

Regulation and Policy

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Offshore Electricity Transmission: Consultation on tender exercises under the enduring regime

Dear Giedre,

Thank you for the opportunity to comment on your consultation in relation to tender exercises under the enduring regime. This response is provided on behalf of the RWE group of companies, including RWE Npower Renewables Limited a fully owned subsidiary of RWE Innogy GmbH, RWE Npower plc and RWE Supply and Trading GmbH. We remain supportive of the OFTO regime and we welcome the flexibility that the enduring regime offers to developers to choose between tendering projects under the generator build and the OFTO build tender models. However, we believe that the potential benefits of the OFTO build regime will only materialise if the offshore regime is improved by resolving the key outstanding issues.

In this consultation, Ofgem should be examining why most developers are favouring generator build at the present time not OFTO build and questioning what is needed to make OFTO build more attractive to developers.

Some long standing developer concerns in relation to the transitional regime including the availability incentive and OFTO of last resort process will continue to pose problems under the enduring regime. In addition, the tender process itself needs to be made more efficient. The First transitional tender round began in June 2009, of the 9 projects, only 4 have OFTOs in place. As projects become larger and more complex, it is important that further OFTO risk is mitigated as far as possible so as to minimise the business impact on generators, who already shoulder most of the project risk. Although we recognise that the OFTO build model may offer benefits in relation to project finance, significant new risks are introduced by the OFTO build model.

Uncertainty in relation to the OFTO regime has caused considerable confusion amongst the industry. A lack of clear vision is illustrated by the inconsistency in approach between the clear preference for OFTO build in this consultation and the default generator build offers now being made by National Grid. Clear direction from Ofgem as to how the regime will operate in future will help developers to make more informed decisions.

As the regime continues to develop, we believe that Ofgem should reassess the apportionment of risk between the developer and the OFTO. There are a number

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of areas where there should be a fairer apportionment of risk to ensure that the most economically efficient solutions are implemented which ultimately result in the lowest cost to the consumer. For example, although generators face significant financial losses as a result of outages, the OFTO penalty may be less than the cable repair cost. We would also like to see a sharpening of the availability incentive to produce a more equal apportionment of risk between the generator and the OFTO, further clarification of the OFTO of last resort process and clarification of the mechanism for the revocation of the OFTO licence.

We believe that future consultations in relation to the enduring regime should also consider offshore coordination because many key issues such as phasing cannot be looked at in isolation. In 2011, National Grid issued a number of coordinated offers but developers were unable to properly consider these offers because of the amount of uncertainty in relation to the OFTO regime.

Please do not hesitate to contact me if you require any further information in relation to our responses.

Yours sincerely

Diana Chklar
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RWE responses to individual questions

Chapter 2: Enduring regulatory regime

Question 2.1: 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 with Ofgem's rationale for focusing on late OFTO build and developing this option. However, we believe that Ofgem should focus on resolving the issues in relation to the generator build option as a priority. Some of these issues, particularly operational issues such as the availability incentive and OFTO of last resort will equally apply to the OFTO build model.

Coordinated network development

We believe that coordinated network development needs to be considered as part of this consultation. The treatment of coordinated assets would be a key factor for developers when deciding which tender model would be most appropriate, particularly for larger transmission assets. We believe that a cost benefit analysis, including the potential for coordination should be undertaken to assess where anticipatory investment should be permitted. Key nodes such as Bicker Fenn on the east coast which have the potential to connect more than one wind farm should be given positive consideration in this analysis, which should include careful consideration of consentability of large connection infrastructure and how this is linked with National Policy Statement EN-5.

Chapter 3: OFTO build option

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

We believe that flexibility is important. Three months prior to submitting a consent application may be too early to trigger a tender process. For a DCO application to the IPC, there is an initial 28 day validation process in which the IPC assesses the validity of the application. If validation is achieved, it is followed three months later by a Preliminary meeting which sets out any potential issues which the IPC require to be investigated during the Examination phase. The Preliminary meeting provides the first firm opportunity to gauge how challenging the consent will be to achieve based upon the number of issues and objections raised that will require additional representations/hearings. We would want to have as much confidence as possible that consent is likely to be achievable from the licensing authorities at this juncture before asking Ofgem to commence a tender process. However, for a TCPA application, we may wish to commence a tender process more quickly.

