

Decision

Decision on the ASTI ODI Penalty Exemption Period request for Eastern Green Link 1 – EGL1

Publication date:	13/11/2025
-------------------	------------

Contact:	Harry Cain
----------	------------

Team:	Major Projects
-------	----------------

Email:	RIIOElectricitytransmission@ofgem.gov.uk
--------	--

This document sets out our decision to award an ASTI ODI Penalty Exemption Period of 57 days for the project Eastern Green Link 1 “EGL1”. EGL1 is a new major electricity transmission project being delivered through our Accelerated Strategic Transmission Investments (ASTI) framework and is therefore subject to a reward/penalty mechanism that aims to incentivise accelerated delivery. This decision has considered all relevant feedback and evidence from the Transmission Owners (TOs) and other interested parties through our consultation period and has been made in line with the ASTI Guidance and Submissions Requirements Document and Special Condition 4.9 of the TO licences.

© Crown copyright 2025

The text of this document may be reproduced (excluding logos) under and in accordance with the terms of the [Open Government Licence](#).

Without prejudice to the generality of the terms of the Open Government Licence the material that is reproduced must be acknowledged as Crown copyright and the document title of this document must be specified in that acknowledgement.

Any enquiries related to the text of this publication should be sent to Ofgem at:

10 South Colonnade, Canary Wharf, London, E14 4PU.

This publication is available at www.ofgem.gov.uk. Any enquiries regarding the use and re-use of this information resource should be sent to: psi@nationalarchives.gsi.gov.uk

Contents

Decision on the ASTI ODI Penalty Exemption Period request for Eastern Green Link 1 – EGL1	1
Executive Summary	4
Introduction.....	6
Context and related publications	7
Our decision-making process	8
General feedback.....	8
2. Application for a Penalty Exemption Period and Ofgem’s consultation position.....	9
Summary of the JV’s PEP application	9
Summary of Ofgem’s consultation position	11
3. Summary of responses to our consultation.	14
4. Our decision	19
Appendix 1 – Relevant definitions and terminology	26
Licence and guidance definitions	26

Executive Summary

This document sets out our final decision on the application submitted by the joint venture (JV) of National Grid Electricity Transmission (NGET) and SP Transmission (SPT) for an Accelerated Strategic Transmission Investment (ASTI) Output Delivery Incentive (ODI) Penalty Exemption Period (PEP) for the Eastern Green Link 1 (EGL1) project. EGL1 is a major electricity transmission project being delivered through our ASTI framework, which incentivises timely delivery through financial rewards and penalties.

The JV applied for a 480-day PEP, citing a Delay Event caused by *unavailability of equipment or capacity globally in the supply chain*. The PEP application, if approved in full, would have exempted the JV from incurring late-delivery penalties on EGL1 for the first 480 days after the project's ASTI ODI Target Date. In our consultation on the ASTI PEP request published on 10 April 2025, we proposed rejecting the application in full, based on concerns that the delay was not outside the JV's reasonable control, was not caused by global supply chain constraints, and may have been the result of the JV's procurement strategy decisions and therefore could have been attributable to an error or failure on the part of the JV.

Following our consultation, which included responses from industry stakeholders, and a detailed response from NGET and SPT supported by independent reports, we have revised our position.

The additional evidence presented in response to the consultation demonstrated that:

- The procurement process was run appropriately and fairly and is not reasonably expected to have caused delay to the EGL1 project.
- The JV faced supply chain constraints that were global in nature and outside its reasonable control.
- EGL1 appears to have achieved the best delivery timeline among comparable global HVDC projects procured in the same period.

However, we remain concerned that a significant portion of the delay stems from previously observed market conditions that were already accounted for in our 2022 ASTI decision and therefore reflected in the EGL1 project's ASTI ODI Target Date. It also remains unclear to what extent the supplier's delayed offer was driven by those market conditions versus other considerations taken into account by the supplier. Furthermore, NGET and SPT did not provide a reasonably robust pre-event delivery expectation for this project. This made calculating the total length of the delay challenging. We have

Decision –Decision on the ASTI ODI Penalty Exemption Period request for Eastern Green Link 1 – EGL1

therefore decided to base the calculation of the PEP on the TOs’ forecasted penalty exposure period.

Given the uncertainties as to the extent of delay attributable to this Delay Event, we consider that it would not be appropriate to exempt the JV from penalties for the full period from 31 December 2028 (The ASTI ODI Target Date) to its updated estimated [Redacted] delivery date¹ after the occurrence of the Delay Event. Instead, we have decided to award a 57-day PEP, calculated as 50% of the JV’s forecasted penalty exposure. This reflects that we do not consider that the delay to EGL1 is solely the result of the qualifying Delay Event.

Our decision reflects a commitment to maintaining robust delivery incentives, while recognising the exceptional challenges faced by TOs in a constrained global supply chain environment.

