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Date: 11 August 2010

Dear Colleague,

Offshore Electricity Transmission: Second Round Transitional Tenders

Introduction

We recently published a statement¹ on our website on The Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2010 (the **2010 Tender Regulations**) which came into effect on 29 July 2010.

The statement provided an overview of the 2010 Tender Regulations and invited offshore developers who have not previously requested to be considered for the second 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 to contact us.

As you may be aware, there have recently been a number of important new developments in addition to the new 2010 Tender Regulations:

- the Secretary of State has commenced the remaining statutory provisions for the transitional regime ("Go-Live");
- we have recently published a joint Ofgem/DECC statement² on the enduring regime. This covers a number of issues, including setting out that we consider it pragmatic to consult further on extending the flexibility of the enduring regime to include the option for generators to build offshore transmission assets before transferring them to an OFTO through a competitive tender process. We will be publishing this joint consultation shortly. Whilst the joint statement notes that this approach, on the face of it, would have elements in common with the existing transitional arrangements, it also sets out that implementing would not simply mean extending the current transitional arrangements. This will be explored more fully in the consultation document; and
- the Authority has announced the selection of Preferred Bidders in respect of seven projects in the first round of transitional tenders.

¹ Statement on the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2010 dated 2 August 2010

² Ofgem E-Serve/DECC open letter: "Providing additional flexibility in the enduring regulatory regime for offshore electricity transmission", published 27 July 2010

The purpose of this letter is to:

- draw developers' attention to the statement on the 2010 Tender Regulations;
- invite offshore developers to request us to commence a tender exercise in respect of their project (if they expect to meet the necessary requirements for this second round of transitional tenders as amended in the 2010 Tender Regulations);
- outline at a high level, the information regarding the project that is required by us to determine whether an offshore generation project is a Qualifying Project for this second round of transitional tenders;
- provide an overview of the Tender Entry Conditions developers are required to meet in order to enter the second round of transitional tenders;
- outline at a high level, the process the Authority will undertake to determine the transfer value of the transmission assets; and
- provide an overview of the payments and security required from developers in order to participate in the second round of transitional tenders.

Statement on the 2010 Tender Regulations

We attach to this letter a copy of the statement published in respect of the 2010 Tender Regulations³. In particular, we draw developers' attention to the amendments to the Qualifying Projects requirements for a transitional tender exercise in Schedule 1 of the 2010 Tender Regulations, to extend the "reasonable endeavours" test to the requirement for the developer to have secured financing to construct the transmission assets.

Request to Commence a Tender Exercise

Regulation 6(1) of the 2010 Tender Regulations requires a developer who wishes the Authority to commence a tender exercise for its project to make a request in writing to the Authority to this effect.

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 therefore requested to confirm in writing by no later than **5pm on Monday 23 August 2010** whether they expect their projects meet the Qualifying Project requirements set out below as at the date of the request. In addition to this, we request that a developer making such a request populate the tables provided in Appendices 1 and 2 to this letter and return them to us with the request letter.

Once a developer has confirmed its position, we will contact the developer regarding the detailed information we require.

Qualifying Project Requirements

In order for an offshore generation project to become a Qualifying Project, the developer is required to demonstrate that it has met a number of requirements, in accordance with Schedule 1 to the 2010 Tender Regulations.

Specifically these requirements are that the developer has:

³ Statement on the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2010; published on 2 August 2010

- a) entered into a CUSC bilateral connection agreement with the National Grid Electricity Transmission in its capacity as the National Electricity Transmission System Operator (NETSO) or entered into an agreement or accepted an offer of an agreement with an electricity distribution network licensee;
- b) entered into an agreement for lease of the seabed with the Crown Estate Commissioners;
- c) obtained all necessary consents and property rights for the transmission assets to be constructed and maintained and ensured that any such consents or property rights which are capable of being assignable to the successful bidder are so assignable;
- d) completed construction of, or entered into all necessary contracts for the construction of the transmission assets and ensured that any such contracts are assignable to the successful bidder; and
- e) secured financing to construct the transmission assets.

Paragraph 3 of Schedule 1 to the Tender Regulations provides us with some discretion with respect to the requirements in c), d) and e) to deem a project to be a Qualifying Project for those purposes if we are satisfied that the developer will use its reasonable endeavours to meet those requirements within a reasonable time period, such period to be notified by the Authority to the developer and to be no later than 31 March 2012. We would consider any instances of this on a case by case basis.

