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for energy consumers

Email: cap.floor@ofgem.gov.uk

Date: 28th October 2022

To: National Grid Viking Link Limited

Cc: BEIS

Dear colleague,

Certification under the ownership unbundling requirements of the Electricity Act 1989: Decision of the Gas and Electricity Markets Authority (the Authority)¹

The ownership unbundling requirements are set out in sections 10A to 10O of the Electricity Act 1989 (the Electricity Act).²

National Grid Viking Link Limited (the Applicant) submitted an application under section 10B(2) of the Electricity Act on 12 July 2022, requesting to be certified pursuant to the ownership unbundling requirements (as set out in section 10F of the Electricity Act).

The Applicant holds an Electricity Interconnector Licence granted under Section 6(1)(e) of the Electricity Act 1989 to operate the Viking Link interconnector. This licence authorises the Applicant to participate in the operation of the Viking Link interconnector between GB (Bicker Fen) and a place within the jurisdiction of another country or territory, being Denmark (Revsing). The Applicant is ultimately controlled by National Grid Plc (NG Plc), a UK listed company.

This letter sets out the Authority's decision on the Applicant's application for certification under section 10D of the Electricity Act.

Application for certification

The Applicant requested certification on the first certification ground, which is set out in section 10E(3) of the Electricity Act. The first certification ground is that the Applicant meets the ownership unbundling requirements in section 10F of the Electricity Act.

¹ In this document, the terms "Authority", "Ofgem", "we" and "us" are used interchangeably.

² The amending regulations, the Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019, as amended by The Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2020, came into force on the IP completion day (as provided by Schedule 5, paragraph 1 of the European Union (Withdrawal Agreement) Act 2020).

The Authority is required to apply five tests set out in section 10F of the Electricity Act in order to determine whether the Applicant meets the ownership unbundling requirement.

The **first test** is that the applicant—

- a) does not control a relevant producer or supplier (RPoS);
- b) does not have a majority shareholding in a RPoS; and
- c) will not, on or after the relevant date, exercise shareholder rights in relation to a RPoS.

The Applicant has confirmed that it does not hold shares in, nor control, any other company. Furthermore, the Applicant has provided a signed undertaking that, during the term of its interconnector licence, it will not exercise, or cause to be exercised on its behalf, any shareholder rights in relation to a RPoS that it might acquire during the currency of the undertaking. Therefore, the Applicant meets the requirements of the first test.

The **second test** is that, 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 RPoS; or
- b) has a majority shareholding in an electricity undertaking which is a RPoS.

The Applicant has provided details of the process for appointing directors and this indicated that the appointment of senior officers of the Applicant can be influenced by NG plc (their ultimate controller). NG plc also controls undertakings in the United States of America (USA), which includes interests that are considered RPoS. The Applicant has demonstrated to our satisfaction that the National Grid group has appropriate governance arrangements in place, and that there is no risk that NG plc's involvement could lead to discrimination on the part of the Applicant or NG plc to benefit generation interests in the USA controlled by NG Plc. The Authority considers it is appropriate to treat the second test as passed in accordance with section 10F(9A) of the Electricity Act. The Applicant therefore meets the requirements of the second test.

The **third test** is that, 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 RPoS.

The information provided by the Applicant confirms that none of its directors is also a senior officer of an electricity undertaking which is a RPoS. The Applicant therefore meets the requirement of the third test.

The **fourth test** is that the applicant is not controlled by a person who controls a RPoS.

The information provided by the Applicant confirms that it is controlled by a person (NG plc) which controls and has a majority shareholding in interests in the USA that qualify as a RPoS. Section 10F(9A) of the Electricity Act provides that the Authority may use its discretion to treat one or more of the five tests as passed in certain circumstances. Based on our assessment of information provided by the Applicant, we consider that the generation interests in the USA controlled by NG plc do not give rise to a risk of discrimination or a conflict of interest, particularly as the RPoS located in the USA have no direct interface with the GB or EEA transmission systems. The Authority considers it is appropriate in these cases to treat the fourth test as passed in accordance with section 10F(9A) of the Electricity Act. The Applicant therefore meets the requirement of the fourth test.

