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Contact
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By email:
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Dear Samuel,

SP Transmission (SPT): Response to Ofgem's Statutory Consultation on Modifications to the special licence conditions in the electricity transmission licences - Early Competition in Onshore Electricity Transmission.

The introduction of competition is an unprecedented change in transmission policy it is imperative that the appropriate time is taken in its implementation to ensure that policies, processes, and appropriate governance are clearly defined and established before its introduction.

We have deep reservations that a policy change of this magnitude, which is only partially formed, is not being progressed by Ofgem in a coordinated manner, with elements being unnecessarily accelerated without the overall policies being in place. This could have serious unintended consequences for all parties; including GB consumers and society as we collectively strive to deliver Clean Power and Net Zero targets. The incremental approach being undertaken by Ofgem has resulted in a significant lack of detail around the implementation of competition; including the operational regimes that such assets will be subject to and how security with respect to the wider transmission system will be managed. It is also key to note that there are several policy decisions that Ofgem have yet to make in relation to the tender regulations and commercial framework. These areas will influence on what should and should not be within the licence obligations of Transmission Owners (TOs) and all parties involved.

Throughout this process there has been a lack of transparency, with no visibility of the licence obligations for the Delivery Body or any potential Competitively Appointed Transmission Owner (CATO). Whilst we recognise that Ofgem is intending to consult on the Delivery Body's and CATO's licence obligations this year, without having the detail of any proposed corresponding obligations on these parties it is impossible to fully understand how the licence obligations set on the TOs will work in practice and how it will be ensured the obligations are fairly distributed between all relevant parties. This also creates a lack of ability to undertake due diligence to understand the full extent of the impact on SPT. The recent Ofgem consultation on the proposed first competitively tendered project further highlights the lack of transparency in this process. The National Energy System Operator (NESO) has not provided detailed evidence of the associated benefits or consumer value to support their recommendation.

While we acknowledge and appreciate that some of our concerns raised through the working groups have now been addressed by Ofgem in this consultation, many issues remain unresolved. In addition to our detailed response in the enclosed annex we present a summary of our outstanding concerns below and urge Ofgem to provide further clarity or address these in the relevant licence conditions or guidance documents.

1. Information Exchange, the importance of ensuring efficiency.

We would suggest that the Delivery Body already has available to them the details being requested in Appendix 1 of the Information Exchange Guidance. To ensure that this process is as efficient as possible, we would suggest that the Delivery Body collates all relevant information available to them before requesting further information from TOs. We would however note that it will be imperative for any data that is compiled by the Delivery Body relating to SPT projects is shared for review with SPT

prior to further sharing with any participating Bidders. The requested information in Appendix 1 is highly subject to change. Consequently, we are concerned about the use of such information being shared in the competitive process, as the majority of the information is influenced by external factors beyond the control of the TO. We would therefore note that we could provide no guarantees on the accuracy of the information when it is used. Any data provided by the TOs should be qualified as indicative and the TOs should not bear any liability for its use.

We have set out concerns with the initial timescales proposed in the Information Exchange Guidance around follow up questions from the Delivery Body and the timescales SPT will need to adhere to. We are concerned that 14 days to respond to a follow up question at the Invitation to Tender (ITT) stage does not accurately reflect the potential scope of requests that could be made. As such, we encourage the 14 day response timeframe to be limited to light-touch updates on previously submitted information, and more extensive responses to be subject to a 90 day response timeframe, with the flexibility to go beyond this depending on the request.

SPT has deep reservations about solely relying on the existing guidance in the STC regarding the sharing and treatment of confidential information. Given the NESO's varied information gathering powers currently set out in STC, it is unclear where certain provisions proposed by Ofgem are located. We urge Ofgem to provide clarity on which provisions are expected to apply and appropriately consult on these ahead of any decisions being made.

