



Electricity Systems Team
Department for Energy Security and Net Zero
3-8 Whitehall Place
London
SW1A 2EG

SSE plc
Inveralmond House
200 Dunkeld Road
Perth
PH1 3AQ

Future System Operation
Office of Gas and Electricity Markets
10 South Colonnade
Canary Wharf
London
E14 4PU

martin.namor@sse.com

9 May 2024

Dear Sir or Madam

Statutory consultation on National Energy System Operator licences and other impacted licences

On behalf of the SSE Group, I welcome the opportunity to respond to DESNZ and Ofgem's joint statutory consultation on the National Energy System Operator's (NESO) licences and proposed amendments to other impacted industry licences.

The SSE Group is a FTSE-100 company headquartered in Perth, Scotland, with interests across the UK and Ireland, Europe, Asia Pacific, and North America. We are one of the largest electricity network companies and a leading generator of renewable electricity in GB. We develop, build, own, and operate the low carbon infrastructure supporting the transition to net zero. This includes electricity transmission and distribution networks; offshore and onshore wind; hydro and pumped storage; solar and batteries; flexible and efficient thermal generation (including, going forward, hydrogen and carbon capture and storage). We also provide energy products and services to business customers.

We welcome the opportunity to provide our views on the proposed conditions for the Electricity System Operator (ESO) and Gas System Planner (GSP) licences, which will be held by NESO, once designated by the Secretary of State (SoS) as the Independent System Operator and Planner (ISOP) under the Energy Act 2023. A successful implementation of NESO is fundamental to the achievement of net zero.

In Appendix 1, we have provided detailed comments on specific conditions within the ESO and GSP licences. In addition to these comments, we would like to highlight upfront the following key points in relation to how NESO is being set up and will be subsequently run and regulated.

- Considering the substantial number and diversity of roles and duties (including newly created ones) assigned to NESO from Day 1, it is essential that NESO is sufficiently resourced and appropriately skilled to discharge all its functions effectively and in a timely way. We would encourage Ofgem and the SoS to set out a clear timeline outlining when they propose assigning any additional roles to

NESO beyond those currently included in its Day 1 ESO and GSP licences. NESO should not take on any new roles until it has demonstrated its ability to deliver against all its Day 1 objectives effectively and in line with the timeframes set by Ofgem or the SoS.

- To demonstrate NESO's progress – both in preparation for Day 1 and in delivering against its objectives, once operational – regular and comprehensive progress updates should be published. NESO should adopt and follow, from Day 1, the principles set out in the Energy Data Taskforce recommendations¹ (endorsed by DESNZ and Ofgem²) and be fully open and transparent in all its interactions with the industry. For example, by providing insights on the data and analysis underpinning its recommendations; on the nature of any advice provided in response to requests from Ofgem or the SoS; and on how it is using its enhanced information gathering powers. We reiterate our view that this commitment to openness and transparency should be enshrined explicitly within NESO's licences from Day 1.
- It is essential that an effective monitoring framework is set up to allow all stakeholders to provide feedback enabling Ofgem to review and use this feedback to inform its assessment of NESO's performance. This framework should include regular public consultations (like those currently in place for NGESO) as well as additional communication channels to allow stakeholders to provide more specific and timely feedback on an ad-hoc basis, where required. In response to this feedback, NESO should be required to set out clearly and transparently what actions and improvements are being implemented to address any areas of poor performance. Where no action is taken forward to address poor performance, NESO should be required to explain why.
- We recognise that the transition from a private company to a public, not-for-profit organisation means that the performance management framework and financial incentives currently in place for NGESO may no longer be fully appropriate for NESO. Nonetheless, it is essential that an alternative but equally effective framework is set up to allow Ofgem to put in place suitable incentives for NESO and intervene promptly when those incentives fail to deliver satisfactory levels of performance. While it is possible that the shift to a not-for profit model will contribute to an enhanced focus on longer-term strategic objectives, this should not remove the requirement for a robust performance management framework.
- Considering the wide range of function and powers (including new and untested ones) assigned to NESO, it is essential that the boundaries between its responsibilities and those of other industry stakeholders are delineated clearly from Day 1 to avoid conflicts and duplications. It is equally important that NESO adopts a collaborative and open-door approach in its engagement with the industry that allows all stakeholders to contribute their knowledge and expertise towards the achievement of the best outcomes for consumers, the environment, and the whole energy sector.
- Condition B4 of the ESO and GSP licences gives the SoS the power to direct NESO to take or refrain from taking certain actions where, in the SoS' opinion, there is a national security risk that might affect the resilience, safety, or security of energy systems, or continuity of essential services. This condition

¹ [*A strategy for a Modern Digitalised Energy System – Energy Data Taskforce report*](#)

² [*Energy Data Taskforce, Modernising Energy Data*](#)

relieves NESO from complying with its other licence obligations³, where these are deemed to conflict with a national security direction from the SoS. The current wording provides the SoS with significant discretion in determining what constitutes a national security risk and, as a result, potential influence over NESO's compliance with its other licence obligations. We would suggest introducing an additional obligation on NESO to use best endeavours to mitigate the impact of any request received from the SoS under condition B4 on its compliance with its other obligations. We would also encourage Ofgem to adopt enhanced scrutiny of NESO's compliance with its licence obligations whenever condition B4 is triggered.

