

The Authority's final decision and analysis on the application for certification as unbundled by TC Moray East OFTO Limited

This document explains the Authority's¹ final decision on compliance by TC Moray East OFTO Limited (the **Applicant**) with the requirements with the requirements of ss.10A-100 of the Electricity Act 1989 (the **Electricity Act**) for transmission system operators (**TSOs**) to be certified as independent from the activities of generation, production and supply.

1. Certification Decision

- 1.1. The Authority concludes that the Applicant complies with the requirements of the full ownership unbundling model as set out in the Electricity Act and should therefore be certified as ownership unbundled.

2. Legislation

- 2.1 The ownership unbundling requirements are set out in sections 10A to 100 of the Electricity Act.²
- 2.2 Under section 10F of the Act "the ownership unbundling requirement is met by an applicant for certification if in relation to each of the five tests ... – (a) the Authority thinks that it is passed, or (b) it is treated as passed by virtue of subsection (7), (9) or (9A)".
- 2.3 Under 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 general duties to do so.³

3. The Applicant

- 3.1. TC Moray East OFTO Limited is expected to become the licensed offshore transmission owner (**OFTO**) for the Moray East offshore transmission project in 2023.

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, the Applicant has provided a signed undertaking that, during the

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

³ https://www.ofgem.gov.uk/sites/default/files/docs/2021/03/certification_open_letter_-_updated_guidance_-_2021_0.pdf

term of its electricity 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 Applicant 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. It meets the requirements of the second test as none of its senior officers has been, or may be, appointed by a company or 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.
- 4.5. *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.*
- 4.6. The information provided by the Applicant confirms that none of its directors is also a senior officer of an electricity undertaking which is a relevant producer or supplier. The Applicant therefore meets the requirement of the third test.
- 4.7. *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.*
- 4.8. The applicant is controlled by International Public Partnerships Limited (**INPP**) and Hunt Companies, Inc. (**HUNT**). The Applicant has provided a comprehensive account of the corporate structures of its controllers. We note that HUNT has small scale generation interests in the USA and one small scale storage interest in GB. We consider that these small-scale generation interests are not relevant producers or suppliers within the meaning of the GB unbundling legislation because they do not require a generation licence. We also consider that these small-scale generation interests do not pose a risk of discrimination. We are therefore satisfied that none of the controllers of the Applicant either controls, or has a majority shareholding in, a relevant producer or supplier. Therefore, the Applicant meets the requirements of the fourth and fifth tests.

5. Controller from a third country

- 5.1. INPP is incorporated and registered in Guernsey and HUNT is incorporated and registered in the USA. As both are from a country outside the United Kingdom for the purposes of this certification assessment and section 100 of the Electricity Act, we notified our Secretary of State on 11 November 2022 in accordance with section 10B(3) of the Electricity Act. On 21 December 2022, the Secretary of State concluded that certifying the Applicant would not put the security of electricity supplies in the United Kingdom at risk.