2. Further detail is required on Conflict Mitigation Measures to ensure a level playing field.

We are concerned that the Conflict Mitigation Arrangements could potentially exclude TOs from the competitive process due to onerous restrictions. It is also key to note there are several critical policy areas requiring further clarity, for example, it appears that restrictions imposed on TOs would not apply to other Bidders. This is including employee transfer and recruitment restrictions, where we expect that any restrictions would also apply to any CATO, but this is yet to be clarified. It also remains unclear how long a CATO asset must be separated from the regulated business model and whether a competed asset can be integrated into the wider TO business once constructed and operational.

We would welcome further clarity from Ofgem in relation to the separation of management structures of any Bidding Unit, as it remains unclear as to what is meant by the 'immediate parent company.'

We would welcome clarity from Ofgem on what is meant by the term "affiliated" as set out in Part E of the Conflict Mitigation Arrangement licence. SPT work with multiple contractors and companies, already facilitating significant competition— with c.95% of our regulated transmission construction activities being delivered by the market via competitive tendering. The scope of this provision's application is unclear, raising concerns about its practical implementation and perceived restrictiveness. This could negatively impact our ability to appoint an external auditor that meets Ofgem's criteria as organisations that have previously worked for the SP group may be unable to participate in the external audit.

We encourage Ofgem to pause the introduction of competition until the licence modifications are fully agreed with TOs and all of the major concerns and points of clarification have been addressed, including in the wider competition framework as noted above.

We look forward to continuing to discuss this important matter with Ofgem and trust that you will address the questions raised by SPT in forthcoming communications.

Yours sincerely,

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

David Boyland
Head of Transmission Regulation and Policy

Annex 1 – Responses to Consultation Questions

Q1 - Do you agree with our proposed drafting for the Tender Support Activities in Onshore Electricity Transmission licence condition?

SPT set out our initial concerns with the draft Tender Support Activities within the licence modifications through the issues log following focused working groups on the licence development.

Despite raising previously, we consider that SpC 9.20.8 is not necessary as this detail is set out in the Onshore Competition Information Exchange Guidance and 9.20.7 already provides that site visits need to be facilitated in accordance with the Onshore Competition Information Exchange Guidance.

It is essential to state that SPT alongside the other GB TOs have set out concerns with the level of information being requested by the Delivery Body as part of the proposed Information Exchange Guidance and have engaged with Ofgem on this through working groups. Despite these concerns, the level of information being requested has not changed raising serious concerns around our confidence in this process. We have set out our concerns with the information sharing guidance and level of information being sought by the Delivery Body in Q2 below.

Q2 - Do you agree with the proposed Onshore Information Exchange Guidance?

It is key to note that any information provided as part of the information exchange obligations is only accurate at the time it is provided to the Delivery Body. The TOs should not have any liability for the use of information that it has not been able to update based on the dynamic nature of the industry and potential for material changes to occur. The Delivery Body should undertake this assessment and provide the information if needed. It must be stressed that in relation to information held by the Delivery Body that is specific to a TO project, there should be a requirement for the Delivery Body to agree the sharing of such information with Bidders in advance with the relevant TO or allow the TOs to make amendments and update the information being shared. This will ensure that information that is considered sensitive is secure. As such, we recommend that the guidance document has a provision that restricts the liability of TOs for information provided as part of the process. Equally, it is important that the Delivery Body has an obligation to ensure the accuracy of the information it provides to Bidders. It would be unreasonable for the TOs to assume responsibility for the information that is shared directly with Bidders as the TOs are forbidden to do so.

We agree with the position stated at 5.2 of the Information Exchange Guidance that the Delivery Body must provide 14 days advance notice of any request for additional information at the Invitation to Tender (ITT) stage. However, we are concerned that the 14 days to respond to a follow up request at the ITT stage may not be sufficient time to respond to the Delivery Body's request. Depending on the detail of the information requested, it may be more complex to obtain the information, and, in such cases, we would require considerable time and resource to collate the information. This will need to be considered against our programme of works and prioritised accordingly. As such, the 14 day requirement, as defined at 5.9 of the Information Exchange Guidance, for providing information on follow up materials should be limited to light touch updates and marginal information requests. We would note that complex and detailed information requests will need to have a similar 90 day period for response, mirroring the Pre-Qualification (PQ) stage for information requests, with the flexibility to go beyond this timescale as this would be an entirely new request. Ensuring consistency with provision 4.5 of the information sharing guidance will allow the TOs to efficiently provide the information requested.

