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Date
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Contact
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By email:
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Dear Tom,

SP Transmission (SPT): Response to Ofgem's consultation on policy updates to Early Competition in Onshore Electricity Transmission Networks.

SPT welcome the opportunity to respond to Ofgem's consultation on their policy updates to early competition in onshore electricity transmission networks. SPT are the Transmission Owner (TO) for Central and South Scotland, and we work closely on a day-to-day basis with the current Electricity System Operator (ESO). Currently we support a significant amount of competition on our network, with c.96% of our regulated transmission activities being delivered by the market.¹

A summary of our response can be viewed below alongside our detailed comments in response to the consultation questions, which are set out in Annex 1 of this response.

Summary:

We have significant concerns with the proposed approach to the CBA.

The ESO's cost benefit analysis (CBA) methodology and the lack of action taken to address stakeholder concerns with the process remains a significant concern. As the ESO's CBA methodology is an essential input into the Early Competition process and it will be a critical tool for ensuring the delivery option that delivers the greatest consumer benefit is selected, it is imperative that stakeholders at the very least should have confidence in the CBA's ability to demonstrate value for money for consumers. The CBA must also minimise the risk of consumer detriment and ensure a more costly, lower quality or less reliable solution is not progressed. We welcome the ESO's approach to seek to capture the costs and benefits of Early Competition as fully as possible. However, we maintain that certain parameters and assumptions are not robustly evidenced, and we would urge Ofgem to reconsider these elements before finalising the CBA to ensure the finalised outputs from any CBA exercise, using this tool, minimises the risk of consumer detriment.

As we have set out to Ofgem and the ESO previously, we believe that any competitively identified solution, once identified, should be considered against the counterfactual option of TO delivery. Only where a third-party solution is considered more efficient than the TO alternative should it then be delivered, in the interest of securing lowest costs for consumers. Without this approach, Ofgem cannot justifiably claim that the lowest cost solution has been delivered in the interest of consumers.

As it currently stands, the ESO has not implemented any material changes to the CBA methodology and has not sought to mitigate the significant concerns raised by stakeholders in response to the ESO's Early Competition Plan, Cost Benefit Analysis consultation in 2022. These substantial concerns

¹ https://www.spennergynetworks.co.uk/userfiles/file/Annex_18_Competition_Plan.pdf

include the inappropriate and irrelevant benchmarks used to underpin key assumptions, unrealistic assumptions around theorised capex and opex savings from competition, and a failure to reflect costs incurred by the TOs in supporting the Early Competition process.

We would encourage Ofgem to consider both qualitative and quantitative factors which do not form a part of the CBA, provided it is relevant to the project in question. We are supportive of the ESO implementing a CBA methodology that represents value for money for consumers while also ensuring a safe, resilient, and secure energy network. We believe decisions should not be made on a subjective basis and should be quantifiable where possible. Objective and transparent decision making will be required with stakeholder views on project delivery being considered holistically and objectively in particular against the efficient and timely delivery of net zero and consumer value. We have provided more detail in our response to Q9 below.

Ofgem and the ESO have set out a key change to the scope of bids requested by the ESO. Previously, the ESO would have identified a system need (e.g., constraint or boundary transfer requirement) and some potential locations (e.g., list of potential start and end points for routes), with the bidder responsible for assessing options and proposing an optimal solution. Following the updated approach, the ESO will now set out the solution, and the competitive bidders are simply setting out their costs for delivering it. This greatly reduces the scope for innovation and to reduce overall bid costs and means that the already over-optimistic assumptions in the initial CBA cannot hold. However, the updated scope has not been reflected in the updated CBA model. For example, the assumption of a 10% capex saving is entirely untenable when bidders must build the same solution that the TO would otherwise build.

Amendments to the Early Competition model proposed by the ESO under its EC-I Update

We are concerned over various aspects of the recommendations from the ESO. These include the recommendations to potentially have connection driven projects included in a competitive tender. We believe that projects identified in the tCSNP (with the exception of the ASTI projects which Ofgem has confirmed will be exempt from competition), and the strategic reinforcements in the subsequent CSNP, should be the only projects that are considered for competition. We would also urge Ofgem to provide exemptions from competition for any projects that are key enablers for ASTI projects.

