

# Licence modifications to implement the fully ownership unbundled model in the gas transmission licenses

## Decision Paper

### 22 August 2013



# About the Utility Regulator

The Utility Regulator is the independent non-ministerial government department responsible for regulating Northern Ireland's electricity, gas, water and sewerage industries, to promote the short and long-term interests of consumers.

We are not a policy-making department of government, but we make sure that the energy and water utility industries in Northern Ireland are regulated and developed within ministerial policy as set out in our statutory duties.

We are governed by a Board of Directors and are accountable to the Northern Ireland Assembly through financial and annual reporting obligations.

We are based at Queens House in the centre of Belfast. The Chief Executive leads a management team of directors representing each of the key functional areas in the organisation: Corporate Affairs; Electricity; Gas; Retail and Social; and Water. The staff team includes economists, engineers, accountants, utility specialists, legal advisors and administration professionals.

## Our Mission

Value and sustainability in energy and water.

## Our Vision

We will make a difference for consumers by listening, innovating and leading.

## Our Values

Be a best practice regulator: transparent, consistent, proportional, accountable, and targeted.

Be a united team.

Be collaborative and co-operative.

Be professional.

Listen and explain.

Make a difference.

Act with integrity.

## Abstract

This document sets out the Utility Regulator's final decisions on the licence modifications we consider necessary to enable certification under the fully ownership unbundled (FOU) model in the Third Gas Directive (Directive 2009/73/EC). This follows a consultation paper published on 2 May 2013.

The FOU licence modifications set out in this decision paper will be made to the PTL and BGTL licences and notified in writing to the individual licence holder. If an application for FOU certification is subsequently received from another licence holder then the FOU required licence conditions will be proposed for inclusion in their licence.

In determining this final set of licence modifications to implement the FOU model, we have given due consideration to the responses received to the consultation. Where appropriate, we have made changes to our original proposals and these are explained within the decision paper.

## Audience

Industry, consumers and statutory bodies.

## Consumer impact

These licence modifications are necessary to implement the fully ownership unbundled model of the Third Gas Directive (Directive 2009/73/EC) and are in the best interests of Northern Ireland consumers, while minimising undue burden or cost on market participants.

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# 1. Introduction

## Purpose of this document

- 1.1. This document sets out the Utility Regulator's final decisions on the licence modifications we consider necessary to enable certification under the fully ownership unbundled (FOU) in the Third Gas Directive (Directive 2009/73/EC) as implemented by the Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011.
- 1.2. On 2 May 2013 we published a consultation paper which set out the proposed modifications for the FOU model. The modifications comprised those that we proposed would apply to any licensee certified as FOU (the required conditions) and specific modifications to the special conditions of the Premier Transmission Ltd. (PTL) and Belfast Gas Transmission Ltd. (BGTL) licences.
- 1.3. The consultation did not deal with the licence modifications that would be necessary to fully implement any other unbundling model (including the Independent Transmission Operator (ITO) model). Licence modifications for any other model will be consulted on at a future date if a decision is made to certify a licensee under such other model.
- 1.4. Three responses were received to the consultation. These were from AES Ballylumford, BGE(UK), and Mutual Energy. AES Ballylumford was in agreement with the proposed licence modifications. Mutual Energy Ltd. (MEL) did not raise any issues with the proposed licence drafting. Their comment centred on how they proposed to meet the requirements in condition 2.14.3 "Sub-Contracting – Terms and Conditions." BGE(UK)'s response made a number of points. The issues raised by

BGE(UK) are summarised in section two which also sets out our response to each of the issues raised. Where appropriate, we have made changes to our original proposals and these are set out in section two. Each of the responses is published alongside this document.

- 1.5. Having taken on board representations made during the consultation, the UR finalised its decisions and sought the consent of the Department of Enterprise, Trade and Investment for the licence modifications. This consent was received on 16 August 2013.
- 1.6. At present PTL and BGTL are the only entities to have applied for certification under the FOU model. The Utility Regulator (UR) published its final decisions to certify PTL and BGTL as fully ownership unbundled transmission system operators on 26 July 2013. The modifications set out in this paper will therefore be made to the PTL and BGTL licences. They will come into effect on 22 August 2013.

