

## **DECC/Ofgem Offshore Transmission External Communication Session, 8<sup>th</sup> December 2008**

This note has been put together by DECC/Ofgem to document the key issues raised at the offshore transmission external communication session, which was held on the 8<sup>th</sup> December 2008. The first section provides a brief overview of the five presentations made during the event. Copies of these slides along with the list of the attendees present at the event are available on the Ofgem and DECC websites.

<http://www.ofgem.gov.uk/Networks/offtrans/edc/Pages/edc.aspx>

<http://www.berr.gov.uk/whatwedo/energy/sources/renewables/policy/offshore-transmission/page28604.html>

The second section details the questions raised and responses given during the three question and answer sessions.

### **Speakers**

Duarte Figueira, Director, Renewables Deployment Team DECC  
Colin Green, Head of Offshore Transmission Policy & Incentives Ofgem  
Sue Harrison, Head of European Energy Markets DECC  
Bridget Morgan, Head of Standard Framework Development Ofgem  
John Greasley, GBSO Offshore Project manager NGET

### **Introduction – Duarte Figueira**

Duarte welcomed attendees, outlined the agenda and opened the session with a brief summary of the aims of the day which were to provide additional clarity on:

- Offshore Transmission project status
- EU Third package
- Design of the regime (as set out in the November 2008 DECC/Ofgem consultation document)
- Implementation issues; and
- The key stages, next steps and dates in the implementation process

### **Offshore Transmission overview and context: view from DECC - Duarte Figueira**

Duarte presented an overview of the offshore transmission regime from the DECC perspective. He discussed the background to the regime, its benefits, the SEA and Round 3 timeline and the November 2008 consultation.

### **Overview of EU Third Package of Legislative Measures for the Gas and Electricity Markets – Sue Harrison**

Sue discussed the unbundling requirements within the EU Third Package. She outlined the context of these requirements, the legislative process and the three unbundling options that member states may choose between.

### **Overview of the Regulatory Regime and latest consultation – Colin Green**

Colin provided more detail on the key regulatory proposals and outlined the recent policy developments in the November 2008 consultation. He also gave an update on the tender process.

### **Implementation of the Regime – Bridget Morgan and John Greasley**

Bridget gave an overview of the implementation proposals. She explained why changes are being made and what changes are being proposed. She also set out the ongoing development of change proposals. John Greasley discussed the impact of the offshore regime on the role of NGET.

## **Question and Answer Session**

### **Can OFTOs own offshore windfarms?**

The intention of the Third Package is clear – generators will not be permitted to control transmission systems. Developers must make their own judgement as to whether their arrangements meet the provisions of the directive. The definition of control is the one used in competition law and does not prevent minority shareholdings.

### **There is a sense that the latest consultation has pre-judged the outcome of the Third Package. Why can the Scottish model not be extended offshore so that generators could become OFTOs?**

At this stage we do not know the final shape of the Third Package, but we do not expect the Scottish system to be fully consistent with any of the three proposed models. The Scottish companies may seek to be certified under the derogation for arrangements which ensure more effective independence than the Independent Transmission Operator (ITO) model which includes some requirements for separation which are stricter than those currently in place in Scotland.

### **What are the main reasons why the existing Scottish model does not meet the independent system operator model?**

The ISO model does not allow the owner of the assets to have any say in operation, maintenance and investment decisions. This is not the case in Scotland, so it is likely that changes, to the industry codes for example, will be required.

### **Before the details of the Third Package emerged many developers had comfort that ultimately they could bid to own the assets, whatever risks there were in the regime. How likely is it that a compromise will be reached to allow this?**

We expect that the options other than full unbundling will only be applicable to those vertically integrated companies that already exist when the Directive comes into force.

Those parties that are developing offshore generation and also currently own assets elsewhere in Europe will need to seek their own legal advice on the implications of the proposals. The objective today is to stress the intention of the package so that our Stakeholders can start considering its impact on their businesses.

### **If the three options in the Third Package only apply to existing vertically integrated companies, then these incumbents appear to have more**

**flexibility in meeting the requirements of the Third Package than new entrants. How is this competitively fair?**

It is difficult to make legislation across twenty seven member states, all with different starting positions. Although in theory vertically integrated companies have more unbundling options to choose from, the ITO model is untried and will be reviewed three and a half years after the directive enters into force to ensure that it guarantees effective independence of the transmission operator.

**Where a company has interests across Europe, which regulator will certify compliance with unbundling requirements?**

The transmission system operator will require certification from the national regulator of the country in which it is operating. This will then be endorsed by the Commission. A new European 'Agency' of national regulators has been proposed as part of the Third Package with the authority to resolve any cross-border disputes that may arise.

**Some of the assets in the transitional regime are built or almost built. Will unbundling requirements apply?**

The Third Package is expected to enter into force in summer 2009, but the award of licences will not take place until the following year. However, Member States have 2½ years to transpose the requirements into national legislation. It is up to developers to ensure that they comply with the unbundling requirements by that time.

**How can consents be achieved by a company seeking to be compliant with EU unbundling?**

We have set out a number of pre-conditions for projects in the transitional regime. But we have not included EU unbundling because we do not yet know precisely what the directive will require and when it will need to be implemented. We have set out a regime whereby generators can bid but they must also comply with EU legislation. It is clear that generators will not be allowed to control transmission systems from the date when implementation is required.

