

Offshore Electricity Transmission: Decision on implementation of the Generator Commissioning Clause in the Energy Act 2013

Final decision

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Overview:

This document sets out our decisions on how we will implement new legislative provisions within the Energy Act 2013. These provisions will ensure that, following full commencement of the offshore transmission regime, generator developers can lawfully commission offshore transmission assets prior to transferring these assets to a licensed Offshore Transmission Owner (OFTO).

This document presents our decision on the point in the commissioning process when a completion notice would be issued for Generator build projects and how the new arrangements will be implemented through code and electricity transmission licence modifications. We also set out how the implementation arrangements will apply to projects that, at the time these new arrangements come into force, have passed the point at which a completion notice would ordinarily be issued but have not yet transferred to an OFTO.

Context

With the government setting an ambitious target that 15 per cent of the UK's energy needs be met from renewable sources by 2020, a dynamic approach is needed to deliver the substantial investment required in transmission. In the case of offshore generation, the Department of Energy & Climate Change (DECC), together with Ofgem, established the competitive regulatory regime for offshore transmission in June 2009. Under the regime we run the competitive tender process to select and license Offshore Transmission Owners (OFTOs).

To date, all tenders have been for Generator build projects, where the generator developer (developer) builds the transmission assets connecting its windfarm to the onshore electricity transmission system and Ofgem selects and licences an OFTO to own and operate those assets.

In order to commission transmission assets to enable the assets to be transferred to an OFTO, it is necessary for a developer to transmit electricity over the assets. However, transmission is prohibited under the Electricity Act 1989 without a licence or exemption. The Generator Commissioning Clause (the Clause) seeks to address this issue by enabling a developer to carry out transmission for a limited period of time for the purposes of commissioning Generator build transmission assets before transferring them to an OFTO.

Associated documents

- January 2014 [Consultation on implementation of the Generator Commissioning Clause in the Energy Act 2013](#)
- August 2013 [Consultation on implementation of the Generator Commissioning Clause in the Energy Bill 2012-13](#)
- [Offshore transmission: proposed measure to address concerns regarding commissioning of transmission assets under the generator build model](#)
- [Offshore Electricity Transmission: addressing Generator build commissioning concerns.](#)
- The Energy Act 2013 is available on the legislation.gov.uk. The Generator Commissioning Clause is provided in Appendix 2.
- [The Electricity \(Competitive Tenders for Offshore Transmission Licences\) Regulations 2013, February 2013](#)
- Section 11A decision to modify the electricity transmission licence, published alongside this document.

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Executive Summary

This document presents our decisions on how we will implement the Generator Commissioning Clause (the Clause) in the Energy Act 2013. The Clause was developed jointly by DECC and Ofgem¹ to ensure that, following full commencement of the offshore transmission regime, a generator developer (developer) can lawfully commission and operate offshore transmission assets before transferring them to an OFTO.

Following two consultations on the implementation of the Generator Commissioning Clause published in August 2013 and January 2014 (the August consultation and the January consultation, respectively), this document sets out our decisions on implementation. We outline our decision on the point in the commissioning process when the 'completion notice' described in the Clause will be issued and how the arrangements will be implemented through proposed changes to industry codes and the electricity transmission licence. We also set out how the Clause will apply to projects 'in flight'. This refers to any offshore transmission projects that have already passed the point at which a completion notice would be issued but not transferred to an OFTO when the code and licence modifications implementing the Clause take effect.

The completion notice

The completion notice is a concept under the Clause that is given to the Authority by the National Electricity Transmission System Operator (NETSO) which states that a transmission system can be made available for use. It marks the beginning of the final 18 month period during which a developer can transmit electricity for the purposes of commissioning transmission assets without a transmission licence or exemption. In our previous consultations we considered existing stages in the commissioning process when the completion notice could be issued in order to work alongside existing industry processes. We proposed to split the current Interim Operational Notification (ION) issued to a developer by the NETSO as part of the commissioning process, into two parts: ION Part A and ION Part B. In the January consultation we stated that ION Part B was our minded-to position for when a completion notice should be issued in respect of a transmission system.

Responses to the January consultation reflected general support for our minded-to position on when the completion notice should be issued, although a couple of stakeholders continue to consider other options more appropriate. Many respondents requested further information on what would happen where a developer continues to operate a transmission system more than 18 months after a completion notice is issued. In this document we set out information on considerations in these circumstances.

¹ For ease of reference, Ofgem is used to refer to Ofgem, Ofgem E-Serve and the Gas and Electricity Markets Authority (the Authority) in this document.

We have decided that a completion notice will be issued for a qualifying project when the ION Part B has been issued for all stages of that project. ION Part B is the first point at which we consider transmission assets could be made available for use (ie are technically ready) and so is compatible with the requirements of the Clause. It is also a point that is clearly visible to the NETSO, which means that the process of issuing completion notices can be administered efficiently and consistently for all projects. Furthermore we consider that 18 months from ION Part B should provide sufficient opportunity to resolve outstanding commissioning issues and transfer the transmission assets to an OFTO.

Projects in flight

In line with our minded-to position outlined in the January consultation, we have decided that for projects in flight a completion notice will be issued when both full commencement of the offshore transmission regime has occurred and the code and licence modifications to implement the Clause have taken effect. This approach will ensure that all projects in flight will receive a completion notice on an equitable basis. Stakeholders have expressed support for this approach in responses to our consultations to date.

Next steps and implementation

We are working with Government to align the implementation of the Clause with full commencement of the offshore transmission regime. We will implement the code and licence modifications to take effect from full commencement. We currently expect that the code and licence modifications that will implement the Clause will take effect on 10 June 2014. This is also the date on which we are advised that the Government intends to fully commence the offshore transmission regime.

This will mean that the NETSO will have an obligation to issue completion notices from 10 June 2014. For any projects in flight, NETSO will have an obligation to issue a completion notice for all such projects on the same day, which will be within ten business days of 10 June 2014.

1. Introduction

Chapter Summary

In this chapter we explain the purpose of this document and provide background on our work on implementation of the Generator Commissioning Clause (the Clause) to date.

Purpose of this document

- 1.1. In this document we consider responses to the Consultation on implementation of the Generator Commissioning Clause in the Energy Act 2013 published on 24 January 2014 (the January consultation)² and set out our decisions on how we will implement the Clause. This includes our decision on the point in the commissioning process when completion notices should be issued and the application of the Clause to projects in flight and to staged and phased projects. We also include our decisions on the associated industry codes and electricity transmission licence (the transmission licence) modifications.

Consultation history

- 1.2. The January consultation followed the Consultation on implementation of the Generator Commissioning Clause in the Energy Bill 2012-13, which was published in August 2013 (the August consultation).
- 1.3. In the January consultation we considered responses to the August consultation and further analysed options for the point at which the completion notice will be issued, including an alternative option proposed by stakeholders. We presented our minded-to positions on implementing the Clause, including point at which the completion notice will be issued and applying the Clause to projects in flight and phased and staged projects.
- 1.4. We also consulted on the necessary accompanying modifications to industry codes and on changes to the transmission licence in accordance with section 11A of the Electricity Act 1989.

