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Draft Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2015 for consultation

Dear Elizabeth,

Thank you for the opportunity to respond to this consultation. This response is provided on behalf of RWE Innogy UK.

We are pleased with the focus of Ofgem in developing the OFTO Build models, however there are still some fundamental problems which must be addressed before any Developer would choose to change from the existing Generator Build model.

Please find below our comments on the consultation grouped under three headings: Securities and Payments; Cost Recovery; and, Tender Stages/Processes.

Securities and Payments

We are concerned at the lack clarity with regard to securities and payments. It is not yet clear to us the level of security required and what/when any payments are made by each party. Additionally we are unsure of how the payments would change with different numbers of Bidders in any tender.

The Authority must give Developers full understanding of their exposure should they choose any OFTO Build model route. At present the Developer could choose an "EPC" OFTO Build and end up with a higher cost of capital (which would essentially increase the final local TNUoS charge) than the Developer could acquire via the existing Generator Build, forcing the Developer to withdraw from the tender and be subject to Authority and Bidder fees. We believe this is a fundamental problem to the entire model which must be addressed in order for a Developer to take the risk of progressing with it. A solution could be via a cap on Bidders cost of capital, which is set at a level decided by the Generator at the beginning of the tender. Should the Bidder exceed this cap The Authority would notify the Bidder that they must reduce their figure or withdraw from the tender – with a clause to this effect within Schedule 7 of the licence or Part 15: Disqualification. This would guarantee that the new regime is a truly competitive regime (Generator vs Bidders, as well as Bidders vs Bidders). It would be sensible to ensure that Developers cover their own tender/withdraw costs as a measure to deter the Bidder from exaggerating their cost of capital amount. Alternatively, if the Developer feels they are worse off following the result of the tender, allowing the Developer to move back to a Generator Build without

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any delay/fees may also be acceptable if the Authority believes this can work in practice.

Cost Recovery

We do not believe the Developer should pay the unsuccessful bidders' costs nor should Bidders who decide to withdraw be able to recover costs. Considering a key benefit of the OFTO Build regime is to stimulate competition and lower the overall costs, the loss of a Bidder will damage the competitive benefits of the process and therefore the Bidder should not be able to leave with their costs covered. In the worst case scenario all Bidders could withdraw and leave the Developer subject to payments and project delays. Making Bidders cover their own costs will ensure the tender is run economically, and not pose an additional risk to the Developer.

We also believe that the Authority should set a cap on its reasonable costs and demonstrate costs incurred are economic and efficient.

Tender stages/process

We want to understand the process of assigning the reserve bidder should the preferred bidder withdraw. Clearly the ability for the preferred bidder to withdraw relatively risk free at a late stage poses a great risk to Developers. It may be the case that a Bidder puts securities in place to cover this eventuality, however without knowledge of this it is likely these securities will be substantially lower than the impact of a project delay.

It would also be helpful to understand the process to appeal/challenge a tender decision by The Authority.

We look forward to further developments in this area and welcome the proposals to hold a workshop in June.

Please do not hesitate to contact myself should you have any questions.

Yours sincerely,

Lewis Elder
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