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

Developers do not undertake major capital projects lightly. It takes significant investment to get projects through the consenting process to FID. Developers would not progress projects to this stage without firm commitment to build. So we would question the level of developer security required and whether OFTOs could share some of the tender process risk.

Where developer security is applied, Ofgem should provide further transparency in relation to the upfront tender costs and information in relation to the rate at which these liabilities are likely to increase during the tender process to allow developers to determine their ongoing levels of liability. This is particularly important if the OFTO build process requires the developer to trigger the tender process before it makes its financial investment decision.

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

We agree that the OFTO build process should allow flexibility in relation to tender specification on a project by project basis particularly in relation to the pre-construction works undertaken by the generator. In relation to the design requirements, the tender specification should not be limited to the information suggested in the consultation document. Developers may also want to include Front End Engineering Design (FEED) studies or other information.

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

We welcome the work currently being undertaken by DECC and Ofgem to facilitate use of compulsory purchase and wayleave powers.

The generator shall, in most circumstances, continue to seek consent for the generating station and the OFTO assets as associated development. The main consenting issues, in the context of this consultation, relate to the transferability of a DCO consent, and the responsibilities therein, to the OFTO company. This will require new modal provisions to be developed and agreed with the IPC in order to “split” the DCO consent. The issues of seeking consent for oversizing any co-ordinated assets and the validity of the ‘Statement of Reasons’ in any Compulsory Purchase Order (submitted as part of the DCO application) will also need to be resolved satisfactorily. A CPO in particular may preclude the consideration of any variations to the design of the project offered by an incoming OFTO as these may result in material changes beyond those considered in the DCO application which would invalidate both the EIA assessment and the CPO resulting in the requirement to re-apply for consent resulting in significant delays to programme.

We would, therefore, welcome further work to resolve interface issues between the generator and the OFTO.

Question 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?

It is essential that the OFTO has a clear understanding of the basis of design of the project going into the FEED stage. This will be founded on two sources. Firstly, the ‘Project Envelope’ that is formed to inform the EIA assessment work and the project description that has been consulted upon during pre-application consent work. This envelope, with its inherent flexibility of design parameters, will have been discussed with all interested parties involved in the decision making process for consent and agreed and this envelope will be agreed by way of successful consent (or rejected if deemed unacceptable). The second is the concept design and pre-FEED engineering and installation design work that has taken place to build up a concept of the project and initial business case

(economic viability of the project) that is used to progress a narrow range of project options into the FEED contracts.

Although we may not have the results of the FEED studies, we may wish to include concept and pre FEED design information, project characterisation information (e.g. survey works and ground model, and also the “Design Basis” for FEED and “Project Envelope” that has been applied for (i.e. the basis of the EIA assessment and the extent of design flexibility sought from the IPC) and potentially other information on a project by project basis. Developers need to undertake FEED studies in order to assess a project’s viability. Developers have a high level of expertise in undertaking these studies and it would make sense to be able to transfer this knowledge to the OFTO. There may be a range of other similar information and therefore the list of pre-construction works should be flexible and reviewed on a project by project basis.

Question 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?

Developers are committed to undertaking high quality seabed surveys because the viability of the entire project relies on accurate and reliable data that informs detail ground models that form the basis of design inputs and assumptions. The development of ground models are iterative in nature and responsive to subsequent survey information that build up the datasets to provide a high level of confidence in characterising the soil (types, depths, variability and mobility), engineering characteristics and seabed morphology/features. Developer consultancy costs are likely to be lower than for other parties because developers would have the necessary expertise in-house to be able to manage the survey (specification and contract management), to ensure that the most appropriate areas of the seabed are surveyed and accurately interpret the results.

Several forms of survey are possible:

- i) a non-intrusive geophysical survey of the sea bed from a vessel at the sea surface. This will provide the nature of the seabed surface including any sand waves, obstacles, etc, but will only provide limited interpretation on the actual ground conditions below the seabed, but can be combined with ground penetrating radar, vibrocore or Cone Penetration Tests (CPTs) surveys;
- ii) Historical data from earlier geophysical or intrusive geotechnical surveys, this may be combined with the above geophysical survey to provide an improved analysis of likely seabed conditions;
- iii) A preliminary geotechnical site investigation at the site, an intrusive survey of the sea bed using CPT tests or bore hole samples to physically determine seabed properties at a number of locations, this can then be used with i) and ii) to build up a good understanding of the sea bed mechanical properties, i.e. it can be used to “ground truth” the geophysical survey results;
- iv) Further tests of the engineering properties of the area through which export cables are to be placed, this may take the form of construction trials testing cable ploughing, jetting or trenching in-situ to actually test which installation method works best, how long they will take to install and what the costs will be.

