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19 October 2010

Dear Sir or Madam

## **DECC Consultation on the Implementation of the EU Third Internal Energy Package**

National Grid welcomes the opportunity to respond to the Department of Energy and Climate Change "Consultation on the Implementation of the EU Third Internal Energy Package". National Grid, through National Grid Electricity Transmission plc ("NGET") owns and operates the high voltage electricity transmission system in England and Wales and, as National Electricity Transmission System Operator (NETSO), operates the National Electricity Transmission System, which includes both of the Scottish transmission networks and which will, in due course, include offshore transmission systems.

National Grid also, through National Grid Gas plc ("NGG"), owns and operates the gas transmission system in Great Britain and four of eight gas distribution systems in England.

This response is made on behalf of the whole of the National Grid group of companies and comprises of this cover letter and summary, along with a detailed document which responds directly to the specific questions raised in the consultation. This response should also be read in conjunction with our response to the Ofgem consultation 'Certification of transmission system operators under the Third Package' dated 23<sup>rd</sup> September 2010.

### **Summary**

The Third Package of European energy legislation intends to help further facilitate fully liberalised European gas and electricity markets, through the development of the effective internal national markets and development of common pan European codes. A key instrument to achieve the market liberalisation stated in the Third Package of European energy legislation is the requirement to separate vertically integrated undertakings through the use of 'unbundling'. We would like to draw attention to certain elements of the unbundling provisions which we believe require further clarification:

- we agree with and support DECC's conclusion that the Independent Transmission Operator (ITO) Model is incompatible with the current arrangements that exist in GB, at least in relation to Scottish Transmission Operators (and potentially OFTOs), because the ITO model requires the ITO to undertake the full range of SO activities and does not permit the obligations to be discharged by a third party. The adoption of an Independent System

Operator (ISO) Model would require a substantial transfer of responsibilities to NETSO, which would have significant implications on GB market arrangements. Clarification is particularly sought in relation to the developing offshore transmission arrangements but also consideration should be given to the arrangements that would apply if the proposed use of a derogation for Scottish transmission businesses was to be unsuccessful, for example, because it was to be blocked by the European Commission; and

- certification of TSOs also raises the contradiction between some elements of the electricity framework and the unbundling requirements of the Third Package, especially relating to offshore transmission companies, interconnectors and application to the Scottish electricity transmission companies.

We fully support the 'unbundling' objectives and look forward to working with Ofgem, DECC and other industry stakeholders in relation Third Package implementation. In particular we support DECC's proposal to legislate to ensure that any party with a controlling interest in the production, generation or supply of gas or electricity (whether or not such activity is licensed) will be prevented from exercising any control over a TSO and we look forward to working with DECC as the changes to legislation are developed. However, this obligation must be implemented in a manner that ensures that the parties best placed to comply with it bear the weight of the obligation.

The other area of particular concern for National Grid is the potential removal of the existing collective licence modification procedure and the implementation of a replacement system which allows OFGEM to impose licence changes. It is our firm view that

- while the Third Package in Great Britain requires Ofgem to have the power to implement ACER decisions in an "efficient and expeditious manner", the consultation paper provides no evidence to suggest that the existing arrangements do not give Ofgem this ability;
- any change beyond the minimum required to implement the Third Package can only be implemented by primary legislation;
- in any event, any such changes to the modification process should be only extended to the scope of the Third Package and should not therefore apply to any and all Licence modifications;
- the proposed change to the modification process will inevitably lead to a significant shift in the relations between the energy industry and its regulator to the detriment of the quality of decision making; and
- the change in the modifications process would predictably lead to undesirable impacts on the industry with regard to costs, uncertainty and delay.

We have set out our concerns and the reasoning behind them in greater detail in the attached detailed document.

I hope that this response is helpful. If you need any clarification on the points made or have any questions please contact [REDACTED] on [REDACTED] or [REDACTED] in the first instance.

Yours sincerely,

[REDACTED]