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Dear Matthew,

Consultation – Extending competition in electricity transmission: commercial and regulatory framework for the SPV Model

Amey welcomes the opportunity to participate in the consultation process on the commercial and regulatory framework for the Special Purpose Vehicle (SPV) model of competition in onshore electricity transmission. As a major service based organisation, active in the design and construction of new transmission projects and with broad based experience in financing, building, owning and operating major infrastructure assets in the UK, we recognise the opportunity to deliver value to the consumer through consideration of such an approach and are keen to contribute to the consultation process. We thus respond to your questions as follows:

Commercial Framework Questions

1. What are your views on the commercial framework as set out in the accompanying Agilia report?

Subject to individual project detail and our comments below, we feel that the commercial framework in the Agilia report is a pragmatic approach to delivering value for the consumer.

We agree that a long-term contract will be beneficial to support long term senior funding, with an efficient cost of capital, for the SPV model. However, we also expect providers of long term capital to require the SPV to have an investment grade structure which may have implications on a number of areas including in particular:

- Compensation on termination (the institutional market will likely require a form of spens make-whole regardless of whose fault has triggered termination, break costs of any swaps associated with bank funding will also need to be covered etc.).

- Credit rating of the TOs, on the assumption that they will be bearing the risk of continuing revenue payments to the SPV – we would suggest discussions with the TOs to understand the implications of the SPV model on their credit rating

Care should be taken with the payment priority of the various cash streams from the TOs. If revenue payments to the SPV sit in priority to debt service of existing bond holders (and shareholders), this may have implications on TO rating (and any guarantees the TOs may need to put in place to support senior funding in the SPVs) and hence the cost of capital for a given project.

2. Do you agree with the scope of our role in the SPV model?

We do - providing oversight and implementing the appropriate license changes and supporting guidance will drive the timeliness and effectiveness of this model, thereby delivering value to the customer. Ofgem's role in ensuring that the chosen procurement model is committed to and followed by all participants will be key to its success.

We note Ofgem's desire to approve both Preferred Bidder and ultimate contract award. Whilst we acknowledge the greater scrutiny and diligence this could provide, bidders are likely to want clarity over potential Ofgem/ TO conflict in these situations and any delay or other implications this may have on the tender process.

One area in which Ofgem may look to extend its role is in influencing pipeline and enforcing SPV project selection criteria. Pipeline visibility and volume will likely influence levels of resource this new market's participants are prepared to commit to the process. By improving this, Ofgem would likely encourage greater market engagement.

3. Do you agree with the scope of the Independent Technical Advisor? Do you have examples you can share of Independent Technical Advisors working well or not so well, and any examples of lessons learned from this approach?

The proposed scope of the Independent Technical Adviser (ITA) appears to be a hybrid of the typical role of the Lenders Technical Adviser (LTA) and the Independent Certifier/Tester (IC), the roles of which are well understood in the UK infrastructure market.

We agree that the scope items proposed to be covered by the ITA are important and would benefit the project and value delivery to the customer. However, subject to final project detail, we would query whether a single ITA appointment with a dual duty of care to both the TO and SPV could cause complication in standard practice and the resolution of disputes.

Financiers of the SPV would likely expect their own LTA (with a sole duty of care) to confirm satisfaction of construction milestones, monitor progress, confirm satisfaction of testing and commissioning proposals, and report back to financiers on any project issues on a monthly basis. Financiers may struggle to accept an Independent Technical Advisor where duty of care, and limitation on liability, is diluted through a shared appointment. (We would also highlight that it would be unlikely for the ITA provider to provide an increased liability limit to mitigate against this issue (as a minimum without a significant increase in its fee)).

It may therefore be more appropriate for the SPV's financiers to have their own LTA, and the TO to appoint a party to undertake an Independent Certifier/Tester type role on its behalf (the cost of which could be borne by the SPV). This party would then confirm construction completion and provide further reporting and support as required by Ofgem. This structure could avoid conflicts of interest, and provide clearer independent reporting to all parties.

4. What are your views on operational period incentives for the SPV?

We agree that the fundamental driver for the model is asset availability, and the proposed incentive structure reflecting that is appropriate.

We noted during the stakeholder engagement meeting on 29th October that there was a view that releasing capital payments at key construction milestones may be desirable, to reduce the cost of capital and provide greater value for money. We would support this view, with phased completion/ revenue commencement would likely provide greater comfort to prospective investors as their overall exposure steps down earlier than in a single completion scenario. However due consideration would need to be given to ensure that the individual completion events are clear and separable.

5. What are your views on where there may be consumer value in a target cost rather than fixed price model?

In principle for an SPV model we would concur that a fixed price contract, in line with standard private finance norms, is an appropriate form of contract, giving a client certainty of exposure, and incentivising project performance and value engineering.

