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Dear Megan

Offshore Electricity Transmission: Consultation on licence policy for future tenders

Thank you for the opportunity to respond to Ofgem's consultation published on 7 December 2012.

As a general comment, SSER considers that any type of Anticipatory Investment (AI) not directly connected to a developer's own project or a related project will be unattractive to a developer. A generator has no commercial drivers to develop transmission beyond their own immediate project needs. A developer is not a transmission company. A developer will not have the same incentives and certainty of recovery that are applicable to TOs in an onshore context. It is not reasonable to expect developers to design and build transmission assets based on the offshore transmission model of ex-post cost recovery, where there is a high likelihood of irrecoverable costs being incurred.

SSER considers that Generator-Focused AI (GFAI) involving two unrelated generators would be an extremely rare occurrence as it would require both generators applying to National Grid within the same time period. In relation to Wider Network Benefit Investment (WNBI), SSER considers that it is inappropriate to expect a developer to undertake this type of investment, even with the safeguard of gateway assessments in place. A potential alternative to Developer-led WNBI might be if the developer could act as an agent or contractor for the TO, where the AI costs would be covered by the TO through price control mechanisms. The feasibility of such an approach, and how it might fit under the current price control processes, would need to be examined further. However, SSER's primary position is that WNBI should be led by the TO rather than the developer unless there is a good reason why this is not practicable.

In relation to non-developer WNBI, SSER agrees with the principle of allowing TOs to carry out preliminary works, with the relevant costs recoverable through their existing price control arrangements. SSER understands that this sort of work could potentially be covered under the "Strategic Wider Works" category of the TOs' price control mechanism, however clarity is required on this point. SSER is unclear regarding what will happen to the WNBI long term, whether it would require to be transferred to an OFTO by the TO or will remain part of the TO's asset base. In either case, the costs of the WNBI should be socialised. If the WNBI is intended to ultimately become part of the OFTO's asset base, then Ofgem will have to consider how to adapt current processes in order to appropriately incentivise the TO to carry out the works.



I hope this response is helpful. If you would like to discuss our comments in more detail then please contact me.

Yours sincerely

A handwritten signature in black ink that reads 'Lesley Gray'.

Lesley Gray
Regulation

Consultation Response

#	Question	Our Response
Chapter 2: Overview of our proposed framework for the delivery of coordinated offshore transmission assets		
Q2.1	Do you agree with our high-level proposed framework for the development of coordinated assets	<p>In the context of Generator Build which, to date, has been the preferred option for developers, the proposed framework makes the assumption that generators will be willing to take additional risk for purposes beyond their own project. This is unrealistic. A generator has no commercial drivers to develop transmission AI beyond their own immediate project needs.</p> <p>The problems relating to cost recovery and security apply equally to all three models covered by Ofgem’s consultation. SSER suggests that the TOs are best placed to carry out any type of WNBI. This is because the onshore regime is designed to reduce the risk of AI, allowing the costs to be recovered through the price control mechanism. SSER understands that the TOs’ price controls do not make explicit provision for the TOs to carry out this type of work. Ofgem would need to ensure that there was clear scope to cover this investment.</p> <p>Generators have no such guarantees. While the extension of the User Commitment rules is a positive step, there is still inadequate comfort given under the proposals. A generator has no guarantee that the costs incurred on behalf of the other developer or for the benefit of the wider network would be judged as economic and efficient. Full recovery seems unlikely considering that every project to date has had costs disallowed during the cost assessment process run by Ofgem. Generators will be reluctant to risk irrecoverable costs for the benefit of an unrelated project. A regime similar to that in place for onshore transmission investment would need to be introduced to provide an upfront guarantee that the AI elements would be recovered and that the generator would not be left with costs that are unconnected to its own project.</p> <p>In short, AI (whether GFAI or WNBI) would only work if the regulatory regime was designed to remove all risk from the developer. Developing AI would not be a commercial activity for a developer - therefore Ofgem should not expect a developer to be exposed to the same commercial risks as it would be for its own project. Furthermore, the current framework lacks incentives for developers to undertake AI. The developer is essentially being asked to perform a similar role as a transmission company but with significant risk and no incentive. That</p>