- Conditions C15 to C17 of the ESO licence (C10 to C12 of the GSP licence) would benefit from further clarity on the timelines and milestones involved in the development and publication of NESO's key strategic planning documents – Future Energy Pathways (FES), Strategic Spatial Energy Plan (SSEP), and Centralised Strategic Network Plan (CSNP) – and the associated guidance and methodologies. In Appendix 1, we have highlighted some potential gaps and inconsistencies within the information provided across these three licence conditions.

More broadly, to enable the development and implementation of the new proposed strategic planning processes (SSEP and CSNP), industry licences will need to be subject to further and more material revisions than those currently proposed as part of this statutory consultation. We would encourage Ofgem to ensure that ample and meaningful engagement opportunities are made available to stakeholders to provide their input from the early stages of this process, well before proposals are published for formal consultation.

Finally, in relation to the amendments to the transmission licence standard conditions proposed as part of the statutory consultation (Annex I), we note that Section C (System Operator Standard Conditions) has been removed in its entirety. Since this section contains provisions on the interaction between transmission owners (TOs) and the relevant industry codes, and the contractual relationship between TOs and the ESO, we would welcome clarification from Ofgem on the reason for deleting the entire section and the proposed new location of these provisions within the updated transmission standard licence conditions.

If you would find helpful to discuss any aspects of our response in greater detail, please do not hesitate to contact me.

Yours faithfully,

Martin Namor
Senior Regulation Manager

³ In turn, via the work of the 'FSO Cross Codes Working Group', this is being transposed into relieving NESO from code and contractual obligations – an approach that is of particular concern. Requiring contractual parties to honour their contractual obligations whilst allowing the counterparty to those contracts (NESO) to walk away from honouring its own contractual obligations is intrinsically unfair and potentially illegal.

Appendix 1 – Detailed comments on specific licence conditions

Licence reference	Feedback / Proposal
ESO B1.2 (p. 73) GSP B1.2 (p. 35)	In Condition B1 – Introduction , we would suggest that provision B1.2 “ <i>The Secretary of State’s policy is <u>that the licensee is anticipated to have a high level of operational independence from government</u></i> ” is revised to “ <i>The secretary of State’s policy is <u>for the licensee to have a high level of operational independence from government</u></i> ”.
ESO B1.17-19 (p.75) GSP B1.17-19 (p.37)	In Condition B1 – Part C: Transitional Services , we would welcome the introduction of an obligation on NESO to publish regular updates to inform stakeholders of its progress towards exiting the Transitional Services Agreements (TSAs).
ESO B1.20-26 (pp. 75-77) GSP B1.20-26 (pp. 37-39)	In Condition B1 – Part D: Independence Statement , we would welcome clarity on whether the Independence Statement is required only during the period over which transitional services are provided under the TSAs or also following termination of the TSAs, on an enduring basis. Provision B1.20 does not mention TSAs while subsequent provisions in Part D do.
ESO B4.4 (p. 82) GSP B4.4 (p. 44)	In Condition B4 – Part A: National security directions , provision B4.4 states that “ <i>The Secretary of State may issue a direction under this paragraph where in the opinion of the Secretary of State: (a) there is a risk relating to national security that may detrimentally impact: (i) the resilience, safety or security of the energy system; or (ii) the continuity of essential services ; and (b) it is in the interest of national security that a direction should be issues to the licensee</i> ”.
	The current wording would give the SoS significant discretion in determining what constitutes a risk to national security.
ESO B4.2,7 (p.82) GSP B4.2,7 (p.44)	In Condition B4 – Part A: National security directions , provision B4.2 states that “ <i>This condition also relieves the licensee of obligations under this licence where and to the extent that they conflict with a direction issued under this condition</i> ”. Provision B4.7 adds that “ <i>The licensee is not required to comply with any obligation in this licence (...) where and to the extent that compliance with that obligation would be inconsistent with the requirement to comply with a direction issued in accordance with paragraph B4, for a period set out in the direction</i> ”.

