



SCOTTISHPOWER RENEWABLES

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Sent by email only

Dear Ms. Naughton and Ms. Dahlstrom,

OFFSHORE ELECTRICITY TRANSMISSION: IMPLEMENTING FURTHER REFINEMENTS to the ENDURING REGIME

Thank you for the opportunity to respond to this consultation of 08 November 2010. On behalf of ScottishPower Renewable Energy Ltd I am pleased to submit our response to the consultation, and in particular to the questions raised. We have included our comments and responses below.

We acknowledge – and are very grateful for - Ofgem and DECC's continued and extensive efforts to develop and implement enduring OFTO arrangements that will support achievement of Government energy policy objectives. We will continue to work with you and other stakeholders to help achieve this, in what is a very challenging timeframe.

We particularly welcome the commitment to continue to develop and implement a 'generator build' OFTO option. We believe that the additional flexibility this brings to the OFTO arrangements will encourage and support investor confidence that the arrangements can support efficient and timely deployment of the windfarms required to achieve the Government's energy policy objectives. Investor confidence is key to the successful deployment on the scale required and we must strive to avoid creating any uncertainty over the OFTO arrangements.

We have included our comments and responses below under the chapter headings included in the consultation document.

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Chapter 2 – The Enduring Regulatory Regime for Offshore Electricity Transmission

Ensuring Consistency

We note and agree with the broad principles of ensuring that a generator pursuing the generator build option should face the same obligations and responsibilities as would an OFTO developing and constructing those same assets. On this basis, the rationale and aims of the code changes as set out in the consultation would appear to be appropriate.

Code Changes for the Late OFTO build option

We believe it is important that the arrangements covering all OFTO options are fully clarified and set out prior to their implementation. In particular, we welcome clarity on the scope of activities that a generator can undertake under the 'Late OFTO' approach. In addition to this however, we think it is critical that a transparent cost recovery methodology is developed – with industry input - as a priority for this arrangement.

It is inevitable though that in the time available to develop and implement the code changes, unforeseen and unintended consequences of the code changes may arise. Therefore, consideration should be given to allowing any changes that result in recognised unforeseen and adverse implications to be changed under a fast track process.

Transfer of assets to the OFTO

This is an area of the arrangements that continues to cause us significant concerns. We believe that a 'Property Scheme' will go some way to alleviating these concerns and so we welcome Ofgem and DECC's proposal to investigate this further.

As we – and others – have stated in the past, the practicalities of developing and commissioning an offshore windfarm need to be reflected in the asset transfer process. The scale of offshore windfarms means that construction and commissioning will happen in stages to reflect the optimum build programme. The envisaged timing of the appointment of the OFTO does not align with this, meaning the process may stall and be inefficient. The arrangements surrounding this need to be thought through and developed carefully in order that this does not happen.

We ask that:

1. Further clarity is given on at what stage in the process will the use of the offshore grid assets be defined as 'transmission (ie licenced) rather than being part of the commissioning process, and
2. Ofgem and DECC give consideration to an approach that would either:
 - a. allow the generator to be exempt – on a temporary basis – from the requirement for the use of the assets in these circumstances to be licenced and 'unbundled' from ownership and operation of the generation assets, or
 - b. allow the OFTO to be appointed in a timeframe that is consistent with the windfarm's commissioning programme and, if necessary, allow the generator to assume some of the obligations and duties of the OFTO during the commissioning phase.



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The arrangements should also recognise that any such exemption or arrangements should also align with the OFTO of Last Resort arrangements, to cope with the event of a failed OFTO tender.

The EU's 3rd Energy package requires unbundling of ownership of generation and transmission assets and certification of the transmission licensee. This process must not be allowed to delay the OFTO being able to assume its licence obligations and responsibilities and so it should be processed in parallel with the OFTO tender process. In the event that this cannot be done the approaches suggested above should be widened to cover this situation.

OFTO of Last Resort

We welcome the proposed extension of the OFTO of Last Resort (OLR) arrangement to the enduring OFTO arrangements for the event of a failed tender (as well as continuation of the OLR arrangements for OFTO failure, abandonment etc). This should help prevent stranding of assets thus encouraging and supporting investor confidence.

However, the very nature of the need for OLR arrangements is such that they will generally be required to be implemented at short notice and in uncertain circumstances. Therefore, to maintain investor confidence in the efficacy of the arrangements, they should be set out transparently and to reflect the practical realities, needs and time sensitive nature of the development and operation of electricity generation projects.

