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Dear Siobhan

Consultation on the certification of transmission system operators under the Third Package

Thank you for the opportunity to comment on this consultation from Ofgem on the certification of TSOs under the Third Package. We welcome the new regulations the Third Package brings, and it is important that they are transposed appropriately into UK regulations such that they are clear and flexible to work alongside current market arrangements. The UK is undergoing a transition to a low carbon economy requiring a significant level of investment. It is important that these investments and the success of the UK market are not undermined.

The key points of our response are as follows:

- We agree that Ofgem should be the relevant regulatory body to certify TSOs under the Third Package and we note that derogations will be the responsibility of DECC. Further information is needed on how this process will work in practice.
- If TSOs demonstrate, and guarantee, more effective independence than the models mandated by the Third Package then derogations may be a practical and sensible way forward. However, we would urge Ofgem to be proactive and actively monitor such arrangements to ensure they are robust and remain compliant with the Third Package. This will ensure consumers' interests are best protected.
- Additional clarity regarding which OFTOs are captured by these arrangements would be beneficial, particularly those whose investment decisions were made prior to 3 September 2009. We would also ask whether Offshore connections to Distribution Systems would be affected by these arrangements.
- More detail is needed on how Transmission assets will be treated and what options will be available to both existing and future TPA exemption holders.
- We agree that National Grid (NG) should divest its Blue NG business as part of OU objectives but not its Energis Communications business, as there is no apparent conflict of interest regarding self-supply.
- We agree with Ofgem's initial view that BBL and IUK interconnectors do not need to be certified as they have exemptions in one form or another from the EC.

Our detailed responses to the consultation questions are set out in the attachment to this letter and are not confidential. We hope you find our comments useful and, should you

wish to discuss any of the issues raised in our response or have any queries on it, please contact my colleague Rob Rome on 01452 653170, or myself.

Yours sincerely,

A handwritten signature in black ink, appearing to read "D. Linford".

Denis Linford
Corporate Policy and Regulation Director

Attachment

Certification of transmission system operators under the Third Package

EDF Energy response to the specific questions

Question 1: Have we correctly identified the GB TSOs that require certification? Are there other TSOs that would require certification?

We believe Ofgem has correctly identified the GB TSOs that require certification and that this consultation does not need to address the unbundling provisions regarding distribution system operators or storage system operators. However, clarity is needed over how the Ownership Unbundling (OU) obligations will apply to low voltage offshore operators, if at all.

Question 2: Are there reasons why the subsidiaries of National Grid plc that act as TSOs should not be certified according to the OU model? What are these?

We see no reason why subsidiaries of NG plc should not be certified according to the Full OU model. This would be in the best option in the spirit of the OU model and in the interests of consumers.

We agree that NG should have to divest its Blue NG subsidiary that produces electricity and heat from renewable sources as part of the OU objectives, however we question why this wasn't the case when Ofgem granted NG a license in 2008 given that the 2nd package was already in force with similar OU obligations. We note that NG has requested a derogation from DECC which would enable it to keep Blue NG until 2013. It is clear that this would provide NG more flexibility on the timing of its sale. We have no strong reasons to oppose this time-limited derogation.

Regarding NG's Energis Communications Ltd and self supply to tenants, we agree with Ofgem that these activities do not present a conflict of interest or contravene the OU model. We would expect there to be a guarantee under any such derogation that Energis actions or omissions would not have any impact whatsoever on NG's electricity and gas customers.

Question 3: What do you think of our proposed approach to certifying the various interconnectors?

The proposed certification of electricity interconnector interests under the full ownership unbundling model seems appropriate.

We also agree that NG's involvement in undertakings outside the EU, such as its holdings in the USA, are not relevant to the test for ownership unbundling as they are not connected to the EU and do not influence its operations within the EU.

Regarding BBL and Interconnector (UK), we recognise that both are captured under the definition of a TSO under the Third package and will need to be reviewed under the scope of the unbundling provisions. However, we agree with Ofgem's initial view that these entities do not need to be certified as they have exemptions in one form or another from the European Commission (EC). This would be in line with DECC's approach to vertically integrated Gas infrastructure in their consultation on implementing the Third package¹. These are large investments which were made based on guarantees from having met certain EC criteria and changing their regulatory arrangements under which they operate may undermine current and future investment in this type of infrastructure.

Question 4: Do you agree that OFTOs should require certification with respect to the unbundling provisions and be obliged to comply with the ownership unbundling model (with possible exceptions noted below)?

We agree with Ofgem's view that Offshore System operators connected to Transmission Systems are caught by the definition of Transmission System under the Third package and are therefore subject to the unbundling requirements set out in the electricity directive. However, it is not clear whether this also applies to Offshore System Operators that are connected to Distribution Systems onshore as this is a low-voltage system less than 132kV.

It is important that offshore investments in electricity made prior to the 3 September 2009 are not undermined by significant regulatory changes. It is imperative that Ofgem stipulate exactly which projects need certifying under the implementation of the Third package given that Ofgem E-Serve are responsible for issuing these licences. This would help to remove uncertainty.

Question 5: Do you consider that the arrangements relating to the Scottish electricity transmission companies guarantee more effective independence of such licensees from the vertically integrated undertakings of which they are part of than the provisions of the ITO model? Why?

If TSOs demonstrate, and guarantee, more effective independence than the models mandated by the Third Package then derogations may be a practical and sensible way forward. However, we would urge Ofgem to be proactive and actively monitor such arrangements to ensure they are robust and remain compliant with the Third Package. This might ensure consumers' interests are better protected. We would hope that any derogation would not weaken arrangements under the SO-TO code.

We note that there is an obligation for SPTL and SHETL to maintain full managerial and operational independence of their transmission businesses from all other parts of their Group businesses, affiliates, JVs, and entities in which they have an equity stake. They are also prohibited from cross-subsidising between the transmission business and any affiliates.

¹ DECC Consultation on the Implementation of the EU Third Internal Energy Market Package – July 2010

Provided that the above requirements are all maintained, on which we are heavily reliant on Ofgem's policing and on the reporting into Ofgem by a Compliance Officer appointed by each firm with Ofgem's approval, we would cautiously offer that we currently foresee no insuperable barriers to the applicability of 9(9) in the case of SPTL and of SHETL.

Question 6: Are there further areas of investigation or clarification we could consider?

Yes, as stated above clarity is needed over whether these new OU regulations would apply to offshore transmission that is connected to low-voltage networks such as distribution networks. Ofgem should be able to identify exactly which projects are captured under the Third package and provide clarification to companies involved if their projects will need to be certified. This will remove any unnecessary doubt or confusion which may undermine project investment going forward.

We would also welcome clarification over whether future Transmission assets with Third Party Exemptions would need to be certified under these arrangements and be able to apply for derogations. We note that part of the TPA exemption criteria under the Third Package (Article 22) is that the project would not be built otherwise and it is important that options are laid out clearly for asset developers to be able to make timely investment decisions going forward.

Question 7: Do you consider our overall approach to the assessment of the Scottish electricity transmission companies against the Article 9(9) derogation appropriate?

See our response to question 5 above.

EDF Energy
September 2010