Neutral citation [2026] CAT 22

Case No: 1754/12/13/25

IN THE COMPETITION APPEAL TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

28 January 2026

Before:

JAMES WOLFFE KC
(Chair)

Sitting as a Tribunal in England and Wales

BETWEEN:

ZENOBĒ ENERGY LIMITED

Applicant/ (**Zenobē**)

- v -

GAS AND ELECTRICITY MARKETS AUTHORITY

Respondent/(**GEMA**)

Heard at Salisbury Square House on 28 January 2026

RULING (INTERVENTION REQUESTS)

APPEARANCES

Nicholas Gibson (instructed by Norton Rose Fulbright LLP) appeared on behalf of the Applicant.

Joseph Barrett KC and Rupert Paines appeared on behalf of the Respondent.

Patrick Halliday appeared on behalf of the Secretary of State for Energy Security and Net Zero

Phillip Ashley (instructed by Cameron McKenna Nabarro Olswang LLP) appeared on behalf of NatPower.

Carter Chim (instructed by Norton Rose Fulbright LLP) appeared on behalf of Gresham House Energy Storage Holdings Limited.

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A. INTRODUCTION

1. On 22 October 2025, the Tribunal received an application from Zenobē under s. 70 of the Subsidy Control Act 2022 ("t**he 2022 Act**"). Zenobē owns and operates, through subsidiaries, lithium-ion battery storage systems ("**BESS**") assets in the United Kingdom. Zenobē alleges that through publication of a suite of documents in September 2025, GEMA made a scheme to provide cap and floor support for LDES projects. Zenobē alleges that this satisfies the definition of a "subsidy scheme" as defined in s. 10 of the 2022 Act. Since that is disputed by GEMA, I shall call it "**the Alleged Scheme**".

2. This judgment addresses requests for permission to intervene from the following persons (together the "**Intervention Requests**"): Gresham House Energy Storage Holdings ("**GHES**"); the Secretary of State for Energy Security and Net Zero (the "**SoS**"); NatPower Development Limited ("**NatPower**") with an application dated 15 January 2026; and the British Hydropower Association ("**BHA**") with an application dated 21 January 2026. I heard argument on these requests at a Case Management Hearing on 28 January 2026 and refused them. This judgment sets out my reasons for doing so.

B. THE PLEADED CASES

3. Zenobē's challenge to the Alleged Scheme proceeds on the following grounds:

   (1) that, in breach of s. 12 of the 2022 Act, GEMA did not consider the subsidy control principles before making the Alleged Scheme;

   (2) that, in breach of s. 13 of the 2022 Act, GEMA did not consider the energy and environment principles before making the Alleged Scheme;

   (3) that, in breach of s. 52 of the 2022 Act, GEMA did not request a report from the Competition and Markets Authority;

   (4) that, in breach of s. 33 of the 2022 Act, GEMA did not ensure that an entry was made in the subsidy register in respect of the Alleged Scheme;

(5) that, in making the Alleged Scheme, GEMA acted ultra vires; and

(6) that GEMA's response to a request by Zenobe for information about the Alleged Scheme did not comply with r. 98A(8) of the Competition Appeal Tribunal Rules 2015 ("**the Tribunal Rules**").

4. GEMA accepts that it did not consider the subsidy control principles or the energy and environment principles and that it did not request a report from the CMA before publishing the documents on which Zenobē relies. It accepts that it has not made any entry in the subsidy register. GEMA's position is that the documents in question did not make a subsidy scheme as defined in s. 10 of the 2022 Act and that, accordingly, none of ss. 12, 13, 33 and 52 of the 2022 Act is engaged.

5. GEMA advances that submission on two bases.

(1) It contends that the Alleged Scheme does not provide for "*binding criteria*" or "*defined parameters and conditions*" such as to satisfy the definition in s. 10 of the 2022 Act, as that definition was explained in Durham Company Ltd v. Durham County Council [2023] CAT 50 at [51].

