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17 February 2012

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Dear Giedre,

RE: Enduring OFTO tender process

DONG Energy is a leading energy company operating in Northern Europe and headquartered in Denmark. It is one of the most active offshore wind operators and investors in the United Kingdom with a total pipeline capacity of approximately 2.8GW, including four offshore wind farms in operation, a stake in a further four sites currently under construction and a strong pipeline of potential future projects. We have participated in both of the transitional OFTO tender rounds, and will have several projects included in the enduring regime. We support Ofgem's proposal to focus on the late OFTO and generator build options, and we are keen to see options developed that are attractive to generators, prospective OFTOs, funders, and the supply chain.

For both OFTO options, it is important that the close interlinking between the transmission assets and the wind farm itself is acknowledged. Changes in the design of the transmission assets, or delays to the construction timetable can have significant effects on the business case of the wind farm. This is of particular relevance where items with long lead times, such as HVDC, are required.

Our main concern with the proposals for the OFTO build option is in respect of the scope for generator involvement in procurement of long-lead time items. We believe that for the OFTO build option to be attractive to generators requiring HVDC technology, generators need to be allowed to make binding agreements with suppliers for manufacturing capacity. Non-binding agreements and an OFTO-led procurement process could lead to years of delay and increased costs, and so creating a barrier to its successful implementation. We believe the strongest impetus for supply chain development will come from a clear enduring framework that provides certainty through the ability for the procurer to make binding commitments in a timely fashion.

We regard it as absolutely vital that the tender processes for both options are clearly aligned with the generator's development and construction schedule, as well as processes arising from the new CfD mechanism. It is essential that the OFTO tender does not cause delay to commissioning or operation of offshore wind farms. Any delays result in increased costs and potential penalties with respect to the CfD.

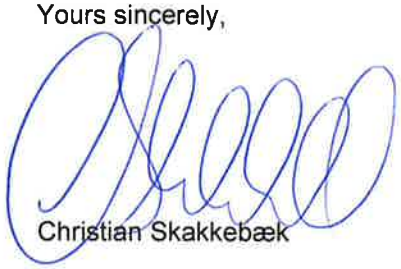
Having considered the options set out in the consultation document, we are concerned that the OFTO build option does not mitigate the main risks for the

generator in terms of programme management and interfaces to a sufficient extent. As such, we do not believe it is a viable alternative to the generator build model at this time. Also, exposing OFTOs to construction risk may increase their cost of capital and hence the required revenue. The benefit to consumers of the OFTO build regime may therefore be lower than what has been seen under the transitional tenders.

However, the generator build option carries the high cost of the transmission assets on the generators balance sheet during the construction phase, particularly in the case of HVDC technology. DONG Energy is interested in exploring an option whereby a third party could be wholly responsible for the funding and construction of the transmission assets, with the generator retaining control of the construction programme and associated the interfaces. The completed assets would then be transferred to the OFTO as under the generator build model. This would not result in any additional costs to the consumer, but would be a very attractive option to generators who can remain in control of important risks while not carrying the full cost of the assets during construction.

Please find our responses to the detailed consultation questions below.

Yours sincerely,



Christian Skakkebæk

Senior Vice President
Head of UK Renewables

DONG Energy

Chapter 2: The enduring regulatory regime for offshore electricity transmission

2.1 Do you have any views on the approach (...) to focus on a single OFTO build option?

DONG Energy does not consider the early build OFTO option to be an attractive one as we believe the planning and consents stage is managed most efficiently as one process by the generator: We support Ofgem's decision to focus on the generator and late OFTO build options, with the reservation that projects requiring items with long-lead times, such as HVDC technology, may find the current proposal for the late OFTO build impractical, as explored in the answers to questions 3.8-11.

Chapter 3: OFTO build option

3.1 What are your views on the proposed arrangements for triggering a tender exercise?

We believe the proposed approach is reasonable. Based on our current understanding of the IPC process the timing proposed by Ofgem should not cause any problems regarding the consent, construction, or financing of an offshore wind farm.

3.2 What are your views on whether our proposal on generator security will ensure the appropriate level of commitment from a generator?

We believe a continuation of the transitional arrangements is appropriate and provides the right level of security from the generator.

