

All with an interest in renewable energy and offshore electricity transmission

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Date: 25 July 2008

Dear Colleague,

## **Offshore Electricity Transmission – Draft Tender Regulations**

### Introduction

Electricity from offshore renewables is expected to make an important contribution to the achievement of the UK's share, when agreed, of the EU target of generating 20 per cent of energy from renewable sources by 2020. It is therefore important that offshore electricity transmission networks are developed efficiently to transfer electricity to the onshore networks and ultimately to consumers.

The Government (via BERR) is putting in place a new regulatory regime for offshore electricity transmission to assist the development of offshore renewable energy generation, and has been developing this regime with Ofgem since 2005. The Government has taken a number of key decisions with respect to the regime over this time, including that offshore electricity transmission licences will be awarded on a non-exclusive basis and by means of a competitive tender. In January 2008, the Government also decided that Ofgem would be the most appropriate body to run this competitive tender process.

This letter forms part of the ongoing consultation process for the development of the regime. It follows on from the joint Ofgem/BERR consultation document published in June 2008<sup>1</sup> and provides stakeholders the first opportunity to comment on Ofgem's preliminary draft of the tender regulations (attached). These regulations are necessary to set out in a transparent way the framework for the tender process. They will be made by the Authority. This letter provides an overview of the legal framework for making the tender regulations, identifies the key features contained within the draft, sets out those specific issues on which we are particularly keen to obtain feedback, and sets out the steps we will be following over the coming months to bring the regulations into effect.

### Legal framework

When commenced, section 92 of the Energy Act 2004 (which will insert section 6C into the Electricity Act 1989) enables the Authority to make regulations which are appropriate for facilitating the making of a determination on a competitive basis of the person to whom an offshore transmission licence is to be granted. The making of these regulations will not be

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<sup>1</sup> 'Offshore Electricity Transmission – A Joint Ofgem/BERR Regulatory Policy Update'; 84/08, June 2008

subject to specific parliamentary procedure. However, the approval of the Secretary of State is required under Section 6C of the Electricity Act before they can come into effect.

When made, the regulations will be in the form of a Statutory Instrument (SI), although it should be noted, for the avoidance of doubt, that this preliminary draft is not in the Stationary Office's (TSO) SI template.

### Remit of the tender regulations

Ofgem has produced the first draft of the tender regulations within the meaning of section 92 of the Energy Act 2004. As such, the draft tender regulations set out the process for the award of an offshore transmission licence on a competitive basis, for both the transitional and enduring regimes.

Ofgem has consulted on the underlying policy for the tender process in an increasing level of detail since July 2007<sup>2</sup>, taking into account stakeholder feedback at all points along the way. This has included feedback provided in formal responses to consultation documents, at stakeholder events (such as the External Communications Sessions we have held with BERR after each document has been published), the tender workshop we held in February<sup>3</sup> and in bilateral meetings.

As set out in the June 2008 consultation document, the overall design of the tender process has now been largely defined. The June document confirmed our policy proposals are that:

- there will be an annual tender process commencing at a fixed point in time,
- Ofgem would run this tender process, recovering costs from participants,
- tenders will be undertaken over four key stages,
- the tender process will be provided for in secondary legislation,
- the tender process would be supported by detailed tender documentation,
- stakeholders such as the offshore developer and the GBSO would have key roles in the tender process,
- generator affiliates would be able to bid to become OFTOs,
- there will be an OFTO of last resort mechanism in the transitional regime, but no corresponding mechanism in the enduring regime, and
- for those offshore projects that fall within the transitional regime, developers would be offered comfort that they would be guaranteed the greater of 75 per cent of Ofgem's ex-ante RAV assessment and 100 per cent of the efficient economic costs of the offshore transmission assets.

Whilst there are a small number of specific issues on which we are still consulting, the preliminary draft of the regulations have been developed in accordance with these policy principles. We will take into account further responses received in respect of the policy consultations – as well as feedback received on the draft regulations themselves – in developing the regulations further.

