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■ Offshore Electricity Transmission: Updated Proposals for the Competitive Tender Process March 2009

Dear Richard,

We welcome the opportunity to respond to this Consultation. This response is provided on behalf of the RWE group of companies, including RWE npower, RWE Supply and Trading GmbH and RWE npower renewables, a fully owned subsidiary of RWE Innogy.

General Comments

We are supportive of the competitive tender framework set out in this document and believe that the proposed updates and amendments will generally improve how the regime is delivered in practice.

From the generator's perspective, the focus is on the requirements to enter a tender and whether the project will be treated as transitional or enduring. There have been some modest refinements to the front-end process, but we are opposed to extending the pre-conditions. The generator's overriding concern is certainty about the framework that will deliver their connection in order to carry on with their development.

The introduction of greater delineation in the tender stages will require that the evaluation criteria at each stage of the process are set out clearly in advance and that information provided at each stage is consistent with the decisions that need to be taken at that stage. The indicative timings also add clarity to the process, although we continue to have some reservations that they are consistent with the additional detailed technical evaluation required for enduring projects. Clarification that generators will be able to bid, at least in initial tender rounds, but that OFTOs

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must be compliant with EU unbundling requirements when these come into force is also welcome.

Our comments on the specific chapters are set out below:

Chapter 4. Pre-Tender Requirements for Projects

The proposal to separate the pre-conditions in the transitional regime does not particularly add much to the process and we await further details of how and when they will be applied to the envelope of transitional projects already identified in the document. More important to developers is the extent of any flexibility that Ofgem will permit when considering qualification evidence and the timescales over which it needs to be provided. The significant differences between the transitional and enduring regimes mean that the implications of a project aiming for transitional status missing out and falling under the enduring arrangements are very major indeed. They could result in several years delay to a project.

We do not agree with introducing an additional pre-condition requiring developers to confirm their expectation that projects should be completed within a reasonably short period after licence grant. Under the previous proposals, the OFTO could include any risks arising from a delay between licence grant and completion of assets into its required revenue stream and we would prefer to retain these arrangements. The implication of this pre-condition is that projects currently identified as transitional will retain that status, but that there may be a requirement to hold additional transitional tenders. It is important to avoid introducing additional uncertainty into the treatment of current transitional projects as developers may delay work if there is any prospect that they will be forced into the enduring regime.

Should such a pre-condition be introduced, Ofgem needs to consider how it fits with a phased build and hence phased adoption programme. In our view, the issue of phasing needs wider consideration in any case as many larger projects will only be built on a phased basis.

Finally, we agree that developing a model Sale and Purchase Agreement is important, but request that it is developed by more widely than by those developers that have projects included in the first transitional tender.

Chapter 5: Tender Process for the Transitional Regime

The updated proposals are intended to introduce a more effective process for the selection of preferred bidders through the different tender stages. Given the value of the transmission assets under consideration and the estimated economic benefits from introducing a competitive tender-based regime, this approach and the proposed filtering criteria are appropriate. To ensure that bidders can take informed and rational decisions on which projects to submit tenders for, it will be critical that sufficient detailed information is made available at each stage. We await Ofgem's firm proposals on information release generally and on the Information Memorandum in particular.

There is an expectation that consortia will enter into the tender process and, given the new two-stage pre-qualification, some are likely to emerge following the Pre-Qualification stage as unsuccessful parties seek to find partners. On this basis, we endorse Ofgem's proposal to allow some flexibility between the Pre-Qualification and Qualification to Tender stages, subject to the new consortia meeting the minimum requirements. It is also appropriate that consortia are fully formed ahead of the Qualification to Tender stage. As the regime has yet to be tested, we agree that there should be some flexibility to consider unexpected changes during Invitation to Tender, but this should be on the basis of exceptional circumstances which will need careful definition.

We also agree that bidder dialogue and clarification will be important components of the practical delivery of the tender for both the OFTO and generator, and welcome the updated proposals in this area. Conversely, we see no justification for introducing auctioning stages into the process. In our view, it is the combination of technical competence and competitive pricing that will lead to the selection of OFTOs that can operate the transmission assets in an economic and technically efficient way over their lifetime. The benefits of this combined assessment should not be diluted by focusing solely on pricing issues, particularly given that the regime is largely untried.

Chapter 6: Tender Process for the Enduring Regime

We agree that the same broad tender principles should apply to both the enduring and transitional regimes, with modifications to the enduring arrangements that reflect the requirement upon OFTOs to design and construct the offshore transmission assets. It is correct that the tender design is refined following practical experience gained from the first transitional tenders. A key element of this refinement will be to allow sufficient time for bid preparation and assessment in the Invitation to Tender stage. This will be complex, particularly where variant bids are submitted. The successful OFTO bidder will also need to meet a greater number of conditions precedent and other contractual pre-conditions and this will extend the back-end of the process associated with the award of the licence.

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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