

All interested parties,
stakeholders in GB and beyond,
and other regulatory bodies

Email: electricitySOreform@ofgem.gov.uk

13 March 2019

Dear colleagues,

Decision on conditions precedent prior to the partial transfer of National Grid Electricity Transmission plc's ("NGET") electricity transmission licence from NGET to National Grid Electricity System Operator Limited ("NGESO")

This letter is to inform interested parties that the Authority is satisfied that the conditions set out in paragraph 9 of our 7A consent decision¹ have been met and to provide information in respect of each of the conditions precedent, numbered in accordance with the 7A consent decision.

Background

Currently the System Operator (SO) functions for the electricity transmission network in Great Britain (GB) are undertaken by NGET. In November 2015, Government ministers expressed the desire to make the electricity SO (ESO) more independent. On 12 January 2017, we issued a consultation on our views on the future arrangements for the ESO's role and structure². We subsequently published our response to that consultation on the 3 August 2017, confirming that we would proceed with the separation of NGET's ESO functions from its transmission owner (TO) functions³. On 1 December 2017, we published our informal consultation⁴ on ESO licence drafting and following this a further update⁵ on 14 March 2018.

On 29 March 2018 NGET sought consent from the Authority, under section 7A of the Electricity Act 1989 ("EA89"), to the partial transfer of NGET's existing transmission licence to NGESO. On 19 April 2018 and 1 February 2019 we gave Notice to the Secretary of State that we intended to impose various modifications to some of the conditions subject to the transfer request in accordance with S7A(4) of EA89. No direction was received from the Secretary of State to not proceed with the modification of the conditions. We also gave a Notice to Consent⁶ to the partial transfer of NGET's licence on 24 May 2018 in accordance with s7A(9) of EA89. We have not received any response contrary to our intention to consent to the partial transfer, nor have we received a direction from the Secretary of State to not

¹ <https://www.ofgem.gov.uk/publications-and-updates/consent-partially-transfer-electricity-transmission-licence-held-national-grid-electricity-transmission-plc-national-grid-electricity-system-operator-limited>

² <https://www.ofgem.gov.uk/publications-and-updates/future-arrangements-electricity-system-operator-its-role-and-structure>. Consultation responses can be found under the heading 'response documents'.

³ <https://www.ofgem.gov.uk/publications-and-updates/future-arrangements-electricity-system-operator-response-consultation-so-separation>

⁴ <https://www.ofgem.gov.uk/publications-and-updates/future-arrangements-electricity-system-operator-informal-consultation-eso-licence-drafting>

⁵ <https://www.ofgem.gov.uk/publications-and-updates/industry-update-following-our-future-arrangements-electricity-system-operator-informal-consultation-eso-licence-drafting>

⁶ <https://www.ofgem.gov.uk/publications-and-updates/eso-separation-notice-proposal-partially-transfer-electricity-transmission-licence-held-national-grid-electricity-transmission-plc-national-grid-electricity-system-operator-limited>

proceed with the transfer as set out in our Notice of the 24 May 2018 and accordingly on 4 September 2018, we published our 7A consent decision on the proposed partial transfer of the transmission licence held by NGET to NGESO and the associated licence modifications required to separate the ESO functions⁷.

The Authority's 7A consent decision, published on 4 September 2018, gave consent to NGET's request to transfer part of its electricity transmission licence to NGESO subject to NGET complying with the conditions set out in paragraph 9 of the 7A consent decision by 1 April 2019.

Annex 1 to this letter sets out the reason for our decision.

Next Steps

Subject to NGET complying with such conditions, the Authority's decision to give consent will have effect from 1 April 2019.

If you have any queries regarding the information contained within this letter, please contact us at the email address listed above.

Yours faithfully,

Grendon Thompson
Head of Electricity System Operator Regulation
Signed on behalf of the Authority and authorised for that purpose

⁷ See footnote 1

Annex 1: Authority's view on each condition precedent (reasons for the Authority's decision to give consent)

a) "The Standard and Special Conditions of the Licence held by NGET and the Standard and Special Conditions of the electricity transmission licence to be transferred to NGESO are modified as outlined in the Schedule and Annexes to this consent"

The modifications to the NGET and NGESO transmission licences as set out in the Schedule and Annexes to the 7A consent decision will take effect in accordance with the terms of the 7A consent decision from 1 April 2019. At this point in time the condition in paragraph 9(a) of the 7A consent decision will be satisfied.

It should be noted that some further modifications to the NGET and NGESO transmission licences are to be introduced in addition to the modifications set out in the Schedule and Annexes to the 7A consent decision of 4 September 2018. These further modifications were notified to the Secretary of State by the Authority pursuant to a Notice under section 7A(7) of the Electricity Act 1989 and dated 1 February 2019. These further modifications will also take effect from 1 April 2019.

As such we consider the condition set out in section 9(a) of the 7A consent decision has been met.

b) "Every derogation or direction given by the Authority under paragraph 12 of Standard Condition C14 (Grid Code) and paragraph 15 of Standard Condition B12 (System Operator – Transmission Owner Code) (together the "relevant conditions") of the Licence, and which were in effect immediately before the date of the partial transfer of the Licence from NGET to NGESO under section 7A of the Act shall have continuing effect as if they had been granted under the transferred conditions directly to NGESO"

Annex H to the 7A consent decision set out the Authority's modifications to the Terms of the NGESO transmission licence introducing a new paragraph 7. The effect of which was to give continuing effect in the NGESO transmission licence to derogations granted to NGET under the relevant conditions referred to above.

