



Department for
Business, Energy
& Industrial Strategy

NOTICE OF PROPOSED TRANSMISSION LICENCE EXEMPTIONS

for Offshore Wind Farm Generators in
Tender Round 5

Closing date: 2 January 2019



OGI

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General information

Consultation details

Issued: Tuesday 4 December 2018

Respond by: 23.45 on Wednesday 2 January 2019

Enquiries to: sophia.cliff@beis.gov.uk

How to respond

Email to: sophia.cliff@beis.gov.uk

Write to:

Sophia Cliff
Electricity Systems, ESNM
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Third Floor, Abbey 1 Area
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Notice

EXEMPTION FROM THE REQUIREMENT FOR A LICENCE TO TRANSMIT ELECTRICITY: PROPOSAL TO MAKE ELECTRICITY (INDIVIDUAL EXEMPTIONS FROM THE REQUIREMENT FOR A TRANSMISSION LICENCE) (ENGLAND) ORDER 2019

SUMMARY

This consultation seeks views on our proposal to make an exemption from the requirement to hold a transmission licence for specific projects involved in the fifth tender round of the OFTO regime. The exemption is intended to address delays experienced to the tender process and avoid generators participating in unlawful transmission. The exemption is being pursued on the basis that these delays constitute exceptional circumstances.

The causes of the delay were threefold

- more projects progressing to the tender stage than had been expected;
- Ofgem's decision to stagger the invitation to tender phases, to address feedback from bidders that it is challenging to pursue multiple projects in parallel; and
- Ofgem consulting on a review of its policy on Income Adjusting Events.

We do not anticipate these causes leading to delays for future tender rounds. The proposed exemption will give each generator 24 months from the start of the invitation to tender or the issuance of the completion notice (whichever is later) to transfer the transmission asset.

The following sections outline the details of the proposed exemption and the reasoning for making the Order. The draft Order is annexed to this document.

PROPOSAL

The Secretary of State (SoS), pursuant to sections 5(2) and 5(3) of the Electricity Act 1989 ("the Act"), hereby gives notice of a proposal to make an order under section 5(1) of the Act granting exemption from the requirement to hold a transmission licence under section 4(1)(b) of the Act to the following wind farms currently going through the commissioning period in tender round 5 of the Offshore Transmission Owner's (OFTO) regime:

- Race Bank Wind Farm Limited, 5 Howick Place, London, England, SW1P 1WG (Company number 05017828), in respect of the Race Bank offshore wind farm, consisting of 91 6.3MW turbines with an overall capacity of approximately 573MW, located approximately 27km-33.3km off the North Norfolk coast;
- Galloper Wind Farm Limited, Windmill Hill Business Park, Whitehill Way, Swindon, SN5 6PB (Company number 07320597), in respect of the Galloper offshore wind farm, consisting of 56 6.3MW turbines with an overall capacity of 353MW, located approximately 27km-37.3km off the Suffolk coast;

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- Walney Extension Limited, 5 Howick Place, London, England, SW1P 1WG (Company number 07306956) in respect of the Walney Extension offshore wind farm, consisting of 87 7MW and 8MW turbines with an overall capacity of up to 659MW, located in the Irish Sea, approximately 19km-29km from Walney Island coast in Cumbria; and
 - Rampion Offshore Wind Limited, Westwood Way, Westwood Business Park, Coventry, CV4 8LG (Company number 07199847), in respect of the Rampion offshore wind farm, consisting of 116 3.45MW turbines with an overall capacity of 400MW, located in the English Channel, approximately 13km-17.2km off the Sussex coast.

