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19 July 2022

Dear Cher-Rae & Viljami

Consultation on our Minded-to-Decision on Pathway to 2030

We welcome the opportunity to respond to your consultation on the delivery of offshore transmission infrastructure to connect offshore generation schemes falling in scope of the Pathway to 2030 (PT2030) workstream of the Offshore Transmission Network Review (OTNR).

We remain supportive of the overall BEIS and Ofgem OTNR objectives. As noted in our previous responses, the OTNR is critical to ensure the necessary infrastructure, required to facilitate the government's 2030 and Net Zero offshore wind targets, is delivered at the most efficient cost for consumers.

ScottishPower is a major UK energy company with renewable generation, retail supply and network interests; we are a leading developer of wind power in the UK, and part of the Iberdrola Group, the world's leading renewables developer. Iberdrola is a global leader in tackling climate change, with a commitment to reaching carbon neutrality by 2050. This response mainly reflects the views of our renewables business, ScottishPower Renewables.

Our responses to the consultation questions are in Annex 1 to this letter, however we would like to highlight the following points.

Regulatory Framework Pre-Gateway Assessment – We believe there is a critical regulatory gap in Ofgem's current proposals, between the National Grid Electricity Network Operator (ESO) Holistic Network design (HND) and Ofgem's gateway assessment in relation to non-radial solutions. It would appear that offshore generators will be left to agree, design, and construct co-ordinated offshore transmission solutions including shared transmission assets and anticipatory investment (AI). We believe this places a significant degree of uncertainty and risk on generators relative to their delivery of radial transmission connections and this could significantly hinder the timely delivery of co-ordinated offshore transmission infrastructure required to meet the government's 2030 and Net Zero targets. We believe addressing this regulatory gap will require greater assurance than can be provided through guidance to Ofgem's gateway assessment. Key issues that must be addressed include:

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- The boundary between offshore transmission sole use and shared assets and onshore transmission in the ESO's HND non-radial solutions and informing the subsequent detailed network design (DND).
- Responsibilities between generators and other parties e.g., ESO, for DND, consents and construction etc. and the required level of collaboration and information exchange in particular for shared assets.
- The identification and treatment of AI including expected interaction with generators connecting later and expected to utilise the AI.

Gateway assessment and AI – We are supportive of Ofgem's minded-to-decision on the treatment of AI in relation to the OTNR early opportunities workstream¹. We would expect given the required delivery timescales that this approach should also be applied to PT2030 projects involving AI specifically:

- Approval of AI at the early-stage assessment provides regulatory certainty against subsequent disallowance in relation to the connection of later generators for whom the AI is intended.
- The costs of the AI are recovered from the relevant later connecting generator(s) through their use of system charges (TNUoS) and user commitment (CMP 192); and
- If the later generator fails to connect the AI costs are recovered by the consumer.

OFTO tender and regulatory framework – we note Ofgem's recognition in the consultation and impact assessment, of the added complexity and longer timescales associated with non-radial offshore transmission assets relative to radial connections. In this context we believe the existing OFTO cost assessment, tender and divestment processes and timescales will require significant, not minimal, amendments to facilitate the "very late" delivery model chosen by Ofgem for generator build non-radial offshore transmission solutions in PT2030.

If you have any questions regarding this response, please don't hesitate to contact me or my colleague Haren Thillainathan (<u>hthillainathan@scottishpower.com</u>).

Yours sincerely,

pp Richard Sweet Director of Regulatory Policy

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¹ <u>https://www.ofgem.gov.uk/publications/offshore-coordination-early-opportunities-consultation-our-minded-decision-anticipatory-investment-and-implementation-policy-changes</u>

Annex 1

OFGEM CONSULTATION ON THE MINDED-TO-DECISION ON PATHWAY TO 2030 SCOTTISHPOWER RESPONSE

Minded-to-decision on non-radial assets in scope of Pathway to 2030

Question 1: Do you agree with the findings of the draft impact assessment published alongside this document?

We acknowledge that the ambition of 50GW of offshore wind by 2030 announced by the British Energy Security Strategy will be challenging. Co-ordinated offshore network designs offer greater opportunities than single radial offshore connections to harness synergies, to reduce delivery timelines and to increase overall sustainability for offshore renewable energy transmission thus facilitating the 2030 ambition.

Whilst the minded-to delivery model may mitigate timing risks in the project development cycle, questions remain surrounding the additional complexity of developing, constructing and tendering shared assets, consequential changes to the regulatory framework, and ensuring generators build network infrastructure for assets beyond those required for their specific projects whilst ensuring that generators are directed to not prioritise their own assets and take on additional risk.