We believe that for simplicity and consistency, OLR arrangements should apply to all OFTO options although we recognise the concerns about doing so for the OFTO build options. Although the generator will have the option of pursuing a generator build option in the event of a failed OFTO-build tender round, this could set the project programme back considerably. In these circumstances, we suggest that there may be merit in considering a 'fast track' tender process, only involving OFTO's who are eligible as OLR, as this may be quicker than the generator having to commence a generator build approach. Further, we suggest that consideration should be given to arrangements that would allow the generator to be the OFTO/OLR on an extended, but temporary, basis.

Involving the generator more closely in the commercial aspects of their OFTO tender round should help reduce the likelihood of the need for an OLR as the generator may be willing to compromise on their requirements, such that the tender does not fail. We note and welcome the proposed further consultations on the Tender Regulations and Tender Rules and other arrangements and hope that this can be addressed at that time.

We believe that a robust and transparent approach to OLR is key to the OFTO arrangements and we note that OLR requirements are already in place in all TO licences, with appropriate safeguards in place to ensure that this duty does not prejudice the TOs' ability to perform its primary duties. We are concerned though that not all TOs may be able to comply with, or sustain, such an obligation. In fact, the investment and financing requirements of this may mean that even the larger TOs' balance sheets and investor ratings could be adversely affected. This will not be acceptable and nor will it be desirable to force a TO to assume this obligation in these circumstances. We believe therefore that consideration should be given to establishing a default OLR, who has the financial standing and ability to assume such responsibilities.

Cost Guarantee

We are disappointed in the proposal not to extend the ex-post guarantee mechanism to the enduring arrangements. We believe that for consistency across the arrangements it should be extended. In addition, we believe it is premature to assume that the OFTO market –

particularly in respect of constructing offshore assets - has developed to a point that investors have sufficient confidence in the regulatory framework that there is no need for an ex-post cost guarantee.

The proposed ex-ante cost guarantee is welcomed, provided that Ofgem's cost efficiency assessment is carried out with full generator involvement and that it will reflect the practical and commercial realities of developing electricity generation projects.

However, publication of the costs and cost assessments of the transitional tender rounds will be very helpful in alleviating concern in this respect.

We note that if a Property Scheme is continued for the generator build option it offers a route of appeal to the Competition Appeals Tribunal (CAT) if the generator disputes Ofgem's cost assessment. However, reliance on this route should be avoided and the points we suggest above may help to avoid this.

Competition Issues

Ofgem and DECC propose that generators will have to 'ring fence' transmission assets costs from generation asset costs to prevent cross-subsidy. We support the principles behind this but recommend that the tender regulations should be used to specify how costs should be ring fenced and that this should extend only to the monitoring and allocating of costs and reporting them to Ofgem for the cost assessment. In addition, a simple proportional basis for allocating overheads should be agreed with each generator, to reflect the particular circumstances of their individual projects.

Further Consultations

We note and welcome the proposal to carry out further consultation on the Tender Regulations and Tender Rules as we believe there is a still considerable uncertainty in aspects of these. As noted in this consultation the detail on other issues such as pre-construction works scopes and costs, contingencies, generator role in evaluation, Ofgem's role in asset transfer etc are still not certain but are important to the successful operation of the OFTO arrangements.

Co-ordination

We note and welcome Ofgem and DECC's plans to carry out further analysis to consider if further arrangements are required to facilitate greater co-ordination in offshore network development. We support the principle of greater co-ordination of development of the offshore network. However, it is critical that the current OFTO arrangements are not threatened by such work or arrangements, as this would undermine confidence in the regulatory framework. In addition, developers of early Round 3 projects must have confidence that their project will be able to proceed as planned and that if changes to the arrangements are proposed they, and their projects, will not be adversely affected by this.

Third Package

We note Ofgem and DECC's aims in respect of implementation in UK law of the 3rd package (unbundling requirements) and to ensure that the offshore regime will be fully compatible with its requirements. This is welcomed but we point out the suggestions we have raised earlier in this response, particularly regarding staged commissioning of projects and OFTO of Last Resort arrangements.

