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Dear Katie

Consultation on licence changes to support electricity transmission competition during RIIO-T1

This response is from SP Transmission plc (SPT) the onshore Transmission Owner (TO) for the South of Scotland. As a TO we are subject to the RIIO-T1 price control framework and must ensure that we develop an economic, efficient and coordinated onshore transmission system and therefore welcome the opportunity to comment on this consultation on licence changes to support electricity transmission competition during RIIO-T1.

In general, these modification proposals to transmission licences deliver the policy decision of 25th November 2016¹ as intended. However, whilst we agree that the conflict mitigation arrangements in the proposed licence amendments are practicable, we note that the policy decision relating to sharing of common areas goes further and in our view exceeds requirements. We agree with the need to ensure a level playing field for all parties, however consider the provision of quality and comprehensive data in the tender process, along with appropriate timescales to prepare and submit a tender, is key to achieving this. Mitigating conflicts of interest supports these measures but should be proportionate to the risk involved and effective without prejudicing the incumbent TO's ability to prepare its own bid.

Whilst the majority of the business separation proposals in Licence condition 20/2P mirror some of the proposals for the Enhanced SO/ISO, the nature of the risk involved for TOs being a part of the CATO regime is not as severe a risk as the SO's role in NOA. Therefore, we propose that the existing business separation rules for vertically integrated businesses are followed. We are keen that such provisions do not discourage TOs from participating in the CATO regime.

To support the requirement for good tender specification, it would be beneficial if more

¹ <https://www.ofgem.gov.uk/publications-and-updates/extending-competition-electricity-transmission-decision-criteria-pre-tender-and-conflict-mitigation-arrangements>

detail was provided on the scope and intent of a functional specification; the level of detail for a project plan and specifications for construction techniques. The requirement to include network data in the tender specification may be problematic where that data relates to the network of another transmission owner.

We have commented on the specific questions raised in the consultation in the attached appendix.

Yours sincerely



Alan Kelly
Transmission Commercial and Policy Manager
Network Planning and Regulation

Appendix 1: Answers to Specific Questions

Question 1: *What are your views on our proposed approach to licence modifications, as outlined in this document, and whether they effectively implement the policy outcomes in our Decision Document?*

SPT Response: The scope of the changes covers the identification of projects that could be suitable for competition and the process to establish a tender in line with the policy decision scope. The proposed use of existing conditions and new conditions is appropriate. However there are some areas that we would like further clarification on as follows:

We note that in the policy it states:

"4.21. Our decision is to require separation of management structures between the TO and any bidding unit up to, but not necessarily including, the TO parent board. Specifically, we will require the management of the bidding unit to be organised in such a way as separates it from the rest of the TO. Practically this will mean the creation of discrete management structures for the bidding unit."

The policy decision was not clear to us initially, as "parent board" could be interpreted in several ways (licensee board, Scottish Power board, or Iberdrola board). In Licence condition 2P/20.5, it is clarified that companies who have an existing TO director would not be required to have an additional director for the Bidding Team. It is our interpretation that our existing Director of Transmission can be director of both the bidding team and the Tender support team; however, all management below this level will be required to be separate. We believe that the proposed licence drafting is practicable and we support it; however, we note that it is potentially inconsistent with the policy drafting.

We also note that in the policy it states:

"4.48. We require that the compliance officer is independent and is not involved in the management or operation of the TO or any associate, including any bidding unit, and we consider this provides a sufficient level of independence for the most part"

In Licence condition 2P/20.16, confirmation is provided that the compliance officer may hold other roles for the licensee. It is our understanding that the existing compliance officer can be one and the same person responsible for fulfilling obligations in SLC2P/20. This will only act as an extension of duties to the Compliance Officer's existing role.

There is also certain wording and numbering in the proposed licence condition that could be improved:

- Appendix 7 Special Condition 1A
 1. Definition of Competitive Tender: please state Competitively Appointed Transmission Owner as opposed to using the acronym as this is only defined within 6M/6J and not in 1A.
 2. Definition of Relevant Assets: Relevant Assets is also used within licence conditions B3 and E4. In the overall definitions list, we believe it would be helpful to also clarify that there are 2 separate meaning of relevant assets in the licence.
 3. Appendix 3 Definitions: The definition of "SO-led Options": Whilst it is clear what this is trying to achieve, we welcome clarification that the "or other options" is in relation to the distribution system solutions only. Some people may interpret this as stating that the "or other options" means that any option can be deemed to be an "SO Led Option". We propose that we add the following wording "*or other options in relation to distribution system solutions*"
- Appendix 4 Special Condition 6I
 1. The current order of licence condition 6I will be impacted by the new 6I.40-6I.42 clauses. As our licence currently runs until 6I.48, we would be grateful for confirmation that these will be re-numbered after 6I.42.
 2. 6I.42 (a)- We don't believe that "Delivery" needs to be capitalised as it is not a defined term
 3. 6I.42 (B) -We don't believe that "Deliver" needs to be capitalised as it is not a defined term
- Appendix 6
 1. At Licence condition 2P/20.17, it states that "*the licensee must appoint a Single Appointed Director*". We would be grateful for confirmation that this term "Single" would not restrict the Director of the CATO from being a Director of an existing TO as this would contradict section 4.13 of Licence Condition 2P/20.
 2. We welcome confirmation on whether the Compliance Methodology Statement as required by 2P/20.12, is required as a one off publication or on a project basis. Our recommendation is that this statement should be on a one off basis and updated as required, this is due to the fact that the same principles of business separation should be followed on all projects.