The **fifth test** is that the applicant is not controlled by a person who has a majority shareholding in a RPoS.

As with the fourth test, the information provided by the Applicant confirms that it is controlled by a person (NG plc) who has a majority shareholding in interests in the USA that qualify as a RPoS. Based on our assessment of information provided by the Applicant, we consider that the generation interests in the USA controlled by NG plc do not give rise to a risk of discrimination or a conflict of interest, particularly as the RPoS located in the USA have no direct interface with the GB or European Economic Area (EEA) transmission systems. The Authority considers it is appropriate in these cases to treat the fifth test as passed in accordance with section 10F(9A) of the Electricity Act. The Applicant therefore meets the requirement of the fifth test.

Certification decision

Our decision is that the Applicant is certified as independent on the basis that it has met the ownership unbundling requirement under section 10F(1) of the Electricity Act, as each of the five tests set out in section 10F has either been met by the Applicant or considered as passed in accordance with section 10F(9A) of the Electricity Act by the Authority.

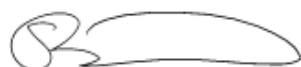
In accordance with sections 10H(1) and 10H(2) of the Electricity Act, the Applicant, being interconnector licence holder pursuant to section 10H(1) of the Electricity Act and certified on the first certification ground, is designated as an electricity transmission system operator.

In accordance with section 10D(7) and 10H(4) of the Electricity Act, the Authority hereby notifies the certification and designation of Viking Link to the Applicant and the Secretary of State.

In accordance with section 10I of the Electricity Act, the Authority will monitor whether the basis on which it decided to certify the Applicant continues to apply following the Authority's final decision and, if appropriate, will review its certification decision.

Attached to this letter is a copy of the certification decision made by the Authority. If you have any questions on this cover letter or our certification decision, please get in touch with Vanessa Simpson at: Vanessa.Simpson@ofgem.gov.uk.

Yours sincerely,



Stuart Borland

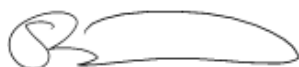
Deputy Director, Offshore Network Regulation

Duly authorised on behalf of the Gas and Electricity Markets Authority

28th October 2022

ELECTRICITY ACT 1989
SECTION 10D
CERTIFICATION – National Grid Viking Link Limited

Pursuant to section 10D of the Electricity Act 1989 (the Act) the Gas and Electricity Markets Authority hereby gives to National Grid Viking Link Limited³ certification as independent under the ground set out in section 10E(3) of the Act, subject to the attached Schedule.



Stuart Borland

Deputy Director, Offshore Network Regulation

Duly authorised on behalf of the Gas and Electricity Markets Authority

28th October 2022

³ This is a company incorporated in England and Wales with company registration number 09075537 whose registered address is 1-3 Strand, London, WC2N 5EH.

SCHEDULE
PERIOD, CONDITIONS AND WITHDRAWAL OF CERTIFICATION

A. Interpretation and Definitions

In this certification

'the Authority'	means the Gas and Electricity Markets Authority established by section 1(1) of the Utilities Act 2000, as amended from time to time
'the Act'	means the Electricity Act 1989, as amended from time to time
'the Agency'	has the same meaning as in section 64 of the Act
'the certified person'	National Viking Link Limited in its capacity as a person certified as independent under section 10D of the Act
'control'	has the same meaning as in section 10O of the Act
'person from a third country'	has the same meaning as in section 10O of the Act
'the relevant date'	has the same meaning as in section 10M of the Act
'shareholder right'	has the same meaning as in section 10O of the Act

B. Period

Subject to section D below, and pursuant to section 10D of the Act, this certification shall come into effect on the date that it is issued and will continue until it is withdrawn in accordance with section D.

C. Conditions

This certification is made subject to the following conditions:

1. The material provided by the certified person to the Authority in respect of its application for certification is true and complete.
2. If at any time the certified person knows or reasonably should know of any event or circumstance that has occurred or is likely to occur that may affect its eligibility for certification, the certified person shall as soon as reasonably practicable notify the Authority in writing of the event or circumstance and the reasons it considers that the event or circumstance may affect its eligibility for certification.