3.3 Do you agree with our proposed approach to the tender specification for an OFTO build tender exercise?

We welcome Ofgem's recognition that the OFTOs' bids should be based on the parameters set by the Bilateral Connection Agreement, the planning consent, and any pre-construction work. We do however note that the design and parameters included in the tender specification may be less flexible and less open to changes at a later stage due to the IPC development consent process requiring extensive consultation on project-specific issues. This may limit the influence the OFTO can have on the design of the transmission assets without risking a resubmission of the planning application, and the tender specification should make it clear what aspects of the design the OFTO can influence. For

example, we would expect that the generator would have to specify the number of substations and cables to be installed for the project, and if the OFTO wished to change these it may result in a new 15-month consent process to get the new design approved.

3.4 Are the proposed arrangements for pre-construction works the most appropriate for investors and generators?

The list of pre-construction works include most of the items that should be considered. However, we believe some flexibility should be retained in the definition of this list: other items may become relevant for a specific project and it would be beneficial for the whole OFTO regime to allow items to be added when needed on a project-specific basis.

We recognise that Ofgem will be looking for the most efficient solution for the grid connection, for which the generator will obtain an agreement with National Grid, and do the necessary studies for the consent application. The generator not only needs to find the most efficient connection route, but also must take full account of environmental and socio-economic impacts. As a consequence, the generator may need to carry out a route option study, requiring multiple surveys, which can result in additional costs that Ofgem must account for in the cost assessment process.

We appreciate that Ofgem is working with DECC to provide clarity on Compulsory Purchase Orders and we want to emphasise the need for further clarity on this issue in order to allow smooth and timely delivery of any wind farm.

Finally, the engineering work carried out by the generator may not be very detailed. The OFTO may need to develop a much more detailed design and this may have implications for the generator's wind farm assets. We want to stress the importance of avoiding any situation where the design work carried out by the OFTO results in the resubmission of either a grid application or planning consent application.

We want to emphasise the intrinsic link between the wind farm and the connection to the OFTO asset and the onshore grid: whatever action is taken by the OFTO needs to be within the envelope of the consent provided for the whole wind farm to avoid knock-on effects and delays for the project.

3.5 What other information, if any, in addition to that referred to within the tender specification and pre-construction works sections, would be needed within the data room for the project?

As stated in our response to Q3.4, it is important to allow some flexibility in the definition of this list. Some project-specific items may become apparent at a

later stage and it would be beneficial to allow this list to be defined based on a case-by-case basis

3.6 What do you think would be the best approach to ensuring bidders have access to and confidence in a seabed survey undertaken by the generator?

A completed seabed survey should be included in the data room.

DONG Energy currently carries out two separate geotechnical surveys: the first is a preliminary survey designed to collect enough data to establish the preferred location and undertake feasibility design for the substation and cable route. The second one is carried out much closer to the time of the final investment decision, and is a highly site- and design specific survey used to obtain geotechnical design data for the substation.

We would expect the first survey to be carried out in time to be available in the data room for the OFTO tender exercise, while the second survey will have to be carried out by the OFTO once appointed. As generators have experience in carrying out such surveys and will be doing similar ones for the wind farm itself (which requires a suitable vessel, booked in advance), the most cost effective option is likely to be for the OFTO to contract the generator to carry out the survey on its behalf.

3.7 With reference to the approach to seabed surveys outlined within paragraph 3.22, what might be the best approach to developing an independent generic survey specification that would be acceptable to both generators and potential bidders?

One possible option is for the British Geotechnical Association to develop survey guidelines for the first geotechnical survey in collaboration with industry. Such guidelines could include:

- A requirement to survey potential substation locations and cable routes, and to provide confidence in:
    - Stratigraphy
    - Interpreted engineering parameters for soil layers down to 80m depth for substation locations and 10m depth along cable routes
    - Identification of geological hazards
- The shared data to be interpreted, and a ground model to be provided.

It would still be necessary for the OFTO to carry out a second geotechnical investigation, for which it would not be appropriate to develop guidelines due to the site- and design specific nature of the survey specification.

3.8 Do you agree that ensuring procurement is undertaken by the OFTO through the tender process would be the most economic and efficient approach?