Question 2: *Do you think that anything is missing from our proposed approach to licence modifications to implement our policies?*

No obvious omissions are apparent.

Question 3: *What role do you consider the SO could play to support a tender during the RII0-T1 price control period in gathering and providing information? Do you think this activity should be implemented through modifying the SO's licence or by making provisions in tender documentation?*

SPT Response: It is not clear what information would be held by the SO that would support a tender that could not be provided under current arrangements and obligations.

Question 4: *What are your views of our proposed amendment regarding generator connection offers and demand connections? Do you consider SLC 27 is the correct condition to implement this policy, or are there other conditions/reports where this assessment should be placed?*

SPT Response: The proposal to require the SO to identify potential works to provide new connections as eligible for competition is reasonable as all transmission connection agreements in GB are between the User and NGET currently. Also the approach to not incorporate this activity within the connection offer process, which is tightly time bound, is beneficial for customers seeking connection. Incorporating this requirement in SLC 27 also seems appropriate.

Question 5: *Do you agree with our assessment that our proposed amendments to SLC will not require any subsequent amendments to either SLC B12 or NGET's SpC 20? If not, please specify what amendments you consider would be required to these licence conditions?*

SPT Response: There is no apparent need to amend these conditions.

Question 6: *What are your views on our proposed definition of SO-led Options as relating to options not identified by transmission licensees? Do you consider that this is wide enough, or do you think that this narrows the scope of what the SO should be considering?*

SPT Response: The proposed definition is sufficiently broad in terms of the scope of options proposed but may benefit from allowing third parties other than transmission licences to propose options.

Question 7: *Do you consider that an update to industry codes would be required as a result of our proposed amendments to SLC C27? If so, please identify what amendments you consider would be required?*

SPT Response: Changes may be required to the STC namely STCP 21-1 "Network Options Assessment". A review of this procedure should be carried out following the licence modification process.

Question 8: *Do you agree the proposed obligations on conduct effectively implement our policy on ensuring the quality of works?*

SPT Response: The proposed obligations do implement policy, however, the requirement of the policy to require physical separation of staff in shared buildings such as canteens and gyms is excessive and was not determined until after the consultation process. This is in excess of the current obligations for business separation for vertically integrated TOs and more stringent than required to achieve effective conflict mitigation. The costs of providing double of every shared area will act as an additional barrier for incumbent TOs to participate in the regime. It is also important to recognise that current business arrangements for vertically integrated companies were deemed to be effective by Ofgem in relation to the EU Third Package requirements.

Whilst, this may mirror some of the proposals for the Enhanced SO/ISO, the nature of the risk involved for TOs being a part of the CATO regime is not as severe a risk as the SO's role in NOA. Therefore, we propose that the existing business separation rules for vertically integrated businesses are followed. We are keen that such provisions do not discourage TOs from participating in the CATO regime.

Question 9: *Is the TO providing an update every 2 months sufficiently frequent, or overly frequent, given the likelihood of information availability over that time?*

SPT Response: The decision document (para 2.36 bullet three) confirms the timescale for the period between the initial tender decision and the start of the Final Tender Checkpoint (FTC) is variable. It is also not clear what the scope of this report would entail. Specifying a 2 month period therefore seems arbitrary and could well be more frequent than required. The supporting clause (6M.3 (b)(i) ensures appropriate reporting will be provided.

To avoid any unnecessary reporting, and ultimately costs, we propose that the 2 months requirement is removed as the Authority already has the ability to request this report at any point (6M.3 (b) (ii)).

Question 10: Do you have any additions or subtractions from Schedules 1 and 2 of the proposed new licence condition 6M/6J? Where suggested, please also provide an appropriate reasoning.

SPT Response: The list of items seems appropriate in both schedules. However, we do have concerns over the potential requirement to divulge data relating to network models that is the property of other licensees. This is incompatible with current obligations and would require appropriate changes to the Grid Code and STC as at present only other transmission license holders are able to have access to it.

