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Dear Giedre,

Offshore electricity transmission: consultation on tender exercises under the enduring regime

Please find our response to the consultation dated 16th December 2011 regarding the enduring regime for offshore electricity transmission.

We find much to support, particularly in the OFTO build proposals.

We recognise from the consultation that there are matters where common views are necessary to make OFTO build work and there are matters where differences of approach can add value.

We think that a key value of the OFTO build tender is the scope for differentiation between the bidders, and care should be taken to preserve this for the benefit of the competition. Balanced with this we recognise that there may still be work to do in order to achieve the necessary clarity and consensus of opinion on the principles that will make an OFTO build tender work for all parties.

We offer our full support to this challenge, both directly and through the Energy Networks Association (ENA) OFTO Forum, and look forward to working with you in this regard.

Yours sincerely,

Morris Bray

Q2.1: *Do you have any views on the approach outlined in paragraph 2.8, namely to focus on a single OFTO build option and not to develop the early OFTO build option further at this stage?*

We agree that, at this early stage of development of the enduring regime in order to ensure that OFTO build is a credible option for generators, the focus should be on the OFTO build option as indicated in Diagram 1 of the consultation document.

We see the proposals as an important step forward. We also recognise from the OTCG work carried out by Ofgem and DECC during 2011 that there may be potential in the future for co-ordination between phases of projects, between adjacent projects and required wider infrastructure investment. For larger and more complex projects a different approach may be required, so we encourage a tendering regime that would provide sufficient flexibility to involve bidders and commence tenders at earlier stages.

We believe that earlier contributions from bidders and other stakeholders will add further value to the outcome of an OFTO build tender process for consumers and generators and we support Ofgem in continuing a dialogue in this regard.

Q3.1: *What are your views on the proposed arrangements for triggering a tender exercise?*

The lead time and triggers to commence a tender are important for Ofgem and the generator to agree. We think that an OFTO build tender should be opened to bidders as close as possible to, and even before, the submission by the generator of an application for planning consent. This makes best use of the 13 month time frame that the IPC has to consider these planning applications to allow bidders to put firm, deliverable bids together - with supply chain arrangements in place ready to mobilise.

We envisage that the quality of information necessary to submit a successful planning application is also sufficient to trigger an OFTO build tender, and should be used as the high level specification. Bids would be prepared on the assumption of unconditional planning consent. The grant of licence and final TRS would be adjusted subject to any planning consent conditions. In the event that planning consent is not achieved or is significantly delayed, we would expect that all reasonable bid costs would be recovered.

Q3.2: *What are your views on whether our proposal on generator security will ensure the appropriate level of commitment from a generator?*

In the event that a generator does not obtain planning permission or otherwise stops or significantly delays the tender process there should be provision by Ofgem for recovery of bidders' bid and qualification costs.

Q3.3: *Do you agree with our proposed approach to the tender specification for an OFTO build tender exercise?*

We agree that the scope of OFTO build should cover the lifecycle from post-consent detailed design through to decommissioning / life extension. The specification for the OFTO build tender should be a high level or functional specification reflecting only the requirements of the bilateral connection agreement and information necessary to submit an application for planning consent. This leaves enough scope for differentiation from each bidder.

We believe that bidders should be consulted prior to tender. Increased bidder-generator interaction at this earlier stage (to understand the prospective planning consent application as a basis of tender specification) would assist in the robustness of bidder pricing and delivery.

Q3.4: *Are the proposed arrangements for pre-construction works the most appropriate for investors and generators?*

We think that the proposals for pre-construction works are sensible and note that the transfer arrangements will be more effective and efficient where less pre-construction works have been carried out by the generator.

Survey information used to support a planning application will be helpful to bidders although we note that the responsibility for cable and OSP installation will fall to the OFTO within the scope of the

planning consent and will need to be provided for in the bid. This may result in some overlap or repeat of works, depending on the extent of pre-construction works done and the effectiveness of works transfer arrangements.

The transfer arrangements should allow full assignment of pre-construction contracts without limits on liability or warranties from the transferor. Shared contracts (OFTO / generator) should be avoided where possible (based on experience from Transitional bids) as should any requirement for the generator to act as an intermediary through transfer agreements.

Q3.5: *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?*

It would be helpful if the generator provided their plans for future development of the wind farm beyond the scope of the current tender. This would inform bidders' design considerations in relation to these future projects (e.g. managing cable proximity; exploring options for cost effective expansion).

The on-going generation works programme should also be provided - identifying work plans, contract parties and responsibilities, interface dependencies - for wind farm construction, commissioning and takeover.

Q3.6: *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?*

We appreciate the logic of having a comprehensive sea-bed survey conducted to a universal specification to provide bidders with confidence to provide efficient but firm bids. As the survey would be for the purpose of the bidders, we agree that the specification would need to be to the satisfaction of all the bidders. We would support using the Energy Networks Association (ENA) to achieve this.