3. If at any time the certified person knows or reasonably should know that any event or circumstance has occurred, or is likely to occur, that may cause the Authority to think that the certified person is or may become a person from a third country, or that a person from a third country has or may take control of the certified person, the certified person shall as soon as reasonably practicable notify the Authority in writing.
4. If at any time from the relevant date the certified person exercises or is likely to exercise any shareholder right or right of appointment in the circumstances described in section 10M of the Act, the certified person shall as soon as reasonably practicable notify the Authority in writing of the right that has been or is likely to be exercised and the effect of exercising that right.
5. By 31 July of each year, the certified person shall provide the Authority with a written declaration, approved by a resolution of the board of directors of the certified person and signed by a director of the certified person pursuant to that resolution, setting out:
 - a. Whether any event or circumstance has occurred in the previous 12 month period, or such part of that 12 month period since the certified person was certified, that may affect the certified person's eligibility for certification, and if so, the reasons it considers that the event or circumstance may affect its eligibility for certification;
 - b. Whether any event or circumstance has occurred, or is likely to occur, that may cause the Authority to think that the certified person has become a person from a third country, or that a person from a third country has taken control of the certified person, in the previous 12 month period or such part of that 12 month period since the certified person was certified; and
 - c. Whether the certified person has exercised any shareholder right or right of appointment in the circumstances described in section 10M of the Act in the previous 12 month period or such part of that 12 month period since the certified person was certified and if so the effect of exercising that right, providing that the certified person is only required to provide a written declaration under this paragraph (c) where it has been certified on the certification ground in section 10E(3) of the Act and in relation to a period that occurs after the relevant date.
6. The certified person furnishes the Authority in such manner and at such times as the Authority may reasonably require, with such information as the Authority may reasonably require, or as may be necessary, for the purpose of:
 - a. performing the functions assigned to it by or under the Act, the Gas Act, the Utilities Act 2000, the Energy Act 2004, the Energy Act 2008, or the Energy Act 2011, each as may be amended from time to time; or

- b. monitoring and reviewing of the certification under section 10I of the Act; or
 - c. reporting by the Authority as to any connection of the licensee with a country outside the European Economic Area under section 10K of the Act.
7. Should any of the grounds for withdrawal arise under section D of this certification, the Authority may amend rather than withdraw this certification.

D. Withdrawal

Pursuant to section 10L of the Act, this certification may be withdrawn in the following circumstances:

1. This certification may be withdrawn by the Authority by giving a notice of withdrawal to the certified person not less than four months before the coming into force of the withdrawal in any of the following circumstances where:
 - a. the Authority considers that condition contained in paragraph C1 above is not met;
 - b. the Authority considers that the basis on which the Authority decided to certify the certified person does not continue to apply and has made a final decision that the certification should be withdrawn;
 - c. the certified person has a receiver (which expression shall include an administrative receiver within the meaning of section 251 of the Insolvency Act 1986, as amended from time to time) of the whole or any material part of its assets or undertaking appointed;
 - d. the certified person has entered into administration under section 8 of Schedule B1 to the Insolvency Act 1986;
 - e. the certified person is found to be in breach of any national or European competition laws, such breach relating to the licensed activity of the certified person;
 - f. the certified person has failed to provide a declaration to the Authority pursuant to paragraph C5 above and the Authority has written to certified person stating that the declaration has not been provided and giving the certified person notice that if the declaration remains outstanding past the period specified in the notice the certification may be withdrawn;
 - g. the certified person has failed to comply with a request for information issued by the Authority under paragraph C6 above and the Authority has written to the certified person stating that the request has not been complied with and giving the certified person notice that if the request for information remains outstanding past the period specified in the notice the certification may be withdrawn.

2. This certification may be withdrawn if the certified person notifies the Authority that it does not require to be certified and the Authority considers that the certified person is not a person who is required to be certified.