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Diane Kennedy
Ofgem
9 Millbank
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Dear Diane

**Offshore Electricity Transmission: Consultation on Draft Tender Regulations 2010 --
DONG Energy's Second Response**

Thank you for the opportunity to comment on the consultation to the Draft Tender Regulations 2010. This response is made by DONG Wind (UK) Ltd on behalf of its affiliated generator companies operating or under development in the British electricity market. In this letter we comment on the remaining issues in the consultation, following our letter of 24 February on the Qualification Stages issues.

In your covering letter you highlight five key issues, we make our comments under these headings:

1. Insertion of a mechanism to assess the costs of pre-construction works for projects tendered under the enduring regime

We agree with this approach but consider the definition of "pre-construction works" rather narrow, in particular the term "unavoidable" in connection with onshore connection works. A broader definition could have the following added at the end "and any other works agreed by the Authority to be treated as pre-construction works".

2. Insertion of a mechanism to transfer any pre-construction works undertaken by developers of projects tendered under the enduring regime

We note that this mechanism is similar to that for the transfer of assets under a transitional tender but consider it would be helpful to have a rather more explicit statement in the regulations about the transfer of pre-construction works. As per our comment on the enduring regime more generally, we think that developer-specific transfer agreement for pre-construction works would be better than generic ones.

3. Changes to both the transitional and enduring developer entry conditions set out in Schedule 2 to the draft 2010 Regulations

For clarity, at the start of paragraph 1(i), add "where a developer has undertaken or intends to undertake pre-construction works,".

4. Requirement on developers to provide updated cost information to the Authority until such time as the assets are available for use for the transmission of electricity. This applies to projects tendered under the transitional regime and enduring regime

No comments

5. Ability for the Authority to use this updated cost information to update cost estimates or assessments for pre-construction works

No comments

Other Issues:

1. Revocation

As we understand the proposed regulation 2, the new regulations would immediately replace the existing (SI 2009/1340). A new provision is needed to clarify that the first transitional tender that commenced under the current regulation should continue under that regulation (unless being explicitly changed for the first transitional tender).

2. Schedule 1

We note that new text has been added to paragraphs 2(b) and (c) in Schedule 1, requiring developers to ensure that all consents and property rights (that are, capable of being assigned to a successful bidder), and all contracts, are assignable. We do not agree with this retrospective change – projects entering the second transitional tender round may have obtained consents or property rights, or signed contracts, some time ago, and if they did not at that time include assignment rights, would need to reopen them ahead of tender entry. Developers will of course seek to effect assignments by bilateral negotiation, but if they cannot, or the commercial terms for doing so are particularly onerous, a request will have to be made to the Authority to use a statutory transfer scheme instead. We do not think that developers should be denied entry to a tender on this issue.

From discussions with the Authority, DONG Energy had understood that greater flexibility was being considered in terms of meeting the requirements of paragraph 2. If so, in paragraph 3, the reference to “paragraph 2(b) or (c)” should be replaced by a reference to “paragraph 2(a), (b), (c) or (d)”.

This response has been sent by email only.



Yours sincerely,
Jesper Krarup Holst
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Head of UK Project Development