LEGISLATIVE BACKGROUND

Section 4 of the Act sets out the activities for which licences are required, which include the transmission of electricity. It specifies that an offence is committed if these activities are carried out without a licence. A transmission licence is granted by the Authority (the Gas and Electricity Markets Authority) under section 6(1)(b) of the Act. “Transmission” and the relevant term “transmission system” is defined in section 4;

Section 5 of the Act grants the SoS powers to grant exemptions from the requirement to hold various types of licences, including a transmission licence. Section 5(1)(c) allows the SoS to specify conditions that apply to exemptions. The exemption can be revoked if it appears to the SoS inappropriate that the exemption should continue to have effect, as set out in section 5(8);

Sections 6F and 6G of the Act allow offshore generators to transmit electricity without an offshore transmission licence subject to certain conditions, including the condition that the transmission takes place during the ‘commissioning period’. The commissioning period is defined as the period before and during the 18 months beginning on the day the Electricity System Operator (ESO) gives a completion notice to Ofgem.

Unlicensed transmission by an offshore generator after the end of the commissioning period is an offence under section 4(1)(b) of the Act, unless an exemption from the requirement to be licensed is granted.

POLICY BACKGROUND AND REASONS FOR PROPOSED ORDER

The links to offshore wind farms are licenced through a competitive regime. Ofgem runs a tender to select the offshore transmission owner (OFTO) who will own and operate the transmission assets for a specified revenue period. For the fifth tender round, this revenue period is 20 years. Whilst the transmission assets can be built and tested by the OFTO itself (under the OFTO build option), all projects so far tendered have been built and tested by generators (under the generator build option). Through this process we have introduced an important element of competition to the sector, which has been estimated to have delivered £700m of savings over the first £3.1bn worth of assets tendered, with further savings expected. The OFTO regime in the Act contemplates that the transmission asset is transferred to an independent OFTO within 18 months of the completion of the project.¹ This 18-month

¹ For these purposes, ‘completion’ refers to the date that Electricity System Operator gives Ofgem a ‘completion notice’ in relation to the project.

commissioning period allows for the technical demonstration of the asset to potential bidders, gives time for Ofgem to run a tender process and select a preferred bidder for the OFTO, and provides time to finalise commercial negotiations ahead of transfer.

Beyond this 18-month commissioning period the generator is not legally able to continue transmitting electricity, as doing so would constitute the transmission of electricity without a licence, which is an offence under section 4(1)(b) of the Act.

Ofgem groups projects together to run tenders. The process for tender round 5 has been significantly delayed for the following reasons:

- more projects progressing to the tender stage than had been expected;
- Ofgem’s decision to stagger the invitation to tender phases, to address feedback from bidders that it is challenging to pursue multiple projects in parallel; and
- Ofgem consulting on a review of its policy on Income Adjusting Events.

These delays mean it now seems very likely that the projects identified above will find themselves in a position that they have not completed the transfer of transmission assets within the 18-month commissioning period and will be unable to continue to lawfully transmit electricity to the grid after that time.

It is in the public interest for offshore wind generation to be transmitted to shore lawfully. To provide an efficient and effective way to deal with the delays experienced in tender round 5, and to avoid leaving the developers with the options of either curtailing generation, or continuing to transmit illegally. The SoS is minded to use the powers granted under section 5 of the Act to grant the projects time-limited exemptions from the requirement to hold a transmission licence.

Aside from the delays to the tender process, Rampion wind farm experienced technical problems with its transmission cables and was required to replace the cables before Ofgem launched the invitation to tender. While this has exacerbated the delay, the 18 month commissioning period would have been breached regardless and we are therefore of the opinion that Rampion should be treated consistently with the other projects in tender round 5.

EXISTING GUIDANCE ON LICENCE EXEMPTIONS

The BEIS guidance *‘Electricity Generation, Distribution and Supply Licence Exemptions: Frequently Asked Questions (FAQs)’ (June 2017)* addresses generation, distribution and supply licence exemptions but does not specifically provide guidance on transmission licence exemptions. This document is nevertheless used as a reference point for BEIS policy on transmission licence exemptions. Although there are differences involved in transmission, and specifically offshore transmission, we are keen that there is consistency in our approach as far as possible.

