

Call for Evidence: Swansea Bay Tidal Lagoon: potential support for the project through the CFD mechanism

Response from Citizen's Advice

February 2015

About Citizens Advice

1.1 The Citizens Advice service provides free, independent, confidential and impartial advice to everyone on their rights and responsibilities. It values diversity, promotes equality and challenges discrimination.

1.2 The service aims:

- to provide the advice people need for the problems they face
- to improve the policies and practices that affect people's lives.

1.3 The Citizens Advice service is a network of nearly 400 independent advice centres that provide free, impartial advice from more than 3,500 locations in England and Wales, including GPs' surgeries, hospitals, community centres, county courts and magistrates courts, and mobile services both in rural areas and to serve particular dispersed groups. In 2012/13 the Citizens Advice service in England and Wales advised 2.3 million people on 6.6 million problems.

1.4 Since April 2012 we have also operated the Citizens Advice Consumer Service, formerly run as Consumer Direct by the OFT. This telephone helpline covers Great Britain and provides free, confidential and impartial advice on all consumer issues.

1.5 In the last four quarters Citizens Advice Bureaux have dealt with 84,000 enquiries about fuel debt, while hits to the energy section of our website doubled in October and November, the period during which suppliers announced their price increases last year. Calls to the Citizens Advice Consumer Helpline seeking advice about energy doubled in the same period.

1.6 In April 2014, Consumer Futures completed its transition into Citizens Advice. Consumer Futures was the statutory consumer body for Energy in Great Britain.

Response to the consultation questions

Do you agree that this document provides transparency on the process for applying for and negotiating a CFD outside the generic CFD allocation process for a tidal lagoon at Swansea Bay? Any CFDs signed following a Secretary of State direction to offer will be published once completed, including the strike price and the reference price, having redacted any other commercially sensitive information.

1. The consultation document makes clear that the process will not be transparent. The process of bilateral negotiations between government officials and developers is inherently opaque. Negotiations will be carried out under sweeping confidentiality terms, that prevent rigorous public scrutiny of the terms of the contract until after it has been signed off, at which point it will be too late to object.
2. The consultation document fails to make clear the process by which the government will decide whether or not to award the contract. Paragraph 5.3 starts with the pledge to assess the contract by whether “the project could be cost-competitive on a broadly comparable bases relative to other options for delivering low carbon power”. However, it then goes on to add the vague and subjective qualifier “or otherwise contribute to the delivery of a socially cost effective electricity generation mix”. How this other contribution to a socially cost effective energy mix is to be defined, if distinct from its cost relative to other generation technologies, is unknown. Without a clear indication of what criteria, beyond cost, the government intends to use to appraise the project, it is impossible to be confident that the process will yield the best outcome for the billpayer.
3. Even after publication of a completed contract, it may be impossible to assess the true burden on consumers. The most prominent bilaterally negotiated Contract for Difference (CfD), for the Hinkley Point C nuclear facility, remains shrouded by redactions that have made it impossible to assess its total costs. The Hinkley contract still conceals the longstop date, which is supposed to guarantee the billpayer in the event of construction overruns, and the terms of two different triggers for profit-sharing between consumers and the Hinkley developers. This is the case *after* a European Commission investigation which forced some new information into the public domain. It is clear that, had the government’s hand not been forced by the EU, much more of the content of the Hinkley contract would still be secret. It is impossible to have confidence in the bilateral negotiation process in the wake of such conduct. Only with full disclosure of all the terms and conditions, before the contract is concluded, can the consumer have any confidence that what they are being asked to support is reasonable and affordable.
4. We note that the National Audit Office is currently conducting an investigation into the Hinkley Point C deal that will “cover the Department’s commercial approach to securing this deal and the proposed terms of the contract, to report to Parliament on value for money and the resulting risks which the Department must manage.” The approach proposed for the Swansea Bay Tidal Lagoon appears to have considerable similarities with that adopted for the Hinkley Point C deal. Given the NAO’s role in ensuring value for money and accountability in Government procurement we would take more comfort if the approach adopted with the

Swansea Bay Tidal Lagoon learnt from the lessons that the NAO identifies. We recognise this creates a potential timing problem, as the NAO is unlikely to publish until the Hinkley deal is finalised, and that matter appears at risk of further delay.