Offshore generation projects connected at 132kV and above that cannot demonstrate the above requirements by Monday 23 August 2010 will be considered under the enduring regime.

Information Request

We require a significant level of information from developers in order to determine whether the Qualifying Project requirements have been met. High level lists of our requirements are set out in Appendix 3.

We recognise that projects vary depending on factors such as their location, and as such the requirements set out in this Appendix are generic and not exhaustive. However Appendix 3 should provide developers with a clear outline of the minimum information that we expect developers to provide in order to meet the Qualifying Project requirements. We will provide developers with more detailed information once we have been requested to commence a tender exercise.

We have established an electronic data room so that developer information can be loaded in to a pre-agreed data structure. As above, we will provide developers with further details on this and access to the data room after we have been requested to commence a tender exercise.

Cost Assessment

To facilitate the tender exercise the second round of transitional projects, it will be necessary for us to determine the economic and efficient costs that ought to be, or ought to have been, incurred with developing and constructing the transmission assets. This cost will form the basis on which developers of offshore generation projects will be compensated for transferring their assets to the OFTO identified through the competitive tender process.

In accordance with the 2010 Tender Regulations, we will undertake two formal reviews of the cost information. Firstly, we will undertake an exercise to determine an estimate of the economic and efficient costs of the transmission assets, which will be used during the

tender process by qualifying bidders in establishing their proposals, including their revenue stream bids. Secondly, we will undertake a cost assessment based on outturn costs which will be used to determine the value the successful OFTO will pay to the developer for transferring the transmission assets.

We will issue developers with further details on the detailed information required for the cost assessment once we have been requested by a developer to consider their projects under the second round of transitional tenders.

Tender Entry Conditions

Once an offshore project is determined as a Qualifying Project, developers will be required to satisfy a number of conditions to enter the tender process, including the provision of information to populate a data room and a detailed Information Memorandum. These conditions will be confirmed once we have determined the developer's Qualifying Project status.

Payments and Security

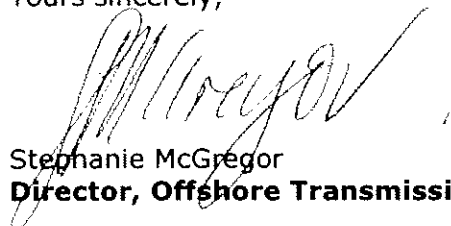
Section 6D of the Electricity Act 1989 (the Act) makes provision for the Authority to recover its costs associated with running a tender exercise from participants in the process, specifically developers and bidders. The 2010 Tender Regulations and associated Cost Recovery Methodology⁴ set this out in further detail. We expect to publish an updated Cost Recovery Methodology in early September.

Next Steps

We are expecting to take decisions on Qualifying Projects for the second transitional tender round in September. We expect to commence tenders at the end of the year for those projects that have met the Qualifying Project requirements in full (i.e. have not been deemed as a Qualifying Project).

If you have any questions about the content of this letter please contact Richard Clay, Senior Manager, Tender Design and Governance (richard.clay@ofgem.gov.uk) in the first instance.

Yours sincerely,



Stephanie McGregor
Director, Offshore Transmission

⁴ Offshore Electricity Transmission: Tender Rules

Appendix 1: Project Information

Please provide project details in the table below. Where your project is phased please provide details on each phase.

[INSERT PROJECT NAME]		
Project Information		
Key deliverable	Date	Notes
Date that connection offer/agreement was signed/expected to be signed		
Connection date		
Date S.36 consent expected/granted		
Date when all major transmission system construction contracts signed/expected to be signed.		
Date of financial close/investment decision/board approval		
Commencement of onshore construction works		
Commencement of export cable laying		
Commencement of commissioning of transmission asset		
Completion of transmission assets		
Full commercial operation of wind farm.		
Estimated Cost		
Detail	Cost (£m)	Notes
Developers estimated value of transmission assets that will transfer to the OFTO. Please indicate the extent of the onshore substation assets and whether the offshore substation will be included.		
Developers estimated overall project cost (generation and transmission)		
Project Ownership		
Detail	Dates	Notes
Please provide detail of the project ownership (parent company, JV arrangements etc.) and the dates on which the project company was established or when it became a JV		

Appendix 2: Contact Details

Please provide two nominated points of contact that Ofgem can contact in relation to your project.

