

Northern Powergrid (Northeast) Limited and Northern Powergrid (Yorkshire) Plc v Gas and Electricity Markets Authority: decision on permission to appeal

1. Under cover of a single Notice of Appeal received by the Competition and Markets Authority (CMA) on 2 March 2015, Northern Powergrid (Northeast) Limited and Northern Powergrid (Yorkshire) Plc (together 'NPg') sought permission to bring an appeal under section 11C of the Electricity Act 1989 (the Act) against the decision of the Gas and Electricity Markets Authority (GEMA) to modify the electricity distribution licences of a number of distribution network operators (DNOs) ('the Decision').
2. The Decision was taken under section 11A of the Act and appears in a document entitled *RIIO-ED1 modifications to amend the special conditions of the electricity distribution licence held by the above named licensees and reasons for the decision pursuant to section 11A and 49A of the Electricity Act 1989*, published on 3 February 2015.

Requirement for permission to appeal

3. Under section 11C(3) of the Act, the CMA's permission is required before such an appeal may be brought.
4. I make this decision on permission to appeal in my capacity as an authorised member of the CMA (see paragraph 1(8) of Schedule 5A to the Act).
5. In making this decision I have had regard to NPg's Notice of Appeal, as well as to the submissions in response made by GEMA on 16 March 2015, and to a further letter dated 20 March 2015 from NPg's solicitors, Slaughter and May, containing a number of representations and observations on GEMA's response.

Decision on permission

6. NPg are the holders of distribution licences under section 6(1)(c) of the Act which are to be modified by the Decision. They are therefore relevant licence holders, as defined in section 11A(10) of the Act, and accordingly have standing in that capacity to bring the present appeal and, by extension, to seek permission to appeal.

7. NPg's Notice of Appeal was received by the CMA within the period prescribed by paragraph 1(3) of Schedule 5A to the Act.
8. Under section 11C(4) of the Act, the CMA may refuse permission to bring an appeal only on one of a number of specified grounds. The only grounds which are of potential relevance in the present case are those in section 11C(4)(d), under which permission to appeal may be refused on the basis (i) that the appeal is brought for reasons that are trivial or vexatious, or (ii) that the appeal has no reasonable prospects of success.
9. On the basis of the facts and circumstances set out in the Notice of Appeal, I am satisfied that NPg's appeal is not brought for reasons that are trivial or vexatious. Further, on the same basis and having taken into account the submissions made by GEMA in its response of 16 March 2015, I am unable to conclude that NPg's appeal has no reasonable prospect of success.
10. I have considered whether the grant of permission to appeal should be made subject to any conditions under paragraph 1(11) of Schedule 5A to the Act. I am satisfied that the grant of permission should not be subject to such conditions.
11. I accordingly grant permission to NPg to bring the appeal set out in their Notice of Appeal, pursuant to section 11C and paragraph 1 of Schedule 5A to the Act.

John Wotton
CMA Inquiry Chair
30 March 2015