**What more will be known about EU unbundling when the OFTO of Last Resort proposal is finalised?**

The OFTO of Last Resort proposal is subject to consultation. The key point is that the Third Package is progressing through the legislative process. Agreement is expected in summer next year. However there is the possibility that we will not know the precise wording of the Directive when finalising our tender process and that is something we will have to address.

**How do the PPP style revocation mechanism, the Energy Act administration regime and the OFTO of Last Resort proposal interact?**

We have set out revocation provisions that are similar to onshore. Special administration may apply but is also discretionary. Even if the legislation did apply, there is a question mark over whether a special administrator would be appointed in the event of insolvency. The OFTO of Last Resort proposal is there as a backstop that could be used in certain circumstances although it may be beneficial for it to be used more widely.

The regime is designed to allow investors to step in and resolve any issues that may arise. Where they are unable to do so, we have powers to step in and protect the interests of the generator. If stakeholders consider that we have not yet provided sufficient clarity on this process, we would welcome feedback on the specific aspects which require further clarification and will aim to do so.

**At what point in the Round 2 and Round 3 Crown Estate leasing process will a developer be required to have reached in order to kick start the tender process?**

There are a range of preconditions that would need to be met for the tender to commence. Following responses to the June 2008 policy update we have developed our thinking on the minimum Crown Estate (CE) lease requirement. Our updated proposal is that, at a minimum, a lease option agreement would be required from CE before the tender process could start. This is in line with responses received to previous consultations.

The qualification criteria for those projects that sit in the transitional regime are currently being developed further. Ofgem will be engaging with developers as to how they will satisfy these pre-conditions.

**What is the process for replacing an OFTO?**

Failure to maintain transmission services will result in a licence breach. The mechanism by which the licence will be revoked is currently being consulted on. Our current proposals are similar to PFI arrangements, which will allow shareholders to exercise their step in rights and rectify the problem where possible, though a serious breach would require revocation and appointment of an alternative licensee. In terms of replacing the OFTO, we have set out the possibility of retendering the project or extending the OFTO of Last Resort proposals to cases of abandonment. We would welcome thoughts and comments on these issues.

**We do not accept the time and cost savings that the regime claims to deliver for generators.**

We have set out in various consultations the speed at which the regime will be deployed and the benefits of innovation.

£15 billion of new transmission network is needed offshore. Developing a considered regime that allows certainty and investment to take place over the long term is therefore essential.

We also need to cater for existing projects. The transitional regime avoids delays by allowing construction to proceed. It has been suggested that the generator is best placed to build the assets at the lowest cost, but if you look to other areas where competition has been opened up you will often see innovation and significant efficiencies.

**Do you anticipate that there will be direct agreements between investors and Ofgem in the transitional regime?**

We do not anticipate this. The licence conditions will ensure that there are several stages of escalation prior to revocation of the licence, giving investors sufficient opportunity to exercise their step in rights.

**Will the 20 per cent permitted capacity increase lead to over design?**

The system will be designed according to generator requirements. We are mindful that the replacement of generation assets is rarely on a like-for-like basis. The incremental capacity increase allows changes in capacity to be accommodated. However a generator may request increased redundancy to accommodate future requirements and this would not be affected by the 20% constraint on additional capacity.

**Given that the generator will take on the risk of network availability, can it have some input into the selection of an OFTO and what is built?**

We have received a number of comments about generator input in response to the tender consultation. If EU unbundling prevents developers from bidding in the tender process, there is the potential for them to have an input into OFTO selection. We have also previously set out that the developer ultimately has the right to veto the selection of an OFTO as it needs to agree to any change to the connection agreement. We have also set out that we will engage with developers regarding the assessment of variant bids.

We are considering the role of the developer but it is important to recognise that generators onshore also take on energy risk. Compensation is paid for the first 24 hours. After this point the compensation regime changes and would not meet energy costs.

**The treatment of offshore platforms in NGET's charging proposals will damage investor confidence in the proposed regime.**

National Grid has clear licence requirements and is consulting on onshore and offshore arrangements. This consultation has not been finalised and NGET's proposals will ultimately be signed off by Ofgem.

**How will the conclusions of the Transmission Access Review (TAR) impact upon the regime, especially with regard to picking landing points?**

The offshore regime is about appointing OFTOs and the TAR is examining how we can facilitate early connections. Clearly there are potential blockages for those attempting to connect to the system and the TAR will look to provide solutions to some of these problems.

One of the key advantages of the offshore regime is the flexibility it offers; in particular the opportunity to connect to parts of the network where there is spare capacity.

The SEA has also considered the interaction between onshore and offshore development.

**A more strategic approach to offshore network development could help solve some of the onshore problems.**

The work of the SEA should enable a more strategic approach.

**What information can be provided on the identity of investors who are interested in becoming OFTOs?**

We have organised a conference with 50 or 60 investors to take place on the 9 December in the Conference Centre, BERR, 1 Victoria St and we have also held private discussions with interested parties. We cannot provide names at this stage. The regime has been designed so that it is an attractive investment and provides a huge amount of certainty.

**Not aware of consultation until after it had closed. Suggest that in the future the Ofgem/DECC mailing list should be used to inform stakeholders of any future NGET or related consultations.**

We have offered to use our distribution list to make Offshore Transmission stakeholders aware of any consultations which National Grid would like to draw their attention to. In future, when we receive a request to circulate information about an upcoming consultation from National Grid we will circulate details to the stakeholders on our list.