

The Authority's final decision and analysis on the application for certification as unbundled by National Grid Viking Link Limited

This document explains the Authority's final decision on compliance by National Grid Viking Link Limited (the Applicant) with the requirements of the Electricity Act 1989 (the Electricity Act) for transmission system operators (TSOs) to unbundle from generation, production and supply undertakings.

1. Certification Decision

1.1. The Authority¹ concludes that the Applicant complies with the requirements of the ownership unbundling model as set out in Great Britain (GB) legislation and should therefore be certified as ownership unbundled.

2. GB Legislation

2.1. The unbundling requirements arise from the European Union (EU) Third Energy Package² and are implemented in section 10A of the Electricity Act 1989 and section 8C of the Gas Act 1986. Prior to the UK exit from the EU, the European Commission reviewed proposed certification decisions and its opinion had to be taken into account by Ofgem in the final decision. Further amendments to the Electricity Act and the Gas Act 1989³ required Ofgem to take account of production, generation and supply activities carried out both within and outside the European Economic Area (EEA). Previously, Ofgem considered production, generation and supply activities only located within the EEA as part of its certification process. Post exit from the EU, the unbundling requirement and certification were further amended (taking effect from 1 January 2021), by the Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019. This extended the requirement to take account of activities outside of the EEA to any activities outside of the UK and limited the gas storage unbundling requirement by reference to activities carried out in the UK (instead of the EEA). Gas and electricity interconnector licensees must be certified by both Ofgem and the national regulatory authority for the connected country.

2.2. The ownership unbundling requirements are set out in sections 10A to 10O of the Electricity Act.⁴ Section 10F of the Electricity Act – 'the ownership unbundling requirement' – states that "the ownership unbundling requirement is met by an applicant for certification if in relation to each of the five tests below – (a) the Authority thinks that it is passed, or (b) it is treated as passed by virtue of subsection (7), (9) or (9A)". In accordance with subsection 10F(9A), where one or more of the tests is not passed, we may decide to treat such tests as passed if the Authority is satisfied that there is no risk of discrimination and it would be appropriate and in line with our principal objective and

¹ The Gas and Electricity Markets Authority (the 'Authority'). In this document, the terms "Authority", "Ofgem", and "us" are used interchangeably.

² 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')

³ The Electricity and Gas (Internal Markets) Regulations 2017 (SI 2017/493) (Internal Market Regulations 2017)

⁴ 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).

general duties to do so.⁵ In March 2021, Ofgem published an updated version of its guidance⁶ which reflected the amendments to the ownership unbundling provisions of the Gas Act 1986 and the Electricity Act 1989, following the end of the EU Exit transition period.

3. The Applicant

- 3.1. The Applicant is a private company limited by shares. The Applicant is a wholly owned subsidiary of National Grid Interconnector Holdings Ltd (NGIH Ltd), which in turn is a wholly owned subsidiary of National Grid Holdings One plc (NGHO plc), which is a wholly owned subsidiary of National Grid plc (NG plc). The Applicant is ultimately controlled by NG plc.
- 3.2. The Applicant holds an electricity interconnector licence, granted on 12 November 2014 under section 6(1)(e) of the Electricity Act 1989.⁷ 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).
- 3.3. The Applicant therefore has the sole business focus of electricity interconnector operator, owning 50% of the Viking Link interconnector between GB and Denmark. The Applicant will participate in the operation of the interconnector only in GB. Energinet, a TSO wholly owned by the Danish state, will operate the other 50% of the interconnector in Denmark.

4. Summary of Ofgem analysis

- 4.1. *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.*
- 4.2. The Applicant has confirmed that it does not hold shares in, nor control, any other company. Furthermore, NGVL has provided a signed declaration in its application for certification, where it 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 (RPOS). Therefore, NGVL meets the requirements of the first test.
- 4.3. *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.*
- 4.4. The Applicant has provided details of the process for appointing directors. The right to appoint the directors for the Applicant sits with the Applicant's Board, and with National Grid Interconnector Holdings Ltd (NGIH Ltd), which is the sole direct 100% shareholder

⁵ https://www.ofgem.gov.uk/sites/default/files/docs/2017/08/certification_open_letter_2017.pdf

⁶ [Certification arrangements in Great Britain following amendments to the ownership unbundling provisions of the Gas Act 1986 and the Electricity Act 1989: End of the transition period | Ofgem](#)

⁷ <https://www.ofgem.gov.uk/publications/national-grid-viking-link-limited-notice-grant-electricity-interconnector-licence>

of the Applicant. Neither the Applicant, nor NGIH Ltd controls nor has a majority shareholding in any RPoS.

