate well below 1%.

**Sub-ground 3: Error in setting the OE assumption at a level inconsistent with independent productivity forecasts evidencing that OE should fairly and realistically be set at a rate well below 1%.**

88. GEMA's decision to set the OE assumption at 1% was inconsistent with, and/or failed to take account of, and/or failed to have sufficient regard to independent productivity forecasts evidencing that the OE assumption should fairly and realistically be set at a rate well below 1%.
89. TFP forecasts produced by the OBR average 0.51% from 2024 to 2030, whilst the BoE's TFP forecasts average 0.07% from 2024-2028.<sup>101</sup> These forecasts are substantially below 1% and provide clear evidence that low productivity growth is expected to continue into the

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<sup>99</sup> CMA RIIO-2 Final Determination, paragraph 7.80 {CGL1/A/3}.

<sup>100</sup> CEPA Report (27 November 2020), section 2.1.3, page 14 {CGL1/C/3}. See also NERA Report, paragraph 42.

<sup>101</sup> NERA Report, paragraphs 71-72 and table 3.2.

RIIO-3 period.<sup>102</sup> An OE assumption of 1.0% is not compatible with any reasonable interpretation of these forecasts.

90. Further:

(a) In its FD, GEMA explains that, while it has given qualitative consideration to third party forecasts, it does not tie the setting of OE directly to OBR and BoE productivity growth forecasts.<sup>103</sup> GEMA errs in its reasoning for taking this approach. Taking each of GEMA's stated reasons in turn:

(i) GEMA asserts that third party forecasts are uncertain and would need updating during the price control period.<sup>104</sup> As noted by NERA, this does not logically follow and is inconsistent with regulatory practice.<sup>105</sup> The majority of GDNs' *ex ante* allowances are based on forecasts of costs and volumes submitted in their Business Plans that are not updated over the price control.<sup>106</sup> The CMA PR24 Provisional Determination also did not propose updating the level of frontier shift for water and wastewater companies over the course of the PR24 price control when relying on forecasts of productivity growth.<sup>107</sup>

(ii) GEMA asserts that, while the OBR and BoE forecasts relate to the productivity of the average UK firm, regulated network companies are expected to be able to outperform the same.<sup>108</sup> As noted by NERA, this assertion does not align with the economic evidence.<sup>109</sup> GEMA's own adviser, Grant Thornton, identifies a number of sectors as undertaking activities similar to network companies, and therefore being relevant proxies when assessing productivity ("**Comparator Industries**"). NERA compares the TFP trends for these Comparator Industries with the multi-factor productivity trends for the wider economy published by the ONS (being the measure of productivity that is forecasted by the

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<sup>102</sup> NERA Report, paragraph 74.

<sup>103</sup> FD: Overview, paragraph 8.47 {CGL1/A/15}.

<sup>104</sup> FD: Overview, paragraph 8.47-8.48 {CGL1/A/15}.

<sup>105</sup> NERA Report, paragraphs 103-104.

<sup>106</sup> NERA Report, paragraph 104.

<sup>107</sup> CMA PR24 Provisional Determination, paragraph 4.174 {CGL1/C/12}. NERA Report, paragraph 104.

<sup>108</sup> FD: Overview, paragraph 8.47 {CGL1/A/15}. See also Sub-ground 4 below. In PR24, the CMA noted that the water sector had performed largely in line with the wider economy over the recent period and so it assessed official forecasts of productivity change in the wider economy to inform its decision on the frontier shift (CMA PR24 Provisional Determination, paragraph 4.160 {CGL1/C/12} and NERA Report, paragraph 91.

<sup>109</sup> NERA Report, paragraph 89.

OBR in its productivity growth forecasts). NERA’s analysis shows that between 2008 and 2019, there was a high degree of correlation, with the Comparator Industries measure indicating slightly slower productivity growth than the ONS data.<sup>110</sup> Accordingly, GEMA was incorrect in its assertion that forecasts from third parties, such as the OBR’s productivity forecast, would be likely to underestimate the productivity growth of regulated network companies. Indeed, the evidence shows that, if anything, such forecasts are likelier to represent a *stretching* basis for forecasting GDN productivity growth (see also paragraph 97(a) below).<sup>111</sup>

- (b) GEMA refers to an OBR forecast of 1% to support its OE assumption.<sup>112</sup> However, this figure relates to labour productivity and so is not comparable to an OE challenge based on TFP growth.<sup>113</sup> Further and in any event, the Institute for Fiscal Studies has rightly observed that “*OBR productivity growth forecasts have historically been over-optimistic*”,<sup>114</sup> as is corroborated by NERA’s analysis showing that OBR forecasts for the years 2010-2025 have historically overestimated productivity growth.<sup>115</sup> This OBR forecast therefore does not provide evidence supporting a 1% OE assumption.