In terms of information requests made by the Delivery Body outside of the PQ and ITT stages, we are concerned with the timescales suggested for TOs to respond to a request within 15 working days. Our concern is that SpC 9.20.4 (c) states that TOs are obligated to respond to "reasonable" requests from the Delivery Body that fall outside of the PQ and ITT stages. We would urge Ofgem to clearly define the term 'reasonable' as it is unclear who determines the reasonableness of the information request.

We would recommend that the similar 90 day period to respond, should be mirrored in these requests to ensure consistency and that TOs are able to escalate certain information requests to Ofgem for a decision to be made on the reasonableness of the request.

Delivery Body Information Request and Template

In terms of information relating to the TO's transmission area, as defined at 4.3 – 4.4 of the Information Exchange Guidance, much of the information being sought is information that the Delivery Body already has access to. As such, we would welcome further engagement with Ofgem on the appropriateness of the information being requested.

Appendix 1 which sets out the pre-tender information request template states that the scope of the information being requested will consist of confirmation and verification of the Electricity Ten Year Statement (ETYS) model data. We would need to know the details of the background for which the assessment is being undertaken. It is our view that the Delivery Body would have access to the ETYS model data information as it stands and therefore this provision could be removed unless there is additional information required, in which case there would be a minimum of 6 weeks required. This will be dependent on the programme of works and existing workload as well as any urgent matters.

Some of our concerns with section 2 of Appendix 1 centre around the fact that our projects will not be sufficiently developed and mature enough to provide some of the details being requested. Any data that is shared by SPT will be subject to change as the connection background changes, largely because this will be dependent on generation activity. Section 2 (i) requests information for connections at existing substations, although our concern is that if we are not the party extending the substations, we may not be the best party to provide such information. Alongside this, there could be substantial time constraints in being able to provide this level of detail based on the scope of works and project programmes, which we believe could take a minimum of 8 weeks to provide.

It is also worth noting that the Delivery Body will have the information being requested as part of section 2 (iv) in relation to the protection key line diagrams for the existing system. We would recommend removing this provision from the template.

In relation to section two the 'Provision of a connection report.' We seek further clarity from Ofgem regarding (v) 'Indicative lead time to deliver the connection at each substation with an estimated earliest in-service date (EISD).' It is unclear what the earliest in-service date (EISD) will be used for and whether these dates are appropriate to be shared unless they are informed by a Quantitative Scheduled Risk Assessments (QSRA). We require confirmation from Ofgem if a QSRA would be required and that if so the appropriate timescales to undertake this activity are appropriately considered as undertaking this process is likely to extend any associated timelines.

We have the following comments on Part A and Part B of the information request template:

Part A

Any request for information around substation fault levels would require the Delivery Body to define the specific generation and demand background, and network configuration that is to be assessed. Without such information, the fault levels will only give an indication of the data at the point in time when it was collated. The data is therefore highly subject to change, as it is inherently dependent on the network assumptions applied. Despite this, the Delivery Body is able to run modelling on the information it holds from the ETYS data which we believe would largely address what the Delivery Body needs.

Part B

In relation to the earth return current request, any data at the time of request would only be a high-level estimation based on what we know about the project at that moment in time. As such the data would be highly dependent on what the CATO intends to connect. We have reservations about providing such information which could have reputational impacts as the ongoing accuracy of the information cannot be guaranteed. As such, requesting this level of information should not attach any liabilities for its accuracy, as stated throughout this response. Similarly, the request for interface information with existing and future TO projects will be equally subject to change in accordance with the related generation and demand connections.

The request for information on integration into existing automation schemes is asking for information that the Delivery Body already has access to in respect of the existing system. This information is provided in the Services Capability Specification (SCS) data submission in accordance with the STC. As such, it would not be appropriate for the TOs to provide this information.

