

Catherine McArthur  
Enduring Regime Implementation  
Ofgem  
9 Millbank  
London  
SW1P 3GE

1 November 2013

Dear Catherine,

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

Thank you for the opportunity to respond to the above consultation of 30 August 2013.

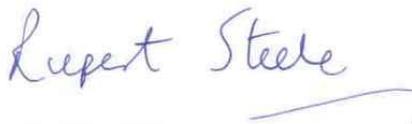
ScottishPower welcomes the improved certainty around OFTO arrangements provided by the new provisions in the Generator Commissioning Clause and we are broadly comfortable with Ofgem's proposed approach to implementation. Our answers to the specific consultation questions are in the attached annex. Our key points are as follows:

- The 18 months commissioning period provided for in the Energy Bill will be challenging given the practical and commercial requirements of OFTO asset projects and transactions. It is therefore important that issuance of the completion notice is not triggered inappropriately early. We think the test in the Energy Bill ('that it would be possible to carry on an activity to which section 4(1)(b) [of the Electricity Act 1989] applies by making available for use that system') should be interpreted to include a requirement that the OFTO assets have been part-load tested adequately. Without such testing it would not be possible to achieve the necessary standard of reliability for the purpose referred to in section 4(1). We propose the trigger should be when active power export equivalent to 20% of the Transmission Entry Capacity (TEC) has been achieved, which is likely to occur at a slightly later stage than Ofgem's proposed definition of the 'ION Part B' trigger.
- We think Ofgem should be giving consideration to what steps it can take to ensure that the generator developer is not exposed to unfair commercial pressures as the end of the commissioning period approaches. Transparent provisions should also be developed and incorporated to deal flexibly, simply and quickly with potential situations where, despite the best endeavours of all parties, the OFTO assets cannot be transferred within 18 months of the completion notice having been issued. Where an exemption from the relevant section of the Electricity Act may be possible, or where it may be possible to treat the connection temporarily as a distribution asset, these measures should be considered as the last resort.

- The inclusion of provisions for 'projects in flight' is a positive step. Although we previously understood that the proposed Generator Commissioning Clause would apply only to projects progressing under the Enduring (Generator Build) OFTO regime and not to Transitional projects, we believe that the greater certainty that these provisions will provide could be beneficial.
- Consideration should be given to the implications of the proposed changes to the existing ION process for other mechanisms and processes that currently use, or will rely on, the existing ION (such as RO accreditation and CfD commissioning evidence) to ensure that there are no unintended consequences.

If you would like to discuss any aspect of this response, please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in blue ink that reads "Rupert Steele". The signature is written in a cursive style and is underlined with a single horizontal stroke.

**Rupert Steele**  
Director of Regulation

**OFFSHORE ELECTRICITY TRANSMISSION: CONSULTATION ON IMPLEMENTATION  
OF THE GENERATOR COMMISSIONING CLAUSE IN THE ENERGY BILL 2012-13**

**SCOTTISHPOWER RESPONSE**

**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 as this additional flexibility in the existing commissioning will provide an appropriate means of triggering the issue of the completion notice and the start of the completion notice period.

We suggest that consideration should be given to the wider potential implications of this proposed approach to avoid any unintended consequences of the proposed change. In particular, we are aware that the existing ION process is used for other mechanisms and processes (such as RO accreditation) and is proposed to be used for others (such as evidence of commissioning under CfD arrangements).

**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 agree with Ofgem that the 'EON', ION Part A, ION Part 3 and 'FON' stages are not appropriate points at which to trigger the completion notice. Ofgem proposes that the ION Part B would be issued at the time of the first export of active power but we do not believe that the OFTO assets can be viewed as being available for use for transmission at that very early point: at that stage the assets will not have been adequately tested to demonstrate that they can be reliably used to carry active power, and therefore whether they can be used to transmit electricity for the giving of a supply to premises etc.

We therefore think that either the completion notice will need to be given at a later stage, or the ION Part B notice redefined to the point at which active power at 20% of the transmission entry capacity can be demonstrated.

**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.**

As we state above, we agree that the proposed ION Part B could represent an appropriate trigger point for the completion notice but only if it were redefined to a point where greater reliability were demonstrated than the first export of active power.

We think the test in the Energy Bill ('that it would be possible to carry on an activity to which section 4(1)(b) applies by making available for use that system') should be interpreted to include a requirement that the OFTO assets have been part-load tested adequately. Without such testing it would not be possible to achieve the necessary standard of reliability for the purpose referred to in section 4(1) ('giving a supply to any premises or enabling a supply to be so given'). We propose the trigger should be when active power export equivalent to 20% of the Transmission Entry Capacity (TEC) has been achieved, which is likely to occur at a slightly later stage than Ofgem's proposed definition of the 'ION Part B' trigger. The 18 months commissioning period provided for in the Energy Bill will be challenging given the practical and commercial requirements of OFTO asset projects and transactions. It is

therefore important that issuance of the completion notice is not triggered inappropriately early.