## **The FOU model in the Directive**

- 1.7. The Third Gas Directive requires that Transmission System Operators (TSOs) are unbundled from production and supply interests. A TSO must be certified under the Directive and a number of grounds for certification are provided for. Three models of unbundling are available in the Gas Order as amended by the Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011: Full ownership unbundling (FOU), Independent System Operator (ISO) and Independent Transmission Operator (ITO).
- 1.8. The intention behind the fully unbundled model (FOU) is that the transmission system is required to be owned and operated by an undertaking that is completely independent from electricity generation, gas production and/or supply interests. For further background on the unbundling

requirements of the Third Energy Package please refer to chapter one of the May consultation paper.<sup>1</sup>

- 1.9. On 23 March 2011, the Department of Enterprise Trade and Investment (the “Department”) made The Gas and Electricity (Internal Markets) Regulations 2011 (the “**Regulations**”).
- 1.10. The Regulations were made under Section 2(2) of the European Communities Act 1972 and implemented the majority of the requirements of the two European Directives on market liberalisation in the energy sector, including the unbundling requirements. They form part of the Third Energy Package, namely Directive 2009/72/EC concerning common rules for the internal market in electricity (the **Electricity Directive**) and Directive 2009/73/EC concerning common rules for the internal market in natural gas (the **Gas Directive**).
- 1.11. Among other things, the Regulations give the Utility Regulator (the “UR”) the *vires* to make modifications to licences for certain Directive purposes, including certification.

## Structure of the Document

- 1.12. This document is organised into three sections:
  - Section One – Introduction
  - Section Two – FOU required conditions
  - Section Three – Modifications to the PTL/BGTL Special Conditions

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<sup>1</sup>[http://www.uregni.gov.uk/publications/regulator\\_publishes\\_consultation\\_on\\_modifications\\_to\\_gas\\_transmission\\_licen](http://www.uregni.gov.uk/publications/regulator_publishes_consultation_on_modifications_to_gas_transmission_licen)

- 1.13. This document is available in accessible formats. Please contact Please contact Breige Tyrie on 02890311575 or Breige.Tyrie@uregni.gov.uk to request this.

## **Next steps**

- 1.14. The modifications set out in this decision paper will be made to the PTL and BGTL licences and notified in writing to the individual licence holder. They will come into effect on 22 August 2013.
- 1.15. The certification decisions for PTL and BGTL will also take effect from 22 August 2013.
- 1.16. If an application for FOU certification is subsequently received from another licence holder then the FOU required licence conditions will be proposed for inclusion in their licence as part of the certification process. If the UR considers that specific conditions to implement the FOU model are necessary for that licensee they will also be proposed and consulted on at the appropriate point in the certification process.



## 2. FOU required conditions

- 2.1. This section of the paper concerns the modifications required to implement the FOU model in any gas transmission conveyance licence where the licensee is, or is to be, certified as fully ownership unbundled.
- 2.2. It sets out the policy background to the amendments to the licences which were proposed in the May consultation paper, the responses received, the UR response (including any changes made to our original proposals) and the final modifications that will be made. We have not repeated here an explanation of the amendments proposed in May and the associated text in full. These can be seen from the May consultation document which is available on our website.<sup>2</sup>

### **Amendments to condition 1.5**

#### **Policy background**

- 2.3. As part of the unbundling requirements, the Gas Directive includes a new article (Article 16(1)) which places obligations on TSOs and transmission system owners to ensure the confidentiality of information held by TSOs and to prevent commercially sensitive information being disclosed in a discriminatory manner.
- 2.4. All the TSO licences have a condition to ensure that information that is commercially confidential information is not used or disclosed inappropriately. We consider that the confidentiality provisions in the existing licences already largely meet the requirements of the Directive for unbundling purposes so the modifications proposed were minor.