The draft impact assessment on the minded-to-decision compares different opportunities and proposes an option to ensure sustainability of offshore transmission is maximised. To ensure strengths, risks and opportunities are fully understood, further clarity is required around available incentives for collaboration and reduction of risk taking between generators; cost assessment review on anticipatory investment; timeline for the development and divestment process of offshore transmission networks; future regulatory framework and the how the challenges for all parties (Generators, ESO and OFTOs) of the increased complexity of co-ordinated offshore networks can be mitigated.

As noted in our response to the 2021 consultation, we believe thew following points to be of key consideration for Ofgem for Pathway 2030 and beyond:

- The boundary between generator sole use and share assets must be clearly defined
- Any shared infrastructure would need to be oversized to avoid interdependencies (i.e., in terms of construction and economics) between generators and this may factor into relevant CfD allocation rounds.
- arrangements and contingencies where required, if one of the generators wins a CfD in the targeted allocation round and the other does not.
- More generally, careful consideration should be given to the planned or potential lag between one project and the other forming part of the same HND.
 - The consenting requirements and responsibilities resultant from the HND solutions are not clear especially for shared assets. We discuss this point further below. It is not clear who will be responsible for building the OFTO assets in each case, for example is it divided between different generators if connections dates are the same, if not, how is the leading party determined? Or is one generator selected to undertake the build regardless of differing programmes? That being the case, it is highly unlikely that any party would agree to such an approach which would oblige

them to accept full risk of disallowed costs unless anticipatory investment is agreed and accepted by Ofgem and not considered as disallowable costs.

We do not believe the Ofgem minded-to-decision considers the balance of risk between the ESO, OFTOs and generators under the co-ordinated delivery model and implies all significant risks will be placed on generators. This is not an approach we can support without further consideration. We have set out our reasoning for this below and throughout this consultation response:

- Very late competition: The timeline for getting regulatory frameworks and guidance is too late to mitigate risks. It appears that it is proposed that they will come after some of the key decisions from the generators would have already been made. This approach poses significant risks to generators.
- We agree with the statement that a significant barrier for coordination has been the lack of clear routes (draft impact assessment 2.18) for claiming back Anticipatory Investment. This is something that we believe would facilitate and incentivise co-ordination.
- Our review of the draft impact assessment suggests that under Option 6 the developer would have similar control of timelines. We do not agree with this assumption as much will depend upon how generators co-ordinate their respective timelines, with some generators bearing more risks than others. We provide further detail on the Pathway to 2030 section.

Based on experience to date, we consider that the proposal to provide updated guidance on cost assessment prior to any tender round will be too late as most of the investment decisions will have already been made by the time the cost assessment guidance is published for the first coordinated projects (2.19). This is no different to the current situation, however for the HND options, investments and risk for generators are greater than at present. To remedy this, we would recommend Ofgem publishes guidance at a minimum of 24 months ahead of the final scheduled early-stage gateway assessment of all schemes in a given OFTO tender round.

- Under Section 5 of the draft impact Assessment, we note that there is no detail provided as to what is involved in the commercial negotiations process between generators. Generators need to understand who has responsibility for agreeing this. For example, is this envisaged to be the responsibility of generators to agree between them? If so, what is the role of Ofgem? The extent of the commercial risks regarding competition between generators on the OFTO assets and their contractual strategies should not be underestimated. Further detail is provided below in our response to "Pathway to 2030 – Gateway assessment Process
- The minded-to-decision proposes that no substantive changes are expected to the current tender process and will continue to follow the same timescales for completion of the project. We do not agree with this proposal. Our reasoning for this is set out in our response to Question 8.
- We agree that any delivery model will have challenges (draft impact assessment 8.14)

Question 2: Where you disagree with the draft impact assessment, does this raise any issues with our minded-to decisions?

Competition Transaction Costs

The co-ordinated network approach to offshore transmission increases the complexity of the design and construction of the OFTO assets and their operation. Therefore, it is likely that tender processes for the OFTO assets would need to be able to accommodate this increased complexity resulting in generators incurring greater costs than for radial connections and requiring increased resources (e.g., legal, technical experts, etc.). Whilst these costs are likely not to be material as stated in section 5.9 of the draft impact assessment on Pathway to 2030 workstream's minded to decision on the Delivery Model option, they should not be compared to benchmarked costs for radial offshore transmission connections.

