

Offshore Transmission Final Consultation
Department of Energy and Climate Change
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Dear Sirs,

National Grid Electricity Transmission (NGET) is pleased to respond to the Ofgem/DECC document 'Offshore Electricity Transmission – A further Joint Ofgem/DECC Regulatory Policy Update'. As designate GBSO (Great Britain System Operator) for offshore transmission networks, NGET has a key role to play in ensuring the successful development, implementation and ongoing operation of the offshore regulatory regime. In this response we have limited our comments to areas specifically relevant to our role as GBSO.

NGET has worked closely with Ofgem/DECC during the development of this regime, and particularly in the context of this document, has undertaken the drafting of the Grid Code, the SO-TO Code, the Connection and Use of System Code (CUSC), and the GB Security and Quality of Supply Standards (GBSQSS) each of which is included as an annex to the document. In parallel with Ofgem/DECC's development of the offshore transmission regime, NGET has also developed transmission charging arrangements for offshore users, and the final proposals were approved by the Authority on 30 March 2009.

Enduring operation of the offshore regime

At Go-active, and then subsequently at Go-Live, NGET will take on new obligations in respect of the enduring operation of the offshore transmission regime. We have developed a forecast of the resources that will be required to enable NGET to discharge these obligations, and look forward to Ofgem bringing forward proposals for the funding of this resource within the framework of NGET's transmission licence. It is essential that these proposals are implemented as soon as possible to enable NGET to commence the recruitment processes to ensure that this resource is available in the necessary timescales.

Co-ordination of network development

The success of the offshore transmission regime is crucial in delivering a significant volume of offshore generation. This will, in turn, play a key role in determining whether the UK meets its 2020 renewable energy targets. NGET has worked hard with Ofgem and DECC to ensure that the regime, as proposed, will operate successfully. We still hold concerns that the regime is not the best way forward to ensure that 2020 renewable targets will be met. However, if it is the case that the competitive appointment of OFTOs remains at the centre of the regime, then NGET believes that the early appointment of zonal OFTOs represents the best way to progress. This would deliver a more co-ordinated approach, and the earliest possible stimulation of the supply chain by the OFTO. We also believe that this could be accommodated relatively simply within the proposed regime. We expanded on this position in our recent response (March 2009) to the Ofgem consultation on the competitive tender process.

We note the comments made in Chapter 4 about co-ordinated network development in Round 3. The proposals for the tender process are triggered by generator applications, and section 4.34 states that the 'developer will be able to consider what kind of electricity transmission infrastructure will be most economic and efficient to its long term plans and signal its requirements'. We remain concerned that there will be circumstances when the requirements of the developer are not aligned with the long term requirements of the overall transmission system and this could lead to delays in connecting offshore generation or inefficient and uneconomic transmission investment, ultimately leading to higher costs to consumers. We advocate that the GBSO is charged with developing a strategic plan for the development of the offshore networks (considered alongside the development of the onshore system). We note and agree that the GBSO should publish information in this regard, but the current proposals suggest that this would be for information only, and there would be no compulsion on the part of the offshore developer to act in accordance with it. We welcome the opportunity to discuss the overall co-ordination issue, and the role of the GBSO, with Ofgem and DECC in more detail over the coming months.

EU Third Package and Unbundling

We note comments in Chapter 5 about EU unbundling and generators bidding to become OFTOs and the change in policy position since the previous consultation. We would welcome further clarity on the revised proposals, in particular, if a generator is successful in bidding to become an OFTO, and subsequently has to divest the transmission assets in order to comply with the Third Package unbundling requirements. Would it then be necessary to hold a further competitive tender to appoint an OFTO and award the associated transmission licence? The alternative would be for the generator to be free to sell its associated transmission owner to whichever party it chose (presumably the highest bidder).

Business Separation and Reporting Requirements

Paragraphs 6.80 – 6.86 refer to business separation requirements and reporting requirements. Ofgem has recently published separate proposals to introduce arrangements in this regard within NGET's Transmission Licence. NGET agrees with, and is minded to consent to, these proposals. We note comments relating to arrangements for other OFTOs and see no reason why these should not be consistent with the arrangements proposed for NGET.

