

## The Authority's review of certification of Blue Transmission Walney 1 Limited, Blue Transmission Walney 2 Limited, Blue Transmission Sheringham Shoal Limited and Blue Transmission London Array Limited

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### 1. Certification Decision

- 1.1. Having taken utmost account of the European Commission's (the 'Commission') opinion<sup>1</sup> of our preliminary decision on the review of the certification status of Blue Transmission Walney 1 Limited ('Walney 1'), Blue Transmission Walney 2 Limited ('Walney 2'), Blue Transmission Sheringham Shoal Limited ('Sheringham Shoal') and Blue Transmission London Array Limited ('London Array') (collectively and individually the 'Certified Persons'), the Authority<sup>2</sup> concludes that the certification of each of the Certified Persons should be continued as the certification basis in respect of each of them continues to apply.
- 1.2. This document provides a summary of the assessment of the updates submitted by the Certified Persons to the Authority and the Commission for the purpose of reviewing whether the basis on which the Authority decided to certify them continues to apply in respect of the five tests as detailed below.

### 2. GB Legislation – Transposition of Directives 2009/72

- 2.1. In GB the ownership unbundling requirements set out in Directive 2009/72 (the 'Electricity Directive') have been transposed through the Electricity and Gas (Internal Markets) Regulations 2011 (the 'Regulations') which insert new sections 10A to 10O into the Electricity Act 1989 (the 'Electricity Act'). Section 10F of the Electricity Act – 'The ownership unbundling requirement' – states that "*the ownership unbundling requirement is met by the applicant if each of the following five tests is passed*" (see Section 4, below).

### 3. The Certified Persons

- 3.1. The Certified Persons are licensed offshore transmission system operators (OFTOs). Walney 1 has been certified since February 2013, and the other three Certified Persons since April 2013.
- 3.2. The Certified Persons are owned and controlled by the same joint venture, Blue Transmission Investments Limited ('Blue Transmission'). One of Blue Transmission's parents is Barclays Infrastructure Funds Management Limited ('BIFM'). BIFM's entire issued share capital was sold to 3i Group plc ('3i') on 8 November 2013. Following the share transfer, BIFM's subsidiary-structure has not changed. The Certified Persons continue to participate in the same business of transmission of offshore wind energy. The circumstances relevant to the Authority's review of each of their certification are essentially the same and as such, it was considered appropriate to review their certification collectively.
- 3.3. The review of their certification was triggered, in accordance with section 10I(5)(b) of the Act, by the Authority's receipt of information regarding the sale.

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<sup>1</sup> The Commission's opinion can be viewed online on

[http://ec.europa.eu/energy/gas\\_electricity/interpretative\\_notes/doc/certification/2013\\_092\\_uk\\_en.pdf](http://ec.europa.eu/energy/gas_electricity/interpretative_notes/doc/certification/2013_092_uk_en.pdf).

<sup>2</sup> The Gas and Electricity Markets Authority (the 'Authority'). In this document, the terms "Authority", "Ofgem", "we" and "us" are used interchangeably.

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#### **4. Summary of Our Analysis**

- 4.1. *First test: The applicant (a) does not control a relevant producer or supplier; (b) does not have a majority shareholding in a relevant producer or supplier; and (c) will not, on or after the relevant date, exercise shareholder rights in relation to a relevant producer or supplier.*
- 4.2. The Certified Persons have confirmed that they do not have any shareholding in nor do they control any other relevant producer or supplier. Furthermore, each of them has provided a signed undertaking that during the term of their OFTO licence, they will not exercise, or cause to be exercised on their behalf, any shareholder rights in relation to a relevant producer or supplier that they might acquire during the currency of the undertaking. Therefore the Certified Persons continue to meet the requirements of the first test.
- 4.3. *Second Test: Where the applicant is a company, partnership or other business, none of its senior officers has been, or may be, appointed by a person who (a) controls an electricity undertaking which is a relevant producer or supplier; or (b) has a majority shareholding in an electricity undertaking which is a relevant producer or supplier.*
- 4.4. The Certified Persons have provided detailed updates on the process for appointing directors, which is the same for all of them. The Certified Persons continue to meet the requirements of the second test as none of their senior officers has been, or may be, appointed by a company or a natural person who (a) controls an electricity undertaking which is a relevant producer or supplier; or (b) has a majority shareholding in an electricity undertaking which is a relevant producer or supplier.
- 4.5. *Third Test: Where the applicant is a company, partnership or other business, none of its senior officers is also a senior officer of an electricity undertaking which is a relevant producer or supplier.*
- 4.6. The information provided by the Certified Persons confirms that none of their directors or senior officers is also a senior officer of electricity undertaking which is a relevant producer or supplier. The Certified Persons therefore continue to meet the requirement of the third test.
- 4.7. *Fourth and Fifth Tests: The applicant is not controlled by a person who (a) controls a relevant producer or supplier; and, (b) has a majority shareholding in a relevant producer or supplier.*
- 4.8. The Certified Persons have provided comprehensive updates on the corporate structures of their ultimate controllers and the associated controllers following the sale of BIFM. We are satisfied that none of their controllers controls or has a majority shareholding in a relevant producer or supplier. Therefore, the Certified Persons continue to meet the requirements of the fourth and fifth tests.

#### **5. European Commission's Opinion**

- 5.1. The Commission's opinion is dated 4 February 2014.
- 5.2. The Commission considered that "an obstacle to continued certification cannot be identified."

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## **6. Conclusion: Continuance of Certification**

6.1. Having taken utmost account of the Commission's opinion the outcome of which accords with the Authority's Preliminary Decision, the Authority concludes that, based upon the above-referenced provisions of the Electricity Act, in particular that 3i does not control Elenia Lämpö Oy (a 56MW combined heat and power plant in Finland), its decision is to continue the certification of the Certified Persons.

## **7. Monitoring**

7.1. The Commission recalled the obligation set out in Article 10(4) of the Electricity Directive to monitor the continuing compliance of TSOs with the unbundling requirements.

7.2. The GB legal framework provides a number of measures to ensure the robustness of our certification decisions on an ongoing basis. The Authority has an obligation under section 10I, 10J and 10L of the Regulations to monitor and review whether a certified person should remain certified according to the process set out in the Regulations. We require certified parties to inform the Authority of any significant changes that are relevant to our certification decisions promptly and to provide the Authority with an annual update.

7.3. In compliance with the GB legal framework and the Electricity Directive, we will continue to monitor whether the basis on which the Authority decided to certify the Certified Persons continues to apply, and will include a condition in our final certification decision which requires the Certified Persons to regularly report to us on the relevant circumstances in this respect.