Name	
Position	
Company	
Email address	
Telephone	
Mobile	
Address	

Secondary Contact	
Name	
Position	
Company	
Email address	
Telephone	
Mobile	
Address	

Appendix 3: Checklist for Meeting the Qualifying Project Requirements

The Qualifying Project requirements for the transitional regime are contained in paragraph 2 of Schedule 1 to the 2010 Tender Regulations. Outlined below are lists of documents that may be used to assess whether or not a project meets those requirements. It should be noted that, whilst the majority of the consents, lease and contracts are similar in nature for each project, we recognise that there is some variance in terms of what individual projects actually require. As such, these lists should be used as a guide only and are not intended to be exhaustive.

2(a) entered into a bilateral agreement with the holder of a co-ordination licence in accordance with the arrangements for connection and use of the transmission system, or entered into an agreement or accepted an offer of an agreement, with the electricity distributor responsible for the distribution system to which the transmission assets are or are intended to be connected;

The type of agreements that a project developer will need to have in place depends on how it is connected to the onshore power network (i.e. transmission or distribution connected). We would need to see the most recent copies of connection agreements, agreements to vary and technical schedules.

- For projects that are connected to the national electricity transmission system we would need to see a copy of the connection agreement with NGET - this would be of the form of a Bilateral Connection Agreement (BCA) and associated agreements.
- For projects that are distribution connected we would require copy of the connection agreement where one is already in place. Where there is no agreement in place we require a copy of the offer and offer acceptance as well as a confirmation email/letter from the relevant DNO confirming that there are no impediments to signing the agreement and delivering the connection by the agreed date.
- We would also require a copy of any agreements to vary for any of the above agreements.

2(b) entered into an agreement for lease of the seabed with the Crown Estate Commissioners;

The agreement for lease that the developer gives the developers the choice as to when to exercise the option on the lease;

2(c) obtained all necessary consents and property rights for the transmission assets to be constructed and maintained and ensured that any such consents or property rights which are capable of being assignable to the successful bidder are so assignable;

Each project has consents and leases that are specific to it depending on its situation and location e.g. the chosen onshore cable route. The list below outlines the consents that may be necessary for the purpose of assessing qualification under this requirement:

- Section 36 consent of the Electricity Act (1989);
- Consent under the Transport and Works Act (1992);
- Section 37 consent of the Electricity Act (1989) if necessary. This is for consent to construct new overhead power lines with a capacity of over 20 kV;
- Section 34 consent of the Coastal Protection Act (1949);
- Licence under Part II of the Food and Environmental Protection Act (1985) (FEPA);
- Section 90 consent of the Town and Country Planning Act (1990);
- Section 109 consent of the Water Resources Act (1991);
- River Works Licence (from the relevant Port Authority);
- Water Resources Act (1991) consent;
- Any necessary cable and/or utilities crossing agreements;

- All necessary land agreements and wayleaves for the entire length of the chosen onshore cable route; and
- Land for the onshore substation or lease agreements for land.

2(d) completed construction of, or entered into all necessary contracts for the construction of the transmission assets and ensured that any such contracts are assignable to the successful bidder; and

As with consents and leases, we understand that project developers will have taken different approaches with regards to procurement and contracting (e.g. multi-contract versus turnkey contractors). Outlined below is a list of contract areas that we would expect to be covered regardless of the contract strategy adopted in order for us to assess qualification under this requirement:

- Offshore platform design, manufacture and installation;
- Offshore substation design, manufacture and installation;
- Offshore cable supply and installation;
- Onshore cable supply and installation;
- Onshore substation design and installation;
- Reactive compensation manufacture and installation (if necessary);
- Supervisory Control and Data Acquisition (SCADA);
- Electrical package, switchgear, transformers etc
- Offshore foundations; and
- Construction agreements with NGET/DNO

We would also require a construction programme outlining the key dates of when contracts were awarded and when works are due to start and finish under each contract.

2(e) Secured financing to construct the transmission assets

In order for us to consider qualification under this requirement, we would expect you to provide either:

- A letter and the meeting minutes detailing the finance committed to the project and the expected Internal Rate of Return on the project at the time of Board sanction; or
- Evidence of financial close for the project (where external financing is being used)