OFTO of Last Resort

We welcome the further information contained within the document about the proposals for the OFTO of last resort, but we remain of the view that further clarity is required and therefore we look forward to reviewing the Guidance Notes for OFTO of Last Resort which will be consulted upon and finalised prior to Go-active. In particular we would welcome further clarity on whether a different process is envisaged for OFTO of last resort in the transitional tenders as compared with the enduring tenders, and whether there would be any circumstance where an OFTO of last resort was appointed because it was considered (most probably by the tender panel) that there had not been effective competition during the tender process.

The Standard Framework Proposals

As stated above, NGET has been heavily involved in drafting a number of the framework documents included within annexes to the document. We note that there is the opportunity, during the 18 month period from Go-active, for the Security of State to designate further changes in respect of offshore transmission to codes and licences. We believe that changes that are ultimately designated should be kept under close review to assess the requirement to designate anything further. We look forward to working with Ofgem over the coming months to ensure that this is done.

Several assumptions were made, and clearly stated, during the development of policy that eventually led to the code drafting contained within the annexes. Proposals for Round 3, and large scale, geographically remote offshore wind farms may not be consistent with all the assumptions made (for instance distance from shore, paralleling of the onshore network). We assume that any further changes necessary in the longer term will be progressed via the standard governance processes.

We have undertaken a detailed review of the codes contained within the consultation, and separately to this response, NGET has provided a number of detailed comments to Ofgem for consideration.

We note comments made within Chapter 7 about the commercial treatment of OFTO provided reactive power and NGET will continue to investigate this issue with a view to bringing forward proposals for its cost-reflective treatment.

Paragraph 7.44 lists the main changes to the CUSC from the November 2008 Policy Update. The fifth bullet point states that the Connection Application has been changed 'to align with the tender regulations and require the applicant to hold (as a minimum) an option on a Crown Estates lease'. We believe that this statement may cause confusion as there is no provision within the CUSC drafting to stipulate that an option on a Crown Estates lease is a pre-condition for making an application to connect to the transmission system.

Financial Security of OFTOs

We welcome comments made in paragraph 7.22 relating to the GBSO's level of compliance with payment mechanisms and that NGET will not be required to provide security cover for OFTOs.

Offshore implementation plan

NGET is currently developing detailed plans to cover the activities that it will need to progress in the period up to Go-live. Our thoughts are broadly consistent with the activities listed in Chapter 7, and we look forward to working with Ofgem and other offshore stakeholders over the coming months to ensure that the regime is implemented successfully.

Our initial work in this area indicates that there may be a requirement to seek derogations relating to a number of the transitional sites, and we expect to discuss this issue in more detail with Ofgem.

Comments on Transmission Licence Drafting

As part of our response to the November 2008 consultation, NGET provided detailed drafting comments on the standard and special conditions. These comments were intended to be helpful and it is disappointing that very few of them are reflected within Annex 1 and Annex 9 of the document. It is particularly disappointing that this drafting contains a significant number of references to provisions of the Companies Act 1985 and European Directives which are no longer in force, having been repealed and replaced by provisions of the Companies Act 2006 and subsequent European Directives/Regulations, especially as the amendments to reflect changes to UK companies legislation are already reflected in other licences (such as gas transporter licences). We understand that the Secretary of State's powers only extend to designating changes specifically required to implement Offshore Transmission, but particularly in respect of the new provisions contained with Condition E, there seems no reason why outdated legislation is referred to. Furthermore we believe that the powers within the Energy Act could be interpreted to allow these references to be removed from the whole of the licence.

We have some further detailed comments that we believe would improve the drafting of the conditions and we include these in Appendix 1 to this response.

Proposed condition C25 relates to the provision of information and assistance to the Authority in relation to applications requiring the appointment of an OFTO. The obligations contained within this proposed condition (especially at paragraphs 3, 4 and 7) are very general in nature and potentially very onerous for NGET. It is also conceivable that NGET and Ofgem will have different expectations in this regard, particularly in the early stages of the regime. We believe that flexibility is required to ensure that the appropriate level of information is provided by NGET to the tender process; that usefully informs the process, but does not impose an unnecessarily high resource burden on NGET which ought naturally to be the responsibility of Ofgem as the specialist regulator. We recognise that the drafting is unlikely to change at this stage of the consultation, and it is therefore crucial that NGET develops a common understanding with Ofgem as to how these obligations are going to be discharged in practice. We can then ensure that the appropriate resource is in place.

NGET looks forward to continuing to work with Ofgem on the implementation and operation of the offshore transmission regime.

I hope that you find these comments useful, please contact me if you require any further information.