[Redacted]

Introduction

Background

- 1.1 Eastern Green Link 1 (“EGL1”) is an electricity transmission project that will connect the Scottish and English transmission networks via a c.176km, 525 kilovolt (KV), 2 gigawatt (GW) High Voltage Direct Current (HVDC) marine cable, from East Lothian in Scotland to County Durham in England.
- 1.2 The Joint Venture (“JV”) of National Grid Electricity Transmission (NGET) and SP Transmission (SPT) is responsible for the delivery of the EGL1 project.
- 1.3 EGL1 received its full project funding allowance of approximately £2bn via a Project Assessment (PA) decision² through Ofgem’s Accelerated Strategic Transmission Investment (ASTI) framework³ in November 2024.
- 1.4 The ASTI framework was implemented by Ofgem in 2023 to enable accelerated delivery of strategically important electricity transmission projects to meet the previous government’s objective of connecting 50GW of offshore wind by 2030.
- 1.5 Projects in the ASTI framework are incentivised for delivery by their optimal delivery date⁴ through the use of the ASTI Output Delivery Incentive (ODI). The ODI incentivises early delivery via a daily financial reward or penalty for early or late delivery respectively. Rewards apply if a project is delivered earlier than its ASTI ODI Target Date (which is set 12 months later than the optimal delivery date on all ASTI projects), and an ASTI ODI penalty will apply for every day a project is delivered later than its ASTI ODI Target Date. The amount of daily reward or penalty reflects a proportion of the assumed consumer benefit or detriment incurred through late delivery in terms of network constraint costs. These costs were set in our ASTI decision, where further information about the methodology and application of the ODI mechanism can be found.
- 1.6 The ODI includes a mechanism for exempting the TOs from penalties under certain circumstances. An exemption through this mechanism is known as an ASTI ODI Penalty Exemption Period (PEP) and the TOs may apply for a PEP where a Delay Event has occurred.

Summary of consultation “minded to” position

² [Eastern Green Link 1 Project Assessment | Ofgem](#)

³ [Decision on accelerating onshore electricity transmission investment | Ofgem](#)

⁴ See Key Terminology annex in Appendix 1

- 1.7 We consulted on rejecting the PEP application because we considered that, based on the evidence provided by the JV in its application, it had not met the requirements for the approval of a Delay Event set out in the Electricity Transmission licence Special Conditions and the ASTI Guidance and Submission Requirements Document. We accepted that supply chain conditions were challenging, but our preliminary view was that we considered that the applicable supply chain constraints were:
- not “global” - there was not unavailability of equipment or capacity globally in the supply chain at the time of the EGL1 tender;
 - not “outside the TO’s reasonable control” as stakeholders were aware of supply chain constraints in 2022 and we believe the JV therefore had sufficient notice to take steps to mitigate these constraints and;
 - not the cause of the delay in this case, which instead may have been attributable to an “error or failure on the licensee’s part” as a result of its procurement strategy.
- 1.8 Further information on terminology, definitions and key dates can be found in Appendix 1.

Summary of our final position

- 1.9 Having considered the additional evidence submitted through the consultation process, we now conclude that the threshold for a Delay Event has been met and are awarding a 57-day Penalty Exemption Period (PEP). NGET and SPT provided further evidence demonstrating that the global supply chain was significantly constrained in 2023, and that EGL1 achieved the most favourable delivery timeline of any comparable project procured in the same year. We consider this to be strong evidence that the delay to the delivery of the EGL1 project was outside the JV’s reasonable control. We also reviewed additional material on the JV’s procurement process and now consider that it did not contribute to the delay and was not at fault.

Context and related publications

- 1.10 [Eastern Green Link 1 Delay Event | Ofgem](#)
- 1.11 [Eastern HVDC - Decision on the project’s Initial Needs Case and initial thinking on its suitability for competition | Ofgem](#)
- 1.12 [Eastern HVDC – Conditional Decision on the projects’ Final Needs Case | Ofgem](#)
- 1.13 [Eastern Green Link 1 Project Assessment | Ofgem](#)
-

Decision –Decision on the ASTI ODI Penalty Exemption Period request for Eastern Green Link 1 – EGL1

- 1.14 [Accelerated Strategic Transmission Investment Guidance And Submission Requirements Document](#)
- 1.15 [Decision on accelerating onshore electricity transmission investment](#)
- 1.16 [Decision to modify the special licence conditions in the electricity transmission licences: Accelerated Strategic Transmission Investment | Ofgem](#)

Our decision-making process

Date	Stage description
10/04/2025	Stage 1: Consultation open
23/05/2025	Stage 2: Consultation closed (awaiting decision), Deadline for responses
13/11/2025	Stage 3: Responses reviewed and published
13/11/2025	Stage 4: Consultation decision/policy statement

General feedback

We believe that consultation is at the heart of good policy development. We are keen to receive your comments about this report. We'd also like to get your answers to these questions:

1. Do you have any comments about the overall quality of this document?
2. Do you have any comments about its tone and content?
3. Was it easy to read and understand? Or could it have been better written?
4. Are its conclusions balanced?
5. Did it make reasoned recommendations?
6. Any further comments

Please send any general feedback comments to [\[stakeholders Ofgem email address\]](#).

2. Application for a Penalty Exemption Period and Ofgem’s consultation position

In this section we set out a high-level summary of the JV’s PEP application, and a summary of Ofgem’s key concerns with the application and minded-to position at the point of consultation.

