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for energy consumers

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Dear Mr O’Riordan,

Certification of transmission system operators (‘TSOs’) under the ownership unbundling requirements of the Third Package¹: Decision on Gas Networks Ireland

The Electricity and Gas (Internal Markets) Regulations 2011 (‘the GB Regulations’) require TSOs to be certified as complying with the ownership unbundling requirements of the Third Package.

Current and future transmission and interconnector licensees² are required to apply for certification under the ownership unbundling requirements of the Third Package pursuant to

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.

² Electricity transmission, gas transportation, electricity interconnector and gas interconnector licensees.

the GB Regulations. The certification procedures are set out in the Electricity Act 1989 ('the Electricity Act') and in the Gas Act 1986 ('the Gas Act') as amended by the GB Regulations.

On 26 July 2011, we³ published an open letter⁴ setting out information on our intended procedure for processing applications for certification under the ownership unbundling requirements of the Third Package. This letter was superseded by open letters published on 10 November 2011⁵, 6 March 2015⁶ and 23 August 2017⁷ which set out updated information on our intended procedure for processing applications.

On 9 March 2020, Gas Networks Ireland (GNI) submitted an application for certification under the ownership unbundling requirements pursuant to section 8H of the Gas Act 1986 (the "Gas Act")⁸. GNI along with its subsidiary GNI(UK) Limited (GNI(UK)) own the interconnector between Moffat in Scotland to the end of UK Territorial Waters. GNI alone is the owner of sections of the Moffat interconnector pipeline between the limit of UK Territorial Waters and the UK Continental Shelf. GNI's application relates to the pipelines between the limit of UK Territorial Waters and the UK Continental Shelf. With respect to the remaining section between Moffat in Scotland to the end of UK Territorial Waters, GNI(UK) were certified under the ownership unbundling requirements in 2016.⁹

This letter contains our final decision on GNI's application for certification under section 8F of the Gas Act.

Background

The Third Package is a suite of legally binding European Union legislation. The Third Package imposes obligations on certain industry participants. One of the core provisions of the Third Package is ensuring that TSOs are unbundled from generation, production and supply interests and are required to be certified as being so. The Third Package envisages that this unbundling will be effective in removing conflicts of interests between producers, suppliers and transmission system operations.

The Third Package has been transposed into national law through the GB Regulations and the 2014 Regulations¹⁰ which have amended relevant domestic legislation, including the

³ The terms "the Authority", "Ofgem", "our" and "we" are used interchangeably in this document. Ofgem is the Office of the Gas and Electricity Markets Authority (the Authority).

⁴ [26 July 2011 Open Letter.](#)

⁵ [10 November 2011 Open Letter.](#)

⁶ [6 March 2015 Open Letter.](#)

⁷ [23 August 2017 Open Letter.](#)

⁸ [The Gas Act 1986.](#)

⁹ [Ofgem 2016 decision's to grant certification to GNI\(UK\).](#)

¹⁰ The Electricity and Gas (Ownership Unbundling) Regulations 2014.

Gas Act, the Electricity Act and the Utilities Act 2000. Section 8G of the Gas Act contains six grounds under which a TSO can be certified and GNI has applied for certification under the first ground of full ownership unbundling.

The GB Regulations have designated us as the National Regulatory Authority for GB and have given us the responsibility for administering the certification process for current and future GB electricity transmission, gas transportation and electricity and gas interconnector licensees.

Application for certification

On 12 June 2020, GNI was granted a gas interconnector licence under section 7ZA of the Gas Act¹¹.

On 9 March 2020, GNI submitted an application for certification under the ownership unbundling requirements pursuant to section 8H of the Gas Act. The Applicant is a person required to be certified as independent under section 8C(2) of the Gas Act.

We are required to apply five tests in order to determine whether applicants meet 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 a gas undertaking which is a relevant producer or supplier; or
- (b) has a majority shareholding in a gas 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 a gas undertaking which is a relevant producer or supplier.

¹¹ [Notice of Grant of a Gas Interconnector Licence.](#)

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.

Decision

On the basis of the information contained in the application and further information provided by GNI, we consider each of the five tests in section 8H of the Gas Act are met. We made our preliminary decision under section 8F (1) of the Gas Act on 04 September 2020 and decided that GNI should be certified as independent under the first ground of full ownership unbundling. Our preliminary decision was notified to the European Commission ('the Commission') in accordance with section 8F (4) of the Gas Act.

We received the Commission's opinion¹² on 28 October 2020. In accordance with Article 3(2) of the Gas Regulation, we have taken utmost account of that opinion in reaching our final decision.

Our final decision is that from the date of this decision, GNI should be certified as independent, on the basis that it meets each of the five tests in section 8H of the Gas Act.

In accordance with section 8J(2) of the Gas Act, the Applicant, being a person who holds a licence specified in section 8J(1) of the Gas Act and who is certified on the first certification ground, is designated as a gas TSO for the purposes of Article 10(2) of the Gas Directive¹³. In accordance with sections 8F(7) and 8J(4) of the Gas Act, we hereby notify the certification and designation of the Applicant to the Commission and the Secretary of State.

