

Offshore Transitional Tenders First Round Transitional Projects Tender Guidance Note on Process to Asset Transfer

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Target audience: Qualifying Applicants, Developers and other parties interested in Offshore First Round Transitional Tenders

Overview:

A new regulatory regime for offshore transmission has been established. A key part of the regime is the grant of Offshore Transmission Licenses on the basis of a competitive tendering process. Ofgem is responsible for managing the process.

This Guidance Note sets out the process to achieving transfer of transmission assets under the first offshore transmission transitional tender round.

The Note identifies two distinct models for transfer. The first of these covers projects which are already operational as at the date of "Go Live" June 2010. The second covers projects which will become operational after Go Live. While following a broadly common process across all projects, various differences are defined by requirements of these two models.

In the light of experience and feedback from the ongoing tender process, we expect that this Guidance Note may be updated or amended over time.

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For all queries please send clarification through the tender portal.

Associated Documents

- Final Statement on Tender Process
- Qualify to Tender (QTT) Document
- Model Sale and Purchase Agreement
- Guidance Note on OFTO of Last Resort
- Guidance Note on Special Licence Conditions
- First Transitional Tender Information Memorandum (Qualifying Applicants only)
- Project Specific Information Memoranda (Qualifying Applicants only)

Version History

Version	Date	Description
V1.0	8th October 2009	Qualification to Tender (QTT) stage issue

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1. Summary

1.1. The content of this Guidance Note is intended to provide further detail to Qualifying Applicants and other interested parties in relation to how it is currently envisaged assets will be transferred from windfarm project developers to future OFTOs under the transitional tender rounds. It reflects the result of ongoing work to define the exact mechanisms of transfer which will deliver the policy framework set out by Ofgem previously. It also reflects project specific information which has been set out in the various Information Memoranda issued confidentially to Qualifying Applicants at the Qualification to Tender (QTT) stage.

1.2. The contents of this Guidance Note will be further clarified as part of documentation issued at the commencement of the Invitation to Tender (ITT) stage. Ofgem is also continuing to work with developers to develop plans to map out the asset transfer process for each project and ensure all matters related to the transfer are properly identified and managed.

1.3. Under the offshore transmission regulatory regime, Ofgem conducts competitive tenders to appoint Offshore Transmission Owners (OFTOs) responsible for the connection of offshore electricity generators to the National Electricity Transmission System (NETS).

1.4. We have established a competitive tender process for the grant of OFTO licences that is designed to proceed in an effective manner, and enable us to meet our key objectives, being:

- the delivery of fit for purpose transmission infrastructure to connect offshore generation;
- provision of certainty and best value to consumers through the competitive process; and
- attracting new entrants to the sector.

1.5. In developing the offshore transmission regulatory regime, Ofgem and DECC (Department of Energy and Climate Change) engaged in extensive consultation with interested parties, and drew on best-practice experience from Private Finance Initiatives and other relevant procurement examples.

1.6. In our June 2009 statement¹, which set out the final design of the competitive tender process, we described how each stage of the tender process would operate.

¹ Final Statement on the Competitive Tender Process - Ref: 71/09

This included the stage from Preferred Bidder through to Licence Grant, and also addressed the Asset Transfer stage. This guidance document provides further detail on our proposed approach to the process to Asset Transfer.

1.7. In order to ensure a smooth and successful transfer of the transmission assets from the wind farm project developer to the respective OFTO, we recognise the need to provide a clear but flexible process to provide for common approaches whilst giving scope to reflect the specific characteristics of different projects where necessary. We have set out in this paper the generic steps in the process to asset transfer which comprise the following:

- submission of Invitation to Tender (ITT) bids;
- selection of a Preferred Bidder;
- notification of and, following the standstill period, appointment of a Successful Bidder; and
- Licence Grant, to occur simultaneously with signature of final documents, completion of funding arrangements and asset transfer.

1.8. From the Go Live date for the regime (anticipated June 2010) the participation in the transmission of electricity from generating stations in offshore waters at voltages of 132kv and above will be prohibited without a licence. We have therefore identified two discrete models for asset transfer, the application of which will be determined by when the projects require a licence to be in place. In general terms, all projects in the first transitional round will require a licence to be in place and transmission assets to be transferred to an OFTO either by Go Live or by the completion of commissioning of the transmission assets, if this is after Go Live.

1.9. Those projects which are already commissioned at Go Live therefore require an approach which ensures they are able to complete all the generic steps above and any project specific steps within the period from March to June 2010.

1.10. Where projects are commissioned after Go Live we will apply an "on hold" period in order to align the transfer of the assets with their physical completion. This "on hold" period will occur following the selection of a preferred bidder, estimated to occur in April 2010, after completion of the ITT evaluation process. The "on hold" period will end in the period prior to the estimated asset transfer date to allow for reconfirmation of a preferred bidder's ITT submission based on any material changes to the project. Following appointment as Successful Bidder, transfer to the OFTO will occur on completion of commissioning of the transmission assets.