Legal and regulatory context

- 1.5. Upon full commencement of the offshore transmission regime, conveying electricity over offshore systems at 132kV and above will be classified as
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² <https://www.ofgem.gov.uk/publications-and-updates/offshore-electricity-transmission-consultation-implementation-generator-commissioning-clause-energy-act-2013>

transmission. Generator developers (developers) conveying electricity over these assets will therefore be in breach of the prohibition on transmission without a licence or exemption.

- 1.6. DECC and Ofgem developed the Generator Commissioning Clause within the Energy Act 2013 to enable developers to commission offshore transmission assets lawfully before transfer to an Offshore Transmission Owner (OFTO) under the Generator build model. The Clause permits transmission by developers for the purposes of commissioning transmission assets during a defined 'commissioning period'.
- 1.7. The Clause provides that transmission over an offshore transmission system can take place during a commissioning period if it takes place before a completion notice is issued or during a period of 18 months³ from the date on which the completion notice is issued. The Clause was developed to enable developers to commission transmission assets under Generator build and so **the decisions outlined in this document relate only to Generator build projects.**
- 1.8. More information on the legal and regulatory context is provided in the August and January consultations.
- 1.9. We have published alongside this document our decision to modify the transmission licence under section 11A.

Appendices and annexes

- 1.10. To support the decisions detailed throughout this document, we have provided a number of appendices and annexes:
 - Appendix 1 provides a summary of responses to the January consultation.
 - Appendix 2 provides the full text of the Clause.
 - Appendix 3 provides a glossary of terms used throughout this document.
 - Appendix 4 provides a feedback questionnaire.
 - Annex 1 provides the modifications to the Connection and Use of System Code (CUSC).
 - Annex 2 provides the modifications to the Grid Code.

³ The Clause provides a provision whereby the 18 month period could be reduced to 12 months by notice by the Secretary of State within two to five years from Clause commencement, where the Secretary of State considers this is appropriate.

2. The Completion Notice

Chapter Summary

In this chapter we highlight key points raised by stakeholders in response to the January consultation and set out our final decision on when completion notices will be issued, including our reasons for choosing this point.

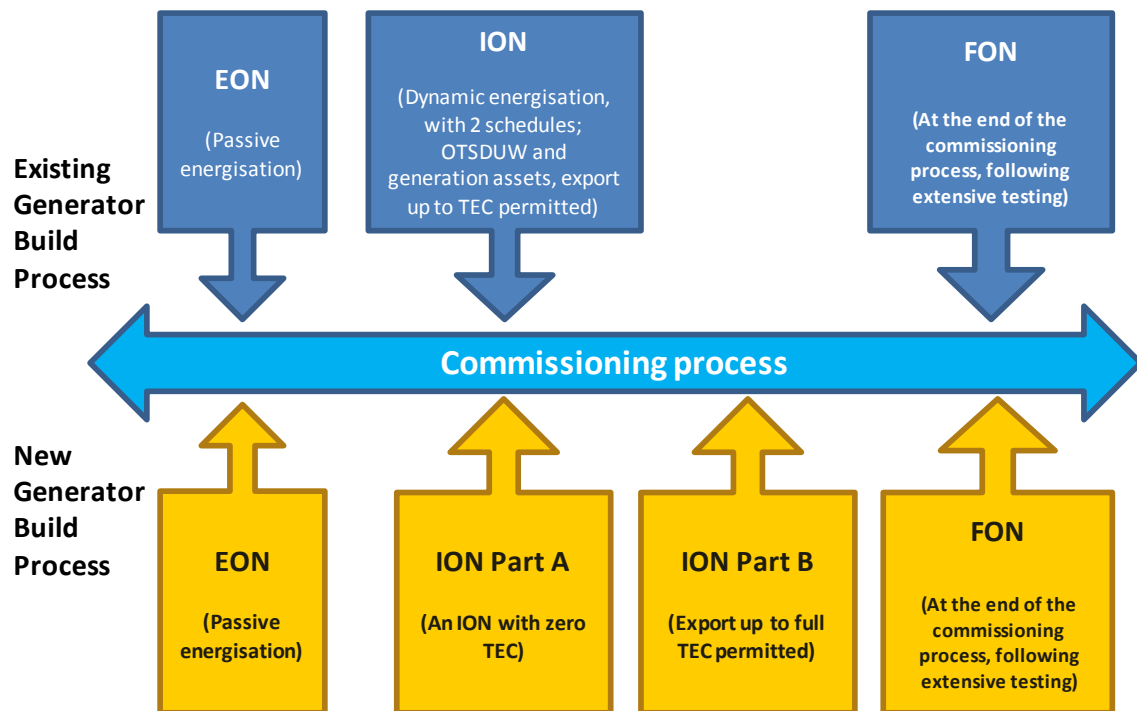
- 2.1. The final decisions provided in this chapter on how we will implement the Clause are as follows:
 - **We will implement code modifications to split the Interim Operational Notification (ION) into ION Part A and ION Part B, for the commissioning of Generator build offshore transmission systems.**
 - **We will implement licence and code modifications to reflect that a completion notice will be issued in respect of a transmission system at ION Part B.**
- 2.2. We explain each of these points in more detail below including the key reasons for these decisions.

The commissioning process and the splitting of the ION

Decision

- 2.3. We confirm the intended position stated in the January consultation and have decided to split the current ION into two separate instruments: ION Part A and ION Part B. Figure 2.1 illustrates how the commissioning process for Generator build offshore transmission systems will work with the ION split into ION Part A and ION Part B.

Figure 2.1: Overview of the Generator build commissioning process showing the split ION: ION Part A and ION Part B



Our reasons for splitting the ION

- 2.4. ION Part A will be the point at which dynamic energisation or the ability to import/export reactive power will be permitted and will indicate when it is necessary for the developer to start connecting to the offshore transmission system. ION Part B will indicate the point at which active power can be exported and will include Transmission Entry Capacity (TEC). This split makes the process more consistent with commissioning requirements onshore and under OFTO build, as well as providing a transparent point at which the transmission system can be considered technically ready.

