

Inveralmond House
200 Dunkeld Road
Perth PH1 3AQ

Offshore Transmission Final Consultation
Department of Energy and Climate Change
1 Victoria Street
London SW1H 0ET

Tel: 01738 456107

Fax: 01738 456415

6 May 2009

**Government response to 'Offshore Electricity Transmission – A further joint
Ofgem/DECC Regulatory Policy Update'**

Final consultation document, 23 March 2009

Scottish and Southern Energy (SSE) welcomes the opportunity to comment on this final consultation document before the offshore transmission regime 'Go Active' in June 2009.

In general, we believe that the proposed drafting of industry codes and licences accurately reflects the high-level policy decisions set out in this and previous policy papers. We have some comments on the detailed drafting which we provide in the annex to this letter.

I hope these comments are helpful.

Yours sincerely,

Aileen McLeod
Regulation Analyst

ANNEX 1 Transmission Licence Standard Conditions

- § Condition A1 (Definitions and interpretation): The definition of “Scottish licensee” needs to be amended to exclude Offshore Transmission Owners (OFTOs).
- § Conditions B18 and E21 (Offshore Transmission Owner of Last Resort): Ofgem publishes guidance on the Supplier of Last Resort arrangements; is similar guidance to be published on the Offshore Transmission Owner of Last Resort arrangements?
- § Condition C25 (Provision of information and assistance to the Authority in relation to applications requiring the appointment of an offshore transmission owner): Paragraph 3 would require the licensee to provide the Authority with computer files that represent the national electricity transmission system. This is a huge volume of data and it is not clear why the entire system data are required for the purposes of designing an offshore connection. Clarification on the intended use of the data and confirmation that the Authority would keep such data confidential would be welcome.
- § Conditions E8 (Availability of resources) and E11 (Credit rating of licensee): These conditions refer to ‘alternative financial arrangements proposed by the licensee’, but do not place an obligation on the Authority to consult on and/or make public such arrangements. At a minimum, the Authority should be required to publish such arrangements (including any associated conditions) to which it has consented.
- § Condition E20 (Prohibition on selling electricity): Paragraph 4 is not relevant to this condition and should be deleted.

ANNEX 2 Balancing and Settlement Code (BSC)

[No comments]

ANNEX 3 Connection and Use of System Code (CUSC)

- § There is an inconsistency in the drafting of the limitation of liability clauses in the CUSC, STC and DCUSA. The proposed drafting of CUSC 6.12.1 of would, in the event of a generator causing damage to the systems of the OFTO, Distribution Network Owner (DNO) and onshore Transmission Owner (TO), cap liabilities to all parties at £1 million. This is inconsistent with the limitation of liabilities associated with, for example, large embedded generators. We suggest that the cap is set at £5 million for all parties and, to achieve this, the drafting changes to CUSC 6.12.1 and STC 4.2 are withdrawn and the drafting of DCUSA 53.1 is revised to £5 million.
- § Compensation arrangements: The illustrative examples set out in Appendix 3 are helpful, however these appear inconsistent with the drafting of CUSC 5.10 and CUSC Schedule 2 Exhibit 1 (Bilateral Connection Agreement) which state that no compensation is payable for

generators with partial redundancy. We suggest that CUSC 5.10 is revised to include for partial redundancy.

ANNEX 4 Distribution and Connection Use of System Agreement (DCUSA)

- § DCUSA 5.7.2 allows for further representation of the National Electricity Transmission System Operator (NETSO) on the DCUSA Panel. This is inconsistent with DCUSA 5.5.2 which allows for either an Independent DNO (IDNO) or NETSO Panel Member. For consistency, DCUSA 5.7.2 is either not necessary or should apply to either IDNOs or the NETSO (whichever does not, under DCUSA 5.5.2, have representation as a Panel Member).
- § Throughout the DCUSA (e.g. 10.2.3, 11.2.3, 13.3.3, Schedule 4) the NETSO is referred to as both a Party and a named person.
- § See comments above on the drafting of the limitation of liability clause (DCUSA 53.1).

