



COMPETITION APPEAL TRIBUNAL

NOTICE OF N APPEAL UNDER SECTION 70 OF THE SUBSIDY CONTROL ACT 2022

Case No: 1754/12/13/25

Pursuant to Rule 14 of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648) (the “Tribunal Rules”), the Registrar gives notice of the receipt of an application (the “Application”) on 22 October 2025, under section 70 of the Subsidy Control Act 2022 (the “SCA22”) by Zenobē Energy Limited (the “Applicant” or “Zenobē”). The Application relates to a decision of the Gas and Electricity Markets Authority (“GEMA” or the “Respondent”) to make a subsidy scheme in respect of longer-duration energy storage (“LDES”) projects (the “Scheme”). It is alleged that establishment of the Scheme constitutes a subsidy decision within the meaning of SCA22. The Appellant is represented by Norton Rose Fulbright LLP, 3 More London Riverside, London SE1 2AQ (Ref: Susanna Rogers, Mark Mills, Jane Kluske and James Dempsey).

According to the Application, the Applicant owns and operates lithium-ion battery energy storage systems (“BESS”) assets in the UK through subsidiaries, each of which either is the holder of an electricity generation licence granted under the Electricity Act 1989 (“EA89”) or operates under an exemption from the requirement to hold a licence.

The Respondent, GEMA, is a non-ministerial government department established under the Utilities Act 2000 and is the independent regulator of gas and electricity markets in Great Britain. Its day-to-day functions are carried out by the Office of Gas and Electricity Markets (“Ofgem”).

The Application states that, on 23 September 2025, GEMA published a suite of documents comprising its decision to make the Scheme (the “Decision”). These documents are said to include:

- (i) “Decision on the Project Assessment framework for Window 1 LDES cap and floor regime” (MCA Consultation Response);
- (ii) “Decision: Financial Framework: LDES Window 1 Cap and Floor regime” (FF Consultation Response);
- (iii) “Guidance: Cap and Floor Cost Assessment: Long Duration Electricity Storage (window one)” (Costs Assessment Guidance);
- (iv) (Multi-Criteria) “Assessment Framework: Cap and Floor Project Assessment: Long Duration Electricity Storage (window 1)” (MCA Framework).

The rationale of the Scheme is to incentivise development of LDES projects, which have been subject to a historic lack of investment, by providing revenue certainty for investors. The Scheme, as described in the Application, is a framework established by GEMA to provide support to eligible LDES projects through a cap and floor mechanism. Under the Scheme, supported projects are guaranteed a minimum level of revenue (the “floor”) and will receive a ‘top up’ payment in the event that revenues fall below the minimum level. The Scheme is also subject to a maximum revenue threshold (the “cap”) which would require some revenues to be returned to customers in the event that revenues exceed the cap. The Application is primarily concerned with floor payments, which are alleged to constitute a subsidy scheme.

Floor payments will be funded by Balancing Services Use of System (“BSUoS”) charges, which are collected by the National Energy System Operator (“NESO”) from suppliers during the course of carrying out its functions to balance the UK electricity network. NESO is a corporation sole, wholly owned by the Secretary for Energy Security and Net Zero.

Zenobē contends that the Scheme’s design risks distorting competition by enabling supported LDES projects to compete directly with unsupported short-duration energy storage (“SDES”) assets, such as lithium-ion battery systems, which have historically operated without public financial support. The Application states that SDES providers rely on revenue stacking across multiple markets to attract investment and maintain commercial viability. By allowing LDES projects to access these same markets while benefiting from cap and floor support, the Scheme is alleged to be creating an uneven playing field that undermines the investment case for SDES technologies.

The Application further asserts that GEMA did not impose any restrictions on the participation of supported LDES projects in short-duration markets, nor did it conduct an assessment of the potential impact on competition or investment in SDES. The Application argues that this omission is particularly significant given the scale of the Scheme and the potential for supported LDES projects to displace or crowd out SDES providers.

