

Consultation

Statutory consultation to modify the electricity transmission special licence conditions: Accelerated Strategic Transmission Investment

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This statutory consultation sets out the proposed changes to the special licence conditions required to implement the Accelerated Strategic Transmission Investment (ASTI) framework into the Transmission Owners' (TOs) electricity transmission licences. We are also consulting on the Accelerated Strategic Transmission Investment Guidance and Submissions Requirements Document, as well as modifications to the Price Control Deliverable Reporting Requirements and Methodology Document to cover the ASTI Pre-Construction Funding (ASTI PCF) Price Control Deliverable (PCD) assessment. We would like views from the TOs and stakeholders with an interest in the development of the onshore electricity transmission network. We also welcome responses from other stakeholders and the public.

This document outlines the scope, purpose, and questions of the consultation and how you can get involved. Once the consultation is closed, we will consider all responses. We want to be transparent in our consultations. We will publish the non-confidential responses we receive alongside a decision on next steps on our website at [ofgem.gov.uk/consultations](https://www.ofgem.gov.uk/consultations). If you want your response – in whole or in part – to be considered confidential, please tell us in your response and explain why. Please clearly mark the parts of your response that you consider to be confidential, and if possible, put the confidential material in separate appendices to your response.

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1. Introduction

- 1.1 In December 2022 we published our decision to introduce a new Accelerated Strategic Transmission Investment (ASTI) framework¹ (referred to within this document as our ASTI decision). Within this framework, Ofgem will assess and approve funding for large, strategic onshore electricity projects that are required to deliver the Government’s ambition to connect up to 50GW of offshore wind generation to the electricity network by 2030.²
- 1.2 Our ASTI decision set out our policy and processes to provide ASTI Pre-Construction Funding (ASTI PCF) and full project funding for ASTI projects, as well as the introduction of an output delivery incentive (ODI) to incentivise the timely delivery of these projects.
- 1.3 We created a licence drafting working group in December 2022 consisting of members of the Ofgem team and TO representatives. This group has met at 12 working groups to regularly review and develop the licence conditions. We also established an ASTI licence Issues Log where the TOs were able to provide detailed feedback on the proposed licence conditions as they developed through multiple iterations of drafting.
- 1.4 In March 2023 we published an informal ASTI licence drafting consultation which received four responses, from the three TOs and from National Grid Electricity System Operator (ESO). We have also received a joint letter from the TOs, dated 3 March 2023, as well as separate letters from National Grid Electricity Transmission Plc, dated 5 May 2023 and Scottish Power Transmission Plc, dated 11 May 2023. We have taken the responses to that consultation into consideration, as well as the contents of the letters, when preparing the licence drafting and ASTI Guidance and Submission Requirements Document now being consulted on.

What are we consulting on?

- 1.5 We are consulting on our proposed modifications to the special conditions (SpCs) in the TOs’ electricity transmission licences required to implement the new ASTI framework.

¹ [Decision on accelerating onshore electricity transmission investment \(ofgem.gov.uk\)](https://www.ofgem.gov.uk/consult/condocs/astiframework/astiframework.pdf)

² [British energy security strategy - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/british-energy-security-strategy)

- 1.6 We are consulting on introducing three new special licence conditions (SpCs):
- SpC 3.40: Accelerated Strategic Transmission Investment Pre-Construction Funding Re-opener, Price Control Deliverable and Use It Or Lose It Adjustment (APCFt)
 - SpC 3.41: Accelerated Strategic Transmission Investment Re-opener and Price Control Deliverable (ASTIRt)
 - SpC 4.8: Accelerated Strategic Transmission Investment output delivery incentive (ASTIIIt)
- 1.7 We are also consulting on modifications to the following existing SpCs that are required to allow for the introduction of the new ASTI conditions:
- SpC 1.1: Interpretations and definitions
 - SpC 3.14: Medium Sized Investment Project Re-opener and Price Control Deliverable (MSIPREt)
 - SpC 3.15: Pre-Construction Funding Re-opener and Price Control Deliverable (PCFt and PCFREt)
- 1.8 Defined terms are capitalised in the electricity transmission licences to make it clear to the reader when they should refer to the SpC 1.1 for further information.
- 1.9 In addition, as part of this consultation we are consulting on the introduction of the ASTI Guidance and Submissions Requirements Document, as well as modifications to the Price Control Deliverable Reporting Requirements and Methodology Document to cover the ASTI PCF Price Control Deliverable (PCD) assessment.³
- 1.10 Within this document we set out the reasons why we propose to make the above licence modifications and their intended effect. We also summarise and give our consideration to the issues raised in the ASTI informal licence drafting consultation published in March 2023.⁴
- 1.11 The proposed licence modifications required to introduce the new ASTI licence conditions, and the ASTI Guidance and Submissions Requirements Document are set out in annexes to this document.

³ [Price Control Deliverable Reporting Requirements and Methodology Document | Ofgem](#)

⁴ [Accelerated Strategic Transmission Investment Informal Licence Drafting Consultation | Ofgem](#)

1.12 We are proposing changes to the following electricity transmission licences:⁵

Abbreviation	Licensee	Licence component
NGET	National Grid Electricity Transmission Plc	Special conditions
SHET	Scottish Hydro Electric Transmission Plc	Special conditions
SPT	Scottish Power Transmission Plc	Special conditions

1.13 SpCs are conditions that apply to a particular TO. However, the wording is often the same for all TOs of a particular type and this is the case for each of the proposed modifications in this consultation. The TO-specific information relating to specific ASTI projects have been added to the special conditions of each TO and presented in the appendices published alongside this document.

Section 2: ASTI Pre-Construction Funding Re-opener, Price Control Deliverable and Use It Or Lose It Adjustment (APCF_t)

1.14 This section includes details of our proposed SpC 3.40 for ASTI Pre-Construction Funding (ASTI PCF), which makes provision for a Re-opener, a Price Control Deliverable (PCD) and a Use-It-Or-Lose-It (UIOLI) adjustment. It also includes our consideration of responses to the informal licence drafting consultation and consultation question(s).

Section 3: ASTI Re-opener and Price Control Deliverable term (ASTIR_t)

1.15 This section includes details of our proposed SpC 3.41 for an ASTI Price Control Deliverable (PCD) and Re-opener. It includes the process for applying for Early Construction Funding (ECF) and a full Project Assessment (PA) and details the process for ASTI Cost And Output Adjusting Events (ASTI COAEs). It also includes our consideration of responses to the informal licence drafting consultation and consultation question(s).

Section 4: ASTI output delivery incentive (ASTII_t)

1.16 This section includes details of our proposed SpC 4.8 for an ASTI ODI to incentivise the timely delivery of ASTI projects and the process for Delay Events.

⁵ [Licences and licence conditions | Ofgem](#)

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It also includes our consideration of responses to the informal licence drafting consultation and consultation questions.

Section 5: Other licence modifications

1.17 This section includes details of our proposed modifications to existing SpCs (1.1, 3.14 and 3.15) that are required for the introduction of the ASTI framework and give full effect to our ASTI policy decisions. This section includes new and updated defined terms, proposed changes to the conditions and supporting documents, and responses to the consultation question(s).

