



Commission for Energy Regulation
An Coimisiún um Rialáil Fuinnimh

19th October 2010

Third Package Consultation Team,
Department of Energy and Climate Change,
Area 4C,
3 Whitehall Place,
London SW1A 2HD,
United Kingdom.

Our Ref: D/10/16697

Dear Sir,

Implementation of EU Third Internal Market Energy Package

I refer to your Department's consultation document on the above of last July as well as to the meeting hosted in your offices on Thursday 14 October and attended by representatives of our own Department of Communications, Energy and Natural Resources, Bord Gáis Éireann (BGE) and myself on behalf of the Commission for Energy Regulation (CER).

I set out below the views of the CER on the consultation document. These relate in particular to the implications of the consultation paper proposals for BGE(UK) in its capacity as owner and operator of the two gas interconnectors between Scotland and Ireland.

- Decisions on which of the unbundling options available in Directive 2009/73/EC should be taken up are a policy matter for the authorities in each Member State (i.e. Government / Minister / legislature as the case may be) as opposed to the energy regulator. This is clear from the Directive. It is also clear that national energy regulators have a very important and independent function in certifying that the vertical unbundling requirements are met by the intended system operator.
- All of the options available under the Directive have equal legal status, as far as EU law is concerned. Again I think this is clear from the Directive itself.

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- In Ireland's case, the CER has been advised by the Department of Communication, Energy and Natural Resources that the Minister has decided that Ireland will adopt the ITO model for the purpose of implementing Directive 2009/73/EC. I attach a copy of the Departmental letter to the CER dated 30 July 2010. The CER is, therefore, preparing to discharge our regulatory functions under the Directive on that basis.
- The Scotland to Ireland interconnectors do straddle both jurisdictions, so therefore some degree of "double regulation" is probably inevitable. A key objective in both jurisdictions, we would suggest, is to avoid unnecessary regulatory burdens or potentially conflicting regulatory requirements. Clearly there is an onus on the authorities in both jurisdictions and particularly on the respective regulators to work to this end (Article 42 of Directive 2009/73/EC). I can certainly assure you of CER's full commitment in this regard.
- CER would emphasise how integral the Scotland to Ireland interconnectors are to the Irish gas industry. They are financially underwritten 100% by the Irish gas transmission system user. They account for 42% of the transmission system rateable asset base (RAB) for the purpose of settling use of system tariffs. They account for 95% of gas supplies to Ireland.
- Against this background, I am sure you can appreciate how vigilant CER must be in our regulation of these interconnectors. This vigilance extends to all licensing aspects of the of the pipelines: ownership, operation, maintenance, safety, third party access, ring fencing from supply functions carried out by the parent company etc.
- The CER is awaiting sight of the forthcoming Irish statutory regulations implementing the ITO option under Directive 2009/73/E. As you know, these must be in place by 3 March 2011. In the meanwhile, and without prejudice to the details of the forthcoming regulations, we are engaging with Bord Gáis Networks and its parent to ensure that we will be in a position to satisfy ourselves and to certify to the European Commission that the ITO entity, when established, meets all the requirements set out in Chapter IV of the Directive. Such certification is a pre condition to "designation" as system operator as described in Article 10 of the Directive. We are happy to keep your Department and OFGEM informed of progress in this regard and to discuss any issues arising as you see fit.



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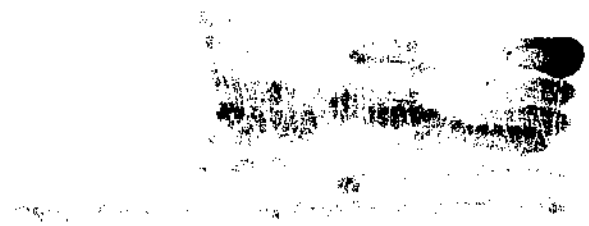
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I trust these views are helpful and we would be very happy to address any follow up queries you may have.

Yours sincerely,

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c.c. [Redacted] DCENR



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