



Business Development
Centrica Energy
Millstream East
Maidenhead Road
Windsor
Berkshire SL4 5GD

Direct Dial: 01753 431 345

Monday, 08 September 2008

Richard Clay
Senior Manager, Offshore Transmission
Ofgem
9 Millbank
London
SW1P 3GE

Sent by email to Richard.clay@ofgem.gov.uk

Dear Richard,

Re: Offshore Electricity Transmission – Draft Tender Regulations

Please find attached a non-confidential response on behalf of Centrica plc (excluding Centrica Storage Ltd) in relation to the above consultation dated 25th July 2008.

We note that this is Ofgem's preliminary draft of the tender regulations and appreciate the greater clarity that this latest offshore transmission consultation brings. As a first draft it is to be expected that there are areas where we feel there is insufficient detail for Centrica to provide a more specific response. We believe that a full response on the tender process will remain difficult until all the tender documents have been published and important gaps in the regulations are addressed in the next draft. On this basis we have attached our views and recommendations to date and look forward to responding on the next draft and supporting Ofgem with this initiative.

Summary

This is a useful first draft of the Regulations and Centrica looks forward to responding to further, detailed draft(s). In addition, the inclusion of policy principles in the next consultation would aid understanding and clarity of intent in some sections.

Attached is a set of detailed comments on each section; areas where we have particular concerns or recommendations are as follows:

Centrica plc
Registered in England No. 3033654
Registered Office
Millstream, Maidenhead Road
Windsor, Berkshire SL4 5GD

Timetable clarity:

The publication of Ofgem notices need to be issued with a reasonable time period ahead of any tender process. It would be useful to have a more explicit timetable in the Regulation, and recommend that the dates (or ranges of dates) relating to Expressions of Interest and Initiation to Tender are included individually.

Appeal mechanisms:

Centrica believes there are a number of areas where an Appeal Mechanism would be useful, noting the transparency and confidentiality constraints. For example, qualification of projects; qualification of bidders; bid assessment criteria; and bidder appointment. Ofgem should consider the inclusion of efficient mechanisms to ensure fairness whilst minimising any potential delays to the process.

Security / Deposits.

More detail is required regarding the security / deposit requirements. For example, the period and type of deposit required, the calculation and application of interest, and the return of such securities / deposits.

Data Room Confidentiality:

The wording for the data room is not specific enough to bring existing contracts (transitional projects) within the purview of the usual type of Regulatory exclusion clauses. This needs to be addressed in the Regulations.

Ofgem Requested Feedback on Key Features of the Regulations

We have outlined here Centrica's views on some of the questions posed in the covering letter. We have also provided specific comments on the text of the draft tender regulations, appended to this letter as Annex 1.

The intention of the consultation was to set out the framework for the tender process:

To some extent this was achieved but there remain some significant areas requiring clarity. We believe the Tender Regulations would benefit from an explicit Principles addendum to aid clarity around intent.

Policy Translation: The covering letter specifically asked for views on how Ofgem has translated the current policy proposals into the framework "for developing processes to enable Ofgem to run an efficient tender process". Unfortunately, this first draft lacks sufficient detail and / or the supporting documentation to be able to comment on whether the current policy has been fully translated.

Consortium / Coordinated Bids: The consideration of bids that cover several projects should be included in the tender regulations. As currently drafted the bids appear to be conceived as a single bid per project. A benefit of a tender window approach is that it allows parties with projects in similar locations on similar timescales etc. to (potentially) share infrastructure and costs. Combined bids could deliver some significant savings and should be accommodated in the regulations and associated documentation.

Comments on - the tender process details provide clarity on the following requirements:

- **Pre-conditions a developer needs to meet for entry into a tender round**
Centrica notes that the process refers to criteria but not the specific details of what all of the criteria will cover. On a related theme, the bidder criteria also needs to be established i.e. financial suitability, experience in wind / transmission projects etc.
- **How and when a tender process will commence**
This remains unclear. Centrica believes 3(1) and 3(2) should actually provide for two notices/dates, one for expressions of interest, then an interval (suggest a range e.g. within [8] weeks) then notice of ITT being issued.
- **Details the tender process particularly in terms of requirements on developers to notify Ofgem when they have met the pre-conditions**
The primary conditions are clear but the remainder lacks clarity.
- **Ofgem to publish certain information and tender documentation at the different stages of the process**
Agree that there is a requirement on Ofgem but it still does not define what and when.
- **Bidders to respond within specified timeframes.**
We are concerned that people will not get consistency or knowledge until each notice is issued. E.g. bidders need to know that they can always expect a (minimum and maximum) [x to y] week period to respond.
- **Ofgem to assess bids in accordance with pre-determined criteria.**
There is a need to establish consistency between processes and criteria. Centrica suggests the regulations require Ofgem to publish in advance of 3(1) and 3(2) what the criteria and documentation will be for all notices issued. In advance of any subsequent change to the criteria or tender documentation, Ofgem should provide for consultation with interested parties, allowing at least [12] weeks to respond.