Taken together, the current wording of provisions B4.2 and B4.4 provides the SoS with significant discretion in determining what constitutes a national security risk and, as a result, potential influence over NESO's compliance with its other licence obligations. We would suggest introducing an additional obligation on NESO to use best endeavours to mitigate the impact of any request received from the SoS under condition B4 on its compliance with its other licence obligations. In addition, we would encourage Ofgem to apply enhanced scrutiny on NESO's compliance with its licence obligations whenever condition B4 is triggered.

ESO C1.6 (pp. 90-91) GSP N/a	In Condition C1 – Part D: General obligation related to the coordinated development of the energy system , provision C1.6, there is a list of obligations, the last of which, identified as item (g), terminates with “ <i>and</i> ”. However, obligation (g) is the last item on the list and is not followed by any further obligation, suggesting that either there is a missing item that has been cut out of the list, or “ <i>and</i> ” should be moved upwards in the list, from the end of item (g) to the end of item (f).
ESO C2.3 (p. 93) GSP C2.3 (p. 52)	In Condition C2 – Part A: Strategy and Policy Statement , provision C2.3 states that “ <i>Where requested by the Authority, the licensee must demonstrate how it has had regard to the strategic priorities set out in the Strategy and Policy Statement in respect of a specific activity or function carried out (...)</i> ”.
ESO C6.1-4 (p.102) GSP C5.1-4 (p. 102)	In Condition C6 (ESO) / C5 (GSP): Licensee’s obligations regarding critical national infrastructure , we would suggest introducing an explicit obligation on NESO to engage with industry stakeholders to inform its understanding and advice to the SoS in relation to the identification of critical national infrastructure.
ESO C7.2-13 (pp. 103-105) GSP C6.2-13 (pp. 59-61)	In Condition C7 (ESO) / C6 (GSP): Energy resilience and resilience reporting , Part C (Energy resilience assessment report) and Part D (Emergency processes assessment) both have a specific provision requiring NESO to engage with the relevant stakeholders when producing its report/assessment. This provision is absent from Part A (Energy risk

and threat advice), Part B (Post-event and post-emergency analysis), and Part E (Industry readiness and preparedness report). We would suggest adding this provision to Part A, Part B, and Part E.

ESO C15.2 (p. 128)

GSP C10.2 (p. 69)

In **Condition C15 (ESO) / C10 (GSP) – Part A: Requirement to create Future Energy Pathways**, provision C15.2 / C10.2 requires NESO to “(a) *develop the Future Energy Pathways Methodology*; and (b) *develop and publish the Future Energy Pathways*”.

We would suggest adding “*and publish*” also to part (a) to clarify that NESO is required to publish also the FEP Methodology. This addition would be in line with provision C15.11 / C10.11, which states that NESO “(…) *must develop, in accordance with the Future Energy Guidance, and publish the Future Energy Pathways Methodology*”.

ESO C15.11,15,18 (pp. 129-131)

GSP C10.11,15, 18 (pp. 70-72)

In **Condition C15 (ESO) / C10 (GSP) – Part D: Future Energy Pathways Methodology**, provision C15.11 / C10.11 states that “*In the Financial Year commencing 1 April 2024 (...), the licensee must develop (...) and publish the Future Energy Pathways Methodology as approved by the Authority*”. However, provision C15.15 / C10.15 states that “*The licensee must, by 1 April of the Financial Year commencing 1 April 2026 (...) submit to the Authority for approval the proposed Future Energy Pathways Methodology*”. In **Part E: Review of the Future Energy Pathways**, provision C15.18 / C10.18 states that “*The licensee must, by 30 January of the Financial Year commencing 1 April 2024 (...) (b) submit to the Authority for approval any changes the licensee proposes to make to the Future Energy Pathways Methodology* (...)”.

These statements, in their current form, appear inconsistent with each other, with the result that the timelines for developing, approving, publishing, reviewing, and revising the first and any subsequent iterations of the FEP Methodology are unclear. We would encourage Ofgem to review Condition C15 to ensure that the relevant timelines are made clearer and consistent with each other.

ESO C16.10 (p. 133)

GSP C11.10 (p. 74)

In **Condition 16 (ESO) / 11 (GSP) – Part B: Scope and timing of the Strategic Spatial Energy Plan**, provision C11.10 states that “*The licensee must, by 30 January of the Financial Year commencing 1 April 2028 and every third Financial Year thereafter (...) submit to the Secretary of State a revised Strategic Spatial Energy Plan* (...)”. It is unclear whether the reference to a “*revised*” SSEP means that 30 January 2029 is the deadline for submitting to the SoS the first revised (and therefore second

overall) SSEP, following a previous submission of the first SSEP, for which no timeline is provided in the condition.

More in general, the deadline for the first Revised SSEP is the only time reference included in the entire Condition 16 (ESO) / 11 (GSP). We would encourage DESNZ to provide clarify the timeline for the first SSEP (including the timeline for publishing the underpinning methodology).

