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Pamela Taylor/Siobh  n Carty
European Strategy
Ofgem
9 Millbank
London SW1P 3GE

22 September 2010

NON-CONFIDENTIAL RESPONSE

Dear Pamela and Siobh  n

Consultation on the Certification of Transmission System Operators ("TSOs") under the Third Energy Package dated 29 July 2010 (the "Consultation")

Interconnector (UK) Limited ("IUK") is identified by Ofgem in the Consultation as one of the TSOs affected by the unbundling provisions of the Third Energy Package. As such, we welcome the opportunity to respond to the Consultation and provide our initial view on the approach that Ofgem will take when certifying interconnectors as TSOs. We recognise that, at this stage, there is a great deal of uncertainty as to how cross-border infrastructure such as ourselves will be certified, and note that Ofgem will need to agree its proposed approach with the designated neighbouring National Regulatory Authorities ("NRA"). The timetable for such agreement, or indeed the likely form of agreed approach, is not clear at this stage.

We are led to believe that the Third Energy Package was never meant to target merchant operators such as ourselves, the main target being vertically integrated national networks. Ofgem is well aware of the disproportionate effect that unbundling (in its pure form) would have on IUK, particularly when compared to the specific arrangements in place for vertically integrated undertakings. This effect is unfortunately compounded by the delay in agreeing a co-ordinated approach to the regulation of interconnectors, which is extremely unsettling for our business and we would hope that Ofgem and the Belgian NRA are able to agree an approach in the near future.

In the Consultation document published on 29 July 2010, Ofgem states that the Commission has clarified that exemptions granted to undertakings under Article 22 of the Second Package Directive (Directive 2003/55/EC) will continue to apply and the holders of such exemptions will not need to request a new exemption under Article 36 of the Third Package Directive (Directive 2009/73/EC). We strongly support this interpretation and the level of certainty it provides to investors who have made long term commitments to build infrastructure in regulated markets. Regulatory stability, over the period during which the investment is made, is essential particularly at a time when the energy sector is seeking to attract significant levels of investment.

As noted in the Consultation, IUK was established prior to the Second Package and therefore was not able to obtain an exemption under Article 22. Ofgem's proposal is to treat IUK in a similar way to BBL, which did obtain an exemption under Article 22. Ofgem proposes to do this by treating the comfort letter which IUK received from the European Commission in respect of its arrangements, dated 17 May 1995 (the "Comfort Letter") as broadly equivalent to an exemption under Article 22.

We welcome Ofgem's purposive approach to the certification of interconnectors, which aims to avoid the discrimination which would otherwise arise between competing infrastructure. We are very grateful for Ofgem's continuing efforts to ensure that this purposive approach is supported by the regulators of neighbouring systems in Belgium and the Netherlands.

We would encourage further close participation with the Commission to pursue a proportionate solution which limits the possibility of discrimination between competing infrastructure such as ourselves and BBL. This concern has been amplified by the recent statements by CREG which indicate that it may not support Ofgem's proposed approach to the treatment of IUK, and indeed BBL.

It is regrettable that the Third Energy Package has been drafted in a way that captures minority shareholders who do not exert control over infrastructure and does not offer any of the alternatives to full unbundling on offer to the vertically integrated undertakings so clearly targeted by the legislation. Ofgem's support to date is appreciated and we look forward to continuing our dialogue in order to reach an equitable solution that meets the policy objectives.

Yours sincerely

A handwritten signature in black ink, appearing to read 'MSimmons', with a long horizontal stroke extending to the right.

Mary Simmons

Legal Manager and Company Secretary