

Energy UK response to Ofgem's Consultation on the enduring regulatory framework for NESO

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About Energy UK

Energy UK is the trade association for the energy industry with over 100 members - from established FTSE 100 companies right through to new, growing suppliers, generators, and service providers across energy, transport, heat, and technology. Our members deliver nearly 80% of the UK's power generation and over 95% of the energy supply for 28 million UK homes as well as businesses.

The sector invests £13bn annually and delivers nearly £30bn in gross value - on top of the nearly £100bn in economic activity through its supply chain and interaction with other sectors. The energy industry is key to delivering growth and plans to invest £100bn over the course of this decade in new energy sources. The energy sector supports 700,000 jobs in every corner of the country.

Energy UK plays a key role in ensuring we attract and retain a diverse workforce. In addition to our Young Energy Professionals Forum, which has over 2,000 members representing over 350 organisations, we are a founding member of TIDE, an industry-wide taskforce to tackle Inclusion and Diversity across energy.

Executive Summary

Energy UK and its members would like to thank Ofgem for the opportunity to respond to its consultation on the enduring regulatory framework for NESO. We can confirm that we are happy for our response to be published.

Energy UK broadly welcomes Ofgem's proposals for NESO's enduring regulatory framework. However, Energy UK holds concerns surrounding the transparency and accountability in how NESO operates and is regulated. It is important that these concerns are sufficiently addressed in order to facilitate a robust regulatory framework that will ensure wider investor confidence in the market.

A key concern is the lack of detail in how each Performance Objective would be delivered. Ofgem should stipulate more granular performance indicators, make performance data publicly available, and ensure individual accountability by naming those senior NESO individuals responsible for each objective. These measures would enable more robust scrutiny and improve NESO's delivery of its core operational roles, many of which are currently under strain.

Energy UK strongly opposes the extent to which NESO would be permitted to regulate aspects of its own performance oversight under its enduring regulatory framework. Principally, Ofgem's proposal for NESO to administer its own Stakeholder Challenge Panel runs the risk of undermining the independent nature of the Panel and could lead to significant conflicts of interest. Ofgem must retain a stronger role in overseeing these functions.

In light of historically poor engagement, Energy UK would also urge Ofgem to strengthen the consultation parameters surrounding NESO's future Business Plan development, to ensure stakeholders have sufficient opportunity to provide meaningful insight and scrutinise its work.

While Energy UK supports the principle of linking NESO senior staff incentives to performance, this must be accompanied by clear enforcement mechanisms. There must be a transparent process in place for responding when NESO fails to meet its objectives, and performance data should be published regularly to support both financial and reputational accountability.

Finally, while Energy UK is broadly supportive of Ofgem's wider proposals for NESO's enduring regulatory framework — including cost reporting, licence obligations, financial regulation, and innovation funding — many of the proposals in their current form are only high-level. As such, further detail must be adequately provided to ensure greater clarity for industry.

If you would like to discuss this response with Energy UK and its members, further engagement is welcome.

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Consultation Response

Performance Incentives

Question 1: Do you agree with our proposal to continue with an evaluative performance assessment that is aligned with our BP3 approach?

Energy UK is broadly supportive of Ofgem's proposal to continue with an evaluative assessment of the National Energy System Operator's (NESO) performance, in alignment with the Business Plan 3 (BP3) approach.

However, as outlined in previous consultation responses, Energy UK does not agree that a shift to outcome-based regulation should entail a move to 'light-touch' regulation. As part of the BP3 process, industry has lost much of the detail of how each Performance Objective would be delivered. This level of detail is required, as is a strategic approach to evaluating performance, to enable industry and officials to hold NESO to account for delivery.

There needs to be a renewed focus on core operational roles and customer service. Energy UK members have seen that the NESO's operational functions are struggling, including core roles such as the management of compliance requirements, contracts, skip rates and system access.

Assessing the success of NESO in meeting its core operational roles relies on more granular targets than those currently set out in BP3 to ensure appropriate accountability and successful implementation.

As such, Energy UK would like to see specific KPIs, linked to each Performance Objective, made publicly available and easily accessible as part of NESO's enduring framework. This would provide the necessary data and evidence to increase Ofgem's ability to scrutinise NESO's cost allowances and metrics for core operational roles. Ofgem is best placed to shape how NESO undertakes its role and areas of focus, but can only do this with sufficient data and evidence.