Key points raised by stakeholders

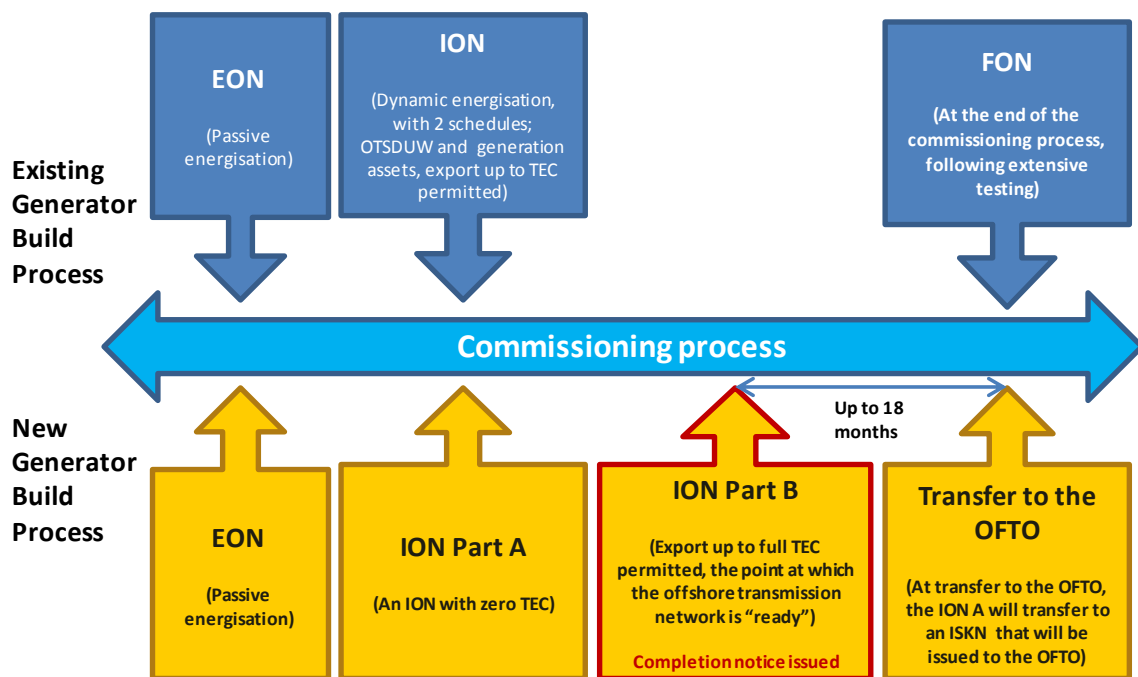
- 2.5. Of the ten responses received to the January consultation, no stakeholders commented on the decision to split the ION into ION Part A and ION Part B. All responses to the August consultation were supportive of the proposed split, noting the increased flexibility and transparency that this will provide.

The completion notice issue point

Decision

- 2.6. We have decided that ION Part B represents the best point at which to issue a completion notice in line with the requirements of the Clause. Figure 2.2 provides an overview of how issuing the completion notice at ION Part B will apply to projects going forward.

Figure 2.2: Overview of ION Part B, the chosen option for when a completion notice will be issued



- 2.7. The completion notice will be issued when ION Part B has been received for the whole offshore transmission system. That is, when a developer can first export active power over the whole offshore transmission system onto the National Electricity Transmission System (NETS). The developer will then have a period of 18 months in which to transfer the transmission system to an OFTO.

Our reasons for completion notices to be issued at ION Part B

- 2.8. We consider that completion notices should be issued at a point that is robust and enforceable in line with the requirements of the Clause, determined through an assessment against the following criteria:

1. **Compatibility with the Clause:** The point should satisfy the requirement in the Clause that a completion notice is issued where “it would be possible to carry on an activity to which section 4(1)(b) applies by making available for use that system”. We consider this means that a completion notice should be issued at a point that the system is technically ready.
 2. **Clarity and consistency:** The point should be clear such that it can be consistently applied to all qualifying projects. The point should also be visible to National Grid Electricity Transmission (NGET) as National Electricity Transmission System Operator (NETSO) to ensure the process of issuing completion notices is efficient, fair, transparent and not unnecessarily burdensome to administer.
- 2.9. On the basis of these criteria we consider ION Part B best meets the requirements of the Clause. The reasons for this are:
- ION Part B best meets the requirements of the Clause by representing a point at which “it would be possible to carry on an activity to which section 4(1)(b) applies by making available for use that system”. That is, we consider that it is the earliest and most appropriate point to provide technical assurance that the transmission system can be made available for use for the transmission of electricity for the purposes of supply.
 - ION Part B represents a clear and unambiguous point for both developers and NGET, as ION Part B would be tied to a specific event in the commissioning process. It also applies in a clear and consistent way to staged and more complex projects. This will allow NGET to treat all developers and projects in a transparent, equitable and consistent manner.
- 2.10. Additionally, we consider that 18 months from ION Part B should provide sufficient opportunity to resolve outstanding commissioning issues and to transfer the transmission assets to the OFTO. This also ensures that the period of time during which a developer can operate transmission assets is limited, in line with the intent of the Clause.

Key points raised by stakeholders

- 2.11. Of the ten responses received to the January consultation, eight agreed with our minded-to position on when completion notices should be issued, noting that ION Part B represented the best point at which to issue the completion notice. In particular, a number of these responses agreed that ION Part B is the option that best meets the requirements of the Clause.
- 2.12. There were two responses that did not support ION Part B as the most appropriate point to issue completion notices. The first response that did not support our minded-to position indicated a preference for the completion

notice to be issued at the point at which active power export is greater than 20 per cent, which was considered as Option 3 in the January consultation. We have confirmed that this option would not be visible to NGET and is not in line with the intent of the Clause. We consider that our analysis, as detailed in the January consultation, adequately explains why such an option is not appropriate. In our view, insufficient evidence was provided to alter the conclusions of this analysis. The other response did not explicitly support our minded position, it instead “noted” our minded-to position and our interpretation of the Clause.

- 2.13. Many of the stakeholder responses requested additional clarity on the treatment of projects that fail to transfer within the 18 month period following the issue of a completion notice. This is considered further in Chapter 3.

3. Implementation of the Generator Commissioning Clause

Chapter Summary

In this chapter we outline how the the Clause will apply to projects in flight and to phased and staged projects. We also consider projects that fail to transfer to an OFTO within 18 months of a completion notice being issued.

