

Special Condition 9.20 Tender Support Activities in Onshore Electricity Transmission

Introduction

- 9.20.1 The purpose of this condition is to place an obligation on the licensee to provide such information and assistance as is reasonably required to the Delivery Body in relation to an Onshore Transmission Tender Exercise.
- 9.20.2 Part A sets out obligations on the licensee in respect of supporting the Delivery Body in an Onshore Transmission Tender Exercise. Part B sets out the scope, contents, and governance arrangements for the Onshore Competition Information Exchange Guidance.

Part A: Provision of information and assistance to the Delivery Body

- 9.20.3 The licensee must support the Delivery Body through participation in the Onshore Competition Information Exchange Process in accordance with the Onshore Competition Information Exchange Guidance.
- 9.20.4 Subject to paragraph 9.20.6, ~~in the Onshore Competition Information Exchange Process~~ and upon request from the Delivery Body, in accordance with the Onshore Competition Information Exchange Guidance, the licensee must:
- (a) provide such information relating to the licensee's Transmission Area as is reasonably required by the Delivery Body to prepare the tender documentation for an Onshore Transmission Tender Exercise;
 - (b) respond to ~~formal~~scheduled requests for information from the Delivery Body during the Invitation to Tender Stage; and
 - (c) respond to reasonable requests for information from the Delivery Body outside of those requested in accordance with paragraph 9.20.4(a) and (b).
- 9.20.5 For the avoidance of doubt, nothing in this condition requires, the licensee to:
- (a) respond to any query it receives directly from a Bidder during an Onshore Transmission Tender Exercise;
 - (b) disclose any information directly to any Bidder during an Onshore Transmission Tender Exercise; or
 - (c) produce any documents or give any information which it could not be compelled to produce or give in evidence in civil proceedings before a court.
- 9.20.6 If the licensee wishes to dispute a request for information from the Delivery Body under paragraph 9.20.4 the licensee must follow the dispute process as set out in the Onshore Competition Information Exchange Guidance.
- 9.20.7 The licensee shall assist the Delivery Body, where appropriate, through the facilitation of a site visit for Qualifying Bidders in accordance with the Onshore Competition Information Exchange Guidance.

- 9.20.8 If the licensee determines that the requested site visits by the Delivery Body cannot be fulfilled, the licensee must as soon as reasonably practicable notify the Delivery Body and the Authority.

Part B: Onshore Competition Information Exchange Guidance

- 9.20.9 The licensee must comply with the Onshore Competition Information Exchange Guidance.
- 9.20.10 The Authority will issue and amend the Onshore Competition Information Exchange Guidance by direction.
- 9.20.11 The Authority will publish the Onshore Competition Information Exchange Guidance on the Authority's Website.
- 9.20.12 The Onshore Competition Information Exchange Guidance will include, or make provision for, the following matters:
- (a) details of information related to the licensees' Transmission Area required to be provided in accordance with paragraph 9.20.4(a);
 - (b) the format (including templates) for responding to requests for information in accordance with paragraphs 9.20.4(a) and 9.20.4(b);
 - (c) timescales for responding to ~~formal~~scheduled information requests from the Delivery Body in accordance with paragraph 9.20.4(b);
 - (d) the frequency with which and the expected timescales in an Onshore Transmission Tender Exercise within which the licensee is required to carry out the activities specified in ~~part~~Part A of this condition;
 - (e) the process for managing additional information requests from the Delivery Body in accordance with paragraph 9.20.4(c);
 - (f) the process for managing information request disputes in accordance with paragraph 9.20.6;
 - (g) the process for facilitating site visits in accordance with paragraph 9.20.7; and
 - (h) processes in respect to the protection of Confidential Information-.
- 9.20.13 Before issuing the Onshore Competition Information Exchange Guidance ~~by direction~~, the Authority will publish on the Authority's Website:
- (a) the text of the proposed ~~direction~~Onshore Competition Information Exchange Guidance;
 - (b) the reasons for the proposed ~~direction~~Onshore Competition Information Exchange Guidance; and
 - (c) a period during which representations on the proposed ~~direction~~Onshore Competition Information Exchange Guidance may be made, which will not be less than 28 days.

9.20.14 Before directing an amendment to the Onshore Competition Information Exchange Guidance by direction, the Authority will publish on the Authority's Website:

- (a) the text of the amended Onshore Competition Exchange Guidance;
- (b) the date on which the Authority intends the amended Onshore Competition Information Exchange Guidance will take effect;
- (c) the reasons for the amendments to the Onshore Competition Information Exchange Guidance; and
- (d) a period during which representations on the amendments to the Onshore Competition Information Exchange Guidance may be made, which will not be less than 28 days.