Ofgem recognises that the role of a reserve bidder in the process will help to maintain competition and provide confidence to all parties of securing an OFTO within the required timescales. In all cases we consider that offshore transmission projects do not provide any greater challenge than other public procurement projects including PFI. Accordingly, the selection of a reserve bidder will help to maintain competitive pressure throughout the process as well as providing for an alternative solution in the case where a preferred bidder should, for any reason, withdraw from a project.

2. Process to Asset Transfer

2.1. In this document we set out a number of the key principles that we have adopted or given consideration to in developing the process to asset transfer. We have also set out the key models of asset transfer which result.

Key principles behind approach to asset transfer

Required timing of transfer

2.2. From the Go Live date for the regime, anticipated for June 2010 (the commencement of the offshore transmission regime), transmitting electricity offshore will be a prohibited activity without a licence.

2.3. We have previously set out that, for transitional projects, construction risk will remain with the developer, and that assets will be transferred post-construction. To complete the construction process and confirm readiness of the assets for operational use, they must first go through a process of commissioning. The definition of commissioning is therefore fundamental to developing the asset transfer process because it is the point in time which, along with the timing of Go Live, dictates the requirement for an offshore transmission licence.

2.4. We have examined this issue (further detail on commissioning is set out in Appendix 1) and consider that asset transfer should take place at the completion of commissioning of the transmission assets i.e. shortly prior to Go Live or when construction of the transmission assets has been completed, if this is after Go Live.

Transfer value payments

2.5. Under the transitional regime Ofgem will conduct an assessment of the economic and efficient costs of developing the assets to be transferred for each project. Prior to completion of the transmission assets, the asset value is estimated. Following completion of the assets, the value is assessed. Through development and consultation on the Model Sale and Purchase Agreement (SPA) we have established the principle that payment for the assets would occur in two stages, specifically:

- 75% of the estimated transfer value would be paid at transfer, and
- the remaining 25% (or other applicable balance) would be paid on completion of the ex-post transfer value assessment.

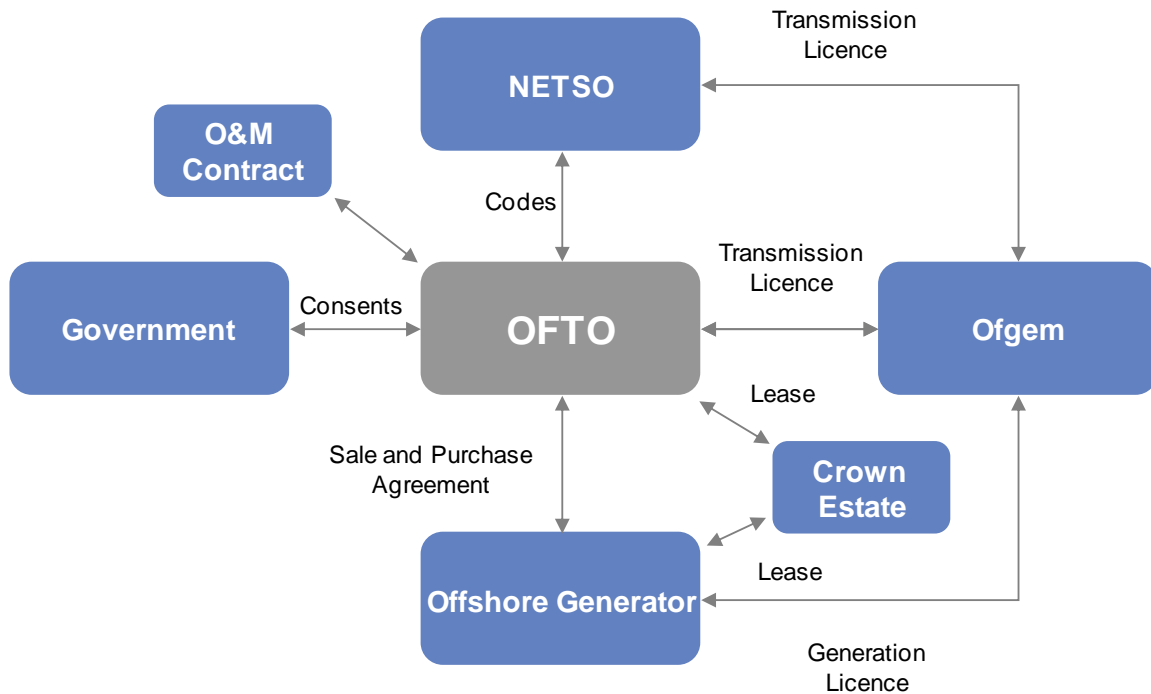
2.6. We can confirm that this approach will be applicable to all projects which are commissioned after Go Live. However, Ofgem also recognises the probable benefit to all parties in terms of simplifying process and financing terms if the initial payment can be increased above 75%. We therefore expect to consider the option of doing so where developers are able to provide sufficient cost information in order to support such a position, to our satisfaction. This will be undertaken on a case by case basis

and Ofgem will need to ensure that it protects the consumer in establishing any arrangement, whilst ensuring continued robustness of the process and equal treatment of both bidders and developers.