Information Exchange Guidance

It is paramount that any information that is being requested by the Delivery Body is valuable and has a transparent purpose. The information needs to be useful in its intent. In relation to the Tender Documentation Support section of the Information Exchange Guidance at section 4, we believe that these obligations should account for any QSRA processes that may be required which could materially impact on timescales.

Additionally, any information that SPT share will be required to go through our internal robust data assurance processes and gain the appropriate sign off. It is essential to note that the information provided will be based on the TOs best estimations on what is available at the time it is provided. The TOs should not be held responsible for the use of information which could become outdated. There should also be an obligation for the Delivery Body to log details on how the information is being used and for what purpose.

We are supportive of the 90 day requirement to respond with information to the Delivery Body. As we have set out above, some of the information being requested needs to be revisited or removed from the Information Exchange Guidance. Additionally, we welcome the provision at 4.6 which requires the Delivery Body to provide 14 days advance notice prior to a request being made.

5.8 of the Information Exchange Guidance states that the Delivery Body can make only one information request in any 7-day window during the Invitation to Tender (ITT) stage. It is unclear on what this information request would consist of and whether the information sought is materially different from the information requested at the pre-tender stage as defined in Appendix 1 of the Information Exchange Guidance. The drafting of this provision introduces uncertainty around information requests and suggests that further information could be requested that extends beyond what is prescribed in the guidance. This is evident in section 5.3 where it states that the Delivery Body will determine the reasonableness and appropriateness of the information being requested. We would urge Ofgem to include a provision that requires the Delivery Body to engage with the TO in assessing the information's appropriateness.

Without such a provision in place TOs would be held to a potentially unreasonable timeline for delivering information to the Delivery Body which will vary depending on the complexity of the information and the potential resource allocation required. Despite the guidance allowing for extensions to be agreed with the Delivery Body and the TO, the guidance does not detail the process where agreement cannot be reached. We would encourage Ofgem to revisit the wording of this provision to accurately reflect the objective of the Information Exchange Guidance.

The Information Exchange Guidance states at 5.10 that where the TO considers a request to be out of the scope of the confidentiality agreement or in relation to commercially sensitive information, the matter will be referred to Ofgem for consideration with a decision issued within 10 working days. We would request further clarity from Ofgem on what this process will look like and how each party will feed into Ofgem's decision making. It is also unclear if there will be a route to request a redetermination of any decisions and as such, we would encourage Ofgem to consider checks and balances are in place to ensure its impartiality when making decisions in this respect prior to rushing into a decision. Equally, TOs should have a right to request a redetermination of any decision in respect of the information pertaining to potential commercially sensitive information. This should also extend to allowing the TOs to escalate its concerns with Ofgem. We also believe that the TOs should be able to raise the dispute resolution process in terms of any aspect of the Information Exchange Guidance document, not only for chapter 5.

We welcome the 10-week notice period required for the Delivery Body to notify the TOs of a proposed site visit as set out in section 6 of the Information Exchange Guidance. As rightly captured by 6.2 of the Information Exchange Guidance, there may be reasons why a date cannot be agreed beyond either party's control. As such, we would recommend that this provision should include that TOs should not be held liable for the delay in facilitating, or the cancellation of, a site visit when the circumstances are out of the TOs control.

Ofgem states at 7.2 of the Information Exchange Guidance that information sharing arrangements between the Delivery Body and the TOs are already in place and are governed by existing protocols in the System Operator Transmission Owner (STC) codes. However, the STC provides various information gathering powers to the National Energy System Operator (NESO) under the STC. As such, it is unclear from 7.2 of the Information Exchange Guidance which provisions within the STC would apply. We would request further engagement with Ofgem in this area to clarify which provisions within the STC are expected to apply to ensure full transparency over this process and to share this ahead of a decision being made. It is essential that we have sufficient time to review and ensure that the provisions of the STC are adequate to gather the information needed to support the competitive tender activities. Equally, we will need to ensure that the appropriate confidentiality requirements apply to the information being shared. Therefore, SPT are unable to confirm whether these provisions are agreeable at this stage and would suggest that Ofgem provides further clarity in this regard.

