

**DEROGATION LETTER  
IN RESPECT OF INITIAL ENFORCEMENT ORDERS ISSUED  
PURSUANT TO SECTION 72(2) ENTERPRISE ACT 2002**

Please note that [X] indicates figures or text which have been deleted or replaced in ranges for reasons of commercial confidentiality.

**Consent under section 72(3C) of the Enterprise Act 2002 to certain actions for the purposes of the Initial Enforcement Order made by the Competition and Markets Authority ('CMA') on 9 June 2021**

**Acquisition by National Grid Holdings One plc of PPL WPD Investments Limited ('the Transaction')**

We refer to your emails and accompanying notes of 8 June 2021, 10 June 2021 and 11 June 2021 requesting that the CMA consents to derogations to the Initial Enforcement Order of 9 June 2021 (the '**Initial Order**'). The terms defined in the Initial Order have the same meaning in this letter.

Under the Initial Order, save for written consent by the CMA, National Grid plc ('**National Grid**'), National Grid Holdings One plc ('**NGHO**'), and PPL WPD Investments Limited ('**WPD HoldCo**') are required to hold separate the National Grid business from the WPD HoldCo business and refrain from taking any action which might prejudice a reference under section 22 of the Act or impede the taking of any remedial action following such a reference.

After due consideration of your request for derogations from the Initial Order, based on the information received from you and in the particular circumstances of this case, National Grid, NGHO and WPD HoldCo may carry out the following actions, in respect of the specific paragraphs:

**1. Paragraphs 6(a) and 6(l) of the Initial Order**

The CMA understands that the National Grid and WPD HoldCo businesses are subject to extensive legal and regulatory obligations which require them (inter alia) to cooperate and exchange information in the event of an emergency affecting gas and/or electricity supply in Great Britain. In the event of an emergency, the National Grid and WPD HoldCo businesses are also subject to reporting obligations to

various governmental and regulatory bodies, including the UK Government, the Department for Business, Energy & Industrial Strategy ('**BEIS**'), the Office for Gas and Electricity Markets ('**Ofgem**') and other national and regional governmental authorities.

In particular, National Grid submits that:

- the relevant regulatory obligations might require the National Grid and WPD HoldCo businesses (together with Ofgem, BEIS, the UK Government and other industry stakeholders) to work together to resolve a crisis in the shortest possible time, given the overarching national importance of doing so; and
- in the event of a crisis, National Grid will be required to work with governmental (regional or national) and use all its available resources, skills and capabilities within its group (including, post-completion, WPD HoldCo) to resolve the crisis for the country in the shortest possible time. In addition, National Grid will also be responsible for reporting back regularly to Ofgem, BEIS and the UK Government on the status of the crisis and remedial actions that are being taken.

The CMA also understands that, in the event of a crisis, National Grid would activate a Crisis Management Team ('**CMT**') [REDACTED]:

- [REDACTED];
- [REDACTED];
- [REDACTED];
- [REDACTED];
- [REDACTED]; or
- [REDACTED].

Notwithstanding, the CMA accepts that it is typically not possible to predict the exact nature of a crisis in advance nor the actions that may be needed to resolve it.

In light of the above, the CMA consents to a derogation from paragraphs 6(a) and 6(l) of the Initial Order to enable the following urgent actions to take place if a crisis or emergency arises which impacts WPD HoldCo whilst the Initial Order is in force and National Grid has activated its CMT:

- i) an immediate initial liaison between the National Grid and WPD HoldCo businesses' emergency response taskforces and any other

- necessary stakeholders (eg Ofgem, BEIS and the UK Government);
- ii) the taking of any urgent action by the National Grid or WPD HoldCo businesses (individually or jointly) which is necessary to investigate, mitigate or resolve (in whole or in part) a crisis; and
  - iii) the development by National Grid of an initial strategic recovery plan with the WPD HoldCo business and other stakeholders as appropriate setting out how the relevant crisis should be managed.

This derogation is granted pursuant to the following conditions:

- a) each of the relevant individuals which form part of the CMT (including any WPD HoldCo individuals) will enter into a non-disclosure agreement (NDA) in a form agreed with the CMA prior to taking their role on the CMT (**'CMT Participants'**). In addition, any National Grid or WPD HoldCo individuals for whom it is strictly necessary to receive any confidential commercial information for the purposes of managing, responding to, and resolving the crisis will also enter into such an NDA prior to receiving any such information (**'Non-CMT Recipients'**);
- b) National Grid will implement strict access controls with the CMT Participants and Non-CMT Recipients to prevent unauthorised individuals from accessing any confidential commercial information obtained pursuant to this derogation. In particular, the CMT Participants and Non-CMT Recipients will store the information obtained pursuant to this derogation in a specific electronic folder which is inaccessible by those not entitled to have access and ensure that any physical copies are stored securely;
- c) the CMT Participants and Non-CMT Recipients are prevented from sharing any confidential commercial information received pursuant to this derogation with any individual within either the National Grid business or the WPD HoldCo business who has not also signed an appropriate NDA as detailed in 1(a) above. For the avoidance of doubt, this would not preclude the National Grid or WPD HoldCo businesses from providing any confidential commercial information to Ofgem, BEIS or the UK Government or other national or regional agencies as required by its legal, licence and/or other regulatory obligations. It would also not prevent the relevant individuals from providing regular high-level general updates relating to the crisis to Boards of either of National Grid or WPD HoldCo or their subsidiaries;

- d) this derogation will last until the expiry of the next working day following the activation of National Grid's CMT.<sup>1</sup> Following which, National Grid will apply to the CMA for a second derogation describing in more detail any necessary interactions with the WPD HoldCo business which might be required after the expiry of this initial period;
- e) National Grid will contact the CMA as soon as possible, and in any event during the next working day, after activating its CMT to provide an initial update regarding the nature of the crisis;
- f) the information shared would be limited to that strictly necessary for the purposes of managing, responding to, and resolving the crisis;
- g) the CMA is entitled to receive all logged communications of the CMT on request;
- h) once the crisis has been fully addressed, National Grid will ensure that any commercially sensitive, confidential or proprietary information received from the WPD HoldCo business pursuant to this derogation will be returned to the WPD HoldCo business and any copies destroyed, except to the extent that record retention is required by law or regulation;
- i) this derogation will not result in any integration between the WPD HoldCo business and the National Grid business; and
- j) this derogation shall not prevent any remedial action which the CMA may need to take regarding the Transaction.

## **2. Paragraphs 6(a), 6(g) and 6(l) of the Initial Order**

National Grid submits that a derogation from paragraphs 6(a), 6(g) and 6(l) of the Interim Order is necessary to enable it to extend its directors' and officers' ('**D&O**') liability insurance and cyber insurance policies to cover the WPD HoldCo business from completion of the Transaction and to receive certain limited information from the WPD HoldCo business for this purpose. National Grid submits that this is necessary as the WPD HoldCo business will cease to be covered by PPL Corporation ('**PPL**')s D&O liability insurance and cyber insurance policies upon completion, as WPD HoldCo will cease to be a member of the PPL group.

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<sup>1</sup> For example, if a crisis arose and National Grid's CMT was activated on a Saturday this derogation would last until 23:59 on the following Monday.

The CMA consents to National Grid extending its D&O liability insurance and its cyber insurance coverage to the WPD HoldCo business.

The CMA also consents to National Grid receiving certain limited information from the WPD HoldCo business which is necessary for National Grid to extend its D&O and cyber insurance coverage to the WPD HoldCo business (the '**Permitted Insurance Purpose**'), namely:

1. a list of the current Directors of the WPD HoldCo business;
2. completed cyber insurance application form(s); and
3. details of any claims or any circumstances which are likely to lead to claims made by the WPD HoldCo business under any D&O liability and/or cyber insurance policies the WPD HoldCo business have the benefit of.

(together, the '**Insurance Information**').

National Grid will limit access to the Insurance Information to the following individuals:

1. [REDACTED];
2. [REDACTED];
3. [REDACTED];
4. [REDACTED]; and
5. [REDACTED].

(collectively, the '**Named Individuals**').

This derogation is granted to ensure that the WPD HoldCo business is maintained as a going concern as the provision of insurance coverage by National Grid is essential to maintain the continued viability of the WPD HoldCo business.

This derogation is granted on the condition that:

- a) each of the Named Individuals shall enter into an NDA in a form agreed with the CMA;
- b) no changes to the list of Named Individuals set out above are permitted without the prior written consent of the CMA (including via email);
- c) the information to be shared shall be limited to the Insurance Information,

and no changes to the definition of Insurance Information set out above are permitted without the prior written consent of the CMA (including via email);

