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Dear Richard

Offshore Electricity Transmission: Updated Proposals for the Competitive Tender Process

E.ON UK welcomes the opportunity to respond to Ofgem's updated proposals for the competitive tender process for awarding offshore electricity transmission licences. We address each of the questions in the consultation in turn below.

Chapter 4

We support the proposal to separate the pre-conditions in both the transitional and enduring regimes. The additional flexibility this gives to developers to choose when to opt to enter in to a tender process distinct from the project status pre-conditions is beneficial. This is particularly the case for enduring projects.

It is not entirely clear what benefit it grants transitional projects, unless there will be opportunity for a transitional project to be tendered in a later tender, after the two initial transitional tenders commencing at Go Active and Go Live. Ofgem has not made it clear if there will be later tenders for transitional projects. This may be necessary depending on how Ofgem interprets the endeavours based test for projects attempting to satisfy the transitional project pre-conditions. In this regard we note that the consultation refers to 'reasonable endeavours' and the draft tender regulations require 'best endeavours' to satisfy the transitional project pre-conditions.

With regard to the detailed engineering audit report, this has always seemed to be a non-essential piece of information. As an independent report it has never been clear why the developer should arrange for this as opposed to Ofgem. Ofgem should be clear where one will be required, the scope of the report and which independent companies should be approached to prepare it. Where Ofgem requires such a report it should be requested with sufficient notice to allow the report to be completed in a timescale where the

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information contained in the report will have relevance to the tender process.

We do not support the addition of a further pre-condition requiring the developer to undertake completion within a reasonably short period. Ofgem has recognised the potential for delays to arise in project development, this additional pre-condition would place an additional burden upon developers of offshore wind projects in an already challenging environment. It also does not recognise the complexity of phased development projects. It is not clear what would happen if the undertaking is not subsequently achieved so presents additional uncertainty and regulatory risk for development projects. If the undertaking cannot be given by a developer that satisfies the transitional pre-conditions this suggests that there may be further transitional tenders after the initial two at Go Active and Go Live. Prospective OFTO's should have the capability to manage release of finance within their arrangements.

We welcome Ofgem taking responsibility to produce an initial draft model Sale and Purchase Agreement. We reserve our position on the form of the agreement until a draft of the model agreement is published. However, in principle this will have to contain terms that are acceptable to both the developer and bidders, as well as have the flexibility to address project specific issues.

In this regard we support the option for developers to offer O&M services as part of the conditions of transfer. For some of the earlier developed projects that have been designed and built as integrated projects this may be essential for the successful operation of both the generation and offshore transmission assets.

Chapter 5

We have no objection to the changes proposed to the pre-qualification stage of the tender process. Whilst it may perhaps give greater confidence in those parties selected to go forward to the ITT stage, there does appear to be a degree of duplication in the information requested at both the PQ and QTT stages. This may be a refinement in the tender process going forward that may reduce the overall timescales for the tender exercise.

We note Ofgem's comments in paragraph 5.21 regarding re-running the tender once it has received feedback from bidders and potentially bundling projects on a geographical basis to make the package more attractive. We would stress that an OFTO must be in place in time to satisfy the requirements of the Acts and that Ofgem has consulted on arrangements for the OFTO of last resort. We would also note the decisions that Government has taken on the non-exclusive licence award. Any proposal to bundle transitional projects on a geographical basis should be with the agreement of the

developers affected and not prejudice their positions with regard to draft sale and purchase agreements.

We support the financial and non-financial criteria set out. Whilst the financial criteria are clearly important we would also emphasise the non-financial criteria both in terms of any business separation requirements and the management and operational capability.

We welcome the flexibility Ofgem is seeking to afford to consortia and any changes in structure that may arise during the tender process.

The involvement of the developer at key stages of the process is essential and we welcome Ofgem's consideration of introducing formal communication routes between the bidders and the developer in the tender process to enable this. In particular this will be essential to conclude the negotiation of the sale and purchase agreement.

We consider that it is too early for Ofgem to be considering changes to the tender process when it has not yet completed a successful tender. Changes should be considered and consulted on where appropriate once sufficient experience has been gained from the initial two transitional tender rounds.

Chapter 6

We broadly support the structure of the competitive tender process as set out for the enduring regime. However we recognise the challenge and scale of investment that will be required and will work with both Ofgem and DECC to better understand and improve upon the process for delivery of enduring regime projects.

In particular we welcome the comments recognising the potential for more co-ordinated offshore transmission network development. Retaining sufficient flexibility within the tender process to accommodate different and combined approaches will be important. Whilst flexibility in the tender process is a key enabler, understanding how the flexibility will be applied in practice will be important to give confidence to both developers and prospective bidders of enduring regime projects.

Chapter 7

The grounds for disqualifying bidders and cancellation of the tender process seem sensible in the main. We would highlight the event of cancellation in Schedule 6 Regulation 19(1)(1)(i) in the event that the developer does not agree the variation to the bilateral connection agreement, this should still be subject to the referral process to the Authority for determination. The Authority's role in determining the referral will be

important given that it will have resided over the tender process and appointed the successful bidder. It is also not clear what would happen if National Grid in its GBSO capacity did not accept the TO Construction Offer under the STC.

In respect of the developer financial commitment we would welcome further clarity on the minimum credit status of an approved third party to provide a parent company guarantee to the satisfaction of the Authority.

Chapter 8

Save for our comments above we have no further comments on the draft tender regulations at this time.

We hope you find our comments on the tender process helpful. We will provide further comments in response to the final consultation on the offshore transmission regime published on 23rd March 2009 by Ofgem/DECC. Please do not hesitate to contact me if you would like to discuss any aspect of our response further.

Yours sincerely



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Senior Project Developer