2.7. In relation to the first round of projects only, Ofgem considers that it may be possible to complete a transfer value assessment for some projects prior to Go Live as they will already be commissioned and operational. For these projects Ofgem will limit any deferred consideration to a minimum with the objective being to achieve 100% of the final transfer value wherever possible, facilitated by an early final assessment of the efficient and economic costs.

Contract documents

2.8. The overall contractual structure governing the offshore transmission regulatory regime is set out below.



2.9. The tender process is designed to be implemented around a number of the key documents shown in this overall structure. Each of these, as set out subsequently, must be agreed by asset transfer:

- A transmission licence, which will include the standard and special licence conditions. The special licence conditions set out the specific obligations and rights relating to the licensee. These define, among other things, the revenue stream that the OFTO will receive. No amendments to the special licence conditions will be allowed as part of the tender process. However, the revenue

number that is arrived at through the competitive tender process will be defined by Ofgem in the special licence conditions (see term TRS). Our guidance note on the OFTO special licence conditions provides additional information.

- The transmission licence standard conditions require compliance with the STC and the security and quality of supply standard (NETS SQSS). These industry framework documents can only be changed through defined governance and consultation arrangements.
- An SPA between the developer and the Preferred Bidder which sets out the transfer value as determined by Ofgem of the assets to be transferred and the conditions associated with the transfer. The SPA will also cover the transfer of other contracts, consents, leases, rights and warranties necessary to complete the asset transfer, with the onus being on the developer to ensure these supporting agreements are in transferrable form well before the anticipated execution of the SPA to ensure no programme delays result. Ofgem would expect the SPA to be agreed at selection of Preferred Bidder.

2.10. In addition, Preferred Bidders will need to conclude (in a specified timeframe) the financing agreements, consortium agreements and other key contracts that will be required to achieve asset transfer.

2.11. Ofgem is also continuing to have close contact with the Crown Estate and DECC in order to ensure provision of all relevant information in respect of seabed leases and decommissioning plans are available at relevant stages of the process.

2.12. The development of the SPA is subject to an ongoing process between Ofgem and developers in order to prepare project specific SPAs for each of the transitional projects. The current status of this and key considerations currently being addressed are set out in a separate document which is being issued to accompany the Model SPA.

The steps to asset transfer

2.13. Where referred to variously in this paper, the process of asset transfer comprises a number of key steps, even where some activity, such as an ex-post transfer value assessment and subsequent payment (deferred consideration), may occur after actual asset transfer.

2.14. The process to asset transfer may be considered to contain the following main stages:

- Receipt of unconditional ITT bids and the provision of ITT payment, subject to certain specified conditions precedent;
- Selection of a Preferred Bidder (and a reserve bidder), and the provision of the Preferred Bidder payment;

- Notification of intent to appoint a Successful Bidder, following preparation of all documentation in final form and accession of the Preferred Bidder to the STC;
- Successful Bidder will be appointed once the standstill period of at least 10 working days has expired and the Successful Bidder payment received by Ofgem; and
- Licence Grant.

More detail on other steps in the process to asset transfer is set out in the later sections dealing with projects operational before and after Go Live.

Bidder commitments at ITT stage

2.15. We expect that acceptable ITT bids will contain the following unconditional commitments for each particular project:

- To execute the Sale and Purchase Agreement with the developer within a specific timescale;
- To agree, within a specific timescale, to the grant of the defined offshore transmission licence from Ofgem which allows for the revenue stated in the bid;
- To accede to relevant codes including the STC, within a specific timescale. (In particular, we are making arrangements to ensure that NETSO make available key STC and CUSC associated project specific documents available to bidders at the ITT stage);
- To execute their defined project contracts or other documentation within a specified timescale, including:
 - Completion of relevant financing documents and confirmatory due diligence;
 - Execution of an operations and maintenance agreement, relevant sub-contracts and interface agreements where applicable; and
 - Establishment of any special purpose vehicles where required.

2.16. The financial commitment required from any bidder, prior to their selection as Preferred Bidder, would be the provision of credit committee-approved term sheets (or equivalent), subject only to completion of loan documentation and final credit approval.

Revenue amendments during the asset transfer process

- Prior to Licence Grant

2.17. Once a Preferred Bidder is selected, we only expect to allow for pre-defined amendments agreed by Ofgem to be made to the revenue stream offer made at ITT stage. We would expect in the scope of these potential amendments to be limited to changes to underlying interest rates and changes to the transfer value where this

occurs prior to licence grant. Such amendments will be captured in the TRS term at the time of licence grant.

2.18. In the case of projects operational after Go Live, other amendments may be permitted to the revenue stream offer made at the ITT stage, where material changes have subsequently occurred to the transferring projects or in wider financing and/or market conditions. Where such changes occur these updated figures will be captured in the TRS term at the time of licence grant. Further detail is provided in the section covering projects operational after Go Live.