Summary of the JV’s PEP application

- 2.1 The JV applied on 7 December 2023 for an ASTI ODI PEP of 480 days, stating it faced “unavailability of equipment and capacity globally in the supply chain”, which is one of the examples listed as a potential Delay Event in the ASTI Guidance. The 480-day period claimed for was calculated as the difference between the EISD and the updated post-Delay Event [Redacted] delivery date estimate. This would have exempted the JV from penalties associated with delay against its ASTI ODI Target Date of 31 December 2028 until 25 April 2030 and would have pushed back its licence obligation to deliver the project to 25 April 2031.
- 2.2 In its Delay Event submission, the JV argued that it had taken all reasonable steps to secure supply chain capacity, and that it could not reasonably control the global supply chain’s availability for converters, cables, and associated works, but had actively sought to mitigate risks.
- 2.3 As primary evidence for the Delay Event, the JV stated that no supplier participating in its tender process had offered delivery before the ASTI ODI Target Date. It noted that within the same procurement period, no comparable projects involving the same suppliers had secured delivery dates earlier than 31 December 2028. The JV supported this claim by presenting letters of withdrawal from suppliers that had initially engaged in the tender process, citing capacity limitations. It also highlighted that the pool of suppliers capable of meeting EGL1’s technical specifications was extremely limited.
- 2.4 Due to these supplier withdrawals, at the Best and Final Offer (BAFO) stage of the procurement process, the JV was left with only one bidder for cable provision and one for the converter station. The delivery date for the [Redacted] which was six months later than previously offered, was cited as the key factor in delaying the project’s [Redacted] estimate by [Redacted]. The JV claimed that this delay

resulted from challenging market conditions, and that the current offer represented the best achievable timeline under those circumstances. While acknowledging that the timing of its tender process and contract awards was within its control, the JV maintained that supplier delivery dates were not. It claimed to have awarded contracts faster than anticipated in both the Initial and Final Needs Cases, suggesting that the delay was not due to any fault on its part.

- 2.5 The JV emphasized that it had engaged the market as early as reasonably possible following informal confirmation from Ofgem in January 2022 that it would be the project's Delivery Body—a decision that took Ofgem 16 months from the Initial Needs Case submission in October 2020. It noted that both SPT and NGET had urged Ofgem to act with urgency during this period. The JV also argued that Ofgem's 2022 ASTI Decision, which added 12 months to the optimal delivery date to the ASTI ODI Target Date, did not reflect the specific market challenges faced by the EGL1 project, as these issues only emerged in 2023.
- 2.6 The JV provided evidence of supply chain restrictions from publicly available sources, as well as a commissioned and independent report on the supply chain by [Redacted]. These reports supported the claim that supply chain conditions for procuring electricity transmission projects were broadly constrained around 2022 and 2023, the broad period in which the JV procured EGL1. The reports did not identify a specific event occurring in the spring of 2023, nor conclude that the supply chain constrictions definitively led to the delay to EGL1.
- 2.7 The JV provided a list of other HVDC project that had been procured in the same period which showed that only two projects procured in 2023 achieved better expected completion dates than EGL1. It later explained that it did not consider these two projects to be comparable to EGL1 due to their distinct technological specifications. The JV's view was therefore that all *comparable* projects had been shown to be procured on a later timeline than EGL1.
- 2.8 Finally, the JV highlighted that EGL1 had already progressed under the Large Onshore Transmission Investments (LOTI)⁵ regime before transitioning to ASTI, meaning it had not fully benefited from ASTI's acceleration mechanisms. The original LOTI-based delivery plan had envisaged supplier engagement throughout 2022, with Invitation to Tender (ITT) launching in late 2022, and contracts

⁵ LOTI is an alternative funding route available through the RIIO price-control framework. [Large Onshore Transmission Investments \(LOTI\) Re-opener Guidance | Ofgem](#)

awarded by summer 2023 for delivery by the end of 2027. NGET also noted that it had used the same procurement approach for the EGL2 project and had successfully secured suitable supplier offers, which it believed demonstrated the effectiveness of its strategy.

Summary of Ofgem’s consultation position

2.9 Our consultation view was that based upon the information provided, we did not consider that the requirements set out in “Special Condition 4.9 Part B: Applications for modifications to Appendix 1” of the TOs’ licences and the ASTI Guidance and Submissions Requirements Document had been met.

2.10 The following subheadings are the three criteria that an event must be met in order for a Delay Event (as defined in the TO licences) to be established. Below each subheading is a summary of why we considered the criteria had not been met.

(a) causes, or is reasonably expected to cause, one or more ASTI projects to be delayed by at least 30 days

2.11 We did not consider the prevailing supply chain conditions to be the primary cause of the delay to the project. The evidence submitted by the JV indicated that the delay may have resulted from an error or failure in its approach to the market. We also did not consider the market pressures experienced in 2023 to be materially different from those already known and accounted for in Ofgem’s 2022 ASTI decision. It was not clear from the evidence provided to what extent the delay was caused by new market developments emerging in early 2023. Furthermore, we had concerns that a potential misunderstanding of consenting requirements by one of the JV’s suppliers may have contributed to the delay. While this may not have been directly attributable to the JV, we considered it plausible that the delay arose from this misunderstanding and a possible lack of oversight earlier in the procurement process.

(b) is outside the licensee’s reasonable control;

2.12 Our view was that mitigation of the Delay Event was, to a significant extent, within the JV’s control. We considered that the JV could have more proactively adapted its procurement strategy in response to evolving market conditions. The supply chain challenges encountered in 2023 do not appear materially different from those already recognised by both the JV and Ofgem in 2022 and could reasonably have been anticipated and factored into the JV’s market engagement approach.

