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BWEA
Delivering the UK's wind, wave and tidal energy

Greencoat House
Francis Street
London, SW1P 1DH, UK

T +44 (0)20 7901 3000
F +44 (0)20 7901 3001
info@bwea.com
www.bwea.com

Sam Cope
Policy Manager, Regulatory Regime Development
Ofgem
9 Millbank
London SW1P 3GE

12th February 2010

Dear Sam,

Consultation on Offshore Electricity Transmission Enduring Regime

Representing over 540 corporate members, BWEA is the UK's leading representative for the wind, wave and tidal energy industry. BWEA's membership includes a board cross section of the industry and this response has been prepared with input from representatives of the key elements of the OFTO process ie developers, supply chain, potential OFTOs, consultants and advisors.

BWEA is very pleased to respond to this latest consultation on the enduring transmission regime. As you know BWEA has been keenly interested in the shape and development of the regime – grid is the critical issue for meeting renewable energy targets, and no more so than for offshore assets. We wholeheartedly share therefore Ofgem's determination to see this regime work and to deliver benefits.

BWEA endorses the aims of the offshore transmission regime, and in particular we are keen to see that competitive tendering of offshore transmission licensees brings efficiency, innovation and expansion of the offshore transmission sector in line with need. The sheer scale of development required of the offshore wind industry makes this essential.

Offshore wind is at a crucial stage as it moves to a different scale of delivery with Round 3 and Scottish Territorial Waters projects. To ensure this expansion is successful will depend on the confidence of developers, OFTOs, investors and the supply chain. The enduring regime should be implemented as soon as possible and our key request is that greater flexibility should be introduced into the regime. BWEA strongly believe that in order to enable delivery this flexibility should include the ability for the developer to design and build their connection.

Comments made by BWEA in response to Ofgem's open letter and in a paper submitted in advance of this consultation remain unanswered and should also be considered. We have included them here as an appendix.

The urgent need for additional flexibility in the enduring regime

DECC and Ofgem have stressed that this consultation represents the final adjustments of offshore transmission policy. BWEA is concerned that in its current form, the regime will not deliver the large scale expansion of offshore wind that is planned for the next ten years.

It is important to stress that BWEA believes the enduring regime should be implemented as soon as possible. Developers will be seeking both early and late OFTOs imminently and the commitment to run the first enduring tender this year should stand.

However, BWEA is concerned that an "OFTO Gap" is being created, where no new grid connection orders can be placed with the supply chain between the last transitional tender bid in May 2010 and the resolution of the first enduring bid in mid 2012. This gap is occurring just at the time when we are asking the supply chain to ramp up in order to deliver Round 3. It is essential that action is taken to prevent this gap and restore market signals to the supply chain.

Crucially projects that form part of The Crown Estate's proposed extension of Round 1 and 2 projects have been asked to construct by 2016. In order to meet this 2016 deadline projects will need to ensure a grid connection on their proposed timescale.

A further incentive to ensure there is no delay to initial enduring projects is DECC's enhanced ROC support for offshore wind. This enhancement is time limited to projects that are accredited by 2014. Developers are being incentivised by DECC to accelerate their programmes and a delay caused by the OFTO process could make this incentive meaningless.

The smooth delivery of projects over the next few years will have a major impact on industry confidence and so the ability delivery of offshore renewable expansion out to 2020 and reap benefits in job creation and investment.

We propose the addition of flexibility into the enduring regime to give developers the option to design and construct their own grid connection before transferring it to an OFTO. This flexibility will overcome the OFTO gap and bring projects and orders forward in the crucial period as industry ramps up for Round 3.

This would require no major change to the planned regime and enable the growing confidence of this industry to continue. If this is not allowed then the offshore transmission regime could well delay projects and compromise the commissioning dates agreed with The Crown Estate. BWEA remain of the position that both early and late OFTO processes will be pursued.

We also urge Ofgem to confirm quickly to the industry that the late appointment developer builds option will be available to allow parties to progress on that basis as the OFTO Gap has already started and is affecting projects and the supply chain.

The remainder of this response provides comments on each of the consultation Sections, answering each question posed in turn.

Section 3, The connection offer process

BWEA notes that Ofgem is not consulting on the offer process and decisions made to-date. We do however have some observations on the commentary in this section.

Ofgem talks about "*customer choice*" variations from a typical connection offer. In the onshore context this typically refers to a variation on an SQSS compliant design that a generator manages to negotiate. However for offshore, National Grid, the OFTO and Ofgem appear to be free to vary the design and, over-rule the generator. Therefore the notion of customer "*choice*" – whilst perhaps already stretched in the onshore case – is not really an appropriate description for the offshore regime. As argued in previous consultations there is a balance to strike between the needs of the generator, the OFTO and the consumer. Projects will not be able to go ahead if parties are asked to take on too much risk for a connection over which they have little control.

