Making a positive difference for energy consumers

The Authority's decision and analysis on the application for certification as unbundled by NNG OFTO Limited

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This document explains the Authority's final decision on compliance by NNG OFTO 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.

1. Certification Decision

1.1. The Authority[1] 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. Legislation

2.1. In GB, the ownership unbundling requirements are set out in sections 10A to 10O of the Electricity Act.[2]

2.2. Under Section 10F of the Electricity 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 section 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]

[1] The Gas and Electricity Markets Authority (the 'Authority'). In this document, the terms "Authority", "Ofgem" 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] 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

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3. The Applicant

3.1. NNG OFTO Limited is expected to become the licensed offshore transmission owner for the NNG offshore transmission system.

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 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. This process 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. Therefore, the Applicant meets the requirements of the second test.

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 Test: The applicant is not controlled by a person who controls a relevant producer or supplier.*

4.8. The Applicant is ultimately controlled by Reade Griffith. The Applicant has provided a comprehensive account of the corporate structures of its controllers. Reade Griffith indirectly holds interests in entities that qualify as relevant producers or suppliers. In some cases, Reade Griffith also controls entities that qualify as Relevant Producers or Suppliers. Through this control Reade Griffith can exercise negative control over those entities that qualify as Relevant Producers or Suppliers. Accordingly, the fourth test is not satisfied.

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4.9. Section 10F(9)(A) of the Electricity Act provides that the Authority can use its discretion to treat one or more of the five tests as passed in certain circumstances.

4.10. Having regard to the evidence provided by the Applicant, including the scale and nature of its generation assets, the lack of physical or operational connections with the Applicant's offshore transmission assets, and the regulatory obligations imposed on the Applicant, the Authority is satisfied that it does not have a relationship with any relevant producers or suppliers that might lead the Applicant to discriminate in favour of those producers or suppliers.

4.11. The Authority therefore considers it appropriate to use its discretion to treat the fourth test as passed in accordance with section 10F(9A) of the Electricity Act.

4.12. *Fifth Test: The applicant is not controlled by a person who has a majority shareholding in a relevant producer or supplier.*

4.13. The Applicant is ultimately controlled by Reade Griffith. The Applicant has provided a comprehensive account of the corporate structures of its controllers. Reade Griffith indirectly holds controlling interests, and in some cases a majority shareholding, in a number of participations in GB, the EEA and worldwide, which qualify as relevant producers or suppliers. Accordingly, the fifth test is not satisfied.

4.14. Section 10F(9)(A) of the Electricity Act provides that the Authority can use its discretion to treat one or more of the five tests as passed in certain circumstances.

4.15. Having regard to the evidence provided by the Applicant, including the scale and nature of its generation assets, the lack of physical or operational connections with the Applicant's offshore transmission assets, and the regulatory obligations imposed on the Applicant, the Authority is satisfied that it does not have a relationship with any relevant producers or suppliers that might lead the Applicant to discriminate in favour of those producers or suppliers.

4.16. The Authority therefore considers it appropriate use its discretion to treat the fifth test as passed in accordance with section 10F(9A) of the Electricity Act.

5. Controller from a Country outside the UK

5.1. The Authority considers that the Ultimate Controller of the Applicant is from a country outside the UK. Although Reade Griffith is a UK citizen, he exercises ultimate control through Pace Cayman Holdco Limited, an intermediate company within the Equitix group which is incorporated and registered in the Cayman Islands.

5.2. The Department for Energy Security and Net Zero, carrying out the Secretary of State's obligations under sections 10C(2) and (3) of the Electricity Act, concluded that the certification of the Applicant would not put at risk the security of electricity supplies in the UK.