The point being made by the above list is that a preliminary survey will never provide the level of detail to accurately cost an export cable installation job. It will be an iterative process of survey and engineering trial, each one more detailed and specific than the last steadily building up the body of knowledge surrounding

the task of cable installation. It is at the end of this process when contracts have finally been agreed with the cable installer that a clearer idea of final costs will be obtained. Even at this point the cost may not be fixed with contractor and owner sharing risk through the contract to cover unknown risks which may still appear. Typically pre-grapple run clearance tasks and subsequent cable burial tests at the site will confirm or otherwise the burial capability of the installation equipment. There will also be post lay contingency solutions where burial is not achieved or sub-optimal burial occurs (for example if ground conditions differ from survey information at discrete locations (due to small scale geological differences in soil types that cannot be predicted from survey work). This is why, to date, generator build and subsequent sale to an OFTO has been the most acceptable method of managing the construction risks of the OFTO asset.

Question 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?

There are a number of issues relating to generic survey specification;

1. Unsuccessful bidders would be commenting on issues that would never concern them. This could result in:
2. Costly speculative surveying of large areas of the seabed that would not ultimately be required by the project; or
3. the survey may not cover all the soil areas that the cable is likely to pass through. Therefore, cable contractors may need to undertake their own survey work to augment that provided by the generic survey.

The project developer would be best placed to advise which areas of the seabed would be most appropriate to survey for the project given their detailed knowledge of all other factors that need to be considered which selecting the survey search area including planning, consenting, marine conservation areas etc.

Also see answer to Q 3.6. The early survey work may be of high standard, geophysical and geotechnical, but it will only be an indication and a guide as to what the final costs of installation will be.

Question 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?

We do not believe that shortlisted bidders would be in a position to negotiate potential construction contracts with the supply chain, and any OFTO bids will only provide purely speculative predictions on costs at the time of OFTO tendering. Developers need to undertake detailed Front end Engineering and Design (FEED) studies prior to receipt of tenders for supply chain contracts. The outcomes of this work would provide inputs for detailed specifications going into the procurement process for construction, the resulting construction tender costs from the supply chain would then determine the viability of the project as a whole. Therefore, developers would not be in a position to commence a tender before receiving supply chain tender contracts. Once developers have a clear idea of potential costs, an OFTO tender process could be commenced provided that developers were not exposed to significant levels of liability from the tender process prior to making their financial investment decision.

Whilst recognising that the OFTO would start to incur costs during the same period as the developer in the procurement phase, the developer does not have the unlimited ability to underwrite significant liabilities held under guarantee with the OFTO prior to FID for the project as this incrementally erodes the parent company ability to raise capital whilst preserving a satisfactory credit rating.

Question 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?

We believe that this constraint can be alleviated if the developer negotiates supply chain contracts at an early stage in the process. Once an OFTO is selected for a project, the OFTO could finalise the contracts.

The second issue relates to consideration of novel design solutions that may require bespoke fabrication solutions. Where proposed design solutions don't use "off the shelf" kit (e.g. 220kV solutions or HV DC at the limits of technology) there may be longer lead times for fabrication or fewer contractors / suppliers who can provide deliverables. Therefore, the reality of the supply chain deliverability is ultimately a factor in reaching suitable project designs.

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

The developer should have the choice as to the optimal procurement method for each project. In some instances, contracts should be transferable. It does not make sense to prevent contract novation where optimal terms have been agreed in advance of the appointment of the OFTO. A complete exemption could create procurement inefficiencies in the process by eroding contract value and adding further cost and delay. Renegotiation would delay the signing of contracts so contract novation must be allowed to pass contractual benefits through from the developer to the OFTO. Ultimately, the OFTO build process should be flexible enough to allow different procurement processes to be undertaken.