The enduring regime should include a commitment from Ofgem to involve generators during the ITT stage on the type of connection proposed. This will lessen the chance of a varied design being rejected by the generator at the agreement to vary stage. The generator may prescribe the design to a certain degree in the data room, but will not be able to indicate their preferences again until the final stage.

In paragraph 3.13 Ofgem states that "*as with onshore generators, parties can choose from two methods of providing security – the Final Sums Liability (FSL) regime and the Interim Generic User Commitment (IGUC) arrangements*". This is incorrect. National Grid does not currently offer IGUC to offshore users. BWEA understands that National Grid will consult on this shortly.

Furthermore if disproportionately large security sums are required at the outset of a project then at the very least this will encourage projects to apply phase by phase, rather than signal total requirements from the outset. At worst it will constitute a barrier to investment.

Section 4 – triggering the tender process

Do you agree with the proposed approach to initiating the tender process?

BWEA agrees with the need for flexibility in the timing of tenders. A series of tender windows is a good and pragmatic approach to this. We remain concerned that a considerable workload peak could be created for all parties, including Ofgem, by a number of generators selecting the same tender window. In addition the delay of one year to a project timescale because a window is missed by a small margin seems inefficient. It may be preferable to include several windows staggered across a year and potentially to vary the window by region of the country, eg. North Sea window, West Coast window, etc.

BWEA is content that generators will have the choice of which tender window to aim for. We would request some clarification on what Ofgem means by it having the ability to determine the "*exact timing*" of a generator's tender – if this means Ofgem deciding and setting out the tender windows for a year, this would seem

reasonable. BWEA would be happy to work with Ofgem in deciding on the best tender window periods on an ongoing basis.

We would re-iterate that generators need to be able to decide themselves when they seek an OFTO appointment. Assuming that a generator meets the relevant qualification criteria we would not be in favour of Ofgem having the power to set back a generator's preferred tender window. However, some scope for negotiation once initial tender windows are mapped out may well be helpful for generators, bidding OFTOs and Ofgem.

Should there be an earliest or latest point (relative to the connection agreement held by the generator) at which the generator should be required to request an OFTO appointment and when should that be?

Please see comments on page 2 of the document on this issue.

Do you agree with the proposed amendments to the qualifying project pre-conditions and tender entry conditions for the enduring regime?

BWEA feels that it is important to learn from experience of the transitional tenders here. For instance have the information requirements for the data room worked well for Ofgem, developers and bidding OFTOs? Have demands been reasonable or unreasonable? If delays have occurred why has this been?

There is not enough background set out in the consultation to answer these questions, and in any event the transitional process is ongoing and it is perhaps premature to draw final conclusions. BWEA would be keen that transitional experiences – good and bad – are used positively to enhance the enduring regime.

Some of the amendments to the tender qualifications essentially elevate Ofgem's control of the process and ask generator's to commit early to the process. Whilst we appreciate that Ofgem needs to be able to exercise control, Ofgem should also be mindful of the fact that it is the independent Regulator to whom generators appeal when they have problems with the connection process. Is this dual role fettering Ofgem's discretion? If generators are unhappy with the process and feel they cannot reasonably commit to the process, to whom do they appeal for an impartial determination?

Furthermore, generators are underwriting Ofgem's costs of providing a tendering service. Again whilst Ofgem has separated this function into Ofgem "e-serve", what kind of independent oversight is there that costs will be reasonable (in the absence of competition for this service)?

The consultation also introduces "*a possible requirement*" that "*the developer's project has an energisation date which is with a fixed number of years from the developer's date of application to the tender process.*" The concept of a fixed energisation date was raised by Ofgem in the context of the transitional regime, and BWEA did not support this. Ofgem agreed with us on that occasion. Again we would re-iterate that the risks around delivery dates are best managed contractually and through negotiation. Furthermore, a mirror obligation for the OFTO to deliver on time may not be acceptable to them.

Generators already have strong incentives to meet milestone dates worked into their Crown Estate lease conditions. Any delivery dates agreed with the OFTO

should be capable of working with, rather than be at odds with, these existing obligations.

Any fixed energisation dates will also be interactive with what comes from the Transmission Access Review in its final form. A Connect and Manage regime originally envisaged a fixed connection date but it is not clear how, or if, this will be implemented. [I am looking to clarify this].

Do you have views on the time of year at which a tender window should be held?

Not yet. But as noted earlier, we would welcome the opportunity to feed into tender timing decisions, as the correct timing and frequency of tenders starts to emerge.

Do you have views on the best method of dealing with contingency costs?

