

Decision

Decision to modify the special licence conditions in the electricity transmission licences: Accelerated Strategic Transmission Investment

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On 24 May 2023 we published a statutory consultation on proposed modifications to the special conditions in the Transmission Owner's (TOs) electricity transmission licences required to incorporate the Accelerated Strategic Transmission Investment (ASTI) framework.

This document sets out our decision and rationale for implementing three new licence special conditions:

- Special Condition 3.40: ASTI Pre-Construction Funding Re-opener, Price Control Deliverable and Use It Or Lose It Adjustment
- Special Condition 3.41: ASTI Re-opener and Price Control Deliverable
- Special Condition 4.9: ASTI output delivery incentive

It also sets out our decision and rationale for implementing modifications to three existing special conditions:

- Special Condition 1.1: Interpretations and definitions
- Special Condition 3.14: Medium Sized Investment Project Re-opener and Price Control Deliverable
- Special Condition 3.15: Pre-Construction Funding Re-opener and Price Control Deliverable

This document also includes our decision to introduce a new Accelerated Strategic Transmission Investment Guidance And Submission Requirements Document (ASTI Guidance Document) and to modify the Price Control Deliverable Reporting

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Requirements and Methodology Document¹ by the addition of a new appendix “Appendix 6: Electricity Transmission: ASTI Pre-Construction Funding”.

¹ [Price Control Deliverable Reporting Requirements and Methodology Document | Ofgem](#)

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1. Introduction

Context

- 1.1. In December 2022 we² published our decision to introduce a new Accelerated Strategic Transmission Investment (ASTI) framework³ (referred to within this document as our “ASTI decision”). Within this ASTI⁴ framework, Ofgem will assess and approve funding for large, strategic onshore electricity transmission projects that are required to deliver the Government’s ambition to connect up to 50GW of offshore wind generation to the electricity network by 2030.⁵
- 1.2. Our ASTI decision set out our policy and processes to provide ASTI Pre-Construction Funding (ASTI PCF), Early Construction Funding (ECF), and full project funding, as well as the introduction of an ASTI output delivery incentive (ASTI ODI) to incentivise the timely delivery of these projects.
- 1.3. Our decision also included Price Control Deliverables (PCDs) and licence obligations (LOs) which oblige the TOs to deliver the ASTI projects in support of the Government’s 2030 objectives, as well as mechanisms to change the project delivery date and exempt the TOs from penalties under the ASTI ODI for delays that are outside of their control.
- 1.4. This decision document details the modifications that we have decided to make to the Transmission Owners’ (TOs’) electricity transmission licences in order to give effect to the ASTI decision.

Our decision-making process

- 1.5. 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 13 working groups to regularly review and develop the licence conditions and draft the ASTI Guidance Document. We also established an ASTI licence issues log where the TOs were able to provide detailed feedback on the draft licence conditions as they developed through multiple iterations of drafting.

² References to ‘Ofgem’, ‘the Authority’, ‘we’ and ‘us’ are used interchangeably in this document. The Authority is the Gas and Electricity Markets Authority. Ofgem is the office of the Authority.

³ [Decision on accelerating onshore electricity transmission investment \(ofgem.gov.uk\)](https://www.ofgem.gov.uk/consult/condocs/astiframework/astiframework.pdf)

⁴ Throughout this document, any capitalised term not otherwise defined has the meaning given to it in Special Condition 1.1 of the electricity transmission licence.

⁵ [British energy security strategy - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/british-energy-security-strategy)

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- 1.6. In March 2023 we published a non-statutory licence consultation⁶ on the proposed new special licence conditions (SpC) and draft ASTI Guidance Document, which received four stakeholder responses from the three TOs and the National Grid Electricity System Operator (ESO). This consultation was part of our non-statutory engagement with stakeholders, conducted ahead of our statutory consultation to allow for additional consideration of stakeholder views.
- 1.7. In May 2023, following consideration of the responses to the non-statutory consultation and further licence drafting working groups, we published a statutory licence consultation.⁷ This set out our proposal to introduce three new ASTI SpCs and a governance document, modify three existing SpCs, and modify the Price Control Deliverable Reporting Requirements and a Methodology Document⁸ in order to implement the policies set out in our ASTI decision. This consultation document also included our consideration of stakeholder views raised in response to the non-statutory licence consultation.
- 1.8. We have also considered at length 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 23 May 2023, and Scottish Power Transmission Plc, dated 11 May 2023 when reaching our decision on the ASTI licence framework.
- 1.9. In addition to the two consultations, licence working groups, issues log, and in-depth consideration of the TO letters, we have also held regular bilateral meetings and had many email exchanges with each of the TOs at all levels of management throughout the organisations, as well as engagement with wider stakeholders.
- 1.10. We received three responses to the statutory consultation, one from each of the TOs. We have included our consideration of all the key points raised in these consultation responses and throughout our lengthy engagement with the TOs in responses in this decision document.

⁶ [Accelerated Strategic Transmission Investment Informal Licence Drafting Consultation | Ofgem](#)

⁷ [Statutory consultation to modify the special licence conditions in the electricity transmission licences: Accelerated Strategic Transmission Investment | Ofgem](#)

⁸ [Price Control Deliverable Reporting Requirements and Methodology Document | Ofgem](#)

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Decision-making stages

Date	Stage description
08/03/2023	Stage 1: Licence consultation on proposals to modify the relevant licences
24/05/2023	Stage 2: Statutory licence consultation on proposals to modify the licences opened
23/06/2023	Stage 3: Statutory licence consultation closed (awaiting decision. Deadline for responses)
25/08/2023	Stage 5: Statutory consultation decision
20/10/2023	Stage 6: Modifications implemented in licences

Document summary

1.11. We have decided to make modifications to the following electricity transmission licences:

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

1.12. SpCs are conditions that apply only to individual licensees and form part of their licence alongside Standard Licence Conditions, any amended Standard Licence Conditions, and any Standard Special Conditions that may apply to them. They are conditions that apply to a particular TO. However, the SpC wording is often the same for all TOs and this is the case for each of the modifications in this decision. The TO-specific information relating to specific ASTI projects has been added to the special conditions of each TO and presented in the appendices published alongside this document.

1.13. Capitalised terms not otherwise defined in this document are defined in the electricity transmission licences. The reader should refer to the SpC 1.1 for the relevant definitions.

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1.14. The rest of this document sets out our consideration of all responses to the statutory licence modification consultation and details our decision on the modifications to the TOs' electricity transmission licences required to implement our ASTI decision.

Section 2: SpC 3.40 ASTI Pre-Construction Funding Re-opener, Price Control Deliverable and Use It Or Lose It Adjustment (APCFt)

1.15. This section includes details of our decision for 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 statutory licence modification consultation.

Section 3: SpC 3.41 ASTI Re-opener and Price Control Deliverable (ASTIRt)

1.16. This section includes details of our decision for 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 an ASTI Project Assessment (PA) Decision , details the process for ASTI Cost And Output Adjusting Events (ASTI COAEs) and contains provisions for the publication and modification of the ASTI Guidance Document. It also includes our consideration of responses to the statutory licence modification consultation.

Section 4: SpC 4.9⁹ ASTI output delivery incentive (ASTI ODI) (ASTIIIt)

1.17. This section includes details of our decision for SpC 4.9 for an ASTI ODI to incentivise the timely delivery of ASTI projects and the process for Delay Events. It also includes our consideration of responses to the statutory licence modification consultation.

Section 5: Other licence modifications

⁹ We consulted on this licence condition as Special Condition 4.8. However, this condition is already in use in a TO licence, therefore we have updated all references across the documents published as part of this consultation to Special Condition 4.9.

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

Section 6: Accelerated Strategic Transmission Investment Guidance and Submissions Requirements Document and Price Control Deliverable Reporting Requirements and Methodology Document

1.19. This section includes details of the newly established ASTI Guidance Document and a modification to the Price Control Deliverable Reporting Requirements and Methodology Document. It also includes our consideration of responses to the statutory licence modification consultation.

