

Stuart Borland  
Deputy Director, Offshore Network Regulation  
Ofgem  
10 South Colonnade  
Canary Wharf  
London  
E14 4PU

9 December 2022

Dear Stuart

**Statutory consultation on proposed modifications to Offshore Transmission licences**

We welcome the opportunity to comment on the proposed modification to the Offshore Transmission Licences set out in this statutory consultation.

ScottishPower is a leading offshore windfarm developer with extensive experience of the UK OFTO market over the past number of years. Through our West of Duddon Sands (WoDS) joint venture project with Orsted, we jointly designed, consented and delivered the OFTO assets through the generator build model and jointly managed the OFTO divestment process. We are also in the process of divesting the OFTO assets for our operational East Anglia ONE (EA1) offshore windfarm, within Tender Round 6. The OFTO assets in respect of EA1 were also constructed using the generator build model. In addition, the East Anglia THREE project received planning consent in August 2017, and we also intend to build the OFTO assets through the generator build model. We also expect to adopt the same approach for the East Anglia Two and East Anglia One North projects that we have in development.

We have set out our detailed comments in relation to each of the proposed licence modifications in Annex 1 to this letter. Our key concern is that Ofgem is proceeding with modifications in relation to cost pass-through and transmission availability associated with asset health reviews and resulting investment works. While the proposed modifications reflect Ofgem's minded-to positions consulted on in June 2022,<sup>1</sup> there are a number of associated issues relating to the wider end of tender revenue stream (EoTRS) regime which are awaiting conclusion by Ofgem. We believe it would have been good regulatory practice for Ofgem to have published its minded-to positions on all the issues raised in the June 2022 consultation before moving to any consultation on proposed licence modifications.

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<sup>1</sup> <https://www.ofgem.gov.uk/publications/offshore-transmission-owner-end-tender-revenue-stream-consultation-concerning-policy-development>

If you have any questions regarding this response, please don't hesitate to contact me or my colleagues Haren Thillainathan ([hthillainathan@scottishpower.com](mailto:hthillainathan@scottishpower.com)) or Deborah MacPherson ( [Deborah.MacPherson@Scottishpower.com](mailto:Deborah.MacPherson@Scottishpower.com))

Yours sincerely,

A handwritten signature in blue ink that reads "Richard Sweet". The signature is written in a cursive, flowing style.

**Richard Sweet**  
Head of Regulatory Policy

**CONSULTATION ON PROPOSED MODIFICATIONS TO OFFSHORE TRANSMISSION  
LICENCES – SCOTTISHPOWER RESPONSE**

**1. Consequential licence modifications due to the end of the transition period**

We note this proposal takes account of the necessary changes to the licence in order to be consistent with UK law following exit from European Union; and as we agree this change is minor, we have no comments.

**2. End of Tender Revenue Stream (EoTRS)**

**Proposal A – Proposed Modification to amended standard condition ASC E12-J3 (Cost of Health Review and Investment Works)**

We note this proposal seeks to introduce two new pass-through terms which will allow all Offshore Transmission Owners (OFTOs) to claim for the cost of carrying out Health Reviews of their transmission assets including the Investment Works needed to extend the lifetime of those assets. As a consequence, the generator is likely to be liable for the majority of the costs incurred via TNUoS charges.

The cost pass-through treatment for OFTOs is only one issue of several that are required to be concluded to facilitate a robust and effective EoTRS regime as set out in Ofgem's June 2022 consultation<sup>2</sup>. In this context, we would refer Ofgem to our consultation response in which we raised specific points regarding the Asset Health Assessment, seeking further clarification regarding the process and the interaction with the generator amongst other things.

To date, there has been no follow up from Ofgem to address the points we raised or our concerns. Therefore, as a matter of priority, we ask Ofgem to clarify when it will publish the next stage of the EoTRS consultation including addressing the points we raised in our response.

In relation to any EoTRS regime, we have consistently reiterated that the key determinant is confirmation from a generator's perspective that there is a viable business case to continue operations beyond the end of the original licence. If an OFTO Asset Health Assessment indicates significant costs are required in order to extend the life of the transmission assets, the generator must retain the right to decline the proposed TRS extension or dispute the assessment before the costs are incurred. We also believe that the generator should have the right to approve the proposed scope and content of the asset health review and the results, subject to independent review.

