

NORTHERN IRELAND ELECTRICITY plc

**Certification of transmission system
operators under the Third Package –
Ofgem consultation**

NIE's RESPONSE

22 September 2010



Introduction

As owner of the electricity transmission and distribution network in Northern Ireland, NIE is pleased to provide the undernoted comments on the issues raised in the consultation paper. We have concentrated our comments on those aspects of the Scottish arrangements where we see a similarity with the arrangements in Northern Ireland.

The Scottish Transmission Arrangements

Whilst we understand that certification in respect of Northern Ireland's transmission arrangements will be a matter for the Utility Regulator, NIE wishes to comment on the specific issue of certification of the Scottish electricity companies, SHETL and SPTL, in accordance with the Article 9(9) derogation. This matter is of direct interest to NIE since the Northern Ireland transmission arrangements are modelled on the System Operator – Transmission Owner Code (STC) in Scotland and, indeed, follow the Scottish arrangements very closely.

The Test for Derogation

The transmission arrangements in Scotland and the test for derogation are clearly set out in the consultation paper.

Neither the Scottish transmission model, nor its Northern Ireland equivalent, align with the ITO model set out in the Electricity Directive (2009/72/EC). Consequently, and as the consultation document correctly points out, in applying the test for the Article 9(9) derogation – that is, whether the Scottish arrangements guarantee more effective independence of the TSO than the ITO provisions – it is not logical to attempt a “line by line” analysis of the Scottish companies’ compliance against these provisions. However, the case for Directive compliance via the Article 9(9) derogation can be powerfully made, in respect of the Scottish arrangements when the test for derogation is applied on a more holistic basis. The consultation paper itself sets out a number of key elements of this case and NIE concurs with the analysis that it presents. In our view the arguments set out below are conclusive.

Separate ownership of the TSO

A critically important point is that, in Scotland, ownership of the TSO lies outside the vertically integrated undertaking (VIU). The TSO's responsibilities include real time operation of the transmission system; managing electricity flows; ensuring the availability of ancillary services; granting and managing non-discriminatory connection to and use of the transmission system; setting charges and collecting revenues from users; and providing information to interconnected TSOs, system users and prospective users.

In respect of these transmission functions, which include those involving an interface with third parties, the ownership unbundling of the TSO of itself guarantees more effective independence than the ITO model (which has the TSO within the VIU).

The existing arrangements are therefore better placed than the ITO model to address those areas of risk associated with transmission operation, connection to and use of the network and transparency of information for users and prospective users.

TSO and Regulatory Oversight and Influence over Transmission Functions

Under the Scottish arrangements, the TSO (NGET) exercises considerable oversight and influence over those transmission activities for which it does not have direct responsibility, including planning and development. In Northern Ireland these functions are undertaken jointly by NIE and SONI and we understand that similar arrangements pertain in Scotland. In addition there is considerable regulatory oversight e.g. in both jurisdictions a matter of dispute between the transmission owner (TO) and the TSO e.g. in relation to transmission investment, may be referred to, and determined by, the regulatory authority.

Independence of the TO within the VIU

We note that comprehensive ring-fencing arrangements are in place in Scotland to ensure that the TO is fully managerially and operationally independent from the VIU, so that the TO cannot undertake its role in relation to any transmission function in a way that discriminates in favour of the VIU. It would appear that the arrangements in Scotland and Northern Ireland are very similar. As an example, in both jurisdictions there are comprehensive restrictions on the use and disclosure of confidential information.

Conclusion

Based on the arguments outlined above, it appears to NIE that the existing transmission arrangements in Scotland meet the test for the Article 9(9) derogation conclusively.