However, this does not rule out the possibility of additional surveys being undertaken by bidders. We also think there is scope for benefit (both in terms of risk mitigation and price certainty) from bidder innovation in the procurement of survey and installation work packages. This could obviate the need for and cost of a universal survey by the generator.

On balance, we would welcome the transfer of information from whatever surveys and studies the generator deems necessary to submit the planning application, appreciating the value of bidder innovation in the procurement of any further pre-installation surveys & installation works according to their supply chain approach.

Q3.7: *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?*

We suggest that the Energy Networks Association (ENA) would be an appropriate body to facilitate the development of a generic survey specification that would be acceptable to bidders.

Q3.8: *Do you agree that ensuring procurement is undertaken by the OFTO through the tender process would be the most economic and efficient approach?*

We agree that procurement by the OFTO would provide a safe, economic and efficient approach. This allows maximum lifecycle value to be extracted from these procurement decisions through long-life supply chain relationships. Safety remains the paramount consideration and "safety by design" by the OFTO will impact on selection of materials, fabrication methods, transportation, installation methods, operation, maintenance, repair, replacement and decommissioning. Procurement by the OFTO also prevents any procurement inefficiencies that may otherwise arise from transferring arrangements.

To maximise contributions from original equipment manufacturers (OEM) in competitive OFTO build tenders we think there needs to be sufficient latitude for bidders to involve OEMs to formulate bespoke bids that will genuinely benefit the tender process.

Q3.9: *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?*

We agree that there can be supply chain constraints affecting lead times for transmission equipment, most apparently in manufacture of cable and other such long lead time items. Project timing, size and location will determine the nature of the constraints (whether transmission technology, equipment rating or connection distance). This does not mean that there is insufficient competition in transmission equipment supply. In fact we see encouraging signs of global competition in supply of AC and DC transmission equipment. Bidder groups containing OEMs would lead to transmission equipment supply arrangements firmly incorporated into OFTO build bids. This would support price certainty and "deliverability" and would improve confidence for supply chain investment to overcome constraints. However, we think supplier views need to be sought and considered carefully by Ofgem.

Q3.10: *What are your views on the examples of alternative approaches for supply chain engagement under OFTO build outlined in this section?*

The approaches for supply chain engagement should be sustainable and promote innovation. To rely on indicative terms sourced by the generator would limit innovation and sustainable supply chain development in our view.

Q3.11: *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?*

The consultation does not explicitly rule out generators offering commercial services to bidders for OFTO build which could see OFTO build delivered by the generator under contract. This could stifle innovation and competition in the OFTO supply chain. In order to encourage supply chain innovation and competition in OFTO build we think Ofgem should provide a clear position on this.

As the OFTO tender process provides a fulcrum for supply chain competition, we do not think that another supply chain competition for transmission equipment is necessary or useful. To do so could cause unwanted delay and limit the extent of innovation without assurance of bid integrity being preserved. Bidders need to be able to form the supply chain arrangements that they think are necessary to bid and deliver a robust OFTO build solution, which may include firm arrangements for transmission equipment supply being integral to the bid.

Q3.12: *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 think that pre-tender interactions should be left to the participants, although Ofgem can help to market the opportunities.

Tender process interactions between Ofgem, generator and bidders have improved appreciably in Transitional round 2 and, in our view, should continue to develop fairly and equitably under the management of Ofgem. This will help promote generators' confidence in the bidders and improve price certainty. It would also help to encourage co-ordination of works.

Although we expect that the majority of tender process interactions will be via the electronic tendering portal, flexibility for generators and qualified bidders to meet face to face would be appreciated. We believe that face to face dialogue is particularly beneficial in the early clarificatory stages of a tender, or even before the tender starts to finalise the tender scope and specification.

Q3.13: *Do you agree that the current 20 year revenue stream provides the best value to consumers under the enduring regime (OFTO or Generator build)? If not, what alternatives should we consider?*

We are open to consideration of project-specific OFTO licence periods, ideally consistent with wind farm generation licence periods (e.g. 35 years or longer). For example, Ofgem and the generator could determine the preferred base period for the project specific licence (subject to a minimum of 20 years) and invite tenders for defined extension periods (e.g. +5 years, +10 years). Longer revenue periods would allow beneficial amortisation of transmission costs, but at a potential cost of increased uncertainty in pricing as assets may require additional investment in later years. There would also need to be refinements to optimise financing costs during any extension period.

Regardless of the length of the licence period, clarity of what is expected to happen after the end of the licence remains an important issue.

Q3.14: *What are your views on our proposed treatment of risk relating to:*
- delay to licence grant?
- weather delay?

