

## **CADENT GAS 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 3 March 2026, Cadent Gas Limited (Cadent) sought permission to bring an appeal under section 23B(1) and (3) of the Gas Act 1986 against the decision by the Gas and Electricity Markets Authority (GEMA), dated 3 February 2026, under section 23(1)(a) of the Gas Act 1986 to modify the gas distribution licence of Cadent (the Decision) to give effect to the RIIO-GD3 price control determinations.

### **Requirement for permission to appeal**

2. Under section 23(B)(3) of the Gas Act 1986, 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 (see paragraph 1(8) of Schedule 4A to the Gas Act 1986).
4. In making this decision I have had regard to Cadent's Notice of Appeal, to the submissions in response made by GEMA on 17 March 2026 and to Cadent's representations to the CMA on 19 March 2026 on whether the CMA should consider together each of the appellants'<sup>1</sup> (the Appellants) grounds of appeal relating to Ongoing Efficiency (OE).

### **Decision on permission**

5. On 3 March 2026, Cadent's Notice of Appeal was received by the CMA within the period prescribed by paragraph 1(3) of Schedule 4A to the Gas Act 1986.

---

<sup>1</sup> The CMA received a total of four applications for permission to appeal the Decision from: Cadent, Northern Gas Networks Limited, Southern Gas Networks plc and Scotland Gas Networks plc (who submitted a joint appeal) and Wales & West Utilities Limited.

6. Section 23B(2)(a) of the Gas Act 1986 provides that an appeal may be brought by a relevant licence holder (within the meaning of section 23 of the Gas Act 1986). The Decision relates to the modification of the gas distribution licence of Cadent. **I am therefore satisfied that Cadent is a relevant licence holder.**
7. Under section 23B(4) of the Gas Act 1986, the CMA may refuse permission to bring an appeal only on one of a number of specified grounds. The potentially relevant grounds in the present case are **(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. Cadent seeks permission to appeal the Decision on one ground, namely that GEMA made errors in setting OE at 1%.
9. Cadent submitted that GEMA erred in its decision to set Cadent's OE challenge at 1% per annum for RIIO-3; and that 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. Cadent submitted that, as a result of these errors, GEMA's decision was wrong on the basis of the statutory grounds set out in section 23D(4)(a) to (c) and (e) of the Gas Act 1986.
10. Cadent submitted that, in wrongly determining the OE assumption of 1%, GEMA made the following series of errors:
  - (a) Sub-ground 1: 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) Sub-ground 2: 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) Sub-ground 3: 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%;
  - (d) Sub-ground 4: GEMA erred in assuming that regulated network companies are insulated from wider productivity slowdowns in the UK economy; and

- (e) 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 its assessment of the qualitative factors cited in the Final Determination.
11. GEMA submitted that the OE figure is ascertained by GEMA weighing a variety of quantitative and qualitative factors, involving not a mathematical assessment but an exercise of regulatory judgement. GEMA adopted a figure of 1%, which was consistent with independent expert advice it received and regulatory precedent. The gas distribution network companies (GDNs) had each suggested that a figure of 0.5% be adopted, although electricity transmission network companies proposed higher and lower figures than this (spanning from 0.7% to 0.1%). GEMA submitted that, ultimately, GEMA's decision is plainly justifiable, and the Appellants cannot show that any alternative approach would have been materially better.
12. I have reviewed GEMA's submissions. **I have concluded that Cadent should be granted permission on its ground of appeal for the reasons set out below.**
13. I consider that the appeal raises arguable points of substance in relation to GEMA's assessment of OE. I do not consider that the CMA can come to a decision on this issue without a substantive review of the evidence.
14. I am therefore satisfied that Cadent's ground of appeal is not brought for reasons that are trivial or vexatious. The appeal raises arguable points of substance which will require detailed consideration and therefore it is not the case that the appeal has no reasonable prospect of success.

### **Grant of permission and conditions**

15. Under paragraph 1(11) of Schedule 4A to the Gas Act 1986, the CMA's grant of permission may be made subject to conditions, which may include:
- (a) conditions which limit the matters that are to be considered on the appeal in question;
  - (b) conditions for the purpose of expediting the determination of the appeal; and
  - (c) conditions requiring that appeal to be considered together with other appeals (including appeals relating to different matters or decisions and appeals brought by different persons).
16. The CMA received a total of four applications for permission to appeal the Decision. I have therefore considered whether, in granting permission to

appeal, any grant of permission should be subject to a condition that GEMA's assessment of OE, which each of the Appellants has raised in their respective Notices of Appeal, should be considered together.

17. The CMA sought representations from the Appellants and GEMA in this regard, all of whom were in favour of each of the Appellants' grounds of appeal relating to GEMA's assessment of OE being considered together.
18. Pursuant to section 23B and paragraph 1 of Schedule 4A to the Gas Act 1986 I have decided to grant permission to Cadent to bring the appeal on the ground set out in its Notice of Appeal. Pursuant to paragraph 1(11)(c) of Schedule 4A to the Gas Act 1986 this grant of permission is conditional upon the following:
  - (a) that this appeal shall be considered together with the OE grounds pleaded by Northern Gas Networks Limited, Southern Gas Networks plc and Scotland Gas Networks plc (together SGN) (Ground 2 in SGN's Notice of Appeal), and Wales & West Utilities Limited (WWU) (Grounds 1, 2 and 3 in WWU's Notice of Appeal).
19. I consider that the above condition will enable the CMA to dispose of the appeals fairly and efficiently and at proportionate cost.

Cyrus Mehta

*Authorised Member of the CMA*

31 March 2026