



Making a positive difference
for energy consumers

Kirsten Koolmees

Manager Regulatory Affairs

BBL Company V.O.F.

Email: energy.securityofsupply@ofgem.gov.uk

Date: 18 August 2023

Dear Kirsten,

Certification of transmission system operators ("TSOs") under the ownership unbundling requirements of the Third Package¹: Decision on BBL Company V.O.F.

The Electricity and Gas (Internal Markets) Regulations 2011² ("the GB Regulations") require TSOs to be certified as complying with the ownership unbundling requirements of the Third Package.

Current and future transmission and interconnector licensees³ are required to apply to the Authority⁴ for certification under the ownership unbundling requirements of the Third Package pursuant to the GB Regulations. The certification procedures are set out in the

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 <https://www.legislation.gov.uk/uksi/2011/2704/contents/made>

³ Electricity transmission, gas transportation, electricity interconnector and gas interconnector licensees.

⁴ References to the "Authority", "Ofgem", "we" and "our" are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day to day work. This decision is made by or on behalf of GEMA.

Electricity Act 1989⁵ ("the Electricity Act") and in the Gas Act 1986⁶ ("the Gas Act") as amended by the GB Regulations.⁷

On 26 July 2011, we published an open letter⁸ setting out information on our intended procedure for processing applications for certification under the ownership unbundling requirements of the Third Package. This letter was superseded by open letters published on 10 November 2011⁹, 06 March 2015¹⁰, 23 August 2017¹¹ and 17 March 2021¹² which set out updated information on our intended procedure for processing applications.

On 12 May 2023 BBL Company V.O.F. ("BBLC" or "the Applicant") submitted an application for certification under the ownership unbundling requirements pursuant to section 8H of the Gas Act.

This letter contains our final decision on BBLC's application for certification under section 8F of the Gas Act.

Background

The Third Package is a suite of legally binding European Union legislation. The Third Package imposes obligations on certain industry participants. One of the core provisions of the Third Package is ensuring that TSOs are unbundled from generation, production and supply interests and are required to be certified as being so. The Third Package envisages that this unbundling will be effective in removing conflicts of interests between producers, suppliers and TSOs.

The Third Package has been transposed into national law through the GB Regulations and the 2014 Regulations¹³ which have amended relevant domestic legislation, including the Gas Act, the Electricity Act and the Utilities Act 2000. Section 8G of the Gas Act contains

⁵ <https://www.legislation.gov.uk/ukpga/1989/29/contents>

⁶ <https://www.legislation.gov.uk/ukpga/1986/44/contents>

⁷ The certification process was further amended by the Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019 <https://www.legislation.gov.uk/uksi/2019/530/contents/made>, as amended by The Electricity and Gas etc. (Amendment) (EU Exit) Regulations 2020 <https://www.legislation.gov.uk/uksi/2020/1016/contents/made>.

⁸ <https://www.ofgem.gov.uk/sites/default/files/docs/2011/07/open-letter-on-certification.pdf>

⁹ <https://www.ofgem.gov.uk/sites/default/files/docs/2011/11/111110-open-letter-on-certification-post-legislation.pdf>

¹⁰ https://www.ofgem.gov.uk/sites/default/files/docs/2015/03/certification_arrangements_in_great_britain_following_amendments_to_the_ownership_unbundling_requirements_of_the_gas_act_1986_and_the_electricity_act_1989_1.pdf

¹¹ https://www.ofgem.gov.uk/sites/default/files/docs/2017/08/certification_open_letter_2017.pdf

¹² https://www.ofgem.gov.uk/sites/default/files/docs/2021/03/certification_open_letter_-_updated_guidance_-_2021_0.pdf

¹³ The Electricity and Gas (Ownership Unbundling) Regulations 2014. <https://www.legislation.gov.uk/uksi/2014/3333/contents/made>

the grounds under which a TSO can be certified and BBLC has applied for certification under the first ground of full ownership unbundling.

The GB Regulations have designated us as the National Regulatory Authority for Great Britain ("GB") and have given us the responsibility for administering the certification process for current and future GB electricity transmission, gas transportation and electricity and gas interconnector licensees.