When considering the procurement phase of a project it should be taken into account that some items may have very long-lead times – HVDC being the current best example. The global bottleneck for HVDC equipment causes several issues if the OFTO were to procure the technology:

- Timing of project delivery: currently, the expected lead time from contract to commissioning for HVDC is longer than 3.5 years. Depending on the timescale of the wind farm, the OFTO may not be able to complete the transmission assets by the commissioning date if such technology is required.
- Suppliers' willingness to negotiate with several bidders: the ITT bid preparation phase is particularly resource intensive for HVDC technology as it requires extensive front-loaded design work. We consider it unlikely that suppliers would be willing to enter into speculative procurement negotiations with several bidding OFTOs. In a global market there may be many projects that become less resource intensive in comparison and thus more attractive to suppliers: we want to avoid a situation where UK projects suffer significant delays as a result.
- Engagement with National Grid: all bidding OFTOs would be required to engage with National Grid to get network data models and harmonic impedance data for the HVDC suppliers. We are uncertain as to whether National Grid have an obligation to share this data with several unlicensed bidders.

For the OFTO build model to be a viable option for generators requiring HVDC technology, we believe that the generator must be allowed a more extensive role in procurement. HVDC procurement and installation takes a long time, and if the OFTO were to complete the whole process it would potentially introduce up to 3 years delay to the delivery of the transmission assets. Figure 1 in annex A provides an illustration of the impact on a project timeline an OFTO procurement option would have.

We do however recognise that there are potential downsides of allowing the generator to carry out procurement:

- Would the chosen supplier permit the transfer of a contract to a third party unknown at the time of signature, without adding a prohibitive risk premium?
- What is the risk of the generator's expenditure being deemed inefficient?

We do not believe innovation and maturation in the supply chain will depend on the OFTO being the sole procurer for transmission assets. The most important factors to achieve a well-established and innovative supply chain is certainty that there is a pipeline of projects that will require components, and the ability of

generators and/or OFTOs to make binding commitments in a timely manner for the relevant components.

3.9 What are your views on whether there are supply chain constraints associated with the manufacture and delivery of some key offshore transmission assets? If there are constraints, do these vary significantly in relation to project design?

As mentioned in the consultation, the main constraint currently known is that of HVDC technology. This is likely to be a requirement for the transmission link as wind farms become larger and move further from shore, and with currently only two suppliers on the market we are anticipating an increased need for early engagement and reservation of manufacturing capacity to ensure timely delivery.

However, due to the global nature of the offshore wind market, it is possible that changes in market demand and wind development plans will affect the availability of other items. A few years ago the market experienced a bottleneck in HVAC transformers, in the future we may see the same for HVAC cables. Therefore, any discussion relating to long-lead time items needs to be general in nature and not focus on specific technologies as the market may change. A generator should be allowed to make its own assessment of market constraints when developing its project. Flexibility in procurement of long-lead items would give increased confidence that a project could be delivered on time.

Whether generators can mitigate bottlenecks through project design depends on the project. With offshore wind projects at increasing distances from shore, HVDC technology may be the only technically viable option for certain projects.

3.10 What are your views on the examples of alternative approaches for supply chain engagement under OFTO build outlined in this chapter?

We do not believe the proposed approach is appropriate, or will work as intended. We believe generators can bring cost savings through long-standing commitments and framework agreements with suppliers of long-lead time items which an OFTO would struggle to match.

The non-binding agreements proposed in the consultation document would not provide enough certainty for suppliers; instead firm commitments and reservation of manufacturing capacity are needed to bring costs down. It is ultimately in the interest of the generator to procure efficient and economic offshore transmission assets, which can be delivered in a timely fashion.

Allowing the generator a strong role in procurement would also avoid a potential risk of OFTO build projects struggling to compete for key technologies on the same terms and generator build projects, or other projects in a global market. For example, if a generator build and an OFTO build project start the process to bid for HVDC technology at the same time, the generator build project will be

able to secure manufacturing capacity at more favourable rates than the OFTO build project bidders, by virtue of being able to commit to a contract at an earlier stage.