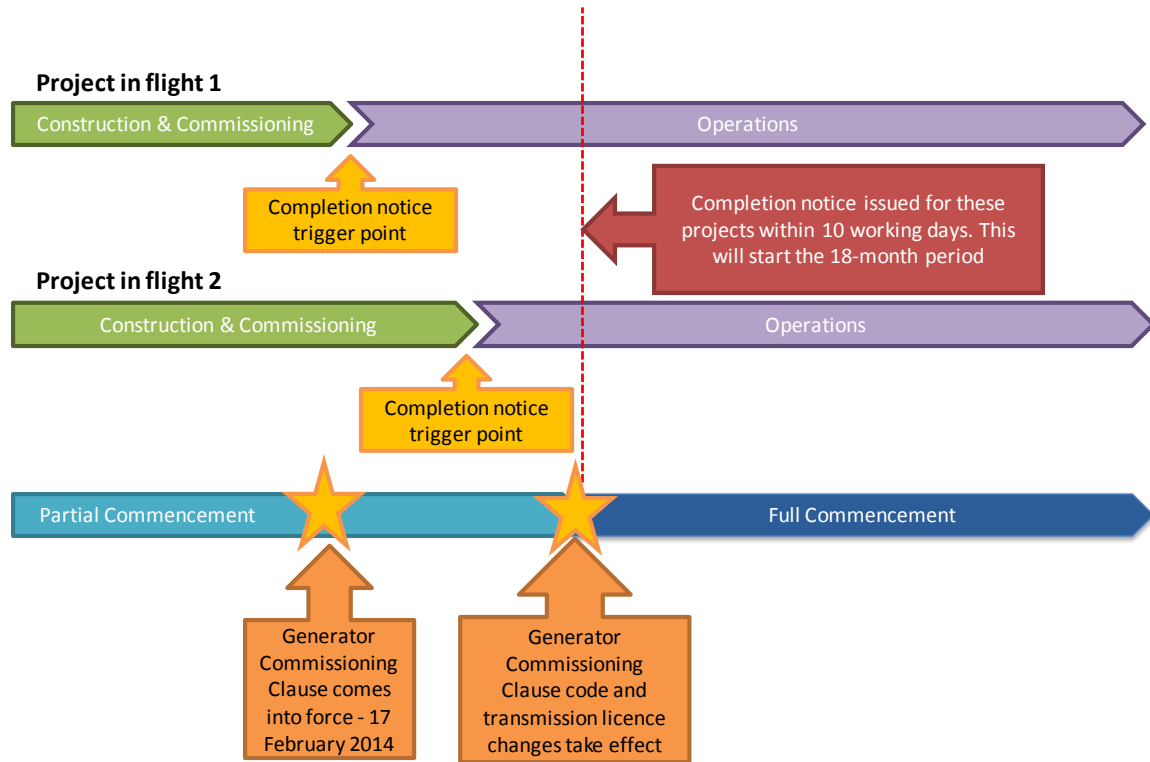
Projects in flight

- 3.1. We are aware that there are likely to be a small number of projects in flight that will require completion notices to be issued.

Decision

- 3.2. **Our decision is that completion notices will be issued for all projects in flight at the same time, within ten business days of the date that both code and transmission licence modifications have taken effect and full commencement has occurred.**
- 3.3. We will make modifications to the CUSC that will require NGET to issue a completion notice for projects in flight within ten business days of the date the code and transmission licence changes take effect, and full commencement has occurred, as represented in Figure 3.1. Refer to Chapter 5 for the expected timings of implementation and full commencement.

Figure 3.1: Decision on implementation for projects in flight



Reasons for our decision

3.4. We consider this treatment to be appropriate because:

- It will ensure the Clause applies to projects in flight in a manner consistent with the intent of the Clause to limit the time in which a transmission system may be operated by a developer; and
- It will ensure fair and consistent treatment of all projects in flight.

Key points raised by stakeholders

3.5. In the January consultation we outlined our minded-to position for how the Clause should be implemented in respect of projects in flight.

3.6. In responding to the January consultation, no stakeholders disagreed with our proposed treatment of projects in flight. One respondent requested clarity on whether an ION Part B would be issued for a project in flight. We have consulted with NGET on this point and can confirm that, for transparency purposes, each project in flight will be issued with an ION Part A and an ION Part B as well as receiving notification that the completion notice has been issued to the Authority.

Phased and staged projects

- 3.7. The following definitions explain what we mean when we are referring to a phase or a stage of a project:
- Phase: a phase consists of transmission assets with a shared level of certainty and timing of build out, and within a discrete location. For example, we would anticipate a single phase to comprise transmission assets with a shared investment decision and/or shared key contractual commitments. A phase would be equivalent to a single qualifying project under the 2013 Tender Regulations.⁴
 - Stage: within a phase (and as such within a single qualifying project), assets may be constructed in discrete groups over a period of time. We use the term stage to refer to each discrete group of assets. A stage refers to where a developer's Bilateral Connection Agreement (as agreed with NGET) permits TEC to be released in several increments. This is where the developer intends to commission distinct parts of a transmission system separately, usually several months apart.

Decision

- 3.8. **For phased projects, one completion notice will be issued for each qualifying project.**
- 3.9. **For staged projects, the completion notice will be issued when ION Part B has been received for the final stage of the qualifying project (the point when export up to full TEC is permitted).**
- 3.10. For illustrative examples of how the Clause will be applied to various examples of phased and staged projects, please refer to Chapter 2 of the January consultation.

Key points raised by stakeholders

- 3.11. In response to the January consultation, some stakeholders requested clarification on implementation of the Clause for staged projects. One respondent sought clarification on when a completion notice would be issued for a project where all TEC is permitted on one date but the export cables are commissioned several months apart. In such circumstances ION Part B would be issued for the whole offshore transmission system at the point when export up to full TEC was permitted, ie when all export cables are commissioned. This is the point at which the completion notice would be issued.
- 3.12. Another respondent requested clarification on shared platforms for assets and how different system designs would be divided into stages. It is the

⁴ As defined under Schedule 1, para 1 (for an OFTO build project) and Schedule 1, para 2 (for a generator build project)

developer's responsibility to design the most economic and efficient transmission system and to agree with NGET whether and how TEC might be staged to meet the needs of the project. We would not expect the Clause to drive the development of less economic and efficient transmission system designs.

- 3.13. The same stakeholder requested confirmation that the definition of a phase in this document is the same as the definition in the Contract for Difference documentation published by DECC in relation to EMR. The definition of phase provided in this document is specific to the offshore transmission regime and is not necessarily applicable to other contexts. The definitions are not intended to align as they refer to different, unrelated policy areas.

Interactions with coordinated network development

- 3.14. Policy is currently being developed and implemented for projects involving coordination, such as wider network benefit investment (WNBI) and generator-focused anticipatory investment (GFAI).⁵ Where any such projects are taken forward under Generator build, they will also be subject to the Clause and a completion notice will be issued for each qualifying project. We have not identified any reasons why our decision on implementation of the Clause would not be appropriate for projects currently in the pipeline involving GFAI and WNBI, nor were any concerns identified in response to the January consultation. We will review the applicability and appropriateness of the Clause to any more complex project designs as and when they come forward to be tendered.

