

Ofgem's Decision on the Continuing Certification basis for National Grid Gas Plc.

Subject	Details
Publication date:	15/11/2022
Contact	Jourdan Edwards
Team:	Unbundling and Certification Team
Telephone	020 3263 9695
Email:	unbundlingcertification@ofgem.gov.uk

This document explains our review as to whether the certification basis of National Grid Gas Plc (the "Certified Person") continues to apply.

© Crown copyright 2022

The text of this document may be reproduced (excluding logos) under and in accordance with the terms of the [Open Government Licence](#).

Without prejudice to the generality of the terms of the Open Government Licence the material that is reproduced must be acknowledged as Crown copyright and the document title of this document must be specified in that acknowledgement.

Any enquiries related to the text of this publication should be sent to Ofgem at:
10 South Colonnade, Canary Wharf, London, E14 4PU.

This publication is available at www.ofgem.gov.uk. Any enquiries regarding the use and re-use of this information resource should be sent to: psi@nationalarchives.gsi.gov.uk

Contents

Ofgem’s Decision on the Certification basis for National Grid Gas Plc.	1
1. Certification Decision.....	3
2. GB Legislation – Transposition of the Gas Directive.....	3
3. The Certified Person	3
4. Summary of Ofgem analysis	4
5. Controller from a country outside the United Kingdom	7

This document explains the Authority's¹ decision on compliance by "National Grid Gas" (NGG) (the **Certified Person**) with the requirements of the Gas Act 1986 (the **Gas Act**) transmission system operators (**TSOs**) to unbundle from generation, production and supply undertakings.

1. Certification Decision

1.1. The Authority concludes that NGG continues to meet the certification criteria as set out in the Gas Act and should therefore continue to be certified as ownership unbundled.

2. GB Legislation – Transposition of the Gas Directive

2.1. The grounds for certification (including the ownership unbundling requirements) are set out in the EU Gas Directive have been transposed in GB through the Electricity and Gas (Internal Markets) Regulations 2011 (the "Regulations") which inserted sections 8C to 8Q into the Gas Act. Section 8K of the Gas Act sets out the grounds on which the Authority can review whether the certification basis in respect of a certified person continues to apply. Section 8H of the Gas Act provides that the ownership unbundling requirement is met if the Authority considers that each of the five tests set out in section 8H is passed. In accordance with subsection 8H(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 general duties to do so.²

3. The Certified Person

3.1. National Grid Gas plc ("**NGG**"), company number 02006000 owns the gas transmission system in England, Wales, and Scotland (Great Britain). NGG holds a Gas Transmission licence treated as granted under Section 7(2) of the Gas Act.

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

² https://www.ofgem.gov.uk/sites/default/files/docs/2021/03/certification_open_letter_-_updated_guidance_-_2021_0.pdf

3.2. NGG was originally certified as fulfilling the ownership unbundling requirements in June 2012.³

3.3. On 31 May 2022, NGG (the “Certified Person”) submitted a notification of changes which may affect the certification under B4 of the Gas Transmission licence. The Licensee then provided further information, as requested under section 8L of the Act, on 16 September 2022, and pursuant to an update on 31 October 2022.

3.4. In March 2022, National Grid plc (“NG”), the controller of the Certified Person, agreed to sell a majority equity interest in NGG to Luppiter Bidco Ltd (“BidCo”), a company incorporated in England and Wales. BidCo is currently ultimately controlled by Macquarie Group Ltd and from completion of the proposed transaction the ultimate controllers of BidCo will be British Columbia Investment Management Corporation (“BCI”) and Macquarie Group Ltd. The ultimate controller of the Certified Person is currently National Grid Plc and from completion of the proposed transaction the ultimate controllers of the Certified Person will be National Grid plc, BCI and Macquarie Group Ltd. The Certified Person has identified relevant producers or suppliers (RPOS), as defined in section 8Q(3) of the Gas Act, in which its controllers have an interest or control.

3.5. This document provides a summary of the analysis of the information submitted by the Certified Person to the Authority for the purpose of assessing whether the basis of certification continued to apply.

4. Summary of Ofgem analysis

Certification Tests

4.1. First Test

4.1.1. The **First test**: the Certified Person (a) does not control a RPOS as defined in section 8Q of the Gas Act; (b) does not have a majority shareholding in a

³ [Certification decision on National Grid Gas plc | Ofgem](#)

RPOS; and (c) will not, on or after the relevant date, exercise shareholder rights in relation to a RPOS.