#### **Sub-ground 4: Error in assuming that regulated network companies are insulated from wider productivity slowdowns in the UK economy**

91. GEMA errs in assuming that regulated network companies are insulated from wider productivity slowdowns in the UK economy. This assumption is wrong.
92. In its FD, GEMA asserts:

*“[Regulated network companies] have greater potential to outperform the wider economy because they operate within the RIIO price control frameworks, which we consider insulates them from the wider economic productivity slowdown due to higher certainty over revenues and returns than for companies operating in competitive sectors.*”

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<sup>110</sup> NERA Report, paragraphs 89-90 and figure 3.5.

<sup>111</sup> NERA Report, paragraph 90.

<sup>112</sup> FD: Overview, paragraph 8.49 {CGL1/A/15}.

<sup>113</sup> NERA Report, paragraphs 75-79.

<sup>114</sup> Institute for Fiscal Studies comments on Spring Statement 2025 {CGL1/C/9}, as referred to in NERA Report, paragraph 73.

<sup>115</sup> NERA Report, paragraph 73 and figure 3.4.

*This allows for greater management focus on cost savings and cost efficiency*<sup>116</sup>  
(emphasis added).

93. GEMA makes this assertion as part of its qualitative assessment,<sup>117</sup> when considering the 1% OE challenge on a forward-looking basis,<sup>118</sup> and in its reasoning for not tying the setting of OE directly to OBR and BoE productivity growth forecasts.<sup>119</sup>
94. It is evident that GEMA's assumption that energy networks are insulated from the wider productivity slowdown is irrational and wrong.
95. **First**, it is not supported by empirical evidence or cogent economic theory:
  - (a) As NERA explains, there is no sound economic justification for supposing that the mere existence of the RIIO price control framework would allow regulated companies to achieve productivity improvements faster than companies operating in competitive segments of the wider economy.<sup>120</sup> Rather, the underlying drivers of the productivity slowdown since 2008, such as infrastructure quality, quality of human capital stock, and availability of public and private investment will not be mitigated by the presence of regulation.<sup>121</sup>
  - (b) Mr Court's evidence is that Cadent faces many of the same pressures as other businesses in terms of the headwinds it has to manage, and in fact faces specific constraints as a regulated gas network that limit its ability to achieve efficiencies that other unregulated companies could achieve.<sup>122</sup>
    - (i) Mr Court outlines how Cadent faces similar challenges to the wider economy in achieving input efficiencies, namely as a result of increased competition for resources, labour and skills shortages, quality of infrastructure, as well as increasing and evolving legislative requirements.<sup>123</sup> Cadent is therefore similarly impacted by, and not insulated from, the headwinds other businesses face.
    - (ii) Additionally, Mr Court explains that the complex regulatory environment in which Cadent operates in fact places constraints on its

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<sup>116</sup> FD: Overview, paragraph 8.50 {CGL1/A/15}.

<sup>117</sup> FD: Overview, paragraph 8.23 {CGL1/A/15}.

<sup>118</sup> FD: Overview, paragraph 8.43 {CGL1/A/15}.

<sup>119</sup> FD: Overview, paragraph 8.47 {CGL1/A/15}. See also paragraph 90(a)(ii) above.

<sup>120</sup> NERA Report, paragraphs 80-82.

<sup>121</sup> NERA Report, paragraphs 83-85.

<sup>122</sup> 1st Court ¶¶ 43-75.

