

The practical legal consequences of the new offshore regulatory regime

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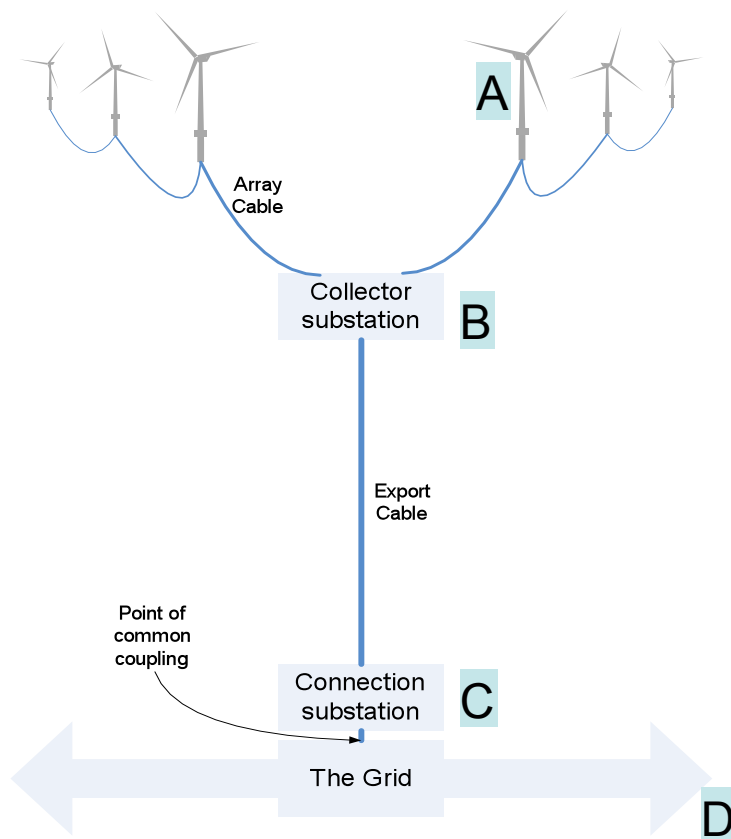
Introduction

- **The legal background – where is the boundary between a generating station and a transmission network?**
- **Overview of the new regime**
- **Discuss impact of new regime on Round 3 projects, including:**
 - **Tender process**
 - **Consents and land rights**
 - **Zonal development**
 - **Project financing**

The legal background

- **Activities of generating, transmitting, distributing and supplying electricity without a licence are prohibited by Electricity Act 1989**
- **Transmission/distribution defined as:
"transmit/distribute electricity... by means of a system which consists wholly or mainly of high/low voltage cables and electrical plant"**
- **Generating station is not defined**
- **No clear dividing line between generating station and network in legislation**
- **Industry agreements set boundary**

Grids and Grid Connections



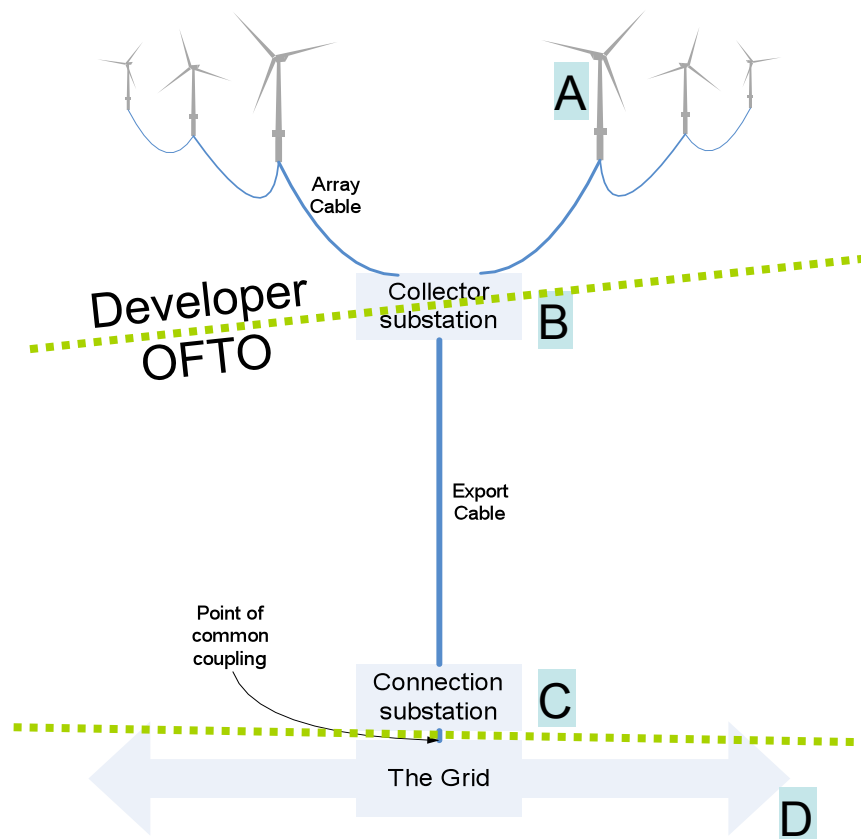
Grid connection – dedicated to one wind farm

