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Dear Daniel

### **Offshore Transmission Owner (OFTO) Regime Tender Process – Consultation concerning the developments to the current tender process**

SSE welcomes Ofgem's consultation on the OFTO tender process and supports the intent of the proposals to ensure that the tendering and transaction process addresses lessons learned from past tenders. We appreciate Ofgem's desire to have greater clarity at the bid stage, with the expectation that this would accelerate the Preferred Bidder stage. Whilst, on balance, SSE is supportive of aspects of the proposed changes to the tender process, we have some reservations about how these would work in practice. We have two immediate concerns in this regard - ensuring that developers can meet the challenging timescales required under the Grid Commissioning Clause (GCC) and that developers are provided adequate opportunity to present relevant additional evidence on costs prior to conclusion of the FTV process.

For example, as a developer, we would be concerned if the ITT stage started later but the PB stage were to be delayed due to some unforeseen circumstances. From a developer's perspective, the project will already be counting down to the 18-month divestment deadline; therefore, if the ITT stage is to start later, we would expect the cost assessment process and PB-related matters to be as streamlined and efficient as possible. In relation to this point, we would welcome further consideration by Ofgem of the process to extend the GCC period where reasons beyond a developer's control would otherwise lead to the deadline not being met.

Separately, we note that the OFTO insurance market has fundamentally changed over the last few years as a result of subsea cable faults experienced in the offshore transmission market. With a failure of offshore infrastructure being the largest single point of failure, the developers' ability to secure the appropriate level of Contingent Business Interruption cover has become limited and is affecting developers' ability to manage risks adequately. We would welcome bilateral engagement with Ofgem to discuss insurance issues in the OFTO area and how some of these issues could potentially be addressed.

We also look forward to engaging with Ofgem on the wider TRS policy work which Ofgem intends to undertake early this year. It would be useful to gain clarity on how any changes in this area align with the wider ongoing work on the offshore transmission network development done by Ofgem and BEIS.

Our views on the tender process changes proposed in the consultation are provided further in this response.

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### **Early access to Data Room or later start of ITT stage**

We support Ofgem's proposal to allow bidders to access the Data Room earlier in the tender process. From a developer perspective, it would be useful to have clear guidance from Ofgem on the timeline for uploading the documents and the level of engagement expected from a developer to support the use of the Data Room by prospective bidders. This would ensure that a developer's OFTO team is staffed appropriately in advance of the Data Room being opened to bidders. It is also our view that the benefit of opening the Data Room early would only be realised if bidders make use of the information made available to them at the early stages of the process. Our experience has been that bidders' due diligence tends to be back-ended which could undermine the benefit of Ofgem's proposal.

We do not object to Ofgem's alternative proposal to delay the ITT stage until the Data Room contains the necessary finalised documentation. Our understanding is that it would be Ofgem's responsibility to manage the overall tender process to ensure that meeting the GCC is not jeopardised as a result of any unforeseen delays between the ITT and PB stages.

### **Transfer and Interface Agreements to be nearly final at the ITT stage**

We require further details on this proposal as it is currently not clear whether a developer would be expected to negotiate transaction agreements with multiple prospective bidders prior to the ITT stage. If this is the case, any scope to deviate from a developer's proposal would need to be very limited. Alternatively, subject to a consultation process, Ofgem could consider setting out a standardised form of Transfer Agreement and Interface Agreement with limited scope to deviate from these templates apart from in special circumstances concerning an OFTO. Standard clauses in the agreements could include a form of security, the level of liability cap, core warranties, among other clauses.

Additionally, the process around finalising transaction agreements could be significantly streamlined if the number of questions that is allowed to be submitted each week as part of CQs is limited and these questions are graded in terms of importance (high/medium/low). There should be also a set timeframe for this process, for example, 8 weeks. Our experience to date has shown that the current process can be time and resource intensive. Setting a specific timetable for document due diligence would allow to achieve a greater price certainty at the ITT stage and allow due diligence post PB stage to be exclusively focused on any issues identified as part of the site visits.

### **All material costs to be settled as part of the ITV**

From a developer's perspective, we do not in principle see any issue in aiming to substantially finalise the cost assessment at the ITT stage, subject to this stage commencing later when there is more certainty around the developer's costs. Ofgem's cost assessment process would need to be fine-tuned to allow for all the necessary checks to take place so that majority of the cost items are closed out at the ITT stage and the FTV stage requires only minor cost adjustments. We are concerned, however, to understand how feasible this would be in practice.

SSE's experience is that the FTV stage can be both protracted and resource intensive; delivering on this proposal would therefore impose a significant resource burden on Ofgem to ensure that evidence is assessed in a timely manner with clear communication of any issues in order that developers have a fair opportunity to present additional evidence where necessary. This will be particularly relevant where

generation assets are developed in deeper water or in more challenging environments which would be likely to make many of the assumptions underpinning the benchmarking exercise less relevant.

It is also unclear at this stage how well this proposal could accommodate projects utilising more innovative designs or where there is some degree of offshore coordination between different projects. We look forward to further engagement with Ofgem on these points to ensure that these proposals do not lead to unintended consequences which may prejudice the position of developers in the OFTO process.

### **Appointment of Reserve Bidder**

We support the view that it would be beneficial to have a Reserve Bidder mechanism in place to ensure that there is an increased incentive for the appointed PB to meet the required timelines. Where the Reserve Bidder is appointed it is likely to extend the tender process considerably. Given that meeting the 18-month divestment deadline can already be challenging, we would welcome further consideration by Ofgem of the process to extend the GCC period; the current process whereby the developer is required to apply to BEIS for a derogation may be unduly onerous in this situation.

### **Insurance issues**

As a developer, we would always prefer for an OFTO to buy LEG 3 insurance to ensure that comprehensive insurance cover is in place. However, we recognise that the OFTO insurance market has fundamentally changed over the last few years as a result of subsea cable faults experienced in the offshore transmission market. As noted above Contingent Business Interruption cover has become limited and is affecting developers' ability to manage risks adequately. Therefore, whilst we appreciate and support Ofgem's position to continue to require bidders to have LEG3 insurance or to provide an equivalent package of protections, we also consider that there is a need to explore more innovative ways of addressing insurance risks in the OFTO area. For example, further consideration should be given to a scenario where a developer could insure the OFTO assets on behalf of the OFTO which would potentially provide better cover and also remove the contingent exposure for insurers. We would welcome bilateral engagement with Ofgem to discuss insurance issues in the OFTO area and how some of these issues could potentially be addressed.

Yours sincerely,

Polina Ruthven  
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