
Ofgem | Consultation on the enduring regulatory framework for NESO

8 JULY 2025

Context

ADE: Demand welcomes the opportunity to respond to Ofgem's consultation on the enduring regulatory framework for NESO.

Our vision, and what ADE: Demand exists to make happen, is no less than a complete re-imagining of the role of demand in our energy system so that:

1. Demand is given equal consideration to generation.
2. Every household, commercial business and industrial site has a commercially viable path to decarbonisation.
3. It is recognised that energy users and their assets have a day job – they shouldn't have to work around the energy system, the energy system should work around them.
4. Millions of users with automated energy provision can play a major part in keeping the lights on.

ADE: Demand Response

Introduction

As per our report, [Demanding More: How the National Energy System Operator Can Empower Energy Demand](#), becoming a public body mandates heightened public scrutiny and accountability, especially when consumers are being excluded from the markets they pay to fund. Our recommendations in that report have been included as an appendix, all of which we stand by as necessary for inclusion within the enduring governance framework. While we support many of the proposals for enduring governance in Ofgem's consultation, we consider there is a need to go further in light of the immense power NESO now holds within the energy system.

Even reflecting on how public discourse has changed in the ten months since its launch, no longer do we speak of 'DESNZ and Ofgem', we speak of 'DESNZ, Ofgem, and NESO' as some kind of all-powerful triumvirate overseeing the future of UK energy. With this in mind, it is incumbent upon Ofgem as its regulator to establish robust and modern mechanisms for keeping the public and industry stakeholders alike abreast of NESO's performance. Furthermore, accountability mechanisms that actually drive better performance is more important than ever, given profit and loss incentives are no longer a driver.

We look forward to working with Ofgem to devise these governance mechanisms to ensure that NESO becomes a critical enabler for a fair, green, secure future energy system.

Performance incentives

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

Our support for the BP3 approach was contingent upon it being an interim measure. While the evaluative approach is preferable to an over-focus on very specific actions, a middle ground must be sought. At present, the BP3 Performance Objectives are very broad and difficult to deduce measurable

outputs from the objectives. Furthermore, since there is an increased focus on senior staff remuneration as a regulatory lever, Ofgem must ensure that NESO assigns named individuals to be responsible and accountable for the performance objectives.

Business Plan and plan assessment

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)?

ADE: Demand supports the proposed extensive stakeholder engagement that will guide the development of the Business Plan. However, this should be a formal requirement. The proposed early engagement of the Independent Challenge Panel (ICP), electricity and gas industry parties, the Authority, consumer representatives and academics, and other interested parties, will provide sufficient opportunity to find gaps or issues. The proposed engagement with Ofgem is a good first step, particularly the outlined areas where NESO should be seeking Ofgem feedback.

The proposed timeline for determination and publication allows for ample opportunity to revise or review the Business Plan, therefore not locking it in too prescriptively. We are supportive of the proposed content structure of the Business Plan, where Performance Objectives (PO), as the major outcomes NESO intends to achieve, are supported by Success Measures, or KPI's to explain how the PO will be achieved, and these are all underpinned by Major Deliverables, as specific, measurable and timebound outputs required to achieving the PO's. We would ask that Ofgem either provide examples of what is expected from NESO, or include additional detail on the three elements of the work priorities, to ensure this is as clear as possible for stakeholders.

In Ofgem's effort to make the development of the Strategic Aims (SA) feel less prescriptive and absolute their proposed process is too light touch in comparison to the intended role of the SAs. Ofgem should consider how to provide more structure to this process to ensure the SAs are big enough to meet the medium- to long-term needs of NESO but also to make it more replicable for future iterations. Ofgem should be more involved in the development of the SA's, as a guide not a creator, to establish a high-quality baseline for NESO.

ADE: Demand notes that the division of roles between Ofgem and NESO have not been as clearly defined as required during this process. The guidance document sets out NESO's role as one with a lot of autonomy but with limited guidance. We believe that for the first iteration of this process, where NESO is operating in its new form, Ofgem should be providing a more hands on approach for consistency and assurance.