In our response to the June 2022 consultation we also requested that Ofgem provide further guidance in relation to cost recovery principles in relation to Asset Health Assessments, including from which party the costs are recovered. We would emphasise that there has been no guidance or clarification on these points provided by Ofgem prior to this statutory consultation. In particular it would have been good regulatory practice for Ofgem to have published its minded positioning on all the EoTRS issues raised in the June 2022 consultation before moving to any statutory consultation.

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<sup>2</sup> [Offshore Transmission Owner End of Tender Revenue Stream – Consultation concerning policy development | Ofgem](#)

We would also note there is currently a live CUSC modification, CMP344, which seeks to fix TNUoS and thereby not allow for the cost recovery principles as set out in the proposed licence changes. Therefore, the impacts of Ofgem's notice of proposed modifications should be taken into account within the work of the CMP344 working group through the Ofgem representative, and the output of the proposed modification should be reflected in the context of Ofgem's notice of proposed licence modifications.

#### Proposal B – Proposed Modifications to ASC E12-J4 (Availability Lost During Health Reviews and Investment Works)

We note the decision by Ofgem to allow for OFTOs to claim an adjustment for up to 7 days of lost availability as a direct result of carrying out health reviews of their transmission assets and the investment works needed to extend the lifetime of those assets. We also note that the generator will carry out its asset health review at six years before the EoTRS, that will then be shared with the OFTO and the Authority to allow the scope of the OFTO's health review to be agreed as part of the OFTO review (at T-5) to then be shared with the generator and the Authority.

The proposal allows for the OFTO to claim the adjustment without prior approval of the Authority, but where outages occur for more than 7 days, the OFTO will be required to submit claims to the Authority for consideration.

We would like to clarify on what basis the generator will be liable through its TNUoS charges for the cost of the OFTO's claimed additional unavailability. In addition, we would seek clarification on the mechanisms that would allow the generator to claim for lost revenue as a result of the unavailability of the transmission assets in relation to asset health reviews and resultant investment works. Dialogue on the timing of outages is essential to ensure that the windfarm output is maximised where possible. We would expect the OFTO to fully comply with its obligations under the STC in respect of any outage planning and notifications. And, as the timescales for such outages will be known by the OFTO well in advance of them taking place, we would expect the OFTO to fully consider how to minimise the impact on the generator.

We are concerned that there is a risk of unintended consequences with the proposal. For example, will this lead to all claims being made for 7 days given that there is no requirement for Authority approval for claims associated with outages of up to 7 days if the outages are not subject to the STC?

### **3. Proposed modification to ASC E12- J3 (application of VAT to decommissioning costs and/or disallowance of scrap value from the decommissioning security)**

The proposed modification to ASC E12-J3 will allow OFTOs licensed in tender rounds 1 (TR1) to 3 (TR3) to seek to recover additional costs or expenses incurred: a) in the event that Value Added Tax (VAT) is applied to decommissioning costs where this is not already provided for in the licence elsewhere, and/or b) as a result of the disallowance of scrap value from the decommissioning security, consistent with licences granted from tender round 4 (TR4) onwards.

Our review of this proposal suggests that it ensures consistency across licences and on that basis, SPR has no objection to this proposed modification.

#### **4. Proposed Modification to ASC E12-J4 Part C (Incremental capacity incentive adjustment)**

This proposal seeks to modify all OFTO licences to make it clear that all OFTOs can seek to recover costs where they have entered into an agreement with the system operator under Standard Licence Condition E17 (Obligations in relation to offers for connection etc) and the OFTO has incurred costs as a result of that agreement.

While we agree with the principle of enabling service provision to help grid security and stability, the assets required to provide such services are more often than not:

- 1) designed and built by the generator/developer (under the generator build model) and justified as a minimum cost solution pre-transfer; or
- 2) provided by generator assets 'through' the OFTO circuit.

We therefore believe that this licence modification runs the risk of falling short of its intention, and would suggest Ofgem recognise the importance of including generator developers in the discussions to ensure there is no risk of assets being paid for twice over.

Additionally, we would request clarity on the treatment of the costs arising where the OFTO has entered into an agreement with the system operator to construct increased capacity.

Further, as noted above in our response to proposal B, the timing of any outages and the impact on generation should be considered by all stakeholders and agreement reached to ensure fairness of operability.

Finally, we would like to clarify if this new condition will differ from in any way from those available to the onshore incumbent TOs where they are able to be remunerated for system services from the ESO.

We would urge Ofgem to consult further on this proposed licence modification with all stakeholders, in particular offshore generators, to ensure Ofgem's policy intent is delivered.

**ScottishPower**  
December 2022