Grid - serves all users

Can achieve compliance in many ways at A, B, or C

Ideally for engineering, consider grid connection as part of the wind farm and optimise as one

The new offshore transmission regime



For engineering grid connection dedicated to wind farm could be considered together

EC and UK legislation require unbundling of transmission and generation

UK OFTO licensing requires separate ownership

The new offshore regulatory regime

Key features of the new regime:

- Separation of ownership of generating station and offshore transmission system
- New transmission licences for offshore transmission owners (OFTOs)
- A transitional regime for existing projects (i.e. have achieved financial close) and an enduring regime for future projects
- Developer only to have contract with NGET, not with OFTO
- Annual windows for applications for connections
- Competitive tendering for OFTO to own and operate offshore transmission
- Each offshore transmission licence holder to be given a price controlled licence for at least 20 years
- New regime to go-active April 2009 and go-live April 2010

No OFTO?

- **No OFTO of last resort under enduring regime**
- **Risk of project delay to next tender window**
- **Developer can bid to be OFTO:**
 - **Business separation rules will apply**
 - **Developer may not have skills to act as OFTO**
 - **No guarantee Developer will win tender**

Consents and land rights

- **Developer has to obtain planning consents and offshore cable route**
- **Developer to transfer rights to OFTO in exchange for payment of “efficiently incurred costs”**
- **Role of transfer scheme under Energy Bill**
- **Incentive on OFTO to improve design of connection?**
- **Timescale for involving OFTO**
- **Availability of CPO rights re onshore cable route**

No contract with OFTO

- **Developers will have contracts with NGET, not the OFTO:**
 - **Developer has NGET connection arrangements**
 - **Developer pays TNUOS charges to NGET**
- **Payment for late delivery of connection to OFTO**
- **Unavailability of connection following energisation**
 - **Asymmetrical incentive payments**
 - **Loss of licence**
 - **CUSC remedies**
- **Insolvency of OFTO**

Zonal Development

- **What connection arrangements should be made for multiple projects in one zone?**
- **Projects may be developed sequentially**
- **Ability to install additional capacity**
- **Impact on revenue stream for OFTO and costs for project SPVs?**
- **Risk of default by single project?**
- **Stranded asset risk**

Impacts on Project Financing

- **For Developer:**
 - **Dependent on OFTO performing for revenue**
 - **Will OFTO be creditworthy?**
 - **Technology risk on offshore substations**
- **For OFTO:**
 - **Insolvency leads to special administration scheme or loss of licence**
 - **Risk of Developer default**
 - **Technology risk**
 - **Interaction with new offshore cables not related to Round 3**

Conclusion

- **New regime is complex but has been subject to extensive consultation**
- **Some issues still to be resolved**
- **Developers will have to adapt previous models**
- **Advisable to include possible OFTO in discussions at early stage**
- **Regime may be changed to accommodate future UK infrastructure**
- **How does this tie-in with a “supergrid”?**

Bond Pearce