



To:
Current and future electricity
transmission; gas transportation;
electricity interconnector; and
gas interconnector licensees

*Promoting choice and value for
all gas and electricity customers*

Our Ref: Certification of Unbundling
Email: unbundlingc@ofgem.gov.uk

Date: 10 November 2011

Dear Colleague,

Certification of transmission system operators (TSOs) under the ownership unbundling requirements of the Third Package¹

On 10 November 2011 the Electricity and Gas (Internal Markets) Regulations 2011 ('the GB Regulations') came into force.

One of the areas covered by the GB Regulations is the requirement for TSOs to be certified as complying with the ownership unbundling requirements of the Third Package.

We are therefore now expecting current and future transmission licensees to formally apply for certification under the ownership unbundling requirements of the Third Package pursuant to the GB Regulations.

It is therefore important that you read this letter carefully and consider what steps you may need to take to apply for certification.

This affects the following types of licensee in Great Britain ('GB'): (i) electricity transmission; (ii) gas transportation (high-pressure only); (iii) electricity interconnector; and, (iv) gas interconnector.

Our open letter of 26 July 2011 set out information on our intended procedure for processing applications for certification under the ownership unbundling requirements of the Third Package. This letter now updates and supersedes that letter, and reflects the European Commission ('the Commission') staff working paper on Certification of Transmission System Operators. The working paper provides guidance on how the Commission will treat and assess preliminary certification decisions from national regulatory authorities, including the Authority². The Commission staff working paper can be found at: http://ec.europa.eu/energy/gas_electricity/interpretative_notes/doc/sec_2011_1095.pdf

¹ The term "Third Package" refers to Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC ('Electricity Directive'); Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 ('Electricity Regulation'); Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC ('Gas Directive'); Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 ('Gas Regulation'); and Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators.

² The Gas and Electricity Markets Authority (the 'Authority'). In this letter the terms, 'Authority', 'Ofgem', 'we' and 'us' are used interchangeably.

Background

The Third Package is a suite of legally binding European Union legislation. The Third Package imposes new obligations on certain industry participants, which are referred to below.

The GB Regulations have amended relevant domestic legislation, including the Gas Act 1986 ('the Gas Act') and the Electricity Act 1989 ('the Electricity Act') and the Utilities Act 2000.

The GB Regulations have designated the Authority as the National Regulatory Authority for GB and have given it the responsibility for administering the ownership unbundling certification process for current and future GB electricity transmission, gas transportation and electricity and gas interconnector licensees.

What is ownership unbundling?

Article 9 of each of the Directives requires TSOs³ to comply with one of the ownership unbundling models set out in the Directives. The default model is full ownership unbundling. Under the full ownership unbundling model the same person, or persons, are not entitled directly or indirectly to exercise control⁴ over a production or supply⁵ undertaking and directly or indirectly to exercise control or exercise any right over a TSO or over a transmission system⁶. Conversely, the same person cannot directly or indirectly exercise control over a TSO or over a transmission system and directly or indirectly exercise control or any right over a production or supply undertaking.

On what basis can an applicant seek certification?

The GB Regulations enable the Authority to certify a TSO as complying with the ownership unbundling requirements under the following models:

- Electricity: (i) full ownership unbundling; or, (ii) designating an independent system operator ('ISO');
- Gas: (i) full ownership unbundling; (ii) designating an ISO; or, (iii) complying with the provisions on an independent transmission operator ('ITO');

or where the certification applicant:

- is entitled to continue to rely on an exemption granted under Article 7 of Regulation (EC) No. 1228/2003 (for electricity TSOs) or under Article 22 of Directive 2003/55/EC (for gas TSOs);
- is in a substantially similar position to a person who has been granted an exemption under Article 22 of Directive 2003/55/EC (for gas TSOs);
- has been granted an exemption under Article 17 of the Electricity Regulation (for electricity TSOs) or Article 36 of the Gas Directive (for gas TSOs); or,
- satisfies the test for a derogation under Article 9(9) of the Directives.

For details of each of these models and alternatives, please refer to the Directives (Article 9 and Chapter V of the Electricity Directive and Article 9 and Chapter IV of the Gas Directive) and to the GB Regulations. The GB Regulations also set out the tests applicable to full ownership unbundling.

³ The terms 'transmission' and 'transmission system operator' are defined in paragraphs (3) and (4) of Article 2 of each of the Directives.

⁴ Control is defined in paragraph (36) of Article 2 of the Gas Directive and paragraph (34) of Article 2 of the Electricity Directive. The recitals to the Directives make it clear that this definition of control is "taken from Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings [(the EC Merger Regulation)]".

⁵ Or generation or supply for electricity.

⁶ Recital 11 of the Electricity Directive and Recital 8 of the Gas Directive.