We are concerned with the rationale Ofgem uses, which assumes the CSNP optioneering will simplify planning and consenting. Our experience shows that even with projects identified through the NOA and HND process, which equally have need identified by the ESO, are still high-level designs, and will need considerable development before the project is in a position to be able to obtain consents. We have not seen anything to suggest that planning and consenting delays for projects are diminished because the ESO has confirmed that there is a need for the project. We welcome further clarity from Ofgem on how the CSNP/tCSNP process will achieve a simplified planning and consenting process and how this would represent an improvement to the current process through which NOA/HND projects are identified.

The ESO's CBA methodology does not consider the increased burden being placed on TOs to support the Early Competition process and its cost implications. In addition, there has been no consideration of the CATO of Last Resort (OLR) regime and the role of the TO in the CBA methodology which are quantifiable scenarios that should be considered alongside the potential impact from the CATO failure following zonal market reform.

TOs' conflict mitigation in supporting Early Competition tender process.

We are not supportive of Ofgem's current proposals on conflict mitigation measures, which risk driving inefficient outcomes for consumers by removing the TO's knowledge and experience from project delivery, resulting in poorer overall outcomes for consumers. As we have set out to Ofgem and the ESO previously, ringfencing bidding units cannot represent consumer value, given the increased

overall costs to bidding and the loss of key expertise in transmission delivery. Furthermore, it is not appropriate that Ofgem's conflict mitigation proposals apply unequally to TOs and CATOs. We urge Ofgem to ensure that the process treats CATOs and TOs the same when it comes to conflict mitigation measures. As such, we welcome Ofgem's stance on CATOs not being able to bid into a competitive tender if the CATO has not been able to satisfy sufficient conflict mitigations. We would encourage Ofgem to consider placing an equal obligation on the CATO to have a full-time equivalent employee (FTE) who will monitor and report to Ofgem any non-compliance with conflict mitigation measures, and equal requirements surrounding transferrals of staff. We have set out below additional concerns around disparities between obligations on TOs and more relaxed obligations on CATOs.

We have reservations about sharing information with prospective bidders that we consider to be of a strictly confidential nature or with sharing information that could threaten the security of the GB network. As such, we would encourage Ofgem to consider excluding or limiting access to the following information: site layout and bay details, operational diagrams for existing TO substations at the point of interconnection, existing protection key line diagrams for existing TO substations at the point of interconnection, and integration into existing automation schemes, as well as any and all other such information that we determine is of a strictly confidential or commercially sensitive nature. Despite this, we acknowledge that there will need to be an element of information sharing, and with this in mind we would encourage Ofgem to ensure that TOs, Bidders and the ESO enter into sufficiently strong non-disclosure agreements that provide TOs with sufficient assurances in the event that the information is disclosed due to this process. We seek clarity from Ofgem on how it intends to address situations of information in relation to critical national infrastructure going through a similar information sharing process, as bidders could potentially obtain this. We need clarity on what the vetting process will look like for bidding units and CATOs. We also encourage Ofgem to provide clarity on precisely when in the Early Competition process a CATO will become party to the System Operator Transmission Owner Code (STC) and if there will be amendments to the STC to ensure interactions between TOs, CATOs and the ESO around the tender process are covered by the necessary obligations.

TNUoS under/over recovery for CATOs

We have significant concerns over the proposed model that would result in CATOs mirroring the current approach applied to OFTOs with regards to revenue recovery as part of the TNUoS regime. Currently as part of the RIIO-T2 methodology, TOs have assumed volume risk in relation to the annual collection of TNUoS revenues which historically had sat with the ESO (i.e., in RIIO-1). Crucially the ESO still retains its role to set tariffs for the collection of TNUoS and therefore TOs are exposed to volume risk with no control over the assumptions used in setting the tariffs that will underpin TNUoS collection. For 23/24, OFTO and Interconnector revenues made up 13% of total TNUoS to be collected which is set to rise to 21% for 24/25. If CATOs were to be treated in line with OFTOs (in terms of revenue recovery) the volume risk exposure for TOs would only grow as the element of TNUoS that is fixed (i.e., paid regardless of collection) continues to rise. This would be at a time when TOs will be required to invest at record levels over the RIIO-3 price controls to help ensure the UK can meet our net zero ambitions. This will result in stretched cashflows for TOs which could be further impacted by greater exposure to volume risk and fluctuations in revenue collection.

