

WALES & WEST UTILITIES LIMITED

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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, Wales & West Utilities Limited (WWU) 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 WWU (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 WWU's Notice of Appeal, to the submissions in response made by GEMA on 17 March 2026 and to WWU's representations to the CMA on 23 March 2026 on whether the CMA should consider together each of the appellants'¹ (the Appellants) grounds of appeal relating to Ongoing Efficiency (OE).

Decision on permission

5. On 3 March 2026, WWU'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.

¹ The CMA received a total of four applications for permission to appeal the Decision from: Cadent Gas Limited, Northern Gas Networks Limited, Southern Gas Networks plc and Scotland Gas Networks plc (who submitted a joint appeal) and WWU.

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 WWU. **I am therefore satisfied that WWU 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. WWU seeks permission to appeal the Decision on three grounds, which all relate to how GEMA set OE at 1%. WWU 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.
9. WWU submitted that GEMA's errors when it set OE at 1% consisted of the following:
 - (a) Ground 1: GEMA's central assumption – that regulated networks are 'insulated' from the economy-wide slowdown in productivity and can outperform competitive benchmarks – is wrong.
 - (b) Ground 2: GEMA committed multiple errors in its quantitative methodology that systematically bias the result upward.
 - (c) Ground 3: GEMA relied on qualitative factors to justify 1.0% OE that are either unevidenced, irrational, or repeat errors the CMA has already rejected.
10. 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.
11. I have reviewed GEMA's submissions. **I have concluded that WWU should be granted permission on its grounds of appeal for the reasons set out below.**

12. 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.
13. I am therefore satisfied that WWU's grounds of appeal are not brought for reasons that are trivial or vexatious. Each of Grounds 1, 2 and 3 raises arguable points of substance which will require detailed consideration and therefore it is not the case that the appeal, in relation to Grounds 1, 2 and 3, has no reasonable prospect of success.

Grant of permission and conditions

14. 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).
15. 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.
16. 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.
17. Pursuant to section 23B and paragraph 1 of Schedule 4A to the Gas Act 1986 I have decided to grant permission to WWU to bring the appeal on all grounds 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 Cadent Gas Limited, Northern Gas Networks Limited, and Southern Gas Networks plc and Scotland Gas Networks plc (together SGN) (Ground 2 in SGN's Notice of Appeal).

18. 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