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<sup>2</sup>[http://www.uregni.gov.uk/uploads/publications/IME3\\_Unbundling\\_Consultation\\_for\\_Gas\\_Transmission\\_and\\_FOU.pdf](http://www.uregni.gov.uk/uploads/publications/IME3_Unbundling_Consultation_for_Gas_Transmission_and_FOU.pdf)

## **Summary of responses**

- 2.5. In respect to condition 1.5.1(b) BGE(UK) expressed a concern that the obligation appears to be on the licensee to take action against a third party to secure the non-utilisation of protected information.

## **Utility Regulator Response**

- 2.6. BGE(UK) are correct in their understanding of this condition. However, the language BGE(UK) are concerned about relates to the way in which the existing licence condition (1.5.1) works. For FOU purposes the way in which the condition works does not need to be amended other than to ensure that all protected information that a licensee holds is subject to the requirements of condition 1.5. At present only information which the licensee 'receives' is so subject.
- 2.7. Consequently, our decision is to make the modification without change.

## **Licence Modifications Final Decision**

- 2.8. Our decision is to modify Condition 1.5 of the PTL and BGTL licences so that it reads:

### **Condition 1.5: Restriction on Use and Disclosure of Certain Information**

#### **1.5.1 Use of protected information**

Where the Licensee or any affiliate or related undertaking of the Licensee holds protected information, the Licensee shall (and shall procure that such affiliate or related undertaking shall) procure:

- (a) that the Licensee shall not obtain any unfair commercial advantage from its possession of protected information with respect to any Separate Business;

- (b) that protected information is not used by any other person for the purpose of obtaining for that person:
  - (i) any unfair commercial advantage from its possession of protected information;
  - (ii) any licence;
  - (iii) any exemption;
  - (iv) control of any body corporate which, directly or indirectly, has the benefit of any such licence or exemption; and
- (c) that protected information is not disclosed except with the prior consent in writing of the relevant person to whose affairs the protected information relates,

provided that the obligation on the Licensee:

- (d) to procure the above in relation to an affiliate or related undertaking which has control of the Licensee (control being defined by Section 450 of the Corporation Tax Act 2010), shall be to do so using reasonable endeavours and obtaining an appropriate contractual undertaking from that affiliate or related undertaking in respect of such protected information; and
- (e) not to obtain any unfair commercial advantage from its possession of protected information under Condition 1.5.1(a) shall be construed to exclude protected information received by any Separate Business, if applicable, not engaged in the conveyance of gas independently of the Separate Business engaged in the conveyance of gas.

#### 1.5.2 Compliance with directions

The Licensee shall implement such measures and procedures and take all such other steps as shall be specified in directions issued by the Department from time to time under Article 45 of the Order or otherwise for the purposes of this Condition as reasonably appear to the Department to be requisite or expedient for the purpose of securing compliance by the Licensee with its obligations under Condition 1.5.1 in the conduct of its business to convey gas.

#### 1.5.3 Limitation of non disclosure obligations

Condition 1.5.1(c) shall not apply to any disclosure of information:

- (a) authorised by Article 63(3) or (4) of the Energy Order; or
- (b) made in compliance with the duties of the Licensee or any affiliate or related undertaking of the Licensee under the Order or the Energy Order or by any other requirement of a competent authority; or
- (c) made in compliance with the Conditions of the Licence or any document referred to in the Licence with which the Licensee or any affiliate or related undertaking of the Licensee is required by virtue of the Order or the Energy Order or the Licence to comply.

#### 1.5.4 Additional definition

In this Condition:

**"protected information"** means any commercially confidential information which:

- (a) relates to the affairs of a person; and

(b) has been furnished to, or otherwise acquired by, the Licensee or by any affiliate or related undertaking of the Licensee in the course of any dealings with that person or any affiliate or related undertaking of his,

other than information which is in, or comes into, the public domain other than as a result of breach by the Licensee of any Condition of the Licence.

## **Costs and Benefits**

2.9. This modification is to ensure full compliance with Article 16(1) for the purposes of certification with the FOU model. The changes to the existing condition are minimal and we consider that any costs should be likewise minimal.