We encourage Ofgem to consider whether TOs should continue to bear this risk and if so, how we mitigate or compensate for exposure, or whether the risk should be allocated to the National Energy System Operator (NESO) as its role and remit evolves.

Dealing with CATO/tender failure

We do not agree that Ofgem's determining factor for a CATO of Last Resort (OLR) should be solely based on the lowest cost to consumers. We believe that other factors such as ensuring security and resilience of the energy network should be given equal weighting to cost in the appointment of the CATO OLR. The CATO OLR process will require clear funding routes for the responsible party,

ensuring that potentially hidden or uncertain costs that may emerge following a failed project being taken on are fully funded and the impact on the TOs overall risk profile reflected in the regulated settlement. We would encourage Ofgem to factor the consumer impact of a CATO OLR into the CBA process and ways in which to safeguard consumers from abandonment costs. This is an example of where the CBA fails to take account of a quantifiable scenario that could occur and as such, we encourage Ofgem to factor potential abandonment costs into the CBA methodology.

We are concerned with Ofgem's proposal and the ESO's statement that CATO compliance with the Grid Codes (GC), Connection and Use of System Code (CUSC), System Operator Transmission Owner Code (STC), and the Security and Quality of Supply Standard (SQSS) means that it will have assets that ensure security of supply and the resilience of the network. Our concerns are based on the fact that the codes do not set the type or the standards an asset is designed to and as such, if TOs are expected to assume control over a CATO asset, we must exercise an element of due diligence to determine if we can take over the asset and to assess the asset condition and specification prior to assuming liability for the operation and management of the asset. We would expect Ofgem to introduce a clause for exceptional event claims much like the OFTO regime when they assume responsibility over an asset. This would go some way to protecting the TO OLR from the potential incentive penalties associated with events which are outside its control. As such, we are keen to engage with Ofgem on these points and highlight the importance of this being included in the CBA methodology.

Next Steps

Given that there remain many areas of ambiguity around how Ofgem's proposals will work in practice, without clarity on the proposals in full it is difficult for us to make a full assessment of risks. We would urge Ofgem to undertake a further consultation exercise once they are firmer in their minded to positions to give us and industry an opportunity to respond more fully to the holistic proposals.

Please do not hesitate to reach out should you wish to discuss any of the issues raised in this response.

Yours sincerely,

A handwritten signature in black ink, appearing to read "David Boyland".

David Boyland
Head of Transmission Regulation & Policy (Acting)

Annex 1 – Responses to Consultation Questions

Q1 - Do you agree that the proposed amendments by the ESO represent good value for money for consumers?

As we have set out to Ofgem and the ESO previously, we believe that any competitively identified solution, once identified, should be considered against the counterfactual option of TO delivery. Only where a third-party solution is considered more efficient than the TO alternative should it then be delivered, in the interest of securing lowest costs for consumers. Without this approach, Ofgem cannot justifiably claim that the lowest cost solution has been delivered in the interest of consumers.

We remain concerned over the amendments made to the early competition plan (ECP) in the EC implementation update (EC-I) published by the ESO. In particular pertaining to the CBA methodology and as such, our view is that the EC-I does not represent quantifiable good value for money for consumers and the metrics behind the CBA are fundamentally flawed, a point we expand on further in Q9 below.

We are concerned that the amount of work being proposed for TOs, from conflict mitigation obligations to the intended operation of the CATO of Last Resort (OLR) regime, places a significant regulatory burden on TOs which neglects to consider our knowledge and experience of project delivery. The ESO has had little to no consideration of the impact this will have on the consumer. These are either known or associated costs that have not been included in the CBA methodology and therefore makes the process flawed, raising serious concerns for stakeholders as to the CBA's robustness and credibility.