Chapter	Licence element	Licence condition(s)
2	ASTI Pre-Construction Funding Re-opener, Price Control Deliverable and Use It Or Lose It Adjustment (APCFt)	SpC 3.40
3	ASTI Re-opener and Price Control Deliverable (ASTIRt)	SpC 3.41
4	ASTI output delivery incentive (ASTIIIt)	SpC 4.9
5	Interpretations and definitions; Medium Sized Investment Project Re-opener and Price Control Deliverable (MSIPREt); and Pre-Construction Funding Re-opener and Price Control Deliverable (PCFt and PCFREt)	SpC 1.1; SpC 3.14; and SpC 3:15
6	ASTI Guidance and Submissions Requirements Document; and Price Control Deliverable Reporting Requirements and Methodology Document	N/A

Related publications

Appendix 1 [Decision on accelerating onshore electricity transmission investment](#)

Appendix 2 [RIIO-ET2 Final Determinations](#)

Appendix 3 [Accelerated Strategic Transmission Investment Informal Licence Drafting Consultation](#)

Appendix 4 [Statutory consultation to modify the special licence conditions in the electricity transmission licences: Accelerated Strategic Transmission Infrastructure](#)

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

Statutory consultation questions

Q1. Do you agree with our proposed licence modification for the ASTI PCF Re-opener, PCD and UIOLI condition?

Q2. Do you propose any changes to the proposed licence modification?

Introduction

2.1. This SpC gives effect to our ASTI decision¹⁰ to have ASTI Pre-Construction Funding (ASTI PCF) with associated Price Control Deliverable (ASTI PCF PCD), a Use-It-Or-Lose-It (UIOLI) Adjustment and a Re-opener for the TOs to request additional ASTI PCF. See paragraphs 2.1 to 2.5 of the consultation document¹¹ for further information regarding this SpC.

Summary of consultation responses

- 2.2. All three TOs commented on SpC 3.40.7 that the 8-week notification period to inform Ofgem of the intention to submit a funding request should include the provision “unless the Authority directs otherwise” to allow the option of flexibility on the pipeline notification process, consistent with the approach to Early Construction Funding (ECF) applications under SpC 3.41.9.
- 2.3. One TO noted that ASTI PCF had not been made available to provisional ASTI projects and emphasised that that pre-construction expenditure on these projects should be approved ahead of the submission of project delivery plans.

¹⁰ [Decision on accelerating onshore electricity transmission investment \(ofgem.gov.uk\)](#)

¹¹ [Statutory consultation to modify the special licence conditions in the electricity transmission licences: Accelerated Strategic Transmission Investment | Ofgem](#)

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- 2.4. One TO proposed that the second use of “additional” in SpC 3.40.8(e) should be removed.
- 2.5. TOs requested that we provide written confirmation that we will accept ASTI PCF submissions during the 56-day period (after which our licence modifications will take effect) after publishing this decision.
- 2.6. One TO commented that the outputs included in Appendix 2 should be updated for consistency with the ASTI Guidance Document which makes reference to the defined ASTI PCF PCD outputs as “*or equivalent*”

Our consideration of consultation responses

- 2.7. We agree with the shared TO view that the 8-week pipeline notification period under 3.40.7 should include the provision ‘unless the Authority directs otherwise’ to allow for greater flexibility to the TOs and reduce the risk that regulatory processes could inadvertently lead to project delay.
- 2.8. Regarding provision of ASTI PCF for the provisional ASTI projects, the ASTI Guidance Document is clear that TOs are able to apply for ASTI PCF as soon as they have developed a credible project delivery plan. We also make clear in the ASTI Guidance Document that money spent developing these projects will be recoverable (through either SpC 3.15 or through SpC 3.40) in the event these projects are cancelled or delivered outside of the ASTI framework. Therefore, we do not consider it necessary to make any further revision to the licence drafting to address this concern.
- 2.9. We have considered whether to delete “additional” in 3.40.8(e). This suggestion is one of several possible drafting approaches that give effect to our policy intention, however we consider the drafting included in the consultation sets out the policy intent more clearly and therefore do not consider it necessary to make any revision to the condition.
- 2.10. We recognise that there is benefit in allowing TOs to make Re-opener applications for ASTI PCF as soon as possible. Therefore, we wrote to the TOs on 04 August 2023 to confirm that we will accept ASTI Re-opener submissions during the 56-day period after our decision to proceed with a licence modification following which the decision will take effect, however we will not consult on these until after the ASTI licence conditions have come into effect in the licence. We consider this appropriate in order not to create an artificial regulatory delay before we can assess any TO submissions. We expect the TOs to notify us of their intention to make ASTI funding requests as far as possible in advance of any submission

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during the period before the licence modifications come into effect and to comply with the licence and ASTI Guidance Document requirements as if these were in place.

- 2.11. We disagree with the TOs that it is necessary to include “or equivalent” when setting out the ASTI PCF PCD output – any equivalent delivery of a specific output can be addressed as part of the PCD assessment in accordance with SpC 9.3 and the Price Control Deliverable Reporting Requirements and Methodology Document. Therefore, we have not made any further revision to the licence modifications to address this proposed drafting change.

Our Decision

- 2.12. The table below sets out the revisions we are making to SpC 3.40 following full consideration of all the stakeholder responses:

Reference	Change	Rationale
3.40.7	Added 'unless the Authority directs otherwise' to the end of the paragraph	Agree with TO response that there may be circumstances where Ofgem agrees it is appropriate for a TO to make an ASTI funding request at shorter notice if an 8-week notice period could lead to delayed delivery. This change provides greater flexibility to the TOs but does not have any wider impact on the operation of the licence condition.
3.40.8	Replaced reference '3.40.640.6' with '3.40.6'	Typographical error
3.40.9	Replaced 'ASTI' with 'Accelerated Strategic Transmission Investment'	As per updated definition in SpC 1.1
Appendix 2 (NGET)	Removed project: "New 400 kV double circuit between the existing Norton to Osboldwick circuit and Poppleton and relevant 275 kV upgrades (NOA Code: OPN2)"	This project already has PCF provided for under SpC 3.15.
Appendix 2 (NGET)	Removed project: "A new 400 kV double circuit in north East Anglia (NOA Code: AENC)"	This project already has PCF provided for under SpC 3.15.
Appendix 2 (NGET)	Removed project: "New 400 kV double circuit between Bramford and Twinstead (NOA Code: BTNO)"	This project already has PCF provided for as part of RIIO2 baseline allowances.
Appendix 2 (NGET)	Removed project: "Pentir to Trawsfynydd cable replacement (NOA Code: PTC1)"	This project already has PCF provided for under SpC 3.15.
Appendix 2 (NGET)	Removed project: "North Wales reinforcement (NOA Code: PTNO)"	This project already has PCF provided for under SpC 3.15.

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Reference	Change	Rationale
Appendix 2 (SPT)	Removed project "Denny to Wishaw 400 kV reinforcement (NOA Code: DWNO)"	This project has already received PCF under SpC 3.9

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

Statutory consultation questions

Q3. 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.

Q4. Do you propose any changes to the proposed licence modification?

Introduction

3.1. This SpC gives effect to our ASTI decision¹² to have an ASTI PCD, Early Construction Funding (ECF) and to establish a Re-opener related to ASTI projects. See paragraphs 3.1 to 3.4 of the ASTI decision for further information regarding this SpC.

Summary of consultation responses

Licence obligation

- 3.2. TOs expressed concern that having a licence obligation (LO) in addition to the ASTI output delivery incentive (ASTI ODI) exposes the TOs to what they see as a 'double jeopardy' threat of punishment in the event of late project delivery through both the LO and the ASTI ODI. They instead proposed that the LO date should be set at a later point at which the incentive reward has reached its cap.
- 3.3. One TO proposed that instead of an LO being to deliver the ASTI projects by a specific date, the obligation should be to "take all reasonable steps" to deliver the projects by that date, while another argued that Ofgem had not demonstrated that it is necessary to have an LO at all.
- 3.4. TOs requested that the wording in the ASTI Guidance Document around when Ofgem would consider enforcement action in the event of late delivery is included in SpC 3.41, highlighting their concern that Ofgem could modify the ASTI Guidance Document in future without the TOs being able to appeal against any change under section 11C of the Electricity Act 1989 (Electricity Act), which

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

allows licensees to appeal the Authority’s decision to proceed with a licence modification.

- 3.5. One TO proposed the following alternative wording to further clarify our approach to enforcement is included in the licence:

“3.41.6 Failure to deliver an ASTI Output by the relevant delivery date specified in Appendix 1 may amount to a contravention of a relevant condition under sections 25, 27A and 27G of the Act only in circumstances where the late delivery of the ASTI Output results from serious deficiencies on the part of the licensee in the performance of its project initiation and management processes or contractors acting on behalf of the licensee. Serious deficiencies exist where the licensee or its contractors fail to exercise the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances.”

- 3.6. One TO acknowledged that the drafting in the ASTI Guidance Document around when Ofgem would consider pursuing enforcement is welcome but raised concerns about still being in ‘technical breach’ of the licence as soon as a project is late, even in circumstances where Ofgem did not look to pursue enforcement action.