Special Condition 9.21 Conflict Mitigation Arrangements for Onshore Transmission Tender Exercise

Introduction

- 9.21.1 The purpose of this condition is to require the licensee to put in place arrangements to manage, and where applicable, mitigate potential conflicts of interest in respect of an Onshore Transmission Tender Exercise.
- 9.21.2 Part A sets out the overarching obligations on the licensee when undertaking Tender Support Activities. Part B sets out the employee restrictions and ~~business~~ separation requirements between the licensee and any Bidding Unit that will apply when a licensee has established a Bidding Unit. Part C sets out the obligations on the licensee to restrict the use of information that the licensee has access to through its Tender Support Activities. Part D sets out the Conflict Mitigation Statement the licensee must publish if it has established a Bidding Unit, which (amongst other things) must comply with the Conflict Mitigation Methodology issued by the Authority. Part E sets out requirements on the licensee to conduct an external independent audit.

Part A: Conduct of the licensee when undertaking its Tender Support Activities

- 9.21.3 In performing its Tender Support Activities and at all times when the licensee has established a Bidding Unit, the licensee must act in a manner intended to ensure that neither the Bidding Unit, nor any Bidder, obtains an ~~unfair commercial advantage, including any advantage from a preferential or discriminatory arrangement~~ Unfair Commercial Advantage.

Part B: Separation of the licensee and any Bidding Unit

- 9.21.4 Without prejudice to the licensee's obligations under Standard Conditions B5 (Prohibition of cross-subsidies) and B6 (Restriction on Activity and Financial Ring Fencing) and ~~[Drafting note, NGET only: Special Conditions 9.17 (Prohibited Activities and Conduct of the Transmission Business) and 9.18 (Business separation requirements and compliance obligations)]~~ [Drafting note, SHET and SPT only: Special Conditions 9.15 (Appointment of a Compliance Officer) and 9.16 (Independence of and appointment of managing director of the Transmission Business)], the licensee must conduct its Tender Support Activities separately from any Bidding Unit in accordance with the requirements set out in Part B of this condition.
- 9.21.5 The licensee must ensure the separation of management structures between the licensee and any Bidding Unit up to, but not necessarily including, the board of directors of an immediate parent company of the licensee.
- 9.21.6 The licensee must ensure that arrangements are in place which are effective in restricting the access of:

- (a) persons engaged in the management or operation of any Bidding Unit to any parts of premises occupied by the network planning or project development operations of the licensee; and
 - (b) persons engaged in the network planning or project development operations of the licensee to any parts of premises occupied by any Bidding Unit.
- 9.21.7 The licensee must ensure that the systems used for the recording, processing and storage of information relating to, or derived from, the licensee performing its Tender Support Activities, to which persons engaged in the management or operation of the licensee have access, cannot be accessed by persons engaged in the management or operation of any Bidding Unit.
- 9.21.8 The licensee must ensure that during the initial 14 weeks of the Invitation to Tender Stage of an Onshore Transmission Tender Exercise:
- (a) all persons involved in the activities within any Bidding Unit are prohibited from transferring to the licensee; and
 - (b) all persons involved in the network planning or project development operations of the licensee are prohibited from transferring to any Bidding Unit.
- 9.21.9 With respect to Standard Conditions B5 (prohibition of cross-subsidies) and B6 (Restriction on Activity and Financial Ring Fencing), the licensee must ensure that any assets related to an Onshore Transmission Tender Exercise are separable from any other asset of the licensee.
- 9.21.10 The licensee must not use any Allowed Revenue to establish any Bidding Unit or for any Bidding Unit activities in respect of an Onshore Transmission Tender Exercise.

Part C: Restrictions on the use of information in connection with Tender Support Activities

- 9.21.11 Any information held by the licensee relating to or deriving from its Tender Support Activities is to be treated as Confidential Information for the purpose of this condition and Special Condition 9.20 Tender Support Activities in ~~onshore electricity transmission~~ Onshore Electricity Transmission.

~~9.21.12 The licensee must not disclose, authorise access to, or authorise use of any Confidential Information except~~ Except as ~~provided~~ provide for in paragraph 9.21.14.

~~9.21.13~~ 9.21.12 ~~For the avoidance of doubt, for the purposes of paragraph 9.21.12 and subject to paragraph 9.21.14, 13,~~ the licensee must not disclose, authorise access to, or authorise use of Confidential Information to:

- (a) any Bidder; and

(b) any Bidding Unit, including any employees, agents, contractors, consultants, and advisers of the Bidding Unit.

