FINAL CERTIFICATION DECISION

GNI’s GAS FOU CERTIFICATION APPLICATION

29th March 2016
Section One: Background to CER’s Final Certification Decision

In accordance with EU Directive 2009/73/EC1 ("the Directive"), Regulation (EC) 715/20092 and S.I. No. 16 of 20153, the CER, as Ireland’s National Regulatory Authority (NRA), is required to certify whether Ireland’s gas Transmission System Operator (i.e. Gas Networks Ireland) is "effectively unbundled".

On the 31st of July 2015, the CER received a Full Ownership Unbundling (FOU) certification application on behalf of Gas Networks Ireland (GNI) and its wholly owned and controlled subsidiary GNI (UK).

Following a review of GNI’s FOU certification application, the CER issued its preliminary certification decision to the EU Commission (30th November 2015). The CER’s preliminary certification decision confirmed the CER’s intention to certify GNI as FOU compliant, while also confirming the CER’s intention to impose obligations on GNI as a requirement for ensuring continued FOU compliance.

Specifically, the CER proposed imposing the following obligations on GNI:

i. GNI provide to the CER signed declarations from GNI’s current board members (prior to the end of December 2015) stating that they are in compliance with Article 9 of the Directive.

ii. GNI provide to the CER signed declarations from all new members that are appointed to GNI and GNI(UK)’s board, which confirm that the relevant board member is compliant with Article 9 of the Directive.

iii. GNI immediately notify the CER regarding the potential and actual appointment of members to the Ervia board, and advise whether members of Ervia board have interests in an undertaking that is involved in energy production/supply.

iv. GNI immediately notify the CER regarding the potential and actual establishment of any new companies within the Ervia Group.

v. GNI immediately notify the CER regarding the potential and actual activation of any dormant/non-trading company with the Ervia Group.

vi. GNI notify the CER if Irish Water substantially escalates its energy production/supply, such that it could reasonably be deemed to be an undertaking that actively participates in energy production/supply.

1 Concerning common rules for the internal market in natural gas.
2 Conditions for access to the natural gas transmission networks.
3 European Communities (Internal Market in Natural Gas and Electricity) (Amendment) Regulations.
On the 29th January 2016, the CER received an opinion from the EU Commission regarding its preliminary decision to certify GNI. The EU Commission’s opinion requested that the CER:

i. require GNI to notify the CER if additional generation units of Irish Water start exporting electricity to the grid;

ii. specify in its final decision whether Ervia’s non-trading companies are engaged in activities of generation or supply of gas or electricity; and

iii. assess in its final decision the degree of independence, which the Minister for Environment, Community and Local Government (MECLG) enjoys in the exercise of their function in relation to Ervia and GNI.

Taking utmost account of the EU Commission’s opinion, this document sets out the CER’s final certification decision regarding GNI’s FOU certification application (see Section 2), and lists the various obligations the CER is imposing on GNI to ensure ongoing compliance with FOU certification.
Section Two: CER’s Final Certification Decision

Taking utmost account of the EU Commission's opinion, the CER’s final certification decision has being amended to include an obligation on GNI to notify the CER if additional generation units of Irish Water start exporting electricity to the grid. Additionally, the CER confirms that Ervia’s non-trading companies are not engaged in the activities of generation or supply of gas or electricity.

With reference to the independence of the MECLG, the CER notes that the independence of Ministers is enshrined in relevant Irish legislation, including:

- **Ministers and Secretaries Act 1924:**
  Pursuant to Section 2(1) of the Ministers and Secretaries Act 1924, each Minister shall be a corporation sole with complete legal responsibility for the affairs of his/her Department and associated breaches of offices. Additionally, Section 1 of the Ministers and Secretaries Act 1924 provides that each Department, and the powers, duties and functions therof shall be assigned to and administered by the Minister.

- **Ministers and Secretaries (Amendment) Act 1939:**
  Section 6(3) of the Ministers and Secretaries (Amendment) Act 1939 provides that whenever any power is vested by statute in a Minister, the administration entails in the exercise of that power is deemed to be allocated to the Department of that Minister.

- **Public Service Management Act 1997:**
  Under the Public Service Management Act 1997, Ministers of the Government having charge of a Department shall be responsible for the performance of functions that are assigned to the Department. Ministers have a duty to inform and explain actions to the Oireachtas (i.e. parliament). As such, they retain the prime democratic accountability for actions in areas under their jurisdiction.

The CER also notes that neither the MECLG nor the Minister for Communication, Energy & Natural Resources (MCENR) is under the common influence of another public entity, as the independence of individual Ministers in the areas under their jurisdiction precludes the Taoiseach (i.e. Prime Minister) from giving orders or instructions.

Based on the above, the CER’s assessment is that the MECLG and the MCENR are both independent and not under the common influence of another public entity. Therefore, taking utmost account of the EU Commission’s opinion, and acting in accordance with Article 10 of the Directive, Article 3 of Regulation (EC) 715/2009 and S.I. No. 16 of 2015, the CER hereby certifies GNI as FOU compliant.
Section Three: Obligations on GNI to Ensure Continued FOU Compliance

Notwithstanding the CER’s positive FOU final certification decision, the CER is imposing the following obligations on GNI in order to ensure continued FOU compliance:

i. GNI provide to the CER signed declarations from all new members that are appointed to GNI and GNI(UK)’s board, which confirm that the relevant board member is compliant with Article 9 of the Directive.

ii. GNI immediately notify the CER regarding the potential and actual appointment of members to the Ervia board, and advise whether members of Ervia board have interests in an undertaking that is involved in energy production/supply.

iii. GNI immediately notify the CER regarding the potential and actual establishment of any new companies within the Ervia Group.

iv. GNI immediately notify the CER regarding the potential and actual activation of any dormant/non-trading company with the Ervia Group.

v. GNI notify the CER if Irish Water substantially escalates its energy production/supply, such that it could reasonably be deemed to be an undertaking that actively participates in energy production/supply. Additionally, GNI shall notify the CER if additional generation units of Irish Water start exporting electricity to the grid.

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4 GNI have provided to the CER signed declarations from GNI’s current board members stating that they are in compliance with Article 9 of the Directive. Therefore, the CER has removed this obligation (as specified in the CER’s preliminary certification decision), as a condition from the CER’s final decision.