



IN THE COMPETITION
APPEAL TRIBUNAL

Case Number: 1099/1/2/08

B E T W E E N:

NATIONAL GRID PLC

Appellant

- v -

THE GAS AND ELECTRICITY MARKETS AUTHORITY

Respondent

supported by

SIEMENS PLC
CAPITAL METERS LIMITED
METER FIT (NORTH WEST) LIMITED
METER FIT (NORTH EAST) LIMITED

Interveners

ORDER

UPON reading written submissions from National Grid plc (“National Grid”), the Respondent (“the Authority”) and the Interveners;

AND UPON hearing the legal representatives of the parties at a case management conference on 22 September 2008 and at a hearing on 8 October 2008;

AND UPON National Grid withdrawing:

- (i) paragraphs 289, 293, 297 and 428 of the Notice of Appeal;
- (ii) the opening words of paragraph 429 of the Notice of Appeal, namely “This flexibility has recently increased even further as”;
- (iii) the sub-heading above, and the first sentence of, paragraph 440 of the Notice of Appeal

IT IS ORDERED THAT:

(1) The following passages in the Interveners' pleadings and evidence are inadmissible:

- (a) In the Statement of Intervention served by CML-
 - (i) the fourth bullet of paragraph 14 (headed "Bundling of maintenance"), except for the first sentence;
 - (ii) the fourth and fifth sentences of paragraph 38 (from the sentence beginning "Further, due to the effect of the MSAs..." to the end of that paragraph);
 - (iii) paragraph 39.
- (b) In the witness statement of Mr Timothy Peter Hoskin dated 27 June 2008-
 - (i) paragraph 13 in so far as the columns in the summary tables include data relating to pre-payment meters;
 - (ii) paragraph 17 and the relevant part of tab 2 of exhibit TPH 1;
 - (iii) paragraphs 23 to 26;
 - (iv) tab 2 of exhibit TPH 1 in so far as it compares the prices of pre-payment meters.
- (c) Paragraphs 24 to 33 of the witness statement of Mr Neil Alan Williams dated 27 June 2008.
- (d) In the Statement of Intervention served by Siemens-
 - (i) the second sentence of paragraph 20 starting "From Siemens' point of view...";
 - (ii) paragraph 21 except for the first sentence;
 - (iii) paragraphs 42 and 43;
 - (iv) paragraph 44(b);
 - (v) the last two sentences of paragraph 46 starting "Moreover the conditions...".
- (e) In the witness statement of Mr David Llewellyn Lee dated 27 June 2008-
 - (i) paragraph 37;

- (ii) paragraphs 42 to 47;
 - (iii) paragraphs 48 to 51;
 - (iv) paragraphs 53 to 64;
 - (v) paragraphs 69 to 72;
 - (vi) the last sentence of paragraph 76.6;
 - (vii) paragraph 78.
- (f) In the witness statement of Mr Paul King dated 26 June 2008-
- (i) paragraph 24;
 - (ii) paragraph 33(a);
 - (iii) paragraph 51 in so far as it responds to paragraph 428 of the Notice of Appeal;
 - (iv) in paragraph 51, in the sub-paragraph responding to paragraph 459 of the Notice of Appeal, the last sentence starting “By their very nature...”;
 - (v) in paragraph 52, in the sub-paragraph responding to Exhibit NA1 to Mr Avery’s witness statement, the last three sentences from “Again these are now having an impact” to the end of that sub-paragraph.
- (2) CML will, as soon as practicable, re-serve tab 2 of exhibit TPH 1 to Mr Hoskin’s witness statement having excluded the material referred to in paragraph 1(b)(ii) and (iv) above.
- (3) National Grid may file and serve additional submissions and evidence (if so advised) relating to-
- (a) the price comparisons set out in the Decision paragraphs 4.111 to 4.118 between National Grid’s and the CMOs’ metering charges to British Gas and in the witness statement of Mr Hoskin paragraphs 10 to 13 and tab 2 of exhibit TPH 1;
 - (b) the Authority’s contentions in paragraph 4.73 of the Decision concerning the reasonableness of assumed achievable volumes of meter replacement.
- (4) CML may serve a supplemental witness statement confirming the information about its contracts set out in its letter to the Tribunal dated 8 October 2008, such statement to be served as soon as possible.

- (5) Siemens may serve a supplemental witness statement from Mr Duncan Southgate correcting a point in Mr Southgate's first witness statement dated 27 June 2008.
- (6) Paragraph 9 (c)(i) and (ii), (e), (f), (g) and (h) of the Order of the Tribunal made on 23 May 2008 are hereby revoked.
- (7) In relation to the further conduct of this appeal:
 - (a) an agreed chronology of events is to be served by National Grid by 5 pm on 24th October 2008;
 - (b) a schedule of issues, agreed so far as possible with the other parties, is to be served by National Grid by 5 pm on 24th October 2008;
 - (c) any additional submissions referred to in paragraph (3) above are to be served by National Grid by 5 pm on 24th October 2008;
 - (d) any response by the Authority or the Interveners to those additional submissions is to be filed and served by 5 pm on 31st October 2008;
 - (e) the parties will prepare an agreed bundle of documents to serve as the core bundle for the hearing and a joint bundle of authorities to be referred to at the hearing; and the parties file nine copies of each of the said bundles by 5 pm on 3rd November 2008;
 - (f) the Appellant file its skeleton argument by 10 am on 10th November 2008;
 - (g) the Authority file its skeleton argument by 5 pm on 1st December 2008;
 - (h) the Interveners file their skeleton arguments by 12 noon on 12th December 2008.
- (8) Costs be reserved.
- (9) There be liberty to apply.

Vivien Rose
Chairman of the Competition Appeal Tribunal

Made: 17 October 2008
Drawn: 17 October 2008