The guidance states that the SoS may grant exemptions to an individual person or to “persons of a class” under section 5(1)(a) of the Act. Exemptions are routinely granted to generators of less than 100MW capacity due to their low impact on the total electricity system and because the exemption “does not pose a threat to the safe and secure operation of the electricity system”. Similarly, the continued operation of the assets covered by the proposed exemption does not threaten the safe and secure operation of the total electricity system for the following reasons:

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- The offshore transmission assets to be granted exemptions do not have the same complexities as onshore transmission - they are point-to-point transmission cables, and are functionally simple connections to one generator rather than part of a complex grid that requires more active management by the ESO.
 - In that context, the ESO already operates the system safely and securely while these generators are generating during the commissioning period.

THE SECRETARY OF STATE'S PRINCIPAL OBJECTIVE

Additionally, in carrying out functions under Part 1 of the Act (including considering granting any exemption from the requirement to hold a transmission licence), the SoS is required under section 3A to consider the principal objective of protecting the interests of existing and future consumers. Consideration of consumers' interests includes interests in: reduction of emissions of targeted greenhouse gases and security of supply. The SoS must further the principal objective in a way that promotes competition wherever possible, and must have regard to the interests in section 3A(2) including the need to contribute to the achievement of sustainable development.

The exemptions promote consumers' interests by protecting these generators from the adverse legal and commercial consequences of tender round 5 delays, which supports the continued investment and competition in the sector. Providing exemptions to these assets also directly supports future reductions in greenhouse gases by ensuring that offshore wind farms can continue to transmit low-carbon power to the grid for the limited time required for the transfer of transmission assets to be completed. The proposed exemptions will allow the affected generators to continue to lawfully generate and provide a sufficient window in which to successfully transfer transmission assets so that they can continue to generate clean electricity and transmit it ashore to be used by businesses and households. This is in line with the overall objective of the Government's Clean Growth Strategy to enable economic growth while cutting greenhouse gas emissions. Enabling offshore wind generation to be lawfully transmitted to shore will help us reduce emissions, supporting the Government's efforts to tackle climate change.

TERMS OF PROPOSED EXEMPTIONS

The Department has considered whether the terms of the exemptions should include conditions that prevent generators from gaining any unfair commercial advantage as a result of being granted an exemption. In creating the exemption, the Department has taken into consideration:

- **Strict time limits:** The duration of the proposed exemptions is strictly time-limited. They begin immediately after each generator's commissioning period ends and continue until a fixed date specified in the Order, or the date of transfer to an OFTO, if that is sooner. Specifically, we propose that the exemption should expire 24 months after the launch of the invitation to tender or the start of commissioning period for each project, whichever is later. This is intended to account for the specific delays to the tender process experienced in tender round 5, thus allowing the generators and preferred bidders sufficient time to conclude commercial negotiations ahead of a transfer of the asset, as was the original intention of the commissioning period.

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- **Commercial advantage:** In considering the best approach to take to address this issue, we considered whether there would be any financial advantage that could be enjoyed by a generator in receipt of a time-limited exemption, for example, through Transmission Network Use of System (TNUoS) charges or through the avoidance of paying a licence fee. Our conclusion is that there is no material advantage.
 - **Interaction with other policies:** We also considered whether there would be any unintended interactions with other policies that could adversely affect the achievement of our objectives in other areas, which might justify imposing conditions. Again, we were not able to identify any.

We therefore do not consider it necessary for the exemptions to be subject to conditions. The generators will still be required to comply with their obligations under their generation licences, meaning they will continue to adhere to the codes of conduct, industry agreements and behavioural conventions.

REPRESENTATIONS AND TIMETABLE

Representations on the proposed Order must be made by 23:45 on Wednesday 2 January 2019 to: *Sophia Cliff, Interconnection and Offshore Transmission, Electricity Systems, ESNM, Department for Business, Energy and Industrial Strategy (BEIS), Abbey 1, 3rd Floor, 1 Victoria Street, London SW1 0ET*

DE MINIMIS ASSESSMENT

The Government produced a *de minimis assessment* in respect of the proposed exemptions in September 2018, which indicated that no financial advantage is expected to be conferred on the relevant generators by granting time-bound exemptions and that any impact is likely to be significantly less than £5m/year.

This notice is available from: <https://www.gov.uk/government/consultations/transmission-licence-exemption-order-for-offshore-generators>

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