Projects failing to transfer within 18 months of a completion notice being issued

- 3.15. Many of the stakeholder responses to the January consultation requested further clarity on the possible actions we might take if a project is not transferred to an OFTO within 18 months of a completion notice being issued. In particular, stakeholders highlighted the perceived risks to a developer in such circumstances.
- 3.16. The Clause was developed to enable developers to lawfully carry out transmission without a licence or exemption for the purposes of commissioning for a defined period. The Clause is not intended to undermine the prohibition on transmission without a licence or exemption.
- 3.17. To date we have said that:
- if a developer continues to operate the transmission system beyond the 18 month period, it would be participating in transmission without a licence. Under the Electricity Act 1989, transmission for the purposes of

⁵ <https://www.ofgem.gov.uk/ofgem-publications/75429/statement-proposed-framework-enable-coordination-update-our-december-consultation.pdf>

giving or enabling supply without a licence or an exemption is an offence;

- in assessing whether enforcement action, including prosecution of any such offence, is in the public interest, the Secretary of State and Ofgem will consider the facts relating to any non-compliance on a case-by-case basis; and
 - developers should seek their own legal advice on this matter.
- 3.18. In considering the facts relating to any potential non-compliance on a case-by-case basis, Ofgem would expect to be kept apprised, via interactions with parties during the tender process, of any concerns over the ability to complete asset transfer within 18 months.
- 3.19. While we appreciate that stakeholders may seek additional information on what may happen if there is a failure to transfer the transmission assets to an OFTO within the 18 month timeframe, we consider that we cannot give any further information at this point, as the circumstances of each case will need to be assessed individually at the relevant time.

4. Transmission Licence and Code Modifications

Chapter Summary

In this chapter we set out our decisions on the modifications to the the transmission licence, the CUSC and the Grid Code that are necessary for the implementation of the Clause.

Modifications to the transmission licence

- 4.1. In Annex 1 to the January consultation we set out the proposed modifications to the transmission licence, which included a statutory consultation under section 11A of the Electricity Act 1989.
- 4.2. We received ten responses to the January consultation; however, only one respondent provided comments on changes to the transmission licence. The respondent proposed a minor amendment to the definition of 'Completion Notice'. We agree with this suggestion and have made the change. We consider this change to the licence to be minor, and that a further consultation in accordance with section 11A(2) of the Electricity Act 1989 is not required. All non-confidential responses have been published on our website.
- 4.3. Given that we have not identified any further modifications to the transmission licence, we now direct that the modifications be made. The section 11A decision to modify the transmission licence is issued alongside this document and includes the modifications to the licence as change-marked text⁶. We currently anticipate that the changes to the transmission licence will take effect on 10 June 2014. See Chapter 5 for further details.
- 4.4. We have not identified any need to propose modifications to other licences to implement the Clause. A complete copy of the latest version of the transmission licence, dated 5 August 2013, can be found on our website⁷. Note that the modifications we are directing to the transmission licence are limited to what is necessary for the implementation of the Clause.

⁶ The S11A Notice is published alongside this document

⁷ <https://epr.ofgem.gov.uk/Content/Documents/Electricity%20transmission%20full%20set%20of%20consolidated%20standard%20licence%20conditions%20-%20Current%20Version.pdf>

Modifications to the CUSC and Grid Code

- 4.5. In Annexes 2 and 3 of the January consultation we set out the modifications to the CUSC and Grid Code that we consider necessary to implement the Clause, in particular relating to issuing a completion notice for an offshore transmission system constructed by the developer. The proposed modifications to the relevant documents were deliberately limited to those modifications that are considered appropriate for the implementation of the Clause.
- 4.6. Of the ten responses received to the January consultation, none commented on the CUSC and one suggested an amendment to the Grid Code to include within CP.6.6.3 an additional ION Part B that allows export up to 100 per cent of capacity for a staged development consisting of a single Power Park Module (PPM).
- 4.7. Having discussed the proposed amendment with NGET, we consider that this change is not needed. We understand that NGET will issue the ION Part B for 100 per cent of the TEC (for that stage), with the restrictions set out in CP.6.6.3 (ie restrictions at 20 per cent and 70 per cent of capacity per PPM). For a staged development consisting of a single PPM, an ION Part B would be issued to release each stage of capacity with the completion notice being issued when the ION Part B is issued for the last stage of capacity. As such, we do not propose that further changes are necessary to the Grid Code.
- 4.8. Section 6H and 6G of the Electricity Act 1989 set out the powers for the Authority to modify a code or agreement where that modification is necessary or desirable for the implementation of the Clause.
- 4.9. Given that we have not identified any need to propose further modifications to the CUSC or Grid Code, we intend to direct that the changes set out in Annex 2 and 3 to this consultation be made. We anticipate that this direction will be issued in May 2014 and will set out the date from which the changes will take effect. It is our intention that the changes to the CUSC and Grid Code will take effect at the same time the changes to the transmission licence take effect.
- 4.10. The modifications to CUSC set out in Annex 2 will:
 - implement an obligation on the NETSO, consistent with section 6G of the Electricity Act 1989, to require NETSO to issue the Authority with a completion notice notifying it that, for any Generator build offshore transmission system, it would be possible to transmit electricity over that system by making it available for use, on the date that export of power from the generating station connected to that offshore transmission system onto the NETS is permitted by the NETSO, in accordance with the CUSC and the commissioning process set out in the Grid Code;

- if a Generator build offshore transmission system has already passed the completion notice trigger point when the code and licence modifications come into effect, implement an obligation on NETSO, consistent with section 6G of the Electricity Act 1989. This will require NETSO to issue the Authority with a completion notice notifying it that such a system is available for use within ten working days of this modification coming into effect;
- clarify that the offshore transmission assets built by the developer constitute an offshore transmission system, consistent with section 6F of the Electricity Act 1989, and further clarify that such a system is not treated as forming part of the NETS until that system transfers to the relevant OFTO. This is consistent with our intention that such developers should not be exposed to all the obligations that would otherwise apply to an OFTO or Transmission Owner (TO) carrying out the same activities. Once the offshore transmission system is owned or operated by an OFTO it will form part of the NETS;
- reflect consequential changes to the connection point of such an offshore transmission system, clarify obligations on the developer in respect of operating the offshore transmission system up until transfer to an OFTO, clarify the necessary information exchanges between the developer and the NETSO when the offshore transmission system is operational for commissioning purposes and before it transfers to an OFTO and update relevant definitions and include interpretative provisions as a result of the modifications; and
- make transitional provisions for any Bilateral Connection Agreement and any Construction Agreement in respect of an offshore transmission system not yet transferred to an OFTO entered into on or before the date this modification comes into force. This is so that these are read and construed as if those agreements had been entered into on or after that date.