Q2 - Do you agree with the ESO's proposal of alignment of Early Competition with the Centralised Strategic Network Plan (CSNP)?

We do not agree with the ESO's suggestion that where a connection project is identified through the tCSNP, then it could be considered for competition. We are concerned that using the CSNP and tCSNP hold signals to identify projects eligible for competition does not at this stage evidence the certainty of need for the project. This is particularly the case where Ofgem have stated it may need to have additional CSNPs run and a re-evaluation of the proceed and hold signals of projects identified in the CSNP/tCSNP. We are also concerned with Ofgem's proposals to use a hold signal as providing certainty for competition, whereas Ofgem does not have the same view in relation to TOs' build where there is a reluctance to have a hold status demonstrating certainty of need. We urge Ofgem to align the approach taken toward the CSNP/tCSNP in identifying the need for competition with the treatment that TOs are facing. We welcome further engagement with Ofgem on this point and encourage Ofgem to treat all parties the same.

Commercially sensitive or confidential information unique to the TOs should not be required to be disclosed unless it is a material factor in the projects' competitive tender. We believe that it will be for the ESO to quantifiably justify the disclosure of any such material factor. We agree with the ESO that asset replacement should not be considered for competition until such time that it is included in the projects within the CSNP and even then, we believe that due to the complexities caused by multiple ownership on single sites and the lack of separability, which is a feature of asset replacement works, the opportunities for early competition in asset replacement works are very limited.

Q3 - Do you agree with the ESO's proposal that only network solutions should be eligible for Early Competition?

In terms of the ESO's proposal to have the EC model consist of network only solutions, we are supportive of this and would maintain that the TO continues to provide, where relevant, the transmission assets and services necessary to support non-network solutions procured from third parties.

Q4 - Do you have any material concerns with the conflict mitigation measures proposed by Ofgem for incumbent TOs and other bidders?

As set out above, ringfencing bidding units cannot represent consumer value, given the increased overall costs to bidding and the loss of key expertise in transmission delivery. We are further concerned that Ofgem is facilitating an uneven playing-field between TOs and CATOs. Our concerns can be considered in two parts, i) TOs are given an additional burden of having to dedicate an FTE employee, whereas CATOs are not obligated to have such employees, creating an uneven playing-field when there can be additional factors requiring conflict mitigation measures; and ii) TOs will need clarity on how the FTE employee will be funded and through what mechanism. It is unclear whether TOs will receive an additional allowance during the RIIO price control or from the outset of a competitive tender to allow for the TOs to fund the FTE conflict mitigation reporting employee. Our concerns are also based on the treatment of a bidder who is or was a CATO and is bidding into another competitive tender. We request that Ofgem ensures conflict mitigation measures are proportionate and are equally applied to CATOs and TOs. Once a CATO has delivered a single project, it will be party to the STC and network planning etc, which will place it in a similar position to TOs, and therefore the same conflict mitigation measures must apply from the outset.

We are also concerned that the obligations proposed to have a conflict mitigation statement submitted prior to a TO's intention to bid places an unfair burden on TOs when there is no such obligation for a CATO to submit a similar statement. We are keen for Ofgem to focus on keeping a level playing-field between CATOs and TOs. We would welcome further engagement with Ofgem on these points and would encourage further guidance to be provided.

Q5 - What are your views on our proposed modification to put in place timing requirements for when the TO must confirm its intention to bid and put in place conflict arrangements?

We believe that obligations placed on the TO and its bidding unit must mirror similar obligations for CATOs, and we urge Ofgem to ensure that this is the case, to maintain a level playing-field. We believe that TOs have a critical role to play in the development of the CSNP through our extensive skills and experience. We are concerned that an obligation on TOs to inform Ofgem of when it intends to bid into a competitive tender creates an unnecessary burden on TOs without placing a similar burden on CATOs and third parties. We agree with providing information required to support tender activities, although we have concerns over the sharing of what could be commercially sensitive information and confidential materials with a third party without sufficiently strong NDAs with assurances from the bid administrator that it will assume liability should there be a breach of information.