However, in this instance we believe it is likely that there will be elements of projects requiring procurer-controlled access, supply, or other management of a part of the critical path. In a rigid fixed price contract, where the procurer's incentive is diluted, bidders may feel that in those circumstance a target cost model is more appropriate.

6. What are your views on possible TO and SPV enhanced alignment options?

Though we agree that enhanced alignment options would not necessarily be required to ensure project performance, any well-structured incentive to collaborate and accelerate delivery or reduce costs is usually helpful.

We also agree that any enhanced alignment structure would require careful consideration to manage value and potential conflict, but if successful could remove unnecessary price contingency while giving suitable incentives to the TO to ensure alignment with SPV in project delivery.

We feel the market may be prepared to support the taking of an equity stake by the TO, but agree with Ofgem's recommendation that that stake be restricted in function and essentially 'silent' as this can have a bearing on the project's complexity, efficiency and balance sheet treatment.

7. Are there any other points we should consider within the commercial framework?

The procurers may wish to consider potential central government policy changes relating to private finance models, including the comments made in the Autumn Budget and nationalisation policies long mooted by members of the opposition. SPV lenders will want certainty that revenue payments would continue to be made or otherwise protected.

Regulatory Framework Questions

1. What are your views on the regulatory framework as set out in this consultation, and how it interacts with the commercial framework?

There is a strong alignment between the regulatory framework and the commercial framework. We recognise the intent to derive value via the SPV and facilitate this by the change to license and potential refinancing revenue stream opportunities, and the similar direction being taken in Ofwat DPC proposals. We therefore feel that this framework interaction should be broadly familiar and acceptable to the market.

2. Do you agree with the scope of TO obligations during the pre-tender, tender, construction period, and operational period?

The obligations appear in line with market expectations, including the ownership of the asset remaining with the TO, however the specific details of individual projects will determine more precisely the degree of risk being assumed under each obligation for each party – for example Land & planning risk could be significantly increased or decreased depending on the nature of a given project.

3. Do you agree with our approach to structuring the TO's allowances, including both base revenue and cost adjustments?

Yes, we agree separating allowances for construction and operational periods is key to allowing better management of working capital and are supportive of this approach.

4. Do you agree with our proposed approach to operational period incentives, including interactions with the TO's price control incentives?

Yes, we broadly agree with the proposals, assuming the correct projects are chosen and input/output risk parameters understood.

5. What are your views on our proposed arrangements for the period after the end of the SPV's revenue term?

The procurers may wish to consider including rights for contact extension, or re-tender regardless of the prevailing tender criteria, should the initial 25-year project be deemed a success. Doing so could prove more cost-efficient than asset return.

6. What are your views on our conflict mitigation proposals? - Would the TO conflict mitigations proposed sufficiently mitigate conflict where a TO bidder

seeks to participate in an SPV tender in its own geographical area? - And if not, what different/additional arrangements would be needed?

We are broadly aligned with Ofgem's view on disqualifying incumbent TOs or their associated companies from bidding in an SPV model tender.

7. **Do you think that any changes to industry codes or standards are needed, or would be beneficial, for the SPV model?**

We would not highlight any specifically at this stage.

General Procurement Questions

1. **Do you agree with our proposed procurement principles?**

We agree with the principles reflected in the consultation paper, although we feel the timescales may prove challenging. We might therefore recommend that the procurers ensure they have instructed specialist advisers to confirm sufficient resource and expertise is available throughout.

We would also recommend consideration be given to extending the potential for bidders to recover costs beyond total cancellation of the process. Doing so may encourage greater competition and ultimately greater value to the customer, and this capital cost can be added to all bidders' pricing and paid out of first draw-downs.

The procurers may wish to consider further the Competitive Dialogue framework to give the market familiarity, and certainty over decision gates, numbers of bidders, and the timings at which their submissions become fixed and binding.

2. **Are there any other areas where we should be setting firm requirements regarding procurement of the SPV, or where additional guidance would be helpful?**

We would welcome additional guidance on the interaction with the CATO model, as we understand the two models are likely to co-exist. This may deter a TO from fully preparing for the SPV model, fearing a return instead to CATO.

We would also welcome additional guidance on the rationale for the removal of potential finance cost benefits as a key evaluation criterion.

The procurer may also wish to consider applying a cap to procurement length from PQQ to Commercial Close. This would prevent bid creep and expanding costs, and would avoid bidders trying to claw back lost bid costs by pricing into their initial submission.

3. **Are there any areas included in this chapter where we should not be setting requirements regarding procurement of the SPV?**

We would not highlight any specifically at this stage.

We trust these responses are of use. Should there be any that Ofgem would like to discuss further, we would welcome that opportunity. We look forward to the development of this opportunity and participating further in the competitive tender process when it comes to market.

Yours sincerely,

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