We anticipate that full ownership unbundling will be the model under which the majority of TSOs will apply for certification. In this regard, we highlight that the ISO, ITO and Article 9(9) derogation certification grounds are only available to applicants who, as at 3 September 2009, were a vertically integrated undertaking ('VIU'). The term 'VIU' is defined in paragraph (20) of Article 2 of the Gas Directive and paragraph (21) of Article 2 of the Electricity Directive. Therefore, this letter focuses on full ownership unbundling only. If you have any queries relating to the alternative certification grounds, please contact us on the unbundlingc@ofgem.gov.uk e-mail address.

What is the deadline for obtaining certification?

TSOs are required to be certified by 3 March 2012. TSOs not certified by this date will be in breach of the unbundling requirements of the Third Package. We therefore expect applications to be made as soon as is reasonably practicable now that the GB Regulations have come into force. We note that the GB Regulations set out two potential grounds for extending this certification deadline up to 3 March 2013⁷.

The first ground for extending the certification deadline is that the applicant asks us for the extension and it satisfies us that: (i) it is not and is not part of a VIU; and, (ii) no senior officers of the TSO is also a senior officer of a relevant producer or supplier. The term 'relevant producer or supplier' is defined in the GB Regulations.

The second ground for extending the certification deadline is that for reasons beyond our and the applicant's control we will not reasonably be able to make a final certification decision before 3 March 2012.

We therefore strongly suggest that you consider how these requirements might affect you and seek independent legal advice on the meaning and application of the requirements. In this regard, please note that this letter (and any previous or subsequent guidance that may be published by us) is not a substitute for the requirements of the Directives and the GB Regulations.

What is the process for certification applications?

Applications can now be submitted to the Authority.

Applications must be in writing and in the form we specify. In this regard, we set out in the Annexes to this letter template questionnaires relating to full ownership unbundling certification for electricity TSOs (Annex 1) and gas TSOs (Annex 2) that need to be answered as part of certification applications. **These certification templates can be found in the annexes to this letter and we require applicants to provide a fully evidenced answer to each question when applying for certification pursuant to the full ownership unbundling ground** under section 10B of the Electricity Act or section 8D of the Gas Act.

Applicants applying for certification on any ground other than full ownership unbundling should not use the certification templates but should refer to the GB Regulations for further application information.

Whilst the timetable for the certification process may be extended if we require further information from the applicant or from a relevant producer or supplier, we expect that following receipt of a complete application the process will be as follows:

- (i) We have four months from receipt of the complete application to make a preliminary certification decision. Please note that if we request further information from the applicant or from a relevant producer or supplier, the deadline (or the deadline as previously extended) is extended to four months beginning on the day on which we receive the last of the requested information. Our preliminary decision (with reasons)

⁷ Section 8C of the Gas Act and section 10A of the Electricity Act.

will be notified to the applicant, the Secretary of State for the Department of Energy and Climate Change ('DECC') and to the Commission.

- (ii) The Commission has two months from receipt of our notification to provide an opinion on the compatibility of the decision with Article 10(2) or Article 11 or Article 9 of the Directives. This time period can be extended by another two months if the Commission requests the Agency for the Co-operation of Energy Regulators to provide its opinion on the Authority's decision.
- (iii) We have two months from receipt of the opinion from the Commission to reach our final certification decision. In reaching this decision, we must take utmost account of the opinion received. In relation to applications for certification on the basis of the Article 9(9) derogation we must not certify the applicant if the Commission has not verified that the requirement as to arrangements for effective independence is met. Our final decision (with reasons) will be notified to the applicant, the Secretary of State for DECC and to the Commission.

Next steps

Given the timescales and process set out above, we expect potential applicants to consider their position and make formal applications for either certification and/or an extension of the deadline as soon as is reasonably practicable.

Please note that any delay in applying; or providing complete or further information may result in a delay to our certification decision.

Should you wish to contact us about the contents of this letter, please contact unbundlingc@ofgem.gov.uk.

Yours sincerely,

Pamela Taylor
Associate Partner – European Strategy

Annex 1 – Questions for Electricity Transmission System Operators (TSOs) – Applicants under section 10B of the Electricity Act 1989 only

Useful information for the applicant

The questions set out in this Annex will be the form specified by the Authority⁸ under section 10B Electricity Act 1989 (EA).

All applications for ownership unbundling certification must be in writing and contained in a single document. Each application should contain sufficient information and analysis to enable Ofgem to understand the issues and reach an informed decision without reference to additional documents. Applicants should ensure that any information relevant to the matters that Ofgem must consider should be provided in the application document even if that information is not strictly required in response to the questions set out below.

This questionnaire is designed to request information necessary to enable Ofgem to discharge its duties under the Electricity and Gas (Internal Markets) Regulations 2011, including information Ofgem is required to provide to the European Commission as part of the certification process.