5. We note that the NAO has already investigated the approach taken with other bilaterally negotiated CfDs. Its June 2014 report, 'Early contracts for renewable electricity', was highly critical of the approach adopted, noting that "committing so much of the available funding through early contracts, *without competition*, has limited the Department's opportunity to secure better value for money" [emphasis added]. We see little evidence in these proposals that DECC has learned from the NAO findings; it appears determined to 'stay the course' on the ad hoc, behind-closed-doors approach that NAO quite rightly criticised. It is imperative for consumer well-being that DECC foster competition between low carbon technologies and that it concentrates its efforts on bringing forward the most cost-effective projects. Public commentary suggests that this may be an extremely expensive project that seeks a far longer support period than other low carbon technologies¹. With finite funding available through the Levy Control Framework, we would consider it wholly unacceptable if considerably lower cost projects in alternative technologies that are subject to genuine competition found themselves frozen out as a result of determination to bring forward this project.
6. We recognise the desire to take calculated gambles on immature technologies to see what can be learnt; whether there is a potential that they could mature and be cost-effective in the future. But we are acutely uncomfortable with DECC making these gambles through bill levy funding. Energy policy will only be sustainable if it is affordable and retains public confidence. The prospect of this is materially reduced where policymakers consciously choose higher cost options where lower cost ones are available. We note that funding has been made available for carbon capture and storage demonstration projects through taxation and EU funding, rather than UK bill levies, and strongly encourage you to develop equivalent arrangements for tidal if you wish to bring forward projects at a strike price far in excess of that required for more mature technologies.

Are there any similarly developed tidal range projects, of sufficient scale that could be in a position to compete with the Swansea Bay Tidal Lagoon as a FOAK project for this new industry, in the near future?

7. We are unaware of any tidal range or lagoon projects that are in a comparable position of advancement to be able to compete with Swansea Bay at this time.
8. While this may appear to justify the use of a bilateral negotiation process, it should also give government negotiators grounds for scepticism about the potential for significant expansion within the tidal sector. We expand on this in the response to the next question.

The Government considers that there may be circumstances where competition is not possible or does not represent the most cost effective option for some low carbon technologies. Do you agree with our view that, in the case of a FOAK project, consideration of the Swansea Bay lagoon project through a bilateral

¹ A series of newspaper articles have suggested that a strike price of £168/MWh may be sought for 35 years, based on a report prepared for the developers by the consultancy Poyry. This is approximately four times the current wholesale price. It is also nearly double the administrative strike price of other high volume technologies such as onshore wind or large scale photovoltaics for delivery before the end of this decade, both of which would only receive 15 years support.

negotiation process is appropriate? We would however seek to introduce, where feasible, a competitive process for allocation of CFD for subsequent lagoons, with the aim of moving to technology neutral competitive allocation approaches across all low carbon technologies as soon as is practical and effective.

9. We do not dispute that there may be some circumstances where resorting to bilateral negotiation is unavoidable. However, the government should try to minimise the occasions in which bilateral negotiating procedures are used. In the absence of other compelling grounds for investment in a particular facility, the inability for a project to enter into open and competitive bidding processes should be considered *a priori* grounds for rejection of a CfD.
10. Investment in projects that are not immediately cost-effective low-carbon generating sources are only justified in cases where the additional research and development premium creates useful public value. To ensure the most cost-effective use of the limited resources available to address climate change, this benefit from innovation funding should be tightly defined on the basis of two main criteria:
 - a. That the technology in question has scope for significant **long-term global climate change mitigation**, and
 - b. That the specific investments can make a material difference to **global-long term reductions in cost** of the technology.
11. It is far from clear that the Swansea Bay tidal project meets either of these criteria. The project's developers have already stated that they do not anticipate any technology learning to come about as a result of the investment.² The more cost-effective (and hypothetical) future projects they outline are cheaper solely because they would involve accessing larger sites, rather than because of any improvement to what is already a well-understood technology.
12. Since Swansea Bay cannot be considered a contribution to any global improvement in the technology, nor to tackling climate change as a global phenomenon, it can only be considered in terms of UK domestic decarbonisation, and specifically the ability to meet the carbon budgets established under the Climate Change Act. It is also unclear that the project can make a material contribution to this, much more limited objective. Speculation from the developers that costs could eventually come down are predicated on access to much larger future sites. These sites have significant obstacles beyond the cost of the tidal lagoon technology - securing planning permission for the larger sites (former DECC chief scientific advisor David MacKay identified The Wash and Morecambe Bay as the two most promising sites of significant scale) will be far more complicated than for Swansea Bay.³ There can be no assurance that expansion beyond Swansea Bay is even possible; investment approval cannot be predicated on the belief that another two lagoons can be brought forward, only reaching a remotely competitive price point with the third lagoon. The case that Swansea Bay is justified because it will enable further future larger tidal lagoons to be built, which will make a material contribution to UK decarbonisation, should be heavily discounted.
13. Under the Levy Control Framework (LCF), there is competition for resources even if it is not directed through the formal auction process. Given limited budgets under the LCF, money which is spent on the Swansea Bay project is taken from the same pot which other CfD