In accordance with section 8K of the Gas Act, we will monitor whether the basis on which we decided to certify GNI continues to apply and if appropriate will review its certification decision.

Yours sincerely



¹² [The European Commission's Opinion.](#)

¹³ Having been designated as a TSO, the Applicant must comply with the obligations imposed on TSOs by the Gas Regulation, the Gas Directive (for example under Article 13) and the relevant European network codes adopted pursuant to the Gas Regulation as they enter into force.

Tom Corcut

Deputy Director, Wholesale Markets

GAS ACT 1986
SECTION 8F
CERTIFICATION

Pursuant to section 8F of the Gas Act 1986 ('the Act') the Gas and Electricity Markets Authority hereby gives to GNI, (incorporated in the Republic of Ireland with registered number 555744 whose registered office is situated at Gas Works Road, Cork, T12 RX96), as a person who is required to be certified as independent, certification as independent under the ground set out in section 8G(3) of the Act, subject to the attached Schedule.

Tom Corcut

A handwritten signature in black ink, appearing to read 'Tom Corcut', is written over a light grey grid background.

Authorised in that behalf by the Gas and Electricity Markets Authority
30 November 2020

SCHEDULE

PERIOD, CONDITIONS AND WITHDRAWAL OF CERTIFICATION

A. Interpretation and Definitions

In this certification

'affiliate'	in relation to any person means any holding company of such person, any subsidiary of such person or any subsidiary of a holding company of such person, in each case within the meaning of sections 1159 and 1160 of the Companies Act 2006
'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 Gas Act 1986, as amended from time to time
'the Agency'	has the same meaning as in section 48 of the Act ¹⁴
'the certified person'	GNI (company number 555744) in its capacity as a person certified as independent under section 8F of the Act
'the Commission'	means the European Commission
'control'	has the same meaning as in section 8Q of the Act
'electricity undertaking'	has the same meaning as in section 100 of the Electricity Act 1989
'the gas interconnector'	means the high pressure gas interconnector between the limit of UK Territorial Waters and the UK Continental Shelf
'the Licence'	means the gas interconnector licence granted by the Gas and Electricity Markets Authority to GNI, the certified person on 12 June 2020 under section 7ZA of the Act including the Gas Interconnector Licence: Standard Conditions from time to time in force
'gas undertaking'	has the same meaning as in section 8Q of the Act
'person from a third country'	has the same meaning as in section 8Q of the Act
'the relevant date'	has the same meaning as in section 8O of the Act
'shareholder right'	has the same meaning as in section 8Q of the Act

¹⁴ The Agency for the Cooperation of Energy Regulators (ACER).

B. Period

Subject to section D below, and pursuant to section 8F 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. Where the certified person contracts for services relating to the activities authorised by its licence (including, but not limited to, the operation of the gas interconnector) from another undertaking (a “contractor”), the certified person must comply with paragraph C3. For the avoidance of doubt, paragraphs C2 and C3 do not affect the application of Condition 21 of the certified person’s licence.
3. The certified person must put in place all necessary measures to prevent commercially sensitive information about:
 - a. the certified person’s activities authorised by its licence, or
 - b. third parties which has been obtained
 - i. by the certified person in performing the activities authorised by its licence; or
 - ii. by the contractor in performing services relating to such activities on behalf of the certified person,from being disclosed by the contractor (including, for the avoidance of doubt, to any affiliate of the contractor which is a gas undertaking or an electricity undertaking), unless in equivalent circumstances the certified person would be permitted to disclose such information under Condition 21 of its licence.
4. If at any time the Authority provisionally considers that the condition contained in paragraph C3 is not met or has not been complied with (the “provisional breach”), the certified person shall provide the Authority in such manner and at such times as the Authority may reasonably require the reasons for the provisional breach and the details of any steps being taken to rectify the provisional breach (including the timescales for any such steps) together with any supporting documentation in order to assist the Authority in any review of this certification under section 8K of the Act.
5. 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.

6. If 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.
7. 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 80 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.
8. 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, providing that the certified person is only required to provide a written declaration under this paragraph (b) in relation to a period that occurs after 3 March 2013; and
 - c. whether the certified person has exercised any shareholder right or right of appointment in the circumstances described in section 80 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 8G(3) of the Act and in relation to a period that occurs after the relevant date.

9. 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 Electricity 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 review of the certification under section 8K 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 8M of the Act.
10. Should any of the grounds for withdrawal arise under section D of this certification, the Authority may amend this certification rather than withdraw the certification.

D. Withdrawal

Pursuant to section 8N 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:
- a. where:
 - i. the Authority considers that a condition contained in paragraph C1 to C10 above is not met;
 - ii. 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; 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;
 - iii. the certified person has entered into administration under section 8 of Schedule B1 to the Insolvency Act 1986;
 - iv. 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;
 - v. the certified person has failed to provide a declaration to the Authority pursuant to paragraph C8 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;

- vi. the certified person has failed to comply with a request for information issued by the Authority under paragraph C9 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
- vii. 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 is not required to be certified and the Authority agrees.