Where any answers rely on contractual provisions please include the relevant underlying contractual provisions with this application (but not entire contracts). We invite TSOs to discuss applications for certification before they are submitted. This will usually take the form of submission of a draft of some or all of an application, together with a note of any issues that the applicant wishes to discuss with Ofgem. It is in the interests of both the applicant and Ofgem to ensure that, on the one hand, an application contains sufficient information for it to be considered complete; and on the other that the scope of information provided can be suitably focussed on any issues that might arise.

An applicant should clearly identify in any application any information which the applicant considers to be confidential. For these purposes, information will be confidential if it is personal information for the purpose of section 40 Freedom of Information Act 2000; or information the publication or disclosure of which would, or would be likely to, prejudice the commercial interest of any person. For each piece of information identified, the applicant should provide an explanation as to why that information is confidential.

Where the same information is required in response to more than one question it is acceptable to answer questions by cross reference to the answers to previous questions.

Unless otherwise stated, please provide the information requested in each section of this application form if you are either applying for an extension of the “relevant date” under section 10A(5) of the EA or if you are applying for certification under section 10B of the EA on the first certification ground (full ownership unbundling requirement).

Definitions

Unless otherwise specified, terms defined in the EA have the same meaning in this form. In particular, the following terms are defined in section 100 of the EA:

- “control”
- “electricity undertaking”
- “majority shareholding”
- “relevant producer or supplier”

⁸ The Authority means the Gas and Electricity Markets Authority (“GEMA”) and Ofgem means the Office of Gas and Electricity Markets. In this document, the terms, the Authority, Ofgem, we and us are used interchangeably.

- “shareholder rights”

References to:

- “company” should be treated as a reference to any form of entity and adapted to the circumstances of that entity;
- “directors” should be treated as references to members of the executive or governing body of a company or, if the applicant is not a body corporate, to partners or equivalent persons;
- “person” in this annex are to natural and legal persons;
- “public body” is any governmental or supragovernmental body or any corporate entity controlled by such a body.

Section 1: General Applicant Information

1. Applicant’s full name (registered name if applicable).
2. Applicant’s registered number (if applicable).
3. Applicant’s trading name (if applicable).
4. Applicant’s legal status⁹ and country of registration.
5. Applicant’s registered office (or if not registered; principal office).
6. If the applicant is a partnership, please list the full name(s), registered numbers (if applicable) and registered offices (or if not registered; principal offices) of each partner.
7. Whom should we contact about this application?

Title	
First names	
Surname	
Job title	
Company name	
Business address	

⁹ Eg public limited company, private limited company, other body corporate (please specify), partnership, unincorporated association, sole trader or other entity (please specify).

Postcode	
Phone number (including area code)	
Mobile number (optional)	
Fax number (including area code)	
Email address	
Company website address	

Please note that if this contact changes you will need to provide us with alternative details.

8. Licences held by the applicant, and any licence applications made by the applicant, under the Electricity Act 1989 or the Gas Act 1986.
9. A description of the governance of the applicant, identifying the board or governing body of the applicant. Please also provide in support: (i) a list of the full names of the applicant's directors; and (ii) for each director a list of their other appointments setting out the full name, registered number (if applicable) and the nature of the business of the persons in which they hold the appointments.
10. Please provide a corporate structure diagram showing all members of the group of companies of which the applicant forms part up to and including each ultimate controller (which is not itself controlled by any other person). The diagram should show the names and types of business of each of the companies shown on it. The diagram should show:
 - each company which directly or indirectly controls the applicant;
 - each other company which is directly or indirectly controlled by any company which directly or indirectly controls the applicant; and
 - any company which is directly or indirectly controlled by the applicant; and

In each case where control arises, please specify the nature and means of control in each of the above (e.g. voting rights, veto rights, holding of a majority share, powers to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking, de facto and de jure control, sole control or joint control).

The diagram should separately identify any gas or electricity undertaking where the applicant knows or reasonably should know of any event or circumstance which may cause the Authority to think that the undertaking is a relevant producer or supplier or has a majority shareholding in any such undertaking.

It is not necessary to include dormant companies. You can use several diagrams and should present the diagrams in a manner which best enables Ofgem to assess who controls whom

You should separately provide, in tabular form, a list of all equity interests or voting rights held by any company shown in the diagram in any gas or electricity undertaking where the applicant knows or reasonably should know of any event or circumstance which may cause the Authority to think that the undertaking is a

relevant producer or supplier (regardless of whether or not these undertakings are shown on the diagram) and a brief explanation of why such equity interests or voting rights do, or do not, create or confer control.

Section 2: Applications for extensions to the “relevant date”

Please complete this section ONLY if you are asking us to extend the relevant date under section 10A(5) of the EA. If you complete this section you do not need to complete sections 3 to 9.