Zenobē has engaged with Ofgem throughout the development of the Scheme and has objected to a variety of its design elements. In correspondence with Ofgem, Zenobē sought confirmation that GEMA had complied with its duties under the SCA22. On 15 September 2025, Ofgem informed Zenobē that it did not consider that the Scheme would constitute a subsidy scheme within the meaning of SCA22.

The Application alleges that in making the Scheme, GEMA failed to comply with its: (i) duty to consider the subsidy control principles before making a subsidy scheme, and (ii) duty not to make the Scheme unless it is of the view that subsidies under the scheme will be consistent with those principles. Zenobē alleges that the Scheme is a subsidy scheme because it involves the provision of financial assistance by a public authority that confers an economic advantage on providers of LDES services through floor payments. Such support is targeted at LDES projects to the exclusion of SDES projects, such as those operated by Zenobē, and is capable

of distorting competition between such projects, which can and do compete in many energy markets.

Following establishment of the Scheme, Zenobē made a written request that GEMA provide certain information and documents in relation to the Decision. Ofgem provided certain information about the making of the Scheme. However, Ofgem did not give notice to Zenobē that the answer constituted a response to a request made by Zenobē under section 76(1) SCA22.

Zenobē applies for review of the Decision on the grounds that GEMA has erred in law and/or acted in breach of the SCA22, public law, and/or the Tribunal Rules, as follows:

1. in failing, contrary to s.12(3) SCA22, to consider the subsidy control principles before making the Scheme; and in making the Scheme without reaching the view that the subsidies provided for by the Scheme will be consistent with those principles;
2. in failing, contrary to s.13(3) SCA22, to consider the energy and environment principles before making the Scheme; and in making it without reaching the view that the subsidies provided for by the Scheme will be consistent with those principles;
3. in failing, contrary to s.52(1)(a) SCA22, to request a report from the Competition and Markets Authority before making a subsidy scheme of particular interest, with the consequence that the Scheme is prohibited by virtue of s.33(1) SCA22;
4. in failing, contrary to s.33(1)(b) SCA22, to ensure that an entry in the subsidy database is made in respect of the Scheme;
5. by taking the Decision to make the Scheme without the legal power to do so; and
6. in failing, contrary to r.98A(8) of the CAT Rules, to provide the required notice that it has provided information in response to a pre-action information request (“PAIR”).

By way of relief, the Appellant seeks:

1. A declaration that GEMA made a “subsidy decision”, within the meaning of s.70(1) and (7) SCA22, to make a “subsidy scheme”, within the meaning of s.10(1) SCA22.
2. A declaration that GEMA has breached its duty under s.12(3) SCA22 to consider the subsidy control principles before making a subsidy scheme.
3. A declaration that GEMA has breached its duty under s.13(3) SCA22 to consider the energy and environment principles before making a subsidy scheme.

4. A declaration that GEMA has breached its duty under s.52(1)(a) SCA22 to request a report from the CMA before making a subsidy scheme of particular interest.
5. A declaration that the Scheme is prohibited pursuant to s.31(1) SCA22.
6. A declaration that GEMA has breached its duty under s.33(1)(b) SCA22 to ensure that an entry in the subsidy database is made in respect of the Scheme.
7. A declaration that the Decision was *ultra vires*.
8. An order quashing the Decision.
9. A declaration that GEMA has breached its duty under r.98A(8) of the CAT Rules to provide notice of having provided information in response to a PAIR.
10. Such further or other relief as appropriate.
11. Costs.

Any person who considers that they have sufficient interest in the outcome of the proceedings may make a request for permission to intervene in the proceedings, in accordance with rule 16 of the Rules.

Please also note that a direction of the President is currently in place as to the electronic filing of documents: see paragraph 2 of the [Practice Direction](#) relating to Covid-19 published on 20 March 2020. Therefore, a request for permission to intervene should be sent to the Registrar electronically, by email to registry@catribunal.org.uk so that it is received within three weeks of the publication of this notice.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at www.catribunal.org.uk. Alternatively, the Tribunal Registry can be contacted by telephone (020 7979 7979) or email (registry@catribunal.org.uk). Please quote the case number mentioned above in all communications.

Charles Dhanowa CBE, KC (Hon)
Registrar

Published 14 November 2025