4.5. However, the appointment of senior officers of the Applicant can be influenced by NG plc (their ultimate controller), according to information provided by the Applicant. The Applicant also notes that NGIH is likely only to become involved in the appointment of a director in 'exceptional circumstances'. NG plc controls undertakings in the United States of America (USA), which includes the following interests that are considered RPoS:

- 'National Grid Generation LLC', a wholly-owned subsidiary of National Grid plc, fossil fuel electric generation capacity of approximately 3,600MW located on Long Island, New York;
- 'National Grid Glenwood Energy Centre LLC', a wholly-owned subsidiary of National Grid plc. A Delaware limited liability company and is an exempt wholesale generator ('EWG') of approximately 80MW electric peaking capacity on Long Island, New York;
- 'National Grid Port Jefferson Energy Centre LLC', a wholly-owned subsidiary of National Grid plc. A Delaware limited liability company and is an exempt wholesale generator ('EWG') of approximately 80MW electric peaking capacity on Long Island, New York;
- 'Massachusetts Electric Company' a wholly-owned subsidiary of National Grid plc. A renewable energy generator capacity of 20MW located in Massachusetts;
- 'East Hampton Energy Storage Center LLC' a partially-owned battery storage facility of approximately 5MW capacity located in Long Island, New York;
- 'Great plains Windpark Legacy, LLC' a partially-owned subsidiary through the Emerald JV. A Delaware limited liability that is an EWG with FERC market-based rate authority that owns an approximately 114MW wind energy facility in Hansford County, Texas;
- 'Prairie Wolf Solar, LLC' a partially-owned subsidiary through the Emerald JV, with Bank of America as the tax equity investor. A Delaware limited liability that is an EWG with FERC market-based rate authority that owns a 200MW ground-mounted solar photovoltaic power project in Coles County, Illinois;
- 'Bingham Solar LLC' a partially-owned subsidiary through the Emerald JV, with Goldman Sachs as the tax equity investor. A Delaware limited liability that is a qualifying small power production facility that owns a 20MW ground-mounted solar photovoltaic power project in Clinton County, Michigan;
- 'Temperance Solar, LLC' a partially-owned subsidiary through the Emerald JV, with Goldman Sachs as the tax equity investor. A Delaware limited liability that that owns a 20MW ground-mounted solar photovoltaic power project in Clinton County, Michigan; and
- 'Crocker Wind Farm, LLC' a partially-owned subsidiary. A Delaware limited liability that is an EWG that owns a 200MW wind generation project in Clark County, South Dakota.

- 4.6. In practice, NG plc has involvement in and oversight of the appointment of the Applicant's directors, by virtue of internal governance arrangements within the National Grid group. 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. The Applicant has asked Ofgem to exercise its discretion under section 10F (9A) with respect to the second test. The Applicant has set out in its submission why they believe there is no risk of discrimination or conferring an unfair advantage arising as a result of NG plc ownership of both the Applicant and the National Grid US companies which are considered as being RPoS or their assets.
- 4.7. 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 National Grid. We are therefore satisfied that the Applicant does not have relationships with these RPoS that might lead the Applicant to discriminate in favour of these RPoS.
- 4.8. On the basis of information provided by the Applicant, 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.
- 4.9. *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.*
- 4.10. 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.
- 4.11. *Fourth and Fifth Tests: The applicant is not controlled by a person who (a) controls a relevant producer or supplier; or (b) has a majority shareholding in a relevant producer or supplier.*
- 4.12. As set out in paragraph 3.1, the Applicant is both controlled by NG plc, who also controls RPoS in the USA.
- 4.13. The Applicant has provided information on all companies in which NG plc (the ultimate parent of the Applicant) has an interest. This shows that the Applicant is controlled by a person (NG plc) which controls and has a majority shareholding interests in the USA that qualify as RPoS.
- 4.14. 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.
- 4.15. 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 Applicant has demonstrated to our satisfaction that it does not have a relationship with NG plc's RPoS interests in the USA that might lead NGVL to discriminate in favour of those RPoS.

4.16. On the evidence provided, the Authority considers it is appropriate in these cases to treat the fourth and fifth tests as passed in accordance with section 10F(9A) of the Electricity Act. The Applicant therefore meets the requirement of the fourth and fifth tests.

5. Ongoing monitoring

- 5.1. The GB legal framework provides a number of measures to ensure the robustness of our certification decisions on an ongoing basis. The Authority has an obligation under section 10I, 10J and 10L of the Electricity Act to monitor and review whether a certified person should remain certified according to the process set out in the Electricity Act. We require certified parties to inform the Authority of any significant changes that are relevant to our certification decisions promptly and to provide the Authority with an annual update.
- 5.2. In compliance with the GB legal framework, we will continue to monitor whether the basis on which the Authority decided to certify the Applicant continues to apply.