We also suggest a requirement on Ofgem to produce and maintain guidance on the process and responses.
- **Sets out the process for finalising the grant of the OFTO licence following the identification of a preferred bidder**
Disagree - only provides for the notification and publication.
- **Sets out the circumstances under which Ofgem may cancel a tender exercise.**
Whilst it clarifies scenarios and then covers re-tendering it still lacks clarity on the process for OFTOoLR process. Centrica remains concerned at the failure to make provision for an OFTOoLR in the enduring regime.
- **Provides for Ofgem to undertake RAV assessments in respect of offshore transitional projects.**
Centrica believes the administration costs for calculation (and monitoring if required) of the RAV should be recovered as part of the overall Ofgem Tender administration costs. It would also be useful to have an indication of the level of "financing cost" to be applied to the RAV.

It would be useful for the tender regulations to clarify the link between the developers and the OFTOs. It is vital that developers have the same or equivalent right to the full onshore provisions for claims against onshore TOs (ONTOs).

Finally, Centrica would like to thank Ofgem for the draft tender regulations, which are a good start, however we do believe a further round of consultation will be necessary given the untested nature of this regime. This will allow all parties to comment on those items which are currently not clear before the final draft is prepared. We urge Ofgem to complete the process as a matter of urgency if the current Go Active and Go Live dates are to be achievable.

We would be happy to meet and discuss any points raised here in more detail.

Yours sincerely,

By e-mail

Fiona Navesey
Business Development Manager (Power)
Business Development
Centrica Energy

ANNEX 1

Draft Tender Regulations – Detailed Comments

Centrica believes that the Regulations would offer greater clarity if they were to be re-ordered, for example, section 3 followed by 9 and 12, then the explanatory sections containing other detail.

PART 2 Commencement Date

Part 2, item3 (1)

- Centrica has assumed that the annual window for each calendar year will be set / published at the start of each calendar year but this is not clear from the wording. Please can you clarify the intent?
- We believe that the text should make provision for two separate dates to be the subject of notices, one for the start of the Expressions of Interest process and one to reflect the start of the Tender process proper. Maximum and minimum times should be specified for the intervening period.
- In order for aspects of the later drafting to be practical (e.g. 7(1)), we believe it would be helpful to require that the Notice be published at least a specified period (perhaps [3] months) in advance of the date at which the tender exercise commences. This will allow parties to plan accordingly and submit requests etc. more effectively.
- The wording could be interpreted as one date for several tender exercises, or several dates for single tender exercises, for multiple projects. Please can you clarify?
- Are developers able to challenge Ofgem's recommendation regarding when the tender process should take place? What is the process for appeal?
- Please clarify whether the date anticipated under 3(1) is the same date as that referenced under 8.2(b), if this is the case, please insert the clause reference for clarity.

Part 2, item 3 (2)

- Please clarify the principle this paragraph is addressing. We believe it provides the flexibility to give notices for different dates where, in the opinion of the Authority, this is appropriate. The combination of 3(1) and 3(2) therefore allowing for a main tender round plus other tender processes in respect of individual projects where this is appropriate.
- Is the developer able to challenge Ofgem's recommendation regarding when the tender process should take place? What is the process for appeal?

Part 2, item 4

- Please confirm whether this is one date for all transition projects or one date per transition project.

Part 3 Qualifying Projects

Part 3, item 5 (2)

- Is it feasible that a developer could enter into more than one connection agreement for one project? If so, what is the course of action?
- The draft regulations make no reference to Round 3.
- 2 (c) “complied with other conditions....as the Authority may specify”. We recognise the need for flexibility but would welcome non-exhaustive examples of additional conditions Ofgem feel may be necessary.

Part 3, item 5 (3)

- 3(a) We would welcome clarity on how security is to be provided, and where cash security is needed; how interest will be paid and calculated whilst the cash is held and the provisions for returning any excess security once the tender process is completed, or sooner where it becomes clear that the funds held are excessive.
- 3(b) If subsequently the Authority determines in favour of National Grid, under standard condition C9 of the electricity transmission licence, will the security be refunded?

Part 3, item 6 (2)

- 2(d) Centrica welcomes the wording has been amended to incorporate balance sheet projects / companies that do not experience financial close.
- 2(e) We have particular concerns on this point. Normal practice in the commercial contracts underpinning developments would be the inclusion of a confidentiality clause as to the detailed terms. The current wording here is not specific enough in our view to bring such contracts within the purview of the usual type of regulatory exclusions clause. In order for parties to be able to include such contracts in a data room, we believe that the provisions of the Regulations need to be much more specific as to what must be included in the data room. We have provided draft text for consideration below. An alternative approach may be, in each case, for Ofgem to order the release of specific documents.