- **Following Licence Grant**

2.19. Where adjustments to the revenue stream may be required as a result of the difference between the Authority's estimated transfer value and the final transfer value, the special licence conditions provide for an adjustment mechanism to reflect this change (see PTR term). The value of the PTR term will be directed by the Authority subsequent to its assessment of the final transfer value.

2.20. In order to promote effective competition and limit the opportunity for preferred bidders to get unfair advantage from any amendments or adjustments, we will ask bidders to demonstrate how additional financing will be sourced as part of the requirements of their proposal.

Role of a reserve bidder

2.21. On selection of a Preferred Bidder, Ofgem may also select a reserve bidder. The objectives are two-fold. Firstly, it will ensure the continuation of a competitive dimension in the process. Secondly, it provides an initial fall-back option if a Preferred Bidder should, for any reason, drop out of the process.

2.22. It is recognised that in some public procurement exercises maintaining the engagement of a reserve bidder has been problematic, especially where timescales are long. However, in this case we consider that the anticipation of future projects and the new market opportunity in which participants have expressed an interest will help ensure interest is maintained. Furthermore, the timescales for which a reserve bidder would be in place for these projects are not excessive when compared to PFI projects and will also not require additional complexities around changes in design or output requirements. We therefore consider that the appointment of a reserve bidder will fulfil the objectives set out above.

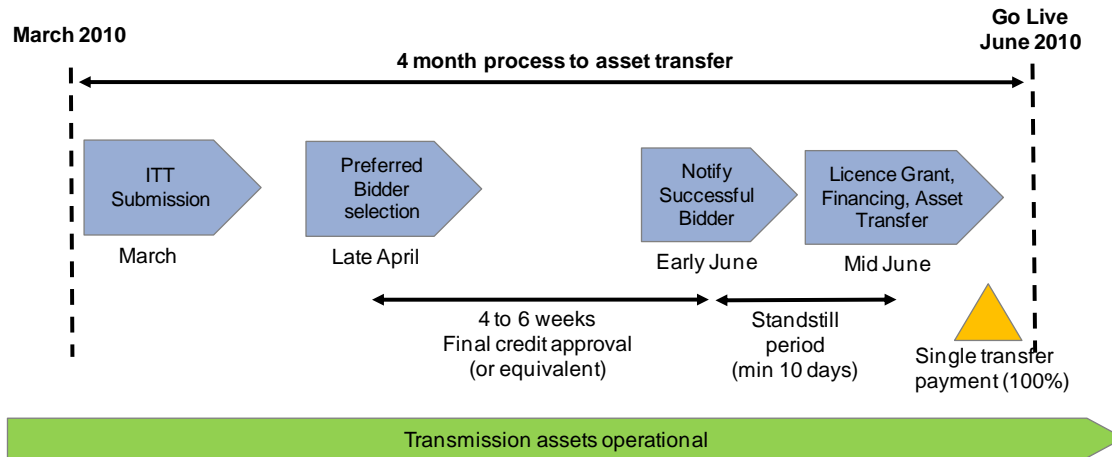
Models of asset transfer

2.23. Subsequent sections of this document set out the two key models of asset transfer which will apply to projects in the first round of transitional tenders. Appendix 2 provides an overview of the current estimated asset transfer dates in relation to the each of the projects. This reflects information available at the time of issuing the Information Memoranda and may be subject to change.

3. Projects operational prior to Go Live

3.1. For projects operational at Go Live, and therefore where transmission assets have already been commissioned, an expedited approach is required in order to allow for transfer of assets prior to Go Live in June 2010. Figure 1 outlines how this process would work.

3.2. Projects currently anticipated to follow this model are Barrow, Gunfleet Sands, Robin Rigg and Thanet.



Firm ITT bids (March 2010)

3.3. At the conclusion of the ITT stage, we would expect all technical due diligence to have been completed. Consequently, we expect bidders to provide firm priced revenue stream bids which will be subject only to the following conditions:

- To execute the Sale and Purchase Agreement with the developer within a specific timescale;
- To agree, within a specific timescale, to the grant of the defined offshore transmission licence from Ofgem which allows for the revenue stated in the bid;
- To accede to relevant codes including the STC, within a specific timescale. (In particular, we are making arrangements to ensure that NETSO make available key STC and CUSC associated project specific documents available to bidders at the ITT stage);
- To execute their defined project contracts or other documentation within a specified timescale, including:
 - Completion of relevant financing documents and confirmatory due diligence;
 - Execution of an operations and maintenance agreement, relevant sub-contracts and interface agreements where applicable; and
 - Establishment of any special purpose vehicles where required.

3.4. In terms of the financing offer (i.e. firm price revenue stream) at ITT stage for Corporate Finance solutions we will expect provision of committed fixed financing terms/pricing (assuming a defined period from ITT to Preferred Bidder).

3.5. For a financing offer at ITT stage for Equity and Debt Finance solutions, the following is expected:

- fixed equity rates with commitments on funding from equity partners;
- credit approved Term Sheets, including in particular:
 - Indicative underlying debt rates;
 - Margins with capped market flex;
 - Hedging proposals.