- d) National Grid will implement strict access controls with the Named Individuals to prevent unauthorised individuals from accessing any information of the WPD HoldCo business obtained pursuant to this derogation. In particular, the Named Individuals will store the Insurance Information in a specific electronic folder which is inaccessible by those not entitled to have access and ensure that any physical copies are stored securely;
- e) the Named Individuals are prevented from sharing the Insurance Information with any individual at National Grid who is not one of the Named Individuals and even then only to the extent such individuals are permitted to have access. Notwithstanding, the Named Individuals are permitted to share the Insurance Information with National Grid's third party captive insurance managers and National Grid's (re)insurers and appointed (re)insurance brokers (to the extent strictly necessary for the Permitted Insurance Purpose) and others within the WPD HoldCo business;
- f) the Named Individuals are limited to those that strictly need to have access to the Insurance Information for the Permitted Insurance Purpose owing to their responsibility for insurance matters within the National Grid business;
- g) the use to which the Insurance Information may be put is limited to the Permitted Insurance Purpose;
- h) the inclusion of the WPD HoldCo business in National Grid's insurance coverage will have no influence upon the commercial direction of the WPD HoldCo business during the term of the Initial Order;
- i) National Grid will ensure that its third party captive insurance managers and National Grid's (re)insurers and appointed (re)insurance brokers are aware of the terms on which the Insurance Information has been provided and that the Insurance Information must not be provided to any individual other than in compliance with the Initial Order and this derogation;
- j) should the CMA prohibit the Transaction or require National Grid to divest all, or part of, the WPD HoldCo business, National Grid will ensure that any records or copies (electronic or otherwise) of business secrets, know-

how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature, wherever they may be held, that were received from the WPD HoldCo business for the Permitted Insurance Purpose will be returned to the WPD HoldCo business and any copies destroyed, except to the extent that record retention is required by law or regulation;

- k) this derogation will not result in any integration between the WPD HoldCo business and the National Grid business; and
- l) derogation shall not prevent any remedial action which the CMA may need to take regarding the Transaction.

### **3. Paragraphs 6(c), 6(i) and 6(k) of the Initial Order**

The CMA understands that on completion of the Transaction certain directors of WPD HoldCo and its subsidiaries who are employees of WPD HoldCo's current ultimate parent company, PPL, intend to resign from their roles due to the fact that PPL will cease to be the owner of WPD HoldCo as from completion (the '**PPL Directors**').

The CMA understands that, following the resignation of the PPL Directors, certain of the WPD HoldCo companies affected by the resignations intend to appoint additional directors from members of the WPD HoldCo executive management team (the '**WPD Appointee Directors**'). The CMA understands that this is necessary in light of appropriate corporate governance and risk management considerations and/or because the Articles of Association of the relevant companies preclude there being only one director.

The CMA notes that no National Grid employee will be appointed to any Board positions in WPD HoldCo or any of its subsidiaries following the resignation of the PPL Directors.

WPD HoldCo submits that [REDACTED] and this would remain the case under the new proposed arrangements.

WPD HoldCo further submits that the Boards of the four licensed distribution network operator entities in the WPD HoldCo business will remain unchanged by completion. The companies from the Boards of which the PPL Directors are resigning are [REDACTED], with the exception of Aztec Insurance Limited which [REDACTED].

Thus, the resignation of the PPL Directors and appointment of the WPD Appointee Directors will not have any impact on the viability of the WPD HoldCo business or its ability to carry on its business in the ordinary course.

In light of the above, the CMA consents to a derogation from paragraphs 6(c), 6(i) and 6(k) of the Initial Order to permit the resignation of the PPL Directors and the appointment of the WPD Appointee Directors as outlined in Annex 1, strictly on the basis that these actions:

- a) will not affect the viability of the WPD HoldCo business or its ability to carry on business in the ordinary course;
- b) will not result in any integration between the WPD HoldCo business and the National Grid business; and
- c) shall not prevent any remedial action which the CMA may need to take regarding the Transaction.

Yours sincerely,

Imogen Ditchfield

Assistant Director, Mergers

11 June 2021



## Annex 1

### PPL Directors

<b>PPL Director</b>	<b>WPD company/ies the Board of which PPL Director is resigning from</b>
Andrew Elmore	PPL WPD Investments Limited, Western Power Distribution plc, WPD Investment Holdings Limited, WPD Distribution Network Holdings Limited, PPL UK Investments Limited, PPL Midlands Limited, PPL WEM Limited, PPL Island Limited
Vincent Sorgi	Western Power Distribution plc
Joseph Bergstein	Western Power Distribution plc
Gregory Dudkin	Western Power Distribution plc
Stacy Frey	Aztec Insurance Limited

### WPD Appointee Directors

<b>WPD Appointee Director</b>	<b>WPD company/ies the Board of which WPD Appointee Director is being appointed to</b>
Philip Swift (CEO, WPD)	PPL WPD Investments Limited
Alison Sleightholm (Resources and External Affairs Director, WPD)	WPD Investment Holdings Limited, PPL UK Investments Limited, PPL Midlands Limited, PPL WEM Limited, PPL Island Limited