Paragraph 7 provides as follows:

"Every derogation or direction given by the Authority under paragraph 12 of Standard Condition C14 (Grid Code) and paragraph 15 of Standard Condition B12 (System Operator – Transmission Owner Code) (together the "relevant conditions") of the transmission licence treated as granted under section 6(1)(b) of the Act to National Grid Electricity Transmission plc ("NGET licence"), and which were in effect immediately before the date of the partial transfer of the NGET licence from NGET to the licensee under section 7A of the Act shall have continuing effect as if they had been given to the licensee under the relevant conditions of this licence."

Paragraph 7 will come into effect in the Terms of the NGESO transmission licence on 1 April 2019 in accordance with the 7A consent decision at which point the condition in paragraph 9(b) of the 7A consent decision will be satisfied.

As such we consider the condition set out in section 9(b) of the 7A consent decision has been met.

c) "NGET's existing relevant consents, granted by the Authority under the existing NGET Licence are, where relevant, to be appropriately granted in favour of NGESO. In addition, where these consents are solely in respect of the system operator functions these will cease to have affect in respect of NGET"

NGET and Ofgem have discussed and agreed the appropriate treatment of licence consents currently granted by the Authority in favour of NGET. In summary:

- NGET will be granted 1 new consent and 1 existing consent will be modified as a consequence of the partial licence transfer;
- NGESO will be granted 6 new consents; and
- As a consequence of the grant of 3 of the consents to NGESO, 3 existing consents currently held by NGET will be revoked in the name of NGET.

The form and content of the NGESO and NGET consents and the NGET revocation direction referred to above has been agreed between NGET and Ofgem on 29th January 2019 via email correspondence.

The NGESO and NGET consents and the NGET revocation direction will be granted / given by the Authority with effect from 1 April 2019 at which point the condition in paragraph 9(c) of the 7A consent decision will be satisfied. The consents and revocation direction will be published by the Authority on 1 April 2019.

As such we consider the condition set out in section 9(c) of the 7A consent decision has been met.

d) "NGESO attains certification by the Authority that it complies with the European Commission's ownership unbundling requirements as required by section 10D of the Act"

The Authority made its preliminary decision under section 10D (1) of the EA89 to certify NGESO as independent on 27 July 2018. The Authority received the Commission's opinion on 27 September 2018 and, in accordance with Article 3(2) of the Electricity Regulation, took the utmost account of that opinion in reaching its final decision.

On 26 November 2018 the Authority made its final decision that NGESO was certified as independent in accordance with the requirements of s10A of EA89 on the basis that it met the ownership unbundling requirements under section 10F (1) of the EA89, as each of the five tests set out in section 10F had been met by NGESO or treated as met under section 10(9A).

As such we consider the condition set out in section 9(d) of the 7A consent decision has been met.

e) "Appropriate modifications are made to the GB electricity industry codes to reflect the new arrangements resulting from the partial transfer of NGET's Licence to the NGESO who will take over NGET's existing system operator functions under the partial transfer"

Modification proposals setting out the necessary consequential changes to reflect the new arrangements resulting from the partial licence transfer by NGET to NGESO have been raised in respect of the following industry codes:

- Connection and Use of System Code (CUSC)
- System Operator Transmission Owner Code (STC)
- Grid Code (GC)
- Security and Quality of Supply Standards (SQSS)
- Balancing and Settlement Code (BSC)
- Distribution Code (DCode)
- Distribution Use of System Agreement (DCUSA)

The modification proposals were approved by the Authority on the following dates:

- CUSC (CMP293, CMP294) Authority Decision received 6th December 2018
- STC (CM065, CM066, CM067, CM068, CM069) Authority Decision received 6th December 2018
- Grid Code (GC0112) Authority Decision received 3rd December 2018
- SQSS (GSR024) Authority Decision received 2nd January 2019
- BSC (P369) Authority Decision received 24th September 2018
- DCode (DCRP/18/10) Authority Decision received 22nd February 2019

DCUSA (Change Proposal DCP324) approved by DCUSA Parties 12th September 2018 (Authority decision not required). Accordingly, when each respective code modification takes effect on 1 April 2019 in accordance with the Authority's respective approvals and the approval of the DCUSA Parties as referred to above, the condition in paragraph 9(e) of the 7A consent decision will be satisfied.

As such we consider the condition set out in section 9(e) of the 7A consent decision has been met.

Separately, we note that a number of erroneous references in the Grid Code have subsequently been identified following the approval of GC0112 as a consequence of other non-separation related

modifications being developed at the same time as GC0112 that did not consider the GC0112 changes. NGET has committed to raise a fast track self-governance modification that will make all necessary corrections to the Grid Code (other than longstanding erroneous references which will be corrected through raising an additional modification using standard Grid Code governance procedures). The fast track modification is expected to be presented to the Panel for approval on 28 March.