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3 June 2009

Dear Richard

Offshore electricity transmission: Consultation on Draft Model Sale and Purchase Agreement and Draft Data Room Guidelines for Transitional Tenders

Scottish and Southern Energy (SSE) welcomes the opportunity to comment on Ofgem's draft model Sale and Purchase Agreement (SPA) and draft data room guidelines for the transitional competitive tender process that will determine the granting of offshore electricity licences to new offshore transmission asset owners (OFTOs).

We believe that the draft model SPA provides a suitable starting point for the development of project-specific SPAs (as is proposed to be the next step following this consultation). Clearly, project-specific documents will be significantly different from the model SPA after the individual project circumstances have been taken into account. For example, project-specific land agreements will determine what can be transferred to the OFTO. Also, the model SPA envisages a business and asset transfer whereas, depending on the status of the project at transfer, there might only be a requirement for asset transfer.

In this regard, we believe that it is important that the value of the model SPA is not overstated, so as to avoid creating an expectation that all (or any) project-specific SPAs will be of this form. We welcome the confirmation in this consultation that bilateral dialogue between both parties to the SPA will be permissible during the tender process.

Specific aspects of the draft model SPA require further consideration including:

- § Economic considerations around when the RAV assessment will be carried out and timescales for the transfer of, and payment for the assets (timing issues are referred to in more detail below). Related to this is a requirement for adequate security to be in place and this should be referred to in the SPA;
- § Given the importance of the transmission assets, we feel there is a need to agree on a project-by-project basis specific operational and safety requirements at the point of connection. We suggest this needs to be done in parallel with the process of appointing an OFTO and should be referred to in the SPA; and
- § Clause 18.1 (Post completion activities – access to information). We understand that this clause is intended to allow for sharing of information associated with the transferred assets; however, we question whether this clause can be enacted given the proposed business separation obligations.

More generally, we believe the proposed timing of the asset transfer process for transitional projects is becoming increasingly unclear. The draft model SPA appears to be based on Ofgem undertaking its RAV assessment following the completion of construction of the offshore development. Hence, the tender process and, indeed, award of the OFTO licence might take place before the efficient RAV value is known. This, in itself, raises questions about the timing of the asset transfer with clear implications for prospective OFTO financing. Whilst we understand that Ofgem is considering that for some projects the transmission assets will transfer after completion of construction, a clear statement from Ofgem on the timing of its RAV assessment, and the extent of the competitive tender process before and after that RAV assessment is urgently required.

I hope these comments are helpful. Please do not hesitate to get in touch if you want to discuss our response further.

Yours sincerely,

Aileen McLeod
Regulation Analyst