

BY EMAIL

Ofgem
9 Millbank
London
SW1P 3GE

For the attention of Akshay Kaul, Partner – Commercial Networks

6 March 2018

Dear Akshay,

Open Letter: Consultation on Income Adjusting Event policy in Offshore Transmission Licences

We welcome the Consultation on Income Adjusting Event policy in Offshore Transmission Licences and think it is making moves in the right direction, recognising that IAE claims are likely to occur for uninsurable latent defects beyond the OFTO's control; and attempts to provide clarity on how the OFTO regime should apportion and price risk between the various parties.

We think it is appropriate for the Developer to provide an overarching indemnity to cover latent defect claims, as they are best placed to manage these risks which are the result of their Design and Construction of the assets, although we do not think that the indemnity period of 5 years following asset transfer is sufficient for an asset that has been designed for in excess of a 40 year life. The Developer should also be prepared to extend its indemnity beyond the warranty period if more than one event of the same root cause occurs within the warranty period. This would more effectively address the objective of making the offshore wind Developer (and generator) ultimately responsible for the quality of the development of the assets. It will also encourage them to negotiate adequate warranty provision with their subcontractors.

Regarding the proposed deductible that is set at the maximum of £5m or 30% of the IAE claim. The proposed provisions mean that the OFTO may be exposed to an unlimited number of deductibles for a repeatable latent defect that it could not have foreseen. The OFTO's funding structure is not designed to accept such a position and it is not reasonable, efficient or economic for the OFTO party to attempt to calculate the contingency to allow for this risk, which may never be realised and therefore cannot offer best value to the customer. We can also see the benefit of retaining a portion of the Asset Transfer Value as this would provide an immediate reserve of cash to deal with latent defect failures, but the 10% level proposed may not be sufficient.

We agree that the OFTO should be encouraged to try and place insurance with latent defect protection (LEG3 exclusion) for any number of independent latent defect failures, but to expose it to more risk than this is not compatible with the single asset project finance funding structures that have generated the significant savings delivered through the OFTO regime to date.

We would be welcome the opportunity to meet and discuss, or to provide more detailed response.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'A Rymer', with a long horizontal stroke extending to the right.

Andy Rymer
Bid Director
Equitix Ltd