² Poyry; *The Levelised Costs of Power from Tidal Lagoons*;

http://tidallagoon.opendebate.co.uk/files/TidallLagoon/tidallagoonpower_levelisedcoststudy_v7_0.pdf

³ David MacKay; *Sustainable Energy Without the Hot Air*; http://withouthotair.com/c14/page_85.shtml

applicants wish to access. If the LCF is fixed, spending on more expensive projects reduces the total volume of low-carbon power that can be purchased with the LCF. And if the LCF is expanded, the cost to the consumer of the whole low-carbon transition is increased. Either scenario is problematic, and reduces the chances of our ability to meet climate change objectives at costs that are acceptable to the consumer.

14. The commendable purpose of both the LCF, and the recently introduced auctions for CfDs, was to focus government's attention on the most cost-effective technologies to meet long-term climate objectives. Devoting (considerable) resources to expensive technologies absent any wider technology development expectation simply cannot be justified with the limited funds available to address climate change. Funding Swansea Bay (and any other projects of similar expense) will squander valuable resources. It is a clear example of the kind of wastefulness that the LCF and auctioning of CfDs were intended to eliminate.

Any potential future negotiation would be without prejudice to a future planning decision on the project. Any decision to direct the LCCC to offer a CFD would be subject to strict value for money considerations, the funds available within the LCF at the time of a decision and obtaining State aid approval from the EU Commission. In respect of value for money, do you have any views on how we might assess the considerations set out? Are there any other considerations you think we should be taking into account in deciding whether to offer a CFD?

15. The case that Swansea Bay could meet "strict value for money considerations" looks very weak. The prices being quoted by the developer of £168/MWh exceeds every technology for which strike prices have been published by DECC, with the exception of the very experimental (and small scale) tidal stream and wave technologies.⁴ For a relatively mature technology (if not industry) this is appalling value for money. Unlike those technologies, it appears from media briefings given by the developers that they are also seeking a much longer contract duration, putting the consumer on the hook for 35 years of guaranteed prices, rather than the more modest 15 years being offered to other technologies.⁵ Such long term contracts are against the interests of consumers - especially when many of their critical terms are kept secret - and should be avoided wherever possible.
16. The developers appear to be basing their case on the premise that, if allowed to build another two lagoons after Swansea Bay, they will be able to reduce their required strike price down to £92/MWh - in other words putting it roughly level with the cost agreed for the first nuclear reactor at Hinkley Point C. Putting aside the speculative nature of these cost reductions, even if it were guaranteed that they could be achieved, the best possible case put forward is that at some point in the future they could reach a cost level that can already be matched or beaten by other technology choices⁶. Those competitor technologies will likely see their costs degress

⁴ Poyry; *The Levelised Costs of Power from Tidal Lagoons*;

http://tidallagoon.opendebate.co.uk/files/Tidallagoon/tidallagoonpower_levelisedcoststudy_v7_0.pdf

⁵ John Murray Brown and Jim Packard; 'Investors back UK's first tidal lagoon power project' in the *Financial Times*; <http://www.ft.com/cms/s/0/3a7657d0-ac5d-11e4-af0e-00144feab7de.html#axzz3RF4fck2X>

⁶ DECC's administrative strike price for onshore wind is £90/MWh in 2017/18. Large scale PV is slightly higher at £100/MWh in 2018/19, but the sharp degression in its costs suggests one could have a high degree of confidence that by the time of any nth-of-a-kind tidal project coming online it could be delivered at a much lower strike price than £92/MWh. Because the established technologies are subject to auctioning, projects may come in below the administrative prices in any event.

further - and even if they did not, that they can be delivered for similar prices now is known, while in the case of tidal is speculative.

