

By email: offshore.enduring@ofgem.gov.uk

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Dear Martin,

7 November

RE: Draft Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2012 for consultation

Your ref. Draft Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2012 for consultation
Our ref. 121105_Enduring Tender Regs

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Thank you for the opportunity to comment on the draft tender regulations for the enduring OFTO regime. 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. We operate 700 MW of offshore wind farms, and have approximately 1.2 GW under construction with a strong pipeline of future projects.

DONG Energy has participated in four completed transitional OFTO tenders with a combined value of nearly £300 million, has interests in three more project due to complete under the transitional regime, and has five more projects in development that will fall under the enduring tender regime.

We broadly support the draft tender regulations, and have the following comments:

General comments

Clarity of terminology

For clarity, we suggest changing the terminology in the Tender Regulations and the Key Features guidance document to clarify which regulations apply to which type of project: OFTO Build or Generator Build. Currently Generator Build is included in the category 'transitional project', which may cause unnecessary confusion.

Developer Groups

We welcome the introduction of 'developer group' as an alternative to developer in the interpretation section. This should provide projects with joint ventures or

SPVs to qualify for tender, which will be required for the larger and more complicated projects under the Enduring Regime.

Our ref. 121105_Enduring Tender
Regs

Given that now a 'developer' can include any member of a 'developer group' it would seem prudent for a qualifying project to state whether it is part of a 'developer group' and that communications should be with one particular member of that 'developer group' to establish clear lines of responsibility under the regulations in respect of the 'developer group'. This would then apply throughout the regulations unless the relevant member of the 'developer group' notified Ofgem otherwise. Without this, the regulations are unclear as to whom the obligations are on and with whom Ofgem will communicate each time it refers to 'developer'.

We note that there may be a need to allow flexibility to change the 'developer group' post qualifying the project, and this should be included under section 32 (Changes to bidder groups).

Timing of licence grant

We note that for a Generator Build project the appropriate timing of the licence grant is more obvious than for an OFTO build project. We believe the tender regulations (or appropriate guidance notes) should set out the expected timing of licence grant for an OFTO build project with reference to the expected development phase (e.g. consent received).

Comments on specific sections:

- Section 20(4)(a): In the case of a developer group wishing to sell the OFTO SPV from within that developer group, it will not be the Preferred Bidder who meets the listed requirements but the OFTO SPV which the Preferred Bidder will become the parent of. Ofgem should consider making the regulations flexible enough to allow a share transfer of an OFTO SPV rather than asset sale to a Preferred Bidder.
- Similarly, in section 27(2), where an OFTO SPV is to be sold to the successful bidder, we believe there should be flexibility for Ofgem to grant the licence to the OFTO SPV rather than the successful bidder, and this should be reflected in the tender regulations.
- In Section 21 (Particular obligations of the developer from preferred bidder stage) we note that the effort to enable the resolution of outstanding matters and the transfer of preliminary works or transmission assets falls solely on the developer. Our experience from the previous transitional tender rounds is that the preferred bidder can have an important role in terms of ensuring a timely resolution of outstanding matters, and we believe the regulations should place a similar obligation on the preferred bidder.
- For the requirements for qualifying projects under the enduring regime, i.e. OFTO build (Schedule 1, paragraph 1) we note that the tender

process is likely to start prior to the developer's final investment decision in order to ensure the assets can be constructed on time. This makes 1.(d) a rather demanding requirement, as firm commitment to secure financing to construct the offshore wind farm cannot be provided prior to the final investment decision.

- Also, in Schedule 1, to give flexibility Ofgem should clarify that any member of a 'developer group' can meet any of the requirements listed. For example, there could be a set-up where an offshore wind farm is developed under the Generator Build Model, with one SPV for the wind farm and one for the GridCo. The wind farm SPV should be allowed to sign the BCA, but the GridCo SPV will have the onshore property rights.
- For the entry conditions (Schedule 2), we note the following:
 - The requirement under 1.(j) to provide evidence in writing of the planned submission dates for the necessary consents may need to contain some flexibility, as our experience is that we typically do not know the exact submission date more than one month in advance of submission.
 - 1.(l), 1.(m) (and the corresponding requirements 2.(h) and 2.(i) are insufficiently specific. In particular, 1.(m) and 2.(i) seem superfluous as there is already an incentive on the developer to undertake all its actions in an efficient manner through the cost assessment process.

Yours sincerely



Ebba John
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DONG Energy