The information guidance lacks clarity on what provisions will exist should there be a suspected breach of confidentiality by a Bidder. As such, we would recommend that the terms of any confidentiality agreement are consulted on and that licence conditions should not come into effect until such time that the TOs have been given adequate opportunity to provide input into the terms of this agreement. Otherwise, the TOs are being required to conform to the Information Exchange Guidance licence obligation without having the ability to provide input into the tripartite confidentiality agreement being in place, which this guidance relies on.

Q3 - Do you agree with our proposed drafting for the Conflict Mitigation Arrangements condition?

We have reviewed the drafting in the proposed Conflict Mitigation Arrangements licence and have set out several concerns below which we request further clarity from Ofgem.

It is important to note that given the volume of questions still needing to be addressed, we have significant concerns around the appropriateness of Ofgem implementing competition with partly formed policy positions that may exclude TOs from bidding into the process. Clarity on these issues is paramount to ensure that the competitive process encourages as much competition as possible as per Ofgem's intentions.

It is unclear from SpC 9.21.5 of the Conflict Mitigation Arrangements what is meant by the immediate parent company. For SPT, SP Transmission plc is the licensee Board and Scottish Power Energy

Networks Holdings Limited (SPENH) is the parent company of SP Transmission plc. We had understood from the July Early Competition decision that SPT would need to ensure separate structures between any Bidding Unit and the rest of the transmission business, but that SP Transmission plc could still be the direct Board over any Bidding Unit. Please can Ofgem confirm that the licence drafting is intended to reflect this policy position and ensure the licence drafting is made clearer.

We can see the logic in Ofgem's position at SpC 9.21.8 (b) of the Conflict Mitigation Arrangements, although we are concerned about the reality of the provision. It appears that there will be restrictions imposed on the TO that would not otherwise apply to other Bidders. This is relevant in relation to employee transfer and recruitment restrictions where we would expect that any restrictions would also apply to any CATO however Ofgem has not yet clarified this. We seek clarity from Ofgem on whether equivalent restrictions would also apply to successful CATOs down the line, who wanted to bid for another project. There has been no indication of what the CATO licence will look like and as such we have negligible confidence in the same conditions applying to all Bidders in the competitive process.

It is also unclear on how long a CATO asset will need to be separated from the regulated business model and whether there is a situation where a competed asset could be brought into the wider TO business model once the assets are built. As such, we would welcome further clarity from Ofgem on this and to make the distinction within SpC 9.21.9 between the separability of ownership.

We are also concerned with the fairness and transparency of the Conflict Mitigation Statement Section (CMS), particularly around the timescales for Ofgem to make a decision. SpC 9.21.22 – 24 sets out the process for Ofgem assessing the CMS as well as the timescales that TOs must adhere to in publishing approved copies of the CMS. There is no indication of the proposed timeline Ofgem will work to in making a decision. In the interest of fairness and transparency, we would recommend that Ofgem commit to a set timeframe for making a decision on the CMS. This will ensure that the TOs are not unnecessarily delayed in being able to proceed implementing the CMS and are able to prepare for the tender.

In addition, at SpC 9.2.16(c) Ofgem have added a new requirement that the CMS be approved by the licensee's board of directors. Ofgem have not provided any justification as to why Ofgem consider this additional governance step is necessary. The TO will already have to prepare and seek Ofgem's approval of the CMS under tight timescales so we would suggest that this adds a further governance step which is not required in the circumstances given the already robust process Ofgem is proposing.

In response to Part E of the Conflict Mitigation Arrangement licence, SpC 9.21.26, we would welcome clarity from Ofgem on what is meant by the term "affiliated". As we work with many contractors and companies, it is unclear on the scope for which this provision will apply to TOs and as such there is a concern with the practicalities on implementing such a provision. We are concerned that this provision is too restrictive as reading it strictly could mean that no organisation who has done work for the SP group before could perform the external audit. This would be highly impractical and would restrict a lot of the usual organisations that we would instruct to perform assurance work. No further guidance is contained in the Conflict Mitigation Methodology on this point despite the reference in the licence to this document. We welcome Ofgem's clarity in this respect and consideration from a practical point of view of our extensive engagement across the industry.