Delivery date

- 3.7. The TOs strongly consider that it is unreasonable to have an LO to deliver ASTI projects by the proposed dates. They state that these are ambitious dates, describing them as theoretical and aspirational, and that they have mostly been established through deterministic assessments or have been created by the ESO with no deliverability analysis. A TO proposed that instead the delivery dates should be set at the ASTI Project Assessment Decision (PA), when there is more certainty around the expected delivery date and be based on the most up to date P80¹³ estimate.
- 3.8. One TO responded that significant risks have been identified since the ASTI decision in December and new delivery dates should be set based on the latest known information.

¹³ The P-value, or probability value, is an estimate of the probability that a project can be delivered by that date. A P80 estimate therefore means the TO considers there to be an 80% chance the project will be delivered by that date.

- 3.9. Two TOs argued that setting the LO and ASTI ODI on the same date is unreasonable and disproportionate and exposes TOs to too much potential downside risk, with one adding that it considers the TOs only have a 50% chance of delivering by these dates, despite any actions it may take to accelerate delivery.

Delivery definition and asset availability standard

- 3.10. All TOs expressed concerns with the definition of 'delivered' in the ASTI Guidance Document,¹⁴ responding that 'made fully available to the ESO' is not clear or defined, and that asset testing and trials continue for significant periods after energisation and being made available to the ESO. One TO suggested that the definition should be more aligned with the language used in industry, while another proposed that the definition is changed to 'an asset has been delivered when it has been made available for operational service and configuration by the ESO and been successfully energised'.
- 3.11. Two TOs argued it was not appropriate to include an asset availability standard in the licence as reliability standards are already sufficiently captured in the licence under Standard Licence Condition D2 and the Energy Not Supplied (ENS) ODI.
- 3.12. One TO stated that the performance standard should be set at a negligible level as the standard places undue risk on TOs in the early stages of the asset's lifetime where asset failures are more common.

Other issues raised in the consultation response

- 3.13. Two TOs responded that the ASTI Cost And Output Adjusting Event (ASTI COAE) materiality threshold of 10% of allowances is too high and leaves TOs potentially exposed to up to £2bn of unfunded costs across the portfolio of ASTI projects. One argued that the threshold should be scrapped or based on each TO's Materiality Threshold,¹⁵ while another considered that the threshold should instead be set at 5% of allowances.
- 3.14. Two TOs stated that the ASTI proposals create excessive financial risk in the event of systematic late project delivery if TOs are exposed to both ASTI ODI and enforcement penalties under the LO, requesting that Ofgem's financeability

¹⁴ [The ASTI Guidance Document \(as consulted on\)](#) stated that 'we consider a project delivered when the asset(s) has been made fully available for operational service and configuration by the ESO and been successfully energised. This will be after the successful completion of all necessary asset testing and trials' (paragraph 4.79)

¹⁵ As per SpC 1.1

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assessment must consider this and that Ofgem should undertake an assessment ahead of the next price control.

- 3.15. Two TOs expressed concern that there is no avenue to challenge a decision by Ofgem to reject a request for an ASTI COAE or a Delay Event, and requested that a mechanism is built into the licence that would reflect any rejected submissions and allow a challenge under section 11C of the Electricity Act, which allows licensees to appeal the Authority's decision to proceed with a licence modification.
- 3.16. A TO confirmed its agreement with the principle that TOs should not benefit financially from delays where liquidated damages exceed the ODI penalty cap, but requested an adjustment to how this was covered in the associated ASTI Guidance Document. Specifically, the TO requested that the drafting in the Guidance around returning liquidated damages to consumers is revised to make clear that any amount returned to consumers is net of any additional costs incurred by the TO as a result of any delay.

Licence drafting

- 3.17. A TO proposed that the table heading in column 3 of Appendix 1 is changed from 'Allowance, £m' to 'Allowance (ASTIAt, £m).
- 3.18. A TO proposed that the table heading in column 1 of Appendix 2 is changed from 'asset availability' to 'circuit availability' as ASTI projects are circuits comprised of multiple assets.
- 3.19. A TO stated that the licence drafting of the proposed modification did not include a mechanism to insert the availability standard into the licence following PA and proposed that Part D is modified to allow for this.
- 3.20. A TO suggested that the reference to SpC 3.41.23 within SpC 3.41.25 is replaced with 'A direction under Part G will set out...', as SpC 3.41.23 is the only paragraph contained within Part G.
- 3.21. A TO proposed that reference to Part G within SpC 3.41.29 is not required as the ASTI Guidance Document does not make provision for a PCD assessment, which is addressed through SpC 9.3 and the Price Control Deliverable Reporting Methodology Document.

Our consideration of consultation responses

Licence obligation

- 3.22. As we set out in the consultation, we consider that the LO and the ASTI ODI mechanisms perform different and specific regulatory functions – the ASTI ODI is an automatic mechanism designed to incentivise timely delivery and penalise late delivery, while the LO allows us to take the specific factors of the case into account (including whether there were any failings by the TO) and decide whether enforcement action for licence breach in addition to the ASTI ODI penalty is appropriate. Therefore, we disagree that the LO creates a double penalty for a single circumstance of delay alongside penalties under the ASTI ODI.
- 3.23. The ASTI Guidance Document¹⁶ is explicit that we would not automatically consider enforcement action for projects being delivered late, but sets out a non-exhaustive list of factors we may take into account when considering whether to take any 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;
 - 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 ASTI ODI Target Date as a direct result of the licensee prioritising resources on other ASTI projects to optimise its overall financial position inappropriately under the ASTI ODI in a manner that does not serve consumers’ interests.
- 3.24. We have considered the wording relating to enforcement a TO proposed to be included in the licence (see paragraph 3.5 above). Whilst we appreciate the reasons for the proposed changes - they are intended to clarify the circumstances in which a failure to deliver an ASTI Output would constitute a licence breach - the proposed wording would make enforcement unduly onerous to the point of undermining the licence obligation and we could not agree to licence drafting that would have that effect.
- 3.25. We do not accept the TOs’ suggestion that Ofgem may modify the ASTI Guidance Document by direction in future to change our current position with regard to enforcement in a way that is detrimental to the TOs. The ASTI Guidance Document is an Associated Document to the licence and is governed by our

¹⁶ Paragraph 4.88

decision on principles of use for RIIO-2 Associated Documents publication¹⁷ (Feb 2021). We note that a similar argument was made at the RIIO-2 appeal in relation to Associated Documents, and that the CMA found that "... these documents cannot be amended at will and without good reason: they can only be amended in accordance with the process set out in the relevant condition, and GEMA must comply with its statutory duties in making any such amendments."¹⁸ TOs also have the ability to challenge any Ofgem decision to modify the ASTI Guidance Document by way of Judicial Review (JR).

- 3.26. Noting the above, we do not consider it necessary to include anything relating to our enforcement approach within the ASTI licence conditions. The purpose of a licence condition is to place obligations on the TOs and enforcement issues need to be addressed in accordance with our Enforcement Guidelines.¹⁹
- 3.27. We do not consider that requiring the ASTI outputs to be delivered (the LO) at the point each project has reached the cap on penalty under the ASTI ODI would be compliant with our principal objective as set out in section 3A of the Electricity Act to protect the interests of existing and future consumers.
- 3.28. The purpose of introducing the ASTI framework is to deliver a specific set of projects by specific dates. Given the scale of investment and the strategic significance of ASTI projects in terms of ensuring Great Britain's energy security, we consider it necessary to oblige the TOs to deliver the projects on time rather than to 'take reasonable steps' to deliver the projects on time. This is consistent with the existing approach under the Large Onshore Transmission Investment (LOTI) framework. Further, the Delay Event mechanism in SpC 4.9 is also available to TOs.
- 3.29. However, following consideration of the information provided by the TOs we have decided that, rather than the LO and the ODI Target Date being the same date, the LO is to deliver the ASTI Outputs by no later than 12 months after the ODI Target Date. We recognise that it will be a challenge for the TOs to deliver all projects on time, especially those projects that are being accelerated beyond their original EISD. Whilst we consider the licence mitigations in place to control for exogenous delay factors means there is a reasonable chance of on-time delivery across each TO's ASTI portfolio, and that our approach to enforcement

¹⁷ [Decision on principles of use for RIIO-2 Associated Documents | Ofgem](#)

¹⁸ [Volume 2B \(publishing.service.gov.uk\)](#) Volume 2B of CMA's final determination, paragraph 8.279(c)

¹⁹ [The Enforcement Guidelines | Ofgem](#)

for late delivery (see paragraph 3.23 above) means the TOs have strong protection in place against any potential penalties, we accept the argument that there is a potential reputational impact for being in licence breach even if Ofgem does not pursue enforcement action.