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<sup>2</sup> (i) 'Offshore Electricity Transmission – a Joint Ofgem/BERR Policy Statement', 189/07, July 2007; (ii) 'Offshore Electricity Transmission – Regulatory Policy Update', 4/08, January 2008; and (iii) 'Offshore Electricity Transmission – A Joint Ofgem/BERR Regulatory Policy Update'; 84/08, June 2008

<sup>3</sup> Notes of Ofgem's tender workshop are available via the following link:

[www.ofgem.gov.uk/Networks/Trans/Offshore/GrpsWrkshops/Documents1/Notes%20from%20tender%20process%20workshop\\_220308.pdf](http://www.ofgem.gov.uk/Networks/Trans/Offshore/GrpsWrkshops/Documents1/Notes%20from%20tender%20process%20workshop_220308.pdf)

## Key features of the tender regulations

Ofgem considers that the key to the tender regulations is to take the policy principles outlined above and determine appropriate processes (or identify the tools needed to determine appropriate processes) in accordance with these so that it can run tenders effectively within a clear set of rules. Taking this approach, the key features of the draft regulations are that they:

- set out the pre-conditions a developer needs to meet for entry into a tender round,
- set out how and when a tender process will commence,
- detail the tender process particularly in terms of:
  - a requirement on developers to notify Ofgem when they have met the pre-conditions,
  - a requirement on Ofgem to publish certain information and tender documentation at the different stages of the process,
  - a requirement on bidders to respond within specified timeframes, and
  - a requirement on Ofgem to assess bids in accordance with pre-determined criteria
- set out the process for finalising the grant of the OFTO licence following the identification of a preferred bidder, and
- set out the circumstances under which Ofgem may cancel a tender exercise.

In addition, the draft regulations provide for Ofgem to undertake RAV assessments in respect of offshore projects that will be subject to the tender process in the transitional regime. They also set out how Ofgem intends to recover costs associated with running the tender process from participants.

## Issues for consultation

This is Ofgem's first attempt at formalising the tender process in the relevant legal instrument, based on our current policy proposals. In order that the final version is robust and fit for purpose, we are seeking as much feedback as possible from interested stakeholders – on the scope of the draft regulations as well as the legal drafting. We are particularly interested in stakeholders' views on how we have translated the current policy proposals into a framework for developing processes that will enable Ofgem to run an efficient tender process.

Stakeholders should be aware that there are a small number of issues regarding the tender process that are still unresolved and are being progressed in parallel. These include:

- the appropriate pre-conditions that developers will need to meet before their projects will be eligible to be included in a tender process,
- how developers that have referred their initial connection offers for determination could be included in the tender process,
- the proposed requirement for the preferred bidder to make its construction offer to the GBSO through the STC, and
- the issues that will need to be resolved once the preferred bidder has been identified.

Depending on how these issues are resolved, they will impact to a greater or lesser extent on the drafting of the tender regulations. Stakeholders should bear these issues in mind in their responses, and comment on them as appropriate. In addition, we are also considering the extent to which the regulations should require Ofgem to approve bidder consortiums at the outset of a tender exercise and approve changes to these. This issue has not been tackled explicitly in the draft regulations, but is something that Ofcom require in running similar spectrum auctions<sup>4</sup>. We would especially welcome views on this issue.

In drawing together this preliminary draft of the tender regulations, we are mindful that there is an appropriate balance to be struck between the formalisation of the tender process in legislation (i.e. the tender regulations) and the need for some flexibility within a tender exercise, which can be reflected in the tender documentation that will accompany each tender. We published a detailed contents list of what this documentation will contain in the June 2008 consultation document<sup>5</sup> and we are currently developing this in detail with our legal advisers. The first draft of this documentation will be published for comment later this year. Subject to feedback received in respect of those documents, the regulations may be amended further. We appreciate that we have only published the detailed contents list to date, but nevertheless we would welcome stakeholders' initial views on the appropriate balance between the regulations and tender documentation.

#### Responding to this consultation

Responses to this consultation should be received by **no later than 5 September 2008**. All responses should be sent to:

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Ofgem  
9 Millbank  
London  
SW1P 3GE

Unless marked as confidential, responses will be placed in the Ofgem library and published on the Ofgem website. It would be helpful if responses could be submitted electronically as well as in hard copy. Any questions on the document should be directed to me in the first instance, by phone on 020 7901 7264 or by e mail at [richard.clay@ofgem.gov.uk](mailto:richard.clay@ofgem.gov.uk).

#### Next steps

Following consideration of responses received, Ofgem will review whether and how the draft regulations could be amended further. Dependent on the extent of the responses, Ofgem has scheduled time in the Autumn for a further round of consultation ahead of the tender regulations being made in advance of Go Active.

Yours sincerely,



Richard Clay  
**Senior Manager, Offshore Transmission**

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<sup>4</sup> See The Wireless Telegraphy (Licence Award) Regulations 2008, SI No. 686 (2008)

<sup>5</sup> Appendix 7 refers