Q4 - Do you agree with our Conflict Mitigation Methodology and Conflict Management Audit Terms of Reference associated documents?

Conflict Mitigation Methodology

If licensees are to have a strict licence requirement to ensure they comply with the Conflict Mitigation Methodology (CMM), then the requirements on TOs need to be much clearer rather than left open ended. We do not believe that Figure 1 of the CMM is accurate based on our understanding of the separation requirements for TOs looking to bid into the competitive process. As we understood there is not to be any direct contact between the TO and any Bidders as any information sharing is done through the Delivery Body. The lines between the TO project development team and the TO Bidding Unit suggest the TO project development team will provide direct support to the Bidding Unit and the red dotted line suggests the TO project development team will respond directly to any queries from the Bidding Unit.

In terms of Figure 2 of the CMM, which is denoted wrongly in the draft CMM as "Figure 1", there is a need for clarity on whether the Conflict of Interest (Col) declaration will be required from all parties bidding into the competitive process. The lack of clarity here is partially due to the provision within the draft Tender Regulations which emphasised at Regulation 39 that all parties are to prepare a conflict of interest assessment, although this provision within the CMM implies TOs must also sign a declaration. TOs will need to comply with the CMS and as such, any conflicts of interest could be captured during that process. We encourage Ofgem to clarify this point.

Appendix A

There is an unnecessarily onerous obligation in Appendix A - A1.2, where each member of the Bidding Unit will need to sign a statement for their potential or perceived conflict with other members of the TO. It should be for the upper management of a Bidding Unit to have such an obligation and the CMS will ensure separation of any Bidding Unit from TO employees involved in the CSNP.

The drafting of Appendix A - A1.2, bullet point 2, does not accurately reflect the July 2024 decision. We would recommend amending this section to read "separation of the Bidding Unit up to, but not necessarily including, the TO parent board" to mirror the language at 3.14 of the July 2024 decision.

In terms of Appendix A - A6.1, bullet point 1, it must be stressed that this was not included in Ofgem's July 2024 decision and as such, we believe that it is inappropriate for Ofgem to implement a policy change through the guidance document. We also consider, at bullet point 5 of A6.2, which should be bullet point 6, that the provision of a report prior to the PQ stage on the measures put in place and how the overall obligations on the TO will be achieved, was not part of the Early Competition July 2024 decision and as such Ofgem should aim to keep consistent messaging throughout the process.

Conflict Mitigation Audit Terms

In relation to the terms of provision 1.6 of the Conflict Mitigation Audit Terms the TO cannot bid into the competitive process if there are any Red RAG ratings. We do not believe that it is appropriate for an External Auditor to have the sole discretionary power to determine whether the TOs are able to bid. Our concern is that this will create further depreciate a level playing field between TO Bidding Units and other Bidders. For example, incumbent TOs may appoint different companies to undertake such audits and as a result this may call into question the consistency of the approach undertaken and the subjectivity of the audit and any associated conclusions. Further, any external auditor will have no formal statutory role in the competition process.

We therefore recommend that it would be more appropriate for Ofgem to undertake an independent assessment of the factors considered in any audits and make its own determination on whether a TO should or should not be able to bid into the process.

We appreciate Ofgem's position in provision 1.8 which states that Ofgem may wish to place requirements on the TOs participating as a Bidder in relation to the credentials, selection process and terms of engagement of the auditor. However, we are concerned that Ofgem state that the selection of the external auditor is the responsibility of the TO, yet there appears to be a significant clause attached to this which fully restricts the TOs from being able to exercise responsibility for the selection process. Additionally, this concern is exacerbated when considering Ofgem's position that it may be involved in placing requirements in the terms of engagement between the TO and external auditor. If Ofgem are going to set out any requirements in terms of credentials, the selection process, and terms of engagement then in the interests of full transparency these should be fully set out in this Terms of Reference Framework. As it currently stands Ofgem have the power to change their approach for each appointment which creates uncertainty and potential unfairness between the TOs if they are being held to different standards.