(2) It further contends the support provided in the Alleged Scheme does not involve "*financial assistance ... from public resources*" and, on that account, does not constitute a subsidy as defined in s. 2 of the 2022 Act.

6. GEMA contends that, in any event, when s. 26 of the Planning and Infrastructure Act 2025 ("**the PIA 2025**") (inserting a new s.10P into the Electricity Act 1989) comes into force, GEMA will be under a statutory duty to establish and operate a scheme such as the Alleged Scheme. GEMA argues that by virtue of the definition in paragraph 4 to Schedule 3 to the 2022 Act, s.78 of, and Schedule 3, to the 2022 Act will apply to a scheme made pursuant to that duty, with the consequence that none of the provisions of the 2022 Act upon which Zenobē relies would apply.

7. As at the date of the Case Management Hearing s.26 was not yet in force, but was expected to come into force on 18 February 2026. GEMA stated that once the section came into force, it intended to make a decision to adopt the work which had previously been undertaken in respect of the Alleged Scheme. GEMA states that the remaining steps to contract award thereafter will proceed pursuant to s.10P. GEMA contends that, in consequence, even if the Tribunal were to find that the Alleged Scheme was a subsidy scheme as defined in the 2022 Act, this appeal would become academic. GEMA contends that even if the Tribunal were otherwise to accept Zenobē's analysis, this circumstance would justify the Tribunal in withholding relief.

8. GEMA resists Zenobē's *vires* challenge on jurisdictional and substantive grounds. It contends that Zenobē's final ground of review proceeds on an untenable interpretation of r.98A(8) of the Tribunal Rules.

9. As regards relief, GEMA relies on s.72(8) of the 2022 Act which is in the following terms:

> "The Tribunal may refuse to grant any relief sought on an application if the Tribunal considers -
>
> (a) that there has been undue delay in making the application, or
>
> (b) that granting the relief sought on the application would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration."

GEMA states that the process under the Alleged Scheme has reached project assessment stage and that 73 projects are involved. It contends that the grant of relief would be highly prejudicial to the interests of those parties as well as to the public interest in the provision of clean energy in the United Kingdom and compliance with the UK's climate related commitments and objectives.

10. In a Reply, Zenobē sets out its analysis in support of the contention that the Alleged Scheme is a subsidy scheme for the purposes of the 2022 Act. Zenobē further contends that s. 26 of the PIA 2025 is irrelevant to this appeal since that provision was not in force when the Alleged Scheme was made and is not said to be retrospective. Zenobē argues that, in any event, s.10P does not have the

legal effect for which GEMA contends because, properly construed, the provision confers a power on GEMA to make a scheme rather than imposing a duty to do so.

C. PROCEDURAL HISTORY

11. On 14 November 2025, the Tribunal published a notice of appeal on its website (the "**Summary**"). On 2 and 5 December 2025, the Tribunal received the intervention requests from GHES and the SoS respectively. On 15 and 21 January 2026, the Tribunal received the requests from NatPower and BHA respectively. The Tribunal sent each Intervention Request to the parties and invited them to make written observations. The Tribunal directed that the Intervention Requests be dealt with at a case management hearing that had been listed on 28 January 2026. The proposed interveners were invited to instruct counsel to make oral submissions on the Intervention Requests at the hearing. Each of the proposed interveners did so, except for BHA which chose not to appear at the hearing and instead filed further written submissions on 26 January 2026.

12. At the Case Management Hearing, I made a determination under r. 18 of the Tribunal Rules that these proceedings are to be treated as proceedings in England and Wales. This determination has the consequence that it is s.72 of the 2022 Act which regulates the Tribunal's powers on review rather than s.73 (which would apply were these proceedings in Scotland). I also clarified with counsel for the parties the issues in dispute. Thereafter, after hearing from the legal representatives of the proposed interveners and the parties, I refused each of the intervention requests. I intimated that I would issue a written ruling giving my reasons.

