

Elizabeth Cooper  
Offshore Transmission  
Ofgem

*By email only*

**Att.: [offshore.enduring@ofgem.gov.uk](mailto:offshore.enduring@ofgem.gov.uk)**

YOUR REF./DATE:

OUR REF.:

PLACE/DATE:

London, 12.05.2015

POSTAL ADDRESS:  
Statkraft UK Ltd  
4th Floor, 41 Moorgate  
London EC2R 6PP  
UK

VISITING ADDRESS:  
4th Floor  
41 Moorgate  
London EC2R 6PP

PHONE:  
+44 (0)20 74488200

FAX:  
+44 (0)20 74488241

INTERNET:  
[www.statkraft.com](http://www.statkraft.com)

E-MAIL:  
[uk-post@statkraft.com](mailto:uk-post@statkraft.com)

VAT REG.NO.: UK-922 1630 58

Dear Elizabeth,

## DRAFT ELECTRICITY REGULATIONS 2015 FOR CONSULTATION

Ofgem published on 26 March 2015 the draft Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2015 for consultation. The draft Electricity Regulations 2015 have been updated (from the 2013 Regulations) based on the Policy Update on OFTO Build published by Ofgem 12 December 2014. Ofgem is now seeking views on the complete set of the draft Electricity Regulations 2015.

Statkraft is Europe's largest generator of renewable energy and is the leading power company in Norway. Statkraft is a major industrial player in the offshore and onshore wind industry, and has been developing wind power projects since 1997. Currently, the onshore portfolio comprises 13 wind farms in operation in Norway, Sweden, Brazil and in the UK, totalling ca. 770 MW and several GW in construction/development. Statkraft has extensive ambitions within offshore wind, and has been developing offshore wind farms since 2009. Statkraft assumed operatorship of Sheringham Shoal (317 MW) in January 2014. In addition, the project portfolio includes development of the Triton Knoll Offshore wind farm (up to 900 MW), stakes in the UK Round3 Dogger Bank projects with a total target capacity of 7 200 MW and the Dudgeon project (402 MW) currently in construction.

Statkraft provided comments end of January to Ofgem's Policy Update on OFTO Build solutions. Statkraft now welcomes the opportunity to comment on the draft Electricity Regulations 2015. In general, the draft regulations seem workable with some exceptions, in particular regarding the developers' liability for costs to the Authority and to bidders.

Developers need certainty around the costs involved in running an OFTO build tender exercise, especially if such costs are to be incurred prior to financial investment decision (FID). The costs due to the Authority's work or due to bidders' works should be capped in each phase, in order to minimise what is considered to be an unmanageable risk for developers, and in order not to become a barrier for a successful implementation of OFTO build solutions. Statkraft is concerned that the current draft regulations do not sufficiently protect developers from escalating liabilities in the early stages of project development.

We acknowledge that the Authority needs to see their costs recovered. The draft Regulations states that the Authority's total tender costs are recoverable. However, as the developers have no control over the work to be performed by the Authority, including the use of external consultants, in our opinion, there should be a cap for the amount of costs the developers could be liable for. We appreciate the Authority's notes that it will continue to publish before the start of a tender round the administrative details relating to methods of payment and details of costs associated with each particular tender round. However, if there is no limit to what these costs could amount to, it will be challenging to quantify and manage this risk for developers. As such, Statkraft is concerned that this uncertainty could push developers to choose the more familiar Generator Build option.

Statkraft's opinion is further that the developer should not be liable for any unsuccessful bidders' costs. This follows on from the same comments made above around uncontrollable and unquantifiable liabilities and risks. Nevertheless, Statkraft is of the opinion that recovery of bidders' costs should be treated differently than those of the Authority, due to the following reasons: Our understanding is that a bidder may choose to submit an offer, but is not required to. Therefore, submitting an offer is an act of free will. It is not normal industry practice to pay contractors or consultants for work carried out in relation to submitting a tender for a piece of work. It follows on from this principle that a bidder (or contractor) may choose how much effort to put into a bid in order to be successful. This is considered to be a cost-efficient way of running competitive tenders. In general, the developer should therefore not be liable for any bidder's costs in the OFTO Tender process either, also when the tender round is cancelled for any reason. In order to minimise the costs for the society as a whole, it is imperative that the bidders are working efficiently throughout the tender exercise, both in relation to the amount of work they are doing and in the way the work is performed, including the degree of involvement from external consultants. If the bidders know they will get (all or some of) their costs recovered, there is no incentive on bidders to run an efficient bid preparation exercise. However, if the Authority maintains that the developers should be liable for costs incurred by bidders, it is imperative that there is a firm cap on either the costs for each bidder and the number of bidders, or a cap on the total amount to be shared by the bidders eligible to cost recovery.

