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Dear David

Consultation on the enduring regulatory framework for NESO

On behalf of the SSE Group¹, I welcome the opportunity to respond to Ofgem's consultation on the proposed enduring regulatory framework for the National Energy System Operator (NESO).

We welcomed the establishment of NESO as a new, independent system operator and planner at the heart of the energy system and look forward to continuing working closely with both NESO and Ofgem to contribute towards meeting critical clean power and net zero targets and delivering a successful energy transition.

We support the development of an effective regulatory framework for NESO, as this will enable the successful delivery of its key strategic aims and objectives; therefore, we welcome Ofgem's consultation on its draft proposals for the enduring framework.

However, to ensure that this framework is effective in incentivising good performance and holding NESO to account, we recommend that Ofgem considers the feedback included in our response, particularly in relation to **stakeholder engagement** and **transparency** (see section 'Stakeholder mechanisms').

In the rest of this letter, we provide a summary of our feedback in relation to each of the areas covered in Ofgem's consultation. Detailed responses to each consultation question are provided in the Appendix.

¹The SSE Group is a FTSE-100 company headquartered in Perth, Scotland, with interests across the UK, Ireland, Continental Europe, Asia-Pacific, and North America. We are one of the largest electricity network companies in the UK and a leading generator of renewable electricity. We develop, build, own, and operate the low carbon infrastructure that is essential for the energy transition. This includes electricity transmission and distribution networks; offshore and onshore wind; conventional hydro and pumped storage; solar and batteries; flexible thermal generation (including hydrogen and carbon capture and storage solutions). We also provide energy products and services to business customers.

Performance incentives

We broadly agree with Ofgem's proposal to continue with a performance assessment approach that is more outcome-based than in the past – although we disagree with the proposed move to 'primarily' outcome-based obligations (see section 'Licence obligations and enforcement'). We will monitor closely the effectiveness of this approach in BP3 to ensure it does not result in a reduced scrutiny of NESO's performance or a move to lighter-touch regulation.

Where appropriate, Ofgem should retain sufficiently prescriptive and granular targets to ensure that NESO can be held accountable for the delivery of measurable outputs (e.g. the timeliness of connection offers or the timelines for publishing specific strategic planning deliverables).

Business plan and assessment

We agree with Ofgem's proposal to adopt 2-year business planning cycles, striking the right balance between proportionality and flexibility. Ofgem should ensure that NESO engages extensively with stakeholders throughout the development of its business plan.

We agree that NESO should publish a new set of Strategic Aims ahead of April 2026; however, we suggest that the minimum frequency for updating these afterwards should be less than the proposed six year, for example every four years (i.e. every two business planning cycles instead of every three).

Cost regulation

We have considered carefully the relative advantages and disadvantages of the different funding models proposed by Ofgem and, on balance, concluded that a move to an ex-ante budget (Option 3) would be preferable to retaining the existing pass-through model (Option 1).

Setting an ex-ante allowance would provide increased upfront certainty by sharpening NESO's focus on producing more accurate cost estimates at an appropriately granular level of detail (including sensitivities and contingencies) and allow Ofgem (and stakeholders) to assess and, where needed, challenge these estimates before costs are actually incurred.

Stakeholder mechanisms

We agree with Ofgem's proposal to establish a new Independent Challenge Panel. However, **we strongly disagree with the proposal that NESO would administer this panel**, as this would be in direct contradiction with its intended independent nature and expose NESO to significant conflicts of interests. This panel should be administered directly by Ofgem (or, alternatively, by another independent third party selected by Ofgem for this purpose).

We disagree with Ofgem's proposal to replace the existing time-limited call for evidence with an ongoing one that allows stakeholders to submit feedback at any time. The existing approach provides certainty and allows stakeholders to take stock of NESO's overall performance during the

year and submit balanced and comprehensive feedback. More targeted or urgent concerns in relation to NESO's performance can continue to be raised through other channels.

Ofgem should strengthen relevant obligations in NESO's licences (e.g. condition C1) and regulatory framework to ensure **alignment with the recommendations of the Energy Data Taskforce**. Specifically, Ofgem should require compliance with the '**Presumed Open**' principle by setting a default expectation that all data should be published and placing on NESO the onus to justify any decision not to publish certain data.

