

Decision on Anticipatory Investment and Implementation of Policy Changes

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On 14 April 2022 we launched a consultation seeking stakeholder views on our minded-to position for the allocation of anticipatory investment (**AI**) in the Early Opportunities workstream of the Offshore Transmission Network Review (**OTNR**) and how we intended to implement changes to our policy on AI (**our 2022 Minded-to Consultation**).¹

This document summarises the responses to our 2022 Minded-to Consultation and provides our final policy positions. We have also set out the next steps for the Early Opportunities workstream and indicative timelines for implementation.

¹ [Offshore Coordination - Early Opportunities: Consultation on our Minded-to Decision on Anticipatory Investment and Implementation of Policy Changes | Ofgem](#)

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1. Executive Summary

In our Minded-to Consultation, we consulted on policy changes to allow for AI capex (capital expenditure) recovery for projects pursuing coordination in the Early Opportunities workstream of the OTNR. This decision supports our ambition to enable investment in low carbon infrastructure at a fair cost for GB consumers as outlined in our Forward Work Programme published on 29 March 2021² and supports Action 3 of Ofgem’s Decarbonisation Action Plan published on 3 February 2020 to have more effective coordination in the delivery of low-cost offshore networks.³

The objective of this change in policy is to reduce the risk associated with AI for developers and reduce the barriers to coordination. The changes in our 2022 Minded-to Consultation to help achieve this objective included:

- Allocating some of the risks and costs of AI between consumers and developers.
- Introducing an early-stage assessment for developers.
- Inviting National Grid Electricity System Operator (**NGESO**) to bring forward a Connection and User of System Code (**CUSC**) modification proposal for the Authority’s approval to extend appropriate user commitment arrangements to new offshore transmission assets which provide offshore transmission works for more than a single user.

The key outcomes from this decision are as follows:

- We are upholding our minded-to position on the allocation of AI risk between the consumer and later user(s) of shared transmission infrastructure developed under the Early Opportunities workstream.
- We will introduce an early-stage assessment process for projects pursuing coordination in the Early Opportunities workstream.
- We will extend user commitment arrangements to the potential later user of AI funded offshore transmission infrastructure.

Following this decision, we will be consulting on the early-stage assessment process for projects incurring any AI expenditure. We will shortly be engaging with stakeholders on the design of this assessment.

² [Forward work programme 2021/22 | Ofgem](#)

³ [Ofgem’s Decarbonisation Action Plan | Ofgem](#)

2. Introduction

Background

The OTNR and Early Opportunities

- 2.1. The OTNR was launched in July 2020 with the objective of ensuring that transmission connections for offshore wind generation are delivered in the most appropriate way, considering the increased ambition for offshore wind to achieve net zero. In doing so, the OTNR aims to find the appropriate balance between environmental, social and economic costs.
- 2.2. The Ten Point Plan for a Green Industrial Revolution published in November 2020 set out an ambitious target of 40GW of offshore wind by 2030.⁴ In the new British Energy Security Strategy published in April 2020 the previous offshore wind target was raised to an ambition of 50GW of offshore wind by 2030.
- 2.3. The Early Opportunities workstream of the OTNR is seeking to enable developers of in-flight projects to pursue greater coordination and thereby realise the benefits of coordination in the near future.⁵ The intent is to achieve this by leveraging flexibility within the existing regulatory framework or by making near-term changes to it. Within this workstream, the decision to pursue greater coordination is at the discretion of the relevant developer(s), rather than being mandatory.

Anticipatory Investment in Early Opportunities

- 2.4. The existing framework for offshore wind development incorporates competition between developers, including seabed leasing rounds and Contracts for Difference (CfD) allocation rounds. Although this framework has successfully driven cost reductions and timely delivery of offshore wind developments, due to the competitive nature of this framework, developers have not been incentivised to undertake AI on behalf of future projects. Similarly, under our existing cost assessment process, where

⁴ [The Ten Point Plan for a Green Industrial Revolution](#)

⁵ The NG ESO's Offshore Coordination Phase 1 report demonstrated that increased coordination in the connection of offshore projects has the potential to deliver consumer savings as well as environmental and social benefits. [The final Phase 1 report in our Offshore Coordination project | National Grid ESO](#)

AI is undertaken by a developer to support the later connection of specific offshore wind project(s), the AI risk is allocated to the developer(s).

- 2.5. Factors such as these have disincentivised offshore wind developers from undertaking additional development risks as developers do not wish to be at a competitive disadvantage. This is particularly evident for risk associated with offshore wind developers making AI in offshore transmission infrastructure to support the later connection of other offshore development(s).
- 2.6. Through industry engagement and public consultation, we have identified that the management of AI risk is potentially a material barrier to greater coordination of projects in the Early Opportunities workstream. Our final decision is intended to address this barrier, enabling developers to undertake AI to deliver beneficial coordination between projects while managing and mitigating the allocation of AI risk to consumers.
- 2.7. For the purposes of this workstream and our decision, we refer to the developer making the investment in the shared asset as the 'initial user'. We also use the term 'anticipatory investment' or 'AI' to refer to investment in offshore transmission infrastructure by the initial user, to support the later connection of a specific offshore development or developments. This is investment which goes beyond the needs of the initial user's immediate offshore development(s). 'Highly anticipatory investment' is excluded from the scope of our decision. This would be expenditure for an unknown potential project(s). Given the limited number of projects potentially affected by our decision, and the lack of a centralised design in this workstream, we consider that including highly anticipatory investment within the scope of our decision would not be appropriate. We recognise that highly anticipatory investment may be within the scope of decisions made with respect to the other OTNR workstreams.