In terms of the Employee Transfer Restrictions Process, the Audit Objectives state the need for a Bidding Unit to confirm the processes and procedures that will be used will not utilise services of any employee of the TO who are involved in a project's initial design or was part of the Tender Support Activities. This provision does not reflect the exemption that would be required for shared services as permitted by the licence. As such we would strongly recommend an amendment to reflect this in the Audit Terms.

We request clarification from Ofgem regarding our concerns about the Audit Terms, specifically the interaction with existing business separation, compliance obligations, and competitive obligations. SPT has substantial experience with external auditors who ensure our compliance with current restrictions. Therefore, it is unclear why there is a need to exclude and restrict certain auditors from supporting a TO-backed Bidding Unit or SPV.

We seek clarification on the duration of these obligations and whether there will be a point when the TO will no longer require a Conflict Mitigation Officer. Additionally, we request clarity on the proposed timeframe for submitting these reports to Ofgem. We encourage Ofgem to specify the timescales for the Audit Terms to help TOs prepare for the competitive process.

Q5 - Do you agree with our proposed modifications to SpC 9.14 Restriction of the use of certain information?

We have no comments on this.

Q6 - Do you propose any modifications to the proposed licence drafting?

Proposed Amendments to the Information Exchange Guidance

We believe, as mentioned in response to Q2 above, that Appendix 1, para 1 of the Information Exchange Guidance can be removed, as the scope of the information being requested will consist of confirmation and verification of the Electricity Ten Year Statement (ETYS) model data. A point to which the Delivery Body would be best suited to address and have access to.

Proposed Amendments to the Conflict Mitigation Arrangement Licence Modifications

We raised concerns in response to Q3 above, that it is unclear how long a CATO asset will need to be separated from the regulated business model and whether there is a situation where a competed asset could be brought into the wider TO business model once the assets are built. As such, we would

welcome further clarity from Ofgem on this and to make the distinction within SpC 9.21.9 between 'ownership' and 'control' of assets, as these should have different restriction that apply.

Proposed Amendments to the Conflict Mitigation Methodology Guidance

As stated in Q4, Appendix A A1.2, bullet point 2, does not accurately reflect the Early Competition decision from July 2024. We would recommend amending this section to read "separation of the Bidding Unit up to, but not necessarily including, the TO parent board" to mirror the language at 3.14 of the July 2024 decision.

Appendix A of the CMM has a typo where after bullet point 2 of A6.2 there should be another bullet point at the following provision "confirmation that the CMO will be independent of both the TO's Tender Support Activities and the Bidding Unit".

Figure 2 in the CMM is denoted wrongly and is marked as "Figure 1" in the draft instead of 'Figure 2'.

Q7 - Do you agree with our proposed modifications to SpC 1.1 Interpretations and definitions?

In terms of the licence modifications on the definition of "Bidder" this is the definition given in the draft Tender Regulations which means "a person, or a group of two or more persons acting together, that submits a pre-qualification questionnaire to the Delivery Body in accordance with these Regulations." We believe that there is a need for further clarity on the definition of a Bidder as they progress through the competitive process. Particularly when a party ceases to be a 'Bidder.' We would recommend that a Bidder is only a Bidder for the duration of the tender exercise, after which time the award is granted, the Bidder will then cease to be a Bidder or become a CATO. Additionally, there is uncertainty about the scope of who is considered a Bidder and whether parties, prior to submitting a PQ questionnaire, are also going to be captured by the term, and therefore have the same restrictions apply. We would welcome further clarity on this from Ofgem.

It is also worth noting that the definition given to the term "Delivery Body," meaning "the body designated by Regulation 3 of the Electricity (Designation of Delivery Bodies) (Transmission) Regulations 2023(a)" needs to be clearly set out. As such, we propose the definition of "Delivery Body" should be tied to Section 6BB of the Electricity Act. Although the NESO is currently the Delivery Body, there should not be an inference that the defined term "Delivery Body" should be read to mean the NESO as this could change. We would encourage Ofgem to consider this.