- 3.30. We have therefore decided that the LO on the TOs is now to deliver the ASTI projects no later than 12 months after the ODI Target Date, and this date will move in accordance with any Delay Events accepted by Ofgem.²⁰
- 3.31. If a TO does not meet its licence obligation, Ofgem will consider whether it is appropriate to initiate enforcement action in accordance with our Enforcement Guidelines and our approach set out in Chapter 4 of the ASTI Guidance Document.
- 3.32. The LO is now to deliver project no later than 24 months after the optimal dates determined by the ESO and in all cases significantly after the dates proposed by the TOs in their September 2022 ASTI delivery plans. In addition, the Delay Event mechanism will move the LO date back for delays that we agree are outside of the TOs' control. We consider that the ASTI licence arrangements strike the optimal balance between protecting consumers in the event of project delays, whilst providing TOs with suitable protection from being pursued for licence breaches for late delivery that results from circumstances outside of their control.
- 3.33. We are not looking to put any TO in breach of its licence obligations. When considering the delivery dates in the TO's delivery plans, we are confident that the LO dates in the licence and protections built in against delays outside of TO control through the Delay Event mechanism mean that, provided the TOs act diligently and efficiently, there is no reason to expect they should be in breach of their licence obligations.

Delivery date

- 3.34. We recognise that the overall level of investment across numerous projects to deliver Government's 2030 objective represents an ambitious programme of works. In the case of some projects the Earliest In Service Dates (EISD)/ Required In Service Dates (RISDs) and the dates in the TOs' delivery plans could also individually be seen as ambitious. However, the dates in the TO September delivery plans are not the dates that we are holding the TOs to deliver the ASTI

²⁰ ASTI Guidance Document, chapter 5

projects by under the LO. We do not have robust probability data from the TOs that could be used to set delivery dates, however the delivery dates are designed to provide a reasonable chance of on-time delivery across each TO's portfolio of projects once relevant ODI protections/Delay Events are considered. It should also be noted that delivering the required ASTI investment by a specific date underpins the decision to introduce the ASTI framework in the first place. Deliverability and operability were one of four equally weighted pillars of the Holistic Network Design (HND) which the ESO has had regard to.²¹

- 3.35. We did not make the decision to introduce the ASTI framework, exempt projects from competition, streamline our assessment, provide ECF and introduce a high-powered incentive to accelerate project delivery only to then at the PA stage set new delivery dates beyond 2030, contrary to Government policy. The Cost Benefit Analysis (CBA) in our ASTI decision²² quantified the additional risk to consumers from taking our approach – specifically the risk of abandoned costs should projects not get consented after providing ECF (assumed 1.5-2% of project costs), of foregoing reduced costs from not competitively tendering the ASTI projects (assumed 10-15% of project costs), and reducing and streamlining our regulatory assessment (assumed 2.5-3% of project costs). However, we considered this justifiable as there is greater benefit by delivering the ASTI projects by 2030 in terms of avoided constraint costs. If the delivery dates are set beyond this and the assumed consumer benefit is not realised it becomes difficult to justify our decision to introduce the ASTI framework.
- 3.36. We have considered the high-level information provided in consultation responses around delivery risks identified since the ASTI decision in December. Without prejudice to any future decision and based on the limited information so far provided, the factors highlighted by the TO that are causing the expected delivery dates to be pushed back all appear to be outside of their direct control. Moreover, the highlighted delays are largely those that are expected to occur in the future rather than delays that have already occurred. If these delays do materialise in future, and this is supported by more detailed evidence within a TO submission, we would expect these delays can be addressed through the Delay Event mechanism in SpC 4.9.

²¹ Paragraph 9 of [HND Methodology, version 1 February 2022](#).

²² Chapter 6

- 3.37. We do not agree that there is sufficient evidence to conclude that the delivery dates are set at a P50 level, which assumes only a 50% chance of delivering by these dates. We asked TOs both at working groups and through the supplementary questions process to provide probability estimates. However, the TOs have either not provided evidence, or provided evidence that is not robust and does not reflect the circumstances under which any Delay Event would be sought.
- 3.38. For almost all ASTI projects the licence obligation is now to deliver the projects at least 24 months after the delivery dates in the TOs' own September 2022 delivery plans with a mechanism to push dates back further for delays outside their control. We do not consider that this places an unreasonable level of risk onto the TOs, and it is important that delivery dates are set out in the licence.

Delivery definition and asset availability standard

- 3.39. We acknowledge the TO concerns around the definition of 'delivered' for ASTI projects and accept that the assets being made 'fully available' to ESO is not defined or clear, and that testing and trials continue for significant periods after energisation and the assets being made available to the ESO. We consider it necessary to have a definition of delivered that is clear, measurable, and consistent across all projects, especially given that the ASTI ODI rewards / penalties are calculated daily.
- 3.40. We are content that the assets being made available to the ESO and energised is an appropriate measure of delivery that meets the above criteria, and that it is appropriate to base the LO and ASTI ODI on this. If there are then any subsequent issues identified with the assets that mean they are not available for use by the ESO, this will be captured by the availability standard obligation. We have therefore decided to amend the delivery definition in the ASTI Guidance Document.²³
- 3.41. Given the scale of ASTI investment we consider it necessary and appropriate to ensure that the assets delivered function to an acceptable standard, and our view is that a bespoke availability standard is the best way of ensuring this. Standard Licence Condition D2 (Obligation to provide transmission services) does not specify any level of asset availability and the ENS ODI is based on customer outages, which the ESO can mitigate through network configuration even if the

²³ Paragraph 4.81

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ASTI assets are not functioning. Therefore, we do not consider either of these mechanisms provide sufficient consumer protection in the event the assets do not operate as expected.

- 3.42. The ASTI Guidance Document is clear that the performance standard will be set below system average performance for that particular type of asset and determined following consultation at the PA stage. We consider this the appropriate juncture to determine an appropriate standard and no obligations are currently being placed on the TOs in terms of asset availability as part of this decision.

Other issues raised in the consultation responses

- 3.43. We accept the TO view that a potential exposure of up to 10% of project costs without allowances, potentially ~£2bn based on current forecast costs across the whole portfolio of ASTI projects, is not appropriate and exposes TOs to an unreasonable amount of risk. We agree with the TO proposal that the ASTI COAE threshold should therefore be reduced to 5%, and we have updated Part E of SpC 3.41 and Chapter 4 of the ASTI Guidance Document to reflect this. We are also mindful that our ASTI decision²⁴ to make an allowance adjustment under the ASTI COAE mechanism where efficient outturn costs deviate +/-10% from allowances may not be possible based on the licence definition of an ASTI COAE. We have engaged with the TOs on this, and our view is that this policy intention is best implemented as part of the PCD assessment when outturn costs are known, and we intend to consult on making modifications to SpC 9.3 (Price Control Deliverable assessment principles and reporting requirements) and the Price Control Deliverable Reporting Requirements and Methodology Document to enable this allowance adjustment in due course.
- 3.44. We acknowledge TO concerns about the theoretical maximum downside risk exposure in the event of late project delivery and will consider all relevant information in a full financeability assessment as part of the next price control setting, where the bulk of ASTI expenditure is forecast and the ASTI ODI rewards / penalties will come into effect.
- 3.45. Our principal objective set out in section 3A of the Electricity Act ²⁵ states that in performing our functions we shall have regard to the need to secure that licence

²⁴ Paragraph 5.41

²⁵ Section 3A(2)(b)

holders are able to finance the activities which are the subject of obligations on them. We discharge this financeability duty in relation to the TOs by assessing whether a notional efficient licensee in the electricity transmission sector is able to finance its activities. We maintain our position set out in Chapter 8 of the ASTI decision,²⁶ that the financeability assessment that we carried out as part of 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 do not consider that a separate financeability assessment in relation to ASTI projects needs to be carried out, as a full assessment will be carried out as part of the next price control.