D. THE LAW APPLICABLE TO INTERVENTIONS

13. Rule 16 of the Tribunal Rules provides, among other things, as follows:

> "(1) Any person with sufficient interest in the outcome may make a request to the Tribunal for permission to intervene in the proceedings.
>
> (2) The request shall be filed within the period specified in rule 14(3)(f)."

14. The "*period specified in rule 14(3)(f)*" is "*within three weeks of publication of the summary or within any other period the President may specify*". In this case, no other period was specified, and requests for permission to intervene are accordingly required to be filed within three weeks of publication of the summary. The intervention requests by NatPower and BHA were accordingly out of time.

15. The effect of r. 16 was summarised by Roth J in *Justin Gutmann v Govia Thameslink Railway Limited and Ors* [2023] CAT 23 ("*Gutmann*") at [7]:

> "… the rule involves a two stage process. There is, first, the threshold question whether the applicant has shown a 'sufficient interest' in the outcome of the proceedings; if that is satisfied, it is then a question of discretion for the Tribunal as to whether to permit an intervention, having regard to the governing principles set out in rule 4." stage process. There is, first, the threshold question whether the applicant has shown a 'sufficient interest' in the outcome of the proceedings; if that is satisfied, it is then a question of discretion for the Tribunal as to whether to permit an intervention, having regard to the governing principles set out in rule 4. The Tribunal reiterated this approach in *Sabre Corp v CMA* [2020] CAT 16 at [8]."

16. The Tribunal must accordingly determine first whether the proposed intervener has a sufficient interest in the outcome of the proceedings. If the proposed intervener does have sufficient interest, the Tribunal must then go on to determine whether to permit the intervention as an exercise of its discretion. In doing so, the Tribunal must have regard to the governing principles set out in r. 4. Rule 4(1) requires the Tribunal to seek to ensure that each case is dealt with justly and at proportionate cost. The Tribunal will have regard to the extent to which the proposed intervention would bring added value to the determination of the proceedings and to the additional cost and complexity which would arise from the intervention.

17. In *Durham Co Ltd (t/a Max Recycle) v Durham County Council* [2023] CAT 13, another case brought under s.70 of the 2022 Act, in which Marcus Smith J gave the following reasons why, even if he had found the applicant to have a sufficient interest in the proceedings, he would nevertheless have declined to exercise his discretion to permit the intervention:

> "[8] Even if TBG has a sufficient interest in these proceedings, I do not consider that its presence would add any value to the issues in the Appellant's

> case or assist the Tribunal in resolving those issues. The Application does not set out how the matters on which TBG intends to offer support are beyond the scope of the material and pleadings filed (or to be filed) by the main parties. The points which the Application indicates TBG wishes to raise could be and are being made by the Appellant. I agree with the Respondent's submissions that the Application does not identify issues of law, statutory construction, or any other legal or factual questions on which it is likely to offer different or additional perspectives to the Appellant.
>
> [9] I further note that TBG's participation, even if on a limited basis, would add complexity and cost to the proceedings, which is undesirable particularly in the context of a section 70 review proceeding on a tight timetable. The subsidy control jurisdiction needs to be fast, cheap, and simple, which includes avoiding expanding the scope of such applications unduly."

18. Mr Gibson, for Zenobē, also drew to my attention para [32] of Roth J's judgment in Gutmann, which addressed an application by the Secretary of State to intervene in that case:

> "All of this indicates, in our view, that although affecting only a minor part of the claims there is a likelihood that, even with robust case management, this aspect of the proposed intervention by the SoS brings the prospect of the trial turning into a broad-ranging examination of the funding and finances of the various operations carried on by, at the very least, the TOC defendants and the policies of the SoS as regards rail passenger transport. In our judgment, that would significantly expand the scope of the case in a manner that is wholly disproportionate and contrary to the Governing principle in rule 4."