3.6. In all cases we would expect confirmation that all technical due diligence has been completed with only confirmatory due diligence (linked to final credit approval) outstanding and a list of conditions remaining to be satisfied (namely completion of loan documentation, credit approvals and selection as Preferred Bidder).

3.7. It is envisaged interest rate changes up to financing completion will be incorporated into the revenue stream at asset transfer; the revenue stream would otherwise be fixed subject to these underlying rate movements. For these projects, at financing completion, the rate on the day would be captured, applied to the revenue stream previously submitted and immediately written into the licence at execution.

Preferred Bidder selection

3.8. The key activity for the Preferred Bidder will be to secure final credit approvals for the financing offer previously submitted at ITT and prepare final funding documents. This credit approval process will confirm the final financial offer (i.e. revenue stream) including financing margins, fees and any conditions in relation to length of holding period of the offer.

3.9. A four to six week period would allow for final credit approval to be secured and a consequent confirmation of the tender revenue stream previously submitted at ITT. This period would also allow for final preparation of all funding documentation. Receipt of this confirmation would result in Ofgem moving forward to appointment of Successful Bidder.

3.10. In circumstances where delays to the project result in completion of the transmission assets before Go Live but an inability to complete a final transfer value assessment before transfer, an ex post adjustment (to reflect difference between prior estimate and final transfer value assessment) would be required.

Appointment of Successful Bidder

3.11. Once credit approvals have been secured, the final submitted revenue stream approved and requirements set out in the Tender Regulations have been satisfied, the Authority will notify of the intent that the Preferred Bidder shall become the Successful Bidder for the purpose of granting a licence. The grant of a licence to the Successful Bidder shall be subject to a 10 day standstill period in accordance with the Tender Regulations, through until the end of May. Following the standstill period the Successful Bidder will be confirmed and required to make the Successful Bidder payment. Upon confirmation of the Successful Bidder the reserve bidder will be stood down.

3.12. Following confirmation of Successful Bidder the parties would be in position to proceed with the simultaneous grant of licence, completion of funding documentation, transfer of the transmission assets and transfer of full payment (i.e. 100% of the final transfer value assessment) from OFTO to developer.

Licence Grant/Asset Transfer/Financing Completion

3.13. Ofgem considers that the timescales allowed will enable OFTO licences to be granted in advance of the anticipated Go Live date for those projects which will require a licence.

3.14. At this final point funding documents will be completed such that financing is in place and can be drawn upon in order to allow the transfer of assets from developer to bidder. With respect to the carrying of interest rate risk, with financing completion occurring concurrently with licence grant, the final revenue stream incorporated into the licence will include the fixed financing terms.

Greater Gabbard

3.15. The Greater Gabbard project is being developed on a phased or incremental basis. Part of the development will be operational at Go Live (anticipated in June 2010) but further phases of the development will not become operational until later in the year, currently estimated to be November 2010. As a result of this, and in this case alone, a licence will be granted prior to Go Live but asset transfer will be delayed until the completion of the second phase of transmission assets (estimated to be November 2010). Completion of financing would also be required at Licence Grant to satisfy all parties, and relevant conditions of the licence, that sufficient funding is in place for the OFTO to undertake its obligations.

3.16. In the period between licence grant and asset transfer, arrangements would be put in place to ensure an appropriate allocation of risk to all parties and that risks are clearly defined for all bidders in the process.

3.17. In addition, in order to account for the ongoing construction and commissioning work on the assets through to transfer, there will be two transfer payments, as per

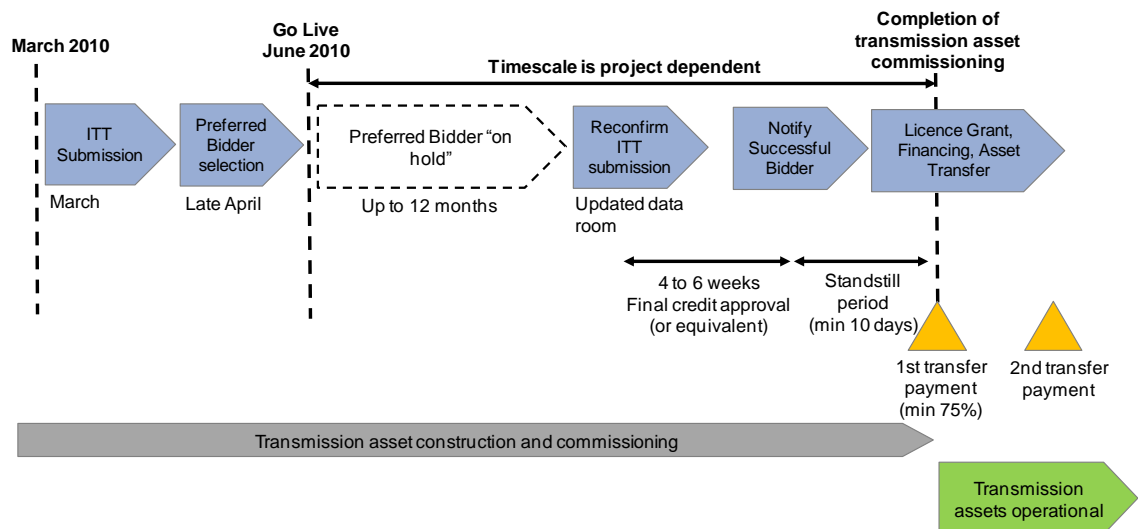
projects operational after Go Live. The first payment to the developer would occur at the same time as the asset transfer, with the second to come following completion of the final transfer value assessment. We expect to fully define the approach for the Greater Gabbard project in subsequent ITT documentation.

