

Katie McFadden
Manager
New Transmission Investment- Ofgem
9 Millbank
London
SW1P 3GE

27 January 2017

Dear Katie,

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

Scottish Hydro Electric Transmission plc (SHE Transmission) welcomes the opportunity to respond to Ofgem's latest consultation on proposed modifications to electricity transmission licences to implement onshore electricity transmission competition policy in the RIIO-T1 price control period. We appreciate the work undertaken to date by the Ofgem led industry working group on the licence drafting.

We welcome the conflict mitigation proposal on the physical separation of premises whereby the access of the Bidding Unit is to be restricted from the premises where the Transmission Owner (TO) conducts its licensed activities. Notwithstanding this, we note the drafting of clause 2P.6 of proposed new condition 2P/2O could be construed to mean that full physical separation would be required between the Bidding Unit and the rest of the TO. We note that this is not Ofgem's intent (para 4.29 of the Decision document that was published alongside this consultation) and would welcome further clarification on this during the statutory consultation period.

In addition, we continue to have some concerns around the timing of the proposed licence changes. In our view, the fact that licence drafting is developing well ahead of the proposed legislative change poses the risk of unintended consequences. This risk is exacerbated all the more as the political landscape is undergoing unprecedented turmoil at this time.

We are also concerned about the proposed inclusion of generation and demand connection assets in the current licence drafting. Whilst we have no objections to introducing competition for these assets, there has been no consultation on their inclusion in the current 'Extending Competition in Electricity Transmission' consultative process. Nor has there been a regulatory impact assessment on the proposal. Whilst the ITPR final conclusions¹ suggested that generation connection offers would be subject to competition in the longer term, there was no indication that this would be progressed during RIIO-T1. We are therefore strongly of the view that these licence obligations should not be included at this stage.

¹Integrated Transmission Planning and Regulation (ITPR) project: final conclusions, pp 13, para 3.4

We also express concern over the means for delivering the remainder of a project which no longer meets the SWW threshold (where there is splitting / repackaging of projects for competition, as discussed in para 3.10 of the consultation). In particular, it is our view that, to the detriment of customers requesting reinforcements to the network, adequate funding might not be available in RIIO-T1 for projects which have been split in to separate packages of work. Furthermore, suggesting that such projects could be delivered in RIIO-T2 could introduce unnecessary and potentially detrimental delay to developers and/or consumers.

The attached Appendix contains our detailed response to the consultation questions. Additional comments on the consultation are as follows:

CHAPTER 2 – Network Options Assessment / project identification

Care needs to be taken in how the transfer of non-physical assets is managed. It will be important to ensure that any costs incurred by the TO can be recovered as part of the ex-post cost assessment (and associated transfer of costs from the Competitively Appointed TO).

CHAPTER 3 - Pre-tender activities

Paragraph 3.5 refers to the TO undertaking the relevant preliminary works and preparing the Tender Specification Outputs for submission when the Final Tender Checkpoint starts. Further clarity is required on how this work is funded, what liabilities are associated with them and who confirms that the preliminary works have been adequately completed.

With regard to the Tender Specification Data (proposed Schedule 2 of the new special licence condition 6M/J), we suggest that as this is a list of items that will change from project to project and potentially overtime, it would be better reflected in a guidance document than in the licence itself. For consistency, we would propose that both Schedules 1 & 2 form part of a guidance document on pre-tender activities.

CHAPTER 4 - Conflict mitigation

With regard to the transfer of personnel back to the TO from the Bidding Unit, the proposed drafting of clause 8(b) (of new special condition 2P/O) should be clarified to ensure that personnel can transfer back to the TO in the event that the Licensee withdraws from the competition.

We are happy to discuss the above and our response to the consultation questions further, and look forward to continuing to work with all interested parties as the competitive delivery framework is developed.

Yours sincerely,

Malcolm J. Burns

Acting Head of Regulation, Transmission

Appendix: SHE Transmission response to consultation questions

APPENDIX - SHE TRANSMISSION RESPONSE TO CONSULTATION QUESTIONS

CHAPTER 1 – Introduction

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?

We understand the intent of this document is to implement the policy as set out in the decision document published alongside this consultation. Nonetheless, we have serious concern that the proposals are ahead of legislative change and include licence proposals which have not been consulted upon or subject to Regulatory Impact Assessment (RIA).

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

We believe that the proposed approach to licence modifications has captured the key policy decisions. However, we believe that once the consultation is closed, a further licence drafting working group should be convened prior to the issue of any statutory consultation. For the avoidance of doubt, we do not believe that the statutory consultation should be initiated prior to such a working group meeting.

Question 3: What role do you consider the SO could play to support a tender during the RIIO-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?

We do not believe that support from the System Operator (SO) is required for a tender during the RIIO-T1 period. In our view the TO will provide all of the information required for bidders.

CHAPTER 2 – Network Options Assessment / project identification

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?

Following our response to Q1, our view of the proposed amendment regarding generator and demand connections is that in the absence of full consultation on any such proposals and a RIA having been undertaken, any licence modification at this stage is inappropriate and could be at risk of challenge.