Finally, NESO's powers to request information from other licence holders should be streamlined into a coherent, robust, and practical centrally managed process supported by clear guidance and including an independent mechanism for resolving disputes.

Licence obligations and enforcement

As presented, we disagree with Ofgem's proposed shift towards 'primarily' outcomes-based obligations. Ofgem should continue to adopt a 'twin-track' approach that balances the use of prescriptive obligations (e.g. on the timeliness of connection offers or the timing for publishing specific strategic planning deliverables) and outcome-based obligations (e.g. in relation to stakeholder engagement).

We are also concerned about Ofgem's suggested role for enforcement in driving NESO's compliance. Enforcement actions should be seen as a backstop and a last resort, and Ofgem should ensure that appropriate regulatory mechanisms are in place to minimise recourse to such actions.

Senior staff incentives

We agree with Ofgem's proposal to require NESO to introduce a formal link between its performance and the remuneration of its senior staff. Of the three options proposed in the consultation, we agree with Ofgem's proposal (Option 2) to replace the existing requirement for a pre-approved remuneration policy with a new principle-based requirement in NESO's licence, which would outline the need for NESO to explain its decision making in a clear and transparent way. This option would place firmly on NESO the onus to explain its senior staff remuneration decisions to stakeholders and the broader public.

Regulatory finance and innovation

We agree with Ofgem's proposal to retain a minimal enduring role in the regulation of NESO's finances, reflecting NESO's move from private to public ownership and to a not-for-profit regulatory model, and the fact that government is now responsible for overseeing this area.

We also agree with Ofgem's proposal (Option 1) for NESO to continue having access to distinct innovation funding through the same funding mechanisms already available for network companies, i.e. the Network Innovation Allowance (NIA) and Strategic Innovation Fund (SIF).

We look forward to continuing engaging with Ofgem to support the successful development and implementation of an effective regulatory framework for NESO.

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

Yours sincerely,

Martin Namor
Senior Regulation Manager

Appendix – Detailed answers to consultation questions

Performance incentives

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

In principle, we broadly agree with Ofgem's proposal to continue with the more evaluative, outcome-based performance assessment approach introduced for the third business plan period (BP3) of RII0-2, provided this does not result in a reduced scrutiny of NESO's performance or, more in general, a move to lighter-touch regulation.

It would be premature to change this approach substantially before Ofgem and stakeholders have had the opportunity to test it during BP3. However, Ofgem should monitor closely the effectiveness of the current approach between now and the end of BP3, including by considering carefully stakeholder feedback, and retain flexibility throughout the process of developing the enduring regulatory framework to ensure that any lessons learnt during BP3 can be reflected in the new framework.

Whilst we are broadly supportive of the move towards a more outcome-based approach, it is important that, where appropriate, Ofgem retains sufficiently prescriptive and granular targets to ensure that NESO can be held accountable for its performance in areas where it is required (under its licence obligations) to deliver more measurable outputs (for example, the timeliness of connection offers or the timelines for publishing specific strategic planning deliverables).

Compared to BP3, in the enduring regulatory framework, Ofgem should consider setting more (and more specific) KPIs for each Performance Objectives to enhance transparency and support its assessment of NESO's performance. Ofgem should also consider how NESO's performance could be benchmarked against the performance of suitable comparators.

To support the implementation of an effective regulatory framework and performance assessment, Ofgem should ensure that, before the start of each regulatory control period, it sets clear ex-ante targets that can act as a benchmark against which to carry out robust ex-post evaluations of NESO's performance. These evaluations should be undertaken with a constructive mindset to ensure that any lessons learnt can be used both by NESO to improve its performance and by Ofgem to inform improvements to the regulatory framework going forward.

Finally, as part of its performance assessment, Ofgem should pay close attention to the extent and quality of NESO's overall stakeholder engagement efforts, rather than just considering this as an aside when assessing NESO's performance in relation to specific areas of work. To facilitate this assessment, Ofgem could request NESO to develop a dedicated Performance Objective focusing

specifically on stakeholder engagement and then assess NESO's performance against the Success Measures attached to this Performance Objective.