Timescale for the Process to Take Place

We do not have any comments in relation to maintaining the current steps for the OFTO tender process. With regards to the timeline of the tender process, in previous single radial offshore transmission connections, we have already seen delays in the tendering process with OFTO Bidders, resulting in compressed timeline for subsequent stages under the Generator Commissioning Clause (GCC) in the Electricity Act 1989. It is anticipated that, coordinated offshore transmission networks would have increased complexities hence likely further delays in the tendering process. Therefore, we agree with the fact that timelines would need to be increased, we foresee increases mainly on the Invitation to tender (ITT) stage and Preferred Bidder stage (PB). It is likely that the OFTO might require increased timeline as well for Successful Bidder stage (SB) which would affect the overall tender timeline. However, Generators are not involved in that step and therefore cannot comment.

In line with the above extension of timeline for the tendering steps, the GCC allowing generators to operate the offshore transmission infrastructure for up to 18 months after it has become available for transmission of power should also extended.

The acknowledgement that the current 18 months GCC clause might not be suitable either around coordinated projects delivering in multiple commissioning stages is welcomed.

Potential for Delay

Given the complexity and variety of options for the coordinated network design depending on the connecting offshore wind developments, Earliest in Service Dates (EISD) would most likely vary from coordinated design to coordinated design, resulting in potential increased timescales for delivery. Whilst the very late competition model reduces uncertainty around the offshore network design for OFTOs, hence removing the competition from the critical path, it shifts that risk onto generators/generators who are constraint by the GCC and are legally required to divest the asset within a certain period. Generators would have no protection for such increased risks.

An anticipatory investment regulatory framework will be key to minimise the risk of delay to the 2030 government objectives as it would give generators and their investors' confidence over the return on their investment at the same time as it would allow accelerated programmes. Please see further information in our response to Question 4.

Timescale for changes to the industry codes and standards

We welcome Ofgem's recognition that the minded-to-decision will require multiple and significant changes to industry codes and standards. We note that it is expected that any changes will be delivered through the normal code governance process. The timescales and scope of work of the relevant codes impacted should not be underestimated, many of which could include complex considerations. We note that the minded-to-decision recognises the significant timescales associated with open governance, however the risk this presents should not be underestimated.

It is already expected that the scope of codes that will be impacted will range across, SQSS, Grid Code and STC, network charging, access rights and user commitment impacts, queue management and the commercial agreements. The resource commitment from industry will be significant to ensure the timely delivery of the changes required.

Pathway to 2030 - Gateway Assessment Process

Question 3: Do you agree with the proposed introduction of a new Tender Entry Condition in the Tender Regulations requiring the confirmation of the offshore transmission system as 'economic, efficient and coordinated'?

We believe the wording of "coordinated' is too vague and as a consequence could lead to Ofgem redefining their interpretation of this at some point. This has been our perception with Ofgem in their application of what is deemed "economic and efficient".

Although we are committed to the development of a coordinated approach, we ask that Ofgem fully considers the risks to generators in delivering such coordinated solutions and take account of the protection required as it develops an appropriate framework which considers and balances all risks.

We have set out below some points for consideration by Ofgem:

- The level of information required to be shared between generators is extraordinary, which could lead to competition issues.
- We are seeing more and more generators opt for an Engineering, Procurement, Construction and Installation (EPCI) contracting strategy where the Original Equipment Manufacturers (OEM) provide the designs. To co-ordinate the grid design, a lot of detailed design information will need to be shared between generators which may lead to issues around cyber security, industrial sensitive information around operation, which if unable to be resolved, will force generators to go with a single OEM
- Joint Venture (JV) Agreements take a long time (greater than 6 months) to develop and agree, with all JV parties having a vested interest in profit for the same project, how does Ofgem propose this will be achieved and what arrangements will support this?
- Whilst we agree that additional steps will need to be considered for the coordinated
 offshore network design, the introduction of the proposed new Tender Entry Condition in
 isolation, requiring confirmation that the offshore transmission system is 'Economic,
 efficient and coordinated' places all the risk of the coordination of designs on
 generators.
- We believe that the definition of the coordination requirements for each coordinated network should come from an independent party with no self-interest in the sensitive commercial information the generators would be sharing with it to allow the co-ordinated network design.

 When talking about coordination it is not clear if it refers to electrical coordination or physical coordination.

It is our opinion that there should be an independent party, with no commercial interest, to oversee the design and associated requirements of co-ordinated offshore transmission solutions. Should such an approach be adopted, it should ensure that there is no conflict with market arrangements, undermining competition or acting as a barrier in any way to the design and delivery process. The introduction of a new Tender Entry Condition places the onus on the Generators to liaise amongst themselves and reach agreement which, in our view, offers little protection.

Question 4: Do you agree with the introduction of the proposed gateway stage assessment process?