Yours sincerely

Chris Bennett
Future Transmission Networks Manager

Appendix 1 – Detailed comments on proposed Transmission Licence Standard and Special Conditions

Annex 1

Condition A1

- In the definition of “GB transmission system” add “transmission” after “Scottish licensees” so as to refer to “transmission licences” which is a defined term in A1 although this definition is not strictly necessary because this term is defined in primary legislation and incorporated in the licences by virtue of paragraph 2 of condition A1.
- In the definition of “offshore transmission”, suggest amendment so as to read “in section 6C in the Act” for ease of cross reference.
- In the definition of “offshore transmission owner”, it is suggested that reference is also made to the holder of a transmission licence in relation to which the Authority has issued a Section E (offshore transmission owner of last resort) Direction (under either B18 or E21).
- In the definition of “transitional tender exercise”, suggest amendment so as to read “in section 6D of the Act” for ease of cross reference.
- In the definition of “transmission assets”, suggest amendment so as to read “in schedule 2A of the Act” for ease of cross reference.

Condition B11

- We note that the changes proposed to this condition in the November 2008 consultation have now been withdrawn. Given that this is the case, how will OFTOs be obliged to comply with the Fuel Security Code security arrangements?

Condition B18

- In paragraph 4 (lines 1 and 3) and in paragraph 5(a), insert “transmission” in front of “licensee” so as to refer to the defined term.
- References to paragraph 7 in paragraph 9, 9(a) and 12 (a) should be references to paragraph 8.
- References to paragraph 6 in paragraph 10 and 11 should be references to paragraph 7.

Condition C13

- The base text of this condition needs to be updated in order to reflect the Authority’s direction on 12 March 2009 under section 11A of the 1989 Act modifying this condition.

Condition C25

- Insert “(Requirement to offer terms)” after each reference to “C8” so as to give condition title consistent with the approach throughout the licence.
- Paragraph 3, line 2: typo “licensee”.

Condition E2

- Paragraphs 3, 6, 7, 9 and 14, as commented previously, should be updated to reflect the repeal of the Companies Act 1985 and paragraph 12 should be deleted as a consequence;
- Paragraph 6 should be amended in line with the equivalent provisions of gas transporter licences by the insertion at the end of the words “*and adopted by the European Commission pursuant to Regulation (EC) No. 1606/2002 of the European Parliament and Council of 19 July 2002 on the application of international accounting standards.*”

Condition E7

- Paragraph 2(c) should be amended to capitalise the reference to the “UK Listing Authority” as it is a proper name.

Condition E8

- Paragraph 7, as commented previously, should be updated to reflect the repeal of the Companies Act 1985.

Condition E10

- As commented previously, we consider that this provision would be significantly more robust if a new paragraph 4 were introduced in line with the equivalent provisions in the conditions of independent gas transporters as follows: “*Where the Authority has granted permission for the use of alternative arrangements in accordance paragraph 2 of Condition E11 (Credit Rating of Licensee) then, except with the prior consent of the Authority, the licensee shall not enter into or complete any transaction of a type referred to or described in paragraph 1(b) save in accordance with paragraph 5, if the alternative arrangements for which the Authority has granted permission are not maintained in accordance with the conditions imposed by the Authority when giving written permission pursuant to paragraph 2 of Condition E11 (Credit Rating of Licensee).*” This is particularly the case since any special purpose vehicle which obtains an OFTO licence will not be able to obtain a credit rating of any kind until it has an established trading record.

Condition E12

- We note that the changes proposed to this condition in the November 2008 consultation have now been withdrawn. Given that this is the case, how will OFTOs be obliged to comply with the Fuel Security Code security arrangements?

Condition E21

- In paragraph 4 (lines 1 and 3) and in paragraph 5(a), insert “transmission” in front of “licensee” so as to refer to the defined term.
- References to paragraph 7 in paragraph 9, 9(a) and 12 (a) should be references to paragraph 8.
- References to paragraph 6 in paragraph 10 and 11 should be references to paragraph 7.

Annex 9

Special Condition D1 (Definitions)

- In the definition of “offshore transmission owner”, it is suggested that reference is also made to the holder of a transmission licence in relation to which the Authority has issued a Section E (offshore transmission owner of last resort) Direction (under either B18 or E21).

Special Conditions K (NGET) and G (SPTL/SHETL)

- These provisions should be updated to reflect the repeal of the 1990 EU Directive by the “Second Package” of European energy legislation in 2003.