



Consultation on initial proposals for an OFTO Build model to deliver non-radial offshore transmission assets.

**SSER response
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Dear Ho Man Lo, Richard and Agustin,

Summary

SSE Renewables welcomes the opportunity to respond to this consultation on initial proposals for an OFTO build model to deliver non-radial offshore transmission assets.

Overall, we remain unconvinced that an OFTO-build model for non-radial assets will deliver benefits for consumers. This is because there will necessarily be additional time, complexity and cost involved in a handover of aspects of the design, procurement and delivery of transmission assets between parties.

We have nevertheless suggested ways in which this process could be made as smooth as possible. Though we note that even with these suggested improvements it is unlikely that an OFTO build would be preferable to generator build.

Our primary recommendation concerns the commencement of the procurement process, which we consider needs to happen as early as possible, ideally in parallel with the submission of the Development Consent Order (DCO). If this starts any later, there will be a commensurate impact on overall project timelines. We consider that this necessarily means the procurement process should be started by the generator.

However, we see a key role for the OFTO – if the OFTO is to build the asset – in the procurement process. They will need to be familiar with the contracts and the design to ensure that they understand and can execute the delivery of the asset. This means we favour a transfer of responsibility for procurement to the OFTO as soon as it is appointed – this would be given effect via contract novation (though we would note that this is not without complexity or cost).

Regarding delays and cost increases, we firmly believe that the party in the best position to manage the risk of either should bear the penalties for failing to meet targets. In particular, we do not support revisions to the Tender Revenue Stream or pain/gain sharing mechanisms in the event of build delays or cost increases on the part of the OFTO. Under the OFTO build model, we would have no control over the performance of the OFTO in delivering the required assets to time or to budget. Any ability on their part to pass through the consequences of underperformance could undermine the project business case long after we have locked in a CfD (or Power Purchase Agreement).

Introduction to SSE Renewables

SSE Renewables is a leading developer and operator of renewable energy, with a portfolio of around 4.5GW of onshore wind, offshore wind and hydropower capacity. Our strategy is to drive the transition

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to a net zero future through the world-class development, construction, and operation of renewable energy assets.

We are currently building more offshore wind than any other company in the world and have set a goal to double our current renewable generation capacity to around 9GW by 2027 and an ambition of 16GW by 2032. This increase is expected to result in SSE Renewables generating at least 50TWh of renewable energy output by the start of the next decade, a fivefold increase from 2019 levels.

SSE Renewables is part of SSE plc which plans to invest £18bn across the five years to 2026/27 and could invest up to £40bn over the decade to 2031/32, mostly in Great Britain's electricity infrastructure as part of our Net Zero Acceleration Programme Plus. SSE is keen to work with policymakers and regulators to maximise the impact of this investment to secure wider value through domestic supply chain growth, skills development, community benefits, innovation, and net environmental gains.

Please note that this response represents the views of SSE Renewables (SSER); other companies within the SSE group might submit a separate response.

Key points

We appreciate Ofgem's efforts to create a workable OFTO build model for non-radial assets, and can see that a significant amount of careful thought has gone into the current proposals. However, there are still important challenges that need to be addressed before Offshore Wind Farms (OWFs) can consider using this model.

In Appendix 1 we have responded to the individual consultation questions, and below we provide a summary of the key points of our response:

Procurement

To make this model viable for OWFs, the procurement process should start early in the development process – ideally alongside the OWF submitting a DCO application. A late start of this process could cause significant delays in the construction phase, putting at risk the timely connection of the OWF. When analysing the timelines of the procurement process under a generator-build model, we note that OWFs start this process very early, before submitting a planning application, and this continues until a DCO is granted. Therefore, we would expect similar timelines for the OFTO build model. It will be particularly important to get this right for non-radial assets, as the sequencing would be even more complex and critical than in the case of a radial OFTO, given two or more OWFs would be involved.

