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5th November 2012

**Open letter: Draft Electricity (Competitive Tenders for Offshore Transmission Licences)
Regulations 2012**

Dear Martin,

Navitus Bay Development Ltd is to develop Offshore Wind capacity at Navitus Bay off the Isle of Wight, Zone 7 of the Round 3 developments. The Navitus Bay project is to deliver between 900MW and 1200MW of capacity in a site which covers 76 square miles.

Navitus Bay Development Ltd welcomes the opportunity to respond to Ofgem's open letter on the draft electricity (Competitive Tenders for Offshore Transmission Licences) regulations 2012.

We consider that the regulations concerning the competitive tender process for appointment and licensing of OFTOs have been effective for projects under Round 1 and to date on Round 2.

A key concern for Navitus Bay is that the tender process and its applicable regulations must be sufficiently robust enough to support the future needs of developers delivering Round 3 projects. Round 3 projects are larger in scale and involve significantly more investment and complexity whereby the subsequent potential value at risk is materially greater. It is therefore vital that these regulations act to ensure adequate protection against risks which could result in developers being left with stranded assets and/or no OFTO in place.

Our detailed responses are set out in the attachment to this letter. If you have any queries on this response, please do not hesitate to contact me on (01926) 331 240.

I confirm that this letter and its attachment can be published on Ofgem's website.

Yours sincerely

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Attachment:**Planning of Competitive Tender Exercise**

A general comment in regards to the draft tender regulations concerns the clarity around the period required for successful completion of the tender exercise. The regulations need to minimise risk to this process and to the associated timescales to avoid delays in the outcome of the tender exercise. This will require significant and effective engagement from Ofgem through this exercise. This uncertainty means it is very hard for a developer to determine the right moment in time to start the tender exercise for its project such that it fits well with the development programme for realisation of the project offshore.

Navitus Bay welcomes the Energy Bill provision which allows UK offshore wind developers to test and commission their transmission infrastructure to export power in advance of an OFTO being in place. This is important for Round 3 offshore wind projects in limiting a significant legal risk for generators (under the generator build option). However it is still critical that the tender exercise is planned such that it does not impact on the developer's programme.

The concerns as raised above should also be seen in relation to the added qualifying requirements as given in Schedule 1 regarding the requirement that a developer has secured financing for the preliminary works (OFTO build option) or construction of the transmission assets and has entered into all necessary contracts for the construction of the transmission assets (generator build option). Without knowing how much time should be incorporated within the development plan for running a successful tender exercise, it will be hard to align this with the required qualification criteria.

Definition of Availability

In Part 2 clause 4(2) (b), page 6, reference is made to 'transmission assets available for use for the transmission of electricity'. We believe that "availability" should be defined within the definition list of Part 1, page 4, as 'those transmission assets that have been successfully commissioned and are ready for the transmission of electricity'.

Response Dates

In Part 2 clause 4(4), page 6, reference is made that a developer can be requested to provide additional information to the Authority if deemed necessary within a certain time period. All data that is not submitted within the specified period will not be taken into account by the Authority. In several other clauses (e.g. clause 6(4)) a similar description is included. This appears open ended and should be defined accordingly to provide a clearer indication of the time period allowed for a developer to respond to a request from the Authority. This may involve consultation with the developer. At the very least, it should recognise that the developer should have a reasonable period of time in which to respond.

Developer's Payment and Security

In Part 4 clause 9(1), page 10, reference is made to the developer's payment and security in relation to the start of the tender exercise which is based on the Authority's cost recovery methodology. For Round 3 projects the regulations need to ensure sufficient clarity regarding payment and security is available in

advance to enable developers to determine and understand their liabilities ahead of the tender process commencing.

It would be helpful to understand if the same methodology applied to Round 2 can or is referenced for the purposes of Round 3 projects. This could be outlined within the tender regulations for clarification.

Determination of Preferred Bidder

In Part 10 clause 18(1), page 13, reference is made to the Authority's procedure to define the preferred bidder after running the Invitation To Tender stage (ITT) for a project. Reference is made to evaluation criteria (e.g. financial, technical, legal, etc.), which each bidder is scored against in order to determine the preferred bidder. Information in regards to the level of weighting applied against each of this criterion would provide more transparency around this aspect of the determination process.

In Part 10 clause 18(1)(b) it indicates that based on the outcomes of the evaluation process the requirement to hold a best and final offer for the project would be determined. Navitus Bay are seeking comfort that, in the unlikely event this is the case, that Ofgem will carefully consider any timing implications from this delay on the developer's process. This process and the applicable regulations should not act as barrier to the developer in achieving their connection in line with the projects planned timescales.

Preferred Bidder Stage

In Part 12 clause 20(4)(b)(i), page 15, reference is made that the preferred bidder should have the required arrangements in place to construct the projects transmission assets. This clause could be made more explicit by detailing what these necessary arrangements are (e.g. financial, technical, legal, etc.) along with clarity on who would be defining the necessary arrangements.

Bilateral Connection Agreement

In Part 12 clause 20(4)(b)(ii), page 15, reference is made to the preferred bidder who needs to have a bilateral connection agreement (BCA) in place for the transmission assets. How will this BCA relate to the BCA which is held by the developer which already includes the part for the transmission assets?

Withdrawal/ Re-run and/or Cancellation of Tender Exercise

In Part 13 clause 22(1), page 16, reference is made to the option for a bidder to withdraw from the tender exercise during any stage of the tender process, even when being the preferred bidder. No specific conditions are described where this action would be deemed acceptable. This creates a risk for the developer through any resulting delays with limited scope to manage it. To minimise this risk for the developer the regulations should clearly define such scenarios where bidder withdrawal may result and the necessary process to ensure a replacement bidder can be expedited.

Similarly in Part 14 clause 23(1), page 17, reference is made to the scenario where a tender exercise needs to be re-run or cancelled when the outcome of the tender exercise is not satisfied. These scenarios are an open risk for a developer which would lead to a significant delay to the tender exercise process and therefore subsequent delays to the project develop. In previous stages of development of the Enduring OFTO regime, an OFTO of Last Resort has always been evaluated as a contingency measure back-up. We expect a similar arrangement to be incorporated into the tender regulations to mitigate the risk of an unsuccessful tender exercise.

Phased Projects & Multiple OFTOs

Navitus Bay recognises that Ofgem have explicitly left out of scope the area of phased projects and multiple OFTOs from this letter. Given the level of complexity associated with phased projects and associated anticipatory investments required we expect that the tender regulations will be addressed by Ofgem in the near future and engagement with industry will follow accordingly. With this in mind Navitus Bay would welcome the opportunity of a meeting to discuss our response in further detail along with our concerns regarding phased project delivery.