11. What date (up to and including 3 March 2013) are you asking us to extend the “relevant date” to? Please set out your reasons in support of this request.
12. Please explain why the applicant is not a vertically integrated undertaking¹⁰ or part thereof.
13. Please confirm that none of the applicant’s directors is also a director of a relevant producer or supplier.

Section 3: Ownership of transmission system

14. Please specify all transmission systems owned (fully or partially) by the applicant in the UK (also those under construction or not constructed before 3 September 2009) including interconnectors and separated transmission networks.
15. Please specify transmission systems which the applicant owns (fully or partially) in other Member States of the EU.
16. Please provide a list of any transmission systems which the applicant leases or rents from or to any other party.
17. Please indicate all other owners of the transmission system mentioned in questions 14 and 15, specifying the shares of each of the owners (where the applicant only partially owns the transmission system).
18. Where the applicant is a joint venture belonging to two or more undertakings owning transmission systems in different Member States, please specify if the entire joint venture is approved under an ISO (Independent System Operator) or ITO (Independent Transmission Operator) model. Please name these other companies and indicate the applicant's status.
19. Where the applicant is a vertically integrated undertaking please describe any procedures in place to ensure that no commercially sensitive information is transferred to that part of the integrated business responsible for the production or supply of gas or the generation or supply of electricity.

Section 4: First test: the applicant (a) does not control a relevant producer or supplier; (b) does not have a majority shareholding in a relevant producer or supplier; and (c) will not, on or after the relevant date, exercise shareholder rights in relation to a relevant producer or supplier

¹⁰ “vertically integrated undertaking” is defined in section 10A(7) of the EA to have the same meaning as in Article 2(21) of the Electricity Directive: “‘vertically integrated undertaking’ means an electricity undertaking or a group of electricity undertakings where the same person or the same persons are entitled, directly or indirectly, to exercise control, and where the undertaking or group of undertakings perform at least one of the functions of transmission or distribution, and at least one of the function of generation or supply of electricity”.

20. Please provide a list of all shares held by the applicant or by any company controlled by the applicant, showing the proportion of the total issued share capital held by the applicant.
21. Please identify any company identified in the answer to question 20 which is active in any way in the gas or electricity sector. For each such company explain whether the applicant knows or reasonably should know of any event or circumstance which may cause the Authority to think that the company is a relevant producer or supplier.
22. For any shareholding which is less than 50% of the total issued voting share capital of the company in question, please identify:
 - 22.1 any special rights held by the applicant or any company controlled by the applicant including rights attached to shares, arising by way of contract or in any other way; and
 - 22.2 the size of the shareholding of the three largest shareholders in the company in question.
23. Please provide an undertaking, in the form attached, that the applicant will not, on or after the relevant date, exercise shareholder rights in relation to a relevant producer or supplier.

Section 5: Second Test: where the applicant is a company, partnership or other business, none of its senior officers has been, or may be, appointed by a person who (a) controls an electricity undertaking which is a relevant producer or supplier; or (b) has a majority shareholding in an electricity undertaking which is a relevant producer or supplier

If the applicant is not a body corporate, please answer the questions below in respect of any partners or equivalent persons.

24. Please provide a list setting out the full name(s) and job title of each of the applicant's current directors.
25. Please provide a fair and accurate overview of the process for appointing the applicant's directors and provide supporting documentary extracts (e.g. from the Articles of Association and any other relevant contracts or constitutional documents). If there is more than one process, please describe each process and identify the directors each process relates to. Please ensure that your answer identifies any persons who have a role in the appointment decision making process which has led to the appointment of any current director, or may lead to any future appointment of any director.
26. Please provide a list and diagram showing a fair and accurate overview of any person who controls the applicant and has been or can be involved in the appointment of any of the applicant's directors.
27. Where, in your response to questions 25 or 26 you have identified any person who has the right to appoint a senior officer of the applicant, you should provide sufficient information and evidence about that person to enable Ofgem to satisfy itself that that person neither controls an electricity undertaking which is a relevant producer or supplier; nor has a majority shareholding in an electricity undertaking which is a relevant producer or supplier.

Section 6: Third Test: where the applicant is a company, partnership or other business, none of its senior officers is also a senior officer of an electricity undertaking which is a relevant producer or supplier

28. For each of the applicant's directors, please confirm whether they are also directors of any other undertaking. If so, please confirm the full name(s) of any such undertaking of which they are also a director. Please explain, for each such undertaking, whether the applicant knows or reasonably should know of any event or circumstance which may cause the Authority to think that the undertaking is an electricity undertaking which is a relevant producer or supplier.

