



To:

Current and future electricity transmission;  
gas transportation; electricity interconnector;  
and gas interconnector licensees

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*Promoting choice and value for  
all gas and electricity customers*

CC: European Commission; DECC.

Our Ref: Certification of Unbundling

Email: unbundlingc@ofgem.gov.uk

Date: 19 June 2012

Dear Colleague,

**Certification of transmission system operators ('TSOs') under the ownership unbundling requirements of the Third Package<sup>1</sup>**

**Decision of the Gas and Electricity Markets Authority ('the Authority')**

The Electricity and Gas (Internal Markets) Regulations 2011 ('the GB Regulations') require TSOs to be certified as complying with the ownership unbundling requirements of the Third Package.

Current and future transmission and interconnector licensees<sup>2</sup> are required to apply for certification under the ownership unbundling requirements of the Third Package pursuant to the GB Regulations. The certification procedures are set out in the Electricity Act 1989 ('the Electricity Act') and in the Gas Act 1986 ('the Gas Act') as amended by the GB Regulations.

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<sup>1</sup> The term 'Third Package' refers to Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC ('Electricity Directive'); Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 ('Electricity Regulation'); Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC ('Gas Directive'); Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 ('Gas Regulation'); and Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators.

<sup>2</sup> Electricity transmission, gas transportation, electricity interconnector and gas interconnector licensees.

On 11 November 2011 Ofgem<sup>3</sup> published an open letter setting out information on our intended procedure for processing applications for certification under the ownership unbundling requirements of the Third Package.

On 13 January 2012 SP Transmission Limited, a company registered in Scotland under number SC189126 ('the Applicant'), submitted an application under section 10B(2) of the Electricity Act requesting to be certified pursuant to the second certification ground set out in section 10(E) 4 of the Electricity Act – that the Applicant has asked the Authority to exempt it from the ownership unbundling requirement on the ground set out in paragraph (9) of Article 9 of the Electricity Directive (alternative arrangements for independence), and the Authority thinks the requirements of that paragraph are met and for designation as a TSO pursuant to section 10H(2) of the Electricity Act.

This letter sets out Ofgem's final certification decision on the Applicant's application for certification under section 10D of the Electricity Act.

## **Background**

The Third Package is a suite of legally binding European Union legislation. The Third Package imposes new obligations on certain industry participants.

The GB Regulations have amended relevant domestic legislation, including the Gas Act, the Electricity Act and the Utilities Act 2000.

The GB Regulations have designated the Authority as the National Regulatory Authority for GB and have given it the responsibility for administering the ownership unbundling certification process for current and future GB electricity transmission, gas transportation and electricity and gas interconnector licensees.

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<sup>3</sup> The terms 'Ofgem' and 'the Authority' are used interchangeably in this document. Ofgem is the office of the Gas and Electricity Markets Authority ('the Authority'), established under section 1 of the Utilities Act 2000.

## **Application for certification**

The Applicant holds an electricity transmission licence treated as granted under section 6(1)(b) of the Electricity Act and is a person required to be certified as independent under section 10A(1) of the Electricity Act.

The Authority received an application for certification under section 10B(2) of the Electricity Act on 12 January 2012. The Authority requested further information from the Applicant under section 10B(4) of the Electricity Act. The Authority received that information on 12 April 2012.

The application was for the Applicant be certified on the second certification ground, which is set out in section 10E(4) of the Electricity Act. The second certification ground is that the Applicant has asked the Authority to exempt it from the ownership unbundling requirement on the grounds in paragraphs (9) of Article 9 of the Electricity Directive (alternative arrangements for independence).

The relevant provisions of Articles 9 and 10 of the Electricity Directive are summarised below:

9. Where, on 3 September 2009, the transmission system belongs to a vertically integrated undertaking and there are arrangements in place which guarantee more effective independence of the TSO than the provisions of Chapter V (Independent Transmission Operator), a Member State may decide not to apply paragraph 1 of Article 9 of the Electricity Directive.

10. Before an undertaking is approved and designated as a TSO under paragraph 9 of Article 10, it shall be certified according to the procedures laid down in Article 10(4), (5) and (6) of the Electricity Directive and in Article 3 of the Electricity Regulation, pursuant to which the European Commission ('the Commission') shall verify that the arrangements in place clearly guarantee more effective independence of the transmission system operator than the provisions of Chapter V of the Electricity Directive.

