

To offshore transmission owners,  
current and prospective bidders for  
Offshore Transmission Licences and  
other interested parties

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## **Decision on proposed modifications to offshore electricity transmission licences**

### **Introduction**

On 11 November 2022, the Authority<sup>1</sup> sought views on a number of proposed modifications to amended standard conditions (**ASC**) E12-J3 and E12-J4 of the offshore electricity transmission licence (**OFTO licence**) under section 11A of the Electricity Act 1989 (the **Consultation**).<sup>2</sup>

We received seventeen responses (representing thirty-three Licensee's/Interested Parties) to the Consultation. Following careful consideration of the representations made, we have decided to proceed, initially, with the consequential amendment to ASC E12-A1 and the licence modification proposed to Part C of ASC E12-J4 for the reasons set out below, with no alterations.

All non-confidential responses relevant to this decision<sup>3</sup> (redacted) are published alongside this decision document.

We expect to publish our final decision on the other licence modifications proposed in the Consultation in July 2023. All non-confidential responses will be published in full alongside that decision on the Ofgem website.

### **Consequential licence modifications due to the end of the transition period**

On 14 January 2019, Ofgem gave notice of its intention to modify a number of licences to ensure that the definitions were consistent with UK law at the end of the transition period following the UK's exit from the European Union. On 11 February 2021, Ofgem made a decision to make those modifications.<sup>4</sup> Four licences were granted in the period between Ofgem giving notice of its intent to modify the licence and publishing its decision; the licences listed below were not included in that decision.

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<sup>1</sup> The terms "the Authority", "we" and "us" are used interchangeably in this document

<sup>2</sup> Link to [Statutory consultation on proposed modifications to Offshore Transmission Owner \(OFTO\) licences | Ofgem](#)

<sup>3</sup> Respondents that specifically responded on these modifications.

<sup>4</sup> Link to our [Decision on consequential licence modifications due to the end of the transition period | Ofgem](#)

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The Consultation proposed modifications to Amended Standard Condition ASC E12-A1 in the following licences, to ensure these also reflect those amendments to UK law:

- Diamond Transmission Partners Galloper Limited;
- Diamond Transmission Partners Hornsea One Limited;
- Diamond Transmission Partners RB Limited, and
- Diamond Transmission Partners Walney Extension Limited.

#### Analysis of responses

Of the three respondents that specifically responded, all stated their agreement to the proposed modification. No concerns or questions were raised by any respondents.

#### **Incremental capacity arrangements**

The Consultation proposed modification to Part C of amended standard condition E12-J4 (**E12-J4 Part C**) of all OFTO licences to make it clear that an Offshore Transmission Owner (**OFTO**) may seek to recover costs, where:

- a) the OFTO has entered into a construction agreement with the system operator under Standard Licence Condition (**SLC**) E17, and
- b) the OFTO incurs construction costs as a result of that agreement.

The proposal changes “additional capacity investment adjustment” to “incremental investment adjustment” (ACA<sub>t</sub>).

The proposed modification does not change an OFTOs ability to recover costs but rather clarifies that OFTOs can seek to recover costs incurred to connect a third party to the OFTOs system, including connections to provide stability on the National Electricity Transmission System (**NETS**), for example, a third party providing a transmission system service.

#### Analysis of responses

Fifteen of the seventeen respondents specifically provided representations in response to this proposal, of those, all respondents welcomed the proposed modification and provided further comments that are discussed below. A detailed assessment of the representations made, together with the Authority’s view on the points raised, is set out below.

- One respondent *was of the view that generators should be included in discussions to ensure assets are not paid for twice over (eg where the services can already be provided by the assets constructed by the generator).*

The Authority’s view: We expect these types of conversations would be with the Electricity System Operator (**ESO**), where relevant, and would occur before the ESO sent an application for connection to an OFTO (pursuant to paragraph 2 of SLC E17).

- One respondent (representing nine Licensees) *asked for the opportunity to discuss how the clarification of the Incremental Investment incentive could be broadened, beyond meeting obligations under E17; for example, there is no clear route for OFTOs to secure cost recovery for investments to maintain compliance with the SQSS (an obligation in the STC) that result from changing system background conditions.*

The Authority's view: Standard Licence Condition C8: Requirement to offer terms and SLC E17 requires the ESO and the OFTO (respectively) to enter into an agreement to facilitate (amongst other things) any modification to an existing connection agreement. E12-J4 Part C provides for the recovery of costs incurred as a result of that agreement. We expect an agreement under ASC E17 would be required in this scenario.