E. GENERAL OBSERVATIONS

19. In assessing whether proposed interveners can add value to the proceedings it is necessary to identify the matters which are in issue between the parties. I have described the parties' pleaded cases in Section B above. At the Case Management Hearing, counsel for the parties agreed the essential issues which arise in this case. I summarise these as follows:

(1) Whether the Alleged Scheme is a subsidy scheme as defined in s. 10 of the 2022 Act?

(2) If the Alleged Scheme is a subsidy scheme as defined in s.10 of the 2022 Act, whether its validity is affected by any decision which GEMA may make under s. 10P of the 1989 Act (inserted by the PIA 2025)?

(3) If the Alleged Scheme is a subsidy scheme as defined in s. 10 of the 2022 Act, and its validity is not affected by any decision which GEMA may have made under s. 10P of the 1989 Act, whether the Tribunal should nevertheless withhold relief on the basis of the considerations set out in s. 72(8) of the 2022 Act?

20. The first of these issues will require the Tribunal to apply the legal tests in the 2022 Act to the factual circumstances of this case. Only two matters are in issue in that regard:

(1) whether the Alleged Scheme does or does not provide for "*binding criteria*" or "*defined parameters and conditions*" such as to satisfy the definition in s.10 of the 2022 Act; and

(2) whether the support envisaged would involve financial assistance from public resources for the purposes of s. 2 of the 2022 Act.

On the face of it, the former will require an assessment of the terms of the Alleged Scheme against the definition in s.10, and the latter on an understanding of the nature of the assistance envisaged in the Alleged Scheme. The second issue, which arises only if the first issue is determined in favour of Zenobē and if GEMA makes a decision under s. 10P of the 1989 Act, will require a legal analysis of the effect, if any, of the coming into force of s.10P and of any decision which GEMA may make under that Act as regards things done before the Act came into force. The issues which arise, are essentially, it seems to me, questions of law. On the face of it, the parties are well-placed to put before the Tribunal such factual information as it may need in order to determine these issues. They are represented by skilled counsel who are well able to articulate the legal submissions which will be of assistance to the Tribunal in that regard.

21. If the Tribunal resolves these issues in favour of Zenobē, the Tribunal will require to address GEMA's reliance on s.72(8) of the 2022 Act. This will require the Tribunal to consider whether or not granting relief would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration, and, if so, whether or not, on that

ground to withhold relief. GEMA pleads that the process under the Alleged Scheme has reached project assessment stage and that 73 projects are involved. It contends that the grant of relief would be highly prejudicial to the interests of those parties as well as to the public interest in the provision of clean energy in the United Kingdom and compliance with the UK's climate related commitments and objectives.

22. On the face, of it, GEMA, as the relevant regulator, which is administering the Alleged Scheme, is well-placed to provide the Tribunal with information about the effect which a grant of relief would have for the development and administration of the Alleged Scheme and, consequentially, the immediate consequence for applicants if any particular relief were to be granted.

F. THE GHES APPLICATION

23. GHES is a wholly owned subsidiary of the London Stock Exchange listed specialist fund Gresham House Energy Storage Fund plc, which invests in, owns and operates BESS assets in Great Britian. GHES (through other controlled entities) holds 30 operational BESS projects, making it the largest single owner and operator of BESS assets in Great Britain, with a market share of around 18%. GHES' future plans include augmenting the capacity of operational BESS projects and developing pipeline BESS projects that are in the development phase.

24. GHES submitted that it has a sufficient interest in the proceedings because:

    (1) the Scheme would affect the financial viability of its operational and pipeline BESS assets;

    (2) GHES has submitted applications to Ofgem to develop projects that would receive assistance under the Scheme. GHES's proposed projects are based on the current design and eligibility criteria for the Scheme; and

(3) as the largest owner and operator of BESS assets in Great Britain, GHES has consulted with Ofgem throughout the development of the Scheme and has raised concerns in correspondence about its design and operation.