- 3.46. It is not standard practice in the TOs' licences for there to be a licence modification following rejected TO submissions that would then allow for a challenge under Section 11C of the Electricity Act, and it is not clear to us why a new mechanism should be created under ASTI regarding the Delay Event and ASTI COAE mechanism. Our decision-making must always comply with our statutory duties and public law duties and we will transparently consult and provide rationale for any decision to reject a TO request. Should TOs believe that Ofgem has failed to comply with its statutory and public law duties in the making of a decision, TOs have the option to seek permission to bring JR proceedings which we believe is an appropriate remedy in these circumstances.
- 3.47. We accept that there may be circumstances where the level of liquidated damages that a TO recovers may exceed the ODI cap without that TO realising an overall financial benefit. This is particularly true in the case of projects with multiple contractors, where liquidated damages recovered by the TO from one contractor may need to be paid forward to other contractors who are subsequently delayed in carrying out their work. We have decided to modify the ASTI Guidance Document²⁷ to make clear that it is the net TO position with regards to liquidated damages on a project that will determine whether any liquidated damages should be returned to consumers. We have also amended the guidance to make clear that where these circumstances do occur we will consider whether there are any specific TO-incurred costs related to the delay that it is reasonable to compensate from any recovered liquidated damages.

²⁶ [Decision on accelerating onshore electricity transmission investment \(ofgem.gov.uk\)](https://www.ofgem.gov.uk) paragraphs 8.13 – 8.33

²⁷ Paragraph 5.36

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Licence drafting

3.48. We agree with all the specific amendments proposed to the actual drafting of SpC 3.41 provided in response and have made these modifications to the licence condition in order to aid clarity of the condition.

Our Decision

3.49. The table below sets out the revisions we are making to SpC 3.41 following full consideration of all the stakeholder responses:

Reference	Change	Rationale
3.41.2(b)	added 'and the availability standard in Appendix' after 'allowances'.	To allow modification of the licence to set an availability standard following Project Assessment
3.41.5	Changed 'by the delivery date in Appendix 1' to 'no later than 12 months after the delivery date in Appendix 1'	To reflect decision to change the LO date
3.41.2(d)	Replaced 'ASTI' with 'Accelerated Strategic Transmission Investment'	As per updated definition in SpC 1.1
3.41.6	Replaced 'ASTI' with 'Accelerated Strategic Transmission Investment'	As per updated definition in SpC 1.1
3.41.11	Replaced 'Appendix 1' with 'Appendices 1 and 2'	To allow modification of the licence to set an availability standard following Project Assessment
3.41.11	Replaced 'to specify or amend an ASTI Output, a delivery date and associated allowances.' with 'to: (a) specify or amend an ASTI Output, a delivery date and associated allowances; and (b) specify the availability standard for the relevant ASTI Output.'	To allow modification of the licence to set an availability standard following Project Assessment
3.41.14	Replaced 'and' with 'And'	The word is capitalised in the defined term
3.41.17(a)	Replaced '10%' with '5%'	To reflect updated policy decision following assessment of consultation responses.
3.41.21	Added 'or ASTI ODI Target Date decision' after 'ASTI ODI Penalty Exemption Period decision'	To move drafting around scope changes and ODI Target Dates from the ASTI Guidance Document to the face of the SpC 4.9.
3.41.23	Deleted reference 'under paragraph 3.41.23'	Paragraph 3.41.23 is the only paragraph in Part G and therefore correct part of the licence is already referenced without requirement for these words
3.41.26	Replaced 'ASTI' with 'Accelerated Strategic Transmission Investment'	As per updated definition in SpC 1.1
3.41.27	Replaced 'ASTI' with 'Accelerated Strategic Transmission Investment'	As per updated definition in SpC 1.1

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Reference	Change	Rationale
3.41.28	Replaced 'ASTI' with 'Accelerated Strategic Transmission Investment'	As per updated definition in SpC 1.1
3.41.29	Replaced 'ASTI' with 'Accelerated Strategic Transmission Investment'	As per updated definition in SpC 1.1
3.41.30	Replaced 'Parts C, D, E, F and G' with 'Parts C, D, E and F'	Part G does not make provision about PCD assessment (addressed under SpC 9.3)
3.41.30	Replaced 'ASTI' with 'Accelerated Strategic Transmission Investment'	As per updated definition in SpC 1.1
3.41.31	Replaced 'ASTI' with 'Accelerated Strategic Transmission Investment'	As per updated definition in SpC 1.1
3.41.31(a)	Replaced 'ASTI' with 'Accelerated Strategic Transmission Investment'	As per updated definition in SpC 1.1
3.41.31(b)	Replaced 'ASTI' with 'Accelerated Strategic Transmission Investment'	As per updated definition in SpC 1.1
3.41.31(c)	Replaced 'ASTI' with 'Accelerated Strategic Transmission Investment'	As per updated definition in SpC 1.1
3.41.32	Replaced 'ASTI' with 'Accelerated Strategic Transmission Investment'	As per updated definition in SpC 1.1
3.41.32(a)	Replaced 'ASTI' with 'Accelerated Strategic Transmission Investment'	As per updated definition in SpC 1.1
3.41.32(b)	Replaced 'ASTI' with 'Accelerated Strategic Transmission Investment'	As per updated definition in SpC 1.1
3.41.32(c)	Replaced 'ASTI' with 'Accelerated Strategic Transmission Investment'	As per updated definition in SpC 1.1
3.41.32(d)	Replaced 'ASTI' with 'Accelerated Strategic Transmission Investment'	As per updated definition in SpC 1.1
Appendix 1	Replaced '£m' with '(ASTIAt, £m)'	To link with the PCFM
Appendix 2 (Table)	Replaced 'asset availability' with 'circuit availability standard'	ASTI projects are not single assets but multiple assets which form a single circuit on the network - terminology updated to reflect this
Part F (title)	Added 'or ASTI ODI Target Date decision' after 'ASTI ODI Penalty Exemption Period decision'	To move drafting around scope changes and ODI Target Dates from the ASTI Guidance Document to the face of the SpC 4.9.
Part I (title)	Replaced 'ASTI' with 'Accelerated Strategic Transmission Investment'	As per updated definition in SpC 1.1
Appendix 2 (Title)	Deleted 'NGESO'	Not required

4. Special Condition 4.9 Accelerated Strategic Transmission Investment output delivery incentive (ASTIIt)

Statutory consultation questions

Q5. Do you agree with our proposed licence modification for the ASTI ODI condition?

Q6. Do you propose any changes to the proposed licence modification?

Q7. 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. This SpC gives effect to our decision to introduce an ASTI output delivery incentive (ASTI ODI) to incentivise the timely delivery of ASTI projects. See paragraphs 4.1 to 4.3 of the ASTI decision²⁸ for further information regarding this SpC.

Summary of consultation responses

Scope changes

4.2. TOs argued that where there are scope changes to projects that result in changes to the EISDs, and the original ASTI ODI Target Date can no longer be achieved, there should be a mechanism in the licence to allow the ASTI ODI Target Date to be re-set. One TO added that Ofgem’s commitment in the ASTI decision - to consider whether to update delivery dates if design changes mean the delivery dates are not achievable – should be included within the SpC 4.9 as well as the ASTI Guidance Document.

4.3. Following further system design and scheme development work since our ASTI decision was published, specifically related to the LRN4 provisional ASTI project,²⁹ NGET has proposed scope changes to three of the ASTI projects (GWNC, E4L5 and TGDC)³⁰ compared to the indicative schemes shown in the HND and NOA and proposed updated delivery dates. NGET has requested that Ofgem include

²⁸ [Decision on accelerating onshore electricity transmission investment | Ofgem](#)

²⁹ ASTI Guidance Document, Chapter 2

³⁰ [Decision on accelerating onshore electricity transmission investment \(ofgem.gov.uk\)](#) Appendix 1

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updated ASTI Outputs and revised delivery dates in its ASTI licence conditions upon these conditions coming into effect.

Delay Events

- 4.4. One TO stated that the Delay Event mechanism provides insufficient comfort that Delay Event requests would be accepted and that Ofgem has too much discretion in whether to accept/reject the proposals, citing concern of 'hindsight bias' rather than Ofgem judging TO actions based on information available at the time any decisions were made.
- 4.5. Two TOs noted that future strategic investments or other network requirements may interact with existing ASTI projects, and Ofgem should consider delays resulting from this to be outside of TO control.
- 4.6. One TO argued that because the Delay Event mechanism does not protect TOs from reduced reward payments it creates an asymmetric incentive mechanism calibrated towards penalties.

Other issues raised in consultation responses

- 4.7. One TO argued it is not appropriate for Ofgem to hold the TOs responsible for the actions of third parties the TOs contract to deliver the ASTI projects on their behalf, arguing that this will encourage TOs to (i) insist on higher contractual penalties, (ii) seek potentially unnecessary back-up contractors, or (iii) seek other expensive forms of financial insurance against contractor default.
- 4.8. The TOs jointly agreed that their preferred route for ASTI ODI rewards / penalties to be reflected is through an adjustment to Allowed Revenue, rather than the initially proposed RAV adjustment, and requested that SpC 4.9 and the ASTI Guidance Document is updated to reflect this.

