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**COMMISSION OPINION**

**of 23.5.2013**

**pursuant to Article 3(1) of Regulation (EC) No 715/2009 and Article 10(6) of  
Directive 2009/73/EC – United Kingdom – Certification of Premier Transmission  
Limited and Belfast Gas Transmission Limited**

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### **pursuant to Article 3(1) of Regulation (EC) No 715/2009 and Article 10(6) of Directive 2009/73/EC – United Kingdom – Certification of Premier Transmission Limited and Belfast Gas Transmission Limited**

#### **I. PROCEDURE**

On 28 March 2013 the Commission received a notification from the Northern Ireland Authority for Utility Regulation, in accordance with Article 10(6) of Directive 2009/73/EC<sup>1</sup> (hereafter, "Gas Directive"), of a draft decision on the certification of the transmission system operator (hereafter, "TSO") for gas Belfast Gas Transmission Limited (hereafter, "BGTL") and Premier Transmission Limited (hereafter, "PTL").

Pursuant to Article 3(1) Regulation (EC) No 715/2009<sup>2</sup> (hereafter, "Gas Regulation") the Commission is required to examine the notified draft decision and deliver an opinion to the relevant national regulatory authority as to its compatibility with Article 10(2) and Article 9 of Directive 2009/73/EC.

#### **II. DESCRIPTION OF THE NOTIFIED DRAFT DECISIONS**

The certification application of PTL concerns the Scotland Northern Ireland Pipeline (hereafter, "SNIP") – 135 kilometre of pipeline from Twynholm in Scotland to Ballylumford in Northern Ireland for which it is licenced to carry out transmission activities.

The certification application of BGTL as a TSO concerns the Belfast Gas Transmission Pipeline (hereafter, "BGTP") – 26 kilometre of pipeline connected to SNIP at Ballylumford in Northern Ireland for which it is licenced to carry out transmission activities.

BGTP and SNIP are jointly operated as the Premier Transmission System, with the performance of many functions sub contracted.

Both PTL and BGTL are wholly owned by Mutual Energy Limited (hereafter, "MEL"). MEL is a company limited by guarantee<sup>3</sup> with the objective of owning and operating energy infrastructure in the island of Ireland for the long-term benefit of the energy consumers of Northern Ireland. MEL has no shareholders and financial surpluses are used for the benefit of all Northern Ireland energy consumers.

The Directors of MEL are also the Directors of PTL and BGTL. The power to appoint Directors of MEL, BGTL and PTL resides with the Members of MEL. According to the Articles of Association, Members are not permitted to have any conflicts of interests, which

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<sup>1</sup> 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, OJ L 211/94 of 14.8.2009

<sup>2</sup> 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, OJ L 211/36 of 14.8.2009

<sup>3</sup> This form of undertaking is described at the MEL website: <http://www.mutual-energy.com/Mutualisation/Concept.php> and in the Articles of Association submitted with the respective applications for certification.

the Northern Ireland Authority for Utility Regulation states would cover any connection with an electricity or gas producer or supplier.

MEL, which is effectively equivalent to both PTL and BGTL, had 15 employees in 2011<sup>4</sup>.

BGTL and PTL have separately applied for certification as transmission system operators applying the full ownership unbundling model. As neither PTL nor BGTL were part of a vertically integrated undertaking on 3 September 2009 this is the only unbundling model which they may implement in accordance with the Gas Directive.

In its notified preliminary certification decisions the Northern Ireland Authority for Utility Regulation considers the situation of one Director in particular, who is a non-executive Director in companies active in the energy sector, i.e. Vermillion Energy Ireland Limited and Vermillion Energy Ireland Holdings Limited which have a 18.5% interest in the Corrib Gas venture established to develop the Corrib natural gas field off the west coast of Ireland. However, the Northern Ireland Authority for Utility Regulation considers the requirements of Article 9(1)(d) of the Gas Directive to be met as:

- Neither MEL, PTL or BGTL have any business relationships with Vermillion,
- The potentially conflicted Director is not involved in the day to day operations of Vermillion,
- It is not possible for any party in Northern Ireland to access gas from the Corrib field as the current infrastructure does not facilitate such access,
- In any case a Director may not participate in decisions, or count towards a quorum, where he has a material interest.

The Northern Ireland Authority for Utility Regulation considers MEL's investments valued at over GBP 10 million in the European Renewable Energy Fund Limited Partnership, but considers these not to be in conflict with the requirements of Article 9(1) of the Gas Directive as the fund is managed on an arm's length basis by a third party, MEL's share of the fund amounts to just 7% and MEL does not exercise control directly or indirectly in any of the fund's investments.

The Northern Ireland Authority for Utility Regulation considers the subcontracting of services, including control room services, in relation to the Premier Transmission Pipeline System. These are currently carried out by Bord Gáis Éireann, the gas transmission operator for Ireland<sup>5</sup>, however Bord Gáis Éireann is not the preferred bidder in the on-going tender for a new service provider.

The Northern Ireland Authority for Utility Regulation states that both BGTL and PTL remain fully legally responsible for all activities and tasks associated with transmission system operation. The contractor in their view has no authority unless given to it by BGTL or PTL and the contractor must also act fully in accordance with the instructions of BGTL or PTL. Additionally, there are measures in place to ensure the confidentiality of data is retained. The Northern Ireland Authority for Utility Regulation thus considers that this subcontracting arrangement is fully in line with the requirements of Article 9(1)(a) of the Gas Directive.