Learnings should be taken forward from the experience of the BP3 period. At present, it is still early to assess whether the approach, in favour of more strategic objectives, is effective in ensuring robust NESO regulation. Ofgem should remain flexible in its preparatory plans to shape NESO's enduring regulatory framework until it can draw more learnings from the current approach.

In light of NESO's move to an individual financial incentive scheme, NESO needs to focus on core operational roles and customer service; current resourcing levels at NESO are unable to cope with the existing operational workload, and this workload will only grow in the coming years to Clean Power 2030 (CP30).

Energy UK members believe that greater transparency and attribution of senior NESO individuals responsible for each Performance Objective will allow for direct and seamless engagement surrounding different workstreams as well as wider accountability. It is

important to have this connection to those named individuals responsible within NESO, and it would place a lot of emphasis on one of the only regulatory levers that Ofgem currently has on NESO, which is the reputational impact.

Related to this, NESO should also be assessed on the quality and transparency of its engagement. NESO's role in connections reform, system access, system planning (including Regional Energy System Planning (RESP)) and competition, amongst others, all require high-quality industry engagement to ensure balanced and robust outcomes. It must be the case that NESO is monitored to ensure engagement is not a simple tick-box exercise with webinars to disseminate information, but is actively engaging industry experts in discussions and challenge groups throughout delivery of its objectives.

Business Plan and plan assessment

Question 2: Do you agree with our proposals for the Business Plan and plan assessment (including the specific proposed requirements in our draft NESO Business Plan Guidance document)?

Overall, Energy UK is supportive of Ofgem's proposals for NESO's Business Plan on an enduring basis.

The submission of a new Business Plan every two years will likely give a good balance of certainty and flexibility for the plan to evolve as things change within the wider sector. Energy UK does not foresee the development of these Business Plans on a two-year reoccurring basis being too burdensome, both from a NESO and wider industry engagement perspective.

Energy UK still holds concerns over Ofgem's requirement for NESO to meaningfully engage with stakeholders before publishing a final Business Plan. The NESO Business Plan Guidance (3.5) sets out a requirement for NESO to 'carry out robust and effective engagement with stakeholders' and that the Business Plan should 'reflect stakeholder views and feedback provided to NESO throughout the duration of the previous Business Plan cycle'.

However, NESO recently cancelled its Q&A event for NESO RIIO-2 BP2 End-scheme performance, which was to provide a brief overview of NESO's end-scheme report headlines as well as provide opportunities for stakeholders to provide feedback.

Concerns have also been compounded by the timelines surrounding NESO's Business Plan consultations, with the most recent BP3 consultation published over the Christmas period and with a very short response deadline. Neither of these examples would constitute 'meaningful engagement'.

Furthermore, the wording set out in Ofgem's Business Plan Guidance document does not stipulate a requirement for NESO to formally consult with stakeholders, and, therefore, there

is a risk that NESO could forego this important form of engagement moving forward. This should be amended to explicitly require a formal consultation as part of the stakeholder engagement process.

It is important that NESO has mandated parameters regarding industry consultation surrounding its Business Plans as part of its enduring regulatory framework, with sufficient submission deadlines to allow for an appropriate level of scrutiny.

As part of this, the current Business Plan guidance suggests a Business Plan should be in place by the 15th working day of October, or another date stipulated by Ofgem. Ofgem should stipulate another date for NESO's first business plan under the enduring regime, given that NESO will need adequate time to develop robust and reliable plans and meaningfully consult with stakeholders. Energy UK is not confident that this is achievable by October.

Cost regulation

Question 3: Do you agree with our overall approach to cost regulation and reporting?

Energy UK has no objections to the overall principle of continuing with a pass-through model for NESO's cost regulation and reporting, but cannot agree to the approach without further detail.

There has not been enough detail provided at this stage to make a full evaluation of the potential impacts relating to Ofgem's proposal to "review and streamline the way existing cost information is reported and monitored to ensure it is proportionate". More information should be provided on Ofgem's plans and what this might mean for NESO's regulatory framework, as a newly formed public body, moving forward.