Business Plan and 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)?

We agree with Ofgem's proposal to adopt 2-year business planning cycles in the enduring regulatory regime (in line with RIIO-2's BP1 and BP2) rather than moving on an enduring basis to 1-year cycles (in line with BP3), as had initially been considered. In our view, a 2-year cycle would strike the right balance between proportionality and flexibility: it would avoid placing an excessive burden on NESO, Ofgem, and industry stakeholders providing feedback, whilst remaining sufficiently dynamic to adapt to an evolving energy landscape.

Throughout the development of its business plan, NESO should engage extensively with stakeholders. To facilitate this, Ofgem should introduce a formal obligation for NESO to consult publicly on its draft business plan; and for the timing and length of its consultation window to be set in a way that offers stakeholder a genuine opportunity to review NESO's proposals in detail and provide fully informed feedback.

For example, the consultation window for NESO's draft BP3 business plan was open for less than six full weeks (2 December to 10 January), including a period between late December and early January when most organisations are generally understaffed due to annual leave. We understand that a quick turnaround was required for BP3, as this involved a 1-year planning cycle; however, going forward, NESO should be formally required to allow stakeholders more time to respond to its draft business plan consultation.

We agree with Ofgem's proposal to require NESO to publish a new set of Strategic Aims ahead of the start of the next business plan cycle (April 2026); however, after that, we suggest that the minimum frequency for updating Strategic Aims should be less than the proposed six year, for example every four years (i.e. every two business plan cycles instead of every three).

Similarly to the business plan, there should be a formal requirement for NESO to consult on its proposed Strategic Aims to allow stakeholders to contribute towards shaping these in a way that reflects the industry's biggest priorities. And, when developing Strategic Aims, NESO should adopt a holistic (rather than siloed) approach, aimed at achieving 'best value' on a whole-system basis. Otherwise, there is a risk that NESO could be assessed as having performed well towards achieving individual Strategic Aims (i.e. within each silo) without delivering good overall outcomes for the whole energy system.

Cost regulation

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

We have considered carefully the relative advantages and disadvantages of the different funding models proposed by Ofgem and, on balance, concluded that a move to an ex-ante budget set by Ofgem (Option 3) would be preferable to retaining the existing pass-through model (Option 1).

Of the three options proposed, we do not consider Option 2 a feasible alternative as, in Ofgem's own words, this would result in a 'materially reduced' cost scrutiny and rely more heavily on an incentives toolkit that has already been weakened by the removal of organisation-level financial incentives and increased reliance on reputational incentives that, in our view, are unlikely to be as effective. External government reviews by the National Audit Office or Public Accounts Committee should be seen as a backstop and a last resort to address serious issues that should never materialise. Therefore, we suggest that Ofgem removes Option 2 from consideration.

On balance, between Option 1 (existing pass-through model with Ofgem's ongoing cost assessment) and Option 3 (ex-ante budget set by Ofgem), our preference lies with latter. Setting an ex-ante allowance would provide increased upfront certainty by sharpening NESO's focus on producing accurate cost estimates at an appropriately granular level of detail (including sensitivities and contingencies) and allow Ofgem (and stakeholders) to assess and, where required, challenge these estimates before costs are actually incurred, a stage at which challenging inefficiencies would be more effective.

As suggested in the consultation, adopting an ex-ante budget would reduce the burden of within-period scrutiny for Ofgem but still allow for any required within-period adjustments to be made, provided NESO justifies the need for any additional spending, which seems a reasonable expectation. Moreover, as acknowledged by Ofgem, this funding model would bring NESO in line with other public organisations.

Stakeholder mechanisms

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

We agree with Ofgem's proposal to establish a new Independent Challenge Panel (ICP), which would effectively consolidate the two existing bodies currently overseeing NESO's business plan development and performance (the Ofgem-administered NESO Performance Panel and the NESO-administered Independent Stakeholder Group), provided the new panel maintains an adequate focus on both aspects of its remit, i.e. scrutinising both the development of NESO's strategic, forward-looking objectives and its performance towards achieving those objectives.