### III. COMMENTS

On the basis of the present notification the Commission has the following comments on the draft decisions.

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<sup>4</sup> Mutual Energy limited Annual Report 2012 p. 72

<sup>5</sup> See Commission Opinion on the Certification of the Bord Gais ITO.

## **1. Conflicted directors**

Ireland and Northern Ireland have been developing an all Island energy framework for almost a decade. This has resulted in the successful implementation of the single electricity market on the island of Ireland, and substantial work on the development of common arrangements for gas. Recently, the possibility for trading using the south-north pipeline between Ireland and Northern Ireland has enhanced market integration. Both Northern Ireland and Ireland are closely linked to the gas market in Great Britain, and indeed SNIP is connected to the wider GB system via the interconnectors between Ireland and Great Britain. Further integration between Northern Ireland, Ireland and Great Britain will require the close cooperation of all transmission system operators, including PTL.

The Corrib gas field represents a potentially very significant contribution to the energy needs of Ireland and indirectly also Northern Ireland. The commercial value of the Corrib gas field will be impacted by the particular arrangement applying for trading between Ireland, Northern Ireland and Great Britain.

The Commission considers that a Director or other senior officer of a transmission system operator who holds an interest in a gas field of the scale of the Corrib gas field, located in such proximity to the relevant gas transmission system, inevitably faces conflicts of interest and cannot be considered to meet the requirement of Article 9(1)(d) of the Gas Directive.

The Commission invites the Northern Ireland Authority for Utility Regulation to ensure that prior to its final certification decision that all directors of the transmission system operator meet the requirements of Article 9(1)(d) of the Gas Directive.

## **2. European Renewable Energy Fund Limited Partnership**

The Commission accepts the view of the Northern Ireland Authority for Utility Regulation that the investments by MEL in the European Renewable Energy Fund Limited Partnership do not constitute a barrier to certification of either BGTL or PTL as the interest of MEL is essentially confined to a financial interest in an investment fund and MEL does not exercise, directly or indirectly, either rights or control in any of the renewable energy undertakings, thus meeting the requirements of Article 9(1) points (b) subparagraphs (c).

## **3. Contracting out of TSO services**

Under Article 9(1)(a) of the Gas Directive, each undertaking which owns a transmission system is required to act as a transmission system operator, including carrying out all the tasks of a transmission system operator under Article 12 Gas Directive. Compliance with ownership unbundling means that the undertaking which is the owner of the transmission system also acts as the transmission system operator, and is as a consequence responsible, among other things, for granting and managing third-party access on a non-discriminatory basis to system users, and for collecting access charges. As regards investments, the owner of the transmission system is responsible for ensuring the long-term ability of the system to meet reasonable demand through investment planning. Decisions related to the operation, maintenance and development of the network must be made by the transmission system operator and the network company must have enough resources at its disposal to carry out its tasks under Article 12 of the Gas Directive independently.

The number of employees at MEL is unlikely to be able to carry out the full range of transmission system operator activities notwithstanding the small size of the premier transmission system; consequently the operation of the premier transmission system is to a large extent dependent of the use of sub-contracting.

In its opinion on Voralberger Übertragungsnetze GmbH (C(2012)2244), the Commission set out that the sub-contracting of core tasks of a transmission system operator to a vertically integrated undertaking was not compatible with the full ownership unbundling model. In that case, the Commission also expressed concerns about the availability of resources to the nominated transmission system operator to enable it to carry out its functions and stated that it should carry out the administration of the transmission system and the control room services itself.

The Commission considers that the contracting out of core transmission system operator functions can only be acceptable either if the transmission system is operated jointly as part of a wider transmission system or if a fully resourced transmission system operator makes an independent commercial decision to sub contract services on efficiency grounds. In the second case, the tendering for services, including the planning of tendering procedures, should be organised in sufficient time to allow the transmission system operator to recruit staff etc. such that it could provide the services in house if necessary. The transmission system operator should itself have sufficient resources to oversee, control and provide instructions to the subcontractor. Only entities which meet the unbundling requirements for gas transmission system operation should be eligible to provide such services. Even when outsourcing the control room activity, the TSO should itself have sufficient resources to oversee, control and provide instructions to the subcontractor.

The Commission invites the Northern Ireland Authority for Utility Regulation to verify that this is the case and to ensure that each tender to provide transmission system operator services has been fully evaluated against the potential of carrying out those functions in house and that the transmission system operator has all necessary resources to effectively oversee, control and provide instructions to the subcontractor.

#### **IV. CONCLUSION**

Pursuant to Article 3(2) Gas Regulation, The Northern Ireland Authority for Utility Regulation shall take utmost account of the above comments of the Commission when taking its final decision regarding the certification of GBTL and PTL, and when it does so, shall communicate this decision to the Commission.

The Commission's position on this particular notification is without prejudice to any position it may take *vis-à-vis* national regulatory authorities on any other notified draft measures concerning certification, or *vis-à-vis* national authorities responsible for the transposition of EU legislation as regards the compatibility of any national implementing measure with EU law.

The Commission will publish this document on its website. The Commission does not consider the information contained herein to be confidential. E-Control is invited to inform the Commission within five working days following receipt whether it considers that, in accordance with EU and national rules on business confidentiality, this document contains confidential information which it wishes to have deleted prior to such publication. Reasons for such a request should be given.

Done at Brussels, 23.5.2013

*For the Commission*  
*Maroš ŠEFČOVIČ*  
*Member of the Commission*