For onshore wind generation projects it is not unusual for developers to enter into arrangements with suppliers for long lead time items and to transfer these arrangements to EPC, turnkey or balance of plant contractors. It could therefore be possible to introduce similar OFTO arrangements.

Question 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?

It imperative that developers can and do engage with the supply chain during the design and specification of their projects so that the optimum solution can be arrived at taking account of requirements, costs, risks and timescales.

There are a number of approaches undertaken by developers which ensure project timescales are met including competitive tendering processes, fostering supply chain opportunities through supply chain events, chamber of commerce forums, websites and media PR to promote expressions of interest in advance of FID. As well as other arrangements with suppliers such as framework

agreements, partnering, joint ventures, preferred suppliers etc. Further clarity is required as to how such arrangements would be accommodated.

Question 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?

Developers should be able to work in partnership with potential bidders and the preferred bidder to ensure that viable and optimal outcomes are delivered for their projects. For an OFTO build project, it will be particularly important to ensure that mechanisms are in place to allow knowledge sharing between developers and OFTOs. This will help to ensure that efficient project solutions are developed without duplication or unnecessary works being undertaken.

Question 3.13: 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?

The tender revenue stream should reflect the asset life of the underlying assets. Therefore, the tender revenue should be considered on a case by case basis and adjusted where assets have been designed to last for longer than 20 years.

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

- delay to licence grant?
- weather delay?

Incentives need to be placed on the OFTOs to manage these types of risks. If these risks are treated as pass through items, the consumer will be exposed to the full cost. OFTOs should be able to manage these risks via the contract structures that they sign or via a hedging mechanism.

Question 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?

It is unclear from the document as to how a risk sharing mechanism would work. We require further detail before we are able to comment on this question.

Question 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?

It is important that bidders' costs are carefully controlled. If bidders are able to undertake numerous speculative studies and surveys, developers may be exposed to unnecessary additional costs.

Question 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?

Question 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?

Any refinancing gain share may reduce the number of bidders and/or push up bid prices. It is up to Ofgem to judge the optimum balance to secure best value for the consumer.

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

A tender process should commence as soon as a developer has asked Ofgem to commence a tender exercise and met the tender entry conditions. Other projects could enter the same tender round at a later date if a generic pre-qualification process is retained.

Question 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 this section?

If Ofgem does not operate a QTT stage, the PQ process would need to be a far more stringent and project specific from the outset. A bespoke tender process would be required for each project. Our experience from transitional tender round two has shown that a bespoke tender process is required for each project is ultimately required in any case. Therefore, particularly as projects become larger and more complex, it would be more straightforward to run a bespoke process from the outset.

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

Our preference would be for option 1. It would not be feasible for bidders to submit their ITT response before the consent granted decision is received. It would also not be feasible to assess the technical component of the response before the TRS because the technical proposal may need to change in the light of the consent outcome or any forced design alterations/constraints agreed with the consenting authorities during the determination period to enable consent to be granted. However, given differences in the planning process for different projects, ultimately we would like flexibility to be applied to the timing of the tender process on a case by case basis.

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

We believe that the generator should be able to decide the point at which the ITT takes place. We believe that the timing of the ITT stage will need to be decided on a project by project basis with significant input from the project developer. Process flexibility, particularly from the ITT stage is key in order to minimise risks and obtain the most cost reflective solution for all parties. It is not considered appropriate or efficient to conclude the OFTO ITT stage before consent is granted as the consent will provide the legal boundaries within which the prospective OFTO must offer a design solution.

Question 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?

It is important that developers are able to assess whether bidder proposal are compliant with the project as a whole. There are a number of aspects of the bids that developers would need to assess in order to do this which may vary by project. We agree that these aspects would include; the overall build programme,

the construction of the offshore substation, the interface points between generator and OFTO assets and the operations and maintenance proposals for the transmission assets.

It would also be helpful for developers to get some idea of costs as early on in the process as possible to avoid abortive tender costs. Late cost transparency in relation to the transmission costs would undermine our ability to progress the rest of the project. No FID could be taken until the developer had a clear view of these costs. Prices could be made anonymous for each bidder in the same way that mark ups of the SPA have been made available to developers in the transitional tender round.

Question 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?