In addition, we ask that careful consideration is given to ensuring that the UK's implementation of the 3rd package unbundling requirements does not disadvantage – or in

fact hinder – developers in the UK compared to their European counterparts. We are aware that other EU member states are not implementing the requirements to the same extent as proposed in the UK and this could be seen as a barrier to entry to, and investment in, the UK.

Chapters 3 Proposed Changes to the Industry Codes

We acknowledge the excellent and comprehensive work that has been undertaken in respect of the CUSC and Grid code in the challenging timetable available to do so. We believe that these proposed changes will have been developed in good faith to deliver the required arrangements.

However, as we have stated previously, given the limited time that has been available to achieve this, it is likely that there will be unintended results arising from these proposed changes. To address the circumstances where there are recognised unforeseen and adverse consequences arising from implementation of the proposed changes, consideration should be given to developing a 'fast track' amendment process, with the aim of achieving the desired outcome of the change.

CUSC

The aim of minimising change to the connection application process is welcomed but the proposed changes to the CUSC are still extensive. From the point of view of the overall structure of the changes, the proposed changes appear to have been developed logically such that the connection process - from application to commissioning - ensures that all the relevant data exchanges, responsibilities and timelines are complied with.

Some developers already have grid agreements that reflect the OFTO build option. Consideration should be given to the arrangements and timing for allowing such generators to decide whether this is still their preferred approach. The consultation does not address how the proposed changes to the enduring regime will be implemented for generators who already have a connection agreement. For example, will a revised agreement be required including the relevant data that NGET must provide to allow the generators to decide which option to choose? If so, will a 'ModApp' be required for how long will this agreement be open for acceptance?

In the following section we have responded to the questions posed in the consultation to where we have a view on it and have pointed out areas where we think further clarity is required. However, in the time available, we have limited comments on the detail of the proposed changes.

Q3.4 Do you consider that the timescale of 28 days, being proposed in clause 17 of Schedule 2, Exhibit 3A of CUSC (the Construction Agreement), for an offshore generator to provide its programme for the construction of the OTSDUW and its proposed onshore connection point is reasonable?

We understand that there is some uncertainty over the meaning of this question. If the stated 28 days period applies only to the generator having to provide "its programme" this 28 days period seems reasonable. However, it will not be reasonable for the generator to provide design information within this timeframe and we suggest that 3 months would be more realistic. In addition, we suggest that as the generator will not be constructing the onshore connection point there should be no requirement to provide any information in this respect.

CUSC Exhibit B Connection Application Form

We cannot see any change to the application form in respect of the applicant being able to indicate that it is not interested in undertaking the Offshore Transmission System Development User Works (OTSDUW).

CUSC Exhibit B Connection Application

The proposed changes state that any assets resulting from the OTSDUW will not be available for use for the purposes of transmission until they have been transferred to an Offshore Transmission Licensee. Will the generator be able to commission and energise the assets prior to the transfer, e.g. import power to allow commissioning? Otherwise, this is likely to delay the wind farm.

In addition, the additional requirements for information from the generator and additional details in the connection proposal may result in additional pressure on the Applicant and the NETSO to consider and respond to technical issues proposed in the connection offer within the 3 month acceptance period. It may therefore be appropriate to remove specified aspects of the offer from the 3 months acceptance period.

In respect of clause 2.13.10 the requirement for the offshore works 'designed' by the user/generator to be defined prior to the application being submitted involves considerable work for the generator. For example, some projects with existing agreements may propose several connection types, e.g. projects 1 and 2 as Generator build and projects 3 and 4 as Late OFTO. We believe that further consideration is required on how the proposed changes will align with such existing agreements and project plans.

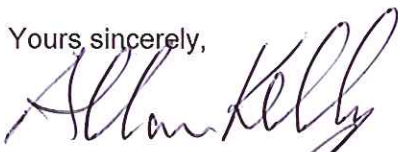
Grid Code

We agree with, and welcome, the fundamental principles and aims of the proposed changes to the grid code ie they are designed to place the technical design requirements on the own-build generator in place of the OFTO and ensure that the generator passes sufficient design data to the System Operator to enable him to plan the development of the transmission system.

As with the changes proposed for the CUSC, in the time available, we have no substantive comments on the detail of the proposed changes. We believe that some of the areas where information – or additional work – can be requested by the NETSO (eg PC 6.5) are vague and consideration should be given to making these more specific.

We hope you find our comments clear and helpful but we would be happy to discuss them more fully with you if you require.

Yours sincerely,



Allan Kelly
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