2.13 We also noted that the Project Assessment process for EGL1 had introduced additional cost protections not available under LOTI to support accelerated delivery.

(c) is not attributable to any error or failure on the licensee's part.

2.14 Our view was that evidence presented by the JV suggested that its approach to market may have impacted the offers received from suppliers, and therefore the above criteria had not been satisfied. This view was supported by correspondence between the JV and two of its suppliers who expressed a lack of support for the technology choice required by the tender, and the other having a strong preference for an alternative lotting strategy.

Did the JV demonstrate that the delay was due to “*unavailability of equipment or capacity globally in supply chain*” as per the ASTI guidance?

2.15 Our consideration was that the JV had not sufficiently demonstrated that the event qualified as “*unavailability of equipment or capacity globally in supply chain*” on three grounds, i) that the JV had not provided evidence of a global outlook for delivery of comparable projects, as the evidence submitted was limited to a European and US outlook, ii) that the JV’s own evidence provided pointed to two comparable projects procured in the same year that achieved better estimated delivery dates, and iii) that we had not seen evidence to persuade us that the supply chain issues were of a different order to those already factored into the 2022 ASTI decision, and that these conditions could not have been anticipated and mitigated for by the JV.

Calculating the number of days for the PEP application

2.16 Notwithstanding the fact that we did not consider that the Delay Event criteria had been satisfied, we also considered the way in which the JV calculated its 480-day PEP application to be incorrect, due to a misinterpretation of the ASTI Guidance. We stated that the purpose of the Delay Event mechanism is to exempt TOs from penalty exposure equal to the actual or expected effect that a qualifying event has on project timelines. We asserted that to calculate the impact of a potential Delay Event on timelines we would use the latest delivery timeline assumptions from before and after the event and calculate the difference. We considered that using expected delivery dates before and after the event calculated on an equivalent basis (e.g. both at a P50 confidence level) was the most appropriate method to give a fair estimation of the delay and is in line with the ASTI guidance.

- 2.17 TOs are expected to provide expected delivery dates according to most recent project delivery plans as part of their PEP applications, as well as supporting evidence to enable us to assess the reasonableness of the TO's expected delivery dates both before and after the event⁶.
- 2.18 The JV's 480-day calculation used the project's original EISD as the starting point for the calculation (a date which the TOs had previously told us was unachievable). In the absence of a pre-event delivery estimate provided as part of the application, we showed that by using the most recent delivery assumption (provided by NGET in December 2022, not as part of this PEP application) the maximum PEP that could be applied for (notwithstanding inaccuracies and issues with the December 2022 delivery assumption) should be 206 days.

⁶ [Accelerated Strategic Transmission Investment Guidance And Submission Requirements Document](#) Paragraph 5.18-5.19

3. Summary of responses to our consultation.

In this section we set out a high-level summary of how the TOs, transmission industry, and other stakeholders responded to our consultation.

Questions asked in consultation:

- Q1. Do you have any views, or additional information (including in support, or opposition) relating to the JV's EGL1 PEP application?
- Q2. Do you agree with our assessment of the EGL1 PEP application?
- Q3. Is there any additional evidence or information that should be considered in making our determination?
- Q4. Do you agree with our assessment of the JV's procurement process?

- 3.1 We received a total of 11 responses to our consultation, including from the three TOs, industry members such as transmission companies and electricity generators, and a member of the public. The two TOs (NGET and SPT) who form the JV responsible for delivery of the project EGL1 shared a joint response, however submitted this response separately on behalf of the separate licensees.
- 3.2 We received a mixture of support and opposition to our minded-to position to reject the PEP application in full. Several respondents did not share a view on whether or not the PEP application should be approved but raised additional information and considerations.

Responses from Industry

- 3.3 Nine of the 11 responses were from the electricity generation or transmission industry (not including the NGET and SPT's response, which is discussed later in this chapter). Of these nine, only four of the responses were marked as non-confidential. As such, we are sharing the views of all nine respondents, but maintaining the anonymity of the respondents that gave confidential responses.
- 3.4 Four respondents agreed that the market for HVDC components was highly constrained in the 2022/23 period, with three providing evidence to support this claim. Only one respondent identified 2023 as having a particular uptick in market orders for HVDC projects. The others only refer more broadly to the 2022 and 2023 period as a whole. The one respondent that pointed to an uptick in 2023 did not clarify whether this was an overall view of the global market conditions or supplier-specific.

- 3.5 Two respondents opposed the granting of a PEP altogether. One (Ocean Winds – an Offshore Wind Generator) argued that the TOs have been granted exceptional regulatory treatment and that this event was a foreseeable risk, which if granted, would undermine the basis of the ASTI scheme. It added that delays such as this have knock-on effects on offshore wind connection dates, which increase costs to generators, and ultimately to the consumers, via risk driving higher bids at Contracts for Difference auctions. The other (anonymous) respondent argues that a PEP should not be granted because the TOs need to be incentivised to adopt more flexible market approaches that use strategic partnerships, procure on programme basis, standardise technology choices and specifications and provide better forward visibility to the supply chain.
- 3.6 Another respondent (Transmission Investment) did not specifically comment on whether the PEP should be granted but argued that this major delay to the project demonstrates TOs are not a low-risk option for project delivery and added that Competitively Appointed Transmission Owners (CATOs) may provide better outcomes for the consumer in terms of delivery, and innovation.
- 3.7 EDF did not comment on the specifics of the EGL1 Delay Event application, but said that it is supportive of effective delivery incentives, but that Ofgem should be cautious against perverse incentives which may be adversely impacting the treatment of existing connected users.