BWEA would favour flexibility on contingency costs and for the judgements to be made with the help of appropriate expertise. The cost categories that necessitate a contingency approach may alter with project-specific and external circumstances.

BWEA welcomes the concept of the contingency as a positive step forward to allowing generators and bidding OFTOs to appropriately price and manage risk in the Early OFTO Appointment. This will reduce risk and the cost to the UK energy consumer from the risk premium only pricing strategy and promote Developer choice of the Early or late OFTO appointment.

BWEA would also favour an approach to contingencies that allowed costs to go down as well as up.

What is your view on the capping of the contingency and any associated incentives?

Please see response above.

BWEA welcomes the contingency approach to mitigating the problem of cost predictability with early OFTO appointments. We feel that this goes some way towards recognising that the regime has contributions to make which go further than a one-off competitive event in appointing an OFTO.

Which items do you consider should be defined as pre-construction costs (and why)?

The most important consideration here is the actual costs that the developer needs to incur to meet its project timescales. Absolute timescales are set by the Crown Estate and built into the lease conditions. Any acceleration on these timescales is driven by commercial and project-specific considerations. Developers will be anxious to ensure that they are not penalised for doing what is required of them to get a successful project.

For these reasons we are not convinced that pre-construction costs should be defined generically. BWEA would be pleased to debate this issue further with Ofgem. We would also urge Ofgem to pay close attention to project developer's own individual responses and engage in bilateral dialogue as appropriate.

BWEA believe that it may be advantageous for generators to continue to incur 'pre-construction' costs following OFTO appointment and this should be allowed.

Do you consider that an Ofgem defined, standard pre-construction works transfer agreement is the appropriate vehicle for managing the transfer and payment of pre-construction costs?

BWEA welcomes the concept of Ofgem providing some heads of terms which will provide some visibility to all parties of the negotiating framework. The acceptability of these terms will be contingent on matters such as:

- It depends what exactly the agreement commits the generator to. If the pre-construction works are being undertaken at risk – which they are – then the generator should have a strong hand in deciding what happens to them, and their worth.
- The transferability of liabilities attached to the pre-construction works
- The extent to which the OFTO will be willing to accept work undertaken by the generator –some agreed standards would be helpful in this respect

It would be useful if Ofgem prepares the pre-construction transfer agreement based on a case-by-case approach with developers involved in its preparation

Para 4.34 states "*We also note that we would expect Crown Estate round 2 projects currently entering pre-construction agreements to enter into separate contracts for the offshore generation and transmission works. Such transparency will aid the Authority's assessment of the efficiency of these costs*". BWEA note that around Europe the supply chain for offshore wind farms often delivers these items as a package. The generator should not be prevented from entering into a single contract; provided that there is no cross subsidy and costs can be apportioned between the future owners.

Section 5 – the scope of the tender

Do you agree that the tender specification should be based on the connection application, with information also being provided relating to any pre-construction works undertaken?

Yes.

Do you agree that bidders should be given flexibility to respond to this specification as they see fit?

As noted earlier BWEA believes that it may be necessary, for timescale reasons, to ask OFTO's to bid against a relatively tight specification for projects on very tight timescales. It is important to recognise that generators are facing extremely strong commercial pressures to find the most efficient and timely connection. These pressures come from locational charging methodology and from Crown Estate milestones in leases – the ultimate sanction being lease termination.

A design agreement statement between the NetSO and the generator should be a permitted to be placed in the data room.

More generally there is a careful balance here between promoting novel solutions and ideas, and providing generator's connection offers commensurate with their expectations. If generators are being asked to underwrite significant amounts up-front at their Stage 1 connection offer, it is reasonable to expect some kind of

predictability or bounded cost for their connection, in return. However, if all of National Grid, Ofgem and the OFTO can all vary the connection design – and hence cost to the developer – there is a significant and unknown risk for the generator. The Stage 1 offer is not very meaningful under these circumstances.

In the consultation Ofgem argues against the OFTOs taking on these kinds of unknown, unbounded, liabilities. Paragraph 5.25 states that "*In our view it is important that a tender specification is sufficiently bounded to ensure that bidders can clearly understand the rights and obligations placed on them and therefore submit financially firm bids. We do not therefore consider that approaches which would place an open ended obligation on OFTOs (for example a requirement to connect all future generation in a given geographic area) would be desirable*."

Paragraph 5.31 states that "*We consider that the likelihood of competition revealing efficient outcomes is likely to be reduced if parties are asked to assume an unknown obligation as a condition of receiving a transmission licence*."

Nonetheless the potential for significant variance in a generator's offer places just such unknown, open-ended financial obligations on the generator. Whilst BWEA accepts that it is of course desirable to encourage innovation, Ofgem should consider carefully how this impacts on generator's costs compared to what might reasonably have been expected.