Leaving all procurement to OFTOs would make the OFTO build option less attractive compared to the generator build option, as delays in procuring long-lead time items could have significant impacts on the construction schedule and timing of the whole wind farm. As outlined in sections 3.14 and 3.21, delays to the construction programme for a wind farm could potentially carry financial penalties under the new financial support mechanism introduced in 2014.

Also, given the predominant financial profile of OFTO investors with no experience in supply chain engagement, we do not believe that OFTOs would necessarily be able to match a generator with the existing relationships, experience, and connections required for timely and cost-effective procurement.

3.11 Are there any other approaches we should consider under OFTO build to enable the supply chain to be engaged in time to ensure project delivery timescales are met, whilst maximising opportunities for competition through the tender process?

We believe that, should the generator be allowed to procure part of the offshore transmission system, the OFTO bidders should accept the generator choice as part of the bid. As far as possible, all details regarding contracts and procurement arrangements should be included in the tender specification and/or data room for the bidders to consider.

Allowing the generator a more extensive role in procurement for an OFTO build project can be facilitated through the use of a share sale instead of an asset transfer. This approach involves setting up a Special Purpose Vehicle (SPV) containing all contracts, licences, and permits relevant for the transmission assets. The SPV can then be transferred to the OFTO through a share sale with all contracts intact. A further benefit is that the contracts included in the SPV could be priced into the bid submission, removing procurement risk and lowering finance cost, as well as maintaining a strong incentive on the generator to minimise costs and ensure a smooth transition to the OFTO.

We do not see any limitations for competition and innovation with this approach. The industry would benefit from the generator's experience of procuring for integrated wind farm projects (under the transitional OFTO regime). In addition, a generator will have its expenditure assessed by Ofgem to establish whether it was efficiently incurred, which provides an additional very strong incentive to keep costs down. Contractual commitments in terms of payments or cancellation fees typically step up about 18 months into the contract, at which point the OFTO would be the responsible party. Due to its lower cost of capital, this would be more efficient for the OFTO to take on liability at this time.

3.12 Should there be any restrictions on interactions between parties, either before or during a tender exercise in order to ensure fair and effective competition and best value for consumers?

We believe there could be significant benefits from allowing interaction between the generator and potential OFTOs, such as allowing the OFTO to fully understand the activities undertaken by the generator, and any limitations imposed by the planning consent. A data room Q&A facility should provide sufficient opportunity for interaction.

3.13 Do you agree that the current 20 year revenue stream provides the best value to consumers under the enduring regime (OFTO build or Generator build)? If not, what alternatives should we consider?

The duration of the revenue stream should be aligned with the expected commercial lifetime of the wind farm for both options under the enduring regime. We therefore suggest Ofgem consider extending the TRS to 24 years.

3.14 What are your views on our proposed treatment of risk relating to:

- **delay to licence grant?**
- **weather delay?**

Delay to licence grant: we understand that the OFTO would be granted its licence at the point of completion and transfer of the generator's pre-construction work. From our experience with the transitional tenders there is potential for delays (see Q 4.6) which could have an impact on the timing of the granting of the licence.

It is important for Ofgem to consider the impact on the generator of a delay to licence grant. The generator will be making commitments to reserve manufacturing capacity and installation vessels in order to ensure the completion of construction is aligned with the agreed timeline for receiving support under the CfD mechanism. If there is a delay in the granting of the OFTO's licence, it would affect the timescale for the completion of the whole wind farm, resulting in a) a delay in the start of the generator's revenue stream, and b) possibly a financial penalty for late completion under the CfD mechanism. We do not believe that the generator should have to share any of the risk or increased cost to the OFTO when we would also be exposed to a financial risk from a delay to the licence grant, particularly when delays are outside the control of the generator.

Weather delay: we would expect an OFTO to include a weather-related risk factor in its TRS bid if no risk sharing mechanism existed. Allowing for such a mechanism should lead to reduced TRS bids which would benefit consumers.

3.15 Are there other areas of risk which would be more efficiently managed (for consumers) through a risk sharing mechanism rather than factored into bidders' TRS bids? If so, can you suggest how these risks might be shared?

We agree that within reason, risk sharing would have some benefits for consumers if the principle Ofgem is considering is for specific items to be allowed as pass-through costs rather than for the OFTO to include them in the margin of their TRS bid. However, we do not believe it is appropriate that the generator (and in turn consumers) bears the cost of all the OFTO's risk. Risk sharing must find a balance between reducing the initial TRS and exposing the generator to large changes in its local TNUoS charge.