Section 7: Fourth and Fifth Tests: the applicant is not controlled by a person who (a) controls a relevant producer or supplier; and, (b) has a majority shareholding in a relevant producer or supplier

29. For each company identified in response to question 10 above as directly or indirectly controlling the applicant please provide a list of all other companies controlled by that company or in which that company has a majority shareholding. In respect of each company named on that list please explain, with sufficient supporting information and evidence, whether the applicant knows or reasonably should know of any event or circumstance which may cause the Authority to think that the company is a relevant producer or supplier.

Section 8: Fourth and Fifth Tests: the applicant is not controlled by a person who (a) controls a relevant producer or supplier; and, (b) has a majority shareholding in a relevant producer or supplier - Rights conferred as a condition of the provision of a financial support or guarantee

Please complete this section ONLY if your application is made on the basis that Ofgem should exercise its discretion to treat the fourth and/or fifth test as passed on the grounds set out in section 10F(7) and/or 10F(9) of the EA.

30. Please give the name and registered number (if applicable) of any company which controls the applicant by virtue of exercising a right conferred as a condition of the provision of either financial support or guarantee (or both). Please provide sufficient information about the relevant financial support or guarantee, the right which was conferred as a condition of that financial support or guarantee, the circumstances which led to the exercise of that right and the nature of control arising as a result of the exercise of that right, together with all other information which you consider Ofgem should take account of in deciding whether circumstances have arisen in which Ofgem is able to exercise its discretion under section 10F(7) and/or 10F(9) of the EA and, if so, whether it should exercise that discretion.
31. Please give the name and registered number (if applicable) of any company which controls the applicant and controls, or holds a majority shareholding in, a production or supply business where the control or majority shareholding in the production or supply business was gained through the exercise of a right conferred as a condition of the provision of either financial support or guarantee (or both).

Section 9: Public bodies

32. Are any of the bodies which, directly or indirectly, exercise control or have any shareholder rights over the applicant a public body? If so:
- please describe how, and which part of, the public body exercises control or has any rights over the applicant;
 - please describe if the public body also directly or indirectly exercises control or exercises any rights over an undertaking performing the functions of generation, production and supply;

- please describe briefly the constitutional (legal and financial) interdependencies between the public body and the applicant; and
- please describe how independence between the public body and the applicant is ensured.

Section 10: Miscellaneous

33. Please provide any further information or extracts from documents which you consider relevant to your application.
34. Please confirm here if the applicant accepts service of documents by e-mail.

Section 11: Declaration

The declaration below must be signed by a current director of the applicant pursuant to a resolution of the board or, where the applicant is not a body corporate, by a partner or equivalent person.

By signing this declaration I declare that:

- (1) I am authorised to make this application on the applicant's behalf;
- (2) To the best of my knowledge and belief, having made due and proper enquiries of all companies named in this application all the details provided in this application or document(s) supplied with this application are true and complete;
- (3) I understand that knowingly or recklessly making a false, incomplete or misleading statement in support of this application may lead to certification being refused or withdrawn and may result in criminal proceedings being instituted under section 59 of The Electricity Act 1989;
- (4) The applicant undertakes to notify Ofgem immediately in writing of any event or circumstance which may affect the basis for the certification decision.

Signature:
Name in capital letters:
Capacity of signatory:
Date:

Draft form of undertaking for electricity TSOs – Applicants under section 10B of the Electricity Act 1989 only

1. This undertaking is given by [] to the Gas and Electricity Markets Authority pursuant to section 10F(2)(c) Electricity Act 1989 (“EA”).
2. [] undertakes that it will not exercise, or cause to be exercised on its behalf, any shareholder rights in relation to a relevant producer or supplier.
3. For the avoidance of doubt this undertaking applies not only to shareholder rights held by [] at the date of this undertaking but also to shareholder rights acquired by [] during the currency of this undertaking.
4. This undertaking:
 - (A) shall come into effect on the relevant date; and
 - (B) shall continue in force until [] ceases to hold [a transmission licence and participate in the transmission of electricity for the purposes mentioned in section 10A(2) EA] / an interconnector licence and participate in the operation of an electricity interconnector].
5. For the purpose of this undertaking:
 - (A) “relevant date” shall have the meaning given to that phrase in section 10A EA; and
 - (B) “shareholder right” and “relevant producer or supplier” shall have the meaning given to those phrases in section 100 EA.

FOR AND ON BEHALF OF []

<p>..... Signature.....</p> <p>..... Name</p> <p>..... Title</p> <p>..... Date</p> <p>(Director)</p>	<p>..... Signature</p> <p>..... Name</p> <p>..... Title</p> <p>..... Date</p> <p>(Director/Company Secretary)</p>
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Annex 2 – Questions for Gas Transmission System Operators (TSOs) – Applicants under section 8D of the Gas Act 1986 only

Useful information for the applicant

The questions set out in this Annex will be the form specified by the Authority¹¹ under section 8D Gas Act 1986 (GA).

