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Dear Catherine,

**Offshore Electricity Transmission: Consultation on implementation of the
Generator Commissioning Clause in the Energy Bill 2012-13**

Summary

- The proposed introduction of the Generator Commissioning Clause is a welcome and positive step forward in developing the OFTO arrangements.
- We agree with Ofgem's proposal to split the ION into an ION Part A and ION Part B.
- The time of the first export of active power should not be considered as the point which ensures the transmission system is able to carry on activity to which section 4(1)(b) applies.
- We do not agree with Ofgem's assessment of the options for the completion notice trigger point.
- We suggest that a variation of the ION Part B option would be preferable, with the Completion Notice issued once 20% of active export power has occurred.
- Transparent provisions should be developed to address the possibility of it not being possible to transfer the OFTO assets within the 18 months completion period; reliance on an exemption from the relevant section of the Energy Act should only be considered as a last resort.
- We agree that projects in flight should be issued a completion notice when the code and licence modifications take effect and full commencement has occurred.

Introduction

RenewableUK is the trade and professional body for the UK wind and marine renewables industries. Formed in 1978, and with over 660 corporate members, RenewableUK is the leading renewable energy trade association in the UK, representing the large majority of the UK's wind, wave, and tidal energy companies. The association's response aims to represent these industries, aided by the expertise and knowledge of our members.

We welcome this Ofgem consultation, are strongly supportive of the OFTO regime and want to continue to improve its workability. So far offshore transmission has all been achieved under "generator build". It is vitally important that generator build continues to improve and that Ofgem and industry learn from experiences to date to improve the regime. We consider this consultation on the Generator Commissioning Clause a very important step forward to enable an effective "generator build" option, and are keen to offer an industry perspective on the issues being discussed by this document.

CHAPTER: Two

Question 2.1: Do you agree with our proposal to split the ION into an ION Part A and ION Part B? Please provide reasons to support your answer.

We agree with Ofgem's proposal to split the ION into an ION Part A and ION Part B. We believe that industry would benefit from increased flexibility and transparency in the issuing of the Interim Operational Notification.

Question 2.2: Do you agree with our assessment of the options for the completion notice trigger point? Please provide reasons to support your answer.

We do not agree with Ofgem's assessment of the options for the completion notice trigger point. In subsection 6G(2) of the Clause, a completion notice is defined as a notice which states that it would be possible to carry on an activity to which section 4(1)(b) applies by making available for use that system. We believe that the time of the first export of active power (which is represented by Ofgem's proposal of ION Part B) should not be considered as the point which ensures the transmission system is

able to carry on activity to which section 4(1)(b) applies, being the system un-tested at this very initial stage.

Question 2.3: Do you agree that ION Part B represents the best trigger point for the completion notice? Please provide reasons to support your answer.

We agree that ION Part B represents the best point to include the Completion Notice Trigger Point, although we would like to suggest an alternative set of circumstances defining when the notice should be issued. We have concerns that an 18 month period, triggered on issue of Completion Notice at the issue of ION Part B as currently defined may not provide sufficient time to prove the assets and complete the transfer to the incoming OFTO. Experience to date suggests that 18 months (from ION Part B) may be tight even if no significant failure or performance or process issue occurs during the 18 month period. The risks of hitting the end buffers on the 18 month period seems to sit largely with the developer / generator and this could place the generator in a weakened position in final negotiations with the incoming OFTO. We are concerned that if a significant failure or performance or process issue does occur then it is likely that 18 months (especially given Ofgem's proposed trigger) would be insufficient (examples of significant failures or performance or process issues could be onshore/offshore transformer failures, HVDC control system interactions, export cable failures, OFTO tender process delays etc) to ensure the asset is properly tested and developers are put in a safe position.

We also suggest that it will be challenging in some circumstances to complete the OFTO tender process (including transferring the OFTO assets) within the 18 months period without improving the efficiency and effectiveness of the OFTO tender process. We suggest that work should be undertaken to ensure that the generator commissioning clause and the OFTO tender process are aligned and consistent. To assist with this we have attached in "Appendix A" a paper suggesting some suggestions on improving efficiency and competition in the OFTO tender process. In recent years, RUK members have had regular discussions with Ofgem about industry concerns over the OFTO arrangements and the tender process and we would be happy to continue this dialogue over our suggestions.