In our view the NETSO does not need to be involved in the evaluation of tenders. STC and Grid Code compliance are specified and so are clear. Regardless of any tender assessments, there is always the risk that the assets do not completely meet the specifications once commissioned and tested and it may not be possible to rectify to provide that compliance. Ofgem should focus on having a procedure in place to deal with such circumstances rather than adding more complexity to the tender assessments. If Ofgem did decide that the NETSO should be involved, their involvement should not be any greater than set out in the consultation document.

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

Yes, as a good principle in Procurement, a non-compliant bid may sometimes offer a solution that exceeds the requirements of the generator at an efficient cost. However, it is very difficult for us to see how this proposal would work in practice without causing significant delay and further complication to a tender process which is already extremely challenging. In any event, the generator should have the right to either support or veto such variations if the design solutions are incompatible or risks are unacceptable to their project. Without such a right to a veto there is a risk that the generator may not achieve project finance. Any variant bid would also need to be cognisant of the restrictions on design or installation methodology enforced by the consent, hence no OFTO tender can be significantly progressed unless the OFTO bidder has had the benefit of digesting and understanding the boundaries of the consented Project Envelope.

Question 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?

The pre-construction costs should be refunded to developers at the point at which the OFTO is selected and the agreed pre-construction works are transferred to the OFTO. At this stage, the transfer agreement would be enforced and payment to the developer should be made for the agreed works.

If planning application is turned down, developers should be entitled to compensation as part of the tender process in the same way that onshore TOs are compensated for such costs.

Question 3.27: 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?

The issue of transmission availability is extremely important and the incentives must contribute to encourage the repair of any fault regardless of how long the fault has been sustained. We wish to see a sharpening of the availability incentive to produce a more equal apportionment of risk between the generator and the OFTO. This could be facilitated by further clarification of the OFTO of last resort process and clarification of the mechanism for the revocation of the OFTO licence.

Question 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?

The proportion of TRS subject to indexation should be minimal. OFTOs should seek to manage risks through contract structure and hedging.

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

We remain to be convinced that the existing incentives provide adequate protection for the developer, particularly in relation to delays. The risks of financial losses faced by generators unable to generate from their projects are much greater than the financial losses faced by an OFTO who is late. The result of such an imbalance is that costs to the consumer will rise due to the increased cost of capital imposed on the generators. Such an outcome is clearly not in line with the objective of the regime to drive down offshore generation costs.

Any Liquidated Damages need to be paid to the generator (whether that is directly or indirectly via the NETSO).

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

The complex and important issues of:

- the risk of major failures in the final years of a franchise;
- decommissioning;
- residual value.

need greater analysis and discussion and we look forward to the further consultation in the spring of 2012.

CHAPTER: Generator build option

There are a number of issues relating to generator build that have been outstanding for a long period of time such as the operation of 132kv assets prior to commissioning, the availability incentive, interest during construction, phasing, OFTO close process and OFTO of last resort. These issues still pose substantial risks to developers and should be resolved as a priority. As projects increase in size and complexity, the OFTO process itself needs to be as stable and low risk as possible. A reduction in the overall length of the tender process itself would help to mitigate some of these risks.

Question 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?

We do not believe that it would be appropriate for any other parties to comment on seabed surveys or post construction seabed surveys. The developer would need to take the relevant decisions in advance of OFTO appointment so it is difficult to see how such an approach would be agreed.

The relevant survey in this instance would be a post installation survey. The same point arises in relation to question 3.6. i.e. the bidders' confidence in the data will depend only partly on the specification of the survey and more importantly on the party undertaking the survey, the contractual arrangements and the liquidated damages and warranties associated with the survey.

We note that the subsea export cable seems to be the major focus area of the risk averse OFTOs. However it is not preconstruction the survey which is their real concern, but the burial and the burial assessment. An industry agreed methodology on how to assess necessary protection of an export cable could add value and save costs. However, there will always be a requirement to do some post lay remedial work (0.5- 1% of total cable lengths are not uncommon).

Question 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?

Tenders should be run at the most appropriate time for the project in question otherwise excessive bid premiums will be included i.e. Tender rounds should be flexible and as frequent as necessary to meet generators' critical paths and deliver more offshore renewables, more cost effectively. Our experience from the transitional tender process has shown that projects require their own bespoke processes. We believe that these should be undertaken on a bespoke basis from the outset.