25. In its written request to intervene, GHES drew attention particularly to the fact that, unlike Zenobē, it has submitted applications under the Scheme and so could bring a different perspective to the proceedings when compared with Zenobē. It also pointed to its market leading status in relation to BESS assets and its ability to provide an industry wide view on the impact of the scheme on BESS operators. GHES also suggested that it could not participate in the proceedings through Zenobē because some information that it would provide may be commercially sensitive and therefore not suitable to share with a competitor.

26. GHES proposed that it should be permitted to participate in the proceedings in a limited capacity by providing evidence in the form of a witness statement of 5-10 pages in length (excluding exhibits). GHES also suggested that it might also make brief written submissions in the form of a statement of intervention, but that it would not seek to make oral submissions unless requested to do so by the Tribunal. Mr Chim advised that the exhibits would comprise some correspondence between GHES and the regulators before the introduction of the Alleged Scheme, amounting to some 20 pages.

27. At the Case Management Hearing, Mr Chim, who appeared for GHES, stated that, in light of the crystallisation of the issues between the parties, GHES would not seek to make any submissions or adduce any evidence in relation to the issue of liability. He contended that GHES could nevertheless add value on the issue of relief. He stated that GHES proposed to: (a) explain why GHES felt obliged to make applications under the Alleged Scheme despite its concerns about the design of the Alleged Scheme; (b) explain how BESS assets can be deployed as one of the viable LDES technologies; (c) explain the anticipated impact of the Alleged Scheme, and of any relief which might be granted, on GHES' business. As one of the largest players on the BESS market, it could provide an industry-wide view. It would not be appropriate for the material in question to be put before the Tribunal as part of Zenobē's evidence, since GHES and Zenobē are

competitors and the proposed witness statement might include commercially sensitive information.

28. Zenobē supported GHES' application and GEMA opposed it. At the Case Management Hearing, Mr Gibson, for Zenobē, submitted, among other things, that GHES could add value by reason of their distinct perspective as a party which had applied under the Alleged Scheme and yet had serious concerns about its likely impact. Mr Barratt, for his part noted that GHES was represented by the same solicitors as Zenobē. He contended that there was no real distinction to be drawn between the position of Zenobē and the position of GHES.

29. I accept that GHES has a sufficient interest in these proceedings, in light of the following circumstances:

    (1) GHES has a significant involvement in markets involving BESS assets, the financial viability of which that may be affected by the Scheme.

    (2) GHES has submitted applications for the development of LDES projects under the Scheme.

30. In light of the crystallisation of the issues between the parties, Mr Chim realistically did not seek to argue that GHES could add materially, other than on the question of relief. Although GHES has submitted applications under the Alleged Scheme, it does not, as I understand it, propose to invite the Tribunal to refuse relief by reference to section 78(2). I am not persuaded that any material which GHES might place before the Tribunal, as a party which has submitted applications under the Alleged Scheme but nevertheless supports Zenobē's position, would be likely to be sufficiently additive to the material which Zenobē'swould put before the Tribunal, to justify granting the request.

G. THE SOS' APPLICATION

31. The SoS' written request for permission to intervene is a relatively brief document expressed at a relatively high level of generality. The detailed basis

for the SoS' request was articulated by Mr Halliday on behalf of the SoS at the Case Management Hearing.

32. Mr Halliday submitted that the SoS has sufficient interest in the outcome of the proceedings, because of his responsibility for LDES policy and for the passage of the PIA25. He told me that the SoS had decided that the Alleged Scheme required to be introduced as quickly as possible to meet the Government's energy and climate policy objectives. If the Alleged Scheme were to be quashed, this would directly affect the SoS because it would disrupt and delay a Scheme whose speedy implementation the SoS had decided was necessary. Mr Halliday contended that the SoS' interest is not identical to GEMA's: GEMA is the electricity regulator and the delivery body for the Scheme; it is the SoS who has responsibility for the relevant Government policies.