Our previous consultation on Early Opportunities and stakeholder feedback

- 2.8. We published a consultation on offshore coordination in July 2021 which closed in September 2021. We provided a summary of consultation responses in January 2022 with an update on policy development. Links to these publications are provided in the 'Context and related publications' section of this document.

What we consulted on

2.9. On 14 April 2022 we launched our 2022 Minded-to Consultation⁶: an 8-week consultation on our minded-to position on AI and the implementation of policy changes to facilitate AI capex recovery for projects pursuing coordination in the Early Opportunities workstream of the OTNR. Within our 2022 Minded-to Consultation, we set out three key areas of policy change we were minded to make:

2.9.1. The risk associated with AI should be shared between the consumer and later user(s) of shared infrastructure. The AI Cost Gap⁷ will be allocated to the later user(s) of shared infrastructure. Consumers will underwrite the AI Cost Gap in advance of the later user(s) connecting to shared infrastructure and in the situation where the potential later user(s) does not connect at all or reduces the capacity of its project.

2.9.2. The introduction of an early-stage assessment process to provide Ofgem with early visibility of projects pursuing AI and to provide developers and investors with the comfort needed to make AI.

2.9.3. The extension of user commitment arrangements in Section 15 of the CUSC to new offshore transmission assets which provide capacity for more than a single user, to minimise the liability that would fall to consumers should the later user fail to connect or reduce the capacity of its project.

2.10. We set out each of the proposals above in greater detail in Sections 2, 3 and 4 of our 2022 Minded-to Consultation document and asked a series of questions to stakeholders:

⁶ [Offshore Coordination - Early Opportunities: Consultation on our Minded-to Decision on Anticipatory Investment and Implementation of Policy Changes | Ofgem](#)

⁷ Paragraph 2.27 [Offshore Coordination - Early Opportunities: Consultation on our Minded-to Decision on Anticipatory Investment and Implementation of Policy Changes | Ofgem](#)

Consumer sharing AI risk

Question 1: Do you agree that consumers should underwrite the risk of the AI Cost Gap by funding the AI Cost Gap until the later user starts paying Transmission Network Use of System (**TNUoS**) charges?

Question 2: Do you agree with the proposal to recover the AI Cost Gap from the later user if the later user connects? If so, do you agree that this should take place over the period of the relevant OFTO licence, starting from the date that the later user starts to pay TNUoS charges?

Question 3: Do you agree that, save for any amounts recovered under user commitment arrangements, AI costs should be recovered from consumers if the later user fails to connect?

Question 4: Do you agree with our assessment that policy option 3 better meets the aims of the Early Opportunities workstream of the OTNR?

Question 5: Do you have views on the modelled assessment of capital cost savings? Please provide any additional quantitative analysis and any further information.

Early-stage assessment

Question 6: Do you agree with the introduction of the proposed early-stage assessment process?

Question 7: Do you think the information sought as part of the early-stage assessment process is appropriate?

Question 8: Do you have any views on the timing of the early-stage assessment process?

Question 9: Is there any other information which you believe should be included in the confirmation to developers?

Minimising AI risk with user commitment

Question 10: Do you agree with the proposed extension of user commitment arrangements to the potential later user of offshore transmission infrastructure which has been funded by AI?

Question 11: Do you have any views on the manner in which the user commitment should be calculated?

2.11. We invited feedback from those with an interest in offshore transmission and offshore generation. We welcomed responses from all stakeholders, particularly developers embarking on offshore coordination projects now or in the future. We also welcomed responses from other stakeholders and the public.

Consultation responses

2.12. In the interest of transparency, where responses are not confidential, we have uploaded the responses received by developers alongside this decision paper.

Overview of responses

2.13. Our 2022 Minded-to Consultation closed on 9th June 2022 and received a total of 18 responses from stakeholders.

2.14. Feedback received demonstrated a broad agreement with our proposals regarding consumers sharing the risk associated with AI, the introduction of an early-stage assessment process and, to a lesser extent, the extension of user commitment arrangements to the potential later user(s).

2.15. Stakeholders were unanimously in favour of consumers underwriting the AI Cost Gap by funding the AI Cost Gap until the later user(s) start paying TNUoS charges but raised questions on how TNUoS charges will work for the later user(s).

2.16. 17 stakeholders were in favour of our proposal to introduce an early-stage assessment process, acknowledging the value of providing early comfort to developers and investors for their decision-making processes. Stakeholders requested greater clarity on how the early-stage assessment process and CfD bidding rounds will interact and requested more detailed information on the design of the process.

2.17. The majority of stakeholders were in favour of our proposal to extend user commitment arrangements under Section 15 of the CUSC to new offshore transmission assets which provide capacity for more than a single user. The primary concern raised by stakeholders was that a high level of user commitment could act as a disincentive to coordinate and therefore a continuation of the status quo.