Licence drafting

- 4.9. A TO stated that the structure of Part B is challenging to follow and proposed that it be restructured slightly to improve the clarity of the condition.
- 4.10. A TO replied that the formula in SpC 4.9.4 is incorrect, as the inclusion of +PEn in the AnnualODIp formula causes an error that means the capped value of the incentive will never be reached if the ASTI ODI Penalty Exemption Period is not zero. The TO proposed an updated formula to remedy this formula error.
- 4.11. A TO proposed that for consistency with the rest of the licence the word 'paragraph' should be added before the references in SpCs 4.9.5, 4.9.5(b) and 4.9.7.

Our consideration of consultation responses

Scope changes

- 4.12. The purpose of introducing the ASTI framework is to accelerate the delivery of a specific set of projects required to deliver the Government’s 2030 objectives. As explained in Chapter 3, our CBA³¹ highlighted the additional risks to consumers of introducing the ASTI framework, specifically in terms of streamlining our assessment, increased risk of abandoned costs for projects that do not proceed, and exempting the projects from competition on the basis of the TO delivery plans demonstrating how they intend to deliver by 2030. We considered that this additional risk is justified as there is potential for considerable consumer benefit if the ASTI projects are accelerated and delivered on time.
- 4.13. However, in general if there are significant delays to projects that are needed in order to meet the Government’s 2030 objectives, whether due to scope changes or due to any other delay factor, we have not seen evidence that there is any consumer benefit in maintaining a delivery incentive by resetting the ASTI ODI against the later date. This would risk incentivising and rewarding late delivery. In such circumstances consumers would be exposed to the additional constraint cost impact of any delay as well as any reward payment under the ASTI ODI.
- 4.14. Notwithstanding the above, we do consider there may be circumstances where it is appropriate to set a new ASTI ODI Target Date following a scope change where it can be demonstrated that a new ASTI ODI Target Date is suitably robust and challenging and there is evidence that consumers could benefit from doing so, as set out in our ASTI decision.³² Where we are satisfied this is the case, we will consult on making the necessary modifications to the ASTI licence conditions under Section 11A of the Electricity Act. In the case of projects that remain subject to a high level of uncertainty in their design at the point that a scope change has been requested, or where incentivisation through the ASTI ODI is unlikely to deliver benefits to consumers, we will consider whether the project in question should be removed from the ASTI framework and funded through the LOTI mechanism. Again, in such circumstances we will consult on making the necessary modifications to the ASTI licence conditions under section 11A of the Electricity Act.

³¹ ASTI decision, Chapter 6

³² ASTI decision, Paragraph 3.14

- 4.15. As requested by the TOs, we have agreed to modify SpC 4.9 to incorporate into the licence itself the policy intention set out in the (draft) ASTI Guidance Document around scope changes potentially leading to revised ASTI ODI Target Dates. We have decided to add the following paragraphs to Part B of SpC 4.9:
- 4.9.5 The licensee may apply under this Part for a modification to the ASTI ODI Penalty Exemption Periods and the ASTI ODI Target Dates in Appendix 1.*
- 4.9.6 The licensee may apply under this Part to modify the ASTI ODI Target Dates in Appendix 1 where there is a material change to the scope of the relevant ASTI project.*
- 4.16. The updated deliverability analysis provided by the TOs highlights factors the TOs consider will cause project delays relative to the EISD we based our ASTI decision on, specifically scope changes, ongoing connections activity and supply chain constraints. Without prejudice to any future decision, these factors would appear to be outside of TO control and we would expect any project delay caused by these factors to be addressed through the Delay Event mechanism in SpC 4.9 if they do in fact materialise. However, we do not consider the information provided to us so far to be sufficient that we could update the project delivery dates or re-calibrate the ASTI ODI ahead of publishing this decision.

Scope change approach

- 4.17. We understand the rationale for NGET proposing scope changes to GWNC and the Eastern Links 3 and 4 projects (E4L5 and TGDC). However, given the impact the proposed scope changes have on the ability to deliver the Government's 2030 objectives, as well as having a potential knock-on impact on other projects and connection offers, and therefore the rest of the ESO's Holistic Network Design (HND), we do not consider it appropriate that Ofgem unilaterally agrees to any scope changes or to any new project delivery dates before understanding the wider implications of any decision.
- 4.18. We are also mindful that the ESO intends to publish the HND Follow Up Exercise (HND FUE) as part of the transitional Centralised Strategic Network Plan (tCSNP) which is expected to be published in late 2023 and will propose further onshore transmission network reinforcements. These additional network reinforcements mean there may be further changes required to the indicative design proposed by the ESO in the HND and NOA in order to optimise the overall Great Britain electricity network design, to ensure that schemes are deliverable and meet requisite consenting requirements. This may in turn result in the need to change

the scope of ASTI projects, and to consider further modifications to the ASTI licence conditions, ASTI Outputs and delivery dates.

- 4.19. We are currently engaging with the TOs, ESO and Government to establish an impact assessment mechanism for appraising proposals by TOs for changes to ASTI (and wider HND) projects to ensure that project-level changes to the HND and the ASTI projects can be considered in the wider context to inform decisions on scope changes and related changes. Once the relevant process has been established then we expect to consider the outputs of these processes before we make any decision on revised ASTI Outputs or delivery dates as a result of proposed scope changes. Once relevant processes have been established then we expect to consider the outputs of these processes in making any further modification to any ASTI Outputs or delivery dates.
- 4.20. Noting the above, we have decided to include the current ASTI Outputs and delivery dates³³ in the ASTI licence conditions as it is against these delivery dates that the ASTI ODI, the ASTI COAE and the Delay Event mechanisms are all calibrated and measured.
- 4.21. Where changes proposed by TOs are in the nature of substantial scope changes, we will consider whether the proposals should effectively be considered a new project and whether it is appropriate to set a new ASTI ODI Target Date or whether the proposals are in the nature of a change to an existing project which should be addressed through the Delay Event mechanism, as explained in Chapter 5 of the ASTI Guidance Document. We will consult ahead of making any decision regarding scope or delivery date changes to ASTI projects.

Delay Events

- 4.22. We consider that the Delay Event process is clearly defined in both the licence and ASTI Guidance Document and do not see any realistic alternative to Ofgem assessing any Delay Event information submitted by the TOs and making a decision on whether or not to apply an ASTI ODI Penalty Exemption Period. The ASTI Guidance Document (Chapter 5) sets out that we would only judge TO actions based on information that could have reasonably been known at the time, and any Delay Event decision will be made transparently and consulted on.

³³ As per Appendix 1 of the ASTI decision document

- 4.23. If the TOs deliver all the ASTI projects in accordance with their own delivery plans they stand to receive rewards in excess of £1bn, which we consider justified as there is a commensurate benefit to consumers from accelerating delivery and delivering these projects on time. However, as set out above, if projects are delayed and not delivered on time there is no benefit to consumers and therefore nothing upon which to base any TO reward.
- 4.24. We acknowledge that in the event projects are delayed then there is reduced scope for incentive rewards, however as we explained in our ASTI decision,³⁴ the Delay Event mechanism ensures that although TOs may not be rewarded, equally they are not exposed to any incentive penalty for delays outside of their control. In these circumstances we consider there is little conceptual difference between the ASTI framework and the LOTI framework, where our Final Determinations decision³⁵ made provision for a Project Delay Charge in the event LOTI projects are delivered late.

Other issues raised in consultation responses

- 4.25. We have committed an initial ~£20bn expenditure on behalf of consumers to deliver the ASTI projects and given the scale of this investment and commensurate financial risk to consumers we consider it necessary, reasonable, and proportionate that there is accountability for that expenditure. TOs are the only companies that Ofgem has the statutory power to hold to account, as they are regulated licensees, therefore it is not appropriate for TOs to absolve themselves of responsibility for the actions of those contracted to act on their behalf, which would leave Ofgem with no ability to protect existing and future consumers.
- 4.26. We expect TOs to ensure proportionate mechanisms are built into their contractual arrangements with third parties to ensure the TOs are suitably protected in the event third parties do not meet their contractual obligations.
- 4.27. The consumer impact of reflecting ASTI ODI rewards / penalties through an adjustment to Allowed Revenue or as a RAV adjustment will be the same and we have no preference between the two, therefore we are comfortable making this change to SpC 4.9 and the ASTI Guidance Document. As explained in our ASTI

³⁴ [Decision on accelerating onshore electricity transmission investment \(ofgem.gov.uk\)](#) paragraph 7.54

³⁵ [RIIO-2 Final Determinations Electricity Transmission System Annex \(REVISED\) \(ofgem.gov.uk\)](#) paragraph 2.95

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decision,³⁶ we intend for the recovery of rewards and penalties to be spread over a longer period of time rather than in a single regulatory year, with an appropriate time period to be agreed between Ofgem and the TOs ahead of the next price control period.