Related publications

- [Decision on accelerating onshore electricity transmission investment](#)
- [RIIO-ET2 Final Determinations](#)
- [Accelerated Strategic Transmission Investment Informal Licence Drafting Consultation](#)

Consultation stages

1.18 This statutory consultation is open from 24 May 2023 for 30 days and will close on 23 June 2023.

Figure 1: Consultation stages

Stage 1	Stage 2	Stage 3	Stage 4	Stage 5
Consultation open	Consultation closes (awaiting decision). Deadline for responses	Responses reviewed and published	Consultation decision/policy statement	Licence implementation period (56 days)
24/05/2023	23/06/2023	June/July 2023	July 2023	August/Sep 2023

How to respond

1.19 We want to hear from anyone interested in this consultation. Please send your response to the person or team named on this document’s front page.

1.20 We have asked for your feedback in each of the questions throughout. Please respond to each one as fully as you can.

- 1.21 We will publish non-confidential responses on our website at www.ofgem.gov.uk/consultations.

Your response, data and confidentiality

- 1.22 You can ask us to keep your response, or parts of your response, confidential. We'll respect this, subject to obligations to disclose information, for example, under the Freedom of Information Act 2000, the Environmental Information Regulations 2004, statutory directions, court orders, Government regulations or where you give us explicit permission to disclose. If you do want us to keep your response confidential, please clearly mark this on your response and explain why.
- 1.23 If you wish us to keep part of your response confidential, please clearly mark those parts of your response that you *do* wish to be kept confidential and those that you *do not* wish to be kept confidential. Please put the confidential material in a separate appendix to your response. If necessary, we will get in touch with you to discuss which parts of the information in your response should be kept confidential, and which can be published. We might ask for reasons why.
- 1.24 If the information you give in your response contains personal data under the General Data Protection Regulation (Regulation (EU) 2016/679) as retained in domestic law following the UK's withdrawal from the European Union (UK GDPR), the Gas and Electricity Markets Authority will be the data controller for the purposes of GDPR. Ofgem uses the information in responses in performing its statutory functions and in accordance with section 105 of the Utilities Act 2000. Please refer to our Privacy Notice on consultations, see Appendix 1.
- 1.25 If you wish to respond confidentially, we'll keep your response itself confidential, but we will publish the number (but not the names) of confidential responses we receive. We won't link responses to respondents if we publish a summary of responses, and we will evaluate each response on its own merits without undermining your right to confidentiality.

General feedback

- 1.26 We believe that consultation is at the heart of good policy development. We welcome any comments about how we've run this consultation. We'd also like to get your answers to these questions:
- Do you have any comments about the overall process of this consultation?
 - Do you have any comments about its tone and content?

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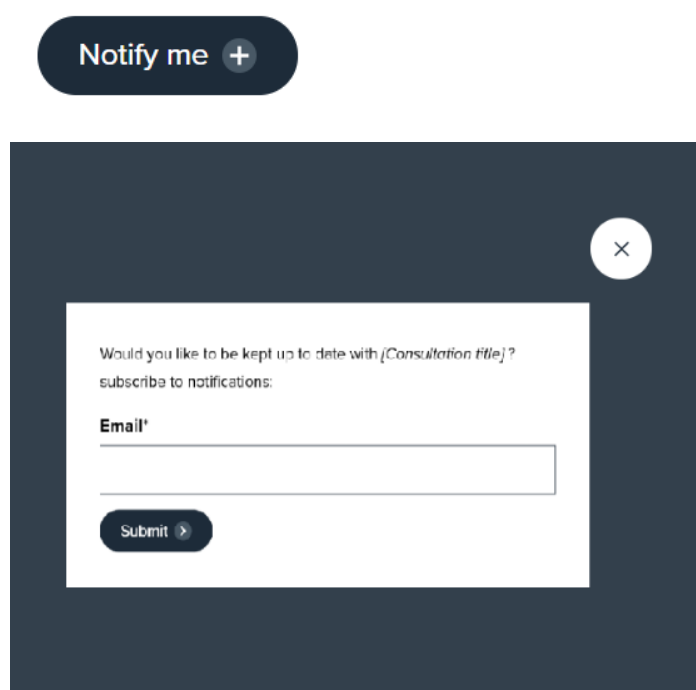
- Was it easy to read and understand? Or could it have been better written?
- Were its conclusions balanced?
- Did it make reasoned recommendations for improvement?
- Any further comments?

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

How to track the progress of the consultation

You can track the progress of a consultation from upcoming to decision status using the 'notify me' function on a consultation page when published on our website.

[Ofgem.gov.uk/consultations](https://www.ofgem.gov.uk/consultations)



Once subscribed to the notifications for a particular consultation, you will receive an email to notify you when it has changed status. Our consultation stages are:

Upcoming > **Open** > **Closed** (awaiting decision) > **Closed** (with decision)

2. Special Condition 3.40 Accelerated Strategic Transmission Investment Pre-Construction Funding Re-opener, Price Control Deliverable and Use It Or Lose It Adjustment (APCF_t)

Questions

1. Do you agree with our proposed licence modification for the ASTI PCF Re-opener, PCD and UIOLI condition?
2. Do you propose any changes to the proposed licence modification?

Introduction

- 2.1 In paragraphs 5.21 to 5.27 of our ASTI decision⁶, we decided to provide PCF for ASTI projects that have not already received PCF through the Large Onshore Transmission Investment (LOTI) framework⁷. Our ASTI decision initially set ASTI PCF allowances at 2.5% of the forecast total project costs for each of the TOs' eligible ASTI projects.
- 2.2 Our ASTI decision set out that this ASTI PCF allowance would be substitutable between ASTI projects⁸, excluding projects for which funding has been, or will be, provided through the LOTI framework. We also decided that the ASTI PCF allowance would be treated as a UIOLI allowance with funding linked to a PCD output to submit a suitable planning application, with any unspent allowances being returned to consumers in full.
- 2.3 We also decided to have an ASTI PCF Re-opener mechanism so that the TOs can apply for additional allowances if costs exceed their Materiality Threshold⁹. We said that we would make provision for an Ofgem-triggered Re-opener for exceptional circumstances where TOs need to apply for funding outside of the Re-opener submission windows.

⁶ [Decision on accelerating onshore electricity transmission investment | Ofgem](#)

⁷ As set out in Special Condition 3.13 of the electricity transmission licence.

⁸ This was inclusive of the 6 additional projects following the Asset Classification Process (AC1-AC6) and projects LRN4 and PSNC (all listed in Appendix 1 of the ASTI decision).

⁹ The materiality threshold is 0.5% of average annual base revenue for each TO, as set out in Special Condition 1.1 (Part B: Definitions) of each TO's respective licence.

Reason and effect of introducing the licence condition

2.4 The reason for introducing this condition is to give effect to our ASTI decision to have an ASTI PCF PCD, UIOLI adjustment and a Re-opener related to ASTI PCF.

2.5 The effect of this condition is to:

- specify outputs, delivery dates and associated allowances for ASTI PCF PCDs;
- establish a Re-opener for TOs to amend and add/remove ASTI PCF PCDs and adjust outputs, delivery dates and associated allowances for existing PCDs;
- provide for an assessment of the ASTI PCF PCDs; and
- explain the process the Authority will follow when making changes under the condition.

Summary of informal licence drafting consultation responses

2.6 TOs considered that under the proposed drafting it was not clear how the PCD assessment would take place, as there may be projects where the PCD output is not deliverable by the end of RIIO-ET2. In addition, TOs sought clarity on how the substitutable allowance would be considered in terms of the PCD assessment.

2.7 TOs also said that the licence does not provide funding for the provisional ASTI projects identified in our ASTI decision which Ofgem said would receive Pre-Construction Funding to further develop.¹⁰

Our consideration of the informal consultation responses

2.8 In this section we set out our minded-to position which reflects our consideration of responses to our informal consultation.