However, **we strongly disagree with Ofgem's proposal that NESO would administer the ICP;** and the proposed requirement for NESO to follow a set of principles and parameters set upfront by

Ofgem would fall short of mitigating our concerns. Allowing NESO to administer its own stakeholder challenge panel would be in direct contradiction with the intended independent nature of this panel and expose NESO to significant conflicts of interests or, as a minimum, the perception of potential conflicts. If Ofgem decided to proceed with this proposal, the ICP would be perceived as independent in name only and likely fail to gain stakeholder trust in its ability to hold NESO to account and assess its performance in an objective and balanced manner.

For example, we would consider it inappropriate for NESO to be able to select the Chair and members of the ICP; decide how often the ICP should meet; or decide what reports on NESO's performance it should publish, and how often (even if it did so within a set of high-level principles and minimum requirements set upfront by Ofgem).

We strongly recommend that Ofgem reconsiders this proposal: **the ICP should be administered directly by Ofgem** (or, as an alternative, by another genuinely independent third party selected by Ofgem for this purpose). And Ofgem should ensure that the panel has full access to the data, analysis, and modelling underpinning NESO's proposals and decisions, and full visibility of the processes through which NESO has formulated those proposals and decisions.

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

We agree with Ofgem's proposals to require NESO to continue conducting regular Stakeholder Satisfaction Surveys every six months and to use the proposed new Independent Challenge Panel (ICP) to discuss stakeholder feedback and survey results. However, for this approach to be effective and result in an objective and balanced assessment of NESO's performance, it is crucial that the ICP is administered by Ofgem (or an alternative independent third-party) rather than by NESO itself (as explained in response to Question 4).

We disagree with Ofgem's proposal to replace the existing time-limited call for evidence with an ongoing call for evidence allowing stakeholders to submit feedback directly to Ofgem at any time throughout the year. The existing approach provides clarity to stakeholders on when they can submit their feedback and when (and how) Ofgem will consider this feedback as part of its assessment of NESO's performance.

The existing approach allows stakeholders to take stock of NESO's overall performance during the year and submit a balanced and comprehensive feedback for Ofgem to consider as part of its own assessment. And where specific or urgent concerns in relation to NESO's performance arise throughout the year, there are other avenues for these to be raised with Ofgem without waiting for a formal call for evidence.

We are concerned that the proposed ongoing call for evidence might result in a constant stream of feedback which is skewed towards the negative aspects of NESO's performance (because it is

more likely that stakeholders will take the time to formalise their feedback to bring attention to a problem than to praise good performance). More broadly, we are concerned that this less structured way of gathering feedback might impact Ofgem's ability to distil a comprehensive and balanced assessment. Finally, we have concerns in relation to the burden that being open for feedback on an ongoing basis might place on Ofgem's resources.

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

Ofgem should strengthen licence condition C1 and any other relevant obligations in NESO's licences and regulatory framework to ensure **alignment with the recommendations of the Energy Data Taskforce (EDT)**², particularly in relation to the **'Presumed Open' principle** (Recommendation 2).

The EDT recommended that *"Government and Ofgem should direct the sector to adopt the principle that Energy System Data should be Presumed Open, using their range of existing legislative and regulatory measures as appropriate, supported by requirements that data is Discoverable, Searchable, Understandable, with common Structures, Interfaces and Standards, and is Secure and Resilient"*.

The EDT noted that *"Presumed Open reverses the current default for data accessibility from closed to open. This principle recognises that Energy System Data needs to be managed and that totally open is not always appropriate; however, this principle places the onus on data owners to 'start from open' justifying why any restrictions might be required"*.

In line with the EDT's recommendations, Ofgem should require NESO to comply fully with the 'Presumed Open' principle and set an expectation for all data to be published, placing on NESO the onus to justify any decision not to publish certain data. As noted by the EDT, this would reverse a default approach where NESO generally tends not to publish certain data, placing the onus on stakeholders to make the case as to why this data should be published.

Another area for improvement relates to NESO's powers to request information from other licence holders. These powers should be streamlined into a coherent, robust, and practical centrally managed process, supported by clear guidance setting out expectations for all parties and including an independent mechanism for resolving disputes.

