



Department for
Business, Energy
& Industrial Strategy

Notice of Proposed Transmission Licence Exemption

for East Anglia One Limited (EAOL)

Closing date: 25 March 2022

February 2022



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General information

Why we are consulting

We are seeking views on a proposed time-limited exemption from the requirement to hold a transmission licence in respect of the offshore wind farm owned and operated by East Anglia One Limited (EAOL).

Consultation details

Issued: 25 February 2022

Respond by: 25 March 2022

Enquiries to: ESSupport@beis.gov.uk

Territorial extent:

Great Britain, including the devolved administrations.

How to respond

Due to current working patterns we are only able to consider responses submitted electronically.

Email to: ESSupport@beis.gov.uk

Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential please tell us, but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable data protection laws. See our [privacy policy](#).

Quality assurance

This consultation has been carried out in accordance with the government's [consultation principles](#).

If you have any complaints about the way this consultation has been conducted, please email: beis.bru@beis.gov.uk.

The proposals – Notice of proposed transmission licence exemption

Exemption from the Requirement for a Licence to Transmit Electricity: Proposal to make the Electricity (Individual Exemption from the Requirement for a Transmission Licence) (England) Order 2022

Summary

This consultation seeks views on our proposal to make an exemption from the requirement to hold a transmission licence for East Anglia One offshore windfarm owned and operated by East Anglia One Limited (EAOL).

In summer 2021, EAOL discovered a technical issue affecting the onshore cables that needs to be rectified before the transfer to the preferred bidder OFTO can progress.

This proposed exemption is intended to allow additional time for EAOL to operate while remedying the cable issues that have caused the delay. While the ultimate cause of the delay was due to technical issues relating to the onshore cables, the delay was compounded by the restrictions put in place in response to the COVID-19 pandemic and the ongoing effects of the pandemic. The exemption is proposed on the basis that the delay caused by COVID-19 constitutes exceptional circumstances.

Given the ongoing uncertainty as to the impact of COVID-19, it is difficult to accurately assess how long is likely to be required to complete the transfer. Therefore, when granting this exemption, we are proposing to err on the side of caution and grant an exemption for a duration we consider is likely to provide adequate time to complete the transfer of the transmission asset. It is, however, important that even in these exceptional circumstances, that there remains a clear deadline by which the transfer process must be completed. Therefore, we are proposing to grant time-limited exemption and considering two options for the length of any such proposed exemption. One option is a proposed exemption which would expire on 13 December 2022 and the other option is a proposed exemption which would expire on 13 April 2023.

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 windfarm currently in the process of transferring transmission assets under the Offshore Transmission Owner's (OFTO) regime:

- East Anglia One Limited, 3rd Floor, 1 Tudor Street, London, EC4Y 0AH, England, (company number 07366753), in respect of the East Anglia One offshore wind farm, consisting of 102 of 7MW turbines with an overall capacity of up to 714MW, located in the Southern North Sea approximately 48.3km – 61.5km off the Suffolk coast of England.

Legislative background

Section 4 of the Act sets out the activities for which licences are required, which includes 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 transmission cables linking offshore wind farms are licenced through a competitive regime. The transmission assets are typically built by the offshore wind developer in parallel with construction of the windfarm array. Once complete, Ofgem runs a tender to select the OFTO who will own and operate the transmission assets for a specified period. The OFTO will then pay the generator the transfer value (determined by Ofgem through an open methodology) and will take ownership and responsibility for the operation of the transmission asset in return for a fixed revenue stream for the specified period. 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 over subsequent tender rounds for assets estimated at a value in excess of £5 billion. 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 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.

EAOL was granted an exemption from the requirement to hold a transmission licence in 2021 to allow three months additional time for the transfer to an independent OFTO, to account for the acute impacts of the COVID-19 pandemic as set out in our previous consultation.²

Three other windfarms were granted exemptions at the same time. These other windfarms were granted exemptions covering a period of up to 12 months, which explicitly erred on the side of caution considering the uncertainties over how the COVID-19 pandemic would affect the process in the future. The 3-month exemption for EAOL reflected the view from the generator that an additional 3 months would provide sufficient time for the transfer to conclude. However, in granting this exemption, which expired on 13 December 2021, we noted in the Explanatory Memorandum to Parliament that there remained concerns about possible further impacts of the COVID-19 pandemic should there be a “second wave” and that Government would be open to considering the need to grant a further exemption.

Since the Secretary of State granted the previous exemption, EAOL have discovered technical issues with the cable installation that need to be remedied before the transfer process can continue. In their exemption request, EAOL note that the restrictions on the movement of personnel due to COVID-19 led to delays in starting the due diligence work ahead of the transfer, in turn resulting in late discovery of these issues.

The causes of the delay in being able to complete the transfer of the asset to the preferred bidder OFTO can therefore be broken down into two contributing factors:

1. Ongoing impacts of the COVID-19 pandemic.

- Further restrictions related to the ongoing COVID-19 pandemic came into force after EAOL’s previous exemption came into force in October 2020, which were not known about at the time that the initial 3-month exemption came into force.