Parties will take risks against what they can control, or where they are making the decisions, but in the offshore regime Ofgem is making the decision but asking the generator in return to take substantial financial risk.

Ofgem's considerations go wider than the commercial incentives places on the generator. If decisions are taken by Ofgem which increase costs for the generator – when the generator has been incentivised to seek the lowest cost connection – then who bears the consequences of this decision deserves some further thought.

Paragraph 5.11 says that "*the onshore regulatory arrangements currently involve relatively little scope for generator participation over and above them specifying their requirements in a connection application*", which may be true. However generators in return usually know what TNUoS zone they are connecting into and the scope for cost variation post-signature is much, much lower than in the offshore regime. If, in the onshore context, generators were being asked to underwrite significant works in return for a connection offer that had no reasonable indication of costs (or benefits), things might look quite different.

BWEA very much welcomes Ofgem's discussion around the incentives to co-ordinate connections. The political imperatives for interconnection are very relevant here. We agree that the regime needs to be flexible enough to respond to developments and that it may be too early to draw any concrete conclusions here. Ofgem's emphasis however is on developers signalling their desire for co-ordination and co-operating with each other. BWEA would note that this is somewhat at odds with the emphasis on competition to keep costs down. It is not realistic to expect competing generators to fully co-operate, unless it is in their own interests – quite often it will not be.

Do you agree with our suggestion not to incorporate capacity oversizing into the enduring regime (unless financial commitment is provided for that capacity)?

We agree that considerations of best value for the consumer should guide Ofgem's decision-making but we do not agree that this rules out over-sizing of assets. Prohibiting provision of some spare capacity may also unduly limit the scope for the OFTOs to innovate. Ofgem has duties towards future consumers as well as having sustainable development duties but says that "*Given our statutory duty to protect the interests of consumers, we find it difficult to argue that large, high cost subsea cables should be constructed to points a considerable distance from shore because of an expectation that developments will occur in those areas at some point in future*."

However we would question if this is consistent with Ofgem's duties towards future consumers, as well as with its duties on sustainable development. The assumption seems to be that over-sizing will lead to higher cost bids, but it can be cheaper overall to over-provide initially, exactly because there is an expectation that development will occur later on.

Ofgem may wish to note for instance that modelling by SHETL for Scottish island links demonstrates the economic viability of over-sizing assets when the cost of carbon is factored in. This is reported in two consultants' findings for work on enhanced TO incentives.[1]

The consultation states that "*the requirement* [for generators] *to post financial security to underwrite requests for capacity might create natural incentives to co-ordinate projects and mean that the likelihood of connection offers for very long lead time projects being sought (particularly were connect and manage transmission access arrangements in place onshore) may be unlikely.*" BWEA disagrees quite strongly on the first point – underwriting interactivity is a very strong disincentive to co-ordinate requests with competitors. Generators often very strongly favour bounded liabilities that do not vary with decisions made by other parties – this has been a major driver in the development of the IGUC underwriting option.

On the latter point BWEA agrees that underwriting promotes short-termism in that it discourages capacity from being developed in advance of a generator's certainty on their own project viability. We agree that this places a natural outward bound on the likelihood of generators tendering for assets very far in advance. This is the sole reason that the TO incentives work has been progressed and is why, where there is a need for decisions to be taken in time for need, there needs to be other mechanisms to achieve this.

We also note that on 7 December 2009 the Energy Minister Lord Hunt signed a political declaration "*to cooperate on the development of offshore wind infrastructure in the North Sea and Irish Seas*."[2] It recognises that this could be a complex task and calls for co-ordination between countries. Again this suggests that the enduring regime may need to accommodate broader perspectives than simply the generator's willingness to underwrite infrastructure at an early stage of its own single project development.

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[1] http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?file=100118_TOincentives_final_proposals_FINAL.pdf&refer=Networks/Trans/ElecTransPolicy/tar

[2] http://www.decc.gov.uk/en/content/cms/news/pn146/pn146.aspx

The proposal to look at the incremental capacity incentive on a case-by-case basis is welcome and this flexible approach should encourage some innovation.

BWEA would ask whether there is a need to consider reopeners, if a grid connection becomes an interconnection either partially or exclusively.

Section 6 – Facilitating competition

Do you consider that supply chain exclusivity should be permissible under the enduring regime? If not, do you have proposals for enforceable measures for precluding it?

BWEA notes that the supply chain does not necessarily want to work exclusively, and that existing anti-competitive legislation and rules may be sufficient to discourage exclusivity. The supply chain is keen to be pro-actively involved in the process and indeed this will be necessary for competent bids. There is also a need to provide the right signals to enable supply chain capability to be ramped up in time. Therefore BWEA would not wish any new rules on exclusivity to unduly restrict the supply chain's essential contribution before OFTO appointment.

