



Legal, Regulation and Compliance

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Thursday, 02 April 2009

Richard Clay
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Ofgem
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Dear Richard,

**Re: Offshore Electricity Transmission: Updated proposals for the competitive tender process.
Response to Draft Tender Regulations**

Thank you for the opportunity to comment on the above consultation. This response is on behalf of the Centrica group excluding Centrica Storage Ltd. We are happy for this non-confidential response to be placed on the Ofgem website and in the Ofgem library.

Overall Centrica believes that the drafting of the Tender Regulations ("Regulations") gives effect to the intent of the discussions to date. However we do have some specific concerns which we believe need to be addressed.

As most of the comments are reasonably specific, we have addressed them on an item by item basis.

1) Confidentiality provisions

a) *Part 2 "Value of Assets", Section 3(7)*

This provision obliges the developer to provide "further information" when requested by the Authority but in Centrica's view is still too narrow to definitively require the inclusion of contracts similar to the EPIC Contract.

We suggest amending it to "If requested by the Authority at any stage, a developer shall provide further information, **including all documents in the developer's possession, that may reasonably be required** to enable the Authority to estimate or assess the value of the transmission assets."

(Suggested amendments in bold)

b) *Part 13 "Notification of Offshore Transmission Licence Grant", Section 22(4)*

As currently drafted, Ofgem must disclose information about the successful bid if requested by an unsuccessful bidder. Although Ofgem has the discretion to withhold commercially sensitive information, there is no obligation for it to do so and no ability for the successful bidder to control what is disclosed. Whilst we do not believe it is likely that Ofgem would disclose commercially sensitive information to a

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competitor, this would provide some comfort by giving the successful bidder an element of control over its bidding documents.

We suggest amending the final line so that it reads, “the Authority shall inform that qualifying bidder of the **general** characteristics and relative advantages of the successful tender, **but shall not, without the written consent of the successful bidder, disclose details of any documentation which formed the subject of the confidentiality agreement entered into in accordance with Section 14(2)(a).**”

c) Schedule 1, paragraph 1(3)

We believe there is a requirement to clarify that there is a legal obligation to provide documents (as well as information) when requested by Ofgem. This is necessary as otherwise a developer may have to choose between breaching the confidentiality provisions of the relevant contract or failing to fully and effectively comply with the OFTO regime.

We suggest amending to read, “The Authority may require a developer to provide **any relevant documents and** information as it considers necessary to make its assessment as to satisfaction of the requirements...”

2) Information provision

There is a theme throughout the Regulations but 3 (7) illustrates it well – it says that “if requested by the Authority at any stage the developer **shall** provide further information...” Centrica is concerned that this is an absolute requirement and whilst parties will try to comply, may not be able to do so due to passage of time etc.

We suggest including the phrase that the developer will “use all reasonable endeavours to provide...”

Regulation 6 (referencing Schedule 2 (paragraph 2 (1)a) raises the same point by requiring a warranty to qualifying bidders that “the information in the data room is to the best of the knowledge and belief of the developer true, accurate and complete in all material respects”.

In Centrica’s view, this goes beyond what could be provided in the ordinary course of business. For example, generally in datarooms, bidders want to maximise the information disclosed. This could be impacted with such a high warranty hurdle as this may create difficulties in signing off data for inclusion. We would recommend that this be amended to providing a warranty that all relevant information in the possession of the developer has been provided.

3) Cost recovery

Centrica believes that the intention is for the developer to underwrite the costs of the tender process in full, but for the developer to be permitted to include the Ofgem charge as part of its ex post cost assessment. The Regulations are explicit on the Authority being able to recover costs and how. It is not clear how Ofgem will ensure that developers have sufficient information on the Authority’s costs, in a timely manner, to enable them to claim the appropriate sums via the RAV process. We would appreciate clarification on how this will work.

4) Selection Criteria

We believe that it would be reasonable to reflect in the Regulations a requirement for the Authority to consult [the developer] on the criteria on which selection is to be based to minimise the risk to developers of a less effective, but cheaper OFTO winning the bid.

5) OFTO failure to perform

Centrica believe developers should to be allowed to request a retender in the case of enduring failure to perform by the OFTO. This seems a reasonable safeguard given that OFTO exposure is capped to 10% of revenue and the developer/generator is fully exposed. Such an improvement would need to be reflected in the Regulations.

6) Security

Centrica notes that Part 15 covers the recovery of the Authority's tender costs and states that this will be done in accordance with a published cost recovery methodology. Part 15 covers payment by the developer, but does not recognise there will be payments to the developer when security is returned. Additionally, the cost methodology as currently drafted does not make it clear in what circumstances the developer would forfeit that security – i.e. forfeit should only occur when it is due to actions by the developer that led to the tender failure. We would appreciate clarification.

7) Independent Engineer's Audit Report

In Schedule 2 (2) (Transitional Entry Conditions) there is a requirement for the provision of an independent engineer's audit report that the transmission assets are fit for purpose. Given that transitional projects will be at different stages of development and operation, Centrica believe it would be better to specify more clearly what this report will need to cover and to what level of detail.

We will be providing a full response to the main consultation document in due course, but we trust these comments have been helpful.

I should be happy to discuss any points in more detail if you would find this useful.

Kind regards

Yours sincerely

Alison Russell
Senior Regulation Manager, Upstream Energy