

OFFICE OF GAS AND ELECTRICITY MARKETS

TRANSITIONAL TENDER REGIME FOR OFFSHORE TRANSMISSION ASSETS

**DRAFT DATA ROOM
POPULATION GUIDELINES**

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Electricity Markets**
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1. INTRODUCTION

These Guidelines have been compiled to assist Developers in populating the data room to be made available to bidders and should build on what Developers have already disclosed to Ofgem in response to the Valuation Information Request. The precise information which will be needed will of course reflect the stage each project has reached at the time the data room is populated, in particular whether construction of the transmission assets has been completed.

2. INFORMATION CATEGORIES

2.1 Technical

2.1.1 A statement about the status of the project (for example whether the transmission system is contracted, being built, being commissioned etc).

2.1.2 All relevant information in respect of:

- (A) what is being transferred, for example transmission assets (primary and secondary systems), access to services (including operation and maintenance services and control system services) and Information Technology systems;
- (B) plans for the project (both historical and current);
- (C) actions which the onshore transmission system owner and/or onshore distribution system owner are required to carry out to meet the Developer's requirements;
- (D) pre-construction works that have been completed or that are planned;
- (E) what is being built;
- (F) what has been tested;
- (G) what has been installed;
- (H) what is required to operate and maintain the assets during the intended lifetime of the project; and
- (I) what is planned for the end of asset life.

2.1.3 Data in relation to:

- (A) Developer project approvals;
- (B) data required to complete applications to the onshore transmission system operator and/or onshore distribution system owner;
- (C) data submitted as part of the application to the onshore transmission system operator and/or onshore distribution system owner;
- (D) pre-construction works completed (including construction programme for the project);

- (E) construction works (including commissioning programme for the project);
- (F) assets that have been installed as part of the project (in respect of each assets and how the assets are joined together as a transmission system);
- (G) proposed operating and maintenance regime (for example what would be planned if the assets were not transferred to the successful bidder during the transitional tender process); and
- (H) decommissioning plans.

2.2 Contracts

- 2.2.1 Construction contracts, including all contracts for the engineering, design, and/or carrying out of works for the manufacture, laying and construction of the transmission system, such as FEED Agreements, EPC Contracts, consultancy agreements and all documentation ancillary to these including technical documents, bonds, guarantees etc;
- 2.2.2 Supply contracts (for plant, machinery, parts and other physical assets) for the assets which form or may form part of the transmission system;
- 2.2.3 Manufacturers warranties and guarantees in relation to plant, machinery, parts and other physical assets;
- 2.2.4 In relation to any of the contracts at sections 2.4.1-2.4.3:
 - (A) any change/variation orders;
 - (B) any collateral warranties and notices of third party rights (including in relation to any sub-contracts)
 - (C) any relevant certificates, including completion certificates, rectification of defaults certificates and final certificates; and
 - (D) any sub-contracts;
- 2.2.5 Snag lists, including any notices of defects occurring during the defects liability period, proposed remediation measures and any programmes for the remediation of any such defects;
- 2.2.6 O&M contracts (if any), including facilities for provision and/or storage of spare parts;
- 2.2.7 Proposed or existing interface agreements, both onshore and offshore;
- 2.2.8 Proposed transport-services agreement;
- 2.2.9 Any other agreements in place for the operation and maintenance of the transmission system or otherwise relating to the transmission system and/or intended to be transferred to the OFTO.

- 2.2.10 Application for a connection to the [transmission system or relevant distribution system] including any ancillary or related documentation relevant to that application;
- 2.2.11 A copy of the agreement for connection to the [transmission system or distribution system], including any ancillary or related documentation relevant to that agreement; and
- 2.2.12 Copies of any correspondence with the transmission system operator, another transmission system owner and/or a distribution system owner which are relevant to that application or agreement.