Licence drafting

- 4.28. We agree the proposed restructuring of Part B improves the clarity of the condition and have restructured the drafting accordingly.
- 4.29. We agree with the error identified in the ASTI ODI formula and also agree the revisions proposed by the TO remedy this error, therefore we have decided to modify the formula to allow the incentive to operate as intended.
- 4.30. We agree with the proposal to include the word 'paragraph' before the references in SpCs 4.9.5, 4.9.5(b) and 4.9.8 and have made that change to SpC 4.9.

Our Decision

- 4.31. The table below sets out the revisions we are making to SpC 4.9 following full consideration of all the stakeholder responses:

Reference	Change	Rationale
4.9.1	Replaced 'RAV' with 'Allowed Revenue'	Consultation responses and engagement subsequent to publication of the stat-con have made clear TO preferred approach is to reflect ODI rewards/penalties as revenue adjustments rather than RAV adjustments. The consumer impact is the same, therefore no objection from Ofgem.
4.9.3	Replaced 'This condition also establishes a mechanism for the licensee to apply for a modification to the value of the ASTI ODI Penalty Exemption Period in Appendix 1 following a Delay Event' with: 'This condition also establishes the mechanism for the licensee to apply for a modification to the: (a) value of the ASTI ODI Penalty Exemption Period in Appendix 1 following a Delay Event; and (b) the ASTI ODI Target Date in	To move drafting around scope changes and ODI Target Dates from the ASTI Guidance Document to the face of the SpC 4.9.

³⁶ Paragraph 7.45

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Reference	Change	Rationale
	Appendix 1 following a material change to the scope of an ASTI Output	
4.8.4	Revised incentive formula	Consultation responses demonstrated that the ODI formula as drafted had a minor error that meant it did not operate as intended in the December decision. This is rectified by the small modification made to the formula.
4.9.7	Added 'paragraph' before the paragraph reference	Consistency with existing licence drafting
4.9.5	Inserted new paragraph: 'The licensee may apply under this Part for a modification to the ASTI ODI Penalty Exemption Periods and the ASTI ODI Target Dates in Appendix 1.' (*all subsequent paragraph numbers / references updated)	To move drafting around scope changes and ODI Target Dates from the ASTI Guidance Document to the face of the SpC 4.9.
4.9.8(b)	Added 'paragraph' before the paragraph reference	Consistency with existing licence drafting
4.9.6	Inserted new paragraph: 'The licensee may apply under this Part to modify the ASTI ODI Target Dates in Appendix 1 where there is a material change to the scope of the relevant ASTI project.' (*all subsequent paragraph numbers / references updated)	To move drafting around scope changes and ODI Target Dates from the ASTI Guidance Document to the face of the SpC 4.9.
4.9.9	Added 'paragraph' before the paragraph reference	Consistency with existing licence drafting
4.9.10	Replaced 'ASTI' with 'Accelerated Strategic Transmission Investment'	As per updated definition in SpC 1.1
Part B	Restructured paragraph order and updated within-condition references	Restructure is clearer to follow, and references now ordered correctly

5. Other licence modifications

Statutory consultation questions

Q8. Do you agree with our proposed licence modifications to SpC 1.1?

Q9. Do you agree with our proposed licence modifications to SpC 3.14?

Q10. Do you agree with our proposed licence modifications to SpC 3.15?

Introduction

5.1. To give effect to our ASTI decision we need to make modifications to the following SpCs:

- Special Condition 1.1 (Interpretations and definitions);
- Special Condition 3.14 (Medium Sized Investment Projects Re-opener and Price Control Deliverable); and
- Special Condition 3.15 (Pre-Construction Funding Re-opener and Price Control Deliverable).

5.2. For further information relating to these conditions see the ASTI decision document.³⁷

SpC 1.1 (Interpretations and definitions)

5.3. The TOs proposed a number of modifications to the ASTI definitions that we consulted on. The responses, and our consideration of them, is set out in the table below:

Defined term	TO view	Ofgem view
ASTI	The definition should be broad enough to allow future projects to potentially come within the scope of the framework.	Treatment of future strategic transmission projects is currently under consideration as part of the Future Systems and

³⁷ [Decision on accelerating onshore electricity transmission investment | Ofgem](#) paragraphs 5.2 – 5.6 (SpC 1.1); 5.7 – 5.13 (SpC 3.14); and 5.14 – 5.18 (SpC 3.15)

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Defined term	TO view	Ofgem view
		Network Regulation (FSNR) workstream.
ASTI Confidential Annex	Should align with the defined term TO Redacted Information Document. Propose: "means the latest version of the confidential document containing confidential / commercially sensitive information related to the ASTI framework issued to the licensee by the Authority".	Agree it makes sense to remain consistent with existing drafting and have redefined ASTI Confidential Annex as per the TO comment
ASTI Guidance and Submission Requirements Document	Revise definition to "Accelerated Strategic Transmission Investment Guidance and Submission Requirements document" as that is the actual name of the document.	Agree. References updated throughout all ASTI conditions and ASTI Guidance Document.
ASTI ODI Target Date	Amend to "means the date from which the licensee is not eligible for a reward under..." for clarity.	Agree. Updated definition of ASTI ODI Target Date as per TO comment.
ASTI Outputs	Propose (in red) "means the outputs included in column 1 of Appendix 1 to Special Condition 3.41" to avoid ambiguity	We consider the original drafting is already sufficiently clear and the suggested additional text is unnecessary.
ASTI Project Assessment Decision	Definition also needs to deal with the setting of the availability standard in Appendix 2 of Special Condition 3.41. Suggested additional text "and c) on the availability standard for the	Agree a mechanism needs to be added to allow insertion of the availability standard and consider proposed drafting appropriate.

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Defined term	TO view	Ofgem view
	relevant ASTI Output to be specified in Appendix 2 to Special Condition 3.41”	
Delay Event	<p>Propose (in red) edit to part (c) of the definition: “(c) is not attributable to the licensee acting in a way which no reasonably competent TO would act.”</p> <p>TOs must make decisions with best available information at the time, and success of that decision may only be known with the benefit of hindsight.</p>	<p>We disagree with the proposed amendment as there is no definition of what a ‘reasonably competent’ TO is or acts like.</p> <p>The ASTI Guidance Document is clear that TOs’ actions will be assessed against information that could reasonably have been known to the TO at the time of the action rather than with the benefit of hindsight.</p>
Early Construction Funding	Propose "and" is replaced with "and/ or".	Agree with proposals – definition updated as per TO proposal.
Early Construction Funding	Re-name term "ASTI Early Construction Funding" to reflect terminology used in SpC 3.41.7, or alternatively update SpC 3.14.7 to refer to Early Construction Funding.	Agree the definition needs to be consistent across the licence conditions – amended term in SpC 3.41 to just “Early Construction Funding” to align with usage elsewhere.
Pre Construction Works	<p>Typo - missing punctuation and "and/ or" to follow (g) tender activities.</p> <p>Typo – ‘Ofgem’ in part (h) should be replaced with ‘the Authority’</p>	Agree with typos and proposal for limbs (e) and (h). Definition updated as per TO proposal.

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Defined term	TO view	Ofgem view
	The definition is broader in the ASTI Guidance Document, suggest for consistency limb (e) should be expanded to refer to "tasks associated with acquiring land rights (which could include permanent rights and/or wayleaves"	
Pre Construction Works	Add requirement that Ofgem's approval should not be unreasonably delayed or withheld to be inserted.	Do not consider this necessary, principally Ofgem do not unreasonably withhold or delay decisions.
Price Control Deliverable	The base text was incorrect and should also refer to SpCs: 3.6, 3.7 and 3.35.	Acknowledge TO response is correct, however this is not related to our ASTI decision and we have not consulted on making these modifications. We will consult on correcting this error in due course.
Re-opener	The base text was incorrect and should also in (a) refer to "to 3.34". In (b) refer to "Parts C and D of Special Condition 3.2" and "Parts C and D of Special Condition 3.3".	Acknowledge TO response is correct, however this is not related to our ASTI decision and we have not consulted on making these modifications. We will consult on correcting this error in due course.
Use It or Lose It Adjustment	Propose the words "which will not exceed the allowance provided" should appear at the end of the list	Agree with this suggestion. Definition updated as per TO proposal.