Question 2.4: Are there any other points in the commissioning process that you feel we haven't considered in the options above that would be a more appropriate point for triggering the completion notice? Please provide reasons to support your answer.

We suggest that a variation of the ION Part B option would be preferable, with the Completion Notice issued once a defined percentage of active export power has occurred. We envisage this percentage to be 20% of the exported Transmission Entry Capacity (TEC), as recorded by the Metering System in the single or final stage of the Qualifying Project. The active export power would be visible to both National Grid and the developer through operational metering and evidenced by settlement data. We believe that such a trigger for the start of the 18month period would help reduce the risk, although probably not remove the risk altogether.

Events outwith the control of the parties to the OFTO transfer transaction – such as a significant component failure or performance issue - could result in delays to the commissioning and transfer processes such that they cannot be achieved within the 18 months completion period, even if all parties are committed to meeting the programme. The increasing size, complexity and innovation of OFTO asset projects and asset transfer transactions mean this will continue to be a real risk. Therefore we suggest that the arrangements should include adequate provisions to ensure the assets are properly tested and transferred under reasonable terms. Although an exemption from the provisions of the Energy Act may be possible, this is unlikely to be a favoured approach and so should only be considered as the last resort.

CHAPTER: Three

Question 3.1: Do you agree that the proposed approach, that projects in flight be issued a completion notice when the code and licence modifications take effect and full commencement has occurred, is the most appropriate approach for such projects? Please provide reasons to support your answer.

We agree that the proposed approach, that projects in flight that have already passed the agreed completion notice trigger date be issued a completion notice when the code and licence modifications take effect and full commencement has occurred, is the most appropriate approach for such projects. We believe that this would be the earliest feasible time for projects in flight to be issued a completion notice, therefore putting them in the least disadvantaged position that circumstances allow in comparison to other projects which are at an earlier stage of development. We also

suggest that careful consideration should be given to ensuring that the implementation of the clause at such a relatively late stage in some project's programme does not disadvantage such projects compared to their current position.

Question 3.2: Do you consider any other possible approaches we have not outlined would be a more suitable solution for projects in flight? It should be noted that options are limited by the scope of the Clause.

No we do not.

CHAPTER: Four

Question 4.1: We invite comments on all aspects of the proposed drafting provided in Annex 1. In particular, do you agree that the proposed licence modifications adequately implement the provisions in the Clause and our proposals set out in this document? Please provide reasons to support your answer.

We agree that the proposed licence change drafting reflects the option proposed by Ofgem and should address our proposed option described in our answer to question 2.4. However, we believe that the detailed drafting required will depend on the approach adopted and so the drafting should be kept under review.

In addition, we suggest that the proposed licence and code drafting should be reviewed to ensure it adequately addresses the implementation of the proposed or adopted approach in respect of staged projects.

Question 4.2: Do you consider there are other licence modifications that are needed to implement the Clause? If so, please provide details.

Please refer to our answer to question 4.1.

CHAPTER: Five

Question 5.1: In addition to the specific questions in Chapter 2 of this document, we invite comments on all aspects of the proposed drafting provided in Annexes 2 and 3. In particular, do you agree that the proposed code modifications adequately implement the provisions in the Clause and our proposals set out in this document? Please provide reasons to support your answer.

Please refer to our answer to question 4.1.

Question 5.2: Do you consider there are other code modifications that are needed to implement the Clause? Please provide evidence to support your answer.

Please refer to our answer to question 4.1. In addition, we understand that the current ION can be used for ROC accreditation purposes and may be used to demonstrate commissioning under the proposed CfD arrangements. Therefore, we suggest that the appropriate guidance and procedures should be reviewed in light of the proposal to split the current ION into 2 (or perhaps more) parts.

We look forward to continuing to support development of the OFTO arrangements to help achievement of Government's energy policy objectives and we would welcome the opportunity to discuss our response and our suggestions further with Ofgem.

Yours sincerely,

Filippo Locatelli
Offshore Wind Development Manager

Appendix A

Improving efficiency and competition in the OFTO Tender Process

The issue

The current OFTO tender process takes too long to complete once a Preferred Bidder has been announced. At present, the Preferred Bidder:

- effectively has exclusivity from an early stage and for a long period; and
- has more bargaining power than would be usual in a competitive process.