2.3 **Land Rights**

Offshore – Crown Estate

- 2.3.1 Copies of Crown Estate seabed leases, substation leases, seabed and foreshore licences and any Agreements for Lease, deeds of variation or documents supplemental to such documents, including in relation to any subsea cables and offshore substations. The proposed mechanism for transfer to the OFTO should be indicated. The mechanism for providing Crown Estate leases or licences for the OFTO assets needs to be clear (e.g. sublease or licence from Developer, new lease or licence from Crown Estates, etc).

Onshore

- 2.3.2 Copies of leases or licences relating to onshore substation site(s) together with any deeds of variation or documents supplemental to them. The proposed mechanism for transfer to the OFTO should be indicated.
- 2.3.3 Copies of Agreements for Lease relating to any onshore substation sites together with any deeds of variation or documents supplemental to them. The proposed mechanism for transfer to the OFTO should be indicated.
- 2.3.4 Copies of wayleave agreements relating to the installation and use of transmission assets. The proposed mechanism for transfer to the OFTO should be indicated and a wayleave agreement relating to electricity transmission apparatus should benefit a statutory successor without further transfer.

Onshore and Offshore

- 2.3.5 Copies of all other land rights and rights of the Developer under agreements relating to land, the foreshore and seabed.
- 2.3.6 Full deduction of immediate and all superior titles relating to present and proposed interests in land of the Developer or in any agreements relating to land to which the Developer is or will be a party.
- 2.3.7 Details of any proposals consultations feasibility studies or other reports relating to any present and proposed interests in land of the Developer or any interest of the Developer in any agreements.
- 2.3.8 Replies to enquiries from the Developer in respect of any interests; [All] Copies of the results of all searches and enquiries.

- 2.3.9 Disputes with landlords, neighbours, easement grantors, etc.
- 2.3.10 Any ongoing or likely complaints or disputes with landlords, neighbours, easement grantors, etc, whether formal or not.
- 2.3.11 Notices relating to the land rights to be transferred.

2.4 Consents

In relation to the transmission system only:

- 2.4.1 Any relevant consents under the Food and Environmental Protection Act 1985 (or Marine and Coastal Access Bill once enacted);
- 2.4.2 Any relevant consents under the Coast Protection Act 1949 (or Marine and Coastal Access Bill once enacted);
- 2.4.3 Any relevant consents under s36 or s37 Electricity Act 1989;
- 2.4.4 Any relevant Transport and Works Act Order made under the Transport and Works Act 1992;
- 2.4.5 Any planning permissions (including deemed planning permission) granted under the Town & Country Planning Act 1990;
- 2.4.6 Any development consent order made under the Planning Act 2008;
- 2.4.7 Any consents under the Water Resources Act 1991;
- 2.4.8 Any relevant Environmental Impact Assessments (EIA) prepared and submitted pursuant to the Electricity Works (Environmental Impact Assessment) Regulations 2000, the Marine Works (Environmental Impact Assessment) Regulations 2007, any environmental impact assessment regulations enacted in relation to applications under the Planning Act 2008 or any other relevant environmental impact regulations (or confirmation that no EIA is required);
- 2.4.9 Any assessments carried out or required pursuant to Offshore Conservation (Natural Habitats) Regulations 1994, the Offshore Marine Conservation (Natural Habitats) Regulations 2007, any habitats assessment regulations enacted in relation to applications under the Planning Act 2008 or any other habitat regulations (or confirmation that no such assessment is required) and details of any identified significant impacts on 'European Sites' as designated by such regulations;
- 2.4.10 Any evidence of satisfaction of conditions or requirements and/or work ongoing to satisfy conditions or requirements in relation to consents obtained pursuant to s36 or s37 Electricity Act 1989, the Food and Environmental Protection Act 1985, the Coast Protection Act 1949, the Town and Country Planning Act 1990, the Planning Act 2008, any Transport and Works Act Order, the Water Resources Act 1991 or any other consent obtained;
- 2.4.11 Disputes with consent grantors (e.g. over whether a condition has been met). Copies of all correspondence with or notices from any regulatory authority relating to actual or alleged non-compliance with applicable laws or consents;

- 2.4.12 Any claims for losses or damages and any complaints raised by third parties that are relevant to the OFTO assets (e.g. noise complaints at onshore substation, fishermen seeking compensation for impact of export cable); and
- 2.4.13 Decommissioning documentation, including approved or proposed decommissioning programme pursuant to Energy Act 2004, environmental impact assessment, and any material correspondence with regulatory authorities in relation to decommissioning. Any information on estimated decommissioning costs. The response should include a proposal for how the decommissioning programme (or that part of it which relates to the transmission system) will be transferred to the OFTO.

