

**To all with an interest in  
offshore transmission**

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Dear Sir/Madam,

**Offshore transmission: proposed measure to address concerns regarding  
commissioning of transmission assets under the generator build model**

Government has amended key definitions in the Electricity Act 1989 to extend the offshore transmission regulatory regime to all projects conveying electricity from GB offshore waters at or above 132kV, including projects in the Renewable Energy Zone (REZ). The amended definitions are partially commenced and currently apply to projects conveying electricity from offshore at 132kV from the point of asset transfer to an Offshore Transmission Owner (OFTO).

Government intends to commence the regulatory regime in due course to apply it to all OFTO and generator built offshore assets at or above 132kV. As a result, the Class Exemption Order that applies to offshore distribution will no longer apply to an offshore line that conveys electricity generated offshore at 132kV.

We are aware of generator developers' concerns regarding the commissioning of offshore transmission assets under the generator build option following further commencement. We recognise the strong preference of generators to be able to convey electricity on these assets for a period prior to transfer of the assets to a licensed OFTO. We understand that some conveyance of electricity may be necessary in order to commission the transmission assets, which in turn facilitates the acceptance of the assets by an OFTO. We recognise that it is also desirable for renewable electricity to keep flowing over these assets during the finalisation of commercial activities to reach financial close and grant of a transmission licence to an OFTO.

DECC and Ofgem are working together to address these concerns, which balances the preference for generators to be able to commission their transmission assets, under the enduring generator build option, with the need for ensuring that generators transfer the transmission assets to the OFTO in a timely manner and are incentivised to take necessary measures to do so.

The Queen's Speech of May 2012, which opened the current parliamentary session, confirmed that secure, clean and affordable energy is a key priority for government. The forthcoming Energy Bill will legislate for Electricity Market Reform, implementing the conclusions of the Ofgem Review, creation of the Office for Nuclear Regulation, and a small number of delivery critical measures. DECC proposes that one of these measures will look to address the concerns raised by generator developers regarding the commissioning of transmission assets. The Energy Bill was published in draft on 22 May 2012<sup>1</sup>.

The intent of the proposed offshore transmission measure in the Energy Bill is to enable generators constructing offshore transmission assets under the generator build option to convey electricity for a defined period in certain circumstances. The proposed measure provides an exception to the prohibition on transmission without a licence during generator commissioning activities and during the period leading to OFTO licence grant, while still ensuring that generators transfer the transmission assets to the OFTO in a timely manner.

DECC will be seeking stakeholder feedback on the draft clause (see Annex 1 for the draft clause and Annex 2 for explanatory notes) over the summer. We are inviting interested parties to attend a briefing session with DECC and Ofgem, in London (BIS Conference Centre, 1 Victoria Street) on 10 July, 10.30-12.30, where we will be seeking initial feedback and want to hear stakeholders' views on how the measure would work in practice and whether the draft clause could be improved. If you would like to attend this workshop, please email [kristina.dahlstrom@decc.gsi.gov.uk](mailto:kristina.dahlstrom@decc.gsi.gov.uk) by 28 June. In addition, we would encourage anyone to contact us, via email, with any views on the proposed clause by 20 July 2012.

Yours sincerely,

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<sup>1</sup> The draft Energy Bill is available at <http://www.decc.gov.uk/en/content/cms/legislation/energybill2012/energybill2012.aspx>.

## **Annex 1: Draft offshore transmission clause – extract from draft Energy Bill**

### **105 Offshore transmission systems**

(1) The Electricity Act 1989 is amended as follows.

(2) In section 4 (prohibition on unlicensed supply), after subsection (3A) insert—

“(3AA) Subsection (3A) is subject to section 6F (offshore transmission during commissioning period).”

(3) After section 6E insert—

#### **“6F Offshore transmission during commissioning period**

(1) For the purposes of this Part a person is not to be regarded as participating in the transmission of electricity if the following four conditions are met.

(2) The first condition is that the transmission takes place over—

- (a) an offshore transmission system (“the system”), or
- (b) any transmission assets in relation to that system.

(3) The second condition is that the transmission takes place during a commissioning period.