2.9 For ASTI projects where the TO does not consider it possible to deliver the PCD output under this condition by 31 March 2026 the TOs can trigger the Re-opener to modify the delivery date, even where this means the delivery date will fall within the next price control. In consideration of the TO responses, we have drafted additional guidance to be included as Appendix 6 of the Price Control Deliverable Reporting Requirements and Methodology Document which we are consulting on as part of this statutory licence consultation.

2.10 In our ASTI decision, we said that *'where additional Pre-Construction Works are required, for example to deliver the asset classification projects and LRN4/PSNC...*

¹⁰ Para 2.10

there will be a Re-opener mechanism to adjust allowances as appropriate¹¹ and 'we will provide pre-construction funding to develop (the provisional ASTI projects) ahead of deciding whether to include them within the ASTI regime¹².

We consider that SpC 3.40 as currently drafted gives effect to that policy decision. Once TOs have developed a project delivery plan we will assess whether the project should be an ASTI project and, if so, we will provide ASTI PCF under this condition. If we do not consider the project should be an ASTI project, TOs can request PCF allowances through SpC 3.15 (Pre-Construction Funding Re-opener and Price Control Deliverable).

- 2.11 We have provided more detailed information around funding the provisional ASTI projects in the ASTI Guidance and Submissions Requirements Document that we are consulting on as part of this statutory licence consultation.

¹¹ [Decision on accelerating onshore electricity transmission investment | Ofgem](#) paragraph 5.18

¹² [Decision on accelerating onshore electricity transmission investment | Ofgem](#) paragraph 2.10

3. Special Condition 3.41 Accelerated Strategic Transmission Investment Re-opener and Price Control Deliverable (ASTIR_t)

Questions

3. We are interested in understanding your views of the proposed licence modification for the ASTI Re-opener and PCD condition? Please provide detailed analysis and evidence in relation to each ASTI project that substantiates your views.
4. Do you propose any changes to the proposed licence modification?

Introduction

- 3.1. Our ASTI decision in December 2022 included a Re-opener and PCD to provide Early Construction Funding (ECF)¹³ and full project funding via ASTI Project Assessment Decision¹⁴ for the ASTI projects that the TOs are required to deliver in support of the Government's 2030 net zero ambitions. We also stated in our decision that ASTI Outputs will be both PCDs and captured in Licence Obligations (LOs), which are both necessary as these mechanisms provide for specific, and separate functions.¹⁵
- 3.2 We decided that there would be an ASTI Cost And Output Adjusting Event Re-opener to potentially adjust outputs, delivery dates, and allowances should there be material changes to the output that is required to be delivered, or where efficient outturn costs deviate +/- 10% from provided allowances.¹⁶
- 3.3 Our ASTI decision set out that the ECF allowance would:
 - Be up to 20% of the forecast total project value provided the need for the activities proposed are acceptable to us, with the option to potentially adjust allowances in excess of 20% where we consider doing so to be necessary and in consumers' interests.

¹³ [Decision on accelerating onshore electricity transmission investment | Ofgem](#) paragraph 5.28 to 5.35

¹⁴ [Decision on accelerating onshore electricity transmission investment | Ofgem](#) paragraphs 5.36 to 5.40

¹⁵ [ASTI decision document](#) paragraphs 7.56 to 7.57

¹⁶ [ASTI decision document](#) paragraph 5.41

- Have two Re-opener windows, the first in summer 2023 and the second in summer 2024, with provision for an Ofgem triggered Re-opener should allowances need to be adjusted outside of these windows.
- Be overwritten in the licence with efficient costs following the PA.

3.4 Our ASTI decision set out that for the full PA we would:

- Not restrict timings by implementing windows for submissions and expect TOs to submit requests for full project funding any time after the relevant planning application has been submitted.
- Reflect our assessment of efficient costs rather than actual incurred expenditure.

Reason and effect of introducing the licence condition

3.5 The reason for introducing this condition is to give effect to our ASTI decision to have an ASTI PCD, ECF and to establish a Re-opener related to ASTI projects.

3.6 The effect is to:

- specify outputs, delivery dates and associated allowances for ASTI PCDs;
- establish a Re-opener for TOs to amend and add/remove ASTI PCDs and adjust outputs, delivery dates and associated allowances for existing PCDs;
- establish a process for TOs to apply for ECF and an ASTI Project Assessment Decision;
- make provision for adjustment to the ASTI PCD outputs and associated allowances following an ASTI Cost And Output Adjusting Event;
- provide for an assessment of the ASTI PCDs; and
- explain the process the Authority will follow when making changes under the condition.

Summary of informal licence drafting consultation responses

3.7. TOs were strongly against having an LO to deliver the ASTI projects by the ASTI ODI Target Date (based on the ESO-optimal delivery date plus 12 months). This is on the basis that the delivery dates came from the ESO and not the TOs, and they said that they do not know whether these dates are achievable.

3.8. TOs responded that if projects were delivered later than these dates it would mean they faced potential consequences under different regulatory mechanisms

(LO, PCD and ODI) and Ofgem had not considered the financeability and reputational impact of this.

- 3.9. TOs disagreed that project delivery dates should be included under this licence condition, proposing instead that delivery dates should only be added to the licence after the PA and full allowances have been provided, as per the current LOTI mechanism.
- 3.10. TOs and the ESO queried whether the use of defined Re-opener windows to submit ECF and PA Re-opener applications was too restrictive, and whether the licence should be more flexible to allow TOs to submit funding requests without regulatory delay.
- 3.11. TOs considered that the trigger to adjust allowances under the ASTI Cost And Output Adjusting Event mechanism – 10% of estimated project value – was too high and should be reduced to reflect additional risk of delivering multiple large projects simultaneously.
- 3.12. TOs considered that having to demonstrate that the delivered assets are available and operable for 48 months after project completion at system average performance levels was unreasonable and too onerous given the innovative nature of the assets being delivered and the 'bathtub effect', where assets typically suffer higher reliability issues at the beginning and end of an asset life.
- 3.13. Finally, TOs proposed that any licence modifications to reflect the provision of ECF should be made under Section 11A of the Electricity Act, rather than being done by direction as proposed by Ofgem.

Our consideration of the informal consultation responses

- 3.14. In this section we set out our minded-to position which reflects our consideration of responses to our informal consultation.
- 3.15. We disagree with the TOs that it is inappropriate to have an LO to deliver the ASTI projects by a specified date, as well as an ODI. These two regulatory mechanisms perform different functions – the ODI is a mechanism to incentivise timely delivery and penalise late delivery, while the LO is a mechanism that enables us to take enforcement action in the event that serious failings by a TO lead to serious consumer detriment.
- 3.16. We do not agree that the LO creates a double penalty for a single circumstance of delay alongside penalties under the ODI. In Chapter 4 of the draft ASTI Guidance and Submissions Requirements Document the proposed wording makes clear that

we would not automatically consider enforcement action for projects being delivered after the ASTI ODI Target Date (as extended by any Delay Event). A key consideration would be how late the project was delivered relative to the required date. The following is a non-exhaustive list of circumstance where we may consider taking enforcement action:

- whether the failure to meet the licence obligations is the result of serious deficiencies in the performance of a licensee’s project initiation and management processes; or
- whether the failure arose due to serious deficiencies in the performance of any contractor acting on a licensee’s behalf (for which the licensee would be held responsible); or
- whether it appears that a project has not been delivered by the ODI target date as a direct result of the licensee prioritising resources on other ASTI projects to optimise their overall financial position inappropriately under the ODI in a manner that does not serve consumers’ interests.