~~9.21.14~~9.21.13 The licensee may disclose or authorise access to or authorise the use of Confidential Information as far as is necessary or appropriate in the circumstances where:

(a) the disclosure of, access to, or use of the Confidential Information is required or permitted by:

- i. any requirement of a Competent Authority;
- ii. the conditions of any licence granted or taking effect as if granted under the Act or any document referred to in such a licence with which the licensee is required by virtue of the Act or that licence to comply;
- iii. paragraph 9.20.4 of Special Condition 9.20 Tender Support Activities in onshore electricity transmission;
- iv. the ~~Electricity~~ (Early-Model Competitive Tenders for Onshore Transmission Licences) Regulations ~~2024~~2025;
- v. any court or tribunal order;
- vi. the performance of a statutory function;
- vii. under the rules of the Electricity Arbitration Association or another arbitral body; or

(b) the disclosure of, access to, or use of the Confidential Information is to persons engaged in the provision of Shared Services, but only to the extent necessary to allow those persons to perform their functions to support the licensee in performing its Tender Support Activities.

Part D: Conflict Mitigation Statement and Conflict Mitigation Methodology

~~9.21.15~~9.21.14 Where the licensee intends to participate in an Onshore Transmission Tender Exercise as a Bidder through a Bidding Unit, before the ~~PQ~~Pre-Qualification Stage commences, the licensee must:

- (a) notify the Authority of its intention to bid; and
- (b) prepare and submit a Conflict Mitigation Statement to the Authority for approval.

~~9.21.16~~9.21.15 A Conflict Mitigation Statement must:

- (a) comply with the Conflict Mitigation Methodology published under paragraph 9.21.~~18~~and 20;
- (b) address the following matters as described in the Conflict Mitigation Methodology:
 - i. separation of the licensee and the Bidding Unit;
 - ii. employee transfer restrictions;
 - iii. managerial separation;
 - iv. information sharing restrictions;
 - v. financial separation; and
 - vi. monitoring and reporting compliance including a Conflicts Management Officer; and

(c) be approved ~~by~~ and signed by a director of the licensee's board of directors.
~~9.21.179.21.1 The Authority will issue and amend the Conflict Mitigation Methodology by direction.~~

~~9.21.189.21.1 The Authority will publish the Conflict Mitigation Methodology on the Authority's Website.~~

~~9.21.199.21.1 The Conflict Mitigation Methodology will make provision about the requirements and reporting framework of the Conflict Mitigation Statement.~~

~~9.21.209.21.1 Before directing that the Conflict Mitigation Methodology comes into effect, the Authority will publish on the Authority's Website:~~

~~(a) the text of the proposed Conflict Mitigation Methodology;~~

~~(b)(a) the reasons for the proposed date on which the Authority intends the Conflict Mitigation Methodology to come into effect; and~~

~~(c)(a) a period during which representations on the text of the proposed Conflict Mitigation Methodology may be made, which will not be less than 28 days.~~

~~9.21.219.21.1 Before directing an amendment to the Conflict Mitigation Methodology, the Authority will publish on the Authority's Website:~~

~~(a) the text of the amended Conflict Mitigation Methodology;~~

~~(b)(a) the date on which the Authority intends the amended Conflict Mitigation Methodology to come into effect;~~

~~(c)(a) the reasons for the amendments to the Conflict Mitigation Methodology; and~~

~~(d)(a) a period during which representations on the amendments to the Conflict Mitigation Methodology may be made, which will not be less than 28 days.~~

9.21.229.21.16 Following receipt of a Conflict Mitigation Statement, or an updated Conflict Mitigation Statement in accordance with paragraph 9.21.~~23~~17(c), the Authority will either:

(a) approve the Conflict Mitigation Statement and notify the licensee of its approval; or

(b) give a direction to the licensee on any parts of the Conflict Mitigation Statement that require further development and provide a date by which the licensee is required to submit a revision to the Authority for approval.