## **Minor amendment to condition 2.4.2(b)**

### **Policy background**

2.10. The Gas Directive requires that TSOs perform certain tasks (Article 13) and that once certified as appropriately unbundled, are designated as TSOs. The requirement for designation is reflected in Article 8H of the Gas Order.

2.11. Consequently a minor modification to insert a reference to Article 8H of the Gas Order was proposed to condition 2.4.2

## **Summary of responses**

2.12. No responses were received on this proposed modification

## **Utility Regulator Response**

2.13. As no responses were received our decision is to make the modification without change.

## **Licence Modifications Final Decision**

2.14. Our decision is to modify Condition 2.4.2(b) of the PTL and BGTL licences so that it reads:

### **Minor Amendment to condition 2.4.2(b)**

- (b) where pursuant to Article 8H of the Order the Licensee is designated as a transmission system operator, ensure that the Network Code contains provisions that establish:
  - (i) the measures that the Licensee will put in place for the balancing of the Network;
  - (ii) the methodology used by the Licensee to procure the gas required for balancing the Network;
  - (iii) the methodology by which the charges to be levied on Users for the balancing of the Network are to be determined; and
  - (iv) the technical safety criteria applicable to the operation of the Network;

## **Costs and Benefits**

2.15. There should be no costs associated with this modification as no new obligations are imposed.

## **New condition 2.12 – Independence of the licensee**

### **Policy background**

2.16. The existing Condition 2.12 of the licences reflects the level of unbundling required by the second gas directive and as such it is necessary to amend it to ensure full compliance with the FOU model in the third directive. We therefore proposed to replace it with a new amended condition to ensure the full independence of the TSO business from all other energy businesses.

### **Summary of responses**

2.17. We received one response to the proposed modification from BGE(UK) which is summarised in the bullets below:

- Regarding condition 2.12.2(d) BGE(UK) have asked UR to clarify that it will not prohibit access by an Energy Business to premises or systems of the TSO;
- Regarding condition 2.12.2(f) BGE(UK) raised the concern that the drafting was unclear, for example as to the timings involved;
- The main concern raised by BGE(UK) was in relation to condition 2.12.3. “Undertaking”. BGE(UK) were concerned that the undertaking was proposed to be “in favour of the Authority;” they believe the undertaking should be in favour of the licensee;
- BGE(UK) sought clarification on a number of definitions in 2.12. Firstly, on the distinction between the definitions “Authorised Business” and “Licensed Business” and secondly, on whether purchase or sale of gas (e.g. balancing actions) by the TSO is performance of TSO function and is not included in the definition of an “Energy Business”.

- BGE(UK) also noted that Storage is not included as part of these definitions and have suggested that it should be covered in some form.

## **Utility Regulator Response**

- 2.18. Regarding condition 2.12.2(d) UR can confirm that this obligation as drafted does not prohibit meetings on TSO premises or accessing/using systems for the purposes of making capacity bookings/nominations. Paragraph 2.12.2 provides that matters listed in the sub-paragraphs that the licensee needs to ensure are “in order to facilitate its compliance with Condition 2.12.1”. In other words it is in order to facilitate compliance with the obligation for the full legal, managerial and operational independence. Consequently, we do not consider that drafting changes are required.
- 2.19. We agree with BGE(UK) that the drafting of 2.12.2(f) is unclear and have redrafted this for clarity. This has also required a new definition of “Related Energy Business” which has also been added to condition 2.12.4.
- 2.20. In light of BGE(UK)’s concerns in relation to condition 2.12.3 “Undertaking” we have considered whether our policy aims can be met by an undertaking in favour of the licensee and have concluded that they would. We have therefore re-drafted 2.12.3 to this effect.
- 2.21. On the distinction between “Authorised Business” and “Licensed Business.” In the licence itself Licensed Business is defined as "means the activities connected with the conveyance of gas pursuant to the Licence" (see Part 1, 1.1.6). But where the Licensee (or any company in the same group) is also carrying out gas distribution, then both the gas transmission and gas distribution businesses can (if so notified to DETI and the Authority) be operated as a combined business, hence the use and definition of “Authorised Business”.
- 2.22. In response to BGE(UK)’s query on the definition of “Energy Business,” we



have made a small amendment here to clarify that the Authorised Business is outside the definition of “Energy Business”.