BBLC is the owner and operator of a bi-directional interconnector pipeline between Bacton in GB and Balgzand in the Netherlands. The Applicant holds a gas interconnector licence granted under section 7ZA of the Gas Act.¹⁴

BBLC was certified as independent by Ofgem on 24 April 2013,¹⁵ pursuant to the sixth certification ground set out in 8G(8) of the Gas Act. This certification expired on 02 December 2022. BBLC held an exemption for part of its capacity from standard licence conditions 10 and 11 until 02 December 2022, and BBLC's certification pursuant to the sixth certification ground was dependent upon this exemption. We reminded BBLC of the expiry date of its certification and its obligation to be certified under the ownership unbundling requirements of the Third Package by email on 18 August 2022. We continued to engage with BBLC on this subject and its plans to apply for certification once planned new ownership was agreed.

Application for certification

On 12 May 2023, BBLC submitted an application for certification under the ownership unbundling requirements pursuant to section 8H of the Gas Act. The Applicant holds a gas interconnector licence granted under section 7ZA of the Gas Act and is a person required to be certified as independent under section 8C(2) of the Gas Act.

We are required to apply five tests to determine whether applicants meet the ownership unbundling requirement:

The first test is that 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.

¹⁴ BBLC was licenced as a gas interconnector on 8 April 2005 <https://epr.ofgem.gov.uk/Document>

¹⁵ <https://www.ofgem.gov.uk/publications/certification-decision-bbl-company-vof>

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 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.

The third test is that, where the applicant is a company, partnership, or other business, none of its senior officers¹⁶ is also a senior officer of a gas undertaking which is a relevant producer or supplier.

The fourth test is that the applicant is not controlled by a person who controls a relevant producer or supplier.

The fifth test is that the applicant is not controlled by a person who has a majority shareholding in a relevant producer or supplier.

Where an applicant for certification is a person from a country outside the United Kingdom the Gas Act requires that we notify the Secretary of State of the application and provide information which, at the time of the notification, the Authority has in its possession and thinks is relevant to the question of whether the security of gas supplies in the United Kingdom would be put at risk by the certification of the applicant. We notified the Secretary of State on 26 May 2023 that a person from outside the United Kingdom may take control of a licensed gas interconnector. On 11 July 2023, the Secretary of State sent a report to the Authority, stating that they do not consider at this time that the security of gas supplies to the United Kingdom would be put at risk by the certification of the Applicant.

Decision

We have assessed the information provided by BBLC against the five tests in section 8H of the Gas Act.

¹⁶ The Gas Act 1986 defines “senior officer” as (a) in relation to a company, a director; (b) in relation to a partnership, a partner; (c) in any other case, a person holding a position equivalent to that of a director or partner. <https://www.legislation.gov.uk/ukpga/1986/44/contents>

The First Test

The Applicant has confirmed that BBLC has no shareholdings or control over any producer or supplier of gas. We therefore consider that BBLC meets the requirements of the first test.

The Second Test

BBLC is a partnership in which the following companies have an interest: Gasunie BBL B.V., Fluxys BBL B.V. and GUFU BBL B.V. Gasunie BBL B.V. is a subsidiary of N.V. Nederlandse Gasunie ("Gasunie") and Fluxys BBL B.V. is a subsidiary of Fluxys Europe N.V. ("Fluxys"). Gasunie and Fluxys are the shareholders of GUFU BBL B.V.

BBLC has one director, who is nominated by Gasunie. If Fluxys demonstrates reasonable concerns regarding the quality or experience of the nominee, Gasunie may nominate another director. The director is appointed, suspended and removed by the general meeting of partners by a simple majority of votes cast on the basis of percentage interests.