All applications for ownership unbundling certification must be in writing and contained in a single document. Each application should contain sufficient information and analysis to enable Ofgem to understand the issues and reach an informed decision without reference to additional documents. Applicants should ensure that any information relevant to the matters that Ofgem must consider should be provided in the application document even if that information is not strictly required in response to the questions set out below.

This questionnaire is designed to request information necessary to enable Ofgem to discharge its duties under the Electricity and Gas (Internal Markets) Regulations 2011, including information Ofgem is required to provide to the European Commission as part of the certification process.

Where any answers rely on contractual provisions please include the relevant underlying contractual provisions with this application (but not entire contracts). We invite TSOs to discuss applications for certification before they are submitted. This will usually take the form of submission of a draft of some or all of an application, together with a note of any issues that the applicant wishes to discuss with Ofgem. It is in the interests of both the applicant and Ofgem to ensure that, on the one hand, an application contains sufficient information for it to be considered complete; and on the other that the scope of information provided can be suitably focussed on any issues that might arise.

An applicant should clearly identify in any application any information which the applicant considers to be confidential. For these purposes, information will be confidential if it is personal information for the purpose of section 40 Freedom of Information Act 2000; or information the publication or disclosure of which would, or would be likely to, prejudice the commercial interest of any person. For each piece of information identified, the applicant should provide an explanation as to why that information is confidential.

Where the same information is required in response to more than one question it is acceptable to answer questions by cross reference to the answers to previous questions.

Unless otherwise stated, please provide the information requested in each section of this application form if you are either applying for an extension of the “relevant date” under section 8C(4) of the GA or if you are applying for certification under section 8D of the GA on the first certification ground (full ownership unbundling requirement).

Definitions

Unless otherwise specified, terms defined in the GA have the same meaning in this form. In particular, the following terms are defined in section 8Q of the GA:

- “control”
- “gas undertaking”
- “relevant producer or supplier”
- “shareholder rights”

¹¹ The Authority means the Gas and Electricity Markets Authority (“GEMA”) and Ofgem means the Office of Gas and Electricity Markets. In this document, the terms, the Authority, Ofgem, we and us are used interchangeably.

References to:

- “company” should be treated as a reference to any form of entity and adapted to the circumstances of that entity;
- “directors” should be treated as references to members of the executive or governing body of a company or, if the applicant is not a body corporate, to partners or equivalent persons;
- “person” in this annex are to natural and legal persons.
- “public body” is any governmental or supragovernmental body or any corporate entity controlled by such a body.

Section 1: General Applicant Information

1. Applicant’s full name (registered name if applicable).
2. Applicant’s registered number (if applicable).
3. Applicant’s trading name (if applicable).
4. Applicant’s legal status¹² and country of registration.
5. Applicant’s registered office (or if not registered; principal office).
6. If the applicant is a partnership, please list the full name(s), registered numbers (if applicable) and registered offices (or if not registered; principal offices) of each partner.
7. Whom should we contact about this application?

Title	
First names	
Surname	
Job title	
Company name	
Business address	
Postcode	

¹² Eg public limited company, private limited company, other body corporate (please specify), partnership, unincorporated association, sole trader or other entity (please specify).

Phone number (including area code)	
Mobile number (optional)	
Fax number (including area code)	
Email address	
Company website address	

Please note that if this contact changes you will need to provide us with alternative details.

8. Licences held by the applicant, and any licence applications made by the applicant, under the Gas Act 1986 or the Electricity Act 1989.
9. A description of the governance of the applicant, identifying the board or governing body of the applicant. Please also provide in support: (i) a list of the full names of the applicant's directors; and (ii) for each director a list of their other appointments setting out the full name, registered number (if applicable) and the nature of the business of the persons in which they hold the appointments.
10. Please provide a corporate structure diagram showing all members of the group of companies of which the applicant forms part up to and including each ultimate controller (which is not itself controlled by any other person). The diagram should show the names and types of business of each of the companies shown on it. The diagram should show:
 - each company which directly or indirectly controls the applicant;
 - each other company which is directly or indirectly controlled by any company which directly or indirectly controls the applicant; and
 - any company which is directly or indirectly controlled by the applicant.

In each case where control arises, please specify the nature and means of control in each of the above (e.g. voting rights, veto rights, holding of a majority share, powers to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking, de facto and de jure control, sole control or joint control).

The diagram should separately identify any gas or electricity undertaking where the applicant knows or reasonably should know of any event or circumstance which may cause the Authority to think that the undertaking is a relevant producer or supplier or has a majority shareholding in any such undertaking.

It is not necessary to include dormant companies. You can use several diagrams and should present the diagrams in a manner which best enables Ofgem to assess who controls whom.

