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Sent: 14 November 2025 14:14
To: Connections
Cc: Giles Frampton; Conor McNally
Subject: Consultation Response - Supplemental Ofgem Guidance on the determination of disputes: Gate 2 to Whole Queue

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Dear Sir,

Please find our consultation response below. I confirm this can be considered non-confidential.

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?

Yes.

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

Yes.

The consultation material sets out the following: *"In general, therefore, Ofgem's position is that parties will not be able to request a determination if they disagree with NESO's decision about the status of their project when that results from proper implementation of the TMO4+ decision. We do not consider ourselves able to make individual determinations that are inconsistent with the TMO4+ reform package related decisions that were issued by the Authority earlier this year. Consequently, we will only accept a request for determination if a party can produce evidence that NESO and/or the DNO has not correctly followed the TMO4+ process as set out in the CUSC, licence conditions and associated methodologies or has reached an incorrect decision. The Authority's presumption will be that if the connections process has been correctly followed and is free of error, then the terms (including Gate 1 Terms) offered to the applicant are reasonable."*

This means that affected parties can only request a determination (and OFGEM will only accept a request for determination) if a party can produce evidence that NESO and/or the DNO has not correctly followed the TMO4+ process. However, NESO has made it clear on numerous webinars that they have no intention of providing transparency regarding the process. OFGEM is no doubt aware that Section 5.18 of the CNDM makes it clear that no information regarding which projects have been successful in receiving a Gate 2 offer will be published. In fact it explicitly states that *"if a zonal breakdown will result in individual projects being identifiable, this data will be amalgamated and presented for larger zones"*. NESO has publicly stated they are unable to provide further transparency due to limitations in the CUSC and/or Section 105 of the Utilities Act 2000; we disagree with this position, noting that project specific data is already published in the public domain under the TEC Register / Appendix G so it cannot be the case that this is restricted currently.

The proposed approach means that **it will be impossible** for any affected party to determine whether NESO has properly implemented TMO4+ and therefore whether or not they have a credible claim. If it were the case that industry could fully trust NESO's processes then might be a theoretical issue but there have been multiple examples of administrative, methodology and understanding errors from NESO in the process to date that have impacted parties.

Our concern is that the proposed lack of transparency is highly likely to legal challenge given errors made to date. This would be detrimental to the whole process, further damage the UK's/NESO's credibility, increase further uncertainty and further delay the transition.

It is not clear to us why this transparency cannot be provided. There is already detailed information in the public domain (e.g. TEC Register / Appendix G) that, contrary to the position in the CNDM, identifies exactly which projects hold which capacity at which connection point and who owns the projects. Every experienced developer has reviewed these registers to assess their project status.

To avoid the risk of legal challenge we would strongly urge that NESO / DNOs are required to issue updated these registers identifying (a) which projects have been granted Gate 2 offers and (b) on which basis (protections, land contracted and “needed”) have these offers been granted. These must be available for NESO to communicate the position in early December but we request this is transparently communicated.

Developers that do not receive the offers they are anticipating will, unfortunately given the experience to date, consider whether this is due to an incorrect implementation by NESO of TMO4+. If OFGEM implements this guidance as proposed then the only route available will be a legal challenge to NESO’s decision as the guidance only allows a dispute if it can be proved that NESO has erred.

It would be rational to provide a small additional amount of transparency to avoid this risk. This would only involve updating existing publicly available documents (TEC Register, App G) to identify which projects have been granted Gate 2 and what was the basis for this decision. We don’t understand why this cannot be provided – in due course it will be very obvious which projects have a Gate 2 offer, these will be the projects that continue to seek planning permission. We have spoken to numerous developers and none have any commercial concern regarding this approach; all agree the bigger commercial delay is further uncertainty and delay as a result of legal disputes.

With this transparency developers will be able to quickly assess if failure to receive a Gate 2 offer for their project is due (i) to other projects being correctly prioritised (e.g. based on the date of grid offer acceptance) or (ii) it is due to an implementation error by NESO and therefore whether this should be raised with OFGEM. Without this transparency it is impossible to raise a dispute which will only leave legal challenge. If OFGEM implement a dispute mechanism where it is evidently impossible to raise a dispute then this in itself could be regarded as irrational.

Please let me know if you have any questions or require clarification on the above.

Kind regards,
Conor.

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