<sup>123</sup> 1st Court ¶¶ 60-71.

ability to achieve scope efficiencies. This is because, unlike businesses in the wider economy and due in particular to its regulatory ring-fence conditions and other regulatory obligations, Cadent is less able to choose whether to deliver its activities or to prioritise activities where efficiency and/or profitability can be driven over ones where it cannot.<sup>124</sup> Mr Court also outlines how the requirements of being a regulated monopoly place strong demands on Cadent's management time and focus.<sup>125</sup>

- (c) GEMA does not provide any evidence to justify its claims that higher certainty with respect to revenues and returns allows for greater management focus on cost savings and cost efficiency. GEMA's position would support a wholly implausible proposition that productivity growth could be achieved by applying RIIO-style regulation across all sectors of the economy.<sup>126</sup> On the contrary, academic literature demonstrates a causal link grounded in economic theory between greater competition and higher levels of productivity.<sup>127</sup>

96. **Second**, GEMA did not have regard to, or gave insufficient weight to, the evidence provided to it prior to its FD:

- (a) The Economic Insight Report, cited by Cadent and other gas network businesses in their responses to the DD,<sup>128</sup> noted that the underlying drivers of the productivity slowdown since the GFC are no less applicable to regulated utilities than other businesses.<sup>129</sup> In particular, Economic Insight's analysis indicated that:
- (i) **Lack of public and private investment:** The UK energy sector has not experienced systematically more, or less, growth in investment over time compared to the UK total since the GFC.<sup>130</sup>
- (ii) **Infrastructure quality:** There are significant issues with the quality of infrastructure in the UK, such as its road system, which all companies rely on.<sup>131</sup>

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<sup>124</sup> 1st Court ¶¶ 47-56.

<sup>125</sup> 1st Court ¶¶ 57-59.

<sup>126</sup> NERA Report, paragraph 86.

<sup>127</sup> NERA Report, paragraph 87.

<sup>128</sup> Cadent DD Response, pages 35-36 {CGL1/B/7} and NGT DD Response, page 14, paragraph 89 {CGL1/C/11}.

<sup>129</sup> Economic Insight Report, section 3B, pages 42-60 {CGL1/C/6}.

<sup>130</sup> Economic Insight Report, section 3B, pages 49-52 {CGL1/C/6}.

<sup>131</sup> Economic Insight Report, section 3B, pages 53-54 {CGL1/C/6}.

- (iii) **Quality of the human capital stock:** Gas networks are affected by the quality of the UK's labour force, in the same way as any other company operating in the economy.<sup>132</sup>
  - (iv) **Management quality:** Likewise, companies across all sectors of the UK economy, including gas networks, will be drawing from the same pool of managers.<sup>133</sup>
- (b) In its FD, GEMA states that it did not accept the argument made by Cadent that regulated companies are not insulated from the productivity slowdown.<sup>134</sup> However, GEMA fails to engage with the evidence put forward by Cadent, specifically:
- (i) GEMA does not provide any evidence that energy networks have received greater investment than other areas of the economy.
  - (ii) GEMA refers to record levels of investment into UK energy network infrastructure.<sup>135</sup> However, it does not address the evidence provided by Economic Insight that whilst regulation of gas networks might result in higher quality gas network infrastructure, it does not (and cannot) protect gas networks from the effect of low-quality infrastructure across the UK economy (e.g. low-quality transport links), which is an input to production.<sup>136</sup>
  - (iii) GEMA does not provide any evidence or justification as to why gas networks should have higher quality human capital or management than other sectors of the economy. As NERA explains, GDNs have no specific ability to mitigate the impact of lower quality human capital stock resulting from changes to the education system and migration patterns.<sup>137</sup> Whilst GEMA refers to the investment by energy networks in operational and non-operational training,<sup>138</sup> it does not provide evidence that this investment in training is greater than that made by companies in the wider economy.

97. **Third**, NERA's analysis corroborates Cadent's position:

- (a) As noted in paragraph 90(a)(ii) above, NERA's analysis shows that relevant historical productivity growth figures for Comparator Industries (which Ofgem's

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<sup>132</sup> Economic Insight Report, section 3B, page 55 {CGL1/C/6}.

<sup>133</sup> Economic Insight Report, section 3B, page 55-56 {CGL1/C/6}.

<sup>134</sup> FD: Overview, paragraph 8.51 {CGL1/A/15}.

<sup>135</sup> FD: Overview, paragraph 8.51 {CGL1/A/15}.

<sup>136</sup> Economic Insight Report, page 54 {CGL1/C/6}.

<sup>137</sup> NERA Report, paragraph 85.

<sup>138</sup> FD: Overview, paragraph 8.51 {CGL1/A/15}.

own adviser, Grant Thornton, identified as being suitable proxies for GDNs) have in fact been lower than comparable ONS figures in relation to productivity growth in the wider economy.<sup>139</sup>

- (b) Analysis of historical productivity growth between 2008 and 2019, specifically in the electricity and gas sectors, displays evidence of systematic underperformance relative to these Comparator Industries.<sup>140</sup>
- (c) The evidence therefore suggests that productivity growth of network companies is in fact materially lower than that of the wider economy.