The current fragmented approach risks creating inconsistent processes and increasing regulatory and commercial uncertainty for all stakeholders. For instance, beyond NESO's general authority to request information, Transmission Owners (TOs) are subject to multiple licence obligations across various NESO-led activities, with more expected going forward. These include obligations relating

² [Energy Data Taskforce | A Modern Digitalised Energy System](#)

to early competition, the Connections Network Design Methodology, and the Centralised Strategic Network Plan. These obligations, and the corresponding reciprocal duties, should be rationalised to ensure consistency and reduce complexity.

Licence obligations and enforcement

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

As presented, we disagree with Ofgem's proposed shift towards 'primarily' outcomes-based obligations, although the level of detail provided in the consultation is insufficient to assess the potential extent and implications of this shift. For example, Ofgem proposes "focusing the use of regulatory approvals and prescriptive obligations to situations where these are clearly necessary or beneficial" but does not explain or provide examples as to what these situations may be.

In general, we suggest that Ofgem should continue to adopt a 'twin-track' approach that balances the use of prescriptive obligations (for example, on the timeliness of connection offers or the timing for publishing specific strategic planning deliverables) and outcome-based obligations (for example, in relation to stakeholder engagement).

More specifically, prescriptive licence conditions must be used where other licence holders have reciprocal obligations; for example, the obligation for TOs to comply with the Connections Network Design Methodology. This reciprocity is critical to ensuring clarity of roles and responsibilities, especially as many of the processes underpinning these obligations are yet to be embedded and will take time to settle in.

We are also concerned about the suggestion that Ofgem "expect to mainly drive NESO's compliance with its licence by maintaining public enforcement investigations, ensuring appropriate links between enforcements actions and senior staff remuneration, and having clear backstop consequences for senior staff".

Enforcement actions should be seen as a backstop and absolute last resort, rather than a primary driver of NESO's compliance, and Ofgem should ensure appropriate regulatory mechanisms are in place to minimise its recourse to enforcements actions.

Senior staff incentives

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

We agree with Ofgem's proposal to require NESO to introduce a formal link between its performance (as assessed by Ofgem based on stakeholder feedback) and the remuneration of its senior staff. With NESO's move from private to public ownership and to a not-for-profit model, and

the resulting removal of organisation-level financial incentives, financial incentives for individual staff are likely to be the most effective way to incentivise good performance (as, in our view, reputational incentives are unlikely to be as effective as financial incentives).

To ensure this is the case, Ofgem should also require NESO to outline in a transparent way the responsibilities of individual senior staff in relation to the specific Performance Objectives against which Ofgem will assess NESO's performance.

Of the three options proposed by Ofgem to link senior staff remuneration to performance, we agree with Ofgem's proposal (under Option 2) to replace the existing requirement for a remuneration policy approved by Ofgem with a new principle-based requirements in NESO's licence, outlining the need for NESO to explain its decision making in a clear and transparent way. This option would place firmly on NESO the onus to explain senior staff remuneration decisions to stakeholders and the broader public.

Both Option 1 (retaining an Ofgem-approved remuneration policy) and Option 3 (introducing licence requirements setting a specific methodology linking remuneration to performance) would be substantially more prescriptive and potentially allow NESO to deflect scrutiny of its senior staff remuneration decisions towards Ofgem.

Regulatory finance

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

We agree with Ofgem's proposal to retain a minimal enduring role in the regulation of NESO's finances, reflecting NESO's move from private to public ownership and to a not-for-profit regulatory model. With government now responsible for overseeing this area, we see no reason for Ofgem to continue undertaking detailed financial audits, approving NESO's revenue calculations, or including NESO within its Annual Iteration Process (AIP).

Innovation

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

We agree with Ofgem's proposal (Option 1) for NESO to continue having access to distinct innovation funding through the same funding mechanisms already available for network companies:

- Network Innovation Allowance (NIA).
- Strategic Innovation Fund (SIF).

We see no reason for introducing new, bespoke funding mechanisms that would apply exclusively to NESO (Option 2); nor we consider a pass-through model appropriate for funding innovation (Option 3).

More in general, as explained in response to Question 3 on Ofgem's overall approach to cost regulation and reporting, we suggest that Ofgem should consider a broader shift from a pass-through model to an ex-ante budget for the entirety of NESO's internal costs.