

GWYNT Y MÔR OFFSHORE WIND FARM LIMITED

RWE RENEWABLES UK LIMITED

RWE RENEWABLES UK SWINDON LIMITED

- and -

GAS AND ELECTRICITY MARKETS AUTHORITY

Decision on Permission to Appeal

1. Under cover of a Notice of Appeal received by the Competition and Markets Authority (CMA) on 26 May 2026, Gwynt y Môr Offshore Wind Farm Limited, RWE Renewables UK Limited and RWE Renewables UK Swindon Limited (together, RWE) sought permission to bring an appeal under section 173 of the Energy Act 2004 against the decision by the Gas and Electricity Markets Authority (GEMA), dated 1 May 2026, to reject CUSC modification proposal CMP344 (the Decision).

Requirement for permission to appeal

2. Under section 173(4) of the Energy Act 2004, the CMA's permission is required before such an appeal may be brought.
3. I make this decision on permission to appeal in my capacity as an authorised member of the CMA.¹
4. In making this decision I have had regard to the Notice of Appeal.

Decision on permission

5. The Notice of Appeal and supporting documentation was received by the CMA within the statutory time limit.
6. Section 173(3) of the Energy Act 2004 provides that an appeal may be brought only by a person whose interests are materially affected by the decision or a body or association whose functions are or include representing

¹ Paragraph 1(7) of Schedule 22 of the Energy Act 2004.

persons in respect of interests of theirs that are so affected. The Decision relates to a refusal by GEMA to modify the Connection and Use of System Code (**CUSC**) and the Transmission Network Use of System (**TNUoS**) tariffs imposed for recovery of the cost of payments made to Transmission Owners (**TOs**). The proposal to modify CUSC and TNUoS tariffs (CMP344) was made by the RWE. **I am satisfied, on the basis set out in the Notice of Appeal, that each of the Gwynt y Môr Offshore Wind Farm Limited, RWE Renewables UK Limited and RWE Renewables UK Swindon Limited is materially affected by the Decision.**

7. Under section 173(5) of the Energy Act 2004, the CMA may refuse permission to bring an appeal only on one of the following grounds: **(i) that the appeal is brought for reasons that are trivial or vexatious; or (ii) that the appeal has no reasonable prospect of success.**
8. RWE seeks permission to appeal the Decision on a number of grounds:
 - (a) Ground 1: The decision is contrary to law because it is vitiated by an appearance of bias, arising by predetermination and/or the connection between the decision-maker and one of the interested parties.
 - (b) Ground 2: Ofgem was wrong in fact and/or law in deciding that the modification would not facilitate competition and cost reflectivity and thus better serve Use of System Charging Objectives (d) and (e). This consists of several sub-grounds:
 - i. Ground 2A: Ofgem erroneously relied upon generators being the party best placed to mitigate the risk of an IAE occurring and its consequences.
 - ii. Ground 2B: Ofgem was wrong to dismiss the existence of discrimination against offshore generators by comparison with entities with which they compete.
 - iii. Ground 2C: Ofgem was wrong to conclude that the impact on competition was nil or immaterial.
 - iv. Ground 2D: Ofgem was wrong to suggest that CMP344 could introduce an anti-competitive distortion on the CfD market.
 - (c) Ground 3: Ofgem was wrong to find that the proposal would not advance Use of System Charging Objective (h).
 - (d) Ground 4: Ofgem was wrong to hold that the baseline is advantageous for consumers and therefore consistent with its objectives and duties.

9. In summary, across these grounds, RWE contends that the Decision was vitiated by apparent bias, that GEMA erred in its assessment of whether CMP344 would advance the Use of System Charging Objectives relating to facilitating effective competition, cost reflectivity and promoting efficiency, and that GEMA erred in its application of its statutory duties.
10. I consider that the issues raised in the Notice of Appeal are serious and of genuine concern to RWE, so that the appeal is not being brought for reasons that are trivial or vexatious. The Notice of Appeal raises a number of matters of substance in support of each of the four grounds of appeal that will require detailed consideration on appeal. Without having formed a view on the merits of the submissions by RWE, my view is that it cannot be said that any of the grounds of appeal has no reasonable prospect of success.

Grant of permission

11. Pursuant to section 173 of the Energy Act 2004, I grant permission to RWE to bring the appeal on the grounds set out in the Notice of Appeal.

Cyrus Mehta

Authorised Member of the CMA

9 June 2026