2.5 Employees

In relation to any person engaged by the Developer who works (whether full or part time) on or in connection with the design, construction, operation and maintenance of the assets who it is envisaged may transfer from the employment of the Developer to the OFTO (the "Employees") under TUPE or otherwise including:

- 2.5.1 An up-to-date list of such Employees broken down into categories of activity and showing for each member of staff the following details:
 - (A) job title;
 - (B) percentage of time spent working on or in connection with the design, construction, operation and maintenance of the assets to be transferred from the Developer to the OFTO;
 - (C) date of commencement of employment and of period of continuous employment;
 - (D) notice period and, for fixed-term employees, expiry date of fixed term;
 - (E) salary;
 - (F) place of work; and
 - (G) Name.
- 2.5.2 A copy of the standard of terms of employment issued by the Developer to any such Employees and of any staff handbook and any collective agreement relating to such Employees;
- 2.5.3 A copy of the service agreement of any such Employee whose contract of employment is terminable on more than three months' notice;
- 2.5.4 Details of labour relations with management and trade unions, trade union representatives, strike experience and other disturbances relevant to such Employees within the past two years;
- 2.5.5 Details of any disciplinary procedure taken against such an Employee or grievance procedure taken by such an Employee within the last two years;
- 2.5.6 Details of any claims for redundancy, unfair dismissal, wrongful dismissal, unlawful discrimination or other employment claims brought by any such

Employee within the last two years or which the Developer has reasonable grounds to believe may be brought by an Employee;

- 2.5.7 Copies of any agreements or arrangements with trade unions or employee representatives or staff associations relating to such Employees (or a written summary of any relevant details if such are not in writing);
- 2.5.8 Details of any works councils established for any such Employees;
- 2.5.9 Details of any bonus scheme provided to or available to any such Employees, including:
 - (A) the amount of the bonus to which each such Employee is entitled or for which each is eligible;
 - (B) by reference to the list of Employees referred to above, which Employees are so entitled or eligible if not applicable to all Employees;
 - (C) the terms of payment;
 - (D) whether the bonus is a contractual entitlement or discretionary and whether the Developer is entitled to vary or terminate the scheme;
- 2.5.10 Confirm whether any such Employee is eligible to participate or is participating in any cash or share incentive arrangement operated by the Developer. If so, please provide full details; and
- 2.5.11 Copies of all documents produced by such Employees pursuant to immigration checks.

2.6 Pensions

This section will only apply if Employees have been identified in section 2.5 above.

- 2.6.1 Schemes or arrangements promising or providing for retirement and/or death benefits and/or ex gratia pensions or other payments relevant to such Employees (whether for a group of individuals or for any one individual and whether funded or not).
- 2.6.2 In respect of each such occupational scheme or arrangement (each a "Scheme"):
 - (A) copies of all governing documents (trust deeds and rules);
 - (B) details of any matters not yet formally documented but which have been agreed in principle;
 - (C) copies of all current explanatory booklets, leaflets and announcements;
 - (D) details of the past record of discretionary pension increases (if any) and of any other discretionary practices; and of any entitlements to special or enhanced benefits;
 - (E) a copy of the most recent actuarial valuation report, details of any advice received from and certificates or reports issued by the Scheme actuary since the date of such valuation, any Recovery Plan, and the most recent

set of trustees' annual report and accounts (including draft report and accounts);

- (F) details of any contribution notice or financial support direction, or any indication that the Scheme's funding is of concern to the Pensions Regulator; and
- (G) details of current rates of employees' and employers' contributions (including employer contributions not documented in the schedule of contributions or payments) and details of all employers' contributions paid during the last three years both in cash terms and as a percentage of pensionable payroll and a copy of the current schedule of contributions or payments.

