

Offshore Transmission Final Consultation  
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**Government Response to Offshore Electricity Transmission – A further Joint Ofgem/DECC  
Regulatory Policy Update  
March 2009**

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, RWE Supply and Trading GmbH and RWE npower renewables, a fully owned subsidiary of RWE Innogy.

**GENERAL COMMENTS**

In general, we are supportive of these updated proposals and welcome the additional clarification provided to questions raised in our response to the November 2008 Regulatory Policy Update document, notably in the area of business separation requirements.

Overall, we believe that the regulatory regime that will be established under these proposals will provide an appropriate framework for delivering offshore transmission, particularly for connection of Round 1 and Round 2 projects. The proposals provide a good balance between certainty and flexibility, recognising that the regime needs to evolve given operational experience, but the update document provides little clarity of what this flexibility may mean in practice.

In our view, the Offshore Implementation Plan sets out the key milestones and, given where we are in the process, are achievable. Go-Live should be a minimum 12 months after Go-active and this date should be set to avoid any project facing uncertainty about whether it will be treated as enduring or transitional. The Plan should also include a milestone for an early review following the first tender rounds to determine what changes might be required to deliver Round 3 projects. The tender process for these projects will need to cope with the appointment of OFTOs to provide offshore transmission infrastructure for a range of possible requirements in a given zone that are likely to be phased over a period of several years. We look forward to working with Ofgem and DECC in developing these arrangements.

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Offshore electricity generation and transmission will be influenced by wider industry developments emerging from the Transmission Access Review and work undertaken under the auspices of the Electricity Networks Strategy Group (ENSG), in particular the provision of strategic investments onshore. Although we have supported developing incentive mechanisms for the onshore TOs to provide transmission infrastructure ahead of full user commitment, from the offshore perspective our key concern is that the onshore connection assets are delivered on time as the OFTO revenues will not begin until its assets are commissioned. This is why we continue to support a delivery incentive on the onshore TO/DNO.

The ENSG is already considering the effect of supply chains and skills on the delivery of infrastructure. Although it is important that an OFTO is cognisant of the issue and can demonstrate well developed policies and processes, they will be one element in a range technical issues that will comprise the OFTOs O&M strategy and should not be given undue weight.

The most significant outstanding item in the November 2008 Regulatory Policy Update was the EU unbundling requirements and their likely impact on the proposed offshore regime. We welcome the clarity contained within the March 2009 Update and confirmation that generator affiliates will not be prevented from bidding. This has removed uncertainty ahead of the early tender rounds and allowed potential OFTOs to focus upon compliance strategies to deliver a compliant business following transposition of the 3<sup>rd</sup> Package requirements into law.

## **STANDARD DEVELOPMENT FRAMEWORK**

### ***Industry Codes & Agreements***

We have no substantive comments on the changes proposed to the various industry codes and agreements and it appears that the drafting reflects the updated policies and current baselines. A robust mechanism may be required to make timely amendments in the light of operational experience and this may need to be in addition to standard governance processes.

### ***Transmission Licence***

The licence drafting appears to reflect the updated policy proposals presented in the main body of this update document. We welcome the additional flexibility to enable certain Special Conditions to be agreed and modified on a case-by-case basis. This is particularly important in the context of the performance incentive applied for transitional projects, as the incentive should reflect the level of availability that the asset is actually capable of achieving, although this point is equally valid for enduring projects where the generator should be able to express their requirements.

The licence conditions should also provide sufficient certainty from a commercial perspective and we strongly support the policy position to restrict ex post changes to licences that have been awarded. Given this, Ofgem needs to define how it will determine where a tender has not met its "robust competition" test. An OFTO appointed under such circumstances will face periodic reviews of its revenue stream which introduces an additional risk and OFTOs need to understand this going into the tender.

In response to specific questions raised:

#### ***a) Our approach to dealing with predefined adjustments for 'known unknowns';***

We continue to support the introduction of mechanisms that provide automatic adjustments for unpredictable factors that are genuinely outside the OFTO's control. These include indexation of costs for inflation and pass-through of business rates and licence fees. We also support the updated position on refinancing, incremental capacity increases including the asset utilisation incentive proposals and the treatment of excluded services. Our preference would be for more

certainty over any additional costs that might arise as a result of changes to decommissioning obligations. Automatic, rather than a conditional pass-through mechanism would be more appropriate.

b) The OFTO of last resort proposals;

We endorse an OFTO of last resort mechanism and consider the criteria that have been set out for an OFTO of last resort direction are clear. It will be important that any direction reflects the capability of any OFTO to meet the additional obligations placed upon it.

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

Yours sincerely,

By email so unsigned

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Economic Regulation