Ofgem shall require each developer to populate their data room with “all documents and information that the developer has in its possession that relates to the developer’s project and may reasonably be required by a bidder in connection with an application for the offshore transmission licence for that project”.

- 2(f) What is the definition of “committed” and how will this be demonstrated? In addition, we believe that the criteria for the selection of preferred bidders need to be published in advance. If the generator has serious concerns about the potential status of the successful bidder, there needs to be an appeal mechanism. This mechanism should also include remedies for persistent failure to perform by the OFTO.
- 2(g) More guidance is needed regarding the Independent Engineering Audit Report. What does it need to contain and how will the costs of this audit be recovered? It is not clear who is required to provide the audit, should it be the developer or Ofgem's responsibility to commission this independent engineering audit report?

- 2(h) “Complied with such other conditions.....”. As previously, we recognise the need for flexibility but would welcome non exhaustive examples of additional conditions Ofgem feel may be necessary.
- 2(h) This provision is potentially wide ranging and should include some form of time limitation, both in terms of the time the Authority has to publish such a Notice and the time for the developer to respond.

Part 3, item 7

- (1) In order for this to be practical, the notices in 3(1) or 3(2) need to be issued a reasonable period in advance of the tender exercise commencement date, as mentioned above.
- (4) Please provide non exhaustive examples of the kind of further information, clarification or documents which may be required. This provision is potentially wide ranging and should also include some form of time limitation, both in terms of the time the Authority has to request such data and the time for the developer to respond.

Part 3, item 8 (1)

- 1(b) Please can you provide an indication of the likely amount that will need to be secured. In what instances will a cash payment be required over a deposit / security? Please also clarify the period for which such security will be needed, and in the case of cash deposits, what arrangements are in place for payment of interest on unused security and later return or release of the security as and when appropriate. Clearly for transitional projects the security could be deemed the existing assets.

Part 3, item 8 (2)

- 2(b) Is this the same date already published in the annual tender windows, at the beginning of the calendar year? If this is the case, as before, please reference back to 3(1) or 3(2) as appropriate.

Part 3, item 8 (3)

We believe it would be appropriate to provide a form of appeal mechanism here.

Part 4 Expressions of Interest

Part 4, Item 9

As before, we believe the clarity of the Regulations would be improved if 3(1) and 3(2) envisaged two dates, relating to Expressions of Interest and Invitation to Tender separately.

- 9.2(c) It would be better to give greater clarity, in advance of the Expressions of Interest process, as to the content of the prequalification questionnaire. It would also be helpful to consider whether, in fact, a prequalification process (covering basic information as to whether an applicant was suitable) could perhaps be carried out at any time, renewable annually to improve the efficiency of the process.

Part 4, Item 10

It would be beneficial for developers to provide input to the criteria for potential bidders in advance of the Expression of Interest stage of the tender process. There should also be some generic (non-project specific) criteria that could be published upfront, i.e. ability to demonstrate experience in the end-to-end delivery of a similar project; financially viable

company etc.

Part 4, Item 11

An appeal/dispute mechanism should be provided.

Part 5 Invitation to Tender Stage

More information is required on what will be included in a detailed statement of requirements and the relevant commercial information included in the invitation to tender documentation.

Part 5, Item 12 (General)

- Centrica believes it may be desirable to provide consistency between tender processes, ensuring that the criteria etc. are not all different for different projects. Even if parameterised, the basic outline should be standard.
- A change process for altering Expressions of Interest and Invitation to Tender documentation and decision making criteria is required. Ofgem should be required to consult allowing a reasonable period before changing.
- The timing between items 9, 10, 11 and 12 is unclear and the maximum and minimum timescales for each stage should be specified to provide certainty to respondents and allow the industry to manage workload efficiently.

Part 5, Item 12 (3)

- Confidentiality will require special consideration, in particular for transitional projects where existing contracts with O&M providers, or others, may be already protected by existing separate confidentiality agreements with the developer / generator.
- Greater clarity is required as to the point at which the confidentiality agreement is required and whether this interacts with the item on the data room, reference our points above. Potentially, consideration should be given as to whether this agreement is required before the status of qualifying bidder is conferred.

Part 5, Item 12 (4)

- It is difficult to provide full comments on the reasonableness or appropriateness of the tender documentation required in the absence of the supporting detail e.g. content of the “detailed statement of requirements”. As previously stated, consistency (of principles) between years and tenders is required.

Part 5, Item 12 (5)

- Regarding the tender evaluation criteria, will these be developed with input from the developer? Can the developer challenge the criteria? Again it is difficult to provide full comments on the reasonableness or appropriateness of this section in the absence of the supporting detail e.g. content of the “detailed statement of requirements”. As previously stated, consistency (of principles) between years and tenders is required.