Our final impact assessment

2.18. One of the ways we assess the potential impact of our policy decisions is by carrying out an impact assessment (**IA**). Since December 2003, Ofgem has had a duty to carry out IAs for proposals that we consider to be “important” within the meaning of Section 5A of the Utilities Act 2000,⁸ or to publish a statement setting out our reasons for not undertaking an IA.

2.19. On the 14 April 2022 we published an initial IA, published separately alongside our 2022 Minded-to Consultation.⁹ Alongside this decision document, we have also published an accompanying final IA, which takes into account our final policy positions. We have added paragraph 2.6 in the IA accounting for our adjustment in position as outlined in paragraph 4.8 of this decision paper.

2.20. We consider that this meets our obligations under Section 5A of the Utilities Act 2000 in a proportionate, consistent and transparent manner.

Context and related publications

2.21. Our previous approach to AI was set out in our [policy statement](#) in July 2013.

2.22. In August 2020, the Department for Business, Energy & Industrial Strategy (**BEIS**) and Ofgem issued a [joint Open Letter](#) in which we called for stakeholder views to support the OTNR. In December 2020, we published a [joint response to the Open Letter](#) engagement.

⁸ [Utilities Act 2000: Section 5A](#)

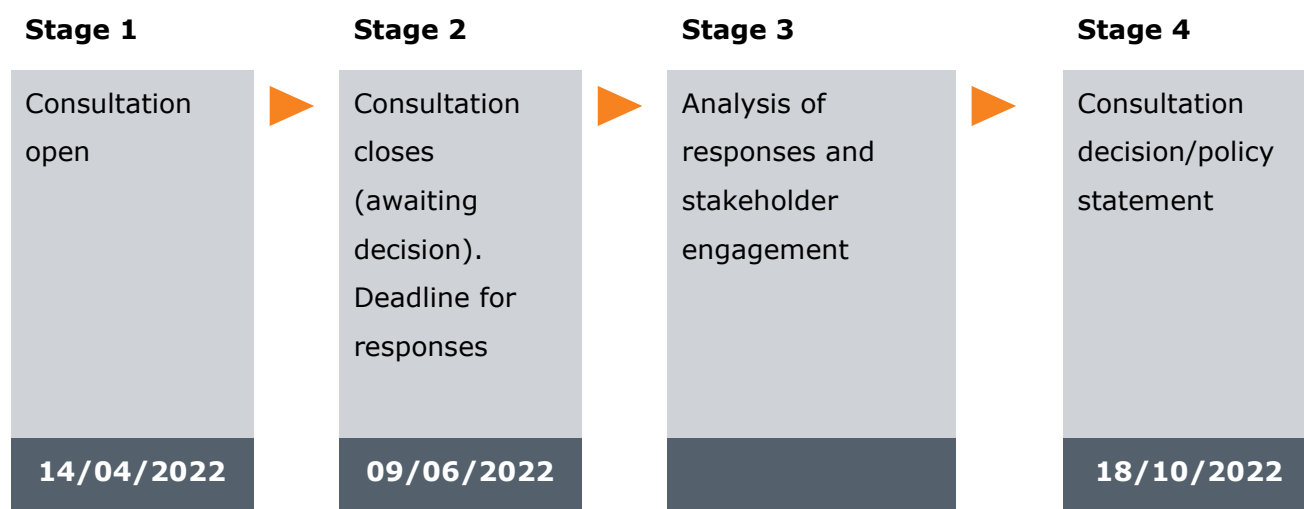
⁹ [Offshore Coordination - Initial impact assessment on allocating anticipatory investment risk in offshore transmission systems in Early Opportunities | Ofgem](#)

- 2.23. In December 2020, NG ESO published the [final report and supporting annexes](#) as part of Phase 1 of its Offshore Coordination Project. In Phase 1, NG ESO assessed the costs and benefits of a coordinated offshore network, the technical considerations to achieve that, and how the offshore connections regime could change to support that.
- 2.24. We published a [consultation](#) in July 2021 on three of the four OTNR workstreams: Early Opportunities, Pathway to 2030, and Multi-Purpose Interconnectors.
- 2.25. In January 2022, we provided a summary of responses and an [update following our consultation on changes intended to bring about greater coordination in the development of offshore energy networks](#).
- 2.26. In April 2022, we published our 2022 Minded-to Consultation on AI and implementation of policy changes to facilitate AI.

Our decision-making process

- 2.27. We published our minded-to position on 14 April 2022 and opened an 8-week consultation period, closing for responses on 9 June 2022.
- 2.28. We welcomed responses from all stakeholders, particularly developers embarking on offshore coordination projects now or in the future.
- 2.29. Following closure of the consultation, we commenced a period of review and analysis of the responses received.

Figure 1: Decision-making stages



Your feedback

General feedback

2.30. We believe that consultation is at the heart of good policy development. We are keen to receive your comments about this report. We'd also like to get your answers to these questions:

1. Do you have any comments about the overall quality of this document?
2. Do you have any comments about its tone and content?
3. Was it easy to read and understand? Or could it have been better written?
4. Are its conclusions balanced?
5. Did it make reasoned recommendations?
6. Any further comments?

Please send any general feedback comments to stakeholders@ofgem.gov.uk.

3. Consumer Sharing AI Risk

Section summary

In this section, we outline the key feedback received from stakeholders and our final decisions and rationale in relation to the allocation of AI risk across the consumer and later user(s) of shared infrastructure.