**Sub-ground 5: GEMA’s decision to pinpoint the OE assumption (within GEMA’s plausible range) at 1% was not reasonably open to it on a fair and proper assessment of the qualitative factors cited in the FD**

- 98. GEMA’s decision to choose an OE assumption of 1% was not reasonably open to it on a fair and proper assessment of the qualitative factors cited in the FD.
- 99. GEMA seeks to justify its Decision to set an OE assumption of 1% (as opposed to another value within its chosen “plausible range”) on the basis of its qualitative assessment of various factors.<sup>141</sup> Taking each such stated factor in turn:
  - (a) GEMA refers to “*the impact of different productivity metrics*”, specifically the impact if the Value Added (“VA”) metric were to be used in place of the Gross Output (“GO”) metric (on which Grant Thornton’s 0.1%-to-1.3% feasible OE range was based).<sup>142</sup> However, Grant Thornton (GEMA’s own adviser) concluded that the use of the GO metric is more appropriate in the context of forecasting OE<sup>143</sup> and this is also the conclusion of NERA.<sup>144</sup>
  - (b) GEMA refers to the potential for embodied and disembodied technical change which it suggests are not contained within its productivity estimates.<sup>145</sup> However, the TFP productivity metric already includes disembodied technical change.<sup>146</sup> Moreover, the Economic Insight Report showed that consideration of embodied technical change

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<sup>139</sup> NERA Report, paragraphs 89-90 and figure 3.5.

<sup>140</sup> NERA Report, paragraph 92-93 and figure 3.6.

<sup>141</sup> FD: Overview, paragraphs 8.23 and 8.41-8.55 {CGL1/A/15}.

<sup>142</sup> FD: Overview, paragraphs 8.23 and 8.52 {CGL1/A/15}.

<sup>143</sup> Grant Thornton First Report, section 3.5.2, page 20 {CGL1/C/10}.

<sup>144</sup> NERA Report, paragraph 108.

<sup>145</sup> FD: Overview, paragraph 8.23 and 8.52 {CGL1/A/15}.

<sup>146</sup> NERA Report, paragraph 110.

would imply a downward adjustment to the OE assumption, as there is evidence that comparator sectors are more likely to have scope for embodied technical change than GDNs.<sup>147</sup> In any case, no attempt is made to quantify this supposed impact, and as NERA explains, it cannot come close to justifying an OE assumption of 1%.<sup>148</sup>

- (c) GEMA refers to high levels of Information Technology and Telecommunications (“IT&T”) and data & digitalisation (“D&D”) spending across the Electricity Transmission, Gas Transmission and Gas Distribution (“GD”) sectors, including ambitions to leverage artificial intelligence and machine learning to drive efficiencies.<sup>149</sup> However, there is no evidence that this will drive faster OE growth in the GD sector than in the wider economy (i.e. the level of productivity growth already reflected in economy-wide forecasts, such as those of the BoE and OBR).<sup>150</sup> By way of illustration in the context of Cadent’s business, Mr Court outlines that the IT&T and D&D spending to which GEMA alludes comprises: (i) regulatory compliance projects (such as cyber security) that are not expected to have any positive effect on productivity; and (ii) “business as usual” lifecycle replacement of IT&T assets, with respect to which there is no reason that GDNs should be able to achieve greater productivity improvements than businesses in the wider economy.<sup>151</sup>
- (d) GEMA refers to the impact of past innovation funding as a justification for higher OE during RIIO-3.<sup>152</sup> However, the notion of an uplift to OE based on innovation stimulus funding was rightly rejected by the CMA as part of the RIIO-2 appeal.<sup>153</sup> For the same reasons, it should also be rejected in this appeal. There is no cogent empirical evidence cited by GEMA that would support an assumption that past innovation funding will generate future efficiencies not already reflected in the energy networks’ Business Plans. On the contrary, Mr Court explains in particular that the innovation stimulus funding received by Cadent in RIIO-2 is restricted by GEMA to supporting the Net Zero transition and vulnerable customers and is therefore not likely to result in productivity benefits.<sup>154</sup> Furthermore, even if some

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<sup>147</sup> Economic Insight Report, section 4B, pages 64-68 {CGL1/C/6} and NERA Report, paragraph 110.