We welcome the proposal of a gateway assessment process to reduce uncertainty throughout the development stages of offshore wind projects for generators when delivering coordinated assets and the risk of not qualifying for OFTO Tender rounds. The minded-to-decision does not however provide sufficient detail to assess the risks and opportunities of such a gateway assessment.

As per our response to "Changes intended to bring about greater coordination in the development of offshore energy networks consultation" in September 2021, framing the approval of anticipatory investment as a gateway assessment process could provide assurance to the industry and promote anticipatory investment provided that Ofgem at the end of the assessment at each gateway, if it approves, provides a clear approval to proceed, implying that it will not be a disallowed cost at cost assessment.

Question 5: Do you think the information sought as part of the gateway assessment process is appropriate and proportionate? Is anything missing?

We believe that the detailed description of the information sought as part of the Gateway Stage Assessment Process to be extensive. It is however difficult to comment without understanding the level of detail required.

Should the responsibility to develop HND solutions wholly lie with generators, early involvement of Ofgem to assess the eligibility of the projects for the OFTO Tender rounds would be welcomed.

Question 6: Do you have any views on the timing of the gateway assessment process?

Further understanding of timeline and definition of the Gateway Assessment Process is key for us. The minded-to-decision states that the guidance would be available prior to having to make any contractual commitments, which could mean that the consents might already be granted for the project, therefore creating the situation where amendments to the consented position might be required to comply with Ofgem's requirements.

The Gateway Assessment Process must work equally for Scottish projects and English and Welsh. The Gateway Assessment Process commencing 12 months before statutory consultation (which is in some cases after application submission) is too late to provide

developer with the certainty that the design for which their planning application seeks consent will be determined acceptable under the Gateway Assessment Process. That may necessitate changes to the consent application and significantly delay deployment. To provide the required certainty, we would expect a Gateway Assessment Process determination on or around the date of the issue of a Scoping Opinion by the relevant consenting authority.

Further definition will be required on the conclusion of the assessment since "as soon as reasonably practicable" places all the risk from delays from Ofgem on the generators.

Question 7: Is there any other information which you believe should be included in the confirmation to generators?

Whilst we welcome the note from Ofgem confirming that a standard process will be developed to give certainty projects can enter the OFTO regime and around anticipatory investment in particular, as per above responses, we believe Ofgem should provide clear and formal approval on whether or not to proceed with anticipatory investment at the early stage assessment in the gateway process.

We believe it is important that generators are provided with confirmation that the description of costs associated with the eligibility gateway will not form the grounds for future disallowed cost at the cost assessment stages.

We have stated in our previous response that:

"Projects intending to connect to the system should have a connection agreement with NGESO. A connection agreement with NGESO will require User Commitment (demonstrating a financial commitment via Securities and Liabilities via CMP192) as well as set out a programme and connection date. It's important to highlight that these securities and liabilities will significantly increase as the project gets close to the connection date.

In circumstances where amounts of higher user commitment may be required by the ESO, for example more TEC to accommodate multiple projects, a clear cost allocation for securities and liabilities should be in place to define how user commitments would be allocated across the zone. Circumstances in which the first project to connect bears the wider user commitment profile for the shared/coordinated asset will be unaffordable for generators, and this will require a way to socialise these costs across parties. We also see a risk of potentially creating an unlevel playing field in CfD auctions if certain generators are carrying more of the grid connection liabilities."

Very Late Competition Model Tender policy

Question 8: Do you think changes are required to the current process to facilitate a very late competition model for non-radial assets?

We agree with Ofgem that the timeline under the Generator Commissioning Clause (GCC) in the Electricity Act 1989 could be problematic for multiple stage delivery. In addition, we believe that the current 18 months' timeline is extremely challenging. Given the increased complexity to coordinate offshore transmission infrastructure, an extended due diligence period would be welcomed to ensure the future OFTOs have sufficient time to assess the network and bring the level of risk to a satisfactory level.

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Qualifying Project Stage:

If early qualification will form part of the gateway assessment stage for HND projects, the current timelines will not work. Currently, a project will qualify after the Final Investment Decision (FID) which is normally aligned with a successful CfD. If the early gateway assessment is to be undertaken as described at least 12 months prior to the generators making an application for issuing its final statutory planning consultation, the projects will need to pre-qualify prior to FID and secure a successful CfD result. That also creates problems with the level of detailed design required to be completed prior to FID and the assessment undertaken of development costs as part of the cost assessment by Ofgem.

Technical Entry Conditions Stages

This is only relevant to the OFTO bidders, we therefore do not have a view as to what a reasonable timeline for this stage for HND projects would be.