3.18. For the period between licence grant and asset transfer a revenue stream would be provided to the OFTO covering legitimate costs in this period, in particular relating to financing. We would therefore expect at ITT submission the provision of pre-and post-transfer revenue streams. Further details on these requirements will be provided in the ITT documentation.

4. Projects commissioned after Go Live

4.1. The diagram below sets out the process for projects commissioned after Go Live. The key feature of this process is the introduction of an "on hold" period following the selection of a Preferred Bidder and provision of the Preferred Bidder payment (expected in April 2010). This "on hold" period would allow time for the transmission assets to be completed and commissioned in advance of asset transfer.

4.2. Projects currently anticipated to follow this model are Ormonde, Sheringham Shoal, Walney I and Walney II.



Firm ITT Bids

4.3. Subject only to the outcomes of the process following the "on hold" period, we would expect the same commitments at ITT stage for the projects operational prior to Go Live. We recognise that the same level of due diligence will not have been completed as for projects operational prior to Go Live, though we expect the appropriate level conducted to differ from project to project, based on actual timescales to estimated asset transfer.

4.4. In terms of the financing offer (i.e. firm price revenue stream) at ITT stage for Corporate Finance solutions we will expect provision of fixed financing terms/pricing (assuming a defined period from ITT to Preferred Bidder) and provisional commitment to allocation of funding.

4.5. For a financing offer at ITT stage for Equity and Debt Finance solutions, the following is expected:

- fixed equity rates with commitments on funding from equity partners;
- credit approved Term Sheets, including in particular:
 - Indicative underlying debt rates;
 - Indicative margins with capped market flex;
 - Hedging proposals.

4.6. Again, in all cases we would expect confirmation that an appropriate level of technical due diligence has been completed with only confirmatory due diligence (linked to final credit approval) outstanding and a list of conditions remaining to be satisfied (namely completion of loan documentation, credit approvals and selection as Preferred Bidder).

Preferred Bidder selection

4.7. Following selection of a Preferred Bidder the process will put "on hold". During this "on hold" period, the Preferred Bidder will need to retain its position with respect to the ITT submission and may be subject to restrictions in its activity in relation to other parties in the process. In addition they may be required to continue in the preparation of relevant industry framework documentation. This will be confirmed following further discussions with the NETSO on these development processes.

4.8. The duration of the "on hold" period will be defined by a combination of the estimated asset transfer date for the relevant project and time required to go through the remaining steps prior to asset transfer, as set out below. We expect this could be approximately 3 to 4 months but will consider this further having sought the views of relevant parties at the ITT stage.

4.9. The "on hold" period would end with the selected Preferred Bidder being requested to confirm their previous ITT tender revenue stream submission. They would be given full access to the dataroom for this exercise, including with reference to any changes that had occurred since the earlier review during ITT submission. Following this confirmation, and acceptance by Ofgem of the final tender revenue stream submitted, movement would be made towards notification and appointment of Successful Bidder, again allowing a similar period for the Preferred Bidder to secure final credit approval and prepare funding documentation (i.e. 4 to 6 weeks).

4.10. Despite the addition of this "on hold" period the financial commitment required from any bidder prior to their selection as Preferred Bidder would essentially be the same as for the projects completed before Go Live. However, it is recognised that full technical due diligence could only be finally completed shortly prior to asset completion and asset transfer. As a result, some changes to the tender revenue stream may arise from further due diligence on the contents of the final data room (after the "on hold" period).

4.11. Only where there have been material adverse changes to the transferring assets or changes to underlying financing or market conditions would amendments to the original ITT submission be considered and in any case these would need to be fully justified to Ofgem prior to further movement in the process.

4.12. Once the confirmation of ITT submission has been received or an otherwise amended version agreed, the Preferred Bidder will again be given 4 to 6 weeks to secure final credit approvals for the financing offer. This credit approval should then confirm the final financial offer (i.e. revenue stream bid) including financing margins and fees, just as for the projects which were commissioned at Go Live and will have transferred previously.

4.13. In parallel Ofgem may look to undertake a review of the latest project information in order to form an up to date view on the likely ex-post valuation figure. This would then inform this process of pricing confirmation and final credit approvals.

4.14. The relevant industry framework documentation and processes will also have been completed by the preferred bidder and NETSO since selection of Preferred Bidder. As with projects commissioned at Go Live, all documents will be in final form prior to appointment of the Successful Bidder.