17. It is also very concerning that ministers have given public statements to the effect that they are already strongly inclined to award the project a CfD.⁷ Setting aside the lack of wisdom in such a costly decision, it also suggests that the process of consultation is not being entered into with an open mind. If the threat of walking away is not both genuine, and perceived to be genuine, the chances of achieving value for money are reduced. This is not a route to good policy-making, and further reduces confidence that the Swansea Bay project is being assessed with anything close to the required rigour.
18. The duration of support will be an important consideration. Most technologies are being offered 15 year contracts, while 35 years has been offered to nuclear, in part because the economic lifespan of nuclear generation projects is longer. You comment that Swansea Bay Tidal Lagoon "has a life expectancy of over a hundred years" and this, plus previous public commentary on the project, may suggest that it will also seek a long term contract - perhaps 35 years. It is important to note that while the life expectancy of generators varies according to generation technology, the life expectancy of consumers does not. While power provided by the project may be very cheap once the CfD has expired, that expiry date may be around 40 years away if a 35 year contract is struck (allowing for construction time). Until that time, it may be providing extremely expensive energy - far above the wholesale price, and - critically - far above the price of other low carbon technologies. Sustainability requires you to act in the interests of both current and future consumers. Meeting the needs of the former becomes harder if you lock-in extremely high strikes prices for several generations. While other technologies such as onshore wind and PV may also receive strike prices above the wholesale price, today's consumers will be able to see a relatively rapid return on that funding in their lifetime as depression rates are high and contracts are relatively short. If awarded a long contract, and with the potential for learning-from-doing being limited for reasons highlighted previously, this lagoon project may compare unfavourably. Duration is also pertinent in ensuring that like-for-like comparison of costs is possible. Choosing a bespoke contract length complicates comparison and makes it harder to ensure public accountability that the most cost effective options are being chosen.
19. Repeatedly through the development of the EMR package, we, our predecessor organisations Consumer Focus and Consumer Futures and other consumer organisations such as Which? have called for all aspects of CfDs that may materially affect future consumer liabilities to be made public. This has not happened in the case of other bespoke CfD deals like the Hinkley project where key contractual terms are either undisclosed or redacted. This was, is, and will remain, wholly unacceptable. Commercial confidentiality is invariably cited as the reason for

⁷ In December the BBC reported Ed Davey as saying of the Swansea Bay project that, "Tidal energy is a huge opportunity for Britain. Tidal lagoons alone could provide up to 8% of our power needs, replacing foreign fossil fuels with clean, reliable home-grown electricity. That's why we're showing investors and developers that we're serious about tidal lagoon potential and have started in-depth discussions for what could become the world's first tidal lagoon," and Welsh Secretary Stephen Crabb saying it could give a "massive boost" to the Welsh economy, creating thousands of jobs. "Wales is already home to some of the most cutting edge companies in the world and the country is uniquely placed to pioneer tidal power, I am a strong supporter of this project and I have long been making the case to my Cabinet colleagues that Welsh innovation should be supporting the next generation of low-carbon technology." BBC News; 'Swansea Bay tidal lagoon given UK government boost'; <http://www.bbc.co.uk/news/uk-wales-south-west-wales-30283203>

non-disclosure. This is irrational: the counterparty to these deals *is* the consumer, they bear the liabilities. It is hard to think of another circumstance where the counterparty to a contract is forbidden from knowing what is in that contract. Pursuing a similarly opaque approach with other one-off CfDs is likely to result in a loss of public trust in the department. We would caution you very strongly against a repeat of the Hinkley process. It would be hard for us to overstate our concern at the approach that was followed in reaching that deal and it is not clear to us that what you propose shows any cognisance of how unhappy many of your stakeholders were with that process, or any desire to tackle the problems that have caused concerns.

20. It is a concern that this process appears to be mirroring many of the problems which occurred during the Hinkley Point C negotiations - an opaque negotiating process, lack of scrutiny of cost effectiveness, and excessive politicisation of the decision in the form of political pressure to approve a deal. A second instance of a major project going ahead with the same failures will undoubtedly create expectations that this is the new way of doing business. This risks leading to further boondoggles which cannot meet sensible cost-effectiveness criteria, but are approved on the strength of indeterminate 'other criteria' based largely on skilful lobbying and political friends. This has worrying implications for the consumers who will be obliged to pay for it all. If it becomes clear that money being spent on climate change mitigation is being spent so profligately, it will weaken public support for the investments that are needed to decarbonise the economy in the next few decades.
21. In conclusion, the process being used to assess Swansea Bay has significant weaknesses. Given the huge cost and lack of countervailing benefits of the project, the outcome of the process should be to reject the application unless there is significant change from the prices and benefits currently in the public domain.