You should separately provide, in tabular form, a list of all equity interests or voting rights held by any company shown in the diagram in any gas or electricity undertaking where the applicant knows or reasonably should know of any event or circumstance which may cause the Authority to think that the undertaking is a relevant producer or supplier (regardless of whether or not these undertakings are

shown on the diagram) and a brief explanation of why such equity interests or voting rights do, or do not, create or confer control.

Section 2: Applications for extensions to the “relevant date”

Please complete this section ONLY if you are asking us to extend the relevant date under section 8C(4) of the GA. If you complete this section you do not need to complete sections 3 to 9.

11. What date (up to and including 3 March 2013) are you asking us to extend the “relevant date” to? Please set out your reasons in support of this request.
12. Please explain why the applicant is not a vertically integrated undertaking¹³ or part thereof.
13. Please confirm that none of the applicant’s directors is also a director of a relevant producer or supplier.

Section 3: Ownership of transmission system

14. Please specify all transmission systems owned (fully or partially) by the applicant in the UK (also those under construction or not constructed before 3 September 2009) including interconnectors and separated transmission networks.
15. Please specify transmission systems which the applicant owns (fully or partially) in other Member States of the EU.
16. Please provide a list of any transmission systems which the applicant leases or rents from or to any other party.
17. Please indicate all other owners of the transmission system mentioned in questions 14 and 15, specifying the shares of each of the owners (where the applicant only partially owns the transmission system).
18. Where the applicant is a joint venture belonging to two or more undertakings owning transmission systems in different Member States, please specify if the entire joint venture is approved under an ISO (Independent System Operator) or ITO (Independent Transmission Operator) model. Please name these other companies and indicate the applicant's status.
19. Where the applicant is a vertically integrated undertaking please describe any procedures in place to ensure that no commercially sensitive information is transferred to that part of the integrated business responsible for the production or supply of gas or the generation or supply of electricity.

Section 4: First test: the applicant (a) does not control a relevant producer or supplier; (b) does not have a majority shareholding in a relevant producer or supplier; and (c) will not, on or after the relevant date, exercise shareholder rights in relation to a relevant producer or supplier

¹³ “vertically integrated undertaking” is defined in section 8C(6) of the GA to have the same meaning as in Article 2(20) of the Gas Directive: “‘vertically integrated undertaking’ means a natural gas undertaking or a group of natural gas undertakings where the same person or the same persons are entitled, directly or indirectly, to exercise control, and where the undertaking or group of undertakings perform at least one of the functions of transmission, distribution, LNG or storage, and at least one of the functions of production or supply of natural”.

20. Please provide a list of all shares held by the applicant or by any company controlled by the applicant, showing the proportion of the total issued share capital held by the applicant.
21. Please identify any company identified in the answer to question 20 which is active in any way in the gas or electricity sector. For each such company explain whether the applicant knows or reasonably should know of any event or circumstance which may cause the Authority to think that the company is a relevant producer or supplier.
22. For any shareholding which is less than 50% of the total issued voting share capital of the company in question, please identify:
 - 22.1 any special rights held by the applicant or any company controlled by the applicant including rights attached to shares, arising by way of contract or in any other way; and
 - 22.2 the size of the shareholding of the three largest shareholders in the company in question.
23. Please provide an undertaking, in the form attached, that the applicant will not, on or after the relevant date, exercise shareholder rights in relation to a relevant producer or supplier.

Section 5: Second Test: where the applicant is a company, partnership or other business, none of its senior officers has been, or may be, appointed by a person who (a) controls a gas undertaking which is a relevant producer or supplier; or (b) has a majority shareholding in a gas undertaking which is a relevant producer or supplier

If the applicant is not a body corporate, please answer the questions below in respect of any partners or equivalent persons.

24. Please provide a list setting out the full name(s) and job title of each of the applicant's current directors.
25. Please provide a fair and accurate overview of the process for appointing the applicant's directors and provide supporting documentary extracts (e.g. from the Articles of Association and any other relevant contracts or constitutional documents). If there is more than one process, please describe each process and identify the directors each process relates to. Please ensure that your answer identifies any persons who have a role in the appointment decision making process which has led to the appointment of any current director, or may lead to any future appointment of any director.
26. Please provide a list and diagram showing a fair and accurate overview of any person who controls the applicant and has been or can be involved in the appointment of any of the applicant's directors.
27. Where, in your response to questions 25 or 26 you have identified any person who has the right to appoint a senior officer of the applicant, you should provide sufficient information and evidence about that person to enable Ofgem to satisfy itself that that person neither controls a gas undertaking which is a relevant producer or supplier; nor has a majority shareholding in a gas undertaking which is a relevant producer or supplier.