- 2.23. BGE(UK) suggested that storage should be covered in some form in either the definition of “Authorised Business” or of “Energy Business” but we see no reason why that would be necessary.

## **Licence Modifications Final Decision**

- 2.24. Our decision is to modify Condition 2.12 of the PTL and BGTL licences so that it reads:

### **Condition 2.12: Independence of the Licensee**

#### **2.12.1 Independence**

The Licensee shall:

- (a) unless it has already done so prior to this Condition coming into force, establish; and
- (b) at all times thereafter maintain,

the full legal, managerial and operational independence of the Authorised Business from any Energy Business.

#### **2.12.2 Means of achieving such independence**

In order to facilitate its compliance with Condition 2.12.1, the Licensee shall ensure that:

- (a) the Authorised Business is provided with such premises, systems, equipment, facilities, property, personnel, data and management

resources as are necessary for its efficient and effective legal, managerial and operational independence;

- (b) it meets the ownership unbundling requirement referred to in Article 8G of the Order by virtue of satisfying, at all times, each of the five tests set out in Articles 8G(2), 8G(4), 8G(6), 8G(12) and 8G(13) of the Order;
- (c) subject to any financial supervisory rights of a Holding Company of the Licensee as provided for in the Licensee's financial plan, commercial and operational decisions relating to the operation, maintenance and development of the Licensee's Network are taken only by those persons who are employed by, and are engaged in the operation and management of, the Authorised Business;
- (d) any Energy Business may not use or have access to:
  - (i) premises or parts of premises occupied by persons engaged in the management or operation of the Authorised Business;
  - (ii) systems for the recording, processing or storage of data to which persons engaged in the management or operation of the Authorised Business also have access;
  - (iii) commercially sensitive or confidential information relating to, or derived from, the Authorised Business;
  - (iv) equipment, facilities or property employed for the management or operation of the Authorised Business; or
  - (v) the services of any persons who are (whether or not as their principal occupation) engaged in the management or operation of the Authorised Business;

- (e) where, in order to comply with this Condition any Energy Business ceases to be an affiliate or related undertaking of the Licensee, the employment of any employee of the Licensee is not transferred to that Energy Business by virtue of the arrangements under which the Energy Business ceases to be an affiliate or related undertaking of the Licensee; and
- (f) in so as far as it is legally possible for it to do so, it prevents any person who has ceased to be employed by, or engaged in the activities of, the Authorised Business from being employed by, or engaged in the activities of, any Related Energy Business until the expiry of an appropriate time from the date on which ceased to be engaged or employed by the Authorised Business.

#### 2.12.3 Undertaking

The Licensee shall procure from the person that is the Ultimate Holding Company of the Licensee a legally enforceable undertaking in favour of the Licensee in a form specified by the Authority, that the Ultimate Holding Company will refrain from any action, and will procure that every subsidiary of the Ultimate Holding Company (other than the Licensee and its subsidiaries) will refrain from any action, which would be likely to cause the Licensee to be in contravention of this Condition. Such undertaking shall be obtained within 7 days after the date when this paragraph first become effective, or after the person in question becomes an Ultimate Holding Company (as the case may be) and shall remain in force for as long as the Licensee remains the holder of this Licence and the giver of the undertaking remains an Ultimate Holding Company of the Licensee.

#### 2.12.4 Additional Definitions

In this Condition:

<b>“Authorised Business”</b>	means the Licensed Business, taken together with (if applicable) where the Licensee has so notified the Department and the Authority, any business of the Licensee (or of any affiliate or related undertaking of the Licensee) that is carrying out activities that require authorisation in accordance with Article 6(1)(a) of the Order or with section 5(1)(a) of the Gas Act;
<b>“Energy Business”</b>	means any business (other than the Authorised Business) that is involved in the generation or supply of electricity or in the production, purchase or supply of gas;
<b>“Gas Act”</b>	means the Gas Act 1986, as amended from time to time;
<b>“Holding Company”</b>	has the meaning given to it in section 1159 of the Companies Act 2006;
<b>“Related Energy Business”</b>	means any Energy Business which was an affiliate or related undertaking of the Licensee at any given time in the six months prior to the date the person ceased to be engaged or employed by the Authorised Business; and
<b>“Ultimate Holding</b>	means any person which is a Holding Company of the Licensee, and which is

**Company”**

not itself a subsidiary of another company.

