

Email: unbundlingc@ofgem.gov.uk

To: Greater Gabbard OFTO plc

Date: 22 February 2018

Cc: European Commission, BEIS

Dear Colleague,

Certification review in accordance with the Electricity Act 1989 - Decision of the Gas and Electricity Markets Authority ('the Authority')

Greater Gabbard OFTO plc ('GG', the 'Certified Person') reported updates to the circumstances and ownership structure of the Certified Person. The Authority¹ has undertaken a review of its certification, in accordance with section 10I(3) of the Electricity Act 1989 (the 'Electricity Act').

This letter sets out the Authority's final decision on our certification review under section 10L of the Electricity Act that the certification of the Certified Person continues to apply.

Certification Review

The Certified Person is a licensed offshore transmission system operator. The Authority certified the Certified Person on 2 August 2013 under the first certification ground, which is set out in section 10E(3) of the Electricity Act.² The first certification ground is that the Certified Person meets the ownership unbundling requirement in section 10F of the Electricity Act.

The Certified Person has the sole business focus, in accordance with its licence, of the transmission of wind generated electricity from a designated area offshore to the onshore national grid or distribution network.

On 26 June 2017, having been informed by the Certified Person of a change in circumstances event it considered might affect the basis for its certification, and following

¹ The Gas and Electricity Markets Authority (the 'Authority'). In this document, the terms "Authority", "Ofgem", and "us" are used interchangeably.

² The Authority's original certification decision:
https://www.ofgem.gov.uk/sites/default/files/docs/2013/08/greater_gabbard_certification_decision_0.pdf

discussion the European Commission ('the Commission'), the Authority opened a review of certification in accordance with section 10I of the Electricity Act.

The relevant change in circumstances reported to the Authority involved a change to the ultimate controller of the Certified Person. This change also resulted in a person from a third country taking control of the Certified Person.

GB Unbundling Legislation

The Authority is required to apply five tests set out in section 10F of the Electricity Act in order to determine whether the Certified Person meets the ownership unbundling requirement:

The first test is that 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.

The second test is that, 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.

The third test is that, 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.

The fourth test is that the Applicant is not controlled by a person who controls a relevant producer or supplier.

The fifth test is that the Applicant is not controlled by a person who has a majority shareholding in a relevant producer or supplier.

On the basis of the information provided by the Certified Person, the Authority considered that each of the five tests remained met by the Certified Person.

On 26 October 2017, the Authority made its preliminary decision under section 10L(1)(a) of the Electricity Act that the Certified Person's certification should be continued. The

Authority's preliminary decision was notified to the Certified Person, the Secretary of State and the Commission in accordance with section 10L(5) of the Electricity Act.

The Authority received the Commission's opinion on 22 December 2017.³ In accordance with Article 3(2) of the Electricity Regulation,⁴ the Authority has taken utmost account of that opinion in reaching its final decision.

Certification decision

The Authority's final decision is that the certification of the Certified Person should be continued, under the ground set out in section 10E(3) of the Electricity Act.

In accordance with section 10L(7) of the Electricity Act, the Authority hereby notifies its final decision to continue the certification of the Certified Person to the Certified Person, the Secretary of State and the Commission.

In accordance with section 10I of the Electricity Act, the Authority will continue to monitor whether the basis on which it decided to certify the Certified Person continues to apply following the Authority's final decision and, if appropriate, will review its certification decision.

Attached to this letter is a copy of the Authority's final decision.

Yours sincerely,

Akshay Kaul
Partner, Competitive Networks

³ The Commission's opinion can be viewed online at https://ec.europa.eu/energy/sites/ener/files/documents/2017_136_uk_en.pdf

⁴ Regulation (EC) No 714/2009 of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity

ELECTRICITY ACT 1989
SECTION 10L
CERTIFICATION – GREATER GABBARD OFTO PLC

Pursuant to section 10L of the Electricity Act 1989 ('the Act') and Article 3 of Regulation (EC) No 714/2009, the Gas and Electricity Markets Authority hereby continues to give to Greater Gabbard OFTO plc,⁵ as a person who is required to be certified as independent, certification as independent under the ground set out in section 10E(3) of the Act, subject to the attached Schedule.

Akshay Kaul

Authorised in that behalf by the Gas and Electricity Markets Authority

22 February 2018

⁵ This is a company incorporated in England and Wales with company registration number 08180541 whose registered address is EMS Welken House, Charterhouse Square, London, England, EC1M 6EH.

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'	Greater Gabbard OFTO plc in its capacity as a person certified as independent under section 10D of the Act
'the Commission'	means the European Commission
'control'	has the same meaning as in section 10O of the Act
'person from a third country'	has the same meaning as in section 10O of the Act
'the relevant date'	has the same meaning as in section 10M of the Act
'shareholder right'	has the same meaning as in section 10O of the Act

B. Period

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

C. Conditions

This certification is made subject to the following conditions:

1. The material provided by the certified person to the Authority in respect of the review of its 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 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. If at any time from the relevant date the certified person exercises or is likely to exercise any shareholder right or right of appointment in the circumstances described in section 10M of the Act, the certified person shall as soon as is reasonably practicable notify the Authority in writing of the right that has been or is likely to be exercised and the effect of exercising that right.
5. 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; and
 - c. Whether the certified person has exercised any shareholder right or right of appointment in the circumstances described in section 10M of the Act in the previous 12 month period or such part of that 12 month period since the certified person was certified and if so the effect of exercising that right, providing that the certified person is only required to provide a written declaration under this paragraph (c) where it has been certified on the certification ground in section 10E(3) of the Act and in relation to a period that occurs after the relevant date.

6. 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 Gas 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 reviewing 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 10I of the Act.
7. Should any of the grounds for withdrawal arise under section D of this certification, the Authority may amend rather than withdraw this certification.

D. 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 where:
 - a. the Authority considers that condition contained in paragraph C1 above is not met;
 - b. 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;
 - c. 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;
 - d. the certified person has entered into administration under section 8 of Schedule B1 to the Insolvency Act 1986;
 - e. 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;
 - f. the certified person has failed to provide a declaration to the Authority pursuant to paragraph C5 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;