ANNEX 5 Distribution Code

[No comments]

ANNEX 6 Grid Code

[No comments]

ANNEX 7 System Operator – Transmission Owner Code (STC)

- § STC 3.1.3 refers to “Offshore Compensation Payments” which, through STC Schedule 10 Part 7, is cross-referenced to OFTO Special Condition C4. The terminology is not consistent between the STC and licence.
- § See comments above on the drafting of the limitation of liability clause (STC 4.2).
- § The pro-forma terms for the OFTO Construction Agreement in STC Schedule 9 are based on the generation user Construction Agreement in the CUSC rather than the Transmission Owner Connection Agreement in the STC. No reason is provided for this inconsistent treatment.
- § The pro-forma terms for the OFTO Construction Agreement in STC Schedule 9, paragraph 2.11 would require the OFTO to stop work in the event that other transmission or distribution works are delayed. This might not be possible for the OFTO, or indeed the OFTO might incur additional costs in complying with this direction. We suggest that this clause is deleted.

- § The pro-forma terms for the OFTO Construction Agreement in STC Schedule 9, paragraph 2.25 would require the OFTO to seek confirmation from the NETSO before commencing work. This might not be possible for the OFTO, or indeed the OFTO might incur additional costs in complying with this direction. We suggest that this clause is deleted.
- § The pro-forma terms for the OFTO Construction Agreement in STC Schedule 9, section 4 does not cap the liabilities of an OFTO (although the NETSO's liabilities are capped at £1 million). We note that under the proposed clauses 2.11 and 2.25 (discussed above), the NETSO might be the cause of OFTO delay. We suggest that this clause is revised to cap liabilities for all parties at £1 million, and the clauses 2.11 and 2.25 deleted.
- § The pro-forma terms for the OFTO Construction Agreement in STC Schedule 9 do not include drafting for Appendix T (TO Event of Default).

ANNEX 8 GB Security and Quality of Supply Standard (SQSS)

[No comments]

ANNEX 9 Transmission Owner Special Licence Conditions

- § Special Condition B (Activities restrictions) of the Scottish licensees needs to be revised to accommodate the OFTO of Last Resort provisions in Standard Condition B18 (as per the drafting of Special Condition B2 in the proposed OFTO Special Licence Conditions).

ANNEX 10 Relevant conditions connected with the implementation of the offshore regime

[No comments]

ANNEX 11 OFTO Special Licence Conditions

- § Special Condition C2 (Restriction of Transmission Revenue: revenue from transmission owner services): paragraph 3 refers to the term 'CRAV' in the formula but 'CTV' in the text. This term appears to be an adjustment to the tendered price made by the Authority after the licence has been awarded. It is not clear that the offshore generator will be aware of this potential additional cost when it considers the revisions to its Bilateral Connection Agreement after the tender. Clarification on the application of this term is required.
- § Special Condition C2 (Restriction of Transmission Revenue: revenue from transmission owner services): the definition of RPI_t in paragraph 3 refers to both calendar and financial years to determine the indexation. We believe the reference should be to April to March.

- § Special Condition C2 (Restriction of Transmission Revenue: revenue from transmission owner services): the definition of PI_t in paragraph 3 suggests a over-recovery of 8 per cent before the penalty interest rate of two per cent is applied. Other regulated networks are typically exposed to the penalty interest rate for over-recovery of more than two per cent, and for the current TOs the penalty is four per cent. We believe that an over-recovery threshold of two per cent and penalty rate of four per cent should also apply to OFTOs.
- § Special Condition C4 (Restriction of Transmission Revenue: Annual revenue adjustments): the proposed drafting of the transmission system availability incentive results in a positive (rather than negative) adjustment to the revenue restriction term. Although the intent of these provisions is clear, the detail of the drafting requires further work; e.g. to define the incentive period y , to set commencement year values at zero, to define performance reporting and permit usage procedures.
- § Special Condition C4 (Restriction of Transmission Revenue: Annual revenue adjustments): the formula in paragraph 12 is missing an opening parentheses. This incentive term appears to have both an automatic ($ICUA_t$) revenue driver and 'top-up' element (ACA_t) subject to Authority approval. By implication, this means that the revenue driver needs to be determined as part of the tender process. Furthermore, the availability incentive would need to be adjusted if the incremental capacity incentive was triggered; no mechanism is currently included to do this.
- § Special Condition C5 (Restriction of Transmission Revenue: Adjustments): This condition requires the licensee to report to the Authority if it over-recovers by more than ten per cent in any year. Consistent with our comments on Special Condition C2 above, this threshold appears high as, typically, network licensees are subject to a threshold of less than five per cent. We believe this condition should be revised to be more consistent with other licensees.