Section 6: Third Test: where the applicant is a company, partnership or other business, none of its senior officers is also a senior officer of a gas undertaking which is a relevant producer or supplier

28. For each of the applicant's directors, please confirm whether they are also directors of any other undertaking. If so, please confirm the full name(s) of any such undertaking of which they are also a director. Please explain, for each such undertaking, whether the applicant knows or reasonably should know of any event or circumstance which may cause the Authority to think that the undertaking is a gas undertaking which is a relevant producer or supplier.

Section 7: Fourth and Fifth Tests: the applicant is not controlled by a person who (a) controls a relevant producer or supplier; and, (b) has a majority shareholding in a relevant producer or supplier

29. For each company identified in response to question 10 above as directly or indirectly controlling the applicant please provide a list of all other companies controlled by that company or in which that company has a majority shareholding. In respect of each company named on that list please explain, with sufficient supporting information and evidence, whether the applicant knows or reasonably should know of any event or circumstance which may cause the Authority to think that the company is a relevant producer or supplier.

Section 8: Fourth and Fifth Tests: the applicant is not controlled by a person who (a) controls a relevant producer or supplier; and, (b) has a majority shareholding in a relevant producer or supplier - Rights conferred as a condition of the provision of a financial support or guarantee

Please complete this section ONLY if your application is made on the basis that Ofgem should exercise its discretion to treat the fourth and/or fifth test as passed on the grounds set out in section 8H(7) and/or 8H(9) of the GA.

30. Please give the name and registered number (if applicable) of any company which controls the applicant by virtue of exercising a right conferred as a condition of the provision of either financial support or guarantee (or both). Please provide sufficient information about the relevant financial support or guarantee, the right which was conferred as a condition of that financial support or guarantee, the circumstances which led to the exercise of that right and the nature of control arising as a result of the exercise of that right, together with all other information which you consider Ofgem should take account of in deciding whether circumstances have arisen in which Ofgem is able to exercise its discretion under section 8H(7) and/or 8H(9) of the GA and, if so, whether it should exercise that discretion.
31. Please give the name and registered number (if applicable) of any company which controls the applicant and controls, or holds a majority shareholding in, a production or supply business where the control or majority shareholding in the production or supply business was gained through the exercise of a right conferred as a condition of the provision of either financial support or guarantee (or both).

Section 9: Public bodies

32. Are any of the bodies which, directly or indirectly, exercise control or have any shareholder rights over the applicant a public body? If so:
- please describe how, and which part of, the public body exercises control or has any rights over the applicant;
 - please describe if the public body also directly or indirectly exercises control or exercises any rights over an undertaking performing the functions of generation, production and supply;

- please describe briefly the constitutional (legal and financial) interdependencies between the public body and the applicant; and
- please describe how independence between the public body and the applicant is ensured.

Section 10: Miscellaneous

33. Please provide any further information or extracts from documents which you consider relevant to your application.
34. Please confirm here if the applicant accepts service of documents by e-mail.

Section 11: Declaration

The declaration below must be signed by a current director of the applicant pursuant to a resolution of the board or, where the applicant is not a body corporate, by a partner or equivalent person.

By signing this declaration I declare that:

- (1) I am authorised to make this application on the applicant's behalf;
- (2) To the best of my knowledge and belief, having made due and proper enquiries of all companies named in this application all the details provided in this application or document(s) supplied with this application are true and complete;
- (3) I understand that knowingly or recklessly making a false, incomplete or misleading statement in support of this application may lead to certification being refused or withdrawn and may result in criminal proceedings being instituted under section 43 of the Gas Act 1986;
- (4) The applicant undertakes to notify Ofgem immediately in writing of any event or circumstance which may affect the basis for the certification decision;

Signature:
Name in capital letters:
Capacity of signatory:
Date:

Draft form of undertaking for gas TSOs – Applicants under section 8D of the Gas Act 1986 only

1. This undertaking is given by [] to the Gas and Electricity Markets Authority pursuant to section 8H(2)(c) Gas Act 1986 ("GA").
2. [] undertakes that it will not exercise, or cause to be exercised on its behalf, any shareholder rights in relation to a relevant producer or supplier.
3. For the avoidance of doubt this undertaking applies not only to shareholder rights held by [] at the date of this undertaking but also to shareholder rights acquired by [] during the currency of this undertaking.
4. This undertaking:
 - (A) shall come into effect on the relevant date; and
 - (B) shall continue in force until [] ceases to hold [a gas transporter licence and participate in the transportation of gas] / an interconnector licence and participate in the operation of a gas interconnector].
5. For the purpose of this undertaking:
 - (A) "relevant date" shall have the meaning given to that phrase in section 8C GA; and
 - (B) "shareholder right" and "relevant producer or supplier" shall have the meaning given to those phrases in section 8Q GA.

FOR AND ON BEHALF OF []

..... Signature..... Signature
..... Name Name
..... Title Title
..... Date Date
(Director)	(Director/Company Secretary)