33. Mr Halliday submitted that the SoS could add value to the proceedings by making submissions on relief under reference to s. 72(8) of the 2022 Act. He told me that, if permitted to intervene, the SoS proposed to present an argument to the effect that, if Zenobē's analysis was otherwise correct, then the relevant decision had been made not in September 2025, as pleaded by Zenobē, but in October 2024 when the SoS decided that an LDES Scheme was required or not later than March 2025 when GEMA and the SoS published a joint technical decision document setting out various characteristics of the scheme. In these circumstances, the SoS intended to argue that there had been undue delay on the part of Zenobē in respect of its failure to challenge those earlier decisions. He advised me that, for the purposes of the submission, there would be two critical documents; so far as he was aware, it would not involve examining correspondence or other interactions with Zenobē.

34. Mr Halliday also contended that the SoS is uniquely well placed to explain the disruption and delay which quashing relief would cause to the achievement of Government goals, including its clean energy objectives and statutory carbon reduction targets. Mr Halliday also intimated that the SoS intended to support GEMA's arguments about the effect of s. 26 of the PIA 2025. The SoS was, he said, uniquely well placed to ensure that the Tribunal has before it any relevant external aids to the interpretation of that legislation. He submitted that it would

not be "optimal" for the SoS' position, insofar as relevant to discretionary relief, to be provided via GEMA because the SoS has a different interest and perspective from GEMA; and as regards materials relevant to the interpretation of s. 26, it would be "more efficient" for the SOS to provide these directly rather than through GEMA.

35. Mr Halliday proposed that the SoS' intervention would consist of a witness statement of up to 15 pages (excluding exhibits) and written submissions of up to 15 pages. He was unable to advise me of the number and scope of the exhibits which were envisaged.

36. Zenobē opposed the SoS' request. At the Case Management Hearing, Mr Gibson, for Zenobē, contended that the SoS' request, which had been filed at the last minute, was not sufficiently detailed to enable the Tribunal properly to engage with it. He contended that the SoS had not explained how what he was proposing to say would meaningfully add to the material which GEMA could put before the Tribunal. Further, the SoS proposed to expand the scope of the dispute between the parties, by contending that there had been undue delay on the part of Zenobē bringing forward its application. For its part, GEMA supported the SoS' request. Mr Barratt confirmed that he was not contending that the decision, if there was a decision to make a subsidy scheme (which he of course rejected), had in fact been taken at an earlier date, or that there was undue delay. He relied on this in support of a submission that the SoS' intervention request should be granted: the SoS had a different legal analysis; and it would not, in his submission, add significantly or substantially to the case.

37. I accept that the SoS has a sufficient interest in the proceedings. He instructed the development of the Alleged Scheme and promoted section 26 of the PIA, with a view to advancing and meeting the UK Government's energy and climate policy objectives. However, I refuse the application. I do so for the following reasons.

38. First, I am not persuaded that anything would be added by allowing legal submissions by the SoS on section 25 of the PIA. GEMA is well able to advance those submissions. There is no reason why GEMA could not identify

and provide to the Tribunal any relevant explanatory materials. I am unpersuaded by Mr Halliday's submission that it would be more "efficient" for the SoS to do this.

39. Second, the SoS proposes to advance a line of argument which is not at issue between the parties – namely that if there was a decision to make a subsidy scheme, it was made prior to the September publications relied upon by Zenobē, and that Zenobē has delayed in challenging that putative decision. This new line of argument was not foreshadowed in the SoS' request to intervene; nor, so far as I am aware, was it intimated to the parties prior to the Case Management Hearing. It is not the SoS' position that a decision to make a subsidy scheme was actually made at a date prior to September 2025. Rather, his position is that if the September documents were concerned with a subsidy scheme, the decision to make the scheme had been made at an earlier point. This is a position which GEMA could have taken but has chosen not to. In these circumstances, I do not consider that it would be consistent with the general principles to allow an intervention which would expand the scope of the case in this way.