Response from the public

- 3.8 We received one response from a member of the public. The respondent did not address the specific details of the EGL1 Delay Event, but instead attributed responsibility for the project's delay to Ofgem, mistakenly understanding that Ofgem was responsible for delivering EGL1.

Response from NGET and SPT

- 3.9 NGET and SPT formally objected to each of the concerns outlined in our consultation and subsequently provided comprehensive responses addressing all issues raised. Additionally, NGET and SPT engaged three independent firms — [Redacted] —to assess supply chain conditions during the EGL1 procurement period and to review its procurement process (with [Redacted] conducting the latter review).

Does the event cause, or is it reasonably expected to cause, one or more ASTI projects to be delayed by at least 30 days?

3.10 NGET and SPT claim that Ofgem agrees that the delay to the project is more than 30 days in length. It claims that the delay was not accounted for when setting the ASTI ODI Target dates in 2022, as this was a decision made on a whole portfolio level rather than considering specific circumstances of particular projects. It considers that it is not possible that Ofgem’s 2022 ASTI decision considered the specific circumstances of EGL1.

Was the event: outside the licensee’s reasonable control?

- 3.11 NGET and SPT argue that this criterion has been met for the following reasons:
- i. the event was caused by global supply chain availability driven by external factors outside NGET and SPT’s reasonable control, i.e. there was a globally constrained market, and the NGET and SPT’s approach was open to all suppliers in the global market.
 - ii. The “comparable projects” identified by Ofgem as having achieved better delivery dates were not fair comparators.
 - iii. Changes to the regulatory framework, including Ofgem taking 16 months to allocate delivery of the project to NGET and SPT, limited the scope to mitigate the impacts of supply chain conditions on the project.

Global Market conditions (3.11 i):

- 3.12 NGET and SPT refuted Ofgem’s objections that the evidence provided before the consultation did not demonstrate a global picture of the supply chain conditions.
- 3.13 NGET and SPT provided additional evidence to show the suppliers that were engaged in its procurement process for EGL1. This showed a much broader view of suppliers than had been presented to Ofgem previously, and included detailed explanations of why many of the suppliers were discounted or withdrew from the procurement process.
- 3.14 NGET and SPT argued that the global supply chain conditions were outside of its control, and provided additional evidence, from commissioned and publicly available reports, that showed there was a peak in supply chain constraints for electricity transmission components in 2022 and 2023 – the time that EGL1 went out to market. It argues this was driven by raw material availability decreasing due to significant increases in orders globally, market shutdowns and volatility from the COVID-19 pandemic and the Ukraine war.

Comparable projects achieving better outcomes (3.11 ii):

- 3.15 NGET and SPT refuted Ofgem’s determination that two European HVDC projects procured on better timelines to EGL1 are fair comparators. NGET and SPT argued that due to the significant differences in the technology choices (i.e. that they differ in circuit configuration and number of circuits), it was not fair to compare these to EGL1. NGET and SPT added that when considering only comparable projects i.e. those with the same circuit configuration and technology choices, EGL1 achieved the best result of any project of this type globally in this procurement period.

Consideration of changes in regulatory framework (3.11 iii):

- 3.16 NGET and SPT raised that Ofgem took 16 months from the Initial Needs Case (INC) submission in October 2020 to informally indicating in January 2022 that the JV would be the delivery body for the project. Without confirmation of its status as the delivery body, NGET and SPT was limited in how it could approach the market, with only limited market engagement possible (i.e. not progressing to the Pre-Qualification Process). This delay created ambiguity around delivery responsibilities, which limited NGET and SPT’s abilities to engage formally with the supply chain and contributed to the Delay Event at the BAFO stage in May 2023. NGET and SPT added that no companies indicated in the early engagement that the target delivery date before 2029 would not be achievable. NGET and SPT stated that its approach was consistent with best practice and in line with Regulation 58 of the Utilities Contracts Regulations on preliminary market consultations.
- 3.17 NGET and SPT also argued that that the full impact of the delay and the transition from LOTI to ASTI during a live procurement event was not considered. It adds that this transition was outside the reasonable control of the TOs and affected the project’s ability to respond to acceleration incentives.

Was the delay attributable to any error or failure on the licensee’s part.

- 3.18 NGET and SPT have provided additional supporting information on their procurement process for EGL1. Part of this evidence base is two independent reports by [Redacted] that were commissioned by NGET and SPT. The reports conclude that NGET and SPT were not at fault in their tender process, and that NGET and SPT made up some time in their procurement process versus the assumptions held at Final Needs Case stage. The [Redacted] report also concludes however, that the delay to the [Redacted] which are on the critical path for the project has not been shown to be due to availability of [Redacted] , but that the delay appears to be driven by refinements to assumed timelines for

consenting and enabling works, civil works, installation and commissioning. The report adds that the extent to which the programme is driven or constrained by the manufacture of equipment, specialist resources or other elements is not possible to ascertain without programme resubmission.

