



Department for
Business, Energy
& Industrial Strategy

Notice of Proposed Transmission Licence Exemption

for Triton Knoll Offshore Wind Farm Limited
(TKOWFL)

Closing date: 18 August 2022

July 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 Triton Knoll Offshore Wind Farm Limited (TKOWL).

Consultation details

Issued: 21 July 2022

Respond by: 18 August 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) (Triton Knoll) (England) Order 2022.

Summary

This consultation seeks views on our proposal to make an exemption from the requirement to hold a transmission licence for the Triton Knoll offshore wind farm owned and operated by Triton Knoll Offshore Wind Farm Limited (TKOWL).

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:

- Triton Knoll Offshore Wind Farm Limited, Windmill Hill Business Park, Whitehall Way, Swindon, SN5 6PB (company number 03696654), in respect of the Triton Knoll offshore wind farm, consisting of 90 x 9.5MW turbines with an overall capacity of up to 857MW, located in the Greater Wash area off the east coast of England, approximately 20 miles off the coast of Lincolnshire and 28 miles from the coast of north Norfolk.

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.

On 19 November 2021 TKOWL suffered a cable fault on one of the subsea export cables. A repair has been made and the windfarm resumed full operation in May 2022. The damaged section of cable is being analysed to identify the cause of the failure (Root Cause Analysis – RCA) although early indications are that it is localised damage caused during the installation and that other sections of cable are unlikely to suffer from similar issues. The RCA is being conducted and full results are expected in August 2022. Early results from the testing for the RCA suggest that the fault is an isolated issue related to a single cable joint. However, as the RCA report will be critical in determining the insurance cover for the export cables, it is not

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

possible to progress commercial negotiations between TKOWL and the OFTO it has been finalised. The cable fault has led to a delay of approximately 6 months to the commercial negotiations, and means that it is not possible to complete the transfer ahead of 23 October 2022, which is the end of the 18-month commissioning period in the Act.

TKOWL have requested an exemption from the requirement to hold a transmission licence for a period of 12 months after the commissioning period ends (October 2023). TKOWL have also presented to us a timetable that works towards completing the transfer in April 2023. A full assessment of the affected section of the cable has yet to be completed, but early indications are that it is an isolated issue affecting just one cable joint. However, we also understand that the outcome of RCA may result in further complexities to the commercial negotiations between the parties that could extend the process to complete the transfer beyond what might normally be expected for an OFTO transfer and beyond the April 2023 timetable.

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 appropriate.

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.

In 2022, the SoS for BEIS granted a further exemption to East Anglia One Limited to account for a further delay to the transfer process. 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 exceptional circumstances of the COVID-19 pandemic and its ongoing effects.

The Secretary of State's Principal Objective

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.

If the SoS were not to provide an exemption, we would anticipate that TKOWL would cease operation after 23 October 2022, as to continue transmission of electricity without a licence or an exemption would be unlawful. If this situation continued for an extended period (i.e. more than a few weeks), the OFTO would likely require 3 months of normal operation after the windfarm is re-energised to be satisfied that there were no residual technical issues associated with the shut-down and to finalise the transfer of the transmission asset. Lawful transmission of electricity after 23 October 2022 to demonstrate the asset in this way would require an exemption to be granted first. The deadline created by the 18-month commissioning period is to ensure a timely transfer to the OFTO so that the benefits of the regime can be realised as quickly as possible. It would therefore be unsatisfactory if OFTO transfer process were to be extended well beyond the timeline that TKOWL has presented to us if an extended cessation of transmission occurred. This would delay the benefits to the consumer that can be expected as a result of the OFTO regime.

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 would be no material distortions to competition or unfair economic advantage to be gained if an exemption were granted.

Providing an exemption would directly support future reductions in greenhouse gases by demonstrating to investors and developers that 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 climate change commitments.

In determining the length of any proposed exemption, the SoS will consider the delays experienced and expected by TKOWL, the need to complete the transaction in a timely fashion, and the contribution that TKOWL will make to security of supply of electricity and the reduction in costs to consumers as a result of displacing more expensive forms of generation.

Although the cable has now been fixed and normal operations have resumed, the RCA into the cause of the failure is only expected in August 2022. It will not be possible for the commercial negotiations to start in earnest until this report has been finalised. It is possible that the detail of this report increases the complexity of the negotiations beyond what is considered normal for OFTO transfers. Increased complexity will lead to increased time to conclude the transfer and it is therefore appropriate to allow a degree of contingency to allow for this beyond the proposed timeline presented by TKOWL (completion by April 2023). As such, we propose granting an exemption of 9 months from the end of the commissioning period. We do not consider that it would be appropriate for the proposed exemption to last for 12 months, as TKOWL has requested, because we consider that 9 months would provide the appropriate length of time to complete the transfer and is proportionate in the circumstances.

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 delays caused by this issue can be reasonably quantified, we do not think a time-limited exemption with a duration that reflects the delay experienced and the potential for further consequent delays can be expected to materially alter any existing asymmetry in negotiations.

Therefore, in line with the Government's efforts to reduce greenhouse gas emissions, increase domestic production of electricity and reduce reliance on energy imports, the SoS is minded to use the powers granted under section 5 of the Act to grant TKOWL a time-limited exemption from the requirement to hold a transmission licence.

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 would be included in the exemption order and the exemption would automatically expire if the transfer to the OFTO is completed before that date. We think

that a proposed exemption that would run for 9 months beyond the end of the commissioning period is appropriate to account for the delay to the process that has resulted from the cable fault and the possibility of additional complexity in the commercial negotiations following the RCA being prepared. This proposed 9-month exemption is intended to allow TKOWL and the OFTO sufficient time to conclude commercial negotiations ahead of a transfer of the transmission asset.

- **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. TKOWL 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. We note that there are economic incentives on TKOWL to complete the transfer and expect TKOWL to work towards a transfer as soon as possible and to report to BEIS on progress towards this.

We invite views from interested parties on a proposal for the SoS to use his powers under the Electricity Act 1989 to grant an exemption from the requirement to hold a transmission licence to TKOWL for a period of 9-months from 24 October 2022.

This consultation is available from: www.gov.uk/beis

If you need a version of this document in a more accessible format, please email enquiries@beis.gov.uk. Please tell us what format you need. It will help us if you say what assistive technology you use.