



## **ESB GT response to Supplemental Ofgem Guidance on the determination of disputes: Gate 2 to Whole Queue**

### **Introduction**

We welcome this opportunity to provide feedback into this proposed process. This is a non-confidential response, and we have provided views in response to the two consultation questions posed in the paper.

### **ESB GT Response**

#### **1. Does the G2tWQ Determinations Guidance in Appendix 1 clearly set out the Authority's determination processes for disputes arising from the Gate 2 to Whole Queue exercise and its expectations of disputing parties?**

Appendix 1 provides a clear step by step outline of the proposed approach for processing of disputes arising from the Gate 2 to Whole Queue exercise. Our concerns with the process however, which we feel are not captured are outlined in the second consultation question.

In addition, regarding the determination process scope, we would argue that where a project may go from Gate 2 to Gate 1, there could be additional and relevant factors other than whether NESO followed a process. There remains no recourse for these matters. We would strongly urge Ofgem to consider the avenues for issues outside of simply examining process compliance by NESO.

#### **2. Is there any additional clarity that you think is needed on the determinations procedures in the G2tWQ Determinations Guidance?**

As referenced above, outlined below are areas where clarity is still required:

1. The cost recovery mechanism for participants if they are successful in their dispute. There is no mention of a possibility of a goodwill payment or other remedying factor following a judgement that could be in favour of the disputing



party. There is precedence in the handling of connections determinations with respect to time taken, aggravating factors etc.

2. The full complaints process with NESO prior to resorting to Ofgem is unclear and narrow in focus. Similarly, this disputes process proposal for seeking recourse with Ofgem remains unclear in terms of scope.
3. The format of the dispute and the limitation of the dispute process to written submissions is disappointing. In practice, where there is a complaints process that has been prolonged and gone through previous channels already, permitting oral hearings may assist in achieving satisfactory outcomes in a larger majority of cases. We would encourage Ofgem to consider the wealth of experience they have in dispute resolution and how oral hearings have been of benefit in previous situations and provide the provision for oral hearings. We acknowledge that oral hearings can be burdensome but bearing in mind the amount of time that may have passed in resolving a dispute before it reaches Ofgem, it would be more expedient as the mediating party, to facilitate oral hearings in certain circumstances.
4. The timeframe for the dispute to be heard, judged and resolved by Ofgem is unclear and what this means for the project and their connection is also unclear. As this dispute will have gone through a complaints process with NESO prior to being reviewed by Ofgem, the status of the project, their connection application and re-application in the queue needs to be made clear.