2.6.3 In respect of each such personal scheme or arrangement (including stakeholder schemes):

- (A) Details of contributions (by the Group or any member of the Group) in respect of such Employees, and documents setting out the basis of such contributions; and
- (B) Booklets, etc, provided to such Employees about the operation of the scheme or arrangement.

2.6.4 Details of any stand alone death-in-service arrangement affecting any such Employee.

2.6.5 In relation to all schemes and arrangements:

- (A) details of any litigation or other disputes or claims, including any pending or threatened and including any complaints made under any internal dispute resolution procedure or made to the Occupational Pensions Advisory Service or Pensions Ombudsman, whether directly affecting such an Employee or otherwise (please exclude the name of the employee, member, or other or complainant concerned unless the name has already been referred to in a public document which includes the information to be disclosed or unless the individual is a director);
- (B) Confirm whether any such Employee came to his employment via a TUPE transfer, and, in the case of any such Employee, whether such Employee was accruing benefits in an occupational pension scheme immediately before such transfer.

2.7 Intellectual Property

In the following section "Intellectual Property Rights" shall include any inventions, patents, trade marks, designs, whether registered or unregistered, or pending applications therefore, and any copyright or database rights, confidential information, secret know-how, or domain names.

2.7.1 Details of any Intellectual Property Rights which will need to be transferred, assigned, licensed or disclosed (as appropriate) to the OFTO, in order for the OFTO to own, develop, maintain and operate the transmission system.

- 2.7.2 Details of any existing or proposed licensing arrangements in respect of Intellectual Property Rights which are necessary for the ownership, development, operation and maintenance of the transmission system, whether these arrangements are documented or not, including details of parties to such arrangements, duration, licence fees payable or receivable and any other material terms.
- 2.7.3 Details of any existing or threatened claims, actions or proceedings relating to the use or possible use of any Intellectual Property Rights, which affect or could affect the ownership, development, operation and maintenance of the transmission system.

2.8 Information Technology

Hardware and Software

- 2.8.1 The following details for all computer hardware and peripherals, telecommunications equipment, networks and infrastructure owned, operated or used by the Developer and to be transferred to the OFTO ("**Hardware**") and all software to be transferred to the OFTO including firmware relating to or comprised in the Hardware, ("**Software**"):
- (A) a description;
 - (B) details of who (and if an individual, anonymised as far as possible) designed, created, built and/or supplied it;
 - (C) its current and any planned use the Developer;
 - (D) Ownership/lease/licence details. If it was designed, created or built by an employee of the Developer, please supply a copy of the terms and conditions of employment of that employee;
 - (E) details of any legal or equitable charge, mortgage, encumbrance, right, interest or claim by any other person;
 - (F) information about its performance, including any errors, breakdowns, failures or breaches of security in the last 12 months which have caused any material disruption to the Developer;
 - (G) details of all ongoing service arrangements, including support and maintenance, disaster recovery and escrow of licensed software;
 - (H) a copy of any relevant agreements including insurance policies, licences, leases, development, maintenance, support, escrow, security, disaster recovery, outsourcing, facilities management, utilisation, bureau, on-line services and service agreements ("Information Technology Agreements"); and
 - (I) details of any instance when the Developer, any employees, agents or contractors of the Developer, or any third party is, has been, or is likely to be, in breach of, has given notice to terminate, or has grounds to terminate any Information Technology Agreement.

Databases

- 2.8.2 Please describe all databases used by the Developer and to be transferred to the OFTO, including databases relating to customers, suppliers or employees. Please include details of the content, location, ownership and use of the databases together with a copy of any relevant agreement.
- 2.8.3 Please provide details of who (if an individual anonymised as far as possible) created the database, maintains it and supports it, together with a copy of any relevant agreement. If it was created or is maintained or supported by an employee of the Developer, please supply a copy of the terms and conditions of employment of that employee.