(4) The third condition is that—

- (a) a tender exercise has been or is being held for the granting of an offshore transmission licence in respect of the system, and
- (b) the transmission assets have not been transferred as a result of the exercise to the successful bidder.

(5) The fourth condition is that the developer in relation to the tender exercise—

(a) is the person—

- (i) who constructed or installed the transmission assets, or
- (ii) on whose behalf those assets were constructed or installed, and

(b) is the operator of a relevant generating station.

(6) For the purposes of subsection (1), it does not matter whether or not the person participating in the transmission of electricity is also the developer in relation to the tender exercise.

- (7) For the purposes of subsection (3), transmission takes place during a “commissioning period” if it takes place at any time—
- (a) before a completion notice is given in respect of the system,
  - or
  - (b) during the period of one year beginning with the day on which such a notice is given.
- (8) A “completion notice”, in relation to a transmission system, is a notice which—
- (a) is given to the Authority by the relevant co-ordination licence holder in accordance with the co-ordination licence, and
  - (b) states that it would be possible to carry on an activity to which section 4(1)(b) applies by making available for use that system.
- (9) For the purposes of subsection (4)(a), a tender exercise is being held in respect of a system from the time when the Authority has determined that the tender exercise request in respect of the system relates to a qualifying project for the purposes of the tender regulations.
- (10) A “tender exercise request” means a request made by the developer in relation to the tender exercise to the Authority in accordance with the tender regulations.
- (11) In this section—
- “co-ordination licence” has the same meaning as in Schedule 2A (see paragraph 38(1) of that Schedule);
  - “developer”, in relation to a tender exercise, means any person within section 6D(2)(a) (person who makes the connection request);
  - “offshore transmission” has the meaning given by section 6C(6);
  - “offshore transmission licence” has the meaning given by section 6C(5);
  - “offshore transmission system” means a transmission system used for purposes connected with offshore transmission;
  - “operator”, in relation to a generating station, means the person who is authorised to generate electricity from that station—

- (a) by a generation licence granted under section 6(1)(a), or
- (b) in accordance with an exemption granted under section 5(1);

“qualifying project” is to be construed in accordance with the tender regulations;

“successful bidder” and “tender exercise” have the same meanings as in section 6D;

“relevant co-ordination licence-holder” has the meaning given by paragraph 13(4) of Schedule 2A;

“relevant generating station”, in relation to an offshore transmission system, means a generating station that generates electricity transmitted over the system;

“the tender regulations” means regulations made under section 6C;

“transmission assets”, in relation to an offshore transmission licence, means the transmission system in respect of which the licence is or is to be granted or anything which forms part of that system.”

## **Annex 2: Explanatory notes to draft offshore transmission clause**

### *Offshore Transmission*

#### ***Summary and Background***

1. Developers constructing an offshore generating station have the choice of also constructing the offshore transmission assets for the purposes of connecting the electricity generated to the onshore grid, before transferring the assets to an Offshore Transmission Owner (OFTO) appointed through a competitive tender process (the generator build model). Section 4(1)(b) of the Electricity Act 1989 prohibits the transmission of electricity to any premises without a licence. Clause 105 amends section 4 in respect of specific transmission activities to exclude offshore transmission during a commissioning period in certain circumstances.

#### ***Commentary on Clauses***

##### **Clause 105: Offshore transmission systems**

2. This clause amends section 4 of the Electricity Act 1989 to create an exception to the prohibition of participating in the transmission of electricity without a licence for a person who participates in offshore transmission activity during a commissioning period in certain circumstances.
3. Subsection (2) of the draft clause makes section 4(3A) of the Electricity Act 1989 subject to a new section 6F which is inserted by subsection (3).
4. Subsection (1) of new section 6F sets out that a person is not to be regarded as participating in the transmission of electricity for the purposes of Part 1 of the Electricity Act 1989 where four conditions are met. Subsections (2) to (5) of new section 6F set out these four conditions which must be met if the prohibition in section 4 is not to apply. Subsection (6) of new section 6F sets out that a person can still benefit from the exception even if they are not the person who meets the fourth condition. Subsections (7) to (11) define particular concepts which are described throughout the new section 6F.