3.17. The main driver of the ASTI mechanism is that it accelerates the delivery of these strategic electricity transmission projects to meet the Government’s 2030 net zero ambitions. Given the importance of delivering against the Government’s 2030 ambitions, it is likely that the greatest detriment to consumers that would result from the above circumstances is a delay to the delivery of the ASTI project(s). By retaining a required delivery date LO, we consider any enforcement action under the kind of circumstances specified above is better able to take account of the level of delay, as well as the reason(s) for, the delay and therefore better captures the level of detriment to consumers.

3.18. Having received a joint letter from the TOs, dated 3 March, we have engaged extensively with the TOs regarding the delivery dates, including via:

- the supplementary questions process;
- the issues log, which has been shared back and forth between Ofgem and the TOs;
- email;
- working group meetings; and
- bilateral meetings between senior management at Ofgem and their counterparts at the TOs.

- 3.19. In their letter, the TOs propose that the LO delivery date for each ASTI project should be set at the point each project has reached the cap on penalty under the ODI. Their rationale for this is to avoid any perceived double punishment for late delivery. For some of the ASTI projects the ODI can have effect for up to 5 years from the ODI Target Date, which is already set one year after the ESO's delivery dates. This would mean that, even in cases of serious failings by the TO in delivery of these projects, Ofgem would be unable to take any enforcement action until 6 years after the projects were supposed to be delivered.
- 3.20. Ofgem's Principal Objective as set out in the Electricity Act 1989 is to "protect the interests of existing and future consumers". Fettering our ability to pursue enforcement action for 6 years whilst the TOs have the benefit of avoiding competition, a streamlined regulatory assessment and earlier access to funding does not protect the interests of consumers. Instead, it is important that we promote efficiency amongst the TOs and encourage them to deliver projects at an accelerated rate, compared with the likely timetables under LOTI, in order to reach the Government's 2030 net zero ambitions and to deliver the benefits to consumers that this will bring.
- 3.21. After careful consideration of the contents of the letter and all the subsequent engagement with the TOs, we are proposing in this statutory consultation that the TOs be subject to an LO to deliver the ASTI projects by the ASTI ODI Target Date. This date will be:
- 12 months after the ESO's optimal delivery date;
 - at least 12 months after the dates in the TOs' September delivery plans;
 - move back to reflect project delays that are outside of the TOs' control; and
 - potentially adjustable to take into account project scope changes.
- 3.22. We consider that this is appropriate for the following reasons:
- The ASTI framework is being introduced for a very specific purpose; the delivery of the Government's 2030 net zero ambitions. Without the commitment to deliver projects on time, it is increasingly difficult to justify the exemptions from competition and the streamlined regulatory approach for projects under ASTI.
 - The TOs proposed delivery dates in their September 2022 delivery plans and then developed credible plans to deliver the projects by these dates.

However, the LO obliges the TOs to deliver the projects only by at least 12 months *after* these dates.

- The TOs take issue with the ESO's delivery dates being used to set the LO delivery date, as these are based on "earliest in-service dates", which are logically ambitious dates. We have, however, taken account of these concerns and added 12 months to the ESO's dates when setting the LO delivery dates.
- We asked TOs both at working groups and through the supplementary questions process to provide probability estimates (P-values) for delivering the ASTI projects by the dates set out in their delivery plans.

Unfortunately, however, the TOs have not provided us with any robust P-value analysis:

- NGET provided P-values for their projects conducted by an external consultant. These provided probability figures did not reflect the circumstances under which an ODI Delay event would be sought, and so we do not consider they accurately reflect the probability of the LO dates not being met. In addition, NGET confirmed that they were not treating these values as a final delivery position or even as a forecast delivery position. They stated that through working with the supply chain they expect to be able to deliver accelerated dates that would lead them to be able to accept the date proposed in the ODI..
- SPT did not provide any P-value analysis; and
- SSE did not provide any P-value analysis
- On this basis, we do not have any evidence to suggest that setting the LO dates 12 months later than the ESO's delivery dates *and* later than the dates suggested by the TOs in their September delivery plans (with a mechanism to move dates further back to account for factors outside of TO control) places an unreasonable level of risk onto the TOs.
- When considered against the status quo of the LOTI framework, we do not consider the approach under ASTI creates additional material risk to the TOs. Under the LOTI framework, the TOs also have an LO to deliver projects by a required delivery date. While these delivery dates are set later than under ASTI (at the PA stage) when there is more certainty around a TO's ability to deliver on time, after the PA there is not the same

mechanism to move the delivery dates back for delays outside of the TOs' control as there is under ASTI.

- When designing the ASTI framework, we have taken into account the TOs' concerns with the existing LOTI regime and their desire for us to create a new framework that enables timely delivery of ASTI projects by reducing the number of regulatory stage-gates, approving project need and delivery body at an early stage and providing early funding ahead of projects obtaining planning permission to lock in supply chains and alleviate supply chain constraints. As explained in our ASTI decision¹⁷, the introduction of the new framework may create risk to consumers. We do not consider it appropriate to create a new framework for the TOs to deliver the ASTI projects that exposes consumers to these additional risks and then not hold the TOs to deliver the projects on time.
- We do not consider that having an LO to deliver the projects only after the expiration of the incentive period offers suitable protection of consumers' interests in the case of significant delay that the relevant TO is responsible for.

3.23. We disagree with the TOs proposal to add delivery dates to the licences only after PA. As highlighted above, the purpose of introducing the ASTI framework is specifically to deliver the ASTI projects by a specified delivery date to support delivery of the Government's 2030 net zero ambitions, and it is these dates that determined the benefits case for introducing the new ASTI framework in the first place.¹⁸ It is important to highlight that the new draft special conditions include a mechanism (Special Condition 3.41, Part F) to push back the delivery dates for events outside the TOs' control that lead to project delay. However we do not consider it appropriate that, before any delays have occurred, we remove any link between the actual delivery of the projects with the dates that are required to deliver Government's 2030 net zero ambitions.

3.24. We agree with the TOs and ESO that flexibility should be afforded to the TOs when submitting funding requests in order for projects to avoid any delay. As a result, we have removed the Re-opener windows from the draft special condition and TOs are therefore able to apply for funding at any time, for both ECF and full project allowances, provided they notify Ofgem no less than 8 weeks before they

¹⁷ Section 6 of our [ASTI decision](#).

¹⁸ Section 6 of our [ASTI decision](#).

make any funding request. Further information is found in chapter 4 of the ASTI Guidance and Submissions Requirements Document.