4.11. The modifications to Grid Code set out in Annex 3 will:

- implement an obligation on NETSO, to issue an ION Part A and ION Part B in respect of a generator built offshore transmission system;
- extend the process for assessing compliance with the Grid Code and requirements for system energisation to generator built offshore transmission systems;
- clarify that the offshore transmission assets built by the developer constitute an offshore transmission system, consistent with section 6F of the Electricity Act 1989, and further clarify that such a system is not treated as forming part of the NETS until that system transfers to the relevant OFTO. This is consistent with our intention that such developers should not be exposed to all the obligations that would otherwise apply to an OFTO or TO carrying out the same activities. Once the offshore

transmission system is owned or operated by an OFTO it will form part of the NETS;

- clarify that the data exchange requirements that apply when configuring Connection Sites (as defined in the Grid Code) will also apply at the Transmission Interface Site (as defined in the Grid Code) for generator built offshore transmission assets until those assets transfer to the OFTO;
- clarify the safety arrangements to apply to generator built offshore transmission systems, until transfer to the OFTO;
- clarify that the developer is required to comply with the Connection Conditions (CC) of the Grid Code in relation to a generator built transmission system, until transfer to the OFTO;
- clarify that a generator built transmission system will be operated by the developer as required by Grid Code and any bilateral agreement;
- clarify that a developer must submit a description of a generator built transmission system with any Modification to that system;
- clarify that, where a developer wishes to connect to an onshore distribution system, the arrangements will be the same as those for connection to an onshore transmission system; and
- set out the data exchange arrangements for generator built transmission systems in relation to Events and Operations, as defined in the Grid Code.

5. Next steps

Chapter Summary

In this chapter we set out expected timings of when code and transmission licence modifications are expected to come into effect and when full commencement is expected to occur. We also provide a summary of final decisions on how we will implement the Clause.

Timing of implementation of the Clause and full commencement

Application of the Clause

- 5.1. The Clause came into force on 17 February 2014, two months after the Energy Act 2013 received Royal Assent. The Clause now applies to all offshore transmission systems that are over 132kV. For those systems at 132kV, the Clause will only apply following full commencement of the offshore transmission regime.

Code and transmission licence modifications

- 5.2. Under Section 6H of the Electricity Act 1989, introduced by the Clause, the Authority has powers to make the necessary code modifications to implement the Clause. We will also make modifications to the transmission licence through existing Section 11A powers.
- 5.3. We intend for the code and licence modifications implementing the Clause will take effect at the same time as full commencement of the offshore transmission regime. We currently expect full commencement to occur on 10 June 2014 (see below). The Section 11A decision to modify the transmission licence has been published alongside this document. This allows sufficient time to satisfy the requirement of a 56 day 'standstill' period, under Section 11A of the Electricity Act 1989. If a party wishes to appeal against the modification decision, an application for permission to appeal to the Competition and Markets Authority has to be made within 20 days of the Section 11A Direction being published.

Timing of full commencement

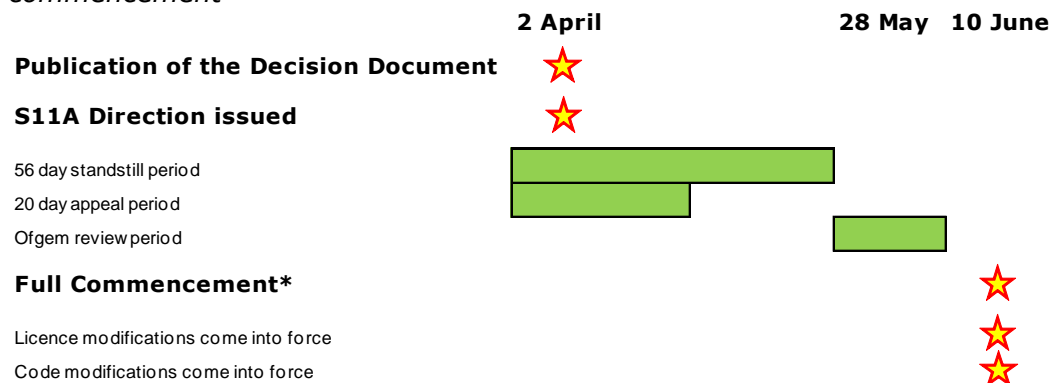
- 5.4. To ensure regulatory certainty we have worked with the Government to ensure that implementation of the Clause can align with full commencement. DECC have indicated that they currently expect full commencement to occur on 10 June 2014, at which time the code and licence modifications implementing the Clause will also come into force.

- 5.5. In practice this would mean that the Clause will apply to offshore transmission projects at 132kV as well as those over 132kV from 10 June 2014.

Implementation timing and arrangements

- 5.6. Projects in flight will receive completion notices within ten business days after the code and licence modifications have come into effect. For other projects, completion notices will be issued as and when they reach ION Part B.
- 5.7. The anticipated timeline for the implementation arrangements coming into effect is provided in figure 5.1 below.

Figure 5.1: Expected timeline for the implementation of the Clause and full commencement



*Current expectations for Full Commencement, subject to timing as determined by Government.

Summary of decisions in this document

- 5.8. The key decisions which we expect to take effect the day of full commencement are:
- **For Generator build offshore transmission projects the ION will be split into two separate instruments: ION Part A and ION Part B.**
 - **ION Part B will be the point at which completion notices will be issued.**
 - **Completion notices will be issued for all projects in flight at the same time, within ten business days of the date that both code and transmission licence modifications have taken effect and full commencement has occurred.**
 - **For phased projects, one completion notice will be issued for each qualifying project. For staged projects, the completion notice will be issued when ION Part B has been received for the final stage of**

the qualifying project (the point when export up to full TEC is permitted).

Appendix 1 – Summary of responses to the January Consultation

The January consultation was a four-week consultation that closed on 24 February 2014. We received ten responses from a range of stakeholders, including developers, OFTOs and industry bodies.

The Completion Notice

Of the ten responses received, eight agreed that ION Part B represented the best point at which to issue the completion notice in line with the requirements of the Clause. A number of responses agreed that ION B represented the option that best meets the requirements of the Clause. One developer response indicated a preference for the completion notice to be issued following active power export of greater than 20 per cent, as considered under Option 3 in the January consultation, on the basis that ION Part B is too early in the process. Another developer response indicated neither support nor objection to our minded-to position for when the completion notice should be issued.

Projects in flight

No stakeholders disagreed with our proposed treatment of projects in flight. One respondent requested clarity over whether ION Part B would be issued at the same time as a completion notice for projects in flight.

Phased and staged projects

Two respondents raised questions over applying the Clause to staged and phased projects. One stakeholder wanted clarification on when a completion notice would be issued for a project where all TEC is permitted on one date but the export cables are commissioned several months apart. Another stakeholder requested clarification that the definitions of “phase” in the arrangements for the offshore transmission regime and the Contracts for Difference are consistent. This respondent also had questions over whether transmission assets sharing platforms or platform connected by bridge links will be classed as different stages.


Projects that fail to transfer within 18 months

Eight responses indicated a desire for greater clarification of the process for those projects that fail to transfer within 18 months. The perceived risk to a developer in such circumstances was noted in a number of responses.

Transmission licence and code modifications

One response was received on the proposed changes to the transmission licence, proposing a minor amendment to the definition of ‘Completion Notice’.