<sup>148</sup> NERA Report, paragraph 110.

<sup>149</sup> FD: Overview, paragraphs 8.23 and 8.53 {CGL1/A/15}.

<sup>150</sup> NERA Report, paragraph 117.

<sup>151</sup> 1st Court ¶ 73.

<sup>152</sup> FD: Overview, paragraph 8.23 {CGL1/A/15}.

<sup>153</sup> CMA RIIO-2 Final Determination, paragraph 7.802-7.803 {CGL1/A/2}. See also NERA Report, paragraph 112.

<sup>154</sup> 1st Court ¶ 39(a)(iii).

past innovation funding could result in cost reductions, GEMA has not provided any evidence to suggest that this could support an OE estimate as high as 1%.

- (e) GEMA refers to regulated network companies being protected against wider productivity slowdowns due to the predictability of price control frameworks.<sup>155</sup> As outlined at NoA Sub-ground 4 above, this assumption made by GEMA is erroneous.
- (f) GEMA refers to recent UK regulatory precedent as support for setting a 1% OE assumption,<sup>156</sup> but such precedent is in fact mixed.<sup>157</sup> The CMA, in the PR24 redetermination process, has provisionally determined that the frontier shift target (comparable to GEMA's OE challenge) should be set at 0.7%.<sup>158</sup> In doing so it has relied on forecasts of productivity growth produced by both the BoE and OBR.<sup>159</sup> Subsequent to the CMA's provisional determination, both the OBR and BoE forecasts have been downgraded further. In addition, replication of CEPA's RIIO-GD2 methodology with the latest data, as set out in the NERA Report, gives rise to an OE range of -0.9% to 0.5%.<sup>160</sup> In the present context, it is wrong to conceive of regulatory precedent as comprising the adoption of a particular figure, as opposed to the consistent application of a particular approach or methodology. Genuine regulatory consistency is liable to require the adoption of a different output figure (here, an OE assumption) in response to updated inputs (here, updated information regarding historic and prospective productivity). In adopting the same 1% OE assumption at RIIO-3 as at RIIO-2, without having proper regard to the underlying body of evidence afresh, GEMA departs from genuine regulatory precedent and accordingly, its Best Practice Duty.<sup>161</sup>
- (g) GEMA refers to the OE assumptions submitted by the networks, but these cannot support an OE assumption of 1%. The network companies' assumptions range between 0.1% to 0.7%, well below 1%.<sup>162</sup>

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<sup>155</sup> FD: Overview, paragraph 8.23 {CGL1/A/15}.

<sup>156</sup> FD: Overview, paragraph 8.23 {CGL1/A/15}.

<sup>157</sup> NERA Report, paragraph 114.

<sup>158</sup> CMA PR24 Provisional Determination, paragraph 4.153 and 4.186 {CGL1/C/12}, referred to in NERA Report, paragraphs 17 and 114.

<sup>159</sup> CMA PR24 Provisional Determination, paragraph 4.160 to 4.174 {CGL1/C/12}, referred to in NERA Report, paragraph 91.

<sup>160</sup> NERA Report, paragraph 39 and Appendix A.

<sup>161</sup> See also NERA Report, paragraph 115.

<sup>162</sup> See paragraph 75(e) above. See also NERA Report, paragraph 111.

- (h) Finally, GEMA refers to independent forecasts of economy-wide productivity trends,<sup>163</sup> but as explained at NoA Sub-ground 3 above these also cannot support an OE assumption of 1%.

### **Legal Error**

100. As a consequence of all of the points in paragraphs 69 to 99, the Decision was wrong and the Statutory Grounds for this appeal are established in that:
- (a) in setting the OE assumption at a level unsupported by economic evidence, GEMA failed properly to have regard to its Principal Objective, Finance Duty, Growth Duty, Diversity and Viability Duty and Best Practice Duty (section 23(D)(4)(a) GA 1986) (see sub-grounds 1, 2, 3 and 5 above);
  - (b) further or alternatively, GEMA failed to give the appropriate weight to the matters listed in paragraph 100(a) above (section 23D(4)(b) GA 1986) (see sub-grounds 1, 2, 3 and 5 above);
  - (c) the Decision was based, wholly or partly, on errors of fact (section 23D(4)(c) GA 1986) (see sub-grounds 1, 3, 4 and 5 above); and/or
  - (d) GEMA's assessment was irrational (and accordingly, is wrong in law) (section 23D(4)(e) GA 1986) (see sub-grounds 1 to 5 above).