40. Third, I do not consider that an intervention by the SoS would sufficiently materially add to the Tribunal's consideration of the application of s. 78(2), in the event that the Tribunal reaches that issue, to justify the additional cost and complexity. As the regulator, GEMA is best placed to explain the impact that any grant of relief may have on regulation of the industry and good administration in that sense. GEMA should be able to articulate any impact on wider government policy objectives at the level of generality or specificity that is likely to be useful and relevant to the Tribunal. If it is necessary to introduce evidence from within UK Government to support the contention, that can be done by GEMA without an intervention from the SoS.

H. THE NATPOWER APPLICATION

41. NatPower describes itself as "*an independent energy enabler, with experience developing infrastructural products for renewable energy generation, providing support to enterprises, utilities, and investors*." NatPower is part of the NatPower group, which has energy related operations in the United Kingdom,

Italy, Kazakhstan, the United States and Canada. NatPower submitted that it has a sufficient interest in these proceedings because it holds 10 of the 77 LDES projects that have passed the eligibility assessment phase of the Scheme. Any quashing of the Scheme would therefore have a direct impact on NatPower's development of those LDES projects.

42. In its request to intervene, NatPower intimated that it proposed to provide evidence to the Tribunal which would "*provide a market participant's counterpoint to the Applicant's characterisation of the LDES scheme and the relevant affected markets*". It would be able to provide evidence and submissions on the market impact of the Alleged Scheme and on the impact of any delay to, or other impact on, the Alleged Scheme arising from these proceedings.

43. NatPower suggested that it would participate in the proceedings in a limited capacity by providing evidence in the form of a witness statement of up to 10 pages in length (excluding exhibits). NatPower suggested that it would also file written submissions of up to 7 pages in length, but that it would not seek to make oral submissions. Mr Ashley advised me that the exhibits would not be extensive.

44. At the Case Management Hearing, Mr Ashley, for NatPower, explained that its request to intervene followed receipt of a letter from GEMA dated 7 January 2026 regarding separate judicial review proceedings in the High Court (also brought by Zenobē) in which NatPower is an interested party. At that point, NatPower sought legal advice and submitted its application on 15 January 2026. Mr Ashley, counsel for NatPower, stated that NatPower was not aware of the significance of these proceedings until it sought legal advice. However, Mr Ashley was unable to confirm whether or not NatPower was aware of these proceedings prior to 7 January 2026.

45. On the substance of the application, Mr Ashley intimated that NatPower would wish to put evidence before the Tribunal about the impact of a quashing order on NatPower and other participants in the market, in particular in respect of investor confidence and financing. It would not be appropriate, said Mr Ashley,

for this information to be put before the Tribunal through GEMA. Mr Ashley intimated that NatPower would also wish to provide evidence on the substantive questions before the Tribunal. Specifically, it would wish to contend that the Alleged Scheme did not have sufficient clarity to satisfy the definition of a "subsidy scheme" under the 2022 Act. It would also wish to contend that the Alleged Scheme did not satisfy the requirement of specificity, set out in section 2(1)(c) of the 2022 Act. And it would wish to respond to a contention that at least some applicants had applied speculatively or to hedge risk, information which could also not appropriately be provided through GEMA.

46. Zenobē opposed NatPower's request; whilst GEMA supported it. At the Case Management Hearing, Mr Gibson contended that NatPower had not provided an adequate explanation or excuse for its application to abridge time. He submitted that almost everything which NatPower could say GEMA would, as the regulator of whole industry, be better placed to say. NatPower, like the SoS, was seeking to expand the scope of the dispute between the parties. Mr Barratt agreed that there was good reason why evidence on relief should be provided by the interested parties themselves, rather than through GEMA, given the ongoing process. He confirmed that he did not propose to advance the specificity argument intimated by Mr Ashley.