As highlighted in previous consultations, greater transparency of plans for costs for the BP3 period would be welcome. This should include a more detailed and granular breakdown of exactly what is to be spent as part of each Performance Objective, as well as the associated benefits/value for money for industry and consumers. Without this level of detail, it would be difficult for Ofgem or industry to be sufficiently informed to effectively scrutinise NESO's capacity and whether it can meet the needs of customers.

Stakeholder mechanisms

Question 4: Do you agree with our proposal for a new NESO stakeholder challenge panel?

Energy UK supports the proposal to continue to have a stakeholder panel to oversee and evaluate NESO's performance, but cannot support the current approach given a number of

serious concerns over Ofgem's proposed Stakeholder Challenge Panel. Most concerning of the proposed approach is the suggestion that the panel will be administered by NESO.

If the Stakeholder Challenge Panel's main objective is to hold NESO to account, allowing NESO to oversee the delivery of the Panel's report on their performance and influence the makeup of the panel (Chair and members) is inappropriate and risks contradicting the independent nature of the Panel. To ensure an unbiased and proportionate level of scrutiny, greater transparency and robust processes for appointing the Panel and ensuring the Panel's independence from the NESO in developing recommendations must be enshrined in the approach.

While Ofgem would set key legal requirements for the Panel to ensure a level of oversight, including the principles and parameters, there is, for many in the sector, a strong risk that NESO could interpret these in a way that would favour themselves. These apprehensions feed into a wider concern that NESO, as has also been seen with energy code reform and code administration, is being given more power to self-regulate while Ofgem takes a step back.

This trend towards centralisation risks leading to potential conflicts of interest. This seems to denote a trend, given proposals in the ongoing implementation of code reform. A significant degree of power is proposed to be handed to Code Managers, such as the power to assess the progression and treatment of code modification proposals, be secretariat for all subcommittees by default, and appoint independent parties to the stakeholder advisory forums without consultation.

It is the responsibility of Ofgem to strongly influence how NESO and other industry bodies undertake their roles and areas of focus, and there must continue to be senior Ofgem direction and monitoring to improve NESO performance.

Energy UK is concerned that the current NESO Performance Panel and NESO Independent Stakeholder Group would merge to form a single Panel under Ofgem's proposed enduring regulatory framework for NESO. The convergence of two remits, one looking at performance and the other taking a more future-looking and strategic approach to NESO's role in the energy system, risks issues regarding balancing one remit over the other. Energy UK would urge Ofgem to set stringent parameters to ensure that there is sufficient focus on both aspects of NESO performance and future plans.

Question 5: Do you agree with our changes suggested to within-scheme stakeholder feedback?

Ongoing feedback mechanism

Energy UK broadly welcomes Ofgem's proposal to implement an ongoing opportunity for stakeholders to provide direct feedback on NESO's performance. There is merit in being

able to provide real-time feedback, allowing Ofgem to react more quickly and effectively to industry concerns as they occur.

There remain wider questions about how often, and in what way, Ofgem would manage the volume of incoming feedback from industry stakeholders. Ofgem needs to provide more detail on the practicalities and protocols in place to give certainty to industry that feedback will continue to be addressed appropriately, whilst also avoiding any potential overburden on Ofgem.

Alongside the opportunity to provide ongoing feedback, Energy UK members still see merit in a periodic checkpoint following the established consultation process. This could take place once every two years as business plans approach end of cycle. A call for evidence acts as a prompt for industry to provide feedback in a structured manner, and without it, there is a risk that less feedback is provided overall, and that feedback is not duly considered when assessing performance at the end of the business plan cycle.

Stakeholder survey

Energy UK welcomes Ofgem's proposal to maintain a 6-monthly stakeholder survey as a key mechanism for gathering wider stakeholder feedback on NESO's performance. These are a useful mechanism to engage industry regularly. However, NESO should not overly rely on this survey and must ensure that it solicits feedback from all stakeholders through a variety of engagement opportunities. There should also be measures in place to ensure that the contact details for these surveys are kept up to date on an ongoing basis.

Additionally, similar to concerns regarding the Stakeholder Challenge Panel, Energy UK questions the true effectiveness of NESO overseeing and conducting these surveys itself, and would encourage Ofgem to explore how to ensure these feedback mechanisms remain as independent as possible.