## **Costs and Benefits**

2.25. The proposal will ensure compliance with the requirements of Article 9 for the purposes of certification with the FOU model. Given that many of the required measures for Article 9 are already in place in respect of PTL and BGTL, we believe that the associated costs should be minimal.

## **Deletion of existing condition 2.13**

### **Policy background**

2.26. The existing condition 2.13 in the TSO licences reflects the unbundling requirements of the second gas directive and applies where the licensee is also carrying on the activities of a supply business. This is incompatible with the FOU model and is therefore no longer required for licensees who are (or are to be) certified as meeting the FOU requirement. There is no need for a compliance plan because the licensee has, at all times, to meet the test for FOU unbundling.

## **Summary of responses**

2.27. No responses were received on this proposed modification.

## **Utility Regulator Response**

2.28. As no responses were received our decision is to make the modification without change.

## **Licence Modifications Final Decision**

2.29. The existing Condition 2.13 will be deleted in the PTL and BGTL licences.

## **Costs and Benefits**

2.30. The deletion will ensure compliance with Article 9 for the purposes of certification with the FOU model. As the effect of the modification is to delete a redundant requirement there will be no costs associated with it.

## **New condition 2.14 Transmission System Operator**

### **Policy background**

2.31. The purpose of the existing condition 2.14 is to state that the licensee is designated as a TSO for the purposes of the second gas directive. Clearly this needs to be updated, including reflecting certification and ongoing certification requirements in relation to the FOU model.

## **Summary of responses**

2.32. Mutual Energy Ltd. (MEL) had no specific comments on the proposed text.

2.33. BGE(UK) suggested some minor redrafting of Condition 2.14.2 “Sub-Contracting – General”. This was to seek clarity as to whether sub-contracting could be in whole or in part.

2.34. Finally BGE(UK) requested some redrafting of Condition 2.14.3 “Sub-Contracting – Terms and Conditions”. This was in reference to the word “ensure” which they have commented on as being inappropriate, as terms and conditions may provide or oblige a third party to act or not to act in a particular way. BGE(UK) believes they cannot ensure that the party acts or does not act accordingly.

## **Utility Regulator Response**

- 2.35. In relation to 2.14.2 the whole also includes the part; however we have made minor changes to 2.14.2 in order to make this clear. A change has also been made to 2.14.3 as a consequence.
- 2.36. Regarding the inclusion of the word 'ensure' in condition 2.14.3; we consider that it is appropriate that the contractual conditions ensure an outcome. On this basis we have retained the word 'ensure'.
- 2.37. We have also made drafting changes to 2.14.4 to make explicit that the licensee, once certified, must ensure that the certification ground on which the licensee is certified continues to apply. Also, to add clarity to the requirement to notify the Authority of any changes etc. which would affect the licensee's certification, e.g. the notification must be in writing.

## **Licence Modifications Final Decision**

- 2.38. Our decision is to modify Condition 2.14 of the PTL and BGTL licences so that it reads:

### **Condition 2.14 Transmission System Operator**

#### **2.14.1 Transmission system owner and operator**

The Licensee shall at all times, while it is the owner of the Network also act as the operator of the Network and shall be responsible for ensuring compliance with all the statutory and regulatory obligations which apply to the conveyance of gas through, and the operation, maintenance and development of, the Network

#### 2.14.2 Sub-Contracting - General

Subject to paragraph 2.14.3, the requirement in paragraph 2.14.1 shall not prevent the Licensee from making contractual arrangements under which a third party carries out any of the activities of conveying gas through any part of the Network or has contractual responsibility for operating, maintaining, and developing any part of the Network in accordance with the instructions of the Licensee.