- A number of respondents *sought further clarity on costs, with one respondent suggesting any costs incurred by an OFTO should be paid for by the party benefitting from the incremental investment, whether that means (for example) recovering the costs from consumers or new generators.*

The Authority's view: Costs must be limited to those that are economically and efficiently incurred. We have asked the ESO to consider whether the current transmission charging arrangements are cost reflective in this regard.

- A number of respondents *considered that forecast costs should be discussed in advance between OFTO and the Authority, and then paid in advance.*

The Authority's view: We do not propose to make changes to the cost recovery provisions included in the OFTO licence to allow advance cost recovery based on forecast costs. We consider the obligation to provide offers for connection to the OFTO's system were clear and unambiguous when the licence was granted. We expect all bidders to familiarise themselves with the requirements of the licence they are bidding for under The Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2015 and to make provisions such that they comply with all licence requirements.

- Three respondents (representing ten Licensees) *sought clarity with regards to costs incurred for producing TO Construction Offers (TOCO) or ATOC agreements. At present there is no mechanism in the licence for the OFTO to recover these costs, however, to date NGESO has agreed to accept these costs with the OFTO invoicing NGESO after such costs are incurred.*

The Authority's view: we note the question and that there is a process available to the OFTO through agreement with the ESO.

- A number of respondents *considered the reference to 'capacity' should be totally removed as incremental investment may be required where there is no increase in capacity. A number of respondents noted issues with the drafting in Walney 1, Walney 2, Sheringham Shoal, London Array - still refer to incremental capacity.*

The Authority's view: Our consultation considered modifications to the ICA<sub>t</sub> term in E12-J4 Part C. OFTO Licences granted in Tender Rounds 1 and 2 include the *Incremental Capacity Utilisation Adjustment (ICUA<sub>t</sub>)*, that applies when the OFTO is able to meet the ESO's request for additional capacity using existing headroom in its asset's capability. We thank respondents for bringing this to our attention. We

intend to consult on further modifications in the near future and will consider whether modification of ICUA<sub>t</sub> term is necessary.

- *A number of respondents raised concerns with regards to protection from the availability penalty set out in amended standard E12-J4 of the licence (E12-J4). In particular, respondents were of the view that OFTOs should be allowed to reclaim lost availability without submitting an EE claim to Ofgem and generators should be reimbursed for lost revenues. Respondents also stated the timing of any outages should be considered by all stakeholders.*

The Authority's view: The System Operator Transmission Owner Code (**STC**) and the Connection and Use of System Code (**CUSC**) set out the outage planning arrangements, we do not expect further changes to the current STC or CUSC arrangements will be necessary. However, we intend to consult on further modifications in the near future to introduce specific protection into the OFTO licence that protects the OFTO from penalty where it is required to take an outage to undertake works to facilitate an agreement with the ESO pursuant to SLC E17 and would welcome any views to the contrary in response to that consultation.

- *One respondent sought clarity on whether the proposed new condition will differ from that available to onshore transmission owner (**TO**) where the onshore TO is able to be remunerated by the ESO for providing system services.*

The Authority's view: The proposed modification does not relate to the provision of transmission system services by the OFTO. The proposed modification clarifies the route by which OFTOs can seek to recover costs incurred to connect a third party to the OFTO's system, for example, a third party providing a transmission system service.

### **Licence modification decisions**

Modification decision notices together with relevant schedules have been published alongside this letter.

### **Next Steps**

In accordance with section 11A(9) of the Electricity Act 1989, these licence modifications will come into effect from 23 August 2023.

We are not issuing hard copies of the modification documents. If, however, you do wish to receive the documents and respond by post, we are able to organise this for you. Please contact us at the contact details above to request hard copies of the relevant documents and postal address for responses.

If you have any questions in relation to this letter please contact Yvonne Naughton (contact details are provided above).



**Stuart Borland**  
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**For and on behalf of the Gas and Electricity Markets Authority**