		<p>is clearly unworkable.</p> <p>In relation to GFAI, commercial arrangements between developers, backed with a regulatory framework might assist the primary developer to acceptably manage the risks, however it is similarly unrealistic to expect a developer to provide an indemnity for costs undertaken by an unrelated developer considering that the second generator would have no control over how the work is carried out in practice.</p> <p>In short, SSER does not consider that GFAI, at least under the Generator Build option, is workable. This type of work would only be realistic under early-OFTO build (not retained by Ofgem as an option) or by a TO on a similar basis as envisaged under WNBI.</p> <p>However, SSER considers that GFAI involving two unrelated generators would be an extremely rare occurrence as it would require both generators applying to National Grid within the same time period.</p>
Q2.2	<p>Do you agree with our expectations of how coordination opportunities will be identified for parties to progress? Are they consistent with existing roles and responsibilities of parties with regards to the development of the network?</p>	<p>We believe that coordination opportunities could be identifiable through the ODIS document, which is to be combined with the existing Seven Year Statement, resulting in National Grid producing annually a Ten Year Statement (E-TYS).</p> <p>Upon receipt of a connection offer, National Grid will only review the circumstances that are applicable “on the ground”. Unless there is more than one connection application being considered by National Grid at the same time, there will be inadequate information available through the connection process alone to issue an AI Connection Offer.</p> <p>NETSO can only facilitate coordination if the need for coordination has crystallised – they cannot delay making a connection offer on the possibility that another project might also be in the background. Similarly NETSO cannot make offshore works assumptions based on a coordinated design by virtue of a hypothesis that another generator might come along. Nor would it be appropriate to do so.</p>
Q2.3	<p>Do respondents consider that changes to the CION be developed further to support coordination? If so, what changes are needed to the process or document? Would an improved CION assist in building developers’ confidence in accepting coordinated connection offers?</p>	<p>The CION document cannot cure the fundamental issue identified in Q2.1 above.</p> <p>The CION assesses connection options based on the information available to National Grid at the time. It only accounts for existing network conditions and signed connection agreements. As with the connection application process, it does not look beyond this to take account of potential connection applications or other hypothetical changes to the network.</p> <p>The only time a CION will account for another generator</p>

		<p>under GFAI would be if the connection offer process for both generators was aligned. This is likely to happen rarely.</p> <p>The CION may potentially be used to identify WNBI, insofar as it takes account of the position as exists at the time the CION is being undertaken, however as indicated above, SSER is of the view that generators will be unwilling to accept responsibility for WNBI work unless they are fully indemnified for the work undertaken. WNBI would not currently be captured by the CION process.</p>
Q2.4	Are there any barriers to improving the CION, if so, what barriers exist and how could these be addressed?	<p>The purpose of the CION is to look at connection options for an individual project, to consider the most economic and efficient solution for that project based on the network as “known” by NETSO at the time. SSER is of the view that this process is not likely to facilitate coordination. Fundamental changes designed to force the CION to fit would undermine the purpose and utility of the CION process. A separate process, which might be informed by the CION, would be more appropriate.</p>
Q2.5	Do respondents anticipate issues with the design or delivery of transmission assets where generation projects are reliant on works to be undertaken by another developer? If so, what would be the appropriate mechanism to address such issues?	<p>On a technical level there is presently a mechanism to gain the technical information necessary to build the transmission works needed for coordination, through National Grid.</p> <p>If a second generator were to connect to the co-ordinated transmission system then their connection assets would have to be designed taking account of the technical parameters of the installed transmission.</p> <p>The developer under a ‘Generator Build’ Connection Agreement will have to consider all the key technical parameters of the attributable generation projects and design a suitably balanced offshore connection point and subsequent offshore transmission system to transport all the necessary electrical energy to shore. In this instance building AI it would be necessary to set a timescale for when technical parameters from attributable generators will need to be firmly stated, with the understanding that, beyond that point in time, the developer would define the parameter and the attributable generator would have to comply.</p>
Q2.6	To what extent could NETSO intermediation mitigate data confidentiality issues between developers? Are any further measures required?	<p>There would need to be arrangements for data sharing, to gain confidence in commitment and project progress associated with managing the over investment risk which could sensibly be managed by NETSO.</p> <p>It would be useful to have a mechanism in place to allow for the sharing of information at an early stage – e.g. during the offer acceptance period.</p> <p>The information gap that is most likely to be experienced, in the context of GFAI, relates to non-technical information such as approach to health and</p>

		<p>safety, financial and technical track record and other matters that a company would typically expect to see when entering contractual arrangements with contractors or when entering joint ventures. However, commercially sensitive information should not be shared without the explicit approval of the relevant developer. It is recognised that in some cases, it may not be appropriate for NETSO to share certain types of information for competition law reasons.</p>
Chapter 3: Generator-Focused Anticipatory Investment		
Q3.1	<p>Do respondents agree with our preferred option, to support the transfer of GFAL assets to the OFTO if security is provided to protect consumers against stranding risk?</p>	<p>SSER does not consider that GFAL will work in practice unless the first generator has a commercial motive to build the GFAL (e.g. it is for a related project). For unrelated projects, a generator may be reluctant to accept the risk, even where user commitment rules are extended. The generator will be incurring costs in relation to the design and build of the AI, which they will only recover at the tender stage. Even with the best will in the world, some of these costs are likely to be irrecoverable. The generator would need comfort that they would be indemnified for the costs related to the AI. In theory this might be achievable through commercial agreements, however SSER is sceptical that workable arrangements could be agreed particularly in the absence of any requirement on the second generator to indemnify the first generator. If such commercial arrangements were achievable, then the 90 day offer acceptance period is not long enough to allow these to be completed within the timescale of the connection offer.</p> <p>SSER agrees with Ofgem's proposals as regards user commitment and considers this provides additional comfort, though there are other issues which make GFAL for unrelated projects extremely tricky.</p> <p>SSER is of the view that such projects are unlikely to be a common occurrence in practice.</p>
Q3.2	<p>To what extent do the current user commitment arrangements address the scenarios set out in table 3.1 and paragraph 3.2?</p>	<p>The User Commitment arrangements address the issues raised in table 3.1 and 3.2. However, an additional issue relating to the upfront costs incurred by developers, which must be financed by the first developer alone in the first instance, and the risk of bearing irrecoverable costs in relation to AI are not addressed by the user commitment proposals. In the absence of financing arrangements akin to the onshore regime, these issues should most likely be covered in commercial arrangements. However, there are challenges associated with this – not least the fact that such arrangements could not be completed within the 90 day offer acceptance period; may not be properly incentivised; and that such an agreement would be uncharted territory.</p>
Q3.3	<p>Are there any barriers to extending user</p>	<p>SSER is unaware of any barriers, other than the requirement to modify the CUSC which Ofgem has</p>

