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***Re: Certification of transmission system operators under the Third Package - consultation***

Dear Ms Carty,

BGE is pleased to have the opportunity to respond to Ofgem's consultation.

BGE owns and operates transmission and interconnector assets in Great Britain, in Northern Ireland and in the Republic of Ireland. BGE is looking forward to working closely with the authorities in all three jurisdictions to put in place arrangements that will deliver compliance with the Directive, and that will ensure that the market continues to develop in line with the key principles which drive the Directive including:

- Ensuring adequately developed networks that provide non-discriminatory access; and
- Furthering regional integration of markets.

BGE has always, working with the regulatory authorities, sought to meet its networks obligation in an efficient and effective manner that aimed to minimise costs to consumers. We believe that this principle should continue to apply i.e. compliance with the Directive should be achieved in the way that is least costly for consumers. In our view, this will be best achieved through co-ordinated, consistent and seamless approach taken by the authorities in the three jurisdictions. Such coordination should also meet the Authority's wish not to create an overly onerous regulatory regime. We therefore greatly welcome Ofgem's proposed approach, as set out in this consultation paper, that it anticipates that the authorities in ROI will take the lead on certification of BGE. As you may be aware, BGE's preference for meeting the unbundling obligations is the creation of a single ITO to hold the various licences in Great Britain, ROI and NI. In this regard, we appreciate your stated intent that Ofgem will co-operate with the Irish Authorities in this task.

In the remainder of this submission, we respond to two key issues set out in Ofgem's consultation document:

- Our views on Ofgem's proposed approach to certification; and
- The proposed timeline for certification.

## **Ofgem's proposed approach to certification**

Ofgem has correctly identified that the holder of the interconnector license for IC1 and IC2 will require certification under the Directive. Ofgem has suggested it will take the following approach to certification:

*“As BGE will need to be certified by the authorities in the Republic of Ireland regarding its transmission system in Ireland, we anticipate these authorities leading on the certification of BGE. However, as BGE (UK) also has a GB interconnector licence, we anticipate co-operating with the authorities in the Republic of Ireland in the certification relating to IC1 and IC 2, where necessary and appropriate.”*

We welcome this approach as set out by Ofgem. We anticipate that it will be particularly important for Ofgem to satisfy itself that whatever arrangements are put in place are fully compliant with the Directive and provide sufficient evidence to satisfy the European Commission regarding this compliance. We look forward to working closely with Ofgem to ensure that the arrangements put in place meet these needs.

In order to facilitate co-operation between the regulatory authorities with regard to certification, we suggest that the three regulatory authorities – Ofgem, CER and NIAUR – may wish to consider agreeing a Memorandum of Understanding, or other such mechanism in relation to their joint approach to certification of compliance with the Directive. We believe that such an approach would provide consistency and therefore regulatory certainty to market participants and would also be likely to minimise Directive compliance costs for both market participants and regulatory authorities. As you may be aware, the Irish government has decided that the ITO model is the method of unbundling to be adopted for BGE in the Republic of Ireland. Accordingly, for the reasons outlined herein, BGE will seek to have the ITO option made available in legislation relating to Great Britain. If the legislation so provides, it would be BGE's preferred approach to implement a single ITO across the three jurisdictions. In that case, it would then be entirely appropriate for the authorities to consider taking a joint approach to certification.

Absent a coordinating mechanism among the regulatory authorities, BGE would be in the position of making the same submissions to three separate regulators, and would be faced – along with all other market participants – with the associated increased uncertainty regarding certification. In particular, differences in assessment between the regulators (or failure to agree on a consistent interpretation of the Directive) could result in BGE having to make multiple - and potentially conflicting - amendments to its proposed arrangements, and lengthen considerably the notification process, potentially giving rise to additional costs to the detriment of customers and the regulators. It would also create complexity for the European Commission given its role in the certification process. By contrast a co-ordinated and unified regulatory approach would minimise customer costs, instil confidence in market participants and support market integration across the jurisdictions in line with the objectives of the Directive.

## **Timeline for certification**

The Directive sets out a clear timeline and process for achieving compliance. In accordance with the timeline set out in the Directive, DECC will be required to transpose the Directive by the 3<sup>rd</sup> of March 2011. DECC is currently consulting on the options it will make available for compliance, and we understand that it is likely to be at least December before it publishes a final decision. We are currently in the process of responding to DECC's consultation on the appropriate options to be made available in the legislation. We believe that the ITO model as set out in the Directive, which will be implemented in the Republic of Ireland, is suitable for the holder of the interconnector license, and we will be making submissions to DECC in support of this position.

Following transposition, Ofgem must certify all transmission system operators as being in compliance by March 2012. We note that Ofgem's consultation suggests that it envisages reaching decisions on certification in early 2011. However, as it will be December at the earliest before it is known which models will be available, the necessary re-structuring of BGE will not be completed within a Q1 2011 timeframe. We will therefore not be in a position to seek certification within the timeframe currently envisaged in the consultation document.

In addition to making comments on the certification of BGE, we wish to respond to your suggested approach to Blue-NG. We believe it appropriate that operators of high pressure gas pipelines be allowed to generate electricity if this leads to increased efficiency of gas system operation and provided that the electricity produced is made available for sale on an unrestricted basis. The pursuit of innovative new technologies by network operators should be encouraged where it benefits network users and supports other important climate change related objectives. We believe that regulation can be devised to address the concerns that Ofgem raises in the consultation paper.

Finally, we reiterate that we are fully committed to achieving certification in line with the timeline set out in the Directive, and we look forward to engaging fully with Ofgem in the certification process,

Yours sincerely,

*Will*

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Will Roche  
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