To support Ofgem's objective of price certainty, we believe that price validity up to the anticipated licence grant date should be at the bidders risk. It may also be possible for some bidders to offer longer price validity periods, which should be credited in bid evaluation. In exceptional circumstances of delay a cost sharing or transfer mechanism would be sensible. Subsequent to licence grant, we agree that construction risk should remain with the bidder.

With regard to weather delay, we think that bidders should state their assumptions in their bid for weather delay during construction, setting out the circumstances in which costs due to weather delay would impact on their construction / decommissioning programmes. We do not believe that weather risk should affect validity of bids; rather a mechanism should allow costs (above a threshold) to be adjusted or shared.

Q3.15: *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 believe in the principle that risks should be allocated to and managed by those best able to manage them and there should be a balance between upside and downside risks. The risks of OFTO build should be managed by the bidders wherever they can be clearly expressed and assessed within Ofgem's bid evaluation process so as to demonstrate value. We agree that construction and funding risk should remain with the bidder where possible, but we do recognise that for larger and more complex projects, this may not be fully achievable. However, to encourage initial participation in OFTO build and innovation to reduce cost, it may be appropriate for Ofgem to subject all bidder contingencies to a pain:gain sharing mechanism.

We note that co-ordination of multiple projects will be the subject of a further consultation in 2012. To achieve such would require scope within the regime to adjust individual project designs and a mechanism to share project risks appropriately between the relevant parties.

Q3.16: *Is the current approach to recovering bid costs appropriate for OFTO build? If not, what alternative approach to recovering bid costs would you recommend?*

Given the increased cost of preparing an OFTO build bid, and to ensure it is a sustainable activity, we would support proposals to reimburse bidder costs – certainly for the first few OFTO build tenders. This could be on a flat rate basis determined by Ofgem's assessment of project complexity and bidders' estimated bid costs at the qualification stage. Depending on the degree of difficulty of the qualification process, Ofgem could agree to reimburse a higher proportion of the post-qualification bid costs of qualifying bidders.

Q3.17: *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 are not aware of any restrictions to the possibilities for OFTO funding in the enduring regime, but note that the different risk profiles of Transitional arrangements, generator build and OFTO build will have particular funding characteristics.

Q3.18: *Do you have any comments on the issues associated with incorporating a refinancing gain share mechanism and how such a mechanism could be structured?*

A refinancing gain share mechanism for OFTO build implies that OFTOs will use project financing. This is not necessarily the case as some bidders may well use their own balance sheets to finance the projects. If Ofgem decide that refinancing sharing arrangements are appropriate for project finance (PF) structures, then it may also be appropriate to make use corresponding adjustment mechanisms for non-PF bids. This could be done using some of the mechanisms in the onshore RIIO frameworks.

Q3.19: *Do you have any preferences from amongst the options outlined for how the PQ stage should operate?*

We advocate a generic but more challenging PQ stage (combining QTT requirements) with a longer validity period (e.g. 3 years) commensurate with the cost of meeting the higher qualification standard. This could be warranted by the bidder on an annual basis, or in an ITT submission, or re-validated in event of a material change in status (e.g. change of funding) and open at any time for new entrant opportunities.

Q3.20: *Are there any other ways that a PQ stage might operate in order to meet the objectives set out at the start of this section?*

We advocate the combination of the PQ/QTT stages into a single qualification process, open at any time for new entrants, but with a longer validity period to allow bidders to quickly participate in project specific tenders. Bidders' PQ/QTT qualification could also be validated and extended by Ofgem based on the quality of ITTs received during the validity period, with unsuccessful bidders otherwise subject to re-qualification upon expiry of their validity period.

Q3.21: *Do you have any preferences from the options outlined for how the ITT stage might operate?*

We recommend option 2 in order to maximise the opportunity to conduct the OFTO build tender during the 13 month period subsequent to a planning application by a generator, thereby minimising any impact of the tender process on the project timescales of the wind farm. Within those timescales ITT evaluation could be expedited to grant the OFTO licence to the successful bidder pending planning approval.

Q3.22: *Are there any other ways that the ITT stage might operate to ensure its efficiency and effectiveness?*

We believe that the OFTO build tender process can be carried out efficiently and effectively and without additional delay to a wind farm project. We believe that earlier provision of project information will enable bidders to conduct their FEED (or equivalent) exercises sooner - leading to earlier, more successful supply chain development and more robust bids.

Q3.23: *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?*

We have no objections to open and transparent involvement by Ofgem of generators in the evaluation of bids. Generators will be reliant on the OFTO assets for the lifetime of their project and it seems reasonable to take steps to ensure that their views on the design and capability of the OFTO should be taken into account.

Q3.24: *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 have no objections to open and transparent involvement by Ofgem of the NETSO in the evaluation of bids. The NETSO will have expert knowledge of transmission system design and integration and interactions with other offshore and onshore projects.