It is important that the flexibility to choose between both OFTO build and generator build tender models is retained within the enduring regime. There should be flexibility to extend between individual phases as well as projects i.e. for a given project it should be possible to be able to choose between generator build and OFTO build for each phase potentially constructing earlier phases ourselves and tendering construction as well for later phases. We would also like to be able to consider using both tender models in the same tender process. This would enable the same OFTO to be appointed for two or more phases.

Question 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?

Ofgem should clearly set out how the tender process for each project will be delivered. This should include timing certainty for each stage of the process. There should be further flexibility in relation to tender entry criteria for developers.

Question 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 have already seen improvements to the transitional generator build process from round one to round two. In particular we have seen additional flexibility in

relation to the transfer agreement and further bidder/developer interaction. However, further process flexibility and timing efficiency are essential given the size and scale of projects to be tendered under the enduring regime.

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

There are certain aspects of the evaluation process that developers should be able to comment on particularly in relation to O&M. However, it is important that the developer's role is clearly defined to ensure that further unnecessary complication and cost are not added to the tender process.

Question 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?

Ofgem should provide clear guidance on the timing of the asset transfer process. Both parties need to be clear in relation to the risks that they are taking on. A clear view from Ofgem as to what it considers economic and efficient costs would help to remove process uncertainty and improve the efficiency of the process, illustrating key principles that will be used to make cost efficiency decisions.

It should be noted that different parties will have different views is also important to consider that the cheapest bid may not necessarily result in the most economic and efficient overall solution.

Question 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?

We require further information in relation to the liabilities arising from the share sale approach to be able to comment on this question.

Question 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?

Question 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?

Question 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?

Any refinancing gain share may reduce the number of bidders and/or push up bid prices. The generator should benefit from such refinancing to incentivise them to assist in that process. It is up to Ofgem to judge the optimum balance to secure best value for the consumer.

CHAPTER: Five phased or stages construction of transmission assets

Question 5.1: Are you satisfied with the practical relevance of our definition of the terms 'phase' and 'stage'?

Phase is related to a single Final Investment Decision. Stage is not clearly defined, but 'Stage' from a Project Management Systems context would normally

relate to the way in which a project lifecycle is broken down into manageable portions. These 'Stages' are separated by a decision gate where the project scope, budget and resource is re-appraised before the project formally receives backing and commitment to move to its next stage (e.g. from consent to detailed design, or FID to build).

Question 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?

Affected generators should have a strong say in whether assets will be tendered separately or together. It is not clear to us how this process will operate for the development of a R2/3 phased project or a large R3 zone.

We agree that developers should be able to instigate a tender process in relation to each FID phase of a project. However, whilst the consultation suggests that only phases that had gone through FID would qualify for an OFTO tender round, NGET are looking at offshore transmission solutions to deliver the most economic solution for an entire zone / project rather than an individual phase, i.e. most economic for contracted capacity rather than phase. This disparity needs to be addressed both in relation to generator build projects and in the context of offshore coordination - for which it is also important that Ofgem provide clarity as how anticipatory will be handled.

Question 5.3: 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?

Affected generators should have a strong say in whether phases will be tendered separately or together.

It is important for developers to be able to phase our projects. However, we are concerned that phasing projects could lead to separate OFTOs being appointed for each phase. If this were the case we would need to agree separate wayleaves and agreements with landowners. This may, in practice be very difficult to do. A landowner may be very uncomfortable after initially dealing with one party, the generator, to agree a easement or land option, and then discovering that there will ultimately be, say, three different parties (three different OFTOs) none of them the original generator who now have rights to access their land, own and maintain equipment, carry out work, etc. It would seem much more feasible in this situation to have an OFTO for the site or zone who would then own each phase in turn either under generator build, OFTO build or a combination of both. A method would be needed for repricing the assets at the correct time as each phase reaches the appropriate stage, The chosen OFTO would have won the original tender with an agreed methodology or formula for recosting the phase costs as the project progresses. The OFTO would also have taken on board the prospect that all the phases may not be built. Having, say, 3 different OFTOs for a project also has implications for the size of assets, in particular onshore if the project is likely to be build in separate phases. One potential effect would be the increased onshore substation footprints. We may also need to install extra kit in order to allow access for more third parties between physical site interfaces where live HV equipment is installed.

We agree with Ofgem's conclusion that the cost assessment process will be undertaken for each project separately in the form in that they are presented for

tender.