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Monday 29 November 2010

**Re: Offshore Electricity Transmission: Implementing further refinements to the enduring regime**

Dear Yvonne and Kristina,

Thank you for the opportunity to respond to the consultation document and input to the proposed changes to the industry codes. We have separately provided comments on the codes drafting of a material nature to you. Our further comments follow below.

Act of Transmission and point of asset transfer

One matter that must be clarified that affects both the transitional regime and the generator build option in the enduring regime is the point when an OFTO needs to be in place to satisfy the transmission licensing requirement.

Ofgem's interpretation of the act of transmission in the Electricity Act 1989 (as amended) requires a licensed offshore transmission owner in place in time for the first export of electricity from the offshore platform to the onshore transmission system. Accordingly this will require certain contracts and assets to pass to the successful bidder before all works are completed, assets are fully commissioned and accepted in accordance with the terms of those contracts.

It is our view that the most sensible and efficient point of transfer is when the assets are fully commissioned and accepted. This does not preclude a phased transfer. It has a number of benefits in terms of clarity of responsibility for managing the construction contracts during the critical commissioning period, avoiding unnecessary increase to safety related risk, resolving any associated claims and minimising risk to the OFTO by reducing its exposure to construction related risks.

This could be achieved by a conditional award of the offshore transmission licence, to

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satisfy the licensing requirement, with a subsequent transfer of the assets once they have been accepted under the terms of the construction contracts. Licence conditions could be largely switched off until the assets are transferred to minimise the OFTO's exposure, with the ability to revoke the licence in the event that the transaction does not complete for any reason.

Alternatively a change to primary legislation, or clarification through secondary legislation, could define the act of transmission for the purpose of offshore transmission, recognising the significant difference between the onshore transmission activity, which has existing incumbent Transmission Owners responsible for the construction activity.

#### Cost Guarantee

We welcome Ofgem's intention to publish cost assessment reports. To aid investment certainty and ensure consistency, Ofgem's processes for determining the ex ante and ex post valuations should be more transparent. Whilst we recognise that each project is assessed on a case by case basis, the rules and criteria that Ofgem apply to assessing the valuation should be visible and understandable to investors.

#### Competition Issues - ringfencing transmission costs

Ringfencing costs will be dependent upon individual company accounting practices and supporting systems. How the requirement will be implemented will be important to whether it is workable in practice. Proposals that prevent the benefits of combined procurement being realised must be avoided.

#### EU Third Energy Package

We welcome the commitment to ensure that the offshore transmission regime will be fully compatible with the requirements of the Third Energy Package. Clarity on how the Third Energy Package will translate the OFTO model to one of the acceptable models of transmission ownership will be helpful. The certification of OFTO entities should not introduce additional time to commence and complete the OFTO tender.

#### Industry Code drafting

We note that drafting changes to the SO-TO Code are to follow. In this context it is difficult to be able to fully assess the appropriateness of all of the proposed drafting changes to the industry codes, particularly the Grid Code. Given the implementation timeframe our ability to undertake a thorough review, to assess whether each detailed requirement is appropriate, has been limited. We would therefore recommend that post



implementation a review is undertaken with the Grid Code Review Panel and CUSC Panel, to ensure that changes introduced are equitable and do not inadvertently result in unintended consequences.

Please find attached our marked up comments on the CUSC and Grid Code text.

Yours sincerely

Guy Phillips  
Grid Interface Executive