Decision Summary

- 3.1. Given the responses to the consultation and the analysis undertaken, we are upholding our minded-to position on the allocation of AI risk between the consumer and later user(s) of shared transmission infrastructure. We are deciding to implement policy option 3, whereby the consumer underwrites the AI Cost Gap until the later user(s) connects to shared infrastructure, at which point the later user(s) would pay for the AI Cost Gap via TNUoS charges.
- 3.2. We are working through the application of the charging methodology for AI across all the workstreams and will engage further with stakeholders ahead of the code modifications process led by NG ESO.
- 3.3. We acknowledge that developers will need further clarity on how TNUoS charges for users of shared transmission assets will work for the later user(s). This will form part of the code modification process. Ofgem will work with NG ESO on how best to implement the decisions set out in this document and the aims of the Early Opportunities workstream through the code modification process. Stakeholders will have the opportunity to feed into this process and Ofgem will engage with NG ESO on how best to achieve the decisions set out in this document and the aims of the Early Opportunities workstream.

Stakeholder Feedback & Ofgem Response

Question 1: Do you agree that consumers should underwrite the risk of the AI Cost Gap by funding the AI Cost Gap until the later user starts paying TNUoS charges?

- 3.4. We received 17 responses to this question, all of which agreed that consumers should underwrite the risk associated with the AI Cost Gap until the later user(s) connects to shared infrastructure. Stakeholders acknowledged that consumers would benefit from the reduced TNUoS charges, as well as the environmental and social benefits associated with coordinated infrastructure.
- 3.5. All stakeholders also agreed that our policy proposal benefits developers by providing the initial user with the reassurance and allocation of risk required to make capital expenditure (**capex**) in AI.
- 3.6. One stakeholder suggested that there may be a case for the Offshore Transmission Owner (**OFTO**) bearing some of the risk if either user's connection is delayed. Some stakeholders suggested that the costs associated with AI should be allocated with reference to the potential benefits of that AI. We do not consider this an appropriate risk for an OFTO to bear as they do not stand to benefit directly from coordinated infrastructure.
- 3.7. We are upholding our minded-to position that consumers should underwrite the risk of the AI Cost Gap by funding the AI Cost Gap until the later user(s) starts paying TNUoS charges.

Question 2: Do you agree with the proposal to recover the AI Cost Gap from the later user if the later user connects? If so, do you agree that this should take place over the period of the relevant OFTO licence, starting from the date that the later user starts to pay TNUoS charges?

- 3.8. We received 18 responses to this question. A majority of stakeholders agreed with our minded-to position. 13 stakeholders agreed that it is appropriate that this portion of the risk associated with AI is allocated to the later user(s) as a key beneficiary of shared infrastructure.
- 3.9. Six stakeholders requested clarity from Ofgem on how the timeline of AI Cost Gap recovery over the OFTO licence period will work for projects delivered at different stages. Our decision establishes a principle for developers to work with. We are continuing to engage internally on possible options for cost recovery and will welcome

further stakeholder engagement through the open governance forum that forms part of the code modification process led by the NG ESO.

- 3.10. Two stakeholders disagreed with our minded-to proposal that the AI Cost Gap should be recovered from the later user(s) via TNUoS charges, over the period of the relevant OFTO licence.
- 3.11. The first stakeholder stated that allocating the AI Cost Gap to the later user(s) could act as a barrier to coordinated connections due to a shorter initial Tender Revenue Stream (**TRS**) for the later user(s) and therefore high TNUoS charges. We do not agree with this position – our expectation is that charges for the later user(s) will still be lower overall due to the cost savings associated with shared transmission assets.
- 3.12. The second stakeholder who disagreed with our minded-to proposal cited a lack of consideration given to parties beyond the consumer, initial user and later user(s) which have a similar or greater influence over the commissioning date of the later user(s).
- 3.13. The second stakeholder suggested parties, such as the relevant onshore Transmission owner (TO) and wider government, would be more appropriate for the recovery of the AI cost gap. We do not consider any of those suggested to be an appropriate alternative to the later user(s). Based on the stakeholder feedback we received in response to our July 2021 consultation, we maintain our view that AI risk should be allocated across benefitting parties, rather than parties holding influence over the connection timeline of the later user(s). We are therefore upholding our minded-to position that the AI Cost Gap should be recovered from the later user(s) as a key beneficiary of AI.
- 3.14. Stakeholders raised the potential issue of disjointed asset lives as a result of coordination. Our intention is that the process of OFTO extension will begin up to seven years ahead of the end of the TRS, the starting point for the commencement of the decommissioning work. This early engagement with the generator and OFTO will ensure that existing and future project timelines are aligned as far as possible. The process to balance the financial exposure of all connected projects which have disjointed asset lives is currently being examined by Ofgem. The intention would be to engage early with affected developers to mitigate potential impacts and identify a collaborative solution.

- 3.15. Two stakeholders expressed concern over the exact value of the AI Cost Gap being subject to a degree of uncertainty, and that this could have a negative impact on investment decisions. While the exact value of the AI may not be certain, an indicative value will be available for developers via our early-assessment process.
- 3.16. We acknowledge that other parties may influence the connection date of the later user(s). For example, the initial user may cause the later user to be delayed. In our view, it is not possible to allocate the liability of risk to the initial user as there may also be some instances where the initial user has no bearing on a delay to the connection date for the later user. We expect commercial agreements to be in place between the initial user and later user to manage such risk.