This will be increasingly important if a developer under the Generator Build regime has to complete the transfer within 18 months of a completion notice being issued (as indicated in the Energy Bill).

Running an effective competitive process is at the heart of the OFTO framework and real improvements can be made to deliver:

- a streamlined and efficient transfer process for the developer;
- cost savings that benefit the consumer.

Defect with the current arrangements

Under the present OFTO tender process Ofgem identifies a short list of bidders which it invites to enter the Invitation to Tender (ITT) stage, to provide financially firm bids. To do this bidders must undertake initial due diligence and obtain price commitments from funders, which typically have a validity period, after which the price can be changed. From this Ofgem selects a Preferred and Reserve Bidder, with the Preferred Bidder (PB) taken forward to complete the transaction. The PB then performs further more detailed due diligence to enable it to obtain the necessary approvals it requires to complete the transaction.

The second stage of due diligence is more detailed than that undertaken at ITT stage. There are several reasons for this:

- limited time available to bidders to carry out diligence at ITT stage;
- delay arising where PB is announced before assets are fully commissioned in compliance with industry requirements and design specifications – OFTO transaction can only complete after assets are shown to be compliant with industry requirements given the link back to the OFTO's availability incentive.

This additional time with very limited competitive pressure remaining on the PB gives opportunity for the PB to seek changes to terms and/or the Tender Revenue Stream (TRS) that it submitted and that formed the basis for its selection as PB.

The time needed to complete a transaction will be increasingly important if the provisions under the Energy Bill come in to force, requiring a transfer to complete within 18 months of a completion notice being issued. Under TR1 and TR2 the shortest period between appointment of a Preferred Bidder and completion was 8 months, with the longest taking 33 months. The average of eight transactions completed to date is just over 17 months, this includes the time needed to award the licence and close the transaction. As the 18 month cut off approaches the bargaining power will be weighted in favour of the PB knowing that a developer is compelled to complete a transfer or potentially be placed in breach of the provisions of the Electricity Act (as amended). This can be further complicated by the handover of the relevant contract packages between the developer and its sub-contractors and the stage the offshore transmission assets are at within the compliance process.

The solution

The Ofgem run tender process can be improved to both minimise the time required to complete a transaction and retain the competitive tension in the latter stages of the process.

Ofgem has already improved the initial stage by combining the Pre-Qualification Questionnaire (PQQ)/Qualification To Tender (QTT). It is proposed that Ofgem optimises its tender process further by removing the distinction between the ITT and PB appointment stages. Instead Ofgem can retain the short list of bidders in the process until it announces a successful bid. This delivers one round of due diligence instead of the current two.

This approach is common in public sector procurement where measures such as competitive dialogue are designed to

- help the awarding authority get greater clarity as to the terms offered by all shortlisted bidders before appointing a PB; and
- reduce the time taken from PB appointment to financial close by specifically limiting the issues on which the PB is permitted to negotiate following appointment as PB.

Although this may lead to an increase in bidders costs it is anticipated that this would be offset by the improvements that retaining the competitive tension in the bidding process would bring. It also ensures the shortlisted bidders get an opportunity to differentiate their bids more explicitly before the PB appointment decision is taken. Once the successful bid was selected there would be a limited time between announcement and completing the transaction. The PB would be permitted to raise issues in limited and defined circumstances only such as non-financial related changes, corporate and credit approvals and the process to award the OFTO licence and complete the transaction.

The timetable for the tender process will be important to ensure that the process can commence later in the development and commissioning of the offshore transmission assets, whilst leaving sufficient time to complete the transaction within 18 months of the Completion Notice being issued. This will in part depend on the timing of when the Completion Notice is issued and the status of the assets to be transferred during the Invitation to Tender stage. The later this takes place the more likely it is that the developer will be able to demonstrate that all of the offshore assets are compliant with the regulatory requirements and operating within design parameters, thereby reducing bidder risk. It also allows sufficient time for Ofgem to complete its cost assessment to determine the Final Transfer Value, which it would be doing in parallel to the bidding process.