	commitment arrangements to address any gaps identified in question 3.2?	already identified.
Chapter 4: Developer-Led Wider Network Benefit Investment		
Q4.1	Do you agree that the NETSO should support the needs case for developer-led WNBI, drawing on relevant TO(s) as necessary? Do you consider changes to the NETSO licence or industry codes are needed to support this?	<p>As a first principle, SSER does not consider it is appropriate to expect a generation company to undertake wider network benefit investment. Such a scenario fails to recognise the incentives and commercial drivers relevant to developers and the likely appetite a developer would have for such works.</p> <p>If regardless, Ofgem intends that Developer-led WNBI should be an option, then it is appropriate that this is supported by the NETSO as developers do not have experience in developing needs cases and will not have access to the same network information as NETSO.</p>
Q4.2	Are there any specific barriers to the NETSO sharing information required to support the needs case for developer-led WNBI with the appropriate developer?	<p>There is likely to be an issue with sharing information that would benefit the generator as this could be considered anti-competitive.</p> <p>SSER considers that an obligation should be placed on NETSO to share the required information, subject to certain restrictions, in a timeous way. There is a possibility that, if left to NETSO's discretion, then obtaining the required information would be more difficult. Furthermore, NETSO would require certainty that it is acceptable to share certain types of information and that this would not cause NETSO to breach any of its licence or other obligations.</p>
Q4.3	What are your views on the criteria that Ofgem could use when assessing proposals for developer-led WNBI?	SSER agrees with the criteria proposed.
Q4.4	Do you agree with our proposal for the timing of the Ofgem assessment gateways to support developer-led WNBI?	SSER agrees with the timing suggested.
Q4.5	Are there some specific types of low regret WNBI that developers may be willing to take forward without a gateway assessment?	Offshore infrastructure is costly and requires various consents and permissions. SSER cannot envisage a type of WNBI which a developer would undertake without a gateway assessment.
Q4.6	Do you consider that there should be a de-minimis threshold for low regret developer-led WNBI? What are your views on how this should work, while ensuring consumers are not exposed to significant	SSER does not agree that there should be a de-minimis threshold.

	stranding risk? Where possible, please provide evidence of the types and costs of WNBI that you consider should be captured by the threshold.	
Chapter 5: Non developer-Led Wider Network Benefit Investment		
Q5.1	To what extent do you think it would be appropriate for onshore TOs to take forward preliminary works for non developer-led WNBI?	SSER agrees that the option for a TO to carry out the WNBI should be introduced.
Q5.2	What are your views on the criteria that Ofgem could use if assessing proposals at the first gateway for non developer-led WNBI?	No comment
Q5.3	What are your views on using two gateways for non developer-led wider network benefit investment?	No comment
Q5.4	What additional incentives and requirements should be placed on preliminary works funding for non-developer led wider network benefit investments?	The main issues from a developers perspective is that, where a developer's project is dependent on the development of the WNBI or there are interactions, timing of the WNBI will need to match in with that of the Project and appropriate incentives must be in place to ensure that agreed timescales are met.
Q5.5	What parties should onshore TOs be expected to engage, and what engagement processes should they follow before and during preliminary works?	<p>There may need to be information-sharing arrangements introduced between the TO and the developer to facilitate efficient build as between the TO's preliminary works and the developer's own transmission assets. This might be coordinated through NETSO in a similar way as proposed for GFAL. There may need to be changes to the current framework to facilitate information-sharing, though SSER recognises that there will be a delicate balance as, from a competition perspective, commercially sensitive information regarding other developers, and network development more generally, should not be shared by the TO with a generator.</p> <p>The TO will have to work closely with the developer during the development of the preliminary works and it would make sense to formalise this communication, rather than leave this to be conducted in an informal, ad hoc way. SSER would suggest that, where the need for non developer-led WNBI is identified, a workshop is established between the affected TOs, NETSO and the developer in order to agree the key milestones and a communications plan.</p>