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Defined term	TO view	Ofgem view
	(a) –(e) as this statement applies to all of the items listed above.	
Use It or Lose It Adjustment	A TO noted that for NGET Ofgem has published a statutory consultation dated 28 April 2023 which proposes to add reference to Special Condition 3.32 (Civil Related Works Re-Opener” as item (e) in the definition of Use It Or Lose It Adjustment so ASTI will need to be item (f) for NGET if Ofgem directs the changes consulted on in its 28 April 2023 notice.	We are publishing this decision ahead of publishing the decision related to SpC 3.32. Therefore, we are making the modification to the definition of Use It Or Lose It Adjustments as consulted on and will make an errata amendment to the reference in the decision related to SpC 3.

Our Decision

5.4. We have decided to modify the definitions we consulted on as per the comments in the table above. Typographical and formatting errors have also been addressed – see the Change Log published as part of this decision. An updated SpC 1.1 for each of the TOs with all changes shown in tracked changes is published as part of this decision.

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

Summary of consultation responses

5.5. We did not receive any specific responses to our proposals to modify SpC 3.14

Our consideration of consultation responses

5.6. Not applicable

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Our Decision

5.7. We will make the modifications to SpC 3.14 as consulted on.

SpC 3.15 (Pre-Construction Funding Re-opener and Price Control Deliverable)

Summary of consultation responses

- 5.8. Two of the TOs argued that the PCF outputs being modified for ASTI projects which have received PCF under SpC 3.15 should be “submission of all material planning consents” rather than “approval of all material planning consents” as they argue that this is a more comparable milestone and in alignment with the other ASTI projects.
- 5.9. A TO noted that ‘A new 400 kV double circuit in north East Anglia (NOA Code: AENC)’ is the same as ‘Norwich Main Bramford’ that is already covered in Special Condition 3.15, and suggested that it had the corresponding NOA code “AENC” added to align with other projects listed in this condition.
- 5.10. A TO proposed an amendment to 3.15.11(b) and (c) to read as follows (additions to existing term in red):
- “(b) where the licensee has submitted its primary planning application for the LOTI or ASTI, but has not secured Final Needs Case approval **for the LOTI** or obtained all material planning consents **for the ASTI**, 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 **for the ASTI**, 100% of the Pre-Construction Works PCD allowance for that LOTI **or ASTI** will be allowed”*

Our consideration of consultation responses

- 5.11. As explained in our statutory consultation document,³⁸ the PCF output for projects that received funding under SpC 3.15 is submission of the Final Needs Case (FNC) as this is what the TOs have been funded to deliver. As the FNC can only be submitted after planning consents have been obtained, we consider obtaining planning consent to be the most comparable and appropriate output to set under

³⁸ Paragraph 5.17

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ASTI and disagree that the output for these projects should be the submission of all material planning consents rather than obtaining them.

5.12. We agree with the TO's proposal to add the NOA code "AENC" to the project 'Norwich Main Bramford' which is already listed in Special Condition 3.15 and that this project should not be in receipt of additional ASTI PCF.

5.13. We agree with the TO's suggested additions to 3.15.11(b) and (c) as we consider this makes it suitably clear where it is referring to an ASTI or LOTI project.

Our Decision

5.14. The table below sets out the revisions we are making to SpC 3.15 following full consideration of all the stakeholder responses:

Reference	Change	Rationale
3.15.2	Added "or an ASTI" after "relation to a LOTI"	To make clear that this applies to ASTI projects too
3.15.7	Added "or ASTI" after "relevant LOTI"	To make clear that this applies to ASTI projects too
3.15.8	Added "In respect of any relevant LOTI,"	To make clear that this applies to LOTI projects only.
3.15.11(b)	Added "or ASTI" after "for the LOTI"	To make clear that this applies to ASTI projects too
3.15.11(b)	Added ' <i>for the LOTI</i> ' after 'Final Needs Case approval'	To add clarity to which outputs are being referred to within the paragraph
3.15.11(b)	Added ' <i>for the ASTI</i> ' after 'all material planning consents'	To add clarity to which outputs are being referred to within the paragraph
3.15.11(c)	Added ' <i>for the ASTI</i> ' after 'all material planning consents'	To add clarity to which outputs are being referred to within the paragraph
3.15.11(c)	Added ' <i>or the ASTI</i> ' before 'will be allowed'	To add clarity to which outputs are being referred to within the paragraph
Appendix 2 (Table)	Added "AENC:" to "LOTI Final Needs Case approval of Norwich Main - Bramford" in NGET's SpCs.	To align with other projects listed in 3.15 that all have their NOA codes listed too.

5.15. We have decided to modify the output for all ASTI projects that received PCF via SpC 3.15 to "Approval of all material planning consents for [NOA code: project description]". The outputs being modified in SpC 3.15 are as follows:

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NGET	SHET	SPT
<i>NOA Code & Description</i>	<i>NOA Code & Description</i>	<i>NOA Code & Description</i>
AENC: Norwich Main - Bramford	E4DC: Peterhead - Drax; Eastern subsea HVDC link	E2DC: Torness - Hawthorn Pit; Eastern subsea HVDC link
CGNC: Creyke Beck - South Humber; new 400 kV double circuit	E4L5: Peterhead - South Humber; Eastern subsea HVDC link	
E2DC: Torness - Hawthorn Pit; Eastern subsea HVDC link		
E4D3: Peterhead - Drax; Eastern subsea HVDC link		
E4L5: Peterhead - South Humber; Eastern subsea HVDC link		
GWNC: South Humber - South Lincolnshire; new 400 kV double circuit		
OPN2: Osbaldwick - Poppleton; new 400 kV double circuit and relevant 275 kV upgrades		
PTC1 and PTNO: North West Wales project		
SCD1: South London - south coast; new 400 kV transmission route		
TKRE: Tilbury - Grain and Tilbury - Kingsnorth upgrade		

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- 5.16. The “Norwich Main – Bramford” project in SpC 3.15 does not have an associated NOA code in the licence. We have decided to add the NOA code “AENC” to this output to align with the other outputs in this condition.
- 5.17. The “North West Wales project” in SpC 3.15 is a combination of two ASTI projects (NOA codes PTC1 and PTNO). For clarity and to align with the other outputs in this condition, we have decided to add the NOA codes “PTC1” and “PTNO” to this output.

6. Governance documents

Statutory consultation questions

- Q11. Do you agree with our proposed modifications to the Price Control Deliverable Reporting Requirements and Methodology Document?
- Q12. Do you agree with the content of our proposed ASTI Guidance and Submissions Requirement Document (included as appendix to this consultation document)?

Introduction

- 6.1. We consulted on introducing a new Accelerated Strategic Transmission Investment Guidance and Submissions Requirements Document (ASTI Guidance Document) and creating a new appendix to the Price Control Deliverable Reporting Requirements and Methodology Document to provide guidance on the ASTI PCF PCD assessment.

Price Control Deliverable Reporting Requirements and Methodology Document

Summary of consultation responses

- 6.2. Two TOs stated it was not clear how the ASTI PCF PCD will be assessed where outputs are delivered after the end of RIIO-ET2.
- 6.3. Two TOs suggested that where projects are cancelled, allowed expenditure should include any reasonable cancellation costs.

Our consideration of consultation responses

- 6.4. We have added a further worked example to Appendix 6 of this document to provide further clarity on how we will undertake our assessment, as requested by the TOs.
- 6.5. We acknowledge that TOs may still incur project-related costs demobilising the workforce after a project is cancelled and accept it is reasonable for these costs to be recovered. As such, we have included “reasonable cancellation costs of these activities will be considered” in paragraph 3.41 of the ASTI Guidance Document.

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Our Decision

6.6. We have added the additional worked example cited above and published Appendix 6 of the Price Control Deliverable Reporting Requirements and Methodology Document without any further modification as part of this decision.

Accelerated Strategic Transmission Investment Guidance and Submissions Requirements Document

Summary of consultation responses

6.7. TOs made comments throughout the ASTI Guidance Document in their consultation responses, making drafting suggestions and highlighting areas where they consider the drafting could be clarified or further enhanced.

Our consideration of consultation responses

6.8. Our consideration of the responses to the draft ASTI Guidance Document is included as an Appendix to this decision document.

Our Decision

6.9. Following consideration of the consultation responses we have made a number of revisions to the ASTI Guidance Document – a tracked version showing all the changes that have been made is included as an Appendix to this decision document.