With respect to staged projects, for the avoidance of doubt we note that although ION Parts A and B will be issued (as proposed by Ofgem) for each stage of a project, only the ION B for the final stage will trigger the completion notice.

#### Additional measures to mitigate risk of commissioning delay

Although there are strong incentives on both the generator developer and the OFTO to achieve the asset transfer as early as possible, the significant consequences and risk of not achieving this rest mainly with the generator developer, who already faces considerable uncertainty and risk.

We note that Ofgem is aiming to minimise code and process changes to accommodate the clause and does not intend to review the OFTO tender process as part of the implementation. However, we would request that Ofgem reconsider its position in respect of the following specific concerns.

- Our first concern is that the generator developer could be placed in a weakened negotiating position with the successful OFTO as the end of the 18 months commissioning period approaches and that such a situation could be exploited to their commercial disadvantage. To mitigate this risk, we suggest that Ofgem should ensure that it has – and is willing to use – appropriate powers under the OFTO tender process and regulations to avoid such a situation arising. Implementation of a property transfer scheme may be necessary along with additional powers to ensure appropriate, reasonable and timely behaviour by all parties.
- In addition, the consequences of a significant component or system failure or performance or process issue or delay mean that asset commissioning and transfer to the OFTO may not be achievable within 18 months, despite the best endeavours of all parties and as a result of influences outwith the control of the involved parties (for example, as a result of consent conditions limiting work periods and activities). OFTO asset projects and asset transfer transactions are likely to continue to increase in size, complexity and innovation so the arrangements must incorporate sufficient time and flexibility to ensure the assets are properly tested and transferred under reasonable terms. We suggest that transparent provisions should be developed and incorporated to deal flexibly, simply and quickly with such potential situations. Where an exemption from the relevant section of the Electricity Act may be possible, or where it may be possible to treat the connection temporarily as a distribution asset, these measures should be considered as the last resort.

**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.**

As noted in our response to Question 2.3, we suggest that a variation of Ofgem's proposed approach to the ION Part B option would be more effective, with the completion notice issued once a defined level of active export power has been achieved. We suggest that this should be when active power export equivalent to 20% of the Transmission Entry Capacity (TEC) has been achieved, as this will give a greater level of confidence that the assets have been load tested and demonstrated as available for use. This may require a further stage in the process (ION Part C), with the ION Part B signifying TEC has been released by NGET and the suggested ION Part C signifying that the required level of export has been achieved.

We believe that it will be possible to manage this by using the metering system in the final stage of the project as the active export power would be visible to both NGET and the developer through operational metering and evidenced by settlement data. We believe that our proposed completion trigger and approach would help reduce uncertainty and risk faced by all parties involved in the asset transfer and transaction, although they do not mitigate completely our concerns raised in our answer to Question 2.3.

We note that this suggested approach would require further – but relatively minor – changes to the licence and code drafting.

**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.**

The inclusion of provisions for 'projects in flight' is a positive step. Although we previously understood that the proposed Generator Commissioning Clause would apply only to projects progressing under the Enduring (Generator Build) OFTO regime and not to Transitional projects, we believe that the greater certainty that these provisions will provide is beneficial.

We believe that the proposed approach of issuing a completion notice when the code and licence modifications take effect and full commencement has occurred seems pragmatic and reasonable in principle, for projects which have already passed the stage at which the completion notice would have been issued. However, we would seek reassurance that the implementation of this proposed approach at a relatively late stage in some projects' programmes will not in any way disadvantage such projects relative to the position they presently have.

**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.**

As we have outlined in Question 3.1, we hope that the introduction of the proposed arrangements for projects in flight will not disadvantage any of these projects relative to their current position. We would seek reassurance from Ofgem that, should it appear that they could be disadvantaged, the projects' existing positions will be maintained.

**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.**

The proposed licence and code drafting seems to address the key areas affected by the proposed approach to the clause. However, this – and the detailed drafting – will depend on the approach adopted and so the drafting should be kept under review.

In our answer to Question 2.4 we have outlined a proposed variation to the approach proposed by Ofgem and we believe our proposed approach would require additional – but relatively minor – licence and code drafting.

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.

**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, it is our experience that the current ION is used as part of the ROC accreditation process and is proposed to be used to evidence commissioning under the proposed CfD arrangements. We suggest that relevant guidance, procedures and/or codes may need to be revised to reflect the proposed splitting of the current ION into at least two further parts.

ScottishPower  
1 November 2013