In all cases, it would be imperative that all costs incurred by the Authority or any bidder, and related cost-methodologies, can be fully documented, justified and verified. Hourly rates or day rates for bidders and their consultants/advisors should follow normal industry levels, and should not be allowed to escalate.

Based on feedback from the Authority around expected cost levels which could be incurred as part of an OFTO Build tender round, Statkraft sees a major challenge in justifying these early commitments potentially reaching £10m prior to CfD award and FID. This is further complicated by the risk that an OFTO appointment might not even materialise in the required timescales (prior to FID). These financial and schedule risks are currently viewed as potential show stoppers for the successful implementation of the proposed OFTO Build solutions.

Statkraft therefore welcomes the Authority's view on ways to manage and limit early commitments incurred if an OFTO build solution is to be palatable for developers.

In the following, comments are being made to specific regulations proposed in the consultation.

Regulation 11 through 21 includes requirements for the various stages from the commencement of a tender round till the preferred bidder stage. The involvement of the developer is included for the preferred bidder stage, but seems to be lacking through the previous stages. In particular for the OFTO build, there will be obligations on the developer and the bidders regarding feedback on the draft contract (e.g. Generator "EPC"), and regarding early notification from the bidder on any design requirements. We advise to verify whether the current draft ensures the possibility of interactions needed between the generator and the bidders through the relevant stages.

Regarding Regulation 18(1)(a), it should be considered whether to include the possibility to organise negotiation meetings with one or more bidders before deciding who will become the preferred bidder. The developer in question should be invited to such negotiation meetings regarding those matters directly affecting the developer, regarding e.g. design or O&M requirements.

Regarding Regulation 18(1)(b) and 19, the best and final offer stage seems to represent an additional risk for delays for a project seeking an OFTO build. It will be important to minimise that risk to the extent possible. Hence it is needed clear and concise criteria about when it can be decided to go for an extra tender stage.

Regarding Regulation 20(2), it should be considered whether information on the reserve bidder also should be disclosed to the developer.

Regarding Regulation 20(3)(b), the Authority should specify a firm date for the preferred bidder to have completed its tasks to be the successful bidder, as possible delays may lead to severe costs for the developer.

Regarding Regulation 20(4)(b), Statkraft's opinion is that bidders shall have secured their finance already as part of the tender. If this is not intended, the finance must at least be secured before the preferred bidder can become the successful bidder, c.f. Regulation 20(4)(b). This would be important to reduce the risk for a project delay when seeking for an OFTO build. The financing of the assets must be in place in due time before the project's FID. As such, it is equally imperative that a back-stop date is included early enough to allow developers to revert back to Generator Build and raise their own project finance for these assets if the OFTO fails to secure its funding.

Regarding Regulation 20(4)(b)(i), it is not necessarily needed that the preferred bidder has established necessary arrangements to construct the transmission assets, as for instance when using the Generator "EPC" model. This should be clarified in the text.

Regarding Regulation 20(8), it is unclear whether the reserve bidder will become the preferred bidder automatically, or what may happen if this will not be the case. In any case, this represents a risk for delay of projects, in particular for OFTO build.

Regarding Regulation 22, a sudden withdrawal by any bidder represents a risk for delay of projects, in particular for OFTO build, and hence risk for costs for the developer.

In general, all decisions by the Authority should be possible to appeal. This is included for some decisions but not for all. Please advise how this will be ensured.

We look forward to viewing the final Electricity Regulations 2015, and please contact us should you have any questions to our comments.

Yours sincerely,  
for Statkraft UK Ltd



Bjørn Drangsholt  
Managing Director