Do you consider that the option of bidding on the basis of indicative costs and tendering after appointment has merit?

BWEA considers that this is an interesting option and that it has merit. We would like some time to work through the implications in more detail. There is a possibility that an indicative costs approach could introduce risks and delay the process. Some scenario-based 'walk-through' would be helpful and we would be pleased to facilitate this with Ofgem's participation. We note that there is a concern that this could distance the supply chain from pre-OFTO appointment participation, and that this would need to be addressed.

Do you support our minded to position that explicit steps to facilitate new entry should not be included in the enduring regulatory regime?

Yes, extra steps do no seem necessary.

The consultation makes the pre-supposition that competition will promote innovation. BWEA would note that the regime will promote innovation to the extent that it values innovation. If bids are evaluated primarily on the basis of cost, then innovation may be stifled. New entrants will not automatically bring innovation in the absence of it being rewarded in the bid evaluation process.

Should we include provisions in the enduring regime to ensure that access to offshore cable capacity and to offshore cable routes is made available? If so, what form should those provisions take?

If the existing proposals remain unchanged we are doubtful whether the regime would encourage any spare capacity. Nonetheless if it is provided via generator commitment then it should be available to that generator. If anticipatory investment incentives are built into the regime then the NETSO or some other body should be tasked with co-ordinating spare capacity.

We agree that there should be some oversight of cable routes. This not only includes access to cable routes but planning and co-ordination of cable crossings. There is perhaps a role here for the Crown Estate or the NETSO.

Section 7 – Tender timings

Do you support, or have alternative, proposals for amending the key stages of, or otherwise stream lining, the tender process?

BWEA welcomes the rationalisation of the pre-qualification stages. Further than that we note that it will be prudent to be able to flex the tender stages and duration subject to experience. Some flexibility in the length of the ITT stage should be considered. While it is important to have clarity on the tender timescale at the start of the process, the length of the ITT could be set according to requirements placed in the data room.

It should be noted that the longer the tender period the less validity there will be on the bid prices resulting in a risk premium.

Do you consider that the timings outlined will provide sufficient time for bidders to develop robust tender submissions and Ofgem to assess them?

See above.

In order to ensure an effective and timely procurement process through the supply chain, how long should the ITT stage last?

See above.

Section 8 – Bid evaluation

In which areas should we allow variant bids?

As noted earlier BWEA feels that variant bids that increase costs or denude the service for generators, pose significant issues and question the proportionality of generator underwriting to that date. There should naturally be a narrowing down of options commensurate with underwriting – if variant bids introduce uncertainty and cost then there are some major questions around who should be exposed to the consequences.

How should variants be treated in evaluation?

A major consideration should be the likelihood of generator acceptance of the Agreement to Vary. As stated previously, Ofgem should commit to involving the generator throughout the ITT stage to ensure generator acceptance.

Do you have a view on the factors we should consider in evaluating bids?

As noted earlier in this response, and in previous responses, BWEA believes that the weight afforded to innovation, forward-looking and anticipatory design should all be valued formally in the bid evaluation.

Section 9 – Revenue stream and incentive mechanisms

Do you consider that the existing incremental capacity incentives should be amended and, if so, what form should they take?

The consultation states that "*the purpose of the incremental capacity incentive is to provide scope for parties to respond to relatively minor changes in design specifications once the licence is granted (stemming from a change in a generator's requirements leading to a modification to a connection agreement) rather than to define a de-minimis threshold below which OFTOs will be able to expand capacity*."

This is contrary to BWEA's understanding, which was the latter rather than the former. We remain of the view that there should be scope for appointed OFTO's to undertake incremental expansion of existing capacity without the need for a new tender process. BWEA appreciates that this creates issues around the revenue stream for the extra capacity. Given that the generator is paying these costs, this could be subject to facilitated negotiation.

The assumption for the incremental incentive, pre-construction, seems to be that OFTOs keep the benefits of cost reductions up to construction but that they can pass on any cost increases. BWEA would prefer to see a more even-handed sharing of savings and cost increases built into the incentive.

How, if at all, should the existing availability incentive be updated for the enduring regulatory regime?

BWEA has already provided extensive comments on the availability incentive. There is a 'big ticket' concern which remains that generators are taking on the risk of network failure without any control over this.

The OFTO is not necessarily incentivised to repair a connection failure as quick as possible. Depending on the loss of revenues stream, the OFTO may find it more convenient to delay repairs in a way that will be the least costly for the OFTO's business. This does not match the needs of a developer, since a longer repair action will mean a longer inability to transmit to shore and generate power. While the OFTO is not capable of taking on the full risk of lost generation, BWEA would prefer an incentive which encourages fast repairs during periods of high generation.