9.21.239.21.17 Following the Authority's approval of the Conflict Mitigation Statement under paragraph 9.21.~~22~~16(a), the licensee must:

(a) unless the Authority otherwise consents or directs, comply with the approved Conflict Mitigation Statement at all times during the Onshore Transmission Tender Exercise;

- (b) keep the Conflict Mitigation Statement under review and update it as necessary, including when circumstances change such that the document no longer secures compliance with this condition or when the Authority directs, to ensure that it continues to be complete and accurate in all material respects;
- (c) where the licensee has updated the approved Conflict Mitigation Statement, submit the updated Conflict Mitigation Statement to the Authority for approval; and
- (d) where the licensee notifies the Authority under paragraph 9.21.15(b)(a) that it intends to participate in an Onshore Transmission Tender Exercise as a Bidder, implement the procedures and systems by which the licensee will secure compliance with Part B of this condition, according to the timescales set out in the approved Conflict Mitigation Statement.

9.21.24 9.21.18 The licensee must publish a copy of the approved Conflict Mitigation Statement and, if applicable, each revision of it within 15 working days of the date of approval by the Authority.

9.21.19 The Authority will issue and amend the Conflict Mitigation Methodology by direction.

9.21.20 The Authority will publish the Conflict Mitigation Methodology on the Authority's Website.

9.21.21 The Conflict Mitigation Methodology will make provision about the requirements and reporting framework of the Conflict Mitigation Statement.

9.21.22 Before directing that the Conflict Mitigation Methodology comes into effect, the Authority will publish on the Authority's Website:

- (a) the text of the proposed Conflict Mitigation Methodology;
- (b) the reasons for the proposed date on which the Authority intends the Conflict Mitigation Methodology to come into effect; and
- (c) a period during which representations on the text of the proposed Conflict Mitigation Methodology may be made, which will not be less than 28 days.

9.21.23 Before directing an amendment to the Conflict Mitigation Methodology, the Authority will publish on the Authority's Website:

- (a) the text of the amended Conflict Mitigation Methodology;
- (b) the date on which the Authority intends the amended Conflict Mitigation Methodology to come into effect;
- (c) the reasons for the amendments to the Conflict Mitigation Methodology; and
- (d) a period during which representations on the amendments to the Conflict Mitigation Methodology may be made, which will not be less than 28 days.

Part E: External Audit

~~9.21.25~~9.21.24 The licensee must procure an external audit ~~as defined in the manner specified~~ in the Conflict Management Audit Terms of Reference ~~of a Conflict Mitigation Statement approved under paragraph 9.21.22~~ to assess the licensee's level of compliance with the requirements in paragraph 9.21.~~16~~15.

9.21.25 The licensee must ensure that ~~-, in respect to an external audit:~~

~~9.21.26(a)~~ (a) the external audit is conducted by an independent ~~party which person who~~ is not affiliated with the Bidding Unit or the licensee ~~as defined in (which has the meaning given in paragraph 1.8 of the Conflict Management Audit Terms of Reference.); and~~

~~(b) the licensee has complied with any requirements that have been specified in respect to the appointment of that person in accordance with paragraphs 1.9-1.12 of the Conflict Management Audit Terms of Reference.~~

~~9.21.27~~9.21.26 The licensee must ensure ~~the any~~ external audit procured in accordance with paragraph 9.21.24 complies with the Conflict Management Audit Terms of Reference.

~~9.21.28~~9.21.27 The Authority will issue and amend the Conflict Management Audit Terms of Reference by direction.

~~9.21.29~~9.21.28 The Authority will publish the Conflict Management Audit Terms of Reference on the Authority's Website.

~~9.21.30~~9.21.29 The Conflict Management Audit Terms of Reference will include:

- (a) the scope, objective and methodology of ~~the an external~~ audit;
- (b) findings, evidence to support findings, and impact of findings; ~~and~~
- (c) conclusions, recommendations, and actionable suggestions.

~~9.21.31~~9.21.30 Before directing that the Conflict Management Audit Terms of Reference come into effect, the Authority will publish on the Authority's Website:

- (a) the text of the proposed Conflict Management Audit Terms of Reference;
- (b) the date on which the Authority intends the Conflict Management Audit Terms of Reference to come into effect; and
- (c) a period during which representations on the text of the proposed Conflict Management Audit Terms of Reference may be made, which will not be less than 28 days.

~~9.21.32~~9.21.31 Before directing an amendment to the Conflict Management Audit Terms of Reference, the Authority will publish on the Authority's Website:

- (a) the text of the amended Conflict Management Audit Terms of Reference;

- (b) the date on which the Authority intends the amended Conflict Management Audit Terms of Reference to come into effect;
- (c) the reasons for the amendments to the Conflict Management Audit Terms of Reference; and
- (d) a period during which representations on the amendments to the Conflict Management Audit Terms of Reference may be made on the proposed direction, which will not be less than 28 days.