We are also concerned that Ofgem is placing a significant obligation on TOs to report, share information and be involved in various elements of the competitive process, without setting out how it intends to fund these activities. We need clarity from Ofgem on how we are going to be funded to deliver on these potential obligations and whether these ancillary services have been quantified in the CBA methodology. Our concern is that Ofgem is placing significant obligations on the TO will attract significant allocation of resource and costs that must be recoverable. In such a case, the ESO has not accounted for this in the CBA methodology.

Q6 - What are your views on our proposed modification to restrict the transfer of TO employees between the Bidding Unit and the team undertaking the Tender Support Activities and pre-construction activity?

We understand Ofgem's proposals with limiting the transfer of employees from TOs that have worked on the CSNP into relevant bidding units for a competitive tender. We believe that if there are to be restrictions on TOs transferring employees, then that restriction must apply equally to prospective CATOs. As such, the conflict mitigation reporting requirements for both TOs and CATOs should align in respect of obligations for identifying potential conflicts with employees who could create an unfair

advantage in the competitive tender. TOs already have extensive safeguards in place with risk mitigations which requires employees to go onto garden leave/quarantine periods to ensure sufficient business separation is maintained, however in the case of ringfencing requirements, this must be applied proportionately, and recognising that certain skills are particularly challenging to recruit from externally from TO organisations.

Q7 - What are your views on the proposed information sharing framework and, on the roles, assigned therein?

Ofgem need to give further consideration to our concerns in sharing strictly confidential or commercially confidential information. Our understanding is that there must be an element of confidential operational information sharing with third parties, although this must be facilitated in a way that ensures the security of the network and safeguards our commercial interests. As such, we are heavily opposed to sharing information that is considered commercially confidential. The following areas Ofgem identified in the consultation are some examples of commercially confidential information: site layout and bay details, operational diagrams for existing TO substations at the point of interconnection, existing protection key line diagrams for existing TO substations at the point of interconnection, and integration into existing automation schemes, as well as any and all other such information that we determine is of a strictly confidential or commercially sensitive nature. Our concerns extend to situations where any party is able to bid and obtain information on what could potentially relate to critical national infrastructure. Ofgem will need to set out the type of vetting process that will take place to safeguard different classifications of information.

We appreciate the proposal from Ofgem requiring the ESO, TO and CATO to sign confidentiality agreements and to anonymise the information where possible, although we have concerns over the chain of exposure to information and the mechanisms available for redress should the agreements be breached. As such, we encourage Ofgem to consider the use of sufficiently strong NDAs that provide assurances from the bid administrator that in the event of information disclosure, the bid administrator will assume liability.

In any case, we believe that the Ofgem proposed information sharing framework should be put in place before such time that there are obligations placed into the licence of TOs. Once this has been achieved, we will need to consider proposed licence condition changes that will facilitate information sharing and we would welcome further engagement with Ofgem on this.

Q8 - Do you have any material concerns with the company structure proposed for raising debt for Early Competition?

We are supportive of any corporate structure provided the bidding unit can demonstrate transparency and compliance with all conflict mitigation measures put in place by Ofgem. This aligns with the rationale stated in the ESO's updated EC-I document.

We welcome engagement with Ofgem on understanding the conflicting messaging around an SPV model and parent company assurances and appropriate forms of security. The ESO has suggested that a successful bidder will have to provide acceptable security to guard against defaulting during the preliminary and construction phases of a project. In doing so a bidder will need access to certain types of security. The ESO identifies performance bonds, letter of credit and cash deposits as appropriate types of security. Our concern is that this creates an unfair basis from which TOs will not be able to offer the same form of security to a bidding unit without conflicting with the obligation to prevent cross subsidy. Ofgem have stated that much of the rationale for the SPV is derived from project financing practices and the requirement to have a project be bankable. It is unclear how a regulated business with restrictions on cross subsidisation of a subsidiary can interact and compete with a project finance modelled CATO, especially when the CATO's parent company can provide a letter of credit and a bidding unit cannot because it is owned by a TO. We encourage Ofgem to provide further clarity on how it intends balance this contradictory policy.