- 3.25. We have considered the TOs' concern that a threshold of 10% of project value could be considered too high a threshold to trigger an allowance adjustment under the ASTI Cost And Output Adjusting Event mechanism. Across the total portfolio of ASTI projects this could equate to around £2bn of potentially unfunded investment required. However, we have no evidence to suggest a systematic risk of overspend across the portfolio of projects, and justified risk allowances are provided at PA. We have updated the ASTI Guidance and Submissions Document to make clear that we will consider setting a lower threshold on a project-specific basis at the PA stage should the TOs justify why this is appropriate.
- 3.26. We recognise that the proposed 48-month demonstration of asset reliability may place an undue level of risk on the TOs, for the reasons they highlighted in paragraph 3.12 above. Following consideration of the TO responses we are proposing to introduce an LO on the TOs to demonstrate asset reliability for a period of 24 months (see appendix 2 of SpC 3.41), with the level of performance to be determined at the PA stage and be reflective of the type of asset(s) being delivered. This is to ensure that consumers actually receive sufficient benefit from the ASTI investments – it is not reasonable to expect consumers to fund ~£20bn of new network investment only for those assets to be unreliable and to not be available to the ESO for use. Further information is given in chapter 4 of the ASTI Guidance and Submissions Document.
- 3.27. Following assessment of the informal licence consultation responses we agree with the TOs that licence modifications to reflect provision of ECF allowances should be made under Section 11A of the Electricity Act. We are satisfied doing so will not lead to any project delay relative to making modifications by direction and therefore propose to make this change to Part C of SpC 3.41.
- 3.28. We have considered the points raised by the TOs around financeability and have concluded that it is appropriate to consult on a position, which remains unchanged from the ASTI decision (see paragraphs 8.27-8.33)^{19,20} It is our view that:

¹⁹

²⁰ [Decision on accelerating onshore electricity transmission investment \(ofgem.gov.uk\)](https://www.ofgem.gov.uk/consult/condocs/ast/ast160116/ast160116.pdf)
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- We have a duty to have regard to the need to secure that licence holders are able to finance the activities which are the subject of obligations imposed by or under applicable legislation. .
- We have also given thought to the impact of our proposed decision on the financeability of a notional efficient TO in the context of making our ASTI Decision, as well as when preparing the informal consultation and this current statutory consultation.
 - We have concluded that the financeability assessment that we carried out in formulating the RIIO-2 Final Determinations gives us confidence that the notional efficient TO is adequately remunerated under the RIIO-2 price control package to allow the investment necessary during the RIIO-2 period to deliver the ASTI programme.
- We will continue to have regard to financeability, including at the point of the next price control review, which will take into account the investment needed to deliver the ASTI programme as determined at the time alongside other factors.

4. Special Condition 4.8 Accelerated Strategic Transmission Investment output delivery incentive (ASTII_t)

Questions

5. Do you agree with our proposed licence modification for the ASTI ODI condition?
6. Do you propose any changes to the proposed licence modification?
7. Can you provide any additional information and evidence that will aid our decision making process in relation to the ASTI ODI condition?

Introduction

- 4.1 Chapter 7 of our ASTI decision document²¹ set out our decision to introduce an ODI that rewards or penalises the TOs in relation to the early or late delivery of ASTI projects relative to each project's ASTI ODI Target Date.
- 4.2 Our ASTI decision set out that the ODI would be set:
 - With daily reward and penalty rates for each project set at 30% of the forecast constraint cost impact of a one-year delay divided by 365.²² Aggregate rewards and penalties for each project capped at 10% of forecast totex for that project. In addition, daily rates are constrained so that²³:
 - a. Rewards and penalties for each project in any 12-month period are capped at 5% of forecast totex.
 - b. Rewards and penalties for each project in any 12-month period are subject to a minimum of 2% of forecast totex.
 - ASTI ODI Target Dates of the 31st of December of the year after the required-in-service year in which the project is required to be delivered in accordance with the Network Options Assessment 2021/22 Refresh²⁴ by the National Grid Electricity System Operator.²⁵

²¹ [Decision on accelerating onshore electricity transmission investment | Ofgem](#)

²² [ASTI decision document](#), paragraph 7.27

²³ [ASTI decision document](#), paragraphs 7.29 to 7.31

²⁴ [download \(nationalgrideso.com\)](#)

²⁵ [ASTI decision document](#), paragraph 7.32 to 7.43

4.3 Our ASTI decision also set out that:

- We would include a mechanism to allow TOs to apply for a time-limited exemption from ASTI ODI penalties for project delays caused by factors outside their reasonable control to the extent that they cannot be reasonably anticipated and mitigated through efficient management.²⁶

Reason and effect of introducing the licence condition

4.4 The reason for introducing this condition is to give effect to our ASTI decision that there should be an ODI to incentivise the timely delivery of ASTI Outputs.

4.5 The effect is to:

- reward or penalise the TOs' performance in relation to delivery against the ASTI ODI Target Date; and
- establish a process for exempting the TO from penalties for project delays that are outside of their reasonable control, and they are unable to mitigate against.

Summary of informal licence drafting consultation responses

4.6 TOs proposed a number of small revisions to the ODI algebra and definitions in order to reduce the formula's complexity and avoid any unnecessary duplication and error, for example using single terms to define both early and late delivery and for reward and penalty rates, rather than having separate terms for each.

4.7 TOs proposed that for projects where there are significant scope changes, as well as having the ability to apply for an extension to the ASTI ODI Penalty Exemption Period, there should also be a mechanism to change the ASTI ODI Target Date itself. TOs said that not including a mechanism is not consistent with our ASTI decision²⁷ that said '*where the further development of the project, for example, as a result of changes through the planning process, has a significant impact on the design of a project and therefore means that the delivery dates are no longer achievable, we will consider whether to update delivery dates for the purposes of the ASTI ODI for these projects*'.

²⁶ [ASTI decision document](#), paragraphs 7.50 to 7.55

²⁷ [ASTI decision document](#), paragraph 3.14

Our consideration of the informal consultation responses

- 4.8 In this section we set out our minded-to position which reflects our consideration of responses to our informal consultation.
- 4.9 We agreed with the proposed revisions to the ASTI ODI algebra and definitions following further explanation from the TOs which demonstrated that the revised algebra and definitions enabled the ASTI ODI formula to work as intended. We are now consulting on an updated ASTI ODI formula.
- 4.10 Where there are significant scope changes to ASTI projects that mean, in effect, they constitute different projects, we will consider whether the project is suitable for funding under ASTI – if we agree that it is we will consider setting a new ASTI Output with a new ASTI ODI Target Date.
- 4.11 Where there are scope changes that we do not consider meet the threshold of constituting a new ASTI Output, before changing the ASTI ODI Target Date, we will consider a range of project-specific factors and circumstances including, but not limited to, the level of confidence we have in the revised date and the extent to which consumer benefit can be demonstrated from delivering the project later than the original ASTI ODI Target Date.
- 4.12 We do not propose to include a specific provision within this condition to enable the TOs to request a change to the ASTI ODI Target Date. We instead propose that where there is sufficient evidence that it is appropriate for the ASTI ODI Target Date to be changed, we will consult on the change and modify the condition under Section 11A of the Electricity Act.
- 4.13 We only expect changes to the ODI target date to be needed in a limited set of circumstances and at specific milestones in project development when it is likely we will already be assessing the project under the other terms of the ASTI funding arrangements. For example, we would typically expect scope changes to be aligned with the identification of new ASTI projects or with the planning process ahead of project assessment. We therefore consider that any adjustments to the ODI Target date can be considered as part of wider considerations at the relevant regulatory stage of the project.
- 4.14 TOs have indicated in recent discussions that there remains some uncertainty around specific designs within some ASTI projects due to changes in how the ESO analysis assumes they will interact. They expect this uncertainty will impact on their ability to deliver the projects on time. Our minded to position is that once the ASTI conditions are in place, the TOs have a clearer understanding of the

design requirements of the projects and the TOs can articulate the likely impact on delivery timescales with evidence, we will consider amending the ODI dates if the evidence presented supports this. We will continue to engage with the TOs on this issue to better understand their delivery plans during the consultation period.