### **Relief**

101. For all the above reasons, the relief sought by Cadent is modification of the Decision to reduce the OE assumption to 0.5%, which would increase Cadent's baseline totex allowance by £185.73 million in total over the RIIO-GD3 price control period (representing 2.55% of Cadent's GD3 totex allowances).<sup>164</sup> As such, the error is clearly material.
102. As the relief sought requires correction only of the totex values in the Decision (with consequential adjustments to the Business Plan Financial Model and licence conditions), Cadent invites the CMA to make these changes itself.

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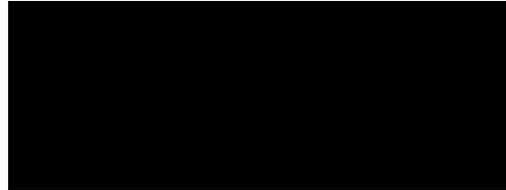
<sup>163</sup> FD: Overview, paragraph 8.23 {CGL1/A/15}.

<sup>164</sup> NERA Report, paragraph 124-130. Baseline allowances include efficient costs, and Bespoke Outputs and Technical Assessments, including frontier shift.

**SECTION 4: STATEMENT OF TRUTH**

Cadent believes that the facts stated in this Notice are true.

Signature of Authorised Representative



Name of Authorised Representative

Tony Ballance.....

Date

3 March 2026.....

**For and on behalf of Cadent Gas Limited**

## APPENDIX 1: CHRONOLOGY

The below chronology sets out the key events and steps leading up to the Decision:

Date	Event / Step
29 September 2022	GEMA published an open letter on the next price control review process
10 March 2023	GEMA published its RIIO-3 Framework Consultation.
26 October 2023	GEMA published its RIIO-3 Framework Decision.
13 December 2023	GEMA published its SSMC.
18 July 2024	GEMA published its SSMD.
31 July 2024	Cadent submitted draft Business Plan Data Table (“BPDTs”) and draft BPDT Commentary.
11 December 2024	Cadent submitted its final 2026-2031 RIIO-3 Business Plan to GEMA.
1 July 2025	GEMA published its DD.
26 August 2025	Cadent submitted its response to the DD and revised certain aspects of its Business Plan (including Submitted Costs) in response to GEMA’s queries.
4 December 2025	GEMA published its FD.
16 December 2025	GEMA published its statutory consultation on the modifications to Cadent’s licence conditions pursuant to Section 23(2) GA 1986.
3 February 2026	GEMA published its final decision on the modifications to Cadent’s licence conditions pursuant to Section 23(2) GA 1986.
13 February 2026	GEMA published updated versions of the FD documentation upon completion of its Errata Process.
23 February 2026	GEMA shared finalised cost models with GDNs. <sup>165</sup>

<sup>165</sup> As noted in footnote 7 above, GEMA has accepted that there are errors in the cost models that underlie its Decision in respect of totex allowances. GEMA confirmed in a document dated 23 February 2026, titled “RIIO-GD3 snagging process outcomes”, the revised totex allowances following the correction of errors and committed to Cadent (and other licence holders) that it will launch a statutory consultation later this year to amend Cadent’s Licence (and other licences) by revising figures which are based on the erroneous cost models {CGL1/C/11}.

## APPENDIX 2: GLOSSARY

Term	Meaning
1 <sup>st</sup> Court	A witness statement of fact from Richard Court, Director of Regulatory Strategy at Cadent, dated 2 March 2026
Allowed Revenue	The amount of money that, pursuant to its price control, a network company can earn via its network charges in order to recover the costs of constructing, operating, repairing and maintaining its network(s), as well as the return to equity and debt investors.
Appellant	Cadent Gas Limited.
Best Practice Duty	As defined in paragraph 42.
Behaviours of Smarter Regulation	As described in the Growth Duty: Statutory Guidance – Refresh exhibited at {CGL1/D/8}.
Better Regulation Task Force	An independent body established in September 1997 to advise the UK Government on action to ensure regulation and its enforcement in accordance with the principles specified in Section 4AA(5A)(a) GA 1986.
BoE	The Bank of England.
BPDT	The Business Plan Data Tables that set out each GDN’s detailed Submitted Costs.
BPDT Commentary	Commentary provided on the BPDT.
Business Plan	The information in the form of a business plan submitted by each network operator to GEMA setting out the activities that it intends to undertake in RIIO-3 and the associated costs and outputs. Cadent submitted its final Business Plan on 11 December 2024.
Business Plan Financial Model	The RIIO-3 Business Plan Financial Model (BPFM): Gas Distribution published as part of the FD.
Business Plan Guidance	The RIIO-3 Business Plan Guidance which sets out the information that should be included in companies’ final business plans and how GEMA assesses those plans, first published on 18 July 2024 and updated on 30 September 2024.
Business Plan Incentive	As described in paragraph 9 of the RIIO-3 Business Plan Guidance.
Cadent	Cadent Gas Limited.
Cadent Business Plan	The final Business Plan submitted by Cadent on 11 December 2024.