Appointment of Successful Bidder

4.15. Once credit approvals have been secured, the final submitted revenue stream approved and requirements set out in the Tender Regulations have been satisfied, the Authority will notify the intention that the Preferred Bidder shall become the Successful Bidder for the purpose of granting a licence. Following the standstill period the Successful Bidder will be confirmed and required to make the Successful Bidder payment. Upon confirmation of the Successful Bidder the reserve bidder will be stood down.

4.16. Following confirmation of Successful Bidder the parties would be in position to proceed with the simultaneous grant of licence, completion of funding documentation, transfer of the transmission assets and transfer of the first transfer payment (i.e. a minimum of 75% of the final transfer value assessment) from OFTO to developer.

Licence Grant/Asset Transfer/Financing Completion

4.17. Projects completed after Go Live require a transfer value assessment after the actual transfer of assets. Our current proposal is that the OFTO would pay a minimum of 75% of the estimated transfer value at asset transfer, although we may review this level on a project by project basis.

4.18. This same approach would be applied to any project with the transmission assets commissioned at Go Live for which a transfer value assessment could not be completed prior to Go Live.

Funding draw down I

4.19. Following licence grant, asset transfer will be accompanied by a first funding draw down, taken from the funding facility and transferred to the developer as initial

payment for the assets. The amount will be in the order of 75% of the ex-ante value estimate. This part of the process will otherwise match the projects commissioned at Go Live.

Funding draw down II

4.20. The second funding draw down will follow the completion of the ex-post value assessment and subsequent calculation of the balance to be transferred from OFTO to developer. This is intended to be a period of up to 6 months after funding draw down I.

5. Next steps

5.1. This Guidance Note sets out the process to achieving asset transfer for projects under the first transitional tender round. It is being released to Qualifying Applicants in particular as part of the QTT stage in order to inform this phase of the tender process.

5.2. As a result of the ongoing experience of the tender process, any feedback received from Qualifying Applicants and our ongoing interaction with project developers we expect that we may need to update or amend this Guidance Note over time. In particular we expect to provide greater detail on a project by project basis as part of the ITT documentation to be released following conclusion of the QTT stage.

Appendix 1 – Commissioning

5.3. We state in paragraph 2.3 that construction of transmission assets would not be complete until commissioning tests to demonstrate performance of the transmission assets were complete. We also state that we consider that asset transfer should take place at completion of commissioning of the transmission assets.

5.4. Prior to completion of commissioning of the transmission assets, we do not consider that a licence is required, principally because the transmission assets would not have been proven as a transmission system. Once commissioning of the transmission assets is complete, the offshore transmission system is proven, asset transfer can take place and a transmission licence is needed to permit participation in transmission using that offshore transmission system.

5.5. We need to distinguish between commissioning activities associated with transitional projects that are required for:

- Transmission assets; and
- Offshore windfarm generating assets ("generation assets").

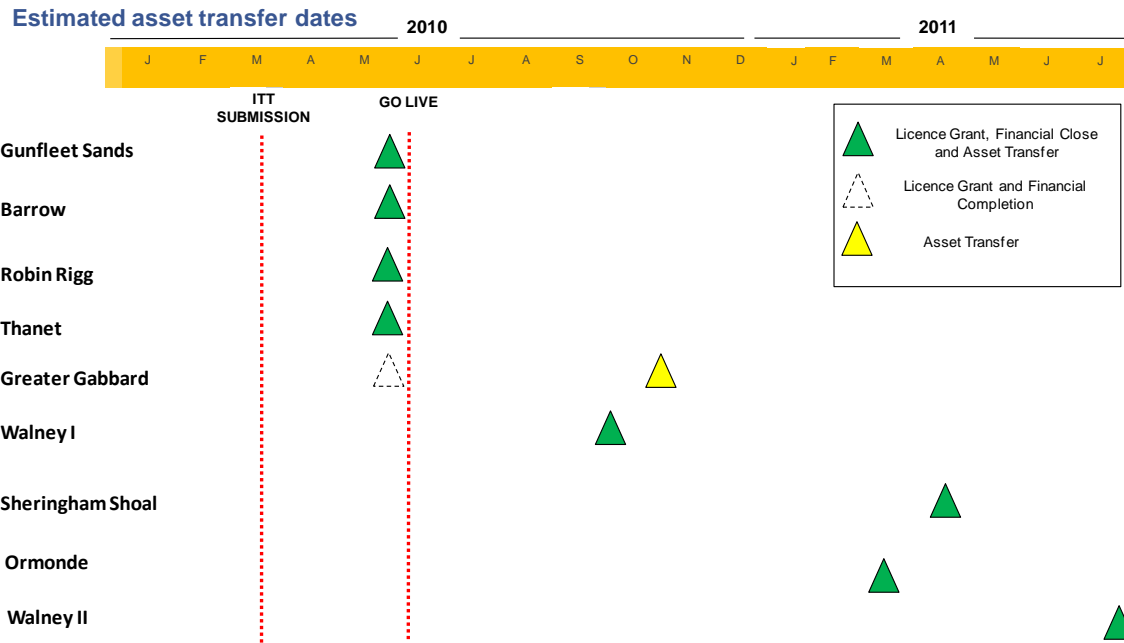
5.6. Each transitional project developer will have a project specific commissioning programme for the assets that it is constructing. There may be occasions where transmission asset and generation asset commissioning activities occur in parallel. Before generation assets can be fully commissioned, the commissioning of the transmission assets will need to have reached a stage that permits energisation of the transmission system and provides an offshore transmission system that is ready to transport electricity,.