5. Other licence modifications

Questions

8. Do you agree with our proposed licence modifications to SpC 1.1?
9. Do you agree with our proposed licence modifications to SpC 3.14?
10. Do you agree with our proposed licence modifications to SpC 3.15?
11. Do you agree with our proposed modifications to the Price Control Deliverable Reporting Requirements and Methodology Document?
12. Do you agree with the content of our proposed ASTI Guidance and Submissions Requirement Document (included as appendix to this consultation document)?

5.1 To fully incorporate the ASTI framework into the TOs' electricity transmission licences we need to make some modifications to the following existing licence special conditions and governance document:

- SpC 1.1 (Interpretations and definitions)
- SpC 3.14 (Medium Sized Investment Projects Re-opener and PCD)
- SpC 3.15 (Pre-Construction Funding Re-opener and PCD)
- PCD Reporting Requirements and Methodology Document

Special Condition 1.1 (Interpretations and definitions)

5.2 There are a number of new defined terms in the ASTI licence conditions that need to be added to SpC 1.1 as well as modification to defined terms already included within SpC 1.1.

5.3 The reason for the modification to SpC 1.1 is to amend or insert defined terms in line with our other proposed licence modifications (see the TO-specific annexes published alongside this statutory consultation).

5.4 The effect of these modifications is to provide greater clarity to the interpretation and application to the licence conditions in question.

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5.5 We have made some minor changes to the definitions consulted on as part of the informal licence drafting consultation to reflect TO comments and subsequent iterations of the issues log process.

5.6 The table below shows the modifications to SpC 1.1 that we are proposing to make – modifications to existing definitions are highlighted in red.

Table 1: SpC 1.1 – ASTI definitions

Term	Definition
New terms	
ASTI	means the assets constituting an investment in the Transmission System, where the investment: (a) meets the definition of LOTI; (b) has been identified by NGESO as being needed to be operational by 2030 to meet the Government’s ambition to connect 50GW offshore wind generation; and (c) satisfies the Authority that there is clear evidence that the expected consumer benefits of applying the accelerated delivery framework to the project exceeds the expected consumer detriment.
ASTI Cost And Output Adjusting Event	means events outside of the licensees' reasonable control and which the licensee could not have economically and efficiently planned a contingency for which have a material impact on the scope or cost of an ASTI Output.
ASTI Guidance and Submission Requirements Document	means the document of that name issued by the Authority in accordance with Special Condition 3.41 (ASTI Re-opener and Price Control Deliverable).
ASTI ODI Penalty Exemption Period	means the number of days after the ASTI ODI Target Date for which the Authority decides an ASTI output delivery incentive penalty will not apply following an application under Part B of Special Condition 4.8 (Accelerated strategic transmission investment output delivery incentive).
ASTI ODI Target Date	means the date from which licensees are not eligible for a reward under the ASTI output delivery incentive as stated in Appendix 1 of Special Condition 4.8 (Accelerated strategic transmission investment output delivery incentive).
ASTI Outputs	means the outputs included in Appendix 1 to Special Condition 3.41 (Accelerated strategic transmission investment Re-opener and Price Control Deliverable).
ASTI Pre-Construction Funding	means the funding required to complete Pre-Construction Works on an ASTI project.

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ASTI Project Assessment Decision	means a document of that name setting out the Authority’s decision on an application by the licensee under Part D of Special Condition 3.41 (Accelerated strategic transmission investment Re-opener and Price Control Deliverable): a) on the ASTI Output, delivery date and associated allowances to be specified in Appendix 1 to Special Condition 3.41; and b) on any additional events that are to be considered ASTI Cost And Output Adjusting Events for that ASTI; with any modifications to Special Condition 3.41 being made under section 11A of the Act.
ASTI Confidential Annex	means the confidential document containing confidential / commercially sensitive information related to the ASTI framework and issued to the licensee on (add date of latest issued version).
Delay Event	means an event that: (a) causes, or is reasonably expected to cause, one or more ASTI projects to be delayed by at least 30 days; (b) is outside the licensee’s reasonable control; and (c) is not attributable to any error or failure on the licensee’s part.
Early Construction Funding	means allowances in addition to ASTI Pre-Construction Funding in relation to an ASTI Output provided before an ASTI Project Assessment Decision and related to: (a) strategic land purchases; (b) early enabling works; (c) early procurement commitments; and (d) other activities approved in advance by the Authority.
Modified terms (proposed modifications in red)	
Pre-Construction Works	means: (a) surveys, assessments and studies; (b) project design; (c) engineering development; (d) stakeholder engagement and consultation; (e) tasks associated with wayleaves; (f) planning applications; and (g) tender activities h) other activities as may be approved by Ofgem undertaken for the purposes of developing a LOTI to the point where all material planning consents have been obtained and the project is ready to begin construction, or developing an ASTI to the point of submission of all material planning consent applications.
Price Control Deliverable	means the outputs, delivery dates and associated allowances in Special Conditions 3.2 to 3.4, 3.9, 3.10, 3.14, 3.15, 3.20 to 3.25, 3.27, 3.40 and 3.41.
Re-opener	means the mechanisms created by: (a) Special Conditions 3.8, 3.13, 3.16, 3.31 to 3.35, and (b) Parts C, D and E of Special Condition 3.2 (Cyber resilience operational technology Re-opener, Price Control Deliverable and Use It Or Lose It adjustment), Parts C, D and E of Special Condition 3.3 (Cyber resilience information technology Re-opener and Price Control Deliverable), Parts C

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	<p>and D of Special Condition 3.4 (Physical security Re-opener and Price Control Deliverable), Part C of Special Condition 3.6 (Net zero Re-opener and Price Control Deliverable), Part C of Special Condition 3.7 (Non-operational IT Capex Re-opener and Price Control Deliverable), Part D of Special Condition 3.10 (Visual Impact Mitigation Re-opener and Price Control Deliverable and Enhancing Pre-existing Infrastructure Projects allowance), Part C of Special Condition 3.14 (Medium Sized Investment Projects Re-opener and Price Control Deliverable), Part C of Special Condition 3.15 (Pre-Construction Funding Re-opener and Price Control Deliverable), Parts C and D of Special Condition 3.27 (SF6 asset intervention Re-opener and Price Control Deliverable), Part C of Special Condition 3.40 (Accelerated strategic transmission investment Pre-Construction Funding Re-opener, Price Control Deliverable and Use It Or Lose It Adjustment) and Parts C and D of Special Condition 3.41 (Accelerated strategic transmission investment Re-opener and Price Control Deliverable).</p>
Use It Or Lose It Adjustment	<p>means an adjustment to allowances where they have not been spent, or have not been spent in a way that is efficient to:</p> <ul style="list-style-type: none"> (a) improving cyber resilience in relation to OT, including risk reduction or improved status of the licensee’s network and information systems with respect to CAF Outcomes, in relation to Special Condition 3.2 (Cyber resilience operational technology Re-opener, Price Control Deliverable and Use It Or Lose It Adjustment), (b) developing projects in preparation for Re-openers in relation to Special Condition 3.5 (Net Zero And Re-opener Development Fund use it or lose it allowance); (c) the delivery of capex substation auxiliary equipment in relation to Special Condition 3.26 (Substation auxiliary systems use it or lose it allowance); or (d) the licensee's stated aims of the allowance provided by Special Condition 5.6 (Net zero carbon Capital Construction use it or lose it allowance) as set out in the licensee's Environmental Action Plan which will not exceed the allowance provided. e) Delivering the outputs associated with ASTI Pre-Construction Funding in relation to Special Condition 3.40 (ASTI Pre-construction Funding Re-opener, Price Control Deliverable and Use It Or Lose It Adjustment).

