

All with an interest in renewable energy and offshore electricity transmission.

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Dear Colleague

## **The Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2010**

### **Introduction**

Electricity from offshore renewables is expected to make an important contribution to the achievement of the UK's share of the EU target of generating 20 per cent of energy from renewable sources by 2020. In order to facilitate the delivery of this target, the Gas and Electricity Markets Authority and the Department of Energy and Climate Change (DECC) introduced a new regulatory regime for offshore electricity transmission in June 2009. A key part of this regime is that offshore electricity transmission owner (OFTO) licences are granted following a competitive tender process carried out by the Authority.

The first competitive tender process for the grant of OFTO licences commenced in July 2009 in accordance with the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2009 (the 2009 Tender Regulations)<sup>1</sup>. In February this year<sup>2</sup>, we consulted on the draft Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2010 (the 2010 Tender Regulations), principally to:

- improve the Tender Regulations for the second transitional tender round, reflecting on lessons learned from the first transitional tender round;
- introduce a number of minor administrative amendments; and
- reflect the "minded to" positions in our December consultation document<sup>3</sup> on the enduring regime for offshore electricity transmission (the December consultation).

We received four responses to this consultation, which are available on our website. We have considered carefully the issues raised in these consultation responses, as well as taking into account developments with respect to the enduring regime over recent months, in finalising the 2010 Tender Regulations.

The 2010 Tender Regulations were made on 22 July 2010 and came into effect on 29 July 2010<sup>4</sup>. The remainder of this letter provides an overview of the 2010 Tender Regulations, including the key changes made from the 2009 Tender Regulations.

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<sup>1</sup> SI 2009/1340

<sup>2</sup> Offshore Electricity Transmission: Open letter on draft Tender Regulations 2010, ref 20/10, published 10 February 2010

<sup>3</sup> Offshore Electricity Transmission: Consultation on the Enduring Regime, ref 157/09, published 18 December 2009

## Regulatory framework

The Tender Regulations 2010 were made under section 6C of the Act, which empowers the Authority to make regulations which enable it to determine on a competitive basis the entity to whom an OFTO licence is to be granted. OFTO licences are subsequently granted in accordance with section 6(1)(b) of the Act, which provides the Authority with the power to grant electricity transmission licences.

The 2010 Tender Regulations revoke the 2009 Tender Regulations in their entirety. Projects currently being tendered under the first transitional tender round will now continue under the 2010 Tender Regulations. This will not result in any material changes to the remainder of the tender process for these projects and the decisions already taken under the 2009 Tender Regulations will be preserved.

## Overview of issues raised in response to consultation on draft 2010 Tender Regulations

As set out above, we received four responses to our consultation on the draft 2010 Tender Regulations in February this year. The non-confidential responses are available on our website<sup>5</sup>. The main issue that respondents commented on was a proposal for the Tender Regulations to provide additional flexibility to enable projects that are taking steps towards construction the opportunity to qualify under the transitional regime. These comments reinforced some of the feedback we received to our December consultation.

Taking into account responses received and the progress of certain projects in their construction programmes, we have made a further amendment to the Tender Regulations to address this issue. Specifically, we have amended the Qualifying Projects requirements for a transitional tender exercise in Schedule 1 of the Tender Regulations to extend the "reasonable endeavours" test to the requirement for the developer to have secured financing to construct the transmission assets.

This means that the Authority may deem a project to be a Qualifying Project for a transitional tender exercise if it is satisfied that a developer will use its reasonable endeavours to secure financing to construct the transmission assets in a reasonable time period. This change adds to the flexibility already provided, which enables the Authority to deem a project to be a Qualifying Project for a transitional tender exercise if it is satisfied that the developer will use its reasonable endeavours to obtain all necessary consents and property rights for the transmission assets to be constructed and maintained, or enter into all necessary contracts for the construction of the transmission assets, within a reasonable time period. The required time period will be notified by the Authority, but can be no later than 31 March 2012.

The effect of this amendment is that projects have the opportunity to qualify as transitional projects in circumstances where financing for the transmission assets is not yet fully secured, but is expected to be secured within a reasonable time period no later than 31 March 2012. Based on the information submitted to date by developers, we expect to take decisions on Qualifying Projects for the second round of transitional tenders during September 2010. **Offshore developers who have not previously requested to be considered for the second transitional tender round, but who consider that they have projects that may be able to satisfy the amended Qualifying Project requirements in the 2010 Tender Regulations, are requested to contact us within two weeks of the date of this letter.**

It is important to reiterate that the intention of the Qualifying Project requirements is to provide certainty to the market that the project is sufficiently committed prior to it being

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<sup>4</sup> SI 2010/1903

<sup>5</sup> <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=2&refer=Networks/offtrans/pdc/cdr/Cons2010>

subject to a tender process. To preserve this intention, the “reasonable endeavours test” allows the Authority to deem the project to be a Qualifying Project in particular circumstances, rather than deem the project to have satisfied the relevant Qualifying Project requirements. Projects will still be required to satisfy all Qualifying Project requirements within the time period notified by the Authority and we will expect the developer to provide a programme of how this is to be achieved. Further, we would only expect to commence a tender exercise for a Qualifying Project once it has satisfied any relevant outstanding Qualifying Project requirements.

A number of respondents commented on the proposed amendments to implement the “minded to” policy positions set out in the December consultation. In light of the recent joint Ofgem/DECC statement<sup>6</sup> and the planned consultation on the enduring regime for offshore electricity transmission, in our view it is premature at this stage to amend the provisions in the Tender Regulations in this regard. As such, we have not incorporated those changes we consulted on in February in respect of the “minded to” positions. Subject to the outcome of the forthcoming consultation, we would expect to consult again before amending the Tender Regulations further for the enduring regime.

We have incorporated a number of other changes to the Tender Regulations that we consulted on in February, including with respect to the Tender Entry Conditions for transitional projects, withdrawal from a tender exercise and events of disqualification. We also received a number of helpful drafting comments in relation to the Tender Regulations. Where we have considered it appropriate, we have incorporated these comments into the 2010 Tender Regulations.

Under the 2010 Tender Regulations, we are required to publish subsidiary documents such as the Tender Rules and Cost Recovery Methodology prior to commencing a tender exercise, and to publish other key documents at each relevant stage of a tender round. These documents will set out detailed requirements, expectations and obligations of relevant parties. We will publish these documents in due course for the second transitional tender round.

## **2010 Tender Regulations**

The 2010 Tender Regulations are now in effect and are available from the Office of Public Sector Information website, [www.opsi.gov.uk](http://www.opsi.gov.uk).

If you have any queries in respect of this letter, please direct them to my colleague Richard Clay ([richard.clay@ofgem.gov.uk](mailto:richard.clay@ofgem.gov.uk) or 0207 901 7264) in the first instance.

Yours faithfully,

Stephanie McGregor  
**Director, Offshore Transmission**

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<sup>6</sup> Ofgem E-Serve/DECC open letter: “Providing additional flexibility in the enduring regulatory regime for offshore electricity transmission”, published 27 July 2010