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Dear Richard

**Re: Offshore Electricity Transmission – Draft Tender Regulations**

As you are aware E.ON UK is supportive of the competitive tender approach to awarding offshore transmission licences, as such we welcome this opportunity to comment on the next level of detail off the tender process.

Clearly, as you state, much of the detail of the tender documentation has not yet been made public so our comments on the tender regulations are limited to the information consulted on to date. This raises a general caveat on our comments on the drafting of the tender regulations, as in some areas more information is required on what is intended before it is possible to comment on the appropriateness and correctness of the drafting.

For example with regard to item 6(2)(e) at present it is not clear what will be required to be in the data room and thus what will be required to satisfy the authority? In item 6(2)(f) it is not clear what form the commitment will take? Further in item 6 (2)(g) more guidance is needed on what an independent engineering audit should contain. It is not clear yet who is required to provide the audit and how the costs will be recovered. With regard to item 9(2)(b), there should be more guidance on what information in respect of the qualifying project will be included in the expression of interest documentation.

Provision to enable 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. One of the major benefits of a tender window approach will be that it will enable bidders tendering for projects in similar locations on similar timescales to offer a combined more economic and efficient connection solution.

Our specific comments on each of the sections of the tender regulations follows below.

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Item 5 (2) (a) refers to the need for a developer to have entered into a CUSC bilateral connection agreement with GBSO to qualify for a tender. A distribution connected, license exempt project would not qualify for this criteria and suggest the wording is changed to include "or a distribution license".

Item 5(2)(b) requires that the developer has served a valid option notice. Under current Crown Estate Agreements for Lease this requires projects to have received all necessary consents. This is a high hurdle and we do not believe it is the intention from the lease arrangements referred to in the June 2008 consultation. We agree that a developer should be the holder of the option on the Crown Estate lease, in order to avoid speculative connection applications to National Grid. However, the OFTO appointment process must be progressed in parallel with the developer's consenting activity to ensure the connection can be designed and consented in similar timescales to the offshore windfarm. This is essential in order to provide for timely connections to enable projects to meet the connection dates that projects aspire to.

With regard to Part 6 the concept of a reserve bidder has not been clear from previous consultations on the regime. A preferred bidder will make a firm and final offer and as such a reserve bidder is unnecessary. If a reserve withdraws or is unable to take on a role then the replacement process is not clear. A more flexible system of reference to secondary bidders would be preferred.

In item 14, as part of the evaluation process the Authority should consult with the developer about the evaluation criteria. This reflects the intention of some aspects of the high level objectives of the process outlined in previous consultations.

In respect of Part 8, the requirement to have a second round of tenders upon the cancellation of a tender has not been included in previous consultations. If an OFTO is required by the Go Live date, there is unlikely to be sufficient time to perform two tenders and then seek an OFTO of last resort. Either the OFTO of last resort process is managed in parallel with the competitive tender process for transitional projects in the April 2009 tender or Ofgem grants derogation from the offshore transmission licensing requirements. The derogation could be time limited to allow for time to establish a licensable entity capable of operating in the last resort capacity.

Item 18 (2) where the authority cancels a tender exercise, either under 18(1)(a) or (b) it is not clear where the costs of the cancelled tender and re-tender will be borne. If a tender exercise were to be repeated several times the costs incurred could be considerable. The mechanism for treatment of the secured amount in the event that the tender is cancelled is not clear. If the developer withdraws from a project, then does it go to the OFTO? With reference to item 18(2), if Ofgem cancels the initial tender process, either

under 18(1)(a) or (b) then is there a requirement to give a second amount of security for a new tender?

There is no explicit driver on Ofgem to prevent the size of security from varying from the initial amount or avoid the need for further secured amounts. If the amount to be secured changes or a tender fails there is a need to explain to the developer why additional costs have been incurred. There should be an obligation on the Authority to conduct an efficient, economic and timely tender process, to give both developers and prospective OFTO's comfort that amounts that they will be required to secure will not escalate, particularly where a tender is cancelled under 18(1)(b).

Item 21 (2) should include efficiently derived development costs and finance costs. As currently drafted it appears that only construction costs will be considered.

Item 22(5), who is responsible for the cost of determining the RAV? Will the costs fall to the developer or the OFTO?

Item 23(3), the scale of the payments to be paid by the developer is not clear. The ability for Ofgem to revise the amount of security required is not appropriate, either it should be clear and fixed at the outset or the developer should have the option of providing an indicative amount which is reconciled upon completion of the tender.

We hope you find our comments helpful and look forward to considering the tender documentation when it is released. If you would like to discuss our response further please do not hesitate to contact me.

Yours sincerely

Guy Phillips  
Senior Project Developer