Question 3: Do you agree that, save for any amounts recovered under user commitment arrangements, AI costs should be recovered from consumers if the later user fails to connect?

- 3.17. We received 17 responses to this question, all respondents agreed that in the event the later user(s) fail to connect, TNUoS charges will not be charged in respect of the AI and therefore AI costs will, save for amounts recovered under user commitment, effectively be absorbed by consumers. Stakeholders agreed that this represented an appropriate level of AI risk to be allocated to the consumer, a key beneficiary of coordinated infrastructure.
- 3.18. Given the positive feedback from stakeholders, we are upholding our minded-to decision on recovery of AI costs by consumers should the later user fail to connect.
- 3.19. Two stakeholders highlighted that there is potential for alternative scenarios which could impact for whom any associated cost is recovered. For example, where the later user reduces the size of their project, or the later user is unable to proceed but a new user is able to utilise the assets. We will give due consideration to these scenarios when drafting our early-stage assessment guidance document.

Question 4: Do you agree with our assessment that policy option 3 better meets the aims of the Early Opportunities workstream of the OTNR?

- 3.20. We received 16 responses to this question, 11 of which agreed with our minded-to position that policy option 3 best meets the aims of the Early Opportunities workstream of the OTNR.
- 3.21. 11 stakeholders agreed that the later user(s) picking up the AI Cost Gap upon connecting to shared infrastructure is a reasonable approach.

- 3.22. Three stakeholders neither agreed nor disagreed, two of which cited the need for further clarity on the issue of disjointed asset lives.
- 3.23. Two stakeholders disagreed with our proposal, one of which expressed preference for policy option 1 (consumer pays) and the other for a combination of policy option 1 and policy option 3 (consumer and later user(s) pays).
- 3.24. We do not consider it appropriate for the consumer to cover AI risk beyond that which we have already outlined, namely underwriting the AI Cost Gap until the later user(s) connects to shared infrastructure. The later user(s) is a key beneficiary of coordination, benefitting from reduced TNUoS charges for use of transmission infrastructure constructed on its behalf. We are upholding our decision, as we maintain our view that it is appropriate that this portion of the AI risk is allocated to the later user(s).

Question 5: Do you have views on the modelled assessment of capital cost savings? Please provide any additional quantitative analysis and any further information.

- 3.25. We received ten responses to this question, only five of which offered views on the modelled assessment of capital cost savings.
- 3.26. Two stakeholders highlighted that the model assumes that projects are of similar sizes and that an offshore substation platform is required.
- 3.27. Similarly, two stakeholders noted that cost savings associated with coordinated grid solutions are generally project specific and depend on the proposed solution. We acknowledge that depending on the scale of the specific project, the degree of benefit will vary. However, the capital cost savings model in our IA still provides a useful scaled example.
- 3.28. One stakeholder noted that the modelled assessment only included material and engineering, procurement, construction and installation (**EPCI**) costs, and highlighted that the developers of shared assets will at some point want pre-EPCI design costs to be accounted for. For clarity, the base costs of tendering the EPCI are included in the final cost of the EPCI at the cost assessment stage under the current regime. The same principle will apply for pre-EPCI costs in relation to any AI made by the initial user.

4. Early-Stage Assessment Process

Section summary

In this section, we outline the key feedback received and our decisions in relation to our proposal to introduce an early-stage assessment process for projects in the Early Opportunities workstream pursuing coordination of transmission infrastructure.

Decision Summary

- 4.1. We are upholding our decision to introduce an early-stage assessment process for projects pursuing coordination in the Early Opportunities workstream as a result of the positive feedback to the proposals set out in the 2022 Minded-to Consultation.
- 4.2. All feedback provided to Section 3 of our Minded-to Consultation will be given due consideration in the development of our early-stage assessment consultation and guidance document. We will also consult on the timeframe for submissions, information needed from developers and any other requirements and responsibilities, when we publish our draft early-stage assessment guidance.

Stakeholder Feedback & Ofgem Response

Question 6: Do you agree with the introduction of the proposed early-stage assessment process?

- 4.3. We received 18 responses to this question, 17 of which agreed with the introduction of our proposed early-stage assessment process.
- 4.4. Three stakeholders highlighted the need for ongoing bilateral discussions with Ofgem throughout the assessment process to ensure developers are able to make informed decisions. We agree that an 'open-door' for ongoing discussion would be beneficial for all parties involved.
- 4.5. Three stakeholders noted that the early-stage assessment process also provides a balanced approach for Pathway to 2030 projects.¹⁰ We agree that the basis of the

¹⁰ Projects progressing through current ScotWind and Crown Estate Leasing Round 4, connecting before 2030

process provides a useful approach for the 'Gateway Assessment' proposed in our consultation on delivery models for Pathway to 2030. The early-stage assessment process will be designed with awareness of the time constraint for projects in the Early Opportunities workstream. Following this, we will develop the early-stage assessment further and incorporate it across all the workstreams.

