

DONG Energy Power A/S

A. C. Meyers Vænge 9
2450 Copenhagen SV
Denmark

Tel +45 44 80 60 00

Fax +45 44 80 60 00

www.dongenergy.com

1 September 2008

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

Dear Mr Clay

Offshore Electricity Transmission – Tender Regulation Consultation

Thank you for the opportunity to comment on the draft regulations issued on 25 July 2008. This response is made by DONG Energy A/S.

Entry Criteria (Regulation 5(2))

As noted previously, DONG Energy is of the view that the proposed approach to tendering (other for transitional projects) will introduce delays to the development of offshore wind, and that developers should be given the option of building the assets and transferring them to an OFTO post completion. We have also made the general comment (in our response to regulatory policy statement of 13 June) that DONG Energy is concerned that offshore developers will be disadvantaged vis-à-vis onshore developers if they have to enter into lease agreements with Crown Estate before applying for a connection. This situation is even worse if, prior to the tender, the developer should have to serve an Option Notice on the Commissioners. According to the development process followed by DONG Energy, we would not expect to serve the option notice until much later in the process ie some time after the final investment decisions has been made. This is on the basis that the Crown Estate offers an option to lease which itself is sufficient for the project to proceed, serving the Option Notice will create costs and liabilities which cannot be supported until (for example) turbines have been contracted, finance arranged and of course the grid offer secured. Putting an earlier obligation on the developers will hinder and delay projects, if not making them impossible to implement all together. If Ofgem and BERR were minded to go down this path, the only appropriate condition should be that the Developer has entered into an Agreement for Lease with the Crown Estate, not that it has also exercised the option.

More generally the regulations also say that “the developer has” done certain things, whereas in fact it is likely to be an affiliate (or a third party acting on behalf of the developer) that has done some of them, and the regulation should make this clear.

Evaluation of Tender (Regulation 14(3))

An additional and critical condition is that the preferred bidder has provided a performance bond to a value sufficient to guarantee completion of the works to be undertaken, and this needs to be included here.

In addition a new regulation is required specifying the matters required under the transitional tender exercise which shall include 3)(b).

Cancellation of Tender Exercises (Regulation 20(2) and (3))

This is not drafted in the way we had understood for the “OFTO of last resort”, ie where cancelled, according to these regulations, the Authority has to start another tender and only if there are no expressions of interest will the developer be invited. Given that it is anticipated that a full year will be required for the first tender process, and it will only start some time after Go Active, we don’t see how there will be time to conduct a second tender if the first is unsuccessful. This revised approach has never been suggested in any of the information to date, and the Authority should go straight to consideration of the developer’s application if the first tender is cancelled.

We are entirely unclear what regulation 20(6) means.

Regulatory Asset Value (Regulation 21(2 and 4))

The RAV should include not only the cost of construction of the regulated assets but the cost of acquiring (where relevant), developing and financing them, including all necessary costs of licenses and way leaves and any other costs necessary to construct the assets. We additionally think that the costs which the developer will have to meet in respect of the tender exercise (Including establishment of the RAV pursuant to regulation 21(5)) should included.

General Issues

There needs to be a right of appeal against decisions made by the Authority under the regulations.

Yours sincerely

PP 

Ivan Christiansen
Head of UK North West & Onshore
DONG Energy Power
Tegholmen
A.C. Meyers Vaenge 9
2450 Copenhagen SV