
An appeal under section 173 Energy Act 2004

E.ON UK plc

-and-

GEMA

Summary of E.ON's Case

Introduction

1. E.ON UK plc (**"E.ON"**) appeals against GEMA's decisions, published on 5 April 2007, directing that Mod 116V to the UNC be implemented and that Mod 116A not be implemented (**"the Decision"**).

2. This Summary is provided pursuant to paragraph 3.5 of the Guidance. The contents of this Summary shall not in any way prejudice or limit the scope of E.ON's appeal as set out in E.ON's Statement of Case dated 30 April 2007 (**"the Case"**).[1]

3. EON also relies on the witness statement of Peter Bolitho of E.ON and the expert report of Graham Shuttleworth of NERA Economic Consulting and the exhibits thereto.

4. Terms used in this Summary are as defined in the Glossary.

Standing to bring an appeal

5. The Decision is contrary to the clear recommendation of the UNC Panel. It is also opposed by the great majority of industry parties.

[1] Including, without limitation, the reasons incorporated by reference on page 4 of the Case.

6. E.ON's interests as a gas shipper, supplier, storage user and operator and consumer may be affected by the Decision. See paragraphs 150-153 of the Case.

Grounds of Appeal

7. The grounds of the appeal are that: GEMA failed properly to have regard to the matters mentioned in section 175(2) of the Energy Act 2004; GEMA failed properly to have regard to the purposes for which the relevant condition has effect; GEMA failed to give the appropriate weight to one or more of those matters or purposes; the Decision was based, wholly or partly, on an error of fact; and/or the Decision was wrong in law. See paragraph 167 of the Case.

Pre-judgment

8. E.ON submits that the Decision amounts to the implementation of Ofgem's and GEMA's own project, not the adjudication of a dispute between industry parties. The history and the Decision plainly show that Ofgem and GEMA prejudged the issues: see paragraphs 1-9 and 160-166 of the Case.

Mod 116V has a substantially negative CBA

9. The Decision accepts that the implementation of Mod 116V will have a negative CBA of £28 million PV. By definition, therefore, Mod 116V is inefficient and disproportionate. Consequently, GEMA should not have approved it: see paragraphs 14-30 and 47-52 of the Case.

The Decision understates the negative CBA

10. In fact, GEMA has seriously understated the negative CBA since:

    a. Relevant costs are still excluded. GEMA should have taken account of the "upfront" costs incurred by gas transporters and the costs incurred in Northern Ireland, the Republic of Ireland and/or the Isle of Man. See paragraphs 31-46 of the Case.

    b. As set out below, the values ascribed by Ofgem in the FIA (and adopted in the Decision) to the three identified "quantitative benefit" items in the FIA are speculative. There is no good reason to conclude that these three items will

produce any benefits, let alone benefits of the amounts ascribed to them. See paragraphs 108-138 of the Case.

11. In particular, GEMA's argument that Mod 116V will give rise to "efficient investment signals" is defective. It rests on a failure to appreciate that the NTS "exit-entry" model cannot deliver efficient investment signals because it does not represent the physical reality of the NTS. Far from increasing investment efficiency, there is a serious risk that Mod 0116V will lead to inefficiency in investment decisions. See paragraphs 109-129 of the Case.

.**Incorrect analysis of "qualitative" benefits**

12. The Decision assumes that supposed qualitative benefits ascribed to Mod 116V outweigh the negative CBA. This is incorrect. The qualitative benefits do not themselves stand up to scrutiny. In any event, GEMA has given them wholly inappropriate weight. See paragraph 107 of the Case.

13. The Decision fails to acknowledge the clear qualitative benefits of Mod 0116A, namely that by removing the sunset clauses on the current offtake provisions in the UNC, Mod 116A promotes regulatory certainty. See paragraph 13 of the Case.

Non-discrimination

14. GEMA ascribes quantitative and qualitative benefits to the Decision arising from a reduction in discrimination. However, there is a fundamental error of law in GEMA's approach to non-discrimination. The Decision assumes that non-discrimination involves treating two entities the same even where there is a good reason for treating them differently – or where a reason which applies to one entity does not apply to another. This is wrong in law. As a result, GEMA does not properly consider the facts and matters which should be central to any discrimination inquiry. See paragraphs 53-86 of the Case.

15. Furthermore, the Decision expressly states that GEMA makes no actual finding of discrimination. No proper case has been made that the alleged non-discrimination 'benefits' are benefits at all. See paragraph 57 of the Case.

Competition

16. GEMA also asserts that the Decision will have qualitative benefits arising from its consequences for competition. However, the competition issues are not properly analysed, either in the Decision or the FIA.

17. Indeed, the competition factors actually identified in the FIA are negative not positive for Mod 116V. The Decision fails to analyse properly or at all these adverse effects on competition. See paragraphs 87-107 of the Case.

Conclusion

18. For the reasons set out in the Case, E.ON invites the Commission to quash GEMA's decision to approve Mod 116V and to remit the Decision to GEMA with a direction that GEMA should approve the implementation of Mod 116A.

E.ON UK plc

30 April 2007