- 4.6. One stakeholder suggested the introduction of a 'preliminary or concept stage' assessment to provide comfort to developers considering investing in concept(s) or pre-EPCI design and development costs that might include AI. The Early Opportunities workstream includes projects which are already in development and so we expect the range of concepts put forward to be limited in scope. We will consider this suggestion and welcome engagement with developers on any concepts that include AI as part of our Pathway to 2030 workstream.
- 4.7. One stakeholder queried how unforeseen changes to coordinated activities would be treated in cases outside of the initial user's control. We note the importance of this point in ensuring that our confirmation to developers provides sufficient certainty to developers and their investors. The offshore transmission cost assessment will ensure that any additional costs are economic and efficient (including assessing evidence that the additional AI costs are outside of the developer's control and that mitigating actions have been taken) in setting the final transfer value.
- 4.8. In our minded-to decision, we stated that the AI policy and early-stage assessment would only apply to projects bidding in different Contract for Difference (**CfD**) rounds. When we started the review process, the change to AI policy was to facilitate projects that were at different stages of development and therefore in different CfD rounds. We anticipate that this will be the primary use of the AI policy. However, because of the way we have dealt with the AI Cost Gap, we do not consider that the different CfD round stipulation is material any longer. This means that if projects start on different timelines but end up in the same CfD round they could keep the option of relying on the AI policy or negotiate among themselves for the recovery of the stated amounts. We are exploring how to build flexibility into the early-stage assessment process so that users can elect how they want AI to be treated.

Question 7: Do you think the information sought as part of the early-stage assessment process is appropriate and proportionate?

- 4.9. We received 15 responses to this question, the majority of which agreed that the information sought as part of the early-stage assessment process was appropriate.
- 4.10. One stakeholder disagreed, stating that it is “unlikely to be practical to provide all the information suggested” due to the commercially sensitive nature of information and the competitive dynamic of the CfD auction. BEIS will retain rules around anti-competitive behaviour, even when projects are sharing infrastructure, under the common understanding that they are required to cooperate on the transmission element of the project, without sharing unnecessary information about generation and eventual bid formation. We will ensure that the information required as part of the early-stage assessment process will adhere to this principle. Any information required by Ofgem beyond that which is directly related to the shared transmission infrastructure will be treated confidentially in line with our statutory duties.
- 4.11. Two stakeholders highlighted the likelihood that certain details may only be possible to provide on an indicative or best estimate basis. Provided there is evidence of a logical and robust methodology, we are content for indicative values to be used. We expect values provided by the developer to become increasingly accurate as the project progresses.
- 4.12. Three stakeholders requested clarity on what would constitute a “material change” to coordinated activities, and further detail on the process for re-assessment. Where there has been a “material change”, we will consider the need for re-assessment on a case-by-case basis. If a re-assessment is necessary for any of the projects, we will consider the change in cost against the assessed benefit of the coordinated activity. We welcome engagement with stakeholders on the design of the re-assessment and will provide further details on our early-stage assessment guidance in due course.
- 4.13. Two stakeholders expressed the need for further clarity on what information will be required as part of the early-stage assessment. This information will also be set out in our forthcoming guidance document consultation, we will engage with stakeholders in the coming months to contribute towards the design of this process.

Question 8: Do you have any views on the timing of the early-stage assessment process?

- 4.14. We received 17 responses to this question, providing views on the timing of the early-stage assessment process.
- 4.15. Five stakeholders highlighted the importance of a flexible approach to the timing of the early-stage assessment. We agree on the need for flexibility in allowing developers to obtain a view on their proposed AI from Ofgem at the point in the project development process most suitable to them. Provided a developer has met our eligibility criteria and assessment is concluded ahead of the CfD qualification process, we will not place any specific requirements on developers as to what stage they must be in the project development process to undertake the early-stage assessment.
- 4.16. Two stakeholders requested clarity on the timeframe of Ofgem’s assessment of submissions. One stakeholder suggested that the timeframe should be limited. We will engage and consult on our position alongside other details of the early-stage assessment process. We will provide greater clarity on this in the consultation.
- 4.17. One stakeholder queried the necessity for Ofgem to undertake a consultation on our decision on recoverable AI costs following an assessment. As the regulator, it is our statutory duty to consult on decisions where there is a legitimate expectation that we will do so. Given the impact on consumers, we still expect to consult on recoverable AI costs following an assessment. Having said this, we may reconsider consulting on recoverable AI costs when taking into account the complexity, scale, and urgency associated with the proposal.

Question 9: Is there any other information which you believe should be included in the confirmation to developers?

- 4.18. We received 13 responses from stakeholders to this question, providing views on information to be included in the confirmation to developers.
- 4.19. Stakeholders expressed the importance of the confirmation to developers only including stipulations that are absolutely necessary, ensuring that as much certainty as possible is provided to developers and investors. We will take this point on board and set out in our early-stage assessment guidance consultation the stipulations we believe are required.

- 4.20. Two stakeholders expressed the importance of developers having clarity on what will constitute recoverable AI costs. We recognise the importance of certainty for the developer making the investment and will work with the Ofgem cost assessment team to provide further details in our early-stage assessment guidance consultation.
- 4.21. One stakeholder suggested that a process for change management for the initial user be included to mitigate the risk of stranded assets. We agree that a process for change management is important and will consider this as part of our early-stage assessment process.
- 4.22. NG ESO requested that the confirmation to developers include an estimated AI value that the developer could then provide to NG ESO for the purposes of user commitment arrangements profile. We can confirm that the confirmation to developers will include an indicative AI value. However, it is important to note that this will be based on provisional figures and may not necessarily reflect the AI value allowed at the cost assessment stage. Ofgem will engage with NG ESO to determine the appropriate values for user commitment purposes.