4. Our decision

4.1 In this section we set out our consideration of the responses to our consultation, and our final decision on the JV's application for a PEP of 480 days. Following a thorough review of all consultation responses, including the substantial additional information and clarifications provided by NGET and SPT, we consider that the threshold for a Delay Event has been met. However, several outstanding issues remain. As a result, while we acknowledge the occurrence of a qualifying Delay Event, we have determined that it does not justify the full 480 days of Penalty Exemption Period (PEP) requested by the JV. We are instead awarding 57 days of PEP, due to significant uncertainty regarding the extent of delay to EGL1's timelines that can be attributed to this Delay Event.

4.2 To reach our decision we assessed whether the event reported by the JV satisfies the criteria as set out in the transmission licence for qualifying as a Delay Event:

Does the event cause, or is it reasonably expected to cause, one or more ASTI projects to be delayed by at least 30 days?

4.3 Having carefully considered the additional information provided in response to our consultation we now consider that the event reported by the JV is reasonably expected to cause a delay of at least 30 days to EGL1. However, we also consider it is likely to have caused significantly fewer than the 480 days of delay claimed by the JV. We do not dispute the JV's [Redacted] assumptions for an [Redacted] delivery, but we do dispute that the Delay Event in question is wholly responsible for the expected delay.

4.4 Making an accurate judgement on the true extent of the delay resulting from this event is extremely challenging with the information we have available. Our primary concern is that much of the delay to the project is, in our view, likely due to the supply chain capacity limitations emerging in 2022, rather than early 2023 as per the JV's application. We consider the 2022 supply chain conditions to have already been accounted for in our 2022 ASTI decision, which extended the ASTI ODI Target Date on all ASTI projects by 12 months compared to our ASTI consultation position. Furthermore, the 2022 supply chain conditions do not form the basis for this Delay Event claim.

4.5 Ofgem's 2022 ASTI decision granted an additional 12 months to the optimal delivery date when setting ODI Target Dates for all ASTI projects. A key factor in this decision was the challenging supply chain conditions reported by TOs at the time, who noted in particular the late-2022 TenneT bulk procurement round,

- which secured multiple large HVDC projects and absorbed a significant share of global market capacity at that time.
- 4.6 We consider that the JV has not demonstrated fully the extent to which the delay to EGL1 is a result of the qualifying Delay Event and is materially distinct from the supply chain constraints already addressed through Ofgem’s 2022 ASTI decision.
- 4.7 The TenneT bulk procurement was an exceptionally large procurement round for 2GW HVDC cable and converters, which, together with other procurement activities occurring at the time, placed substantial pressure on the market capacity at the time and leading into 2023. Evidence submitted by NGET and SPT indicates that procurement for the same technology type continued into early 2023, coinciding with the EGL1 procurement and the alleged Delay Event.
- 4.8 On the basis of this evidence, we consider it likely that the market conditions prevailing in late 2022 were a main contributing factor to the delay experienced by EGL1 at the point of tender in early 2023. Nevertheless, the evidence also demonstrates that market pressures did persist and intensify throughout early 2023. As such, we conclude that these ongoing pressures likely contributed at least 30 days to EGL1’s forecast delay.
- 4.9 The challenge in determining the amount of delay due to this event is compounded by a lack of clear delivery expectations for the project before and after the Delay Event occurred. NGET and SPT did not provide any updated pre-Delay Event delivery expectations, proposing instead for the delay period to be calculated based upon the original EISD of the project (end of 2027). We understand from previous engagement with the TOs that the original EISD for the project was a highly improbable delivery expectation for EGL1 even before the Delay Event had occurred, in particular this understanding was informed by a set of probability estimates provided by NGET as part of their late 2022 ASTI delivery plan submissions which gave a deterministic delivery estimate for delivery by end of 2027 a less than [Redacted]% chance.
- 4.10 Lastly, an independent report commissioned by the JV adds further uncertainty to determining the effects of the supply chain constraints, concluding that it was not possible to determine the impact of these supply chain conditions versus other factors that the supplier was facing and considering when developing the project delivery timeline.

Was the event: outside the licensee’s reasonable control?

- 4.11 Following further consideration, we now determine that this event was outside the reasonable control of the JV, which is a departure from the position set out in our consultation. In our consultation, we expressed the view that the JV could have adopted a more proactive and responsive approach to market engagement in order to mitigate against the delay. We expected that a more competitive offer by the JV may have yielded a more favourable outcome for the project. We also held the view that the prevailing market conditions ought to have been reasonably foreseeable to the JV.
- 4.12 NGET and SPT have since provided evidence demonstrating that, among all *comparable* HVDC projects procured globally in 2023, EGL1 appears to have achieved the most favourable expected delivery date. This supports our revised assessment that the delay was outside the JV’s reasonable control. Given that no supplier worldwide was able to offer a more accelerated delivery schedule under the prevailing conditions, we consider it unlikely that a materially different outcome could have been achieved through an alternative procurement approach.
- 4.13 In our consultation, we identified two projects from the JV’s list of globally procured HVDC schemes as potentially comparable to EGL1, noting that they appeared to have achieved more favourable expected delivery dates despite being procured within the same timeframe. However, having reviewed the additional evidence and rationale provided in NGET and SPT’s response, we now accept that these projects do not constitute a fair comparison. This is due to material differences in technology choices, which were reasonably excluded from the EGL1 tender on the basis that they would have resulted in a less optimal economic outcome for consumers.
- 4.14 While we continue to hold that the JV’s approach to market engagement in response to prevailing pressures remained within its sphere of control, we do not consider it reasonable, in this instance, to assert that an alternative strategy would have materially improved the delivery timeline for the project. Therefore, we conclude that the specific circumstances faced by the JV for the procurement process of EGL1 could not have been reasonably mitigated against in a way that could have avoided any delay.