<p>ESO C17.2 (p. 128)</p> <p>GSP C12.2 (p. 69)</p>	<p>In Condition C17 (ESO) / C12 (GSP) – Part A: Requirement to create a Centralised Strategic Network Plan, provision C17.2 / C12.2 requires NESO to “(a) <i>develop a CSNP Methodology</i>; and (b) <i>develop <u>and publish</u> a CSNP</i>”. We would suggest adding “<i>and publish</i>” also to part (a) to clarify that NESO is required to publish also the CSNP Methodology. This addition would be in line with provision C17.10 / C12.10, which states that NESO “<i>must (...) <u>publish</u> the CSNP Methodology</i>”.</p>
<p>ESO D1.3-5 (p. 138)</p> <p>GSP D1.3-5 (p. 79)</p>	<p>In Condition D1 – Part B: Further obligations regarding ISOP advice, we would welcome the introduction of an additional obligation on NESO to publish regular summaries detailing the advice provided in response to requests from Ofgem and the SoS. This would be consistent with the commitment to be open and transparent with the industry and allow stakeholders to understand the nature of the advice sought by Ofgem and the SoS, which in turn would provide visibility of what Ofgem and DESNZ consider to be the key challenges for the energy sector.</p>
<p>ESO D3.6 (p. 141)</p> <p>GSP D3.6 (p. 82)</p>	<p>In Condition D3 – Part B: Further obligations regarding information provision, provision D3.6 seems to give Ofgem the power to direct NESO to provide information beyond Ofgem’s own information gathering powers where, in Ofgem’s opinion, “<i>such further information is, or is likely to be, necessary to enable it to exercise functions</i>”. We would welcome further clarity from Ofgem and DESNZ on the rationale for this provision and detail on the type of information that Ofgem might seek to gather under this provision.</p>
<p>ESO F1.4 (p. 233)</p> <p>GSP F1.4 (p. 90)</p>	<p>In Condition F1 – Part A: Requirements on ISOP expenditure, provision F1.4 states that “<i>The licensee must take all reasonable steps to ensure that it incurs no expenditure which is demonstrably uneconomical, wasteful or inefficient (...)</i>”.</p> <p>Annex A to the statutory consultation (“<i>Reasons and effects</i>”), pp. 44-45, refers to “<i>requirements in relation to uneconomical, inefficient and wasteful expenditure (to replace existing financial cost disallowance powers)</i>”. This suggests that such expenditure would not be disallowed,</p>

in which case we would welcome clarification as what alternative actions would be taken to rectify the situation and ensure that NESO is incentive to only incur expenditure that is economic and efficient.

ESO F4.2-4 (p. 250)

GSP F3.2-4 (p. 96)

Condition F4 – Part A: Availability of resources includes obligations on NESO to:

F4.2: “*at all times act in a manner calculated to secure that it has available to it such resources (...) as shall ensure that is at all times able (a) to properly and efficiently carry on the ISOP Business; and (b) to comply in all respects with its obligations*”; and

F4.3: “*notify the Authority in writing immediately if it becomes aware of any circumstance that causes it not to have a reasonable expectation that it will have sufficient resources*”.

We would welcome further information in relation to what actions would be taken by Ofgem or the SoS following receipt of a notification from NESO saying the resources at its disposal were not sufficient to “*properly and efficiently carry out the ISOP Business*” and “*comply in all respects with all obligations*”.

ESO F7.5 (pp. 257-258)

GSP F5.5 (pp. 101-102)

Under **Condition F7 (ESO) / F5 (GSP) – Part B: Remuneration policy**, “*The Remuneration Policy must describe the principles, practices, procedures and systems that the licensee must follow when remunerating its employees, and the policy shall included the following: (...) (d) the principles and methodologies for awarding performance related remuneration, including how any assessment of the licensee’s performance by the Authority, and any instances of non-compliance with this licence or enforcement actions against the licensee, will be taken into consideration for senior management performance related remuneration (...)*”.

In Condition 7 there is no requirement for NESO Remuneration Policy to be published. However, a degree of visibility on the “*principles and methodologies for awarding performance related remuneration*” would be welcome and provide stakeholders with confidence that the right incentives have been put in place to drive good performance.

ESO G2.4 (p. 274)

GSP G2.4 (p. 106)

In Condition G2 – Part A: Performance reports, stakeholder feedback and assessment, provision G2.4 states that “*The licensee must use reasonable endeavours to put in place arrangements that enable a*

diverse range of stakeholders to provide regular and coordinated feedback on the licensee's performance".

Considering the importance that should be placed on stakeholder feedback in assessing and managing NESO's performance, we would suggest removing "use reasonable endeavours to" to make this provision read "*The licensee must put in place arrangements (...)*"; or, alternatively, replacing "reasonable endeavours" with "*best endeavours*".
