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5<sup>th</sup> September, 2008

## Offshore Electricity Transmission - Draft Tender Regulations July 2008

Dear Richard,

We welcome the opportunity to respond to this Regulatory Policy Update. This response is provided on behalf of the RWE group of companies, including RWE Npower plc, RWE Supply and Trading GmbH and RWE Innogy.

These draft tender regulations are based upon agreed policy principles as set out in the recent Regulatory Policy Update<sup>1</sup>. Some aspects of the regulatory regime design are still to be finalised and subject to ongoing consultation. It would be helpful to understand when these outstanding issues will be resolved as some key to the formulation of the tender regulations, while others, such as those related to access and charging, are critical to the final regime design. As part of the process to refine these regulations, we would like clarity on how some of the obligations need to be met, such as the format for giving a commitment to transfer the regulated assets to the successful bidder (Condition 2 (f) of transitional pre-condition).

We agree that the tender regulations need to deliver a clear and unambiguous process for awarding TO licences, although we endorse Ofgem's approach that seeks to balance formalisation of the tender process in legislation with the need for flexibility within the tender exercise.

### PART 1: INTRODUCTORY

No comments.

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

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## PART 2: COMMENCEMENT DATE

- We support the ability of the Authority, under 3(2), to initiate tender exercises separate from the annual process and believe that this could avoid a delay of close to one year for a project which just misses the window of pre-qualification.

## PART 3: QUALIFYING PROJECTS

- In clause 5. (1) (c) there is a reference to complying with other conditions specified under regulation 3 (1) or (2). As regulation 3 (1) or (2) only relates to the date of the tender, so it is not clear what these conditions might be.
- In 5 (2) (b), the serving of a valid Option Notice is far too late in the project development process to be treated as a pre-condition for the commencement of a tender exercise. A developer will normally enter into the Lease when he has obtained all the necessary consents (a pre-condition) and has placed the main construction contracts. If a tender process commences at that time it is unlikely the transmission assets will be designed, purchased and installed prior to the wind farm being capable of exporting power. Alternative approaches are either the submission of the applications for all necessary consents or the obtaining of all necessary consents and property rights (as for transitional projects).
- Under clauses 5 (2) (a) and 6 (2) (a) the agreements required with the GBSO need to be distinguished as they contain different processes for production of the connection offer.
- Clause 6 (2) (h) is not linked back to a condition in these regulations in the same way that enduring projects are under 5. (1) (c). The Authority's scope to publish additional conditions needs to be limited.
- In clause 8 (3), there should be a right of appeal against the Authority's decision and the timings should allow the project to be treated as a qualifying project should the appeal be upheld.

## PART 4: EXPRESSIONS OF INTEREST STAGE

No comments.

## PART 5: INVITATION TO TENDER STAGE

No comments.

## PART 6: EVALUATION STAGE

No comments.

## PART 7: LICENCE AWARD

No comments.

## PART 8: CANCELLATION OF TENDER EXERCISES

- Clause 18 (2) introduces a second tender where there are no initial expressions of interest. This appears to be an additional step from that set out in the regulatory Policy Update.
- Under clause 18 (3), the developer is invited to apply to be appointed OFTO of last resort. We would like clarification of whether this, in effect, prevents any OFTO affiliated with the developer from entering the tender process at the expression of interest stage.

## PART 9: REGULATORY ASSET VALUES

- For completeness, this section should also indicate the process that will be followed to determine the RAV under the enduring regime, i.e. how competing tenders will be assessed ahead of licence award and setting of the regulated revenue stream;
- Paragraph 21 (5) requires some tightening-up as drafted it looks like an open-ended commitment to pay by the developer. It should be noted that this charge represents additional costs to the developer.

#### PART 10: COST RECOVERY

No comments.

#### PART 11: SUPPLEMENTAL

No comments.

In our view, Ofgem needs to address a weakness that remains in the regime. This relates to projects that have obtained or expect to obtain onshore connection offers ahead of go-active/go-live, but whose connection works will not be completed until the enduring regime. As drafted, there are no provisions for the developer to recover neither any costs incurred in the onshore works undertaken nor any obligation on the OFTO to use the onshore connection. We believe strongly that this needs to be corrected as it has the potential to delay projects until the enduring regime to avoid the costs of stranded works.

We hope these views are helpful and would be happy to discuss them further.

Yours sincerely,

By email so unsigned

Charles Ruffell  
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