Cost regulation

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

Overall, we are supportive of the pass-through mechanism as the most appropriate option for a non-profit public body. However, in past business plans Ofgem have consistently raised concerns over NESO's proposals on value for money and the level of transparency of NESO's planned spending. There must be stronger guidance for NESO on demonstrating value for money and promoting transparency in their business plans, including regarding necessary staffing, salary banding, and the use of external consultants with no fixed end-date for reviews.

Stakeholder mechanisms

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

We support the establishment of the ICP and its evolution from the current performance panel. However, administration of the ICP, publication of reports, and selection of members should absolutely not be undertaken by NESO and should instead remain within the remit of Ofgem to avoid the serious risk of conflicts of interest.

We also support the ICP taking on a more strategic role with regard to business planning. One issue to date with the current performance panel is that the metrics upon which ESO was being judged may not have been considered the right metrics to begin with by panel members and therefore it is difficult to effectively evaluate performance. Therefore, having the ICP advise on business planning will allow early oversight of strategic direction and thus enhance assessment down the line.

It is important that the ICP is representative of NESO stakeholders and includes those who have a working level relationship with NESO, not just members who are only exposed to senior management and executives. Continued representation from trade bodies such as ADE: Demand is also imperative.

As discussed elsewhere, Ofgem should modernise its approach to regulatory reporting/publications. Outputs from the panel should be made public in an accessible and easy to digest format, including accompanying press releases, social media posts and high-level summaries. The public nature of NESO demands greater public accountability and it is primarily Ofgem's duty to broadcast how that accountability is being delivered.

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

Overall, we agree with Ofgem's proposals but believe they must go far further to reflect the unique nature of NESO as an entity.

We strongly consider that the introduction of quarterly town hall style events with executive representation from both Ofgem and NESO CEOs to report on progress against Strategic Objectives is imperative to build public trust in this organisation. As a critical sector underpinning the daily functioning of GB, we must seriously question why the regulator and system operator may be reticent to appear on a publicly streamed and accessible event to take responsibility and accountability for their work.

Transparency, accountability, and uneven access to senior leadership have been constant criticisms even before NESO was a public body and simply continuing a 'behind closed doors' or 'buried in regulatory reports' approach to stakeholder feedback is no longer tenable. We appreciate that such events would need to be designed carefully in order to maximise their utility for all and as always, ADE: Demand is happy to support Ofgem in such an effort.

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

As above.

We also believe that Ofgem needs to modernise the way it broadcasts the results of regulatory oversight.

Licence obligations and enforcement

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

See Appendix 1.

Senior staff incentives

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

Yes we agree with the proposal but believe a clearer enforcement process needs to be enumerated. Across all the proposals in the consultation, there is some opacity as to how accountability will actually arise in practice, as opposed to in theory. As per our answer to question 1, senior staff should be named as the lead party for strategic objectives.

Regulatory finance

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

Yes, we agree with the overall approach.

Innovation

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

Yes, we agree with the overall approach.

FOR MORE INFORMATION, PLEASE CONTACT:

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Appendix 1 - Recommendations from [Demanding More](#) Report

5 How do we move forward?

“Explaining shortfalls, embracing challenges, and executing change is imperative for our system operator to reach Clean Power by 2030.”

On behalf of Empowering Energy Demand, the ADE and its members are ready to collaborate with Parliament, Government, Ofgem, and NESO to move expeditiously towards a future where UK homes, businesses, and industry are rewarded for the critical support they can provide the energy system.

From the foregoing, we recommend the following:

Responsible Party	Recommendation
PARLIAMENT	An inquiry into the priorities and needs of the NESO transition is launched by the Parliamentary Select Committee for Energy Security and Net Zero.
GOVERNMENT	<p>When formally designating NESO, Government makes explicit the areas in need of urgent change in order to reach Clean Power by 2030</p> <p>The Strategy and Policy Statement is amended to:</p> <ul style="list-style-type: none"> • Recognise the significant cultural reformation needed within NESO for it to be an asset in reaching Clean Power by 2030; • Emphasise that given its unique position in the energy system, NESO carries a strong burden of proof for its decisions; • Highlight the priority role that demand side participation must play in system transformation and NESO's role in promoting it; and • Clarify the role that NESO advice will play in Government decision-making.
OFGEM	<p>Multiple amendments are made to the ESO licence to reflect the additionality it is supposed to provide to the legislation and the clearer expectations that are needed when reputational incentives are the core regulatory lever:</p> <ul style="list-style-type: none"> • Burden of proof: <ul style="list-style-type: none"> ◦ Set out that decisions that appear discriminatory are presumptively invalid. Therefore, NESO has a burden of proof to rebut this presumption, rather than requiring stakeholders to prove why decisions are wrong.