There are other more detailed concerns around the treatment of monthly debits and credits – we note Ofgem's intention to work through these issues and look forward to commenting further as appropriate.

What is your view of the inclusion of a re-financing claw back mechanism?

BWEA notes that refinancing has benefits in cost reduction and should be included. It is difficult to assess the likelihood of windfall gains that could occur from refinancing at any time up to 20 years in the future. However, it is not clear how allowing the OFTO to retain all gains is beneficial for consumers. It has not been described how an OFTO retaining less than 100% of refinancing gains would be a tipping point to not seek these. Examples of a 50% split in claw-back have been seen in PFI models and could be used here provided they are across the

board for project finance and generator finance. i.e. cannot be avoided by certain finance structures.

Do you have evidence of insurance market volatility that suggests that an incentive would be in the interests of consumers?

BWEA has no evidence to add on this point.

Section 10 – Responding to future developments

Do you have comments on the practicality of the potential options for dealing with the future developments outlined?

BWEA agrees with Ofgem that the different options discussed each have some issues. It will be important to ensure that the generator can share any benefits arising from future use of infrastructure that it has paid for, either through a profit share or a refund. BWEA considers there to be scope for facilitated negotiation between the generator(s) and the OFTO(s) as to the most appropriate solution, on a case-by-case basis.

Do you have alternative options for addressing the issues raised?

Yes – please see our comments on over-sizing of capacity. We remain convinced that some anticipatory investment will be of benefit to UK plc.

Are there other issues regarding future offshore developments which you consider need to be addressed?

The consultation treats the issue of future expansion as something that is not on the critical path – suggesting that it can be dealt with in the longer-term. BWEA disagrees with this assessment. For large offshore projects one of the very first decisions that a generator will need to make is whether to make a connection application for one large, phased project, or to make separate applications for each stage. This decision will be very much informed by the policy on future capacity expansions. We also note that the NETSO will benefit from advance signalling of need and hence may tend to prefer large, phased applications.

The issues around interconnection do need to be addressed, if not as part of the regime then alongside it. There is a need to develop thinking on how to manage interconnections between countries, and specifically to remove the regulatory barriers created by the offshore regime being regulated, and interconnections being developed largely on a merchant basis. There is a mis-match which at present will not promote efficient interconnection in areas such as the Irish Sea (connecting Wales and Ireland via offshore developments) or the North Sea connecting Round 3 projects with the German North Sea projects.

In addition BWEA has had some membership feedback that under the transitional regime there is a great deal of uncertainty over whether the generators can rightfully commission their assets before handing over to the OFTO. Our understanding is that handover cannot take place until the assets have been tested and commissioned because this is not a risk that the OFTO's funders wish to take. Does commissioning however place the generator in breach of the prohibition on transmission? Our members need some written clarity on this point and we would be grateful if this could be prioritised.

Appendix

We also request that Ofgem consider the many outstanding issues raised in earlier consultation responses, BWEA's pre-consultation submission and in our response to Ofgem's open letter.

BWEA's response to Ofgem's open letter

BWEA's response can be downloaded here.
http://www.ofgem.gov.uk/Networks/offtrans/pdc/cdr/cons2009/Documents1/Response%20from%20BWEA%20to%20An%20Open%20Letter%20on%20the%20Enduring%20Regime.pdf

BWEA Offshore Wind

The offshore transmission regime: Carry- over issues for further consultation on the enduring regime

Dear Bob and Lorraine,

BWEA was very pleased to note that Ofgem / DECC will be consulting further on the enduring regime. We appreciate the immediate need to ensure that the transitional tenders are a success, and to that end we are more than happy to assist as required as the tender process rolls out. Looking forward to the enduring regime, we have taken the opportunity to review previous offshore regime consultations, and identify some key issues that we believe could usefully be carried over into discussions on the enduring projects.

Clearly there will also be lessons to learn from experiences in the transitional regime, and we trust that these will be incorporated as appropriate. BWEA also acknowledges Ofgem's response to feedback on some transitional regime proposals, including the decisions:

- not to mandate an independent engineering report – we considered that this was not essential where OFTO's might be expected to undertake their own due diligence
- not to impose an obligation to construct assets within a prescribed period – this is a commercial matter, and subject to managing the commercial issues through the SPA and final bid negotiations
- to allow developers to offer services to OFTO's such as Operations and Maintenance – BWEA welcomes this
- not to bar supply chain exclusivity for the transitional regime – BWEA agrees with Ofgem that this is largely academic for the transitional regime, but welcomes the opportunity to consider this further for the enduring regime

Our key issues for the enduring regime are set out below. We hope you find this analysis useful.