Pre-qualification stage and Enhanced Project Qualification Stage

This is only relevant to the OFTO bidders, we therefore do not have a view as to what a reasonable timeline for this stage for HND projects would be.

Invitation to tender (ITT) Stage

The current timeline estimates a 6-month ITT which is split into 2 sections:

- 1. Tender preparation: A 3-month phase where bidders review the documentation and prepare their submission. During this first phase, OFTO bidders review the project information (i.e. technical description, consents, construction contracts...) and request clarifications from the generator via a Q&A managed by Ofgem.
- 2. Offers reviewed and preferred bidder selection: A 3-month period where Ofgem reviews the bidder's offers and select a preferred and reserve bidders as potential future OFTO.

We have seen the tender preparation stage extend by about 2-months for radial projects, extending the overall ITT to 8-months. We believe that the ITT stage timescales are already very challenging with current "simpler" radial connections. Due to the increased complexity of the HND connections, it is not unreasonable to expect that the OFTO bidders would require more time to review the technical proposals than for radial connections, hence requiring an extended ITT phase.

Preferred Bidder (PB) Stage and Successful Bidder Stage (SB)

At present, the typical duration for the tender process for the PB and SB stages is approximately 12 months.

Under the current radial connection system, it is estimated that the SB stage takes approximately 3 months including taking account of the following OFTO stages: Lender's approval process, Section 8A, Standstill Period and the fundings draw down. This means that out of the 12 months

a maximum of 9 are available, assuming there are no delays in the ITT process, for the OFTO to complete their technical due diligence and the future OFTO and the developer to agree the necessary commercial agreements for the divestment.

We believe this process and current timescales is already very challenging and with a more complex HND connection we consider that it is not unreasonable for the preferred bidder to take additional time to review the technical documentation.

Should an increased timeline not be permitted for the preferred bidder to review the technical documentation of the project, we would expect that any risks from the HND increased complexity would fall on the developer. It is crucial that preferred bidders are granted

sufficient time to undertake their technical due diligence to ensure the risk programme is not passed onto the developer.

In light of the concerns, we have raised regarding the timelines and the need to extend them, we believe the GCC timeframe should be reviewed (as proposed in our response to Question 2).

Policy considerations for implementing non-radial offshore transmission

Question 9: Do you think changes are required to the current package of OFTO obligations and incentives due to the introduction of non-radial offshore transmission assets?

Yes, we have previously commented that "In the case of interconnectors sharing infrastructure with an Offshore Wind Farm, clarity would be required to ensure generator output was not curtailed due to interconnector operations as well as any need for the generator to comply with system requirements across two different countries simultaneously."

If there are sole OFW assets and Interconnectors, how will the availability figure be considered? OFTO assets are held to 98% availability figure. Where this is not met, penalties are applied. How do Ofgem propose these penalties be socialised for shared connections?

We stated in our previous consultation response that "The concept of user commitment (UC) currently used in relation to onshore integrated transmission assets (CMP 192) could be adapted for use for offshore shared transmission assets. UC identifies the proportion of integrated assets that are effectively solely for the benefit of individual generators and accordingly calculates security and liabilities a generator must lodge to cover the risk of termination before connection. UC liabilities form part of a generator's connection agreement onshore. If appropriately adapted, UC will substantially reduce stranding in the unlikely event of termination before connection offshore. Furthermore, UC increases the generator's financial commitment in addition to the factors identified above and should therefore reduce overall AI risk. Two features we think an offshore UC would need to introduce are:

- a methodology for allocating UC liability between coordinated generators; and
- where generators are connecting at different times, requiring all the generators to sign connection agreements and provide UC at the same time or within a sufficiently close timeframe together."

In order undertake the availability calculation, generators would need to share a significant volume of information to do the system studies that will form the basis for the OFTO assets availability. How do Ofgem propose that the issue of confidentiality is addressed?

It should be noted that the risk of reduced availability of the OFTO assets increases as the assets age. Generators connecting at later dates should be protected from increased failure rates of ageing assets. Increased maintenance regimes should be promoted/ incentivised/ encouraged.

Question 10: Do you think changes are required to other aspects of the OFTO regime, e.g., asset life or duration of the revenue stream?

We agree that changes are required to other aspects of the OFTO regime such as asset life.

The design life of the OFTO assets will likely need to be extended to 30+years since there will be later connections who will still require a minimum of 25 years generation that will need to be accommodated, unless specifically agreed at the design stage.

With the above in mind, licence periods should be extended to match the minimum generation timeline requirements from all connecting generators.

ScottishPower July 2022

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