We think the two proposals regarding who should be responsible for procurement are unviable. Option 1 (the OFTO undertakes procurement) could lead to significant delays, in particular if the tender process starts after DCO approval. Additionally, it would be harmful to the chances of project success to exclude the generator from this process. This is because the generator will have a role to play during the construction process, not least in running tests, so familiarity with the design is critical. Similarly, option 2 (the generator conducts procurement) could be challenging for the OFTO, as the OFTO would have to take over a design they are unfamiliar with, which would make the construction phase challenging.

In this context, we propose a third option where the generator starts procurement and hands over to the OFTO as soon as it is appointed. This could accelerate timelines and manage the uncertainty of the OFTO taking over a design and contract it is unfamiliar with. However, this is only possible if the tender process begins early in the process – ideally alongside the generator's DCO submission. To

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ensure this option works for the generator, there are several conditions that would need to be put in place:

- The generator would need to be reassured that the costs associated with the procurement activities already conducted could be recouped as soon as the OFTO is appointed,
- The decisions made by the generator as part of the procurement process (specifications and requirements) would need to be accepted by the OFTO, once appointed, and any other relevant contractors, and
- Clear boundaries between generator and OFTO responsibility areas would need to be established.

We recognise that this option also has challenges, and is not perfect. Not least because there would need to be a handover of procurement activities part way through the process, which adds coordination risk between the OFTO and generator. And there remains a risk of delay where there is disagreement between generator and OFTO around the procurement terms. Nevertheless, we consider our proposed option presents the best opportunity to maintain project pace while ensuring both generator and OFTO are sufficiently familiar with the technical specifications. In general, we would emphasise that it is unrealistic to exclude either the generator or OFTO from the procurement process.

Delay during construction.

In the case that the OFTO experiences delay during construction, we think that OWFs should be compensated in proportion to the damages caused by the delay. Therefore, we support the general concept of a compensation option proposed by Ofgem, in which the OFTO should compensate the generator for Liquidated Damages (LDs). However, LDs are project specific. Therefore instead of standardised, cross-project compensation, we suggest the development of a multi-party agreement, which can consider the interests of the generators, OFTO, and contractor. In this way, compensation mechanisms should be set from the start on a negotiation basis.

Cost increases during construction

How any cost increases during construction will be managed is a key challenge for the OFTO build model. Given the tender process for this model will take place before construction, the OFTO will need to submit proposed revenues in its Tender Revenue Stream (TRS) bid based on cost estimates, which could be subject to change. This presents a significant risk for OWFs, as any cost increase that is passed on to generators after CfD application will harm their investment case.

Usually, OWFs apply for a CfD after obtaining DCO approval. Once the OWF applies for the CfD, the project cannot make changes to the investment case. Under the OFTO build model approach for HVDC assets, it is quite likely that detailed design and component construction take place during CfD application. The process for merchant OWFs, who strike Corporate Power Purchase Agreements, while slightly different in terms of precise timings and process, is overall similar in that the generator needs to make an informed business case decision prior to the point at which actual construction costs are known. This makes the OFTO build model risky for generators.

We suggest that Ofgem do not allow cost increases to be passed on to the generator after CfD application via either changes to the TRS or via a pain-gain share mechanism. Otherwise, this model is unlikely to be used by developers.

Failure during construction

In the case that the OFTO fails during construction, we think the only viable option is that the generator takes control of the construction. Under a failure scenario, there will be limited time to hand over the construction to a third party who manages to deliver on time.

Generator contracted by the OFTO

We would like to maintain the possibility that the OFTO contracts the generator to deliver the assets. In this scenario the OFTO would not be required to compensate the generator for delays, and cost increases could be managed between the generator and their contractors. Additionally, this setup would reduce the risk of failure during construction.

Transmission charges

We note that the consultation does not address the issue of how the TRS would be split across different users of the assets. For example, under a generator build model, the generator could apply to the early-stage assessment process for Anticipatory Investment (AI), in which Ofgem calculates the user commitment for the users of the assets who connect later. This protects the generator that provides the anticipatory investment, so they are charged only for the proportion of the circuits they use, despite oversizing those assets. However, in the OFTO build model, it is unclear how transmission charges will be calculated. Transmission charges are significant for OWFs, so we would welcome clarification on this point.