3.16 Is the current approach to recovering bid costs appropriate for OFTO build? If not, what alternative approach to recovering bid costs would you recommend?

We believe that the current approach is appropriate. It would not be in the interest of efficiency and cost reduction to allow all bidders to pass on their costs to the consumer.

3.17 Are there any aspects of the current transitional arrangements or within the proposals for OFTO build, including revenue term, bid requirements and risk profile, which may prevent access to certain sources of finance in the enduring regime?

We do not believe that this is the case. The transitional projects attracted funding on very favourable terms compared to other project finance investments.

3.18 Do you have any comments on the issues associated with incorporating a refinancing gain share mechanism and how such a mechanism could be structured?

Our understanding is that funders price OFTO money on the assumption that it will be refinanced in the short-medium term. We do not believe that a refinancing gain share mechanism would be appropriate. From a funder's point of view it would reduce the potential benefit of refinancing, reducing the incentive to refinance and possibly driving up the margin required in the initial TRS bid to ensure that they still make their required rate of return.

3.19 Do you have any preferences from amongst the options outlined for how the PQ stage should operate?

We support Option 1 in the consultation document. We understand the aim of this option as ensuring that there is a continuous pool of qualified bidders available to enter a tender process. This should cut down on the time needed to initiate a tender process.

We recommend Ofgem include a process for bidders to provide a restatement when entering specific tender rounds to confirm no significant changes to funding/consortia structure have occurred since the annual prequalification.

We also want to highlight the need for Ofgem to ensure potential bidders are informed of the projects which are likely to come up for tender within any specific year. This will require Ofgem to keep up to date with generator's development timelines well in advance of the generators triggering a tender process.

Option 1 may require additional consideration on what would happen to prequalified bidders if due to project delays no wind farm triggers a tender in the specified period for the validity of the PQ. This could either require a new prequalification stage in the subsequent year, or a mechanism to allow prequalified bidders to 'roll over' into the next PQ period.

3.20 Are there any other ways that a PQ stage might operate in order to meet the objectives set out at the start of the 'Tender stages and timings' section?

We do not have any further comments on the PQ stage.

3.21 Do you have any preferences from the options outlined for how the ITT stage might operate?

It is vital the tender process for the enduring regime works alongside the process for awarding financial support under the FiT CfD mechanism. The current expectation is that the level of support will be determined around the time of planning consent, with contracts signed at FID (or equivalent) and potential penalties for late delivery of the construction.

We think Option 2 is the best option as long as the bidders are allowed insight into the consents process, to allow them to amend their bids as a result of changes requested from the consenting body. A later ITT stage would involve the OFTO carrying out design and procurement work well past the consent date, which could increase the risk of delays to the wind farm. Allowing the OFTO to continue to carry out design and procurement work after the consent

has been finalised also increases the risk of the OFTO's actions resulting in a resubmission of the planning application to ensure approval for a new design.

An early ITT should also bring the timing of licence grant forward, leading to a longer time for the OFTO to construct the transmission assets while still adhering to the overall time schedule for the whole wind farm.

3.22 Are there any other ways that the ITT stage might operate to ensure its efficiency and effectiveness?

For a generator, it is important that the tender process under the OFTO build option is aligned with the timescales of other processes, such as the generator's planned construction programme, and any commitments made as condition for receiving financial support under the CfD mechanism.

3.23 What are your views on the proposals for involving generators in evaluation of bids? In particular, what key technical aspects of bids would be most important for generators to evaluate?