Q3.25: *Are there areas on which you think allowing variant bids under OFTO build would add value to the process and to consumers?*

We would need more definition of what Ofgem envisage as a variant bid. We think that bidders will incorporate efficiencies and improvements in their bid howsoever found, but the bid must meet the functional performance specification to allow objective evaluation in our view.

Q3.26: *What are your views on generators recovering efficiently incurred pre-construction costs at the point at which the transmission construction works are completed?*

We can see benefits for the generator to be reimbursed for efficiently incurred pre-construction costs for OFTO build upon grant of licence to the successful bidder rather than waiting until completion of transmission construction works.

Q3.27: *Do you have any early views on the appropriateness of design incentives for transmission asset lifecycle design, e.g. transmission availability, quality of installation and transmission losses?*

We think that OFTO incentives should cover safety, reliability, cost and carbon contribution over the life of the assets. With regard to transmission availability, we note that the current "capacity availability" incentive does not promote offshore AC interconnection of multiple HVDC links. An "energy availability" incentive does promote this, providing better alignment to generators' incentives.

Q3.28: *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?*

The principle of long term indexation of revenues is an important determinant and differentiator for investment in OFTO. However, there may be more benefits for consumers from a more focused approach e.g. only allowing indexation on bidder costs that are genuinely exposed to inflation rather than the whole TRS. It should be possible for bidders to differentiate in their approach to inflation risk.

Q3.29: *Do you agree that additional delivery incentives for OFTOs are not necessary?*

We agree that additional delivery incentives are not necessary for OFTO build bidders. However, in the absence of an established market place for OFTO build, there should be appropriate encouragement for generators to choose the OFTO build option in the first place.

Q3.30: *What are your views on what approach to decommissioning of assets would provide best ongoing value to consumers?*

We think that decommissioning responsibilities should lie with the OFTO. The requirement to accrue decommissioning funds provides assurance of meeting those responsibilities and liabilities. However, depending on the period of the licence and end of life arrangements in the licence, the decommissioning activity could be treated as an assessed cost that is reimbursed when actually incurred at end of life. As a result, consumers would bear the real cost of decommissioning only at the time of need, and this might also encourage life extension.

Q4.1: *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 the assets will be installed by the generator, it should remain the responsibility of the generator to conduct whatever survey they deem necessary to allow a compliant installation that facilitates a successful transfer of the assets to the OFTO.

Q4.2: *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 see benefits in running the Qualification process on a batch basis for groups of projects and see efficiency benefits in running the ITT stage in batches where possible.

Q4.3: *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?*

We have no view on this point.

Q4.4: *Are there any changes to the information supplied in the data room which would improve the efficiency of the process for Generator build?*

We suggest that Ofgem separately consults qualified bidders on their requirements for a generator build data room.

Q4.5: *What are your views on the benefits of involving generators in evaluation of bids as outlined in this section?*

Open and transparent involvement by Ofgem of generators in the evaluation of bids would be understandable.

Q4.6: *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?*

We have seen some benefit from Ofgem's development of pro-forma transfer documentation for Transitional OFTO projects and would hope that this continuous development will flow through to transfer documentation for generator build and OFTO build. However, this requires generators to use the documentation prescribed by Ofgem with minimum change.

Q4.7: *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?*

We have no view on this point. There are pros and cons for asset transfer and share transfer approaches.

Q4.8: *Do you agree that the current split between costs priced into the TRS and those allowed as pass throughs provides best value for consumers?*

Where possible, based on due diligence, provision for project-specific events should be efficiently priced into the TRS based on a bidder's capability to foresee, avoid or manage the event. Where a bidder has successfully demonstrated foresight of an event, but where the cost impact of the event significantly differs from the reasonable and efficient assumptions in the TRS, Ofgem should consider this as an income adjusting event for cost reimbursement.

Q4.9: *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?*

We are not aware of any restrictions to the possibilities for OFTO funding in the enduring regime but note that the different risk profiles of Transitional arrangements, generator build and OFTO build will have particular funding characteristics

Q4.10: *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 have no view on this.

Q5.1: *Are you satisfied with the practical relevance of our definition of the terms 'phase' and 'stage'?*

We recognise that enduring OFTO tenders can be sub-sets of the total amount of transmission connections from, within or between wind farms, and that the extent of the OFTO tenders will vary dependent on generator choice.

Q5.2: *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?*

We think that the generator should decide what is tendered at what stage.

Q5.3: *What are your 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?*

Where possible, Ofgem should encourage generators to scope, specify and time their OFTO tender requirements to extract efficiencies of scale and coordination apparent for larger wind farms. To run separate tender exercises for each phase (of multiple stages, as described in the consultation) may be the best way to achieve this.