We would recommend that charges are estimated mirroring the process that Ofgem will use for the generator build model. There must be a level playing field between generators using the assets and these should not be charged for an oversized asset if they are using only a proportion of this.

Cost assessment

We also note that the consultation only mentions a cost assessment to the OFTO in case there is a cost increase during construction. Therefore, it is not clear if the OFTO will be subject to the traditional cost assessment that generators face under the generator-build model. Our assumption is that the tender process would establish 'best value' and there would therefore not be a full cost assessment upon completion. However, allowing partial or full pass-through of cost increases beyond those submitted as part of the tender would undermine the efficiency of the initial tender exercise. We would welcome clarification from Ofgem on this point.

We would be keen to engage further with this agenda and would be happy to discuss our response in more detail.

Yours sincerely,

Angeles Sandoval
Senior Regulation Analyst

Appendix 1 – Detailed responses to consultation questions

Procurement under a late competition OFTO Build

Q1. Which party should be responsible for procurement in the late competition OFTO build model and why?

We do not think that option 1: the OFTO undertakes procurement, and option 2: the generator undertakes procurement, are feasible options.

If the OFTO undertakes procurement this could cause significant delays, in particular if the tender process starts after DCO approval. Usually, under the generator build model, developers start the procurement process before planning application, and the process continues alongside the planning application assessment. Therefore, we do not think the OFTO should start the procurement process after the generator is granted a DCO as this will notably delay construction and the connection of the OWF.

On the other hand, if the generator undertakes procurement, the OFTO may experience difficulties during the construction process, which would require it to take on a degree of design work it is unfamiliar with and could potentially disagree with. There may also be questions over who is liable for resolving any design issues up to the point of transfer. Furthermore, there are likely to be complexities associated with the OFTO taking over responsibility for managing a contract that it has not negotiated and is unfamiliar with.

To book a slot with an electrical manufacturer, the generator would have needed to run a competitive tender process and taken on some degree of pre-design work, incurring costs in the process. Timelines for HVDC packages are between 6-8 years from contract signature to commissioned asset depending on whether it is for HVDC monopole or bipole technology. Often 10% of full contract value is due for payment early in the process¹, rising to ~30% by CfD award. For the generator to undertake procurement, there would need to be reassurance that these associated costs could be recouped (along with the costs associated with the slot booking itself).

Recent indications from the export cable market are that slot booking can be secured through suitable collateral mechanisms (Bond or Parent Company Guarantee sized to cover the cancellation fee). The cancellation fees will start to incur a cost from approx. 4 years before the scheduled cable manufacturing date of roughly 5% of the contract value. This will then ramp-up in value roughly every year to around 20% in the year before the scheduled cable manufacturing date. The level of flexibility and transferability within these bookings depends on the terms that the generator or OFTO can negotiate. It would be expected that the slot would be transferable to another entity, but this could incur additional fees. A change in timeline could likely be accommodated to an extent but this would be more certain the further in time that notice is given from the original intended manufacturing slot start date.

We recommend that instead of using option 1 or 2, Ofgem develop a hybrid option (a third option), where the generator starts the procurement process and it is handed over to the OFTO as soon as it is appointed. This would help to accelerate timelines and allow for a smoother handover of activities between generator and OFTO, as opposed to the OFTO assuming responsibility for a procurement contract it is unfamiliar with shortly before construction commences. For this option to work effectively

¹ At Limited Notice to Proceed (LNTP) stage.

the tender process needs to start very early in the process, ideally alongside the DCO submission from the generator.

It would be undesirable and impractical for the generator and OFTO to work separately. From the design phase, the OFTO will need to run tests that necessarily involve the generator, therefore some degree of coordination in the design process will be needed. The OFTO will also have to pass the information gathered to their contractors, so this three-way setup (generator, OFTO, contractors) would need to be integrated to an extent.