Allowing generators to help evaluating bids would facilitate the entire process. This would be beneficial for several reasons:

- The generator's involvement will ensure that the OFTO's design is within technical requirements and the consent for the whole wind farm. There is an integral relationship between the OFTO assets and the wind farm, and any impact of the bidders proposals on the wind farm can more easily be identified and addressed if the generator is allowed a role in evaluating bids.
- The generator could verify that a complete understanding of the existing offshore transmission design, especially from a technical point of view, has been achieved by all bidders and could clarify points that do not appear to be fully considered.
- The generator could initiate clarification of any aspect that can accelerate the handover of the assets following OFTO appointment.
- The generator could help Ofgem in understanding the assumptions and rationale behind the design of the transmission assets and ensure the most suitable bidder is selected (although we accept that it would be Ofgem alone to be responsible for any decision in the process)
- The generator would be able to ensure the OFTO's proposed design for equipment is fit for purpose and the levels of redundancy are appropriate. This could help avoid 'gold plating' the assets and reduce the cost to consumers

3.24 What are your views on the proposals for involving NETSO in evaluation of bids? In particular, what key technical aspects of bids are most important for NETSO to evaluate?

We believe the involvement of NETSO in the assessment of the bids would be beneficial for the assessment process, especially in cases where the development of the offshore transmission assets will be part of a wider coordinated offshore network.

NETSO involvement would help ensure understanding of the relevant connection codes and electrical standards has been reached by the OFTO or their agent as well as sense checking their construction program and commissioning assumptions relative to the necessary onshore works.

NETSO would also have an enduring relationship with the OFTO once appointed via STC requirements and therefore their involvement at this stage would assist in meeting those obligations.

3.25 Are there areas on which you think allowing variant bids under OFTO build would add value to the process and to consumers?

We believe variant bids should be allowed, as long as they fit within the design and consent envelope and provided the tender process can suitably assess them. Bid components that could be varied could include the delivery model or levels of fixed prices within contracts.

We would not support an option where variant bids could risk impacting the overall deliverability of the project and cause delays in the consenting process and in achieving the completion date. There may also be limits to the extent the OFTO can propose variations if the connection and offshore assets are required to accommodate the needs for a coordinated offshore network.

3.26 What are your views on generators recovering efficiently incurred pre-construction costs at the point at which the transmission construction works are completed?

It seems reasonable to allow the generator to recover pre-construction costs at the time of the commencement of the OFTO's revenue stream.

3.27 Do you have any early views on the appropriateness of design incentives for transmission asset lifecycle design, eg transmission availability, quality of installation and transmission losses?

We do not believe that it would be appropriate to introduce a specific design incentive. Assets should be designed to appropriate technical standards as set

out in the SQSS and the connection offer from National Grid. Quality of design should be a deterministic requirement for bid qualification: a pass/fail in the tender assessment, with some potential for flexibility to account for uncertainties relating to new/innovative designs or technologies.

With respect to availability, we believe the current mechanism can be improved through a yield-based approach, something we have already discussed with Ofgem. We would also like to see a change in the calculation of the local TNUoS charge by National Grid, so any reduction in the OFTO's allowed revenue as a result of underperformance is deducted from the generator's local TNUoS charge rather than spread over all generators, as the loss in availability is specific to the individual generator. For example, the OFTO's revenue requirement could be reduced through the correction factor (Kt) in the year following the underperformance. This would directly reduce the allowed revenue (OFTOt) and thus the generator's local TNUoS charge.

3.28 What are your views on whether the current approach to indexation, and in particular the proportion of the TRS subject to indexation, provides the best value to consumers? How might any alternative approaches be managed?

Our understanding is that all the different components of the OFTO's allowed revenue ($OFTO_t$ in the licence) are indexed explicitly or implicitly, such that the OFTO is shielded from inflation risk. We believe that the current arrangements make the OFTO assets a low-risk investment, which will benefit consumers through a low TRS.

3.29 Do you agree that additional delivery incentives for OFTOs are not necessary?

Timely delivery of transmission assets is of vital importance to the generator, and a delay can cause significant losses in income. This is likely to become even more important for projects that are to receive support from the new Contracts for Difference mechanism as delays to project delivery could result in the generator having to pay a penalty or receive a reduced level of support for the duration of the support period.

We believe the strongest delivery incentive on the OFTO will be the timing of the commencement of their revenue stream, and that an additional delivery incentive would increase complexity and be unlikely to be effective. However, depending on the extent of any financial penalty for delays included in the Government's contracts for difference, we believe a requirement on the OFTO to provide liquidated damages in case of delays to construction would be appropriate.