SpC 3.14 Medium Sized Investment Projects Re-opener and Price Control Deliverable (MSIPRE_t)

5.7 Currently, the Medium Sized Investment Projects (MSIP) Re-opener under SpC 3.14 allows for one Re-opener window per year. Whilst we consider this gives a significant level of flexibility for TOs to make Re-opener applications, our ASTI

decision²⁸ acknowledged that this may not provide the necessary flexibility to accelerate projects if TOs have to wait for that specified window before they can make an application. We explained that we would modify SpC 3.14 to increase the frequency of Re-opener windows.

5.8 For this reason, in each of the TOs' electricity transmission licences we propose modification to SpC 3.14.6 to add the following eligibility criteria to make a Re-opener application:

- *'(m) a project identified by NGESO as required to be delivered by 2030'* and
- *(n) a project required to enable delivery of an ASTI project*

5.9 We also propose modification to SpC 3.14.7 to add the following bullet point after the existing Re-opener windows:

- *'or as otherwise directed by the Authority.'*

5.10 Therefore, we propose Part C of SpC 3.14 should be modified as follows (proposed modifications in red):

Part C: Medium Sized Investment Projects Re-opener

3.14.6 The licensee may apply to the Authority for a modification to the outputs, delivery dates or associated allowances in Appendix 1 in relation to one or more of the following activities:

- (a) a Generation Connection project, including all infrastructure related to that project, the forecast costs of which are at least £11.84m more or less than the level that could be provided for under Special Condition 3.11 (Generation Connections volume driver);
- (b) a Demand Connection project, including all infrastructure related to that project, the forecast costs of which are at least £11.84m more or less than the level that could be provided for under Special Condition 3.12 (Demand Connection volume driver);
- (c) a Boundary Reinforcement Project that has received a NOA Proceed Signal in the most recent NOA, and will:
 - i. create a new boundary, or alter an existing boundary; or
 - ii. finish after 1 April 2028 but before 31 March 2031;
- (d) a Flooding Defence Project, the purpose of which is to follow:
 - i. updates to the Energy Networks Association's report titled 'Engineering Technical Report (ETR138)' guidance on flooding; or

²⁸ Paragraph 3.24

- ii. a request from government, or a body which has responsibility for flood prevention, to protect sites from flooding;
- (e) an Electricity System Restoration Project following the establishment of an Electricity System Restoration Standard;
- (f) a system operability, constraint management or OMW connection project or substation work which is required to accommodate embedded generation, which in each case has been requested in writing by the System Operator;
- (g) projects that are required in order to meet NETS SQSS requirements regarding security, or system operability;
- (h) Harmonic Filtering projects that are needed following:
 - i. requests from the licensee's customers to aggregate and deliver Harmonic Filtering requirements; or
 - ii. system studies by the System Operator or the licensee showing a need for additional Harmonic Filtering on the National Electricity Transmission System;
- (i) protection projects that are needed following:
 - i. system studies by the System Operator or the licensee showing a need for changes to the protection settings or replacement of protection relay with inadequate range;
 - ii. system studies by the System Operator or the licensee showing a need for dynamic line ratings; or
 - iii. system studies by the System Operator or the licensee showing a need for an operational intertrip;
- (j) data transformation and improvement projects, to implement recommendations regarding specific outputs required to meet principles developed by industry data working groups;
- (k) SF6 asset interventions, where the licensee can demonstrate a well-justified SF6 Intervention Plan;
- (l) Electricity System Restoration Projects or a Flooding Defence Project, where the licensee can demonstrate a well-justified needs case;
- (m) a project identified by NGESO as required to be delivered by 2030; and
- (n) a project required to enable delivery of an ASTI project.

3.14.7 The licensee may only apply to the Authority under paragraph 3.14.6 Between:

- (a) 24 April 2021 and 30 April 2021;
- (b) 25 January 2022 and 31 January 2022
- (c) 25 January 2023 and 31 January 2023;
- (d) 25 January 2024 and 31 January 2024;
- (e) 25 January 2025 and 31 January 2025;
- (f) or as otherwise directed by the Authority.

3.14.8 In relation to an application under paragraph 3.14.6(l) the licensee may apply twice during the Price Control Period.

- 3.14.9 An application under paragraph 3.14.6 must be made in writing to the Authority and include:
- (a) a statement setting out what Medium Sized Investment Project the application relates to;
 - (b) any amendments requested to the outputs, delivery dates or allowances in Appendix 1;
 - (c) such detailed supporting evidence as is reasonable in the circumstances to justify the technical need including cost benefit analysis, impact assessments, risk mitigation, and engineering justification statements; and
 - (d) an explanation of the basis of the calculation for any adjustments requested to allowances.
- 3.14.10 An application under paragraph 3.14.6 must:
- (a) take account of any expenditure, which can be avoided as a result of the change;
 - (b) relate to costs incurred or expected to be incurred that exceed the Materiality Threshold, but are less than £100m; and
 - (c) be confined to costs incurred or expected to be incurred on or after 1 April 2021.
- 3.14.11 Any modifications under this Part will be made under section 11A of the Act.
- 5.11 Given the flexibility that is already provided in the MSIP Re-opener, the following criteria will apply when the Authority directs additional Re-opener windows:
- (1) Additional windows can only be utilised for applications for projects:
 - (a) related to work driven by the Holistic Network Design²⁹;
 - (b) identified as being required to be delivered by 2030 in the Networks Options Analysis 7 Refresh³⁰; or
 - (c) necessary to enable delivery of ASTI projects.
 - (2) There will be a maximum of one additional window per regulatory year across all TOs (i.e., not an additional extra window for each TO)
- 5.12 The reason for making these modifications is to provide more flexibility to the TOs around when they can submit Re-opener applications for MSIP projects required to deliver the Government's 2030 net zero ambitions.
- 5.13 The effect is to allow the TOs to apply for MSIP funding twice in each regulatory year rather than once as per the current licence condition.

²⁹ [The Pathway to 2030 Holistic Network Design | ESO \(nationalgrideso.com\)](https://www.nationalgrideso.com/the-pathway-to-2030-holistic-network-design)

³⁰ [Network Options Assessment \(NOA\) | ESO \(nationalgrideso.com\)](https://www.nationalgrideso.com/network-options-assessment-noa)

Special Condition 3.15 Pre-Construction Funding Re-opener and Price Control Deliverable (PCF_t and PCFRE_t)

- 5.14 There are a number of projects included within the scope of the ASTI framework that have already received PCF under SpC 3.15. Our ASTI decision stated that these projects would not receive any additional ASTI PCF allowances under SpC 3.40, however modifications are required to SpC 3.15 to:
- Align the PCF outputs between SpC 3.15 and SpC 3.40 for projects within the ASTI framework;
 - Remove reference to submission of Initial Needs Case (INC) / Final Needs Case (FNC) assessments for projects funded under SpC 3.15 that are now in the ASTI framework;
 - Remove the requirement to submit an INC when requesting additional PCF funding under SpC 3.15 for projects that are within the ASTI framework;
 - Make explicit that projects within the ASTI framework that received PCF under SpC 3.15 are now ASTI projects; and
 - Update how the PCDs for ASTI projects that received PCF under SpC 3.15 will be assessed.
- 5.15 The reason for these modifications to SpC 3.15 is to give effect to our ASTI decision that projects that have already received PCF under SpC 3.15 will not receive any further allowance under SpC 3.40 but will for all other purposes be treated as ASTI projects rather than LOTI projects.
- 5.16 The effect is to make the changes identified in paragraph 5.14 above in the TOs' electricity transmission licences.
- 5.17 We propose modifying the 'Output' in Appendix 1 of SpC 3.15 for all ASTI projects that have received PCF under this condition from 'LOTI Final Needs Case approval of (project)' to 'Obtaining all material planning consents for (project)'
- 5.18 We also propose making the following modifications (in red) to SpC 3.15:

Special Condition 3.15 Pre-Construction Funding Re-opener and Price Control Deliverable (PCF_t and PCFRE_t)

Introduction

- 3.15.1 The purpose of this condition is to calculate the terms PCF_t (the Pre-Construction Funding Price Control Deliverable term) and PCFRE_t (the Pre-Construction Funding Re-opener term). These contribute to the calculation of the Totex Allowance.
- 3.15.2 The effect of this condition is to:
- (a) specify the outputs, delivery dates and associated allowances for the Price Control Deliverable; and
 - (b) establish a Re-opener for the licensee to trigger where it expects to incur costs for Pre-Construction Works in relation to a LOTI **or an ASTI**.
- 3.15.3 This condition also sets out the process the Authority will follow when directing any changes under paragraphs 3.15.6 and 3.15.9.

Part A: Formula for calculating the Pre-Construction Funding Price Control Deliverable term (PCF_t) and the Pre-Construction Funding Re-opener term (PCFRE_t)

- 3.15.4 The value of PCF_t is derived in accordance with the following formula:

$$PCF_t = PCFA_t - PCFRA_t$$

where:

PCFA _t	means the baseline allowances in Appendix 1; and
PCFRA _t	has the value zero unless otherwise directed by the Authority in accordance with Part D.

- 3.15.5 The value of PCFRE_t is derived in accordance with the following formula:

$$PCFRE_t = PCFO_t - PCFRO_t$$

where:

PCFO _t	means the sum of allowances directed by the Authority as a result of the Re-openers established by Part C; and
PCFRO _t	has the value zero unless otherwise directed by the Authority in accordance with Part D.

Part B: What the licensee is funded to deliver

- 3.15.6 Appendix 2 specifies the outputs that the licensee is funded to deliver, the delivery dates for those outputs and the allowances provided.

Part C: Pre-Construction Funding Re-opener

- 3.15.7 In respect of any relevant LOTI **or ASTI**, the licensee may apply to the Authority for a direction amending the outputs, delivery dates or associated allowances in Appendix 2 where:

- (a) the licensee expects to incur costs for Pre-Construction Works that are not already specified as outputs in Appendix 2; or
- (b) the licensee expects that the costs of Pre-Construction Works specified as outputs in Appendix 2 will be more than double the allowance provided for those Pre-Construction Works.

3.15.8 In respect of any relevant LOTI, the licensee may only apply to the Authority under paragraph 3.15.7 when submitting an Initial Needs Case for the relevant LOTI, unless the Authority directs that the licensee can apply at another time.

3.15.9 An application under paragraph 3.15.7 must be made in writing and include:

- (a) a breakdown of what Pre-Construction Works are expected to be undertaken;
- (b) an overview of the LOTI or ASTI to which the Pre-Construction Works relate;
- (c) a justification of why the Pre-Construction Works are required; and
- (d) any amendments requested to the outputs, delivery dates or allowances set out in Appendix 2.

Part D: Assessment of outputs Price Control Deliverable (PCFRA_t and PCFRO_t)

3.15.10 The Authority will, in accordance with the assessment principles set out in Part A of Special Condition 9.3 (Price Control Deliverable assessment principles and reporting requirements) and the principles in paragraph 3.15.11, consider directing a value for PCFRA_t and PCFRO_t where the licensee has not Fully Delivered an output in Appendix 2.

3.15.11 The principles mentioned in paragraph 3.15.10 are:

- (a) where the Authority considers that the licensee has completed a sufficient proportion of Pre-Construction Work, but not submitted its primary planning application for the LOTI or ASTI, a minimum of 20% of the allowance for the relevant Pre-Construction Works will be allowed;
- (b) where the licensee has submitted its primary planning application for the LOTI or ASTI, but has not secured Final Needs Case approval or obtained all material planning consents, a minimum of 60% of the allowance for the relevant Pre-Construction Works will be allowed; and
- (c) where the licensee has secured Final Needs Case approval for the LOTI or obtained all material planning consents, 100% of the Pre-Construction Works PCD allowance for that LOTI will be allowed.

Part E: What process will the Authority follow in making a direction?

3.15.12 Before making a direction under paragraphs 3.15.7 or 3.15.10 the Authority will publish on the Authority's Website:

- (a) the text of the proposed direction;
- (b) the reasons for the proposed direction; and
- (c) a period during which representations may be made on the proposed direction, which will not be less than 28 days.

3.15.13 A direction under paragraph 3.15.7 will set out any amendments to Appendix 2.

3.15.14 A direction under paragraph 3.15.10 will set out:

- (a) the delivery status of the output that has not been Fully Delivered;
- (b) the value of the PCFRA_t and PCFRO_t terms and the Regulatory Years to which those adjustments relate; and
- (c) the methodology and data that has been used to decide the delivery status and value of any adjustments to the PCFRA_t and PCFRO_t terms.

PCD Reporting Requirements and Methodology

Document

5.19 We consider it necessary to modify the PCD Reporting Requirements and Methodology Document to set out how we intend to undertake the PCD assessment under SpC 3.40. We have proposed to add 'Appendix 6 Electricity Transmission: ASTI Pre-Construction Funding' to the PCD Reporting Requirements and Methodology Document, and are consulting on it as part of this statutory licence consultation.

5.20 Further information around the ASTI PCF PCD described in SpC 3.40 and the ASTI PCD described in SpC 3.41 is included in Chapters 3 and 4 of the ASTI Guidance and Submissions Requirements Document we are consulting on as part of this statutory licence consultation.

Appendix 1: Privacy notice on consultations

Personal data

The following explains your rights and gives you the information you are entitled to under the General Data Protection Regulation (GDPR).

Note that this section only refers to your personal data (your name address and anything that could be used to identify you personally) not the content of your response to the consultation.

1. The identity of the controller and contact details of our Data Protection Officer

The Gas and Electricity Markets Authority is the controller, (for ease of reference, "Ofgem"). The Data Protection Officer can be contacted at dpo@ofgem.gov.uk

2. Why we are collecting your personal data

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

3. Our legal basis for processing your personal data

As a public authority, the GDPR makes provision for Ofgem to process personal data as necessary for the effective performance of a task carried out in the public interest. i.e. a consultation.

4. With whom we will be sharing your personal data

We will not be sharing your personal data.

5. For how long we will keep your personal data, or criteria used to determine the retention period.

Your personal data will be held for twelve months after the consultation has closed.

6. Your rights

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right to:

- know how we use your personal data
- access your personal data
- have personal data corrected if it is inaccurate or incomplete
- ask us to delete personal data when we no longer need it
- ask us to restrict how we process your data
- get your data from us and re-use it across other services

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- object to certain ways we use your data
- be safeguarded against risks where decisions based on your data are taken entirely automatically
- tell us if we can share your information with 3rd parties
- tell us your preferred frequency, content and format of our communications with you
- to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at <https://ico.org.uk/>, or telephone 0303 123 1113.

7. Your personal data will not be sent overseas

8. Your personal data will not be used for any automated decision making.

9. Your personal data will be stored in a secure government IT system.

10. More information For more information on how Ofgem processes your data, click on the link to our "[ofgem privacy promise](#)".