We consider that neither Gasunie nor Fluxys control nor have a majority shareholding in a gas undertaking which is a relevant producer or supplier. We note that the National Authority of the Netherlands keeps the unbundled status of Gasunie Transport Services B.V. under annual review, and that this includes confirming Gasunie does not control and holds no shares in a gas producer or supplier.¹⁷ We also note that the Belgian Federal Commission for Electricity and Gas Regulation ("CREG") on 27 September 2012 certified that Fluxys is compliant with the ownership unbundling rules and does not control a gas undertaking which is a relevant producer or supplier and does not have a majority shareholding in a gas undertaking which is a relevant producer or supplier. This certification decision is monitored on an ongoing basis.¹⁸

The Third Test

BBLC's application states the applicant has one director. The application names Ivan Bjorn Wapstra at the current Managing Director and confirms that they hold no other directorships at present. Under the gas interconnector licence, BBLC is required to notify us of any changes that may affect their eligibility for certification. Therefore, any change of directors or change of relevant interests of those directors will be notified so that they can

¹⁷ <https://www.acm.nl/nl/publicaties/publicatie/12454/Besluit-certificering-Gasunie-Transport-Services-BV>;

¹⁸ <https://www.creg.be/sites/default/files/assets/Publications/Decisions/B1166FR.pdf>;
<https://www.creg.be/sites/default/files/assets/Publications/Decisions/B1166NL.pdf>

be considered by Ofgem. We therefore consider that BBLC meets the requirements of the third test.

The Fourth and Fifth Tests

BBLC is a partnership of Gasunie BBL B.V. (60%), Fluxys BBL B.V. (20%) and GUFU BBL B.V. (20%). Gasunie has a 75% interest in BBLC, 60% through Gasunie BBL B.V. and 15% through GUFU BBL B.V.; Fluxys has a 25% interest, 20% through Fluxys BBL B.V. and 5% through GUFU BBL B.V.

We are satisfied that Gasunie and Fluxys do not have control of or a majority shareholding in a relevant producer or supplier. We therefore consider that BBLC meets the requirements of the fourth and fifth tests. As stated for the second test, the National Authority of the Netherlands monitors Gasunie's unbundled status on an ongoing basis and CREG monitors Fluxys unbundled status on an ongoing basis.

Our decision

On the basis of information contained in the application and supporting documents submitted by BBLC on 12 May 2023, the Authority considers that each of the five tests in Section 8H of the Gas Act are met.

The Authority's final decision is that the Applicant is certified as independent on the basis that it has met the ownership unbundling requirements of the Third Package under section 8H of the Gas Act.

In accordance with section 8J(2) of the Gas Act, the Applicant, being a person who holds a licence specified in section 8J(1) of the Gas Act and who is certified on the first certification ground, in section 8G, is designated as a gas transmission system operator for the purposes of the Gas Regulation.¹⁹

In accordance with section 8F(4) of the Gas Act, the Authority hereby notifies the certification of the Applicant to the Applicant and the Secretary of State.

In accordance with section 8K of the Gas 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.

¹⁹ "the Gas Regulation" means 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.

This letter constitutes notice of the Authority's reasons for the decision pursuant to section 38A of the Gas Act. Attached to this letter is a copy of the certification decision granted by the Authority.

If you have any questions relating to this decision, please contact Jonathan Balls at energy.securityofsupply@ofgem.gov.uk

Helen Seaton
Principal Policy Expert, Energy Systems Management and Security
Signed on behalf of the Authority and authorised for that purpose

GAS ACT 1986
SECTION 8H
CERTIFICATION

Pursuant to section 8F of the Gas Act 1986 ('the Act') the Gas and Electricity Markets Authority hereby gives BBL Company V.O.F. ("BBLC") (a partnership registered in the Netherlands under company number 02085020 whose registered office is situated at Concourslaan 17 9727 KC Groningen, The Netherlands), as a person who is required to be certified as independent, certification as independent under the ground set out in 8G(3) of the Act, subject to the attached Schedule.