Qualification for the enduring regime
The qualification criteria for the enduring regime are understood to comprise:

(1) A grid connection offer from the GBSO
(2) Having entered into lease arrangements with the Crown Estate

With a pre-condition for tender entry being:

(3) Release of available and relevant project information (e.g. seabed surveys) into the data room prior to the tender exercise

As discussed in the March update of the competitive tender process, BWEA understands that 'lease agreements' means that the developer is required to demonstrate (to the satisfaction of Ofgem and the bidders) that an agreement for a lease from Crown Estate has been obtained. As far as possible we would not wish these pre-conditions to unnecessarily extend the period before a project might qualify for inclusion in an OFTO tender round. It may also be helpful for Ofgem to indicate likely requirements to pre-qualifying OFTOs at the outset of the tender process, before exact requirements are finalised at the full tendering stage.

We would therefore be supportive of some professional and pragmatic judgement in the application of these criteria, in support of early qualification where requested.

Nature of the OFTO

The transitional regime is intended to transfer existing assets over to an OFTO – i.e. the scope for the bidding OFTO in differentiating itself is limited to the revenue stream, ongoing operational practices, and incremental additions to capacity. This is quite a 'thin' OFTO. This compares with Ofgem's vision for the enduring regime which would be an innovative organisation bringing efficiencies and novel solutions to the full suite of design, construction and operation of the offshore assets – let's say a 'well built' OFTO.

In the enduring regime there could easily be a broad spectrum of projects looking for OFTO's of all shapes and sizes. For instance in the first enduring tender there could conceivably be a project that just missed qualification as a transitional project, and one that has only just been awarded a Round 3 lease. It must be clear, then, that flexibility is very important.

Ofgem has stated its willingness to be flexible and this is very welcome. We would however like to understand how this will translate into practice. Ofgem will potentially be in a position to exercise its own preferences in awarding OFTO licenses. We need to reach a common understanding on this and find a good balance between flexibility and predictability.

For instance, a generator is at liberty to choose when it goes to tender, but if it tenders later than Ofgem would have liked, will sanctions be applied such as a lower pass-through of the generator's costs incurred? Would this hurt the generator if the OFTO offered a better price in return? That is, is there genuine commercial flexibility in the regime or will there be nominal legislative flexibility which is countered by strong regulatory preferences?

Asset transfer

The key difference between the transitional and enduring regime is the powers available to the transitional tender process to mandate an asset transfer scheme. On the face of it this is not a significant difference, but could be very important where there is little or no OFTO competition i.e. the generator is a distressed seller. In both cases generators are reliant on Ofgem to secure them a fair deal. This is pretty fundamental to assessing risk and when to tender for an OFTO, and does need some further thought. This is related to the preceding point on generator choice of when to tender for an OFTO.

Assessment criteria
BWEA has previously questioned whether it is possible to meet the twin objectives of:

- a competitive, robust IRR bid, with,
- an early appointment of an OFTO bringing new solutions to the table.

IRRs will be robust and reliable for late-stage appointment, but will inevitably be subject to uncertainty for early-stage appointment, especially where new practices are proposed. Under these circumstances BWEA would question whether it is appropriate to have the same assessment criteria and relative weightings for each and every OFTO. We have severe reservations whether 'one-size-fits-all' assessment criteria are appropriate.

Embedded Transmission
BWEA continues to believe that the arrangements for embedded transmission are overly cumbersome, and unduly discriminatory. Embedded generators will have to pay 'pancaked' transmission and distribution charges, and yet be subject to more access restrictions than a directly-connected generator at transmission. BWEA is supportive of a solution put forward by E.ON UK for the treatment of licence exempt embedded generators connected to embedded transmission assets.

Revenue Period
BWEA have in the past encouraged Ofgem to consider the revenue period for the licence to be more flexible and in line with the expected lifespan of the offshore assets. We are happy to see that the end of the revenue period is open-ended, albeit disappointed that there is not more flexibility. At the very least we think there is merit in the incumbent OFTO having first refusal for any licence extensions (except where the OFTO has failed to fulfil contractual obligations throughout the revenue period).

Network failure risk
BWEA remains concerned that the risk of network failure and the financial burden this potentially places on a developer has not been adequately addressed. BWEA has previously argued for an association between the size of the penalties levied on an OFTO for unplanned outages and the loss of generation from the project. The aim being to incentivise prompt repair during periods of high revenue generation. Baring in mind that the penalties that are passed onto the OFTO will be priced into the tender, adequate communication during the tender should be allowed so that the generator can indicate what risks can be accommodated and at what cost. An appropriate balance of risk should be found between the generator, the OFTO and the consumer. Partially addressing this issue through the CUSC could avoid potential OFTOs and generators being unable to accommodate this risk.