4.1.2. We consider the Certified Person, has no shareholding or control in an RPOS. Furthermore, the Certified Person has provided a signed undertaking that, during the term of its gas transmission licence, it will not exercise, or cause to be exercised on its behalf, any shareholder rights in relation to a relevant producer or supplier that it might acquire during the currency of the undertaking. Therefore, the Certified Person continues to meet the requirements of the first test.

4.2. Second Test

4.2.1. The **Second test**: that none of the Certified Person's senior officers has been, or may be, appointed by a person who:

- (a) controls a gas undertaking which is an RPOS, or
- (b) has a majority shareholding in a gas undertaking which is an RPOS.

4.2.2. The Certified Person has provided details of the corporate structures of its controllers, process for appointing directors, and the associated interests in the United Kingdom (UK). The appointment of senior officers of the Certified Person can be influenced by NG plc, BCI & Macquarie Group Ltd.

4.2.3. We consider that the interests in the UK, that are wholly or partly-owned by the controllers of the Certified Person, are RPOS within the meaning of the Gas Act.

4.2.4. The Certified Person has provided detailed governance arrangements, details of the RPOS highlighting the limited market share and the regulatory safeguards in place to restrict any ability to discriminate. While the Certified Person's controllers do also control, and in some cases hold a majority shareholding in, RPOS, the Certified Person has demonstrated to our satisfaction that it does not have a relationship with these relevant producers or suppliers that might lead the Certified Person to discriminate in favour of those RPOS. Further information on the factors we consider to be particularly

relevant in assessing the risk of discrimination and our ability to exercise our discretion are detailed in our March 2021 open letter.⁴

4.2.5. The Authority considers it appropriate to treat the second test as passed in accordance with section 8H(9A) of the Gas Act. The Certified Person therefore continues to meet the requirements of the second test.

4.3. Third Test

4.3.1. The **third test**: none of the Certified Person's senior officers is also a senior officer of a gas undertaking which is an RPOS.

4.3.2. The information provided by the Certified Person confirms that none of its senior officers is also a senior officer of a gas undertaking which is a RPOS.

4.3.3. The Certified Person therefore continues to meet the requirement of the third test.

4.4. Fourth and Fifth Test

4.4.1. The **fourth and fifth test**: The fourth test is that a person who controls an RPOS does not control the Certified Person. The fifth test is that the Certified Person is not controlled by a person who has a majority shareholding in an RPOS.

4.4.2. The Certified Person has provided a comprehensive account of the corporate structures of its ultimate controllers, namely NG Plc, BCI & Macquarie Group Ltd. Some of the Certified Person's controllers through various subsidiaries control gas undertakings which are involved in the production of gas.

4.4.3. The Certified Person has provided detailed governance arrangements, information on the energy assets operated (predominantly wind generation assets), lack of market power and mechanisms in place to remove any incentive to discriminate. This information has enabled Ofgem to conclude that while the Certified Person's controllers do control, and in some cases hold a

⁴ [Certification Open Letter March2021 updated guidance \(ofgem.gov.uk\)](https://www.ofgem.gov.uk/certification-open-letter-march2021-updated-guidance)

majority shareholding in RPOS, the Certified Person has demonstrated to our satisfaction that there is no realistic prospect of the Certified Person discriminating in favour of these undertakings. Further information on the factors we consider to be particularly relevant in assessing the risk of discrimination and our ability to exercise our discretion are detailed in our March 2021 open letter.⁵

4.4.4. The Authority considers it appropriate to treat the fourth and fifth tests as passed in accordance with section 8H(9A) of the Gas Act. The Certified Person therefore continues to meet the requirements of the fourth and fifth tests.

5. Controller from a country outside the United Kingdom

5.1. National Grid plc is incorporated in Great Britain. BCI is created by statute in British Columbia, Canada. Macquarie Group Limited is incorporated Australia. As both Canada and Australia are outside the United Kingdom for the purposes of this certification assessment and section 8K(2) of the Gas Act 1986, we notified the Secretary of State to assess whether the security of gas supplies in the UK would be put at risk by the continued certification of the person.

5.2. In its report, the Department of Business, Energy and Industrial Strategy carrying out the Secretary of State's obligations under section 8M of the Gas Act, concluded that the continued certification of the Certified Person would not put at risk the security of gas supplies in the UK.

⁵ [Certification Open Letter March2021 updated guidance \(ofgem.gov.uk\)](https://www.ofgem.gov.uk/certification-open-letter-march2021-updated-guidance)