47. Whilst Mr Ashley explained very candidly how NatPower came to file their request to intervene when they did, he was unable to advise me whether NatPower knew about these proceedings at an earlier time, and accordingly did not address me on whether NatPower could have considered requesting to intervene at an earlier date. In these circumstances, I am not satisfied that I should exercise my discretion to extend the Application Deadline to accommodate the NatPower Application.

48. If I had extended the Application Deadline, I would have accepted that NatPower has a sufficient interest in these proceedings. NatPower has pending applications. The grant of relief, should the Scheme be found to be unlawful, would therefore affect NatPower's interests. I would not, though, have granted the request to intervene, for the following reasons. First, I would not have permitted NatPower to expand the scope of proceedings by making submissions

on the issue of specificity. This is not a matter in dispute between the parties. It would have been open to GEMA to take that point but it has chosen not to do so. On the face of it, this would be a material expansion of the issues which the Tribunal would require to address. Further, whilst I recognise that prejudice to third parties may be relevant to the question of relief, I do not accept that NatPower's perspective on those impacts would be sufficiently additive to justify the additional costs of their participation. NatPower does not claim to have vested rights which would be prejudiced by the grant of relief. It seems to me that that the impact of relief on market participants is a point which GEMA should be able to articulate at the level of generality or specificity that is sufficient to allow the Tribunal to grapple with the issue, if the Tribunal reaches the point of considering relief. The same can be said of any submissions that NatPower would make about the structure of the market and the relationship between BESS and LDES assets.

I. THE BHA APPLICATION

49. BHA is a trade association representing the hydropower sector, including developers and operators of pumped storage hydropower ("PSH") schemes. BHA's members include organisations actively developing projects that may receive support under the Scheme. Unlike the other parties, BHA submitted written submissions of five pages ahead of the hearing (the "BHA Intervention Submissions") and confirmed that it would not instruct counsel or seek to make any further submissions. The BHA Intervention Submissions were the totality of BHA's participation in these proceedings.

50. The BHA Intervention Submissions provide context on the role of PSH schemes in electricity systems; the challenges affecting investment in PSH schemes; and the delivery and system resilience implications of any delay, pause or material redesign of the Scheme following the Tribunal's determination of these proceedings. The BHA Intervention Submissions sought to demonstrate that the Scheme is necessary for the delivery of PSH projects and the benefits of such projects. BHA stated that it was focussed on the practical consequences, or what BHA described as the "collateral effects" of these proceedings on PSH projects, rather than its legal merits.

51. Zenobē opposed BHA's intervention. Mr Gibson contended that they had not articulated any proper excuse for the late request. Nor, in his submission, had they articulated a proper interest in the case.

52. BHA also submitted its application after the Application Deadline. The BHA Application says nothing about the delay and simply asserts that the application was made at an early stage in proceedings and that it was not aware of the procedural timetable. I am not persuaded that I should exercise my discretion to extend the Application Deadline to accommodate the BHA Application.

53. If I had extended the Application Deadline, I would have accepted that BHA has a sufficient interest in these proceedings given that the quashing of the Scheme would have an impact on the projects of those of its members who had submitted applications under the Scheme. However, I have reviewed the BHA Intervention Submissions, which would have formed the totality of BHA's participation in the proceedings. BHA's explanation of PSH technology and its assertions about the importance of such technologies is unlikely to provide any material assistance to the Tribunal in the determination of the matters which are at issue between the parties in these proceedings. The high-level submissions that BHA have made about the impact of any grant of relief on PSH developers can equally well be articulated by GEMA.

J. DISPOSITION

54. For the reasons set out above, I refuse the Intervention Requests.

James Wolffe KC
Chair of the Competition Appeal Tribunal

Made: 28 January 2026
Drawn: 16 March 2026