To ensure that the hybrid option works for the generator, it would need to be reassured that the associated costs incurred by the generator in the procurement process are recouped as soon as the OFTO is appointed.

Tender process

Q2. At what point should the OFTO tender process commence? Does option 1 or option 2 present the best approach?

For the OFTO build model to become a feasible option, it needs to start early in the process. Therefore, option 2 - tender commences at consent submission, would be our preferred option.

Option 1 - tender commences at consent being granted, could cause significant delays in the construction process, which would make this model unattractive for developers.

Q3. Do you agree with the view that, providing stakeholder engagement is properly conducted ahead of consent submission, generators should have a reasonably clear view, at the time of consent submission, as to whether the consent is likely to be granted in the form requested, and that an OFTO would be comfortable to submit tender bids on this basis?

Undertaking proper stakeholder engagement at an early stage is essential in identifying the potential consenting challenges the project may face. It also allows the opportunity for discussions on any appropriate approaches and measures that may be included within the final submission documentation to address them.

However, one of the issues currently facing the industry is lack of stakeholder resource resulting in regulators and advisors not having the capacity to engage fully with developers at the pre-submission stage, allowing for this dialogue to occur in advance of the applications going in. These discussions are then held post-submission, often delaying the determination phase and changing the application from the form in which it was submitted.

Furthermore, while there is a presumption in favour of consent for Nationally Significant Infrastructure Projects (NSIPs) that Town & Country Planning Act or Marine Licence projects do not have, there remains the risk of significant local opposition to projects. This is increasing given the volume of new and upgraded infrastructure proposed across GB including Round 3 & 4, ScotWind, the Great Grid Upgrade, new nuclear and interconnector projects. With this comes the increased risk of legal challenges to projects.

Taking all this into consideration, we cannot conclude that consent is likely to be granted in the form requested and that an OFTO would be comfortable to submit tender bids on that basis.

Timely delivery

Q4. As compared with commercial liquidated damages, how effective are options 1 and 2 in incentivising timely delivery and managing the risk of delay? Could these options make OFTO build a meaningful option for the generators?

We think that instead of a standardised compensation or a reduction of the TRS, a multi-party agreement should be developed. This agreement should consider the interest of all parties involved, including compensation mechanisms.

It is also important that Ofgem makes sure that the OFTO will not have the power to increase the TRS due to compensation payments. There would otherwise be little value in compensation payments as generators would face correspondingly higher costs on an ongoing basis.

Ofgem states that the delay charge could be standardised and set up front on a non-project specific basis. The delay charge would be set according to parameters (to be developed) that apply to every in-scope project, without dependence on any negotiation between the OFTO and the generators. This ensures that when generators choose the delivery model, it is clear how much they would be partially compensated in case of late delivery by the OFTO.

We support the general concept of compensation proposed by Ofgem. However, Liquidated Damages (LDs) are project-specific, therefore standardised compensation may not fully compensate the project for LDs. As mentioned above, instead of a standardised compensation, we suggest the development of a tri-party agreement, which can consider the interests of the generator, OFTO, and contractor.

The impact of a delay to the HVDC system can be significant for the generator, ranging from delayed cable pull-in operations and wind turbine energisation delays to sizable lost generation revenues. It could also jeopardise CfD eligibility in the worst case scenario. We would therefore expect that in the case of delays most of the liquidated damages that the HVDC manufacturer would pay to the OFTO (under the terms of the contracts) would be transferred to the generator, as it is the generator that is most impacted.

Where the OFTO is responsible for the delay, a different contract should be established between the OFTO and generator. In this case, it is the OFTO who should pay the generator for LDs.

Q5. How can the OFTO delay charge and consumer underwriting in option 1, as well as the TRS reduction in option 2, be appropriately set and executed?

As mentioned in our answer to Question 1 and 4, compensation must be project specific and built around the contractual terms agreed between the OFTO and HVDC manufacturer. In a delay scenario it is the generator that is most exposed. To ensure effective alignment of incentives, it is essential that the party responsible for any delay or cost overrun bears the risk attached.