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?

We have not identified any current requirement for subsequent amendment of B12 or SpC20. However, subject to the outcome of Ofgem's current consultation on Future arrangements for the electricity system operator: its role and structure, which closes on 10th March, it is possible that such amendments may yet be required.

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?

Para 2.20 invites views on whether DNOs and other relevant parties might also be able to propose options that the SO should consider.

We agree that contributions from other relevant parties should be considered by the SO. These could include options identified by generation developers and other informed bodies or individuals, as well as those by transmission licensees. Such flexibility will ensure that credible options are not overlooked and that stakeholders have confidence that such alternatives are able to be considered.

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?

We have not identified any further updates to industry codes and procedures. However, we would re-iterate the principle that codes and procedures applicable to existing TOs must apply equally to all transmission licensees, including CATOs. Similarly, to ensure proper scrutiny of alternative system modifications, STCPs that include obligations for the modelling and simulation of detailed technical aspects of the transmission system must be applicable to all transmission licensees.

More generally, but in the same vein, we note in para 2.20 of the consultation the clarification that the obligation to identify options extends to all transmission licensees including OFTOs and future CATOs.

CHAPTER 3 - Pre-tender activities

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

We believe that the proposed obligations should help to ensure the quality of the works.

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?

An update every 2 months appears sufficient. Individual projects and the scope involved will determine how much information can be provided, but nonetheless a high level update each 2 months would be advantageous.

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.

From Schedule 2 we would suggest removing the Needs Case Report and Optioneering Report as these will be the agreed need for the project and project scope between Ofgem and the TO, which will then be developed into a tender for competition. Including these documents may result in challenge and additional questions being raised by the tenderers.

Additional data for inclusion, on a project by project basis, are existing services surveys, tender health & safety plan including all relevant CDM documents, watercourse/drainage plans, Subsea landfall assessment, road/river crossing assessments, proposed construction compound layouts.

Given the nature of Schedule 2, we believe that it would be better reflected in a guidance document than the licence condition itself as the data may change from project to project (and is likely to change over time). For consistency, Schedule 1 should also be part of a guidance document on per-tender activities.

Question 11: Is the split of items across Schedules 1 and 2 correct?

The split across the items seem reasonable. It will be open to interpretation what each of these items actually contain, unless a detailed format is produced for consistency. Retaining the flexibility to adapt on a project specific basis will be essential, which supports the argument for these Schedules to form part of a guidance document rather than part of the licence condition.

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?

The descriptions of the items are understood. However, as advised under question 11, each of the documents and their actual content can be open to interpretation. We believe the Schedules should be considered 'pick lists' that will be developed on a project by project basis.

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?

We believe that Chapter 6 is the appropriate place for the new condition M/J. In general it would be best if TO licence condition letters were aligned.

The changes resulting from the proposed legal separation of the SO and TO roles within National Grid (Ofgem's current consultation on Future arrangements for the electricity system operator: its role and structure) are likely to change the structure of the electricity transmission licences and this should be borne in mind if these 'competition' licence changes occur first.

CHAPTER 4 - Conflict mitigation

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?

We do not have any significant concerns with our understanding of the conflict mitigation proposals.

Following on from our further discussions the policy intent is clear. However, we would welcome clarification of the drafting of clause 2P.6 of the proposed new condition 2P/O. There is the possibility that this could be construed to mean that full physical separation would be required between the Bidding Unit and the rest of the TO. We note that this is not Ofgem's intent (para 4.29 of the Decision document that was published alongside this consultation) and would welcome further clarification on this.

We would also welcome confirmation that, under clause 2P.5, the proposed separation measures are required at licensee board level rather than parent company board level.

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?

In the new SpC 2P (2O) clauses 8(a) and 9 both refer to separation and notification to bid being in place 6 months prior to the date for the commencement of the Final Tender Checkpoint (FTC). However, Clause 9 also refers to the licensee being allowed 8 weeks to notify the Authority whether it intends to bid.

It will, of course, be important to ensure sufficient time is allowed between the initial decision to the FTC for the licensee to notify the Authority of its intention.

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?

With regard to Clause 8(b): drafting should be clarified to ensure that personnel can transfer back to the TO from a Bidding Unit in the event that the Licensee withdraws from the competition.

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?

We do not believe that there will be any conflicts of interest or wider issues in allowing the independent compliance officer and single appointed director to fulfil their duties across multiple compliance roles. Indeed, our external Compliance Officer, Henderson Loggie, is independent but is similarly engaged by other licensees without conflict. Henderson Loggie has carried out this role effectively and consistently over a number of years.

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 letter vary by licensee, or should we seek to align the letters across licensees?

We agree with Ofgem's proposed location for the new SpC in the three TOs licences.

The changes resulting from the proposed legal separation of the SO and TO roles within National Grid (Ofgem's current consultation on Future arrangements for the electricity system operator: its role and structure) are likely to change the structure of the electricity transmission licences and this should be borne in mind if these 'competition' licence changes occur first.