Part 5, Item 13

- 13 (3) (a) (and relates to 5(a)). Do the potential bidders have the right to request an extension to the specified timescales? The impact on project delivery should be considered if this is the case.

- 13 (3) (a) in addition to the point above, the Regulations should specify a minimum and maximum time allowed for this activity and make provisions to apply formally for an extension.

Part 6 Evaluation Stage

The process seems to assume a single tender per project and does not appear to take into account co-ordinated tender bids for multiple projects and innovative transmission solutions.

The consultation provides for Licence periods of less than 20years. What criteria will be applied for any such award and how will the tender process and subsequent revenue stream be modified to allow for this?

Part 6, Item 14

- As part of the evaluation process the Authority should consult with the developer about the evaluation criteria.
- 14 (1) This paragraph should refer back to the criteria set out in the Invitation to Tender.
- 14 (1) (a) The section references “certain matters”. Please can you provide non-exhaustive examples of the kind of matters envisaged here?
- 14 (1) (b) - on the basis that a reserve bidder may also be the preferred bidder for an alternative project (with a concurrent tender process), the reserve bidder may withdraw from the reserve project - what is the process if both the preferred and main bidders withdraw? What timeframe does the preferred bidder have to accept?
- Reserve bidder is also omitted from Part1 Interpretation.
- Consideration should be given to whether a reserve bidder is really necessary since the preferred bidder will make a firm and final offer. A more flexible system of reference of secondary bidders is preferred. This ensures there is some contingency without limiting the selection to a single reserve.
- 14 (3) Financial credentials should be added to the list of matters that need to be resolved to the Authorities satisfaction.

Part 6, Item 15

- Will there be an appeals process for the developer and / or the bidder. Any appeals process will need to be fast and efficient to prevent delays to the timetable.
- 15 (3) (c) The regulations should include a description of how the payment scales associated with this “payment” will be calculated and how any changes will be consulted upon and publicised.
- 15 (3) (c) Please clarify the purpose of the payment under this section, if this is for the actual licence, then presumably this would relate to the amounts payable under the Licence Regulations. If this is the case then please reference the actual regulation and confirm whether an amendment to those Regulations might be required.
- 15 (4) (a) should reference 14(2).

Part 8 Cancellation of Tender Exercises

Part 8, Item 3

- This part suggests there will be up to two tender rounds. Please can you confirm that this is the approach? Will there be the option of further rounds?
- Will the second round be judged on the same criteria or will it be possible for Ofgem / the developer to amend in order to address the previous round's failure?
- If no bidder is successful (and / or fails because of Ofgem criteria?) does the developer still have to pay for the tender process? Especially as there is no option for the developer to be the OFTOoLR in the enduring solution.
- 18 (1) Please review the conditionality of statements (a) to (e). We believe that current statements (c) and (d) should be merged and be joined by an "and" rather than being alternatives, such that the tender process is only cancelled for that reason if both the preferred and reserve bidders withdraw.
- 18 (3) Please clarify the process that would apply if the developer does not apply under this clause. The absence of a formal OFTO of last resort process may lead to investors perceiving an unacceptable level of risk.
- 18 (6) This paragraph may need rewording. We believe it is probably the case that the developer should not be in a position to inappropriately influence the OFTO. Is the intention of the paragraph to give effect to separation between the entities? In addition, the Licensee should not be restricted to being a subsidiary of the developer, but should be able to be another company within the same group providing appropriate separation is in place.

Part 9 Regulatory Asset Values

Part 9, Item 21

- 21 (2) (4) Only efficient construction costs are noted here. These items should also include efficiency derived developer costs and financing costs. As currently drafted it appears that only construction costs will be considered.
- In addition, how will contractual costs be remunerated given that O&M contracts may need to be terminated with the existing provider.
- 21 (5) "Where a transitional tender exercise has been held (is this the same as awarded?) the Authority shall require the owner of the Asset.... to make payment ...for Ofgem to derive the RAV). As this is an admin cost this should be recovered as part Ofgem's recovery of the tender administration costs.
- 21 (5) If it is the case that the arrangements require a payment, we do not fully understand why this should differ between the transitional and enduring processes. In addition, as this applies to arrangements "after the tender has been held" is the owner of the asset the developer or the OFTO? The costs could be underwritten as a deposit / security fund in the same manner as the enduring tender process. The developer is already committed to the process as the assets are already constructed / part-constructed, therefore it would be more appropriate for the bidders to cover these costs.

Part 10 Cost Recovery

Part 10, Item 22

- The tender costs should be clear at the start of this process. It is not reasonable for Ofgem to determine part way through the process that additional payments / deposits / securities are required from the developer.