On the basis of the information contained in the application and the further information provided by the Applicant, the Authority considered that SP Transmission Limited's arrangements as of 3 September 2009 guarantee more effective independence of SP Transmission Limited than the provisions of the Independent Transmission Operator model set out in Chapter V of the Electricity Directive.

The Authority made its preliminary decision under section 10D(1) of the Electricity Act on 13 March 2012 and decided that the Applicant should be certified as independent pursuant to the second certification ground set out in section 10E(4) of the Electricity Act. The Authority's preliminary decision was notified to the Commission in accordance with section 10D(4) of the Electricity Act.

The Authority received the Commission's decision on 14 May 2012. Pursuant to Article 3(6) of the Electricity Regulation Ofgem has complied with the Commission's decision.

The Authority's final decision is that as of and from the date of this decision, the Applicant should be certified as independent under the second certification ground set out in section 10E(4) of the Electricity Act.

In accordance with section 10H(2) of the Electricity Act, the Applicant, being a person who holds a licence specified in section 10H(1) of the Electricity Act and who is certified on the second certification ground, is designated as an electricity transmission system operator for the purposes of Article 10(2) of the Electricity Directive.

In accordance with sections 10D(7) and 10H(4) of the Electricity Act, the Authority hereby notifies the certification and designation of the Applicant to the Applicant, to the Commission and to the Secretary of State.

In accordance with section 10I of the Electricity Act the Authority will monitor whether the basis on which it decided to certify the Applicant continues to apply following the Authority's final decision and will review the certification decision if it considers this to be appropriate.

Attached to this letter is a copy of the certification decision granted by the Authority.

Yours sincerely,

Pamela Taylor  
Associate Partner, European Strategy

**ELECTRICITY ACT 1989**

**SECTION 10D**

**CERTIFICATION**

Pursuant to section 10D of the Electricity Act 1989 ('the Act') the Gas and Electricity Markets Authority hereby gives to SP Transmission Limited as a person who is required to be certified as independent, certification as independent under the ground set out in section 10E(4) of the Act, in respect of the Transmission area of Scotland (except the area specified in the Electricity Act 1989 (North of Scotland Specified Area) Order 1990 made on 7 March 1990), the Cruachan Transmission Line and the Dalmally Switching Station<sup>4</sup> subject to the attached Schedule.

Pamela Taylor

Authorised in that behalf by the Gas and Electricity Markets Authority

19 June 2012

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<sup>4</sup> In this condition, the "Cruachan Transmission Line" means the double circuit 275kV transmission line extending from the Cruachan Station Works, to the Dalmally Switching Station and thereafter to the Windyhill Substation together with all lattice towers, conductors, insulators, associated cables and connections, and all other items of plant or equipment making up or supporting said transmission line, with the benefit, subject to the applicable conditions therein, of all wayleaves and/or servitude rights relating thereto and where any expressions used in this definition are defined in a transfer scheme, the expressions shall have the same meaning as in such transfer scheme. SP Transmission Limited's Transmission area is set out in Special Condition AA of SP Transmission Limited's Electricity Transmission licence.

## SCHEDULE

### PERIOD, CONDITIONS AND WITHDRAWAL OF CERTIFICATION

#### A. Interpretation and Definitions

In this certification

'the Authority'	means the Gas and Electricity Markets Authority established by section 1(1) of the Utilities Act 2000, as amended from time to time
'the Act'	means the Electricity Act 1989, as amended from time to time
'the Agency'	has the same meaning as in section 64 of the Act
'the certified person'	SP Transmission Limited in its capacity as a person certified as independent under section 10D of the Act
'the Commission'	means the European Commission
'the Electricity Directive'	has the same meaning as in section 64 of the Act
'person from a third country'	has the same meaning as in section 100 of the Act

#### B. Full description of the transmission system to which this certification relates

SP Transmission Limited owns and maintains the electricity transmission system in Scotland (except the area specified in the Electricity Act 1989 (North of Scotland Specified Area) Order 1990 made on 7 March 1990), the Cruachan Transmission Line and the Dalmally Switching Station, therefore this certification relates to the electricity transmission system in Southern Scotland.

#### C. Period

Subject to section E below, and pursuant to section 10D of the Act, this certification shall come into effect on the date that it is issued and will continue until it is withdrawn in accordance with section E, whichever is earlier.