Was the delay attributable to any error or failure on the licensee’s part.

- 4.15 We are no longer concerned that the delay may be attributable to any error or failure on the JV’s behalf.

- 4.16 A key concern in our consultation was that we considered the JV had approached the market in a way that may have been unattractive to bidders. Broadly, our concerns with the approach were that it was inflexible and loaded much of the risk onto suppliers, which we considered would make it an unattractive tender to bidders in what was known to be a highly competitive and challenging market.
- 4.17 Having carefully considered additional information and clarifications submitted by NGET and SPT, we no longer consider that its approach to the market was an error or failure that caused or contributed to the delay to EGL1. Although we did have criticisms of the approach taken by the JV in its procurement process for EGL1, we do not conclude that in this circumstance the choices made were faults on the JV's behalf, or that an alternative approach necessarily could have produced better results in these circumstances. NGET and SPT have demonstrated that EGL1 appears to have achieved the best expected delivery timelines of any comparable HVDC project procured within the same period. It would be unreasonable therefore, in our view, to assert that this approach has led to delays, or that an alternative approach could have produced a better outcome.
- 4.18 We held a second concern that a potential misunderstanding of the consenting requirements by one of the JV's suppliers had led to them reconsidering their offer and adding 6 months of delay to the offer. Our concern at consultation was that it was possible incorrect information had been provided to the supplier, or that a lack of oversight from the JV could have mitigated this delay.
- 4.19 NGET and SPT provided more details on the details of their tender process and included an independent report from [Redacted] in their submission. From this information provided we no longer consider that the consenting misunderstanding was due to incorrect information nor that additional oversight from the JV was required or would have resulted in the offer not being delayed. We understand that the correct information was provided, and do not conclude that earlier oversight would have resulted in the 6-month delay being avoided.

Did the JV demonstrate that the delay was due to "*unavailability of equipment or capacity globally in supply chain*" as per the ASTI guidance?

- 4.20 Our consultation position was that the JV had not demonstrated that there had been unavailability of equipment or capacity globally in supply chain on the basis that two other comparable projects (in our view) had been procured within the same period and achieved more favourable dates. As discussed above in paragraph 4.13, we no longer consider the two projects in question to be reasonably comparable to EGL1, and therefore now consider EGL1 to have

achieved the best outcome globally for comparable projects procured within that time period.

- 4.21 Furthermore, NGET and SPT provided more detailed evidence of the suppliers they had considered in their procurement process, and why certain suppliers had been discounted from their process. We are now satisfied that they took a truly global view in procuring the EGL1 project.
- 4.22 We now consider that the JV has demonstrated that at the time of its procurement process there was in fact *unavailability of equipment or capacity globally in supply chain* to deliver EGL1 to a more favourable timeframe than that achieved by the JV.

Calculating the number of days for the PEP application

- 4.23 We remain in fundamental disagreement with the approach the JV took to calculating their PEP as part of this application, our reasoning remains as per our consultation position which is explained from paragraph 2.16 above.
- 4.24 Now that we accept that a Delay Event has occurred, we must determine a value for the PEP. This is challenging in the circumstance of EGL1 as we do not have a robust view of the project's expected delivery timeframe before and after the event (as required by the ASTI guidance). In our consultation we stated that the most recent pre-Delay Event delivery expectation we have for EGL1 is from a December 2022 submission by NGET submitted as part of the development of the ASTI framework. This submission was heavily caveated by NGET at the time as being an indicative estimation developed by an external consultancy and did not factor in many considerations that would impact project delivery.
- 4.25 In their response to our consultation, NGET and SPT state that "NGET/ SPT do not accept that NGET's December 2022 plan amounts to 'the most recent project delivery plan'." on the grounds that the plan was submitted by NGET only, was caveated as "not being a final delivery position or a forecast delivery position", and that the previously submitted plan (Sept 2022) was aligned with other plans submitted to Ofgem. We understand from subsequent engagement however, that the TOS' current view is that the December 2022 is in fact a suitable pre-delay delivery estimate.
- 4.26 We agree with NGET and SPT's response to our consultation that use of this delivery estimation for the basis of calculating the PEP is inappropriate due to its being an indicative date submitted a very considerable length of time ago by only one member of the JV. We disagree however, with NGET and SPT's response in

our consultation that the pre-Delay Event date used should instead be the date provided in their September 2022 submission, which is further outdated and has an even less-well developed view for the project's delivery timeline. In conclusion, we do not consider either of the pre-Delay Event delivery dates available to us (the TOs' September and December 2022 submissions) to be reasonably accurate enough to be used for the calculation of the Delay Event period.