5. Minimising AI Risk with User commitment

Section summary

In this section, we outline the key feedback received and our final decisions in relation to our proposal to extend user commitment arrangements under Section 15 of the Connection and Use of System Code (CUSC) to the later user(s) of shared transmission infrastructure.

Decision Summary

- 5.1. We maintain our view that it is appropriate for the application of the user commitment provisions under Section 15 of the CUSC to be extended to the later user(s) to demonstrate their commitment to the project, as well as to minimise the cost to consumers should the later user(s) withdraw or reduce the capacity of their offshore wind development.
- 5.2. The user commitment methodology will be considered through the code modification process run by NG ESO. Stakeholders will have the opportunity to provide further feedback during the code modification process and Ofgem will continue to work with NG ESO on how best to implement the decisions outlined in this document and the aims of the Early Opportunities workstream.

Stakeholder Feedback & Ofgem Response

Question 10: Do you agree with the proposed extension of user commitment arrangements to the potential later user of offshore transmission infrastructure which has been funded by AI?

- 5.3. We received 17 responses to this question, 9 of which agreed with our minded-to position to extend user commitment arrangements to the potential later user(s) of offshore transmission infrastructure which has been funded by AI.
- 5.4. Those that agreed stated that it was appropriate for the later user(s) of shared infrastructure to demonstrate their commitment to the project ahead of connection.
- 5.5. Two stakeholders disagreed with our minded-to position, one of which stated that it is unnecessary for the later user(s), who is already incentivised to connect in a timely manner due to their responsibility for the AI Cost Gap, to have further liability under user commitment arrangements.

- 5.6. Beyond providing an incentive for timely connection, the extension of user commitment to the later user(s) will ensure that consumers are protected from unnecessary costs if the later user decides to reduce its capacity or cancel its project. We therefore maintain the view that the extension of user commitment to the later user(s) is appropriate.
- 5.7. Six stakeholders expressed neither agreement nor disagreement with the extension of user commitment arrangements to the later user(s) of shared infrastructure. Several stakeholders cited the need for clarity regarding at what stage user commitment will be required and how this will be staged over time.
- 5.8. We consider it practical for AI user commitment to commence once Ofgem provides the indicative AI value to the NG ESO following the output of the early-stage assessment and will cease when the later user(s) connects to the shared transmission infrastructure. The later user(s) will then be required to provide user commitment payments from the first 6 monthly security period thereafter. The later user(s) will not be liable for AI (if any) accrued from the signature of the connection contract to the point at which the indicative AI value and spend profile is provided by Ofgem. In our view, it is unlikely that the initial user will have accrued significant AI capex prior to the output of the early-stage assessment. These stipulations will be considered by stakeholders through the code modification process.
- 5.9. Stakeholders also expressed concern that the cost of user commitment to the later user(s) could be considerably high, and therefore act as a disincentive to coordination. Whilst we maintain the view that user commitment is necessary, we acknowledge that a high level of user commitment could pose risk to the later user(s). Through the code modification process, the method for calculating liability and security will be decided upon in an open governance forum.
- 5.10. In our view, consumer risk should be limited as far as possible through user commitment arrangements. However, we accept that liability may be less than the value of the AI. The level of user commitment will be dependent on the indicative value of the AI in the early-stage assessment, comparative AI values, the actual spend of AI by the initial user and AI calculations for liability and security. Other considerations such as linking user commitment to Transmission Entry Capacity (**TEC**), will be governed through the code modification process led by the NG ESO.

Question 11: Do you have any views on the manner in which the user commitment should be calculated?

- 5.11. We received 13 responses to this question, providing views on the process by which user commitment should be calculated for the later user(s) of shared transmission infrastructure.
- 5.12. A number of stakeholders suggested that user commitment be calculated using a similar methodology to the existing process for radial connections, with user commitment being increased in line with the maturity of projects.
- 5.13. We note that this methodology is used in the case of onshore projects, provided the work being done by the Transmission Operator (**TO**) is aligned with the developer's project. However, if works are mid-flight when the developer signs (i.e., the TO's programme of works is more advanced than the developer's project programme), then the developer will pick up liability and security for those works too. In respect of AI, we agree with the concept of user commitment charges following the spend profile and recognising the maturity of the project. Having said this, the calculation of user commitment for the later user will be decided with stakeholder engagement through the code modifications process led by the NG ESO.
- 5.14. Conversely, a number of stakeholders queried whether it would be appropriate to simply replicate the calculation used for onshore user commitment. One stakeholder highlighted a potential issue with the existing liabilities calculation provided by TOs, specifically in relation to the Local Asset Reuse Factor (**LARF**). The stakeholder expressed concern about how the LARF would apply given the likelihood that the initial user would be unable to reuse these assets in any other sites they own.
- 5.15. We acknowledge that the methodology used for calculating user commitment for onshore infrastructure may not be directly applicable to coordinated offshore infrastructure, especially when considering reusable assets. At this stage, it is not certain how the LARF will be calculated, or if a LARF value will be used at all for AI.
- 5.16. One stakeholder suggested that a user commitment moratorium be introduced in cases where the initial user responsible for delivering the shared transmission infrastructure causes delays to the connection date of the later user(s). In our view, a moratorium would not be appropriate as the risk would fall to the consumer if the initial user continued to spend in relation to what becomes the later user(s)'s securable works. However, we note the importance of this point for the later user(s) and will

Decision – Decision on Anticipatory Investment and Implementation of Policy Changes

explore in our draft early-stage assessment guidance how the AI spend profile can be kept in review to ensure liability is adjusted for any significant divergence.