#### D. Conditions

This certification is made subject to the following conditions:

1. The material provided by the certified person to the Authority in respect of its application for certification is true and complete.
2. If at any time the certified person knows or reasonably should know of any event or circumstance that has occurred or is likely to occur that may affect its eligibility for certification, the certified person shall as soon as reasonably practicable notify the Authority in writing of the event or circumstance and the reasons it considers that the event or circumstance may affect its eligibility for certification.
3. If at any time from 3 March 2013 the certified person knows or reasonably should know that any event or circumstance has occurred, or is likely to occur, that may cause the Authority to think that the certified person is or may become a person from a third country, or that a person from a third country has or may take control of the certified person, the certified person shall as soon as reasonably practicable notify the Authority in writing.
4. By 31 July of each year the certified person shall provide the Authority with a written declaration, approved by a resolution of the board of directors of the certified person and signed by a director of the certified person pursuant to that resolution, setting out:
  - a. Whether any event or circumstance has occurred in the previous 12 month period, or such part of that 12 month period since the certified person was certified, that may affect the certified person's eligibility for certification, and if so, the reasons it considers that the event or circumstance may affect its eligibility for certification;
  - b. Whether any event or circumstance has occurred, or is likely to occur, that may cause the Authority to think that the certified person has become a person from a third country, or that a person from a third country has taken control of the certified person, in the previous 12 month period or such part of that 12 month period since the certified person was certified, providing that the certified person is only required to provide a written declaration under this paragraph (b) in relation to a period that occurs after 3 March 2013; and
  - c. Whether there have been any changes to the certified person's arrangements (including but not limited to the certified person's regulatory and legal arrangements) in the previous 12 month period or such part of that 12 month period since the certified person was certified that may affect how the Authority assesses that the certified person's arrangements guarantee more effective

independence of the certified person than the provisions of Chapter V of the Electricity Directive.

5. The certified person furnishes the Authority in such manner and at such times as the Authority may reasonably require, with such information as the Authority may reasonably require, or as may be necessary, for the purpose of:
  - (a) performing the functions assigned to it by or under the Act, the Utilities Act 2000, the Energy Act 2004, the Energy Act 2008, or the Energy Act 2011, each as may be amended from time to time; or
  - (b) monitoring and review of the certification under section 10I of the Act; or
  - (c) reporting by the Authority as to any connection of the licensee with a country outside the European Economic Area under section 10K of the Act.
  
6. Should any of the grounds for withdrawal arise under section E of this certification, the Authority may amend this certification rather than withdraw the certification.

#### **E. Withdrawal**

Pursuant to section 10L of the Act, this certification may be withdrawn in the following circumstances:

1. This certification may be withdrawn by the Authority by giving a notice of withdrawal to the certified person not less than four months before the coming into force of the withdrawal in any of the following circumstances:
  - (a) where:
    - (i) the Authority considers that condition contained in paragraph D1 above is not met;
    - (ii) the Authority considers that the basis on which the Authority decided to certify the certified person does not continue to apply and has made a final decision that the certification should be withdrawn;
    - (iii) the Authority considers that the certified person's arrangements (including but not limited to the certified person's regulatory and legal arrangements) do not continue to guarantee more effective independence of the certified person than the provisions of Chapter V of the Electricity Directive and has made a final decision that the certification should be withdrawn;



- (iv) the certified person has a receiver (which expression shall include an administrative receiver within the meaning of section 251 of the Insolvency Act 1986, as amended from time to time) of the whole or any material part of its assets or undertaking appointed;
- (v) the certified person has entered into administration under section 8 of Schedule B1 to the Insolvency Act 1986;
- (vi) the certified person is found to be in breach of any national or European competition laws, such breach relating to the licensed activity of the certified person;
- (vii) the certified person has failed to provide a declaration to the Authority pursuant to paragraph D4 above and the Authority has written to certified person stating that the declaration has not been provided and giving the certified person notice that if the declaration remains outstanding past the period specified in the notice the certification may be withdrawn;
- (viii) the certified person has failed to comply with a request for information issued by the Authority under paragraph D5 above and the Authority has written to certified person stating that the request has not been complied with and giving the certified person notice that if the request for information remains outstanding past the period specified in the notice the certification may be withdrawn; or
- (ix) to ensure compliance with any legally binding decision of the Agency or of the Commission.

2. This certification may be withdrawn if the certified person notifies the Authority that it does not require to be certified and the Authority considers that the certified person is not a person who is required to be certified.