- 4.27 Calculating the correct duration of PEP to award is further complicated by the fact that the Delay Event is in effect a continuation of the late 2022 supply chain conditions already addressed in our 2022 ASTI decision⁷. Based on the information available, we have not been able to clearly separate the impacts of the 2022 market conditions from those of the 2023 Delay Event, and as such it is not possible to definitively draw a line between where the impact of one event stops, and the other begins.
- 4.28 This difficulty is compounded by the findings of the confidential independent report commissioned by the JV, which concluded that it was not possible to separate delays caused by equipment unavailability from those arising due to other supplier-related issues.
- 4.29 Given the above factors we consider it is highly challenging to accurately determine the extent of the delay that is attributable to the Delay Event in question. Given the lack of a robust pre-Delay Event delivery estimate, and lack of clarity on the actual delay impact caused by this Delay Event we have judged it appropriate to award 50% of the forecasted penalty exposure period to account for the various uncertainties. In the case of future Delay Events we expect to make a judgement on the PEP based upon robust pre and post Delay Event delivery expectations. We now receive regular reporting on ASTI delivery expectations from the TOs and expect that this would form a reasonable basis for calculating the duration of any future Delay Event claims. We explain our rationale for awarding 50% further below:
- 4.30 We have determined that a reasonable amount of PEP to award in this case is 57 days. This has been calculated as 50% of the TO's forecasted exposure to penalties (to its current [Redacted] delivery date).

⁷ [ASTI decision doc - Final Published.pdf](#)

- 4.31 By looking at the forecasted penalty exposure period rather than pre- and post-event delivery expectations to calculate the delay period, this approach represents a departure from the ASTI guidance. This departure has been taken by exception due to the unique circumstances of EGL1. In the absence of a reliable pre-Delay Event delivery expectation, we consider the TO's penalty exposure period from the ASTI ODI target date to the latest [Redacted] delivery expectation to be the most reasonable basis for calculation. We have applied a 50% deduction to this period to account for two key uncertainties: (i) the difficulty in isolating the impact of the 2023 Delay Event from the 2022 market conditions already addressed in the ASTI decision, and (ii) concerns also raised in the independent report that supplier delays may not be solely attributable to market pressures.
- 4.32 We consider this strikes the appropriate balance between fair treatment for the JV, recognising the challenging circumstances it has faced on this project, whilst maintaining a strong delivery incentive on the ASTI project, ensuring that the consumer remains protected against a significant portion of the impact of late project delivery. Awarding a PEP of 57 days ensures that if the project is delayed to the new forecast date, consumers are not fully exposed to the cost impacts of this delay.

Appendix 1 – Relevant definitions and terminology

Licence and guidance definitions

A1.1 An ASTI ODI PEP is defined in the licence as: *"the number of days after the ASTI ODI Target Date for which the Authority decides an ASTI output delivery incentive penalty will not apply following an application under Part B of Special Condition 4.9 (Accelerated strategic transmission investment output delivery incentive)."*

A1.2 A Delay Event is defined in the licence as:

"[A Delay Event] means an event that:

(a) causes, or is reasonably expected to cause, one or more ASTI projects to be delayed by at least 30 days;

(b) is outside the licensee's reasonable control; and

(c) is not attributable to any error or failure on the licensee's part."

A1.3 Our ASTI Guidance and Submission Requirements Document ("ASTI Guidance")⁸ states: *"5.7 Whether or not the definition of Delay Event set out in Special Condition 1.1 is met will depend on the relevant circumstances and the quality of supporting evidence put forward by TOs in their applications.*

5.8 Examples of events that could potentially qualify as Delay Events include:

[...]

Unavailability of equipment or capacity globally in supply chain

[...]"

A1.4 and

"5.25 - Ofgem will determine the duration of the actual or expected delay, taking account of:

- estimates of the delay period provided by the TO as part of its application;*
- its assessment of the expected delivery dates (both with and without the Delay Event); and*

⁸ [Accelerated Strategic Transmission Investment Guidance And Submission Requirements Document](#)

- *its assessment of the proportion of the delay that could reasonably be attributed to the Delay Event."*

Key Terminology

- A1.5 The following terminology refers to well understood concepts within the electricity transmission network planning process, and/or defined terms set out in Special Condition 1.1 of the TOs' Electricity Transmission Licence, which provides for the ASTI framework. As a result, these terms are used throughout this Decision and so are explained or replicated here to assist the reader.
- A1.6 **Earliest in service date (EISD).** This date is provided by the TOs to the National Electricity System Operator (NESO) as part of the NESO's annual Network Options Assessment (NOA) process⁹, and is defined by the NESO as "the earliest date when the project could be delivered and put into service, if investment in the project was started immediately"¹⁰
- A1.7 **Optimal delivery date.** This is the year in which the NESO considers each project needs to be delivered by to deliver optimal consumer benefits within its CBA. It does not specify a date within the year by which the project must be delivered.
- A1.8 **ASTI ODI Target Date.** This is the date from which the licensee is not eligible for a reward under the ASTI output delivery incentive.
- A1.9 **Licence obligation.** A licence obligation is a regulatory requirement that a TO must comply with as part of its licence. There are licence obligations in place for the ASTI projects which oblige the TOs to deliver the ASTI projects in support of the Government's 2030 ambitions. Failure to meet a licence obligation is a breach of the licence and Ofgem then has the discretion to use enforcement action against a TO.
- A1.10 **ASTI ODI Penalty Exemption Period (PEP).** The number of days after the ASTI ODI Target Date for which Ofgem decides an ASTI Output Delivery Incentive penalty will not apply following an application under Part B of Special Condition 4.9

⁹ [Transitional Centralised Strategic Network Plan \(tCSNP\) | National Energy System Operator](#)

¹⁰ <https://www.neso.energy/document/304786/download>