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

² <https://www.gov.uk/government/consultations/transmission-licence-exemptions-for-offshore-wind-farm-generators-affected-by-covid-19>

- Restrictions on the number of personnel able to travel to the offshore substation to prepare for offshore site visits. This delayed site visits by around 3 months.
- Delayed rectification of a number of technical issues.
- Delays to the due diligence process resulting in material commercial issues being delayed, including the late discovery of the cable issue (referred to below).
- Disruption to normal working practices and patterns with much less in-person engagement.

2. Onshore cable burial issue:

In summer 2021, EA1 discovered technical issues relating to its onshore cables which requires remedial works in order to allow the transfer of transmission assets to the preferred bidder OFTO to proceed. These works will rely on the input of multiple third parties, including relevant local authorities, landowners and contractors, and is expected to require some physical remedial work.

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:

- 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.

In 2019, the SoS for BEIS granted four of the five projects in tender round 5 an exemption from the requirement to hold a transmission licence due to delays in the tendering process outside of the developers' control. In 2020, the SoS for BEIS granted exemptions to four projects due to delays to the transfer process as a result of the COVID-19 pandemic and response

measures. These exemptions were granted on the basis that in each instance the delays constituted exceptional circumstances.

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 in relation to electricity conveyed by distribution systems or transmission systems. Consideration of consumers' interests includes interests in: reduction of emissions of targeted greenhouse gases and security of supply of electricity to consumers. The SoS shall carry out his functions under Part 1 in the manner which he considers is best calculated to further the principal objective, wherever appropriate by promoting effective competition, and must have regard to the interests in section 3A(2), including the need to contribute to the achievement of sustainable development.

In the absence of compelling reasons to the contrary, we consider it to be in the public interest for offshore wind generation to be transmitted to shore so that it can reduce the overall level of greenhouse gas emissions from the power sector and contribute to a diverse and secure supply of electricity. We are satisfied that there are no material distortions to competition or unfair economic advantage to be gained from the granting of an exemption. Although we consider it is the responsibility of EAOL to manage technical issues relating to its onshore cables, we think that COVID-19 has continued to have a material impact on the transfer process.

Providing an exemption would directly support future reductions in greenhouse gases by demonstrating to investors and developers that, in the face of exceptional circumstances, offshore windfarms can continue to transmit low-carbon power to the grid for the limited time required for the transfer of transmission assets to be completed. 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.

In determining the length of any exemption the SoS will consider the delays experienced and expected by EAOL, the need to maintain sufficient momentum to complete the transaction in a timely fashion, and the contribution that EAOL will make to security of supply of electricity over the next winter period if it is fully operational.

It has been noted that the deadline for transfer is perceived to create an asymmetry in the commercial negotiations between parties, and that extending the time for a generator to transfer assets could be seen as beneficial to the generator covered by an exemption compared to others both past and future. However, given the significant impact of COVID-19 on the ability of EAOL complete the transaction, a time-limited exemption is not expected to materially alter any existing asymmetry in negotiations.

Therefore, in line with the Government's efforts to support the economy and businesses in the light of the COVID-19 national emergency, the SoS is minded to use the powers granted under section 5 of the Act to grant the project a time-limited exemption from the requirement to hold a transmission licence. This is in response to the truly exceptional circumstances of COVID-19.

Terms of proposed exemption

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

- **Strict time limits:** The duration of the proposed exemption will be strictly time limited. An expiry date will be included in the exemption order and the exemption will automatically expire if the transfer to the OFTO is completed before that date. We are considering two options for duration of the proposed exemption. These options are discussed in more detail below.
- **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 exemption to be subject to conditions. EAOL will still be required to comply with its obligations under its generation licences meaning it will continue to adhere to the codes of conduct, industry agreements and behavioural conventions.

Options for the duration of the exemption

We note that there are economic incentives on EAOL to complete the transfer as soon as possible and would therefore still expect EAOL to work towards a transfer by 13 December, and to report to BEIS on progress towards this. However, we invite views on two possible expiry dates of the exemption. In either case any proposed exemption would expire upon transfer of the transmission asset to the preferred bidder OFTO, if the transfer of the transmission asset completed before the expiry date given in the proposed exemption.

- Option A. An exemption expiring on 13 December 2022, 12 months after the expiry of the previous exemption granted to EAOL in 2020. EAOL has presented a timeline that envisages a transfer before the 13 December 2022.

Transmission Licence Exemption: East Anglia One Limited

- Option B. An exemption expiring on 13 April 2023, 16 months after the expiry of the previous exemption granted to EAOL in 2020. This option allows a short period of additional time beyond the timeline presented to us to ensure that any incremental delay to the process does not result in a shut-down scenario for EAOL over the winter period.

Considering the risks to consumers associated with a shut-down scenario that could result in EAOL not contributing to security of supply over the next winter period, we are minded to focus on option B. However, we remain open to all responses from interested parties on each of the options presented and on the proposed exemption in general.

This consultation is available from: www.gov.uk/government/publications/electricity-transmission-licence-exemption-east-anglia-one-limited

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