We would also welcome engagement with Ofgem to understand how it intends to address the financial resilience of CATOs and bidding units when there are restrictions on cross subsidy arrangements. TOs are obligated under the Standard Licence Condition B9 and B10 to submit financial resilience reports and maintain a BBB credit rating. It is unclear how this obligation of ensuring financial resilience will translate into the competitive tender process.

Q9 - Do you have any material concerns with the ESO's proposed methodology of its CBA model and the elements considered therein?

We remain concerned about significant portions of the CBA methodology, particularly because the majority of it remains unchanged from the 2022 ESO consultation. The ESO's decision on the CBA methodology, published in February 2024 suggests that the concerns raised had either already been considered by the ESO; which the ESO did not provide any supplementary evidence to support that this was actually the case; or the methodology used additional data sources that were not listed in the sources published in 2022; to which end the ESO did not share these additional sources. As such, we remain concerned over the effectiveness of the ESO's CBA methodology in being able to accurately determine consumer value for money when a project has been identified for competition. It is apparent that TOs are required to provide sufficient quantification for amendments to the CBA, whereas the ESO does not have a similar obligation for refusing to accept changes. This is particularly the case where we have highlighted the inefficiencies in the CBA and are not provided with sufficient reasoning for the ESO's decision. We would encourage Ofgem to consider our position and ensure the CBA methodology reflects an accurate quantitative assessment of consumer value, and that it is not driven by opinion or a desire to artificially reach a competitive signal.

Our concerns with the CBA methodology are focused on the nonrealisation of benefits under the RIIO model, bias towards a competitive process, and lack of consideration for risk to delivery and financeability of CATOs. Under the RIIO model, there are multiple instances where TOs deliver significant consumer benefit which have not been realised in the CBA methodology. The ESO assumes that third party delivery will result in 'increased levels of innovation' without providing robust evidence to support the claim, particularly given that bidders no longer have the discretion to determine the location and nature of the projects, which will instead be determined by the NESO. This is further exacerbated by the ESO's lack of consideration for the totex incentive mechanism (TIM) sharing factor and the benefits consumers get from under and overspend on allowances. Our concern is that the ESO has not quantifiably assessed the potential loss of benefits from TOs should a competitive tender be obtained.

We are also concerned over the apparent bias the ESO demonstrates when approaching the CBA methodology. The ESO has not sought to prove that competition will lead to greater cost efficiencies than TOs and has provided no evidence in support of this position. It states that opex efficiencies in OFTO projects of circa 27%, when compared to the RIIO model, provides the basis for the high case opex efficiency costs, despite the fundamentally different regimes. We are also concerned that there has been increasing revenue adjusting events in the OFTO regime as a result of financeability issues, demonstrating significant weakness in the model that Ofgem is basing its proposals on. In light of this, we are concerned that the assumptions Ofgem makes, that third party ownership will result capex and opex savings, is not sufficiently justified. Similarly on capex costs, the assumed 10% saving will be the key driver behind any positive signal for competition and is not robustly evidenced based on a weak sample of broadly irrelevant international comparators, as we have set out to the ESO and Ofgem through our responses to the Early Competition CBA Methodology Consultation. This updated consultation does not provide clarity on how cost savings would be delivered on capex or opex given that third parties will be procuring services and assets from the same market and provides no additional justification for the broadly irrelevant benchmarks used.

In terms of the deliverability of assets, we are concerned with the idea that because CATOs will need to adhere to the GC, CUSC, STC, and the SQSS that automatically means that there should be little

concern over the technical specification of the assets that are delivered. To put this into context, the STC for example does not dictate the type and standards to which assets are designed. This becomes even more concerning when thinking of potential CATO failures and the retendering process. It is apparent that the CBA does not consider the quantifiable impact on consumers when assets are taken through the due diligence process and the assets condition and specification are deemed insufficient. The CBA methodology must account for instances of exceptional event claims, an element currently not considered in the CBA.

Q10 - Do you have any material concerns with the proposed TNUoS revenue recovery model for a CATO similar to the OFTO model?