#### 2.14.3 Sub-Contracting – Terms and Conditions

Where the Licensee makes contractual arrangements under which a third party carries out any of the activities of conveying gas through any part of the Network or has contractual responsibility for operating, maintaining and developing any part of the Network in accordance with the instructions of the Licensee, the Licensee shall ensure that the contractual arrangements contain such terms and conditions which ensure:

- (a) that any information relating to the Licensee or the Licensed Business which is provided by the Licensee to, or otherwise obtained by, the third party is:
  - (i) kept confidential and secure such that it is not disclosed to any other person; and
  - (ii) not used by that third party for any purpose other than for the purpose of fulfilling the contractual arrangements; and
- (b) that the third party does not:
  - (i) prevent (whether by act or omission) the Licensee from complying with the Directive or its certification as a transmission system operator; or



- (ii) cause (whether by act or omission) the Licensee to contravene the Directive or its certification as a transmission system operator.

#### 2.14.4 Certification

The Licensee shall, where it is, in accordance with Article 3 of the Gas Regulation, certified by the Authority as a transmission system operator:

- (a) use all reasonable endeavours to ensure that the certification ground on which the Licensee is certified continues to apply;
- (b) as soon as practicable after it becomes aware of it, give notice (in writing) to the Authority of:
  - (i) any proposed or actual change in control of the Licensee;
  - (ii) any event, change in circumstance, or transaction undertaken (or proposed to be undertaken) by the Licensee or any affiliate or related undertaking of the Licensee, which:
    - (A) affects, or is likely to affect, the Licensee being certified as a transmission system operator on the certification ground on which it is certified; or
    - (B) requires, or is likely to require, a reassessment by the Authority of whether the certification ground on which it is certified continues to apply in respect of the Licensee.

#### 2.14.5 Meaning of Control

For the purposes of Condition 2.14.4(a) there is a change in the control of the Licensee whenever a person obtains control of the Licensee who did

not have control of the Licensee at the date that the Authority last certified, in accordance with Article 3 of the Gas Regulation, the Licensee as a transmission system operator; and sub-sections (2), (3) and (4) of Section 450 of the Corporation Tax Act 2010 shall apply for the purpose of determining whether for the purposes of this paragraph a person has or had control of the Licensee, but at any time should no person have control then for the words "the greater part" wherever they occur in said sub-section (3) there shall be substituted the words "one-third or more".

#### 2.14.6 Definitions

In this Condition "certification ground" has the meaning given to it in Article 8L of the Order.

### **Costs and Benefits**

2.39. It will be necessary for the licensee to ensure that any relevant contracts with third parties comply with this condition and to put procedures in place to ensure that the Authority is notified of a change in control or other change in circumstance that might affect the licensee's certification status. However, any costs associated with this should be minimal and will help to ensure compliance with the FOU model.

## **3. Modifications to the PTL/BGTL Special Conditions**

### **Minor modification to condition 3.2 in PTL and BGTL licenses**

#### **Policy background**

- 3.1. Only one licence modification was proposed to the PTL and BGTL special conditions and this is a minor modification to update a legislative reference in condition 3.2.2 of both licences for the purpose of determining who has control of the licensee.

#### **Summary of responses**

- 3.2. No responses were received on this proposed modification

#### **Utility Regulator Response**

- 3.3. As no responses were received our decision is to make the modification without change.

#### **Licence Modifications Final Decision**

- 3.4. The final paragraph of Condition 3.2.2 will be modified in the PTL and BGTL Licences so that it reads as follows:

For the purposes of this condition, there is a change in the control of the Licensee whenever a person obtains control of the Licensee who did not have control of the Licensee when this Licence was granted; and sub-sections (2), (3) and (4) of Section 450 of the Corporation Tax Act 2010 shall apply for the purpose of determining whether for the purposes of this paragraph a person has or had control of the Licensee, but at any time should no person have control then for the words "the

greater part" wherever they occur in said sub-section (3) there shall be substituted the words "one-third or more".

### **Costs and Benefits**

- 3.5. The modification will ensure that the legislative reference in this condition is up to date and there will be no costs associated with this.