Security requirements
Linked to the point above, BWEA still also has reservations around the offshore security standard, and what purpose it is serving if it is not linked to compensation levels. We do not agree with Ofgem that redundancy is the over-riding criterion. BWEA believes that financial considerations have influenced Ofgem's thinking, and that this has resulted in a downgrading of the technical and economic considerations which went into determining the offshore security standard. We would welcome an open, explicit debate about what should be given priority.

BWEA has also queried whether there would be opportunities to achieve higher measures of redundancy through project interconnection? Developers could chose

to specify this as part of an OFTO tender, but how would this impact on outage payments? This could be complex if redundancy developed incrementally with separate, interacting OFTOs.

Supply chain
As you know BWEA has expressed reservations about measures that could limit the ability of the supply chain to engage in and service the OFTO process. Their participation is of course essential and thus any restrictions on their activities should be very carefully thought through. In particular, the ability of the supply chain to gear up production in a timely fashion is going to be absolutely critical to meeting government targets.

As we have noted previously, if Ofgem wants to place restrictions on supply chain freedom to contract with who they chose when they chose, then the quid pro quo may need to be some form of government backing for ramping up capacity during the time that commercial contracts might have otherwise allowed them to do so.

Co-ordinated and strategic development of assets
BWEA acknowledges Ofgem's statements around developer choice on timing, phasing and collation of asset requirements to make up a simple or a complex OFTO tender. This could for instance result in multi-connection point, multi-project, phased build programmes being put out as a single tender. As you know there are a number of questions around such an approach, including:

- Will competing generators naturally co-operate?
- Will user commitment be forthcoming in time for development of strategic assets, or is there some work in looking at whether the OFTOs might be incentivised to undertake some anticipatory investment?
- Is there a need for the GBSO to take a more formal co-ordinating role for strategic asset developments?
- How complex will it be to keep the fixed 20 year revenue stream for such tenders? Will some flexibility be required?

BWEA remains open-minded on the appropriate model by which co-operation is achieved. We are however clear that anticipatory offshore investment will be necessary for timely investment.

Scenario walk-through
We would commend the value of a scenario-based walk-through of the OFTO as a very useful tool for highlighting issues and understanding the process. We would like to extend an open invitation for Ofgem and DECC to join BWEA in such an exercise.

Revenue re-openers
Ofgem envisages very limited circumstances in which the price control arrangements for the OFTO would be re-opened. BWEA is open-minded about the pros and cons of price control stability, but would note that the trend onshore is towards more flexibility within price control periods. Ofgem may wish to keep its options open in this respect.

Decommissioning
BWEA would re-iterate earlier representations that cost pass-through of unforeseen decommissioning costs may not promote the highest standard of decommissioning plans. There should be some recognition of what is considered to be reasonable provision, and benchmarking of tenders on decommissioning competence.

Reactive Power and other GBSO services
The arrangements by which a generator benefits from revenue for equipment that it pays for remains unclear. This should at least be negotiable during the tender process. The OFTO should be asked to identify what services it will offer. Future service provision may present a case for a revenue re-opener.

Regime Monitoring
BWEA supports Ofgem / DECC plans to review progress and monitor performance of the tender process. We remain however concerned that there is as yet no agreed "scorecard" as to what success constitutes, and we would urge this to be developer earlier rather than later. The risk is that any monitoring programme is viewed cynically as self-regulation with the scope for retrospective definition of the aims and objectives of the regime. For the avoidance of doubt, top of BWEA's scorecard is meeting 2020 targets.

Tender Timeframes
As previously highlighted, Round 3 projects requiring design work by the OFTO and a supply chain offer to the OFTO could extend the tender timeframe from a year to 18-21 months. Opportunities to gain efficiencies could be explored, such as signalling strategic supply chain requirements in advance.

Data Room
BWEA has previously asked for some guidance on when a generator would satisfy the data room pre-condition for tender entry. Ofgem has since published some draft data room guidelines and we await the final guidelines. Please let us know if you would welcome any discussion on this.

Developers' role in negotiations
As you know the BWEA has strong views on the generator's ability to influence the outcome of the OFTO selection process. We support tri-partite negotiations between the generator, prospective bidders and Ofgem during the bidding process, and note that Ofgem favours a process of "structured" dialogue around asset transfer for the transitional projects.

BWEA would urge Ofgem to consider this further in the context of enduring projects. A developer's acceptance of the Agreement to Vary is crucial and has project delivery implications. As far as possible we would promote the benefits a two-way dialogue between generator and prospective OFTO.

License tradability
BWEA has previously asked whether an OFTO divesting its assets would trigger a re-tender for the transmission licence. As far as we are aware this remains unresolved.