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- Set out that decisions that appear discriminatory are presumptively invalid. Therefore, NESO has a burden of proof to rebut this presumption, rather than requiring stakeholders to prove why decisions are wrong.
- To do so, it would be standard practice for NESO to demonstrate proportionality testing, to prove:
 - There is a legitimate purpose underpinning the measure;
 - The measure would achieve that legitimate purpose; and
 - The measure is reasonable and necessary to achieve the purpose; there is no less onerous or restrictive way to go about achieving the purpose.
- Basic principles of necessity and reasonableness would be set out in advance in the Regulatory Instructions and Guidance (RIGs) where it is made clear that control room incapacilities, as opposed to system or energy needs, are not a justifiable reason for discriminatory treatment of assets in the design, procurement or decision-making on balancing services.
- Ethical Walls:
 - Since NESO represents a significant consolidation of power within one organisation, the licences must make provision for the separation of powers within NESO.
 - Licences clarify that where a team within NESO is directly benefitting from a function eg market design/strategic planning/providing advice, that team is not designing that function.
 - Building Ethical Walls between teams within NESO that may incur actual or perceived conflicts of interest with one another is imperative to establish public trust within an organisation that so clearly could fall into mission creep.
- Under Condition C9 - 'Procurement and use of Balancing Services':
 - Add 'Design' of balancing services rather than just 'Procurement and use'.
 - Explicitly prohibit any design, procurement, or use of balancing services that disproportionately discriminates against certain technology types based on technical differences such as volume or being a single or aggregated portfolio. This should ensure that lack of familiarity or trust in certain technology types does not impact design, procurement, or use within markets.
- Public forums:
 - While ESO have made efforts of varying success to increase transparency, Ofgem has an obvious role to play in connecting transparency to accountability.
 - The status quo - bilateral meetings and ad hoc workshops where both ESO and Ofgem are present - is no longer sufficient given the scale of the challenge to reach Clean Power by 2030.

OFGEM

- Therefore, licences should mandate that on a quarterly basis Ofgem runs public forums where senior Ofgem and NESO officials present on public concerns and the work being undertaken to address them including proportionality analysis (above), with the chance for questions and answers.

NESO

NESO embraces and supports the above recommendations, including publicly acknowledging the need for massive cultural transformation and the concrete steps being taken to implement it.

The Power Responsive programme is reformed to:

- Have a stronger organisational mandate (including a name change) whereby recommendations are considered presumptively valid and to be employed expeditiously, not subject to the purview of control room;
- Create more direct links to licence obligations, such as those considered above, thereby ensuring equal incentives and weight to their work;
- Incorporate within its remit reform of all NESO balancing markets in coordination with the Market Facilitator;
- Establish Councils similar to the Markets Advisory Council (MAC) whereby Power Responsive and other Senior NESO representatives meet with different types of energy users to better understand their needs and capabilities. Initially, such groups could represent:
 - Industrial energy users with high/variable load factors;
 - Commercial energy users with high persistent load factors;
 - Domestic energy user representatives with high variable aggregated load factors; and
 - Dedicated flexibility providers who already have strong representation within the Power Responsive Steering Group and may have crossover with any of the above groups.
- Ensure the programme is adequately resourced to fulfil the above.

Regional Energy Strategic Planners (RESPs) are established so that:

- Energy demand utilisation is at the heart of their remit and outlook.
- Industrial decarbonisation through a variety of pathways is well-understood and modelled.
- Heat network zoning and other large heat infrastructure projects are properly reflected within plans, including the flexibility they can provide.

Whole-system modelling ensures that energy demand is better represented in FES, including as the presumptive flexibility solution before first-of-a-kind technologies such as hydrogen.