We have significant concerns that the Ofgem's proposals on TNUoS and applying the OFTO regime to CATOs presents significant risk for TOs who will have to assume all of the revenue collection risk for both OFTOs and CATOs. As it currently stands, OFTOs are able to recover their costs in the year while onshore TOs are faced with the revenue collection risk for the OFTOs. This is a concern for us because the OFTOs revenue share has been increasing year on year and the onshore TOs are faced with an outsized portion of collection risk as opposed to our revenue base. As such, if Ofgem is keen for CATOs to follow a similar route to that of OFTOs, then that will equally pass the collection risk to the onshore TOs.

We are also concerned that the assumptions around how revenue is collected in Transmission is decided by the ESO, we end up bearing all the risk without being able to set the process. We would encourage Ofgem to consider whether TOs should be assuming that risk and in which case, how is Ofgem proposing to mitigate that, or whether the risk should be allocated to the public body, NESO.

Q11 - Do you have any material concerns about the proposed approach and principles in dealing with a situation of CATO/tender failure?

We are not supportive of Ofgem's proposal that a CATO OLR will be decided based on the least cost to consumers. In the event that a CATO, which has been appointed through a competitive tender and through the CBA methodology, fails, then we are not convinced that least cost alternatives are an appropriate metric to determine a CATO OLR. We are supportive of a metric that looks to ensuring that a CATO OLR is appointed with the lead criteria being a bidder who is able to deliver a resilient, safe, and secure energy network at an economically efficient cost to consumers. This is particularly pertinent in cases of failure, as the resulting delays to delivery are likely to cost consumers significantly through constraint costs. We would welcome further engagement with Ofgem on this point.

It will be imperative that the risk of CATO failure is factored into the CBA methodology should a CATO fail and at what stage of the development of the project it fails. The rationale is that there can be significant costs incurred by supplementing a CATO with another CATO who has an equal risk of failing. As such, we believe these additional costs in running another tender process should be considered alongside the cost impact for consumers of potentially higher delivery costs.

It remains unclear how Ofgem intends to address concerns that a CATO OLR might have with regards to the asset's condition or technical specification. The ESO suggests that due to a requirement for compliance with the GC, CUSC, STC and SQSS that this should not be a concern for TOs. We are heavily opposed to this rationale on the basis that we have strict licence conditions to maintain a safe, secure, and resilient network, particularly because we will have had no ability to influence the design process. As mentioned previously, the STC does not state the type or the standards an asset is designed to and as such, if we are expected to assume control over a CATO asset, we must exercise an element of due diligence to determine if we can take over the asset and to assess the asset condition and specification prior to assuming liability for the operation and management of the asset. We would expect Ofgem to introduce a clause for exceptional event claims, similar to the OFTO regime when they assume responsibility over an asset. We are also concerned that a CATO is only a CATO until such time that it is energised, at which point it will be a TO. As such, we maintain that a CATO must

follow a similar level of asset delivery as that of TOs, especially in terms of technical specification. We are equally apprehensive that TOs are expected to accept transference risk in relation to interfacing failures resulting from a CATO. We encourage Ofgem to consider that TOs will have direct quantifiable risk when given projects that potentially have significant risks or barriers to delivery. As such, we encourage Ofgem to consider the risk impact and regulatory burden of granting revenue adjustments and further relief in the event of a CATO failure and the fact that this risk has not been considered in the ESO's CBA methodology.

In any case, consumers should be protected from potential CATO failures and the resulting increased costs likely to be associated with non-delivery. In such cases, we believe that Ofgem should consider a mechanism that sits alongside the entirety of a CATO licence that creates a pot from which non-delivery, insufficient maintenance and upgrading costs can be mitigated for consumers. It could follow a similar model used in the Oil and Gas sector for oil exploration with decommissioning obligations. It would require a CATO to pay into a decommissioning fund where consumers are somewhat protected from increased costs that may result from poorly maintained assets which a TO may need to upgrade or decommission. The mechanism could also act as a safeguard for consumers if the tender has to have a CATO OLR appointed, with a portion of abandonment costs recoverable from the failed CATO, ideally through a fund that a CATO has already paid into.