6. Next steps

Section summary

This section sets out our intended next steps for the Early Opportunities workstream and implementation of the decisions made in this document. In particular, we will set out next steps regarding the code modifications necessary to implement our policy decisions and guidance on the early-stage assessment process.

Code modifications

- 6.1. As mentioned in paragraph 3.2, we are working through the application of the charging methodology for AI across all OTNR workstreams and will engage further with stakeholders ahead of the code modifications process led by NG ESO.
- 6.2. This document has outlined our final policy decisions in relation to how the risk associated with AI will be allocated between consumers and the later user(s) of shared transmission infrastructure within the Early Opportunities workstream. The specifics of how Transmission Network Use of System (**TNUoS**) charges will work for the later user(s), including but not limited to how TNUoS charges will be shared between the initial and later user(s) and how TNUoS for the recovery of the AI Cost Gap will be spread over the TRS, will be clarified through the code modification process.
- 6.3. Similarly, given our decision to uphold our proposal to extend user commitment arrangements under Section 15 of the Connection and Use of System Code (**CUSC**) to the later user(s) of shared transmission infrastructure, code modifications will be necessary to facilitate and implement our decision. This includes but is not limited to how user commitment for the later user(s) will be calculated in respect of the indicative AI value provided by the early-stage assessment and how liability and security will be staged based on the AI profile provided by the early-stage assessment.
- 6.4. We invite NG ESO to raise code modifications to implement our policy decisions.
- 6.5. Stakeholders will have the opportunity to feed into the existing open governance processes that form part of the code modification process.
- 6.6. Whilst we cannot predetermine the outcome of any code modifications that come to Ofgem for determination, we will work with NG ESO on how best to achieve the policy decisions set out in this document and the aims of the Early Opportunities workstream.

- 6.7. We expect code modifications for TNUoS charges and user commitment to be raised in the months following publication of this decision. It is likely that the code modification process will take 12 months and depending on their complexity, a further 12 months for implementation. We intend to consult further on the methodology of the AI Cost Gap and charging through TNUoS as it would apply to projects in the OTNR.

Early-stage assessment guidance

- 6.8. We intend to publish a draft early-stage assessment guidance in Q1 of 2023 which will be open for a 4-week consultation period, after which we intend to publish our final early-stage assessment guidance. We will consider all feedback provided to us on the early-stage assessment process in response to the AI consultation and will engage with stakeholders in the coming months to contribute towards the design of the process.
- 6.9. We will conduct a scoping exercise with the Pathway to 2030 workstream to explore the possibility of developing a common assessment process for coordinated infrastructure that will apply across all workstreams. However, we are aware of the time pressures associated with Early Opportunities and will prioritise the early-stage assessment accordingly.

Ancillary documents & guidance

- 6.10. In our minded-to decision we set out our intention to review ancillary documents and guidance that may require modification in order to give effect to our changes in how AI is treated. This remains our intention, however, we intend to do this in conjunction with the other workstreams of the OTNR.

Appendices

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Appendix 1 - Glossary

A

Anticipatory Investment (AI)

Investment that goes beyond the needs of immediate generation, reflecting the needs created by a likely future generation project or projects.

Authority

The Gas and Electricity Markets Authority established by Section 1(1) of the Utilities Act 2000. The Authority governs Ofgem.

AI Cost Gap

The recovery of the AI element of the offshore generator TNUoS tariff in the period between the shared asset transfer to the OFTO and the point when the later user(s) will start using the shared assets and paying TNUoS charges

B

BEIS

Department for Business, Energy & Industrial Strategy

C

Capex

Capital Expenditure

CfD

Contracts for Difference

CUSC

Connection and Use of System Code

E

Electricity Act or the Act

The Electricity Act 1989 as amended from time to time.

G

Generator Build

A model for the construction of Transmission Assets. Under this model, the Developer carries out the preliminary works, procurement, and construction of the Transmission Assets.

I

IA

Impact Assessment

NG ESO

National Grid Electricity System Operator

O

Ofgem

Office of Gas and Electricity Markets. Ofgem, “the Authority” and “we” are used interchangeably in this document.

OFTO

Offshore transmission owner

OFTO Licence

The licence awarded under Section 6(1)(b) of the Electricity Act following a tender exercise authorising an OFTO to participate in the transmission of electricity in respect of the relevant Transmission Assets. The licence sets out an OFTO’s rights and obligations as the offshore transmission asset owner and operator.

OTNR

Offshore Transmission Network Review

T

TEC

Transmission Entry Capacity

Tender Regulations

Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2015

Tender Revenue Stream (TRS)

The payment an OFTO receives over its revenue term.

TO or Transmission Owner

An owner of a high-voltage transmission network or asset.

TNUoS

Transmission Network Use of System charge. TNUoS charging arrangements reflect the cost of building, operating and maintaining the transmission system.