One response was received on the proposed changes to the Grid Code. The respondent suggested that paragraph CP.6.6.3 of the Grid Code be amended to



Offshore Electricity Transmission: Decision on implementation of the Generator Commissioning Clause in the Energy Act 2013

include an additional ION Part B, that allows export up to 100 per cent of capacity for a staged development consisting of a single Power Park Module (PPM).

Appendix 2 – The Generator Commissioning Clause

Generator Commissioning (Clause 147, Energy Act 2013)

PART 6, CHAPTER 2 MISCELLANEOUS *Offshore transmission*

147 Offshore transmission systems

(1) EA 1989 is amended as follows.

(2) In section 4 (prohibition on unlicensed supply), after subsection (3A) insert—

“(3AA) Subsection (3A) is subject to section 6F (offshore transmission during commissioning period).”

(3) After section 6E insert—

“6F Offshore transmission during commissioning period

(1) For the purposes of this Part a person is not to be regarded as participating in the transmission of electricity if the following four conditions are met.

(2) The first condition is that the transmission takes place over an offshore transmission system (“the system”) or anything forming part of it.

(3) The second condition is that the transmission takes place during a commissioning period (see section 6G).

(4) The third condition is that—

(a) a request has been made to the Authority in accordance with the tender regulations for a tender exercise to be held for the granting of an offshore transmission licence in respect of the system,

(b) the Authority has determined in accordance with those regulations that the request relates to a qualifying project, and

(c) the system, or anything forming part of it, has not been transferred as a result of the exercise to the successful bidder.

(5) The fourth condition is that—

(a) the person who is the developer in relation to the tender exercise is also the operator of a relevant generating station, and

(b) the construction or installation of the system is being or has been carried out by or on behalf of, or by or on behalf of a combination of, any of the following—

(i) the person mentioned in paragraph (a);

(ii) a body corporate associated⁸ with that person at any time during the period of construction or installation;

(iii) a previous developer;

(iv) a body corporate associated with a previous developer at any time during the period of construction or installation.

(6) For the purposes of subsection (1), it does not matter whether or not the person mentioned in that subsection is the developer in relation to the tender exercise.

(7) For the purposes of subsection (5)(b)(iii) and (iv), a person is a “previous developer” in relation to the system if—

(a) the person does not fall within subsection (5)(a), but

(b) at any time during the period of construction or installation, the person was the developer in relation to the tender exercise.

(8) In this section—

“associated”, in relation to a body corporate, is to be construed in accordance with paragraph 37 of Schedule 2A;

“developer”, in relation to a tender exercise, means any person within section 6D(2)(a) (person who makes the connection request, including any person who is to be so treated by virtue of section 6D(4));

“offshore transmission” has the meaning given by section 6C(6);

“offshore transmission licence” has the meaning given by section 6C(5);

“offshore transmission system” means a transmission system used for purposes connected with offshore transmission;

“operator”, in relation to a generating station, means the person who is authorised to generate electricity from that station—

(a) by a generation licence granted under section 6(1)(a), or

(b) in accordance with an exemption granted under section 5(1);

“qualifying project” is to be construed in accordance with the tender regulations;

“successful bidder” and “tender exercise” have the same meanings as in section 6D;

⁸ <http://www.ofgem.gov.uk/Networks/offtrans/pdc/cdr/2013/Documents1/Offshore%20Electricity%20Transmission%20Statement%20on%20future%20generator%20build%20tenders.pdf>

⁸ An extract of paragraph 37 of schedule 2A to the Electricity Act 1989 is provided below as part of this appendix for reference.

“relevant generating station”, in relation to an offshore transmission system, means a generating station that generates electricity transmitted over the system;

“the tender regulations” means regulations made under section 6C.

6G Section 6F: meaning of “commissioning period”

(1) For the purposes of section 6F(3), transmission over an offshore transmission system (or anything forming part of it) takes place during a “commissioning period” if it takes place at any time—

- (a) before a completion notice is given in respect of the system, or
- (b) during the period of 18 months beginning with the day on which such a notice is given.

(2) A “completion notice”, in relation to a transmission system, is a notice which—

- (a) is given to the Authority by the relevant co-ordination licence holder in accordance with the co-ordination licence, and
- (b) 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.

(3) The Secretary of State may by order amend subsection (1) so as to specify a period of 12 months in place of the period of 18 months.

(4) An order under subsection (3) may be made only so as to come into force during the period—

- (a) beginning 2 years after the day on which section 127 of the Energy Act 2013 comes into force, and
- (b) ending 5 years after that day.

(5) An amendment made by an order under subsection (3) does not apply in relation to any transmission of electricity over a transmission system if—

- (a) but for the making of the order, the person participating in the transmission would, by virtue of section 6F, have been regarded as not participating in the transmission, and
- (b) the determination mentioned in subsection (4)(b) of that section in relation to the system was made on or before the day on which the order is made.

(6) In this section—

“co-ordination licence” has the same meaning as in Schedule 2A (see paragraph 38(1) of that Schedule);

“relevant co-ordination licence-holder” has the meaning given by paragraph 13(4) of Schedule 2A.

6H Sections 6F and 6G: modification of codes or agreements

(1) The Authority may—

- (a) modify a code maintained in accordance with the conditions of a transmission licence or a distribution licence;
- (b) modify an agreement that gives effect to a code so maintained.

(2) The Authority may make a modification under subsection (1) only if it considers it necessary or desirable for the purpose of implementing or facilitating the operation of section 6F or 6G.

(3) The power to make modifications under subsection (1) includes a power to make incidental, supplemental, consequential or transitional modifications.

(4) The Authority must consult such persons as the Authority considers appropriate before making a modification under subsection (1).

(5) Subsection (4) may be satisfied by consultation before, as well as consultation after, the passing of the Energy Act 2013.

(6) As soon as reasonably practicable after making a modification under subsection (1), the Authority must publish a notice stating its reasons for making it.

(7) A notice under subsection (6) is to be published in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by it.

(8) A modification under subsection (1) may not be made after the end of the period of 7 years beginning with the day on which section 127 of the Energy Act 2013 comes into force."

(4) In section 64 (interpretation of Part 1), in subsection (1B) at the end insert "and section 6F".

Appendix 3 – Glossary

A

Authority

The Gas and Electricity Markets Authority established by section 1(1) of the Utilities Act 2000. The Authority governs Ofgem.

C

Commissioning period

Under section 6G of the Generator Commissioning Clause a “commissioning period” is the period:

- (a) before a completion notice is given in respect of the system, or
- (b) during the period of 18 months beginning with the day on which such a notice is given.

The commissioning period is the period during which a generator may lawfully commission and operate transmission assets provided they satisfy the conditions of the Clause.

Completion notice

A completion notice under the Generator Commissioning Clause is a notification from the System Operator to the Authority to indicate that a transmission system can be made available for use. The effect of the completion notice is to trigger the final 18 month period to complete commissioning activities.