Question 6: Do you have any suggestions for new and additional mechanisms or licence obligations that could improve NESO's accountability to stakeholders?

Energy UK proposes an industry 'Town Hall' approach to strengthen public accountability alongside individual performance incentives. This could involve members from NESO's Executive Leadership Team, including Fintan Slye, sharing progress with the industry in a public forum every quarter.

This would enhance transparency, build trust, and offer stakeholders a regular opportunity to engage directly with leadership. It would also complement individual incentives with a reputational driver, help maintain delivery momentum, and signal a cultural shift towards openness and shared responsibility across the sector.

Licence obligations and enforcement

Question 7: Do you agree with our overall approach to NESO's licence obligations and enforcement?

Energy UK is broadly supportive of the direction of travel in Ofgem's proposals for NESO's licence obligations and enforcement. However, more information is required on this particular section of the consultation, specifically on the following:

- Ofgem proposes "limiting the use of regulatory approvals and prescriptive obligations to situations where clearly necessary". This may reduce the regulatory burden for Ofgem, but further detail of the proposed changes and the process for making these amends would be welcome.
- Ofgem also plans to provide "clearer and more focussed licence guidance". As part of this, it would be useful to understand whether Ofgem is considering a review of its own obligations to ensure that Guidance is up to date, relevant and consulted upon.

Senior staff incentives

Question 8: Do you agree with our proposal for NESO senior-staff level incentives?

Energy UK welcomes the intention for a stronger link between remuneration and performance, as outlined in this consultation. Financial incentives for senior staff at NESO will perhaps be the strongest lever industry has to drive performance.

As mentioned earlier, each Performance Objective should have a named individual responsible for its delivery. This would allow for a more direct and justifiable link between performance outcomes and the awarding of financial incentives. NESO should be empowered to take appropriate risks and respond with agility when circumstances change or existing plans deviate from expectations.

Clarification is needed regarding what happens if NESO fails to deliver against its performance objectives. There must be a transparent enforcement process led by Ofgem to ensure accountability and timely corrective action. The annual release by Ofgem of NESO performance data, perhaps to coincide with the previously proposed Town Halls, would also be a welcome measure.

Regulatory finance

Question 9: Do you agree with our overall approach to NESO's financial regulatory framework and reporting?

Energy UK agrees with Ofgem's proposed approach to NESO's financial regulatory framework and reporting.

Given that NESO is now a not-for-profit organisation, Ofgem should ensure that frameworks and reporting are aligned with the rules and regulations now associated with this status.

Innovation

Question 10: Do you agree with our proposal for innovation funding for NESO?

Whilst Energy UK broadly agrees with the proposal to keep access to the same innovation funding as other network companies for RIIO-3, one of NESO's strategic aims as part of the business plan must focus on the need for innovation.

As set out in response to other consultations, there is a clear need for innovation funding to consider a greater focus on whole-systems solutions that are cross-industry and cross-vector, not just innovation to NESO's internal operations.

Broader comments

Energy UK would stress the importance of ensuring that the following KPIs are incorporated into NESO's performance assessment, as part of their ongoing regulatory framework:

- **Data Transparency:** NESO should ensure that data is not only made available but also accessible and user-friendly for market participants. For example, enabling downloadable datasets across flexible date ranges (rather than month-by-month exports) would significantly improve usability.
- **Skip Rates:** Reporting should include skip rates across all technologies, including Demand Side Response (DSR), which has historically been overlooked in this context. This would support a more complete and consistent picture of system performance.
- **Engagement with Global System Operators:** It is currently unclear how NESO identifies and incorporates international best practice. Greater transparency on how NESO engages with other best-in-class system operators, particularly in areas such as metering requirements, would support continuous improvement and global alignment.
- **Low Carbon Flexibility Roadmap Targets:** Including how many GW of flexibility we are seeing in various NESO markets compared with what flexibility is on the system but currently unable to participate due to entry requirements and other barriers.
- **Code administration:** Ofgem should ensure clear routes to recourse for code parties, should NESO be made a Code Manager as part of the code reform process.
- **Clear timetables for delivery:** At present, NESO sets out projects for new services, but does not have a firm timetable for delivery until projects near the go-live phase. Industry investment and operational decisions hinge on clear timelines for product development/launch. The more transparency that can be provided, the better.