3.30 What are your views on what approach to decommissioning of assets would provide best ongoing value to consumers?

We believe additional decommissioning costs that may or may not occur are best handled as pass-through costs. It is not efficient to provide for all decommissioning contingencies in the TRS.

Chapter 4: Generator Build

4.1 What are your views on whether there are benefits under Generator build to the generator undertaking the seabed survey against a comprehensive generic survey specification agreed by industry?

As outlined in question 3.6-7, we believe that the existing guidelines from Cefas are appropriate, and do not see it as likely that a specific generic survey can be developed that covers all potential site types.

4.2 Do you agree with the approach that Ofgem continues to run tender rounds for groups of projects, not necessarily limited to one per year, or would you recommend an alternative approach?

We agree it is a sensible approach, as long as Ofgem remain committed to allowing flexibility so that no project would run the risk of significant delays due to the lack of other projects to participate in a tender round.

4.3 Do you think there are further efficiencies we could make to the tender process and the transaction procedures for Generator build which would increase their efficiency and provide greater certainty to bidders and funders?

- Early communication between bidders and the generator (TR2 approach to be extended to enduring rounds) to ensure that any issues that need resolving are identified at an early stage. Such issues could include:
    - Asset-specific issues, such as cable burial, grouting and snagging issues, and how these should be dealt with. When such issues arouse during the transitional tenders considerable time and effort had to go into agreeing provisions to deal with, in particular, cable burial and grouting, and in undertaking the necessary surveys to determine the extent of the relevant issues.

    - Concerns the OFTO's finance providers may have that need to be discussed with the generator
- We also think that there could be improvements in the time taken to secure third party consents from counterparties to property contracts and construction contracts. This can become an issue as counterparties do not always have a common interest in working to the transaction timetable, leading to delays.
- Ensuring the OFTO organises its approach to property due diligence at an early stage. In our experience from the first transitional round due diligence queries were raised at a very late stage, which could have been addressed earlier on in the transaction.

4.4 Are there any changes to the information supplied in the data room which would improve the efficiency of the process for Generator build?

We think the data room process from the Transitional Regime should be applied to the Generator Build option. However, the data room should have a more detailed structure for the definition of the folders. This would simplify the uploading process and facilitate the searching of already stored information. The structure should maintain a certain level of flexibility to accommodate project-specific issues.

4.5 What are your views on the benefits of involving generators in evaluation of bids as outlined in this section?

The benefits of including generators at this stage include:

- Allowing generators to verify that a complete understanding of the offshore transmission design has been achieved and clarify points that do not appear to be fully considered, particularly from a technical point of view.
- To initiate clarification of any aspect that can accelerate the handover of the assets following OFTO appointment and commissioning of the assets.
- To help Ofgem in understanding the thinking behind the design of the Transmission assets and ensure that the most suitable bidder is selected (although we accept that it would be Ofgem alone to be responsible for any decision in the process)

4.6 Do you have any suggestions on amendments which would improve the efficiency of the process for finalisation of transfer documentation and which would maximise value to consumers?

Based on our experiences in transitional tender rounds, we request Ofgem consider the following:

- Resolution at an early stage of the terms on which the relevant contracts (construction and property) are to be transferred. In our experience drafts were inserted in the SPA upon which the preferred bidder placed its bid, but each preferred bidder sought to amend the terms of these drafts further, which meant having to agree these transfer documents and get in touch with counterparties to explain the amendments, and seek further approval;
- The Crown Estate to set out its approach clearly and its concerns, requirements (such as consent letters and approach to crossing agreements) and issues regarding timing of surrender, re-grant and transfer of the relevant lease, and ensure it produces/reviews the relevant maps and documentation and responds in a timely manner;
- DECC to set out its approach to decommissioning generally, including how this ties in with the condition precedent in the SPA, and ensure it produces/reviews the relevant documentation and responds in a timely manner;
- Identify the approach to transfer of going concern for VAT purposes - this may not be an issue as HMRC's approach should be confirmed following completion of TR1.

4.7 What do you consider might be the implications of a share sale approach as opposed to a transfer of assets as has been seen to date?

For a share sale approach to work it will be necessary that TCE provide separate leases, one for each generator and one for the OFTO asset owner.