It is also worth noting that depending on the project and the timing of the tendering decision, some of the items in the schedules may not be available (e.g. specification of major components) and arrangements would be required to update the tender specification or require the obligation to pass to the CATO. **Question 11:** Is the split of items across Schedules 1 and 2 correct?

SPT Response: The split of items also seems appropriate.

Question 12: Do the items in Schedules 1 and 2 require further detail to be provided, or are the descriptions provided sufficient, in the context of application to specific projects?

SPT Response: It would be beneficial if more detail was provided. For example, the scope and intent of a functional specification; the level of detail for a project plan and specifications for construction techniques do require more detail..

Typically, suppliers will engage ahead of a tender on a confidential basis and releasing some of this information may not be possible and could significantly impair the preliminary works as the information provision from potential suppliers will be very limited.

At the INC stage, it is unlikely that much, if any, site ground investigations will have been undertaken.

Question 13: Is Chapter 6 the appropriate place for the proposed new condition M/J? Should the letter vary by licensee, or should we seek to align the letters across licensees?

SPT Response: Chapter 6 of our licence comprises special licence conditions relevant to the annual iteration process in respect of adjustments to the revenue restriction. The new condition relates to arrangements for supporting the tender process. This activity would be funded and therefore could contribute to the annual iteration process. For this reason it is appropriate to be included in chapter 6. Licence condition 6I is also being amended to reflect new obligations related to supporting a tender so it is appropriate for the new licence condition to follow consequentially, and should therefore be named 6J in our licence.

Question 14: *What are your views on our proposed modification to implement policy in connection with a TO's conduct prior to and during a tender?*

SPT Response: We agree with the need to ensure a level playing field for all parties. The provision of quality and comprehensive data in the tender process, along with appropriate timescales to prepare and submit a tender, is key to achieving this. Mitigating conflicts of interest supports these measures but are less effective and should be proportionate and effective without prejudicing the incumbent TO's ability to prepare its own bid. In general the mitigation measures proposed are reasonable and consistent with existing business separation measures. However, the policy decision on physical separation (para 4.29) requires no sharing of shared areas such as canteens and gyms. This exceeds reasonable measures; obligations that exceed current business separation procedures and should be removed.

Question 15: *What are your views on our proposed modification to put in place timing requirements for when the TO must confirm its intention to bid and put in place conflict arrangements?*

SPT Response: Para 4:11 of the consultation requires a maximum period of six months ahead of the FTC by which conflict mitigation measures should be in place. As the period from initial tender decision to FTC is variable it would be better to propose a maximum period from the initial tender decision by which measures should be implemented.

Question 16: *What are your views on our proposed modification to restrict the transfer of TO employees between the Bidding Unit and the team undertaking the Tender Support Activities and pre-construction activity?*

SPT Response: The arrangements provide a reasonable compromise between creating a level playing field for all bidders without unnecessarily undermining the incumbent TO's ability to prepare a strong tender bid.

However, the provision of 20.8 (b) is overly restrictive.

"(b) no person involved in the activities of a Bidding Unit transfers to the licensee during the Competitive Tender"

There may be members of the bidding team who are sitting idle for months and it would be more efficient if strict measures were put in place to ensure that any transfer allows bidding team members to take part in activities of the licensee where no conflicts of interest would arise. For example, the bidding team member may be able to carry out activities on other projects which are not related to the CATO bid which could be monitored by the Compliance Officer.

In addition, we welcome clarity on whether the Bidding Unit will stand on a project by project basis or whether the definition refers to a bidding unit for several projects collectively.

Definition of Bidding Unit-

***“Bidding Unit”** means that part of the licensee group or business (including an associate of the licensee) that intends to participate, or is participating in, a Competitive Tender as a bidder.*

As the definition refers to “a” competitive tender, it is our understanding that this is on a project by project basis.

Question 17: *Our current drafting allows for the independent compliance officer and single appointed director to fulfil their duties across multiple compliance roles (as set out in several conditions). Do you consider this would present any conflicts of interest or wider issues?*

SPT Response: These arrangements are consistent with the existing obligations for business separation and therefore provide confidence that conflict of interest issues do not arise through these arrangements.

Question 18: *Do you consider that our proposed location for the new SpC in both NGET’s and Scottish licences is the best location? Specifically, is Chapter 2 an appropriate location; should we be seeking to fill unused SpCs instead of adding extra letters; should the*

SPT Response: Chapter 2 of our existing licence provides for General obligations and includes arrangements for the appointment of a compliance officer etc and it is therefore appropriate to include the new condition in chapter 2.