<b>Term</b>	<b>Meaning</b>
Cadent DD Response	The response to the DD submitted by Cadent on 26 August 2025.
capital expenditure (or capex)	Capital expenditure on investment in long-term distribution assets, such as gas pipelines.
CAWG	The RIIO-3 Cost Assessment Working Group.
CEPA	Cambridge Economic Policy Associates Ltd.
CEPA Report	The report produced by CEPA for Ofgem, titled “RIIO-GD2 and T2: Cost Assessment – Advice on Frontier Shift policy for Final Determinations” and dated 27 November 2020.
CMA	Competition and Markets Authority.
CMA RIIO-2 Final Determination	The CMA’s final determination with respect to the appeals brought by Cadent, NGET, National Grid Gas <sup>166</sup> , NGN, SHET, SGN, SPT and WWU of GEMA’s RIIO-2 price control determination, as issued on 28 October 2021.
CMA PR24 Provisional Determination	The provisional redeterminations of the CMA published on 9 October 2025 in relation to the Anglian Water, Northumbrian Water, South East Water, Southern Water and Wessex Water price controls for 2025-2030 following a reference from Ofwat on request of each company.
Comparator Industries	As defined in paragraph 90(a)(ii).
D&D	Data & digitalisation.
DD	GEMA’s RIIO-3 Draft Determinations for Transmission, Gas Distribution and Electricity System Operator of 1 July 2025.
Decision	GEMA’s decision of 3 February 2026 to proceed with modifications to the Licence in respect of Cadent’s price control over the period 1 April 2026 to 31 March 2031.
Diversity and Viability Duty	As defined at paragraph 40.
Drivers of Economic Growth	As described in the Growth Duty: Statutory Guidance – Refresh exhibited at {CGL1/D/8}.
Eastern	Cadent’s eastern network covering the East of England and the East Midlands as shown on the map in <b>Appendix 3</b> .
Economic Insight	Economic Insight Ltd, an economics consultancy.
Economic Insight Report	As defined in paragraph 75(b).

<sup>166</sup> Subsequently re-named to NGT.

<b>Term</b>	<b>Meaning</b>
Errata Process	The process through which GEMA sought to correct certain errors in its FD.
FD	GEMA’s RIIO-3 Final Determinations for Transmission and Gas Distribution companies and the Electricity System Operator of 4 December 2025 (as revised and republished on 13 February 2026 to reflect the outcome of the Errata Process).
Finance Duty	As defined in paragraph 36.
GA 1986	Gas Act 1986.
GB	Great Britain.
GD	Gas distribution.
Gas Distribution Network or GDN	Either (1) a regional gas distribution network in GB; or (2) the licensed entity operating such a network, as the context requires.
GEMA	Gas and Electricity Markets Authority.
GFC	The global financial crisis of 2008.
GO	“Gross Output” as defined at page 4 of the Grant Thornton First Report.
Grant Thornton	Grant Thornton UK Advisory & Tax LLP.
Grant Thornton First Report	The first report titled ‘Independent Report on Ongoing Efficiency’ prepared by Grant Thornton UK Advisory & Tax LLP for Ofgem and dated 26 <sup>th</sup> June 2025.
Grant Thornton Second Report	The second report titled ‘Second Independent Report on Ongoing Efficiency’ prepared by Grant Thornton UK Advisory & Tax LLP for Ofgem and dated November 2025.
Growth Duty	As defined in paragraph 46.
High Court	The High Court of Justice in London.
IT&T	Information Technology and Telecommunications.
Licence	The gas transporter licence held by Cadent under Section 7(2) GA 1986.
NERA	The economic consultants known as NERA Economic Consulting.
NERA Report	The expert report prepared by NERA.
Net Zero	The target net UK carbon account referred to in section 1 of the Climate Change Act 2008.
NG	National Grid
NGN	Northern Gas Networks Limited.
NGET	National Grid Electricity Transmission plc.