We believe a share sale approach would have benefits in terms of process improvement:

- Generation and transmission assets can be procured independently which avoids contract novation on closing meaning fewer contracts and fewer third party interfaces.
- Under the DCO process the generator is now required to name all future beneficiaries of the consent in the initial application. The ability to form an SPV at an early stage facilitates this as the OFTO will not be appointed when the application has to be submitted.
- It should also be easier to manage operational contract issues and tracking of transmission asset costs, while the need for records management and legal assistance decreases.
- Further, as an OFTO SPV is a fiscally flexible structure it does not prevent a future asset sale without hold over relief by that company, if such an approach is ultimately preferred

There are also possible advantages due to tax treatments which need to be fully assessed. We believe that such tax advantages could potentially reduce the TRS bid and lower the final cost for the consumer.

4.8 Do you agree that the current split between costs priced into the TRS and those allowed as pass through provides best value for consumers?

We believe that the current categories of pass-through items are appropriate.

4.9 Are there any aspects of the current arrangements for transitional tender exercises or within the changes we have proposed above, including revenue term, bid requirements and risk profile, which may prevent access to certain sources of finance under Generator build?

Experience from the transitional rounds shows that OFTOs were able to attract funding on very good terms compared to other Project Finance investments in the market. We do not believe that the existing arrangements, nor the proposed alterations, would have an impact on the OFTO's abilities to attract finance.

4.10 Do you have any comments on the issues associated with incorporating a refinancing gain share mechanism for Generator build and how such a mechanism could be structured?

We do not support the introduction of a refinancing gain share mechanism. The benefit of a gain share mechanism is likely to be lower under the generator build option as the OFTO does not have to bear the construction risk. see Q.3.18

Chapter 5: Phased or staged construction of transmission assets

5.1. Are you satisfied with the practical relevance of our definition of the terms and stage?

At a high level the terms zone, phase and stage do work and this is explained clearly in the consultation document. However, the use of the word phase may be confusing and another more suitable word could perhaps be subzone or development area. This is because the term phase has in the past been used by Ofgem to define the sequential build out of transmission assets for individual wind farms e.g. London Array phase 1 and phase 2. Using the terminology in the consultation document these phases would be classified as stages and the two of them together would constitute a phase.

5.2. What are your views on the measures we propose to determine whether a stage or phase within a site/zone qualifies for a single tender exercise?

There is not enough information in the consultation document to be able to draw any firm conclusions on how suitable the criteria are. There needs to be some consideration of how the transmission system is developed across the zone as the proposals 5 only appear to consider phases/stages in isolation. This may be true for some sites, especially the first R3 wind farms to connect as they are more likely to be radial, but beyond this the role of the NETSO in coordination also becomes a factor. Just by looking at the National Grid ODIS scenarios it can be seen that currently there are a lot of options and high uncertainty associated with planning offshore transmission systems. It is entirely possible that the offshore transmission assets in a zone cannot be conveniently split into phases and stages when a whole system is being planned and designed. This becomes even more relevant if the prospect of offshore DC hubs becomes a reality.

The TNEI and Redpoint coordination reports identify how complicated and how much uncertainty there currently is regarding the eventual design of the offshore transmission systems. We would encourage Ofgem to fully consider the findings of these reports before finalising the criteria. Given the many differing potential connection options for projects within R3 zones the criteria need to have enough flexibility to be zone specific

Further details are also requested on what Ofgem considers to be "the degree of certainty that a project will go ahead" and consideration of how this would link in to anticipatory investment. For example, what happens if transmission assets are oversized for wind farm project 1 (eg the OSP is structurally designed to accommodate switchgear and a transformer for project 2) before wind farm project 2 has reached FID where the oversizing is fully justified on cost and coordination grounds?

5.3. What are you views on whether running a separate tender exercise for each phase within a site/zone would best meet the objectives of the enduring regulatory regime?

This would depend on the size of the phase and its interconnection potentially with other phases or even other zones. This may also have to be taken on a zone by zone basis. It may be appropriate to have one tender for some of the smaller zones but the larger zones may require more depending on how the transmission system is developed, coordinated, interconnected and the associated timeframe?

Annex A

Figure 1: Illustration of programme timetable under OFTO procurement for HVDC assets

Our ref. 120217_OFTOenduring