Helen Seaton

Authorised in that behalf by the Gas and Electricity Markets Authority

18 August 2023

SCHEDULE
PERIOD, CONDITIONS AND WITHDRAWAL OF CERTIFICATION

A. Interpretation and Definitions

In this certification

'affiliate'	in relation to any person means any holding company of such person, any subsidiary of such person or any subsidiary of a holding company of such person, in each case within the meaning of sections 1159 and 1160 of the Companies Act 2006
'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 Gas Act 1986, as amended from time to time
'the Agency'	has the same meaning as in section 48 of the Act ²⁰
'the certified person'	BBLC (company number 02085020) in its capacity as a person certified as independent under section 8F of the Act
'the Commission'	means the European Commission
'control'	has the same meaning as in section 8Q of the Act
'electricity undertaking'	has the same meaning as in section 100 of the Electricity Act 1989
'the gas interconnector'	means the gas pipeline known as the Balgzand Bacton Line between Julianadorp near Balgzand in the Netherlands and Bacton in the United Kingdom
'the Licence'	means the gas interconnector licence granted by the Gas and Electricity Markets Authority to BBL Company V.O.F., the certified person on 08 April 2005 under section 7ZA of the Act including the Gas Interconnector Licence: Standard Conditions from time to time in force
'gas undertaking'	has the same meaning as in section 8Q of the Act
'person from a country outside the United Kingdom'	has the same meaning as in section 8Q of the Act
'the relevant date'	has the same meaning as in section 8O of the Act
'shareholder right'	has the same meaning as in section 8Q of the Act

²⁰ The Agency for the Cooperation of Energy Regulators (ACER).

B. Period

Subject to section D below, and pursuant to section 8F 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. Where the certified person contracts for services relating to the activities authorised by its licence (including, but not limited to, the operation of the gas interconnector) from another undertaking (a “contractor”), the certified person must comply with paragraph C3. For the avoidance of doubt, paragraphs C2 and C3 do not affect the application of Condition 21 of the certified person’s licence.
3. The certified person must put in place all necessary measures to prevent commercially sensitive information about:
 - a. the certified person’s activities authorised by its licence, or
 - b. third parties which has been obtained
 - i. by the certified person in performing the activities authorised by its licence; or
 - ii. by the contractor in performing services relating to such activities on behalf of the certified person,from being disclosed by the contractor (including, for the avoidance of doubt, to any affiliate of the contractor which is a gas undertaking or an electricity undertaking), unless in equivalent circumstances the certified person would be permitted to disclose such information under Condition 21 of its licence.
4. The certified person shall notify the Authority in writing within 7 working days of any change in the partners of the certified person. Such notification to include but not be limited to the registered name(s) and company number(s) of any new partner(s); the percentage of the partnership in BBLC held by the new partner(s); any reduction or increase in the percentage of the partnership held by any current partner(s); and, whether any new partner(s) are, in BBLC’s reasonable opinion a conflicted partner together with BBLC’s reasons.
5. 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.

6. If 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 country outside the United Kingdom, or that a person from a country outside the United Kingdom has or may take control of the certified person, the certified person shall as soon as reasonably practicable notify the Authority in writing.
7. 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 80 of the Act, the certified person shall as soon as is 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.
8. 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 country outside the United Kingdom, or that a person from a country outside the United Kingdom 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 80 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 8G(3) of the Act and in relation to a period that occurs after the relevant date.
9. 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 Electricity 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 review of the certification under section 8K of the Act; or
 - c. reporting by the Authority as to any connection of the licensee with a person from outside of the United Kingdom under section 8M of the Act.
10. If at any time the Authority provisionally considers that a condition contained in paragraphs C1 to C9 is not met or has not been complied with (the “provisional breach”), the certified person shall furnish the Authority in such manner and at such times as the Authority may reasonably require the reasons for the provisional breach and the details of any steps being taken to rectify the provisional breach (including the timescales for any such steps) together with any supporting documentation in order to assist the Authority in any review of this certification under section 8K of the Act.
11. Should any of the grounds for withdrawal arise under section D of this certification, the Authority may amend this certification rather than withdraw the certification.

D. Withdrawal

Pursuant to section 8N 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:
 - a. where:
 - i. the Authority considers that a condition contained in paragraph C1 to C10 above is not met;
 - ii. 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;
 - iii. 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;
 - iv. the certified person has entered into administration under section 8 of Schedule B1 to the Insolvency Act 1986;

- v. 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;
 - vi. the certified person has failed to provide a declaration to the Authority pursuant to paragraph C8 above and the Authority has written to the 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;
 - vii. the certified person has failed to comply with a request for information issued by the Authority under paragraph C9 or C10 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; or
 - viii. to ensure compliance with any legally binding decision of the Agency or of the Commission.
2. This certification may be withdrawn if the certified person notifies the Authority that it is not required to be certified and the Authority agrees.