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for energy consumers

To: National Grid Electricity  
System Operator Limited

Cc: European Commission, BEIS

Email:  
[unbundlingcertification@ofgem.gov.uk](mailto:unbundlingcertification@ofgem.gov.uk)

Date: 26 November 2018

Dear Colleague,

**Certification under the ownership unbundling requirements of the Third Package<sup>1</sup>  
Decision of the Gas and Electricity Markets Authority ('the Authority')<sup>2</sup>**

National Grid Electricity System Operator Limited (NGESO) submitted an application under section 10B(2) of the Electricity Act 1989 (the 'Electricity Act') on 3 April 2018, requesting to be certified pursuant to the ownership unbundling requirements (as set out in Article 9(1) of the Electricity Directive and transposed into GB law in section 10F of the Electricity Act).

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

**Application for certification**

The reasons for this application are due to the separation of National Grid Electricity Transmission (NGET) into a separate Transmission Owner (TO) company and Electricity System Operator (ESO) company; the Applicant. The current NGET electricity transmission licence is in the process of being partially transferred and split into two separate electricity transmission licences – an NGET (TO) licence, and a new ESO licence for NGESO. Therefore, NGESO needs to apply for EU certification under the ownership unbundling requirement.

The ultimate owner and controller of the Applicant is National Grid plc and the Applicant has also identified that the ultimate controller of the Applicant owns relevant producers or

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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> In this document, the terms "Authority", "Ofgem", "we" and "us" are used interchangeably.

suppliers (RPOS), as defined in section 10O(3) of the Electricity Act. These RPOS comprise generation interests in the United States.

The applicant has therefore requested that the authority exercise its discretion under Section 10F(9A) of the Electricity Act 1989, to treat the second, fourth and fifth tests as passed.

The Authority is required to apply five tests set out in section 10F of the Electricity Act in order to determine whether the Applicant 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 contained in the application and further information provided by the Applicant, the Authority considered that the Applicant met the ownership unbundling requirement, as each of the five tests is passed, or has been treated as passed.

On 27 July 2018, the Authority made its preliminary decision under section 10D(1) of the Electricity Act to certify the Applicant as independent. The Authority's preliminary decision was notified to the Applicant, the Secretary of State and the Commission on 27 July 2018, in accordance with section 10D(4) of the Electricity Act.

The Authority received the Commission's opinion on 27 September 2018. In accordance with Article 3(2) of the Electricity Regulation, the Authority has taken utmost account of that opinion in reaching its final decision.

## **Certification decision**

The Authority's final decision is that the Applicant is certified as independent on the basis that it has met the ownership unbundling requirement under section 10F(1) of the Electricity Act, as each of the five tests set out in section 10F has been met by the Applicant, or treated as met under section 10F(9A).

On the date of the licence grant and in accordance with sections 10H(1) and 10H(2) of the Electricity Act, the Applicant will become the holder of a transmission system operator licence and will be designated as an electricity transmission system operator for the purposes of Article 10(2) of the Electricity Directive.

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

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, if appropriate, will review its certification decision.

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

Yours sincerely,

Louise van Rensburg

Interim Deputy Director – System Operation and Whole Systems

**ELECTRICITY ACT 1989  
SECTION 10D**

**CERTIFICATION – National Grid Electricity System Operator Limited**

Pursuant to section 10D of the Electricity Act 1989 ('the Act') the Gas and Electricity Markets Authority hereby gives to National Grid Electricity System Operator Limited<sup>3</sup> certification as independent under the ground set out in section 10E(3) of the Act, subject to the attached Schedule.

Louise van Rensburg

Interim Deputy Director – System Operation and Whole Systems

Authorised in that behalf by the Gas and Electricity Markets Authority

26 November 2018

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<sup>3</sup> This is a company incorporated in England and Wales with company registration number 11014226 whose registered address is 1-3 Strand, London, WC2N 5EH

**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'	National Grid Electricity System Operator Limited 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 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 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 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 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 10K 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;

- g. the certified person has failed to comply with a request for information issued by the Authority under paragraph C6 above and the Authority has written to the 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
  - h. the certified person has failed 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.