<b>Term</b>	<b>Meaning</b>
NGET Business Plan	The Business Plan submitted by NGET on 18 December 2024.
NGT	National Gas Transmission plc.
NGT DD Response	The response to the DD submitted by NGT in August 2025.
Sub-grounds	The elements of the ground of appeal identified as such within Section 3 of this Notice of Appeal.
NGET Business Plan	As defined in paragraph 71.
North London	The North London region for the purposes of gas distribution regions, as shown on the map in <b>Appendix 3</b> .
North West	The North West region for the purposes of gas distribution regions, as shown on the map in <b>Appendix 3</b> .
Notice of Appeal	This Notice of Appeal submitted to the CMA on 3 March 2026.
OBR	Office for Budget Responsibility.
Ongoing Efficiency or OE	A mechanism, such as that included by GEMA in its price controls, by virtue of which efficient modelled costs and technically assessed costs are adjusted to reflect a target improvement in productivity across the relevant price control period.
ONS	Office for National Statistics.
operating expenditure (or opex)	The costs of the day-to-day operation of the network such as staff costs, repairs and maintenance expenditures and overheads.
Outputs	The outputs set by GEMA as part of RIIO-GD3.
Principal Objective	As defined in paragraph 32.
PR24	Ofwat’s price control decisions for each of the 16 regional regulated water companies for the period 2025 to 2030.
repex	Capital expenditure associated with the replacement of gas mains, services and other assets.
RIIO	The “ <i>Revenues = Incentives + Innovation + Outputs</i> ” regulatory price control framework developed by GEMA.
RIIO-2	The second generation of RIIO price control reviews, relating respectively to the GB gas transmission, gas distribution, electricity transmission and electricity distribution sectors.
RIIO-2 FD	GEMA’s RIIO-2 Final Determinations for Transmission and Gas Distribution companies and the Electricity System Operator of 8

<b>Term</b>	<b>Meaning</b>
	December 2020 (as revised and republished on 3 February 2021 to reflect the outcome of the Errata Process).
RIIO-3	The third generation of RIIO price control reviews, relating respectively to the GB gas transmission, gas distribution, electricity transmission and electricity distribution sectors.
RIIO-GD2	The RIIO-2 price control review for GDNs for the period 1 April 2021 to 31 March 2026.
RIIO-GD3	The RIIO-3 price control review for GDNs for the period 1 April 2026 to 31 March 2031.
Sector Specific Methodology Consultation (or SSMC)	GEMA’s RIIO-3 Sector Specific Methodology Consultation of 13 December 2023.
Sector Specific Methodology Decision (or SSMD)	GEMA’s RIIO-3 Sector Specific Methodology Decision of 18 July 2024.
SGN	Southern Gas Networks plc and Scotland Gas Networks plc. <sup>167</sup>
SHET	Scottish Hydro Electric Transmission plc.
SPT	SP Transmission plc.
SPT Business Plan	The Business Plan submitted by SPT on 18 December 2024.
Statutory Grounds	The grounds on which the CMA may allow an appeal against a decision by GEMA to modify licence conditions under sections 23D(4)(a)-(e) GA 1986 (as reproduced in paragraph 24).
Submitted Costs	The forecast costs submitted by GDNs in their Business Plans.
TFP	Total Factor Productivity.
VA	“Value Added” as defined in the Grant Thornton First Report.
West Midlands	The West Midlands region for the purposes of gas distribution regions, as shown on the map in <b>Appendix 3</b> .
WWU	Wales & West Utilities Limited.
WWU Judgment	Final judgment handed down by the High Court in respect of the application brought by WWU for judicial review of the determination by the CMA of the RIIO-2 price control appeal. See <i>R (on the application of Wales &amp; West Utilities Ltd) v Competition and Markets Authority</i> [2026] EWHC 99 (Admin).

<sup>167</sup> Each of these companies holds a gas transporter licence under section 7(2) of GA86. Both companies are wholly owned subsidiaries of Scotia Gas Networks Limited, and together are known as SGN.

### Appendix 3: Map of Cadent's regional gas distribution network