5.7. We note that the industry framework provides for the possibility that services from the offshore generator could be used (if offered by the offshore generator) to achieve compliance of the offshore transmission system with technical requirements specified in the STC. If offshore generation plant provides services to achieve the STC performance requirement, then tests to demonstrate compliance may need to be completed as part of the commissioning programme for the generating assets. In such cases, there would need to be specific arrangements to be agreed to allow for compliance testing after asset transfer (which could take place when all other parts of the transmission assets had been proven).

5.8. The guidance we have developed assumes that the following definition for commissioning of transmission assets is applied:

- The commissioning programme defines a set of tests and related activities which will be carried out by the developer to demonstrate that the transmission assets are fit for use as a system or part of a system for the use of transmission of electricity.
- Energisation by the NETSO would only be instructed after satisfactory completion of the commissioning programme and evidence of the same.

Appendix 2 – Estimated asset transfer dates



Appendix 3 – The Authority’s Powers and Duties

1.1. Ofgem is the Office of Gas and Electricity Markets which supports the Gas and Electricity Markets Authority (“the Authority”), the regulator of the gas and electricity industries in Great Britain. This Appendix summarises the primary powers and duties of the Authority. It is not comprehensive and is not a substitute to reference to the relevant legal instruments (including, but not limited to, those referred to below).

1.2. The Authority's powers and duties are largely provided for in statute, principally the Gas Act 1986, the Electricity Act 1989, the Utilities Act 2000, the Competition Act 1998, the Enterprise Act 2002 and the Energy Act 2004, as well as arising from directly effective European Community legislation. References to the Gas Act and the Electricity Act in this Appendix are to Part 1 of each of those Acts.²

1.3. Duties and functions relating to gas are set out in the Gas Act and those relating to electricity are set out in the Electricity Act. This Appendix must be read accordingly³.

1.4. The Authority’s principal objective when carrying out certain of its functions under each of the Gas Act and the Electricity Act is to protect the interests of existing and future consumers, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the shipping, transportation or supply of gas conveyed through pipes, and the generation, transmission, distribution or supply of electricity or the provision or use of electricity interconnectors.

1.5. The Authority must when carrying out those functions have regard to:

- the need to secure that, so far as it is economical to meet them, all reasonable demands in Great Britain for gas conveyed through pipes are met;
- the need to secure that all reasonable demands for electricity are met;
- the need to secure that licence holders are able to finance the activities which are the subject of obligations on them⁴;
- the need to contribute to the achievement of sustainable development; and
- the interests of individuals who are disabled or chronically sick, of pensionable age, with low revenues, or residing in rural areas.⁵

² entitled “Gas Supply” and “Electricity Supply” respectively.

³ However, in exercising a function under the Electricity Act the Authority may have regard to the interests of consumers in relation to gas conveyed through pipes and vice versa in the case of it exercising a function under the Gas Act.

⁴ under the Gas Act and the Utilities Act, in the case of Gas Act functions, or the Electricity Act, the Utilities Act and certain parts of the Energy Act in the case of Electricity Act functions.

⁵ The Authority may have regard to other descriptions of consumers.

1.6. Subject to the above, the Authority is required to carry out the functions referred to in the manner which it considers is best calculated to:

- promote efficiency and economy on the part of those licensed⁶ under the relevant Act and the efficient use of gas conveyed through pipes and electricity conveyed by distribution systems or transmission systems;
- protect the public from dangers arising from the conveyance of gas through pipes or the use of gas conveyed through pipes and from the generation, transmission, distribution or supply of electricity; and
- secure a diverse and viable long-term energy supply.

1.7. In carrying out the functions referred to, the Authority must also have regard, to:

- the effect on the environment of activities connected with the conveyance of gas through pipes or with the generation, transmission, distribution or supply of electricity;
- the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed and any other principles that appear to it to represent the best regulatory practice; and
- certain statutory guidance on social and environmental matters issued by the Secretary of State.

1.8. The Authority has powers under the Competition Act to investigate suspected anti-competitive activity and take action for breaches of the prohibitions in the legislation in respect of the gas and electricity sectors in Great Britain and is a designated National Competition Authority under the EC Modernisation Regulation⁷ and therefore part of the European Competition Network. The Authority also has concurrent powers with the Office of Fair Trading in respect of market investigation references to the Competition Commission.

⁶ or persons authorised by exemptions to carry on any activity.

⁷ Council Regulation (EC) 1/2003