

To: Diamond Transmission
Partners Walney Extension
Limited

Cc: European Commission, BEIS

Your Ref:

Our Ref:

Direct Dial: 0207 901 3896

Email: unbundlingcertification@ofgem.gov.uk

Date: 07 February 2020

Dear Colleague,

**Certification under the ownership unbundling requirements of the Third Package¹
Decision of the Gas and Electricity Markets Authority (the Authority)**

Diamond Transmission Partners Walney Extension Limited (the **Applicant**) submitted an application under section 10B(2) of the Electricity Act 1989 (the **Electricity Act**) on 26 April 2019 and further information was provided by the Applicant on 19 June 2019, 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 the Applicant's application for certification, under section 10D of the Electricity Act.

¹ 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.

Application for certification

The Applicant, is expected to become a licensed offshore transmission system owner (**OFTO**) under section 6(1)(b) of the Electricity Act, and is ultimately controlled by Mitsubishi Corporation (**MC**), HICL Infrastructure PLC (**HICL**), InfraRed Capital Partners (Management) LLP (**InfraRed**) and Chubu Electric Power Co., Inc (**Chubu**).

The Applicant requested certification on the first certification ground, which is set out in section 10E(3) of the Electricity Act. The first certification ground is that the Applicant meets the ownership unbundling requirement in section 10F of the Electricity Act. Under section 10B(3) of the Electricity Act, if the Applicant is controlled by a person from a third country, the Authority must, as soon as is reasonably practicable, notify the Secretary of State and the European Commission (the **Commission**) that an application from such a person has been made. The Authority must also enclose with the notification to the Secretary of State any further information which, at the time of the notification, the Authority has in its possession and thinks is relevant to the question of whether the security of energy supplies in the United Kingdom or any other EEA state would be put at risk by the certification of the applicant.

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 all of the five tests were met, or treated as met, by the Applicant.

MC and Chubu are incorporated and registered in Japan, which are third country controllers for the purposes section 100 of the Electricity Act and this certification assessment. We notified the Secretary of State on 24 June 2019 in accordance with section 10B(3) of the Electricity Act². On 1 August 2019, the Secretary of State concluded that certifying the Applicant would not put the security of electricity supplies in the UK or any other EEA states at risk.

On 9 October 2019, 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 (the **Commission**) in accordance with section 10D(4) of the Electricity Act.

The Authority received the Commission's opinion on 9 December 2019. The Authority has taken utmost account of that opinion in reaching its final decision in accordance with Article 3(2) of the Electricity Regulation.

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 an OFTO Licence holder and will be designated as an electricity transmission system operator for the purposes of Article 10(2) of the Electricity Directive.

² The Secretary of State and European Commission were informed on 24 June 2019 of a change in HICL group parent as HICL Infrastructure Company Limited based in Guernsey was voluntarily liquidated and the business was transferred to HICL Infrastructure Plc incorporated and registered in England and Wales.

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 upon 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,



Rebecca Barnett
Deputy Director, Systems and Networks

Duly authorised on behalf of the
Gas and Electricity Markets Authority
07 February 2020

**ELECTRICITY ACT 1989
SECTION 10D**

CERTIFICATION – Diamond Transmission Partners Walney Extension Limited

Pursuant to section 10D of the Electricity Act 1989 ('the Act'), the Gas and Electricity Markets Authority hereby gives to Diamond Transmission Partners Walney Extension Limited³ certification as independent under the grounds set out in section 10E(3) of the Act, subject to the attached Schedule.



**Rebecca Barnett
Deputy Director, Systems and Networks**

**Duly authorised on behalf of the
Gas and Electricity Markets Authority
07 February 2020**

³ This is a company incorporated in England and Wales with company registration number 10726538 whose registered address is Mid City Place, 71 High Holborn, London, WC1V 6BA, United Kingdom.

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'	Diamond Transmission Partners Walney Extension 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 100 of the Act
'person from a third country'	has the same meaning as in section 100 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 100 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 the 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 applicable 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;

