

Mark Cassidy
mark.cassidy@ofgem.gov.uk

National Grid ESO
Faraday House
Gallows Hill
Warwick
CV34 6DA

gareth.davies@nationalgrideso.com
nationalgrideso.com

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ESO Response to Proposal to modify the Regulatory Reporting Pack (RRP), Regulatory Instructions and Guidance (RIGs) and the Price Control Financial Model (PCFM) Guidance for RIIO-ET2

Dear Mr Cassidy,

Thank you for the opportunity to respond to your consultation on Proposal to modify the Regulatory Reporting Pack (RRP), Regulatory Instructions and Guidance (RIGs) and the Price Control Financial Model (PCFM) Guidance for RIIO-ET2.

Who we are

As the Electricity System Operator (ESO) for Great Britain, we are in a privileged position at the heart of the energy system, balancing electricity supply and demand second by second.

As the UK moves towards its 2050 net zero target, our mission is to drive the transformation to a fully decarbonised electricity system by 2035, one which is reliable, affordable, and fair for all. We play a central role in driving Great Britain's path to net zero and use our unique perspective and independent position to facilitate market-based solutions to the challenges posed by the trilemma.

Our transformation to a Future System Operator (FSO) is set to build on the ESO's position at the heart of the energy industry, acting as an enabler for greater industry collaboration and alignment. This will unlock value for current and future consumers through more effective strategic planning, management, and coordination across the whole energy system.

Our response

Whilst this consultation does not refer to our own licence, we wish to comment on the proposals for 'Amending the definition of totex' which are set out within table 1 on page 2 of the letter published by Ofgem on 28 February.

- We are concerned the current drafting could lead to unintended consequences which Ofgem may not have considered. For example, in the past the ESO has assisted the court or CMA as an interested party or intervener in judicial reviews and CMA appeals brought against Ofgem (in particular, providing evidence and analytical support). The proposal would appear to stop the relevant licensees from recovering costs incurred in performing such a role in the future.
- More broadly, we consider that this proposal if implemented would represent a step change for UK economic regulation, in creating a barrier to challenge Ofgem's decisions.
- We consider that the ability to appeal to the CMA and oversight of the courts through the judicial review are necessary parts of the regime.
- The ability to challenge the regulator in an impartial tribunal has always been considered a favorable feature for investment in the utility industry and is an admired aspect of the UK regime. There must be a risk that implementing proposals such as this could damage investment in the energy sector in the UK, at a time where such investment is crucial for the energy transition.

- We are concerned the precedent that such a proposal would set for the industry across the interlinked licences, codes and organisations which make up the system for the provision of essential utilities and the ability for all those companies to operate economically and efficiently.

Finally, we were surprised to see these changes within a notice rather than consultation, given the scale of proposed change within.

We look forward to engaging with you further. Should you require further information on any of the points raised in our response please contact Amanda Rooney. Our response is not confidential.

Yours sincerely

Gareth Davies

ESO Regulation & RIIO Senior Manager