Cost increases during construction

Q6. Which of the four proposals offers the most suitable option for the treatment of cost increases during construction?

Under the late competition OFTO build delivery model, the OFTO tender will take place before construction of the transmission assets. An OFTO will need to submit proposed revenue in its TRS bid based on cost estimates. However, actual construction costs may (and in reality are highly likely to) differ from these estimates.

Instead of the four options Ofgem has outlined, we would advocate for a tri-party agreement to be established between generator, OFTO and contractor. This would enable contracts to be established

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in a way that assigns the risk of delays and cost overruns to the party responsible for causing those, and for compensation to be paid to the party damaged as a result.

Any variation to the TRS during construction will be damaging for generators as the TRS needs to be factored in to the project business case when applying for a CfD. Normally a project can apply for a CfD as soon as they have a DCO granted. So, in theory, the TRS could change any time before the generator gets planning permission. Any time after that, the generator will be applying for a CfD, and will not have the chance to modify the business case included in the CfD application.

Q7. What, in your view, is an appropriate calibration for the pain-gain share mechanism outlined in options 3 and 4?

As mentioned in our answer to question 6, we do not think any of the options presented provide the appropriate incentives for parties to minimise the risk or magnitude of delays or cost overruns. Instead we recommend that terms are negotiated on a tri-partite basis, so the risk of delay or increased costs falls to the party who is responsible.

Refinancing Gain Share

Q8. Should we expand the refinancing gain share mechanism to cover the conversion of equity to debt or the sale of equity? How could the mechanism work in principle?

Ofgem should keep the current mechanism that provides for any gains made by the OFTO from refinancing debt to be shared with consumers. The question of whether this mechanism should be extended to also cover the conversion of equity to debt or the sale of equity (for example, at the end of construction, to reflect the step change in project risk between construction and operations) is more complex and should be given further consideration. Expanding the refinancing gain mechanism could make the OFTO build model less attractive for OFTOs; on the other hand, not expanding it could significantly tilt the original balance between the interests of the OFTO and the interests of consumers. Therefore, we suggest that Ofgem gives further consideration to this issue and develops more detailed proposals for consultation, including on how an extended gain share mechanism could work in principle.

OFTO build failure during construction.

Q9. What do you think is the best way to deal with a failure scenario during construction?

Under a failure scenario, there will be limited time to hand over the construction to a third party who could manage to deliver on time. This would only increase uncertainty for generators. Therefore, we propose that in a failure scenario, the generator takes over the construction work under a generator-build model.

We would welcome further clarity from Ofgem regarding the types of scenario that may be considered 'failure', which parties would be responsible for making this judgement, and when. The further into the construction phase we are the more limited the ability of the stepping in party to put things right. There may be circumstances in which it becomes apparent at a relatively early stage of construction that an OFTO is not effectively managing the process. We would recommend providing the generator with the ability to raise concerns with Ofgem, and to seek the ability to step in at an early stage. This would be preferable to a scenario in which the OFTO itself determines 'failure', potentially at quite a late stage when the ability of a generator to put things right may be quite limited.

Q10. In the event that the appointed OFTO cannot continue with the project, which party is best placed to take the build to completion? How should the transfer value for a partially completed project be set?

As mentioned in our answer to question 9, if the appointed OFTO cannot continue with the project, the generator should undertake construction under the generator-build model.

Where a transfer value needs to be set for a partially complete asset, we would expect this to be done following a process similar to the Ofgem cost assessment process for generator build. This should take into account the costs economically and efficiently incurred by the OFTO to that point.

Appendix 2 – Glossary

DCO	Development Consent Order
CfD	Contract for Difference
Final Investment Decision	FID
LDS	Liquidated Damages
OWF	Offshore Wind Farm
TNUoS	Transmission Network Use of System
TRS	Tender Revenue Stream
OFTO	Offshore Transmission Owner