2.9 Health & Safety Matters

- 2.9.1 Safety rules, in particular, electrical safety and platform-access safety.
- 2.9.2 Copies of health and safety audits, reports, assessments etc.
- 2.9.3 Details of known non-compliances with applicable health and safety law and any required corrective action. Copies of all correspondence with or notices from any health and safety regulatory authority relating to actual or alleged non-compliance.
- 2.9.4 Details of any employee or third party claims or complaints in relation to health and safety matters.
- 2.9.5 Details of injuries, incidents, near misses (including any within the scope of the Reporting of Injuries, Disease, and Dangerous Occurrence Regulations 1995). Details of post-incident inquiries and recommendations.
- 2.9.6 Evidence of compliance with the Construction (Design and Management) Regulations 2007 and any related documentation, correspondence and contracts.
- 2.9.7 Please provide copies of site waste management plans prepared in accordance with the Site Waste Management Plans Regulations 2008 (or confirmation that no such plans are required to be prepared).

2.10 Claims and Disputes

Details of any current litigation or other disputes (including employment and property disputes and disputes with any relevant Government authority) whether considered material or not in which any of the property, assets, contracts, licences, permits, authorisations or consents to be transferred to the OFTO is involved (whether as claimant or defendant) or which may be pending or threatened together with details or statements of claim, opinions from Counsel or others and settlement levels and estimated legal costs (please exclude the name of any individual concerned, unless the name has already been referred to in a public document which includes the information to be disclosed, or the individual is a director).

2.11 Taxation

- 2.11.1 Details of any disputes with any HM Revenue and Customs authority relating to any of the assets to be transferred to the OFTO.

- 2.11.2 Details of any specific arrangements or agreements with any taxation authority relating to any of the assets transferred to the OFTO.
- 2.11.3 Any circumstances in which a charge for capital transfer tax or inheritance tax may arise against any of the assets transferred to the OFTO.
- 2.11.4 Details of any lease to be acquired which may be subject to ongoing stamp duty land tax payment or compliance obligations.

2.12 Insurance

- 2.12.1 Insurances over the property, assets or rights of the Developer in relation to the offshore transmission system and all relevant documentation, including construction insurances, property insurance, professional indemnity insurances, third party insurances and any insurances of sub-contractors to be relied upon by the Developer.
- 2.12.2 Evidence that all premiums in relation to the insurance listed under section 2.14.1 have been duly paid.
- 2.12.3 Insurance claims already made that relate to transmission assets.
- 2.12.4 Confirmation that the Developer is not aware of anything which could vitiate any of such policies.

2.13 Liabilities

Details of all outstanding mortgages, charges or other security over the property, assets or rights of the Developer in relation to the offshore transmission system.

2.14 Developer Commercial/Financial Documentation

- 2.14.1 An explanation of the Developers methods of procurement and assessment/evaluation of competitive tenders for work related to the transmission system.
- 2.14.2 Any internal financing approvals/authorisations/decisions.
- 2.14.3 Initial and most recent project timetables and milestones.
- 2.14.4 Monthly project cashflow for transmission components of Developers business and all cost allocation methodology between transmission and generation components of its business.

2.15 Competition

- 2.15.1 Details of any restrictive covenants to which the land or transmission system is subject (please provide copies of documents where available).
- 2.15.2 Details of any exclusive agreements or arrangements, whether oral or written, relating to the transmission system (please provide copies of agreements where available).
- 2.15.3 Copies of any correspondence with and details of any investigation by any competition or regulatory body in any jurisdiction, including without limitation,

the Office of Fair Trading, the Office of the Gas and Electricity Markets, the Competition Commission, the Commission of the European Communities, the United States Department of Justice or any similar body or authority together with any related request for information (whether made formally or informally), subpoena, decision, guidance, order, report, comfort letter or similar relating to or which may affect the transmission system or its value.