Connection and Use of System Code (CUSC)

The Connection and Use of System Code is the contractual framework for connection to, and use of, the National Electricity Transmission System.

Coordination

The work we are undertaking to support the development of onshore and offshore transmission networks in a strategic and coordinated manner.

D

DECC

The Department of Energy and Climate Change, which is the government department responsible for, among other things, the introduction of the regulatory regime for offshore electricity transmission. It has responsibility for commencing the relevant sections of primary legislation and approves new and amended tender regulations.

Developer

The 2013 Tender Regulations define a 'developer' as 'any person within section 6D(2)(a) of the 1989 Act or within a developer group'. Section 6D(2)(a) of the Electricity Act 1989 defines such person as 'the person who made the connection request for the purposes of which the tender exercise has been, is being or is to be, held'. In practice, such person is also the entity responsible for the construction of the generation assets and, under Generator build, the transmission assets.

Distribution exemption

The Electricity (Class Exemptions from the Requirement for a Licence) Order 2001 SI 2001 No. 3270

E

Energy Act 2013

Refers to the Energy Act that received Royal Assent on 18 December 2013.

EON

Energisation Operational Notification

EU

European Union

F

FON

Final Operational Notification

Full commencement

Full commencement is the extension of the offshore regulatory regime to apply to all OFTO build and Generator build offshore transmission assets at or above 132kV. The offshore regulatory regime is currently partially commenced and applies to projects conveying electricity from offshore at 132kV from the point of asset transfer to an OFTO.

G

GB

Great Britain.

Generator build

A model for the construction of offshore transmission assets. Under the Generator build option, the developer carries out the preliminary works, procurement and construction of the transmission assets. The OFTO operates, maintains and decommissions the transmission assets.

Generator Commissioning Clause

The Generator Commissioning Clause is clause 147 of the Energy Act 2013. Refer to Appendix 2 for full clause text.

GFAI

Generator-focused anticipatory investment, which is anticipatory investment that provides offshore transmission capacity for specific future offshore generation projects.

Grid Code

An industry code covering technical aspects relating to connections to, and the operation and use of the NETS, amongst other things; and maintained by the NETSO pursuant to standard condition C14 of the transmission licence.

GW

Gigawatt.

I

Industry codes

The industry codes underpin the electricity wholesale and retail markets and define the terms under which industry participants can access the electricity networks including the Connection and Use of System Code (CUSC), the Balancing and Settlement Code (BSC), the Grid Code, the System Operator – Transmission Owner Code (STC), the Distribution Connection and Use of System Agreement (DCUSA) and the Distribution Code.

ION

Interim Operational Notification

K

kV

Kilovolts

kW

Kilowatts

N

National Electricity Transmission System (NETS)

Means the system consisting (wholly or mainly) of high voltage electric lines owned or operated by transmission licensees within Great Britain, in the territorial sea adjacent to Great Britain and in any Renewable Energy Zone and used for the transmission of electricity from one generating station to a sub-station or to another generating station or between sub-stations or to or from any interconnector and includes any electrical plant or meters owned or operated by any transmission licensee within Great Britain, in the territorial sea adjacent to Great Britain and in any Renewable Energy Zone in connection with the transmission of electricity.

NETSO

The National Electricity Transmission System Operator (NETSO) is the entity responsible for coordinating and directing the flow of electricity over the National Electricity Transmission System.

NGET

National Grid Electricity Transmission Plc. NGET owns and maintains the transmission system in England and Wales. It is also the NETSO for GB.

O

Offshore Transmission Owner (OFTO)

The holder of an Offshore Transmission Licence.

Offshore Transmission System

A transmission system that is used for purposes connected with offshore transmission. An Offshore Transmission System is made up of transmission assets.

Ofgem

Office of Gas and Electricity Markets.

P

Phase

A grouping of transmission assets to be built out over a period of time, where the grouping is defined by certainty of build out (for example, in relation to a Final Investment Decision and/or key contractual obligations). A phase may include

stages. Each subsequent phase of the transmission assets would constitute a separate qualifying project.

Projects in flight

Projects that have already passed the point at which a completion notice should be issued but not transferred to an OFTO when the code and transmission licence modifications implementing the Clause take effect.

Q

Qualifying project

An offshore transmission assets project in respect of which Ofgem determines that the developer has satisfied the requirements described in the Tender Regulations or will use its reasonable endeavours to satisfy the relevant qualifying project requirements within a period specified by Ofgem.

S

Stage

Within a phase (and as such within a single qualifying project), assets may be constructed in discrete groups over a period of time. We use the term 'stage' to refer to each discrete group of assets. A stage may also refer to where a developer's BCA requests that TEC is granted in several increments within a single qualifying project where the developer intends to commission a transmission system in distinct stages, usually several months apart.

T

Tender Regulations

The Tender Regulations are made under section 6C of the Electricity Act 1989 and set out the legal framework and powers for the Authority to run a competitive tender process for the grant of an Offshore Transmission Licence in respect of an offshore transmission system. Currently the 2010 Tender Regulations (only for certain qualifying projects) and 2013 Tender Regulations are in force.

2013 Tender Regulations

The Electricity (Competitive Tenders for Offshore Transmission Licences) 2013.

Transmission Assets

Are defined in paragraph 1(3) of Schedule 2A of the Electricity Act 1989 as 'the transmission system in respect of which the offshore transmission licence is (or is to be) granted or anything which forms part of that system'. The transmission system is expected to include subsea export cables, onshore export cables, onshore and offshore substations, and any other assets, consents, property arrangements or

permits required by an incoming OFTO in order for it to fulfil its obligations as a transmission operator.

Transmission Licence

The licence awarded under section 6(1)(b) of the Electricity Act 1989 authorising the NETSO or a Transmission Owner (TO) to participate in the transmission of electricity including an Offshore Transmission Licence. The licence sets out a TO's rights and obligations as a transmission asset owner and operator.

Transmission Entry Capacity (TEC)

The contractually agreed maximum amount of electricity a developer can export onto the NETS.

U

UK

United Kingdom.

W

WNBI

Wider network benefit investment, which is investment which has wider network benefits by serving to mitigate the need for separate reinforcements of the onshore transmission network.

Appendix 4 – Feedback questionnaire

1.1. Ofgem considers that consultation is at the heart of good policy development. We are keen to consider any comments or complaints about the manner in which this consultation has been conducted. In any case we would be keen to get your answers to the following questions:

1. Do you have any comments about the overall process, which was adopted for this consultation?
2. Do you have any comments about the overall tone and content of the report?
3. Was the report easy to read and understand, could it have been better written?
4. To what extent did the